

Town of Middlesex / Zoning Board of Appeals Public Hearing

Minutes December 16, 2021

Zoning Board of Appeals Members: Rebecca Parshall, Chair; Board Members present: Ted Carman, Elizabeth Grant, Richard DeMallie, Win Harper (alt)

Others present: Rob Brenner, Esq., Dawn Kane, CEO

Public Present: Rocco & Pat Venezia, Richard Testa, Jon Jones P.E. of Marks Engineering, Dean Arpag, Kris & Eric Eckberg

Public Hearing was called to order at 7:02 p.m.

Chair Parshall was in attendance by a zoom link. She established there was a quorum of Board members and gave a brief summary of the criteria required of the Zoning Board of Appeals in determining a variance, stating all persons would need to be recognized by the Board prior to speaking. Any request for variance from the Town's Zoning Law, was given up to sixty-two (62) days for the Board to determine after closing of the Public Hearing. She cited Sec. #908.0 of the Town of Middlesex Zoning Law which offered the applicant an appeal to the Supreme Court by proceeding with an Article #78 of the Civil Practices Law and Rules to be instituted within (30) thirty days after the filing of a decision by the Zoning Board of Appeals.

1. Application #1112021-Z

Applicant: Dean Arpag, represented by Jon Jones, Marks Engineering.
Property located at 1187 South Lake Road, Middlesex NY 14507
Tax ID # 21.64-1.1 (LR)

CEO Kane summarized the application stating Mr. Arpag, represented by Jon Jones of Marks Engineering were resubmitting a revised area variance request which was heard on November 18, 2021 and reconvening to have their variance requests heard again by the Zoning Board of Appeals.

Chair Parshall acknowledged Jon Jones, representing Mr. Arpag.

Jon Jones stated the applicant had requested a change in the number of variances requested after listening to the Board's comments in November. The variance requests were reduced in number to become (4) four variances instead of (6) six by removing a landscape rock wall at roadside. The front and side setbacks for the proposed 14 x 16 ft. shed remained the same. Dean Arpag explained that his parcel was divided by the road as was many other parcels around the lake and the shed would allow him the necessary storage space at the shoreline rather than carrying waterfront gear across the road to his upland garage which would be dangerous. Also, his kayaks and scuba gear would fit in the larger size shed and protect them from the weather. The pre-existing stairs were in need of repair and a redesign when replacing them would make them safer and easier to navigate as its location is in a steep portion of the parcel.

Board Member Harper inquired about the Town's ROW stating that portion of South Lake Road would be Phase II of the Town Highway Improvement Project and asked if there had been any discussion with the Town Highway Supervisor. Jon Jones stated he had made an inquiry, and the Mr. Conaway had no concerns at this time without knowing what the future work would entail.

Attorney Brenner stated that it was present protocol that any proposed projects infringing on the Town's ROW that may create an impact on future highway projects and/or maintenance of the road would be

allowed only on the condition that if the owner proposes the location of a new structure within the ROW, the Town is not liable if this structure becomes damaged during routine highway maintenance or must be removed at the expense of the owner as the variance if allowed stays with the land forever.

Discussion developed around the size of the shed and its relevance to other parcels on the road with similar Boat Accessory Structures that were grandfathered in. Board Member Carman stated that even the UDML set an allowed maximum limit of 120 sf for all BAS in a steep slope area, which Arpags' property did not qualify for this due to the toe of the slope. Expansion on the waterfront is strictly regulated due to density and protection of the lake. Mr. Carman suggested racking his kayaks and providing a cover to them to protect them from weather deterioration.

Attorney Brenner stated the regulation by UDML was not relevant in the area variance request before the Board, as the structure was upland of the HMWL, and the criteria focused on continuity within the character of the neighborhood and whether it was substantial as requested.

CEO Kane stated in answer to Jones inquiry of a shed size allowed, the option to replace with like kind in the same footprint of the existing shed would be allowed without a variance.

Mr. Arpag stated he had discussed his project with his contiguous neighbor to the south and they were in favor of what he was proposing. He stated this neighbor had a similar structure the same distance from their shared property line.

Chair Parshall invited further discussion. There was none.

Member Carman offered to make a motion to deny all three variance requests that defined the proposed waterfront location of the 14 x 16 ft shed, but granting of the fourth variance request of 18.6 ft. for the proposed stair system with the condition that the owner was clearly aware of and acknowledged the possibility of removal of the stair landing in the Town's ROW if the stairs' location impacted the Town's maintenance and repair of the road and this removal would be at the expense of the owner.

Member DeMallie offered a second to the motions on the floor.

- (1) After careful review of the findings for criteria of an Area Variance, the board members stated variance requests (1, 2, and 3) the benefit to the applicant did NOT outweigh the detriment to the character, health, safety, and welfare of the neighborhood and therefore was denied:

Roll Call Vote:

Rebecca Parshall, Chair:	nay	Elizabeth Grant:	nay
Ted Carman:	nay	Richard DeMallie	nay
Win Harper (alt)	nay		

- (2) After careful review of the findings for criteria of an Area Variance, the board members stated variance request (4) the benefit to the applicant DOES outweigh the detriment to the character, health safety and welfare of the neighborhood and therefore the variance request is granted:

Roll Call Vote:

Rebecca Parshall, Chair:	aye	Elizabeth Grant:	aye
Ted Carman:	aye	Richard DeMallie	aye
Win Harper (alt)	aye		

The motion so carried. After complete review of the file and the testimony given at the Public Hearing, and after due deliberation, the findings of fact were noted and referenced in the Findings and Decision form.

