

AREA VARIANCE FINDINGS & DECISION

Town of Middlesex ZONING BOARD OF APPEALS Public Hearing on March 3, 2022

Applicant: Mark & Carol Gould Variance #: 020922-Z
Address: PO Box 210, Gibson Island, MD 21056 Zoning District: Lake Residential
Telephone: (443) 257-9192 Published Notice(s) on: 02/22/2022
Tax Map #: 21.33-1-7 County Referral Deadline: N/A
Applicable Section of Zoning Code: Section 403, Schedule II County Hearing Date/Response: N/A

NATURE OF REQUEST

Per Section #403, Schedule II of the Zoning Code, Lake Residential Zoning District requires a 60' rear setback and a 40' front setback. Applicant is requesting two (2) variances. (1) One rear setback variance of 36.9', whereas 60' is required; and (2) one front setback variance of 0', whereas 40' is required.

FACTORS CONSIDERED:

1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created: Yes No

Reasons:

This request represents a significant change based on our zoning and its waterfront location and, if approved, would lead to additional similar requests. We have had many requests of this type for beach accessory structures and modifications which were denied.

2. Whether the benefit requested by the applicant could be achieved by some method, feasible for the applicant to pursue, other than a variance: Yes No

Reasons:

There are other means to achieve shade on the waterfront, such as a retractable awning or sun shade, there are examples of those on the west side, it would be attractive and still may require a variance but is not a permanent structure going further into the setback. That could be done without building out closer to the water front or up to the mean high water.

3. Whether the requested variance is substantial: Yes No

On the waterfront any significant change relating to zoning and setback goes against the intent of the regulation which is designed to protect all residents, abutters and takes into consideration people's viewshed and space protection.

4. Whether the variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district: Yes No

In view of the precedent this could lead to many adverse impact issues on the waterfront even potentially impacting the Uniform Dock and Mooring Regulations. We need to stick to the setbacks, which are there for everyone's protection and based on sound reason.

5. Whether the alleged difficulty was self-created: Yes No

Unfortunately, the tree is dying, it is reducing shade but every other place along there faces and receives sun in the afternoon. Others have that same kind of issue.

DETERMINATION OF THE ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after taking into consideration the above five factors, in a motion made by Ted Carman, and seconded by Win Harper finds that:

- The benefit to the Applicant DOES NOT outweigh the detriment to the character, health, safety, and welfare of the neighborhood and therefore the variance request is DENIED.

NOTE: SEC. 908.0 of the Town of Middlesex, NY Zoning Law states:

Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals, or any officer, department, board or bureau of the Town, may apply to the Supreme Court by proceeding under Article 78 of the Civil Practices Law and Rules. Such action must be instituted within thirty (30) days after the filing of a decision in the Office of the Town Clerk.

- 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.

CONDITIONS:

The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community:

Rebecca Parshall

Chairperson, Zoning Board of Appeals

Date

RECORD OF VOTE

	MEMBER NAME	AYE	NAY
Chair	<u>Rebecca Parshall</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member	<u>Ted Carman</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member	<u>Richard DeMallie</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member	<u>Elizabeth Grant</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member	<u>Win Harper</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member	_____	<input type="checkbox"/>	<input type="checkbox"/>

(Version Date 5/11)