

## **Town of Middlesex / Zoning Board of Appeals Minutes**

### **Public Hearing / April 15, 2021, 7pm**

Zoning Board of Appeals Members: Chair – Rebecca Parshall;

Board Members present: Ted Carman, Elizabeth Grant, Win Harper (alt)

Public Hearing called to order at 7:00 p.m.

Chair Parshall stated that the ZBA could only grant the minimum variance allowed by the local Zoning Code with or without conditions. Any variance granted by the ZBA remains with the parcel, not with the property owner. Any decision made by the Board must be made within 62 days from the closing of the Public Hearing. Under Sec. #908 of the Town 's Zoning Law, any person or person(s) may appeal a decision of the Zoning Board of Appeals, by applying to the Supreme Court of Yates County under Article 78 within (30) days after a decision has been filed in the Office of the Town Clerk.

1. Application # 040921-ZBA

Applicant: Jeff & Nancy Wolk, 894 South Lake Road, Tax ID # 21.26-1-4

Variance request(s): Applicant is seeking variances for 28% Lot Coverage: whereas maximum lot coverage in Lake Residential Zoning District is 20 %. Applicant is also requesting a 10 ft. variance on the side setback for a driveway to be located 5 feet off the north boundary line; whereas a side setback of 15 feet is required pursuant to Section #403, Schedule II of the Town of Middlesex Zoning Code in this Zoning District.

Legal Notices were mailed on march 29<sup>th</sup> to parcels within 200 ft. of said property.  
Publication date in the Daily Messenger was 4/06/21

Code Officer Kane summarized the application stating the Planning Board had currently undergone two reviews and given conditional approval on the engineered site plans, site drainage and hydraulic loads. This vacant parcel is restricted by the lay of the land, and a pre-existing leach field installed by the previous owner and undergone a full review and support by the NYSDOH. The variances requested are in part driven by the septic and access to the site from a pre-existing gravel path to the parcel.

It was noted the Code Office had not received phone-calls or written comment by the general public in response to legal notices of tonight's Public Hearing.

Discussion from Board Members concerns and inquiries centered around lot coverage and on-site drainage.

Applicants stated the parcel was smaller than the standard 100 ft. lot as it was driven by a pre-existing leach field. Unable to purchase additional footage from contiguous parcel owners, and restricted by NYSDOH to utilize the pre-existing septic leach field, they reduced the footprint of the driveway to 10 ft. in width, and the turnaround to a one car width. Applicants had purchased the property with the knowledge that the site had been sized and approved for a 2762 sq. foot house footprint, applied for by the previous owner. The current footprint of 2 story house is 2550 sf. Proposed lot coverage with building driveway and decks is 28%. Driveway improvements and turnaround takes 11% and the building footprint takes up 17% of the total requested; whereas 20% is required by zoning.

Applicants stated drainage from off roof runoff used splash blocks a preference of the NYSDEC. The septic leach field remained established vegetation tapering down to engineered swales to move water around the south side of the house. Water run-off from driveway would be mitigated by inverting the crown to the driveway and channeling it by leveling off the 15% existing grade and elevating it 42" with a retaining wall. Another swale engineered between turnaround and house would disperse water run-off to the west side of the driveway at end. Applicant's noted recent Town efforts to upgrade drainage on the upland side of South Lake Road would also mitigate run-off from an upland parcel across the road.

After much discussion, Chair Parshall inquired of the Board whether they would like to have more time to consider all aspects of the application and reconvene at a later date to review the application, allowing applicants time to work with their architect and engineer and perhaps reconfigure aspects of the application to be more in compliance with current zoning.

A date of Thursday, April 22<sup>nd</sup> at 7pm was scheduled to reconvene on the application.

2. Application # 040821-ZBA

Applicant: Bill & Jan Scott, 818 Green Cove Drive, Tax ID # 11.74-1-53

Variance request: Area Variance for a front setback to locate 6 ft. high privacy fence (8) eight feet from the High Mean Water Line; whereas pursuant to Sect. #403, Schedule II of the Town of Middlesex Zoning Code, (40) forty feet are required in the Lake Residential Zoning District.