Chair Parshall closed the Public Hearing at 7:38 pm

2. Application #111821-Z

Applicant: Richard Testa, represented by Rocco Venezia of Venezia & Associates
Property located at 958 South Lake Road, Middlesex NY 14507
Tax ID # 21.58-1-8 (LR)

Chair Parshall opened the Public Hearing at 7:40pm

CEO Kane summarized the application stating the owner and his representing agent were present, as well as the contiguous neighbor to the north – Kris & Eric Eckberg's were present for the Public Hearing on Zoom. She distributed letters from neighbors stating they were not in support of the variance requests.

Rocco Venezia stated there were (2) side setback variance requests and a Lot coverage variance. He stated flooding and drainage issues sustained over time necessitated the proposed repairs and the owner's intent to live in the seasonal cottage year-round gave reason for the proposed expansion and detached garage.

Owner Richard Testa summarized the damage to the cottage due to water damage.

Agent Venezia stated the elevation of the property in relation to the contiguous parcels created the drainage issues which would be resolved by raising the cottage by putting an 8 ft. basement under the existing cottage and addition creating a one-story configuration with a walk-out basement for storage. He also stated the geo-grid driveway concept was an option for smaller lot sizes as the finished driveway would not be included in lot coverage as it was constructed underground and was permeable. The two-car garage was a reasonable addition for a year-round lake resident today, as it provided boat storage as well as a vehicular storage.

Owner Richard Testa distributed multiple pictures of the proposed construction and additional letters of support from other parcels in the neighborhood.

Code Officer Kane stated she would accept the geo-grid driveway as a non-permeable surface not to be included in the total lot coverage for the parcel.

Board Member Harper stated the lot coverage could be minimized by reducing the garage square footage to a one car garage which was in better keeping with the character of the neighborhood as a 2 car garage by the road is a big structure blocking the view of the lake and cottage.

Board Member Carman stated he felt the additional structures proposed created an over building on a 57 ft. frontage lot.

Board Member DeMallie requested the letters received from the Board Members be read into the minutes. Ms. Kane stated everyone had received a copy of the letters except for the Eckberg's so reading the letter from Mr. Rick Agnello within the Zoom format for the meeting for their benefit was reasonable. Mr. Agnello's letter of non-support for the project was read into the minutes.

Chair Parshall invited Public Comment.

The Eckberg's who were Mr. Testa's neighbors to the north, stated they had not received full disclosure of the variance violations back in September when Mr. Testa shown pictures of the proposed changes to the existing cottage and the finished addition. Upon receiving the legal notice of Public Hearing from the Town of Middlesex they were concerned and called Dawn Kane at the Code Office. They were against anything that was not in compliance with the Town's Zoning Law. They felt a 10% increase in the lot's coverage was substantial as well as the 15 ft. side setback violation in Lake Residential Zoning District which provides a good buffer between properties. Expansion within compliance with the Town's Laws protected the impact on nearby properties and doing what is right for your neighbor is important to uphold. The Eckberg's were hoping the relationship as good neighbors could continue; however, was felt it important to be part of the discussion.

Chair Parshall invited discussion.

Board Member Carman stated the applicant had the right to rebuild on the footprint, regardless of public comment, but extending the footprint on an already narrow lakefront property is difficult and lot coverage gets overbuilt.

Rocco Venezia offered alternative options such as tearing down the existing cottage and rebuilding, or reconfiguring the dimensions of the structures to be more in compliance or working with the pre-existing and non-conforming cottage in the existing footprint.

Chair Parshall invited more discussion.

Owner Testa stated he acknowledged the Board's opinions, thanked the Board stating other alternatives were available in working with Rocco and the architect involved in the project. He brought up more examples of lot coverage infringements in the neighborhood for the board to consider.

Rocco Venezia stated that he would like to work with the project more and resubmit rather than receiving a denial on the variances requested.

Without further public comment, Chair Parshall closed the public comment portion of the meeting.

Chair Parshall entertained a motion to close the Public Hearing, table the application and reconvene at a later date if an alternative option was submitted for review. Board Member Harper made the motion and Board Member DeMallie offered a second. The motion so carried with all Board Members present voting in favor. None opposed.

Draft Minutes from November 18th were reviewed and a motion to accept the minutes as submitted was offered by Elizabeth Grant and seconded by Richard DeMallie. The motion so carried with all Board Members present voting in favor. None opposed.

A motion to adjourn was made by Richard DeMallie and seconded by Ted Carman. The motion so carried with all Board Members present voting in favor.

Meeting adjourned at 8:42 pm.
Draft Minutes submitted by L. Lersch
Minutes approved on 1/6/2022