Legal Notices mailed on 3/29/21 to parcels within 200 ft. of said property.

Publication date in the Daily Messenger – 4/06/21

Code Officer, Dawn Kane summarized the application stating the applicant is now requesting a front setback from the HMWL noting this dimension had been on a second map that had not been submitted by the engineer with the previous application for a side setback which had been granted by the ZBA in March. Applicants Jan & Bill Scott wished to request the front setback to obtain the privacy they seek from the contiguous public beach owned by the Town of Middlesex. She stated a maintenance agreement with the applicant and the Town of Middlesex was in the works but did not enter into tonight's hearing discussion. She stated the Code Office had not received any phone calls or written comments from the general public prior to the hearing.

Applicant Bill Scott stated they were requesting the front setback variance for the reason for the request was privacy, placing the fence 40 feet from the HMWL to be in compliance was too far back to create the privacy buffer they were seeking. He stated the fence would remain in the same location only closer to the lake, ending at the shed.

After complete review of the file and the testimony given at the Public Hearing, and after due deliberation, the findings of fact were determined. (Refer to the Area Variance Findings & Decision Form found on the Town website.)

Without further discussion and after consideration of the five factors presented, a motion was made by Carman, seconded by Grant and resolved that the variance request is GRANTED because the benefit to the Applicant DOES outweigh the detriment to the character, health, safety and welfare of the neighborhood.

The motion so carried with the following vote:

Roll call vote:

Rebecca Parshall	aye	Richard DeMallie	absent
Elizabeth Grant	aye	Ted Carman	aye
Win Harper (alt)	aye		

Chair Parshall closed the Public Hearing at 8:15pm

Draft minutes from March 4<sup>th</sup> for review. Board Member Carman made a motion to accept the minutes with a slight revision. Board Member Grant provided a second. The motion so carried with all Board Members present voting in favor. None opposed.

CEO Kane reported to the Board that the Code Office had received a phone call from the contiguous neighbor with a concern about a previous application which had been reviewed by the ZBA and granted last month for a front and side setback to locate a privacy fence on the property line at 5530 Sunnyside Road last month. A contiguous neighbor to the south stated he had received the legal notice for the application after the hearing due to being out of state and not picking up his mail at his business location until after March 4<sup>th</sup>. His concerns were summarized in an email sent to Ms. Kane, CEO.

Ms. Kane read the neighbor's concerns to the Board. He requested an updated survey of the property line and setbacks in reference to an existing deeded ROW to verify the placement of the privacy fence to be reviewed by the Board. CEO Kane assured the Board, after obtaining legal advisement, the Town Attorney had confirmed that the ZBA had completed its' legal obligation in notification to neighboring property owners in advance of the Public Hearing and was not obligated legally for the receiving or reading of such notification. As it would be improper to accept additional information or documents from a member of the public after the close of the public hearing, the ZBA can only consider in its review of the application, those comments or submissions from the public made as part of the Public Hearing by unanimous vote and rehear the application if they felt it important to necessitate such action.

After board discussion, it was recommended by all members present, that the neighbor could obtain a survey at his own expense and work out an agreement on his own with the property owner as to any conceived appropriate placement of the fence in relation to the property line. The ZBA held in its prior determination on March 4, 2021 without a rehearing of the application.

Ms. Kane, CEO stated she would relay the Board's decision to the parties concerned without further action by the Board.

After a brief discussion, Chair Parshall entertained a motion to adjourn the meeting of the Zoning Board of Appeals. Board Member Carman made the motion. Board Member Grant provided a second. The motion so carried with all Board Members present voting in favor. None opposed.

Meeting adjourned at 8:30 pm

Draft Minutes submitted by L. Lersch, Zoning Clerk

Minutes accepted on April 22, 2021