

# AREA VARIANCE FINDINGS & DECISION

MIDDLESEX ZONING BOARD OF APPEALS on November 15, & December 16, 2021

Applicant: Dean Arpag

Variance No: #1112021-ZBA

Address: 1187 South Lake Rd., Middlesex NY 14507

Zoning District: (LR)

Telephone: (585) 721-4231

Published Notice on DM 11/11/21

Property Location: same – Tax ID # 21.64-1.1

Notice to County sent on N/A

Applicable Section of Town Zoning Code: Sec. #403, Schedule II

County Hearing held on N/A

## NATURE OF REQUEST

Proposed structures do not meet lot area setback requirements for the Zoning District it is in. On November 15<sup>th</sup>, the applicant requested six (6) variances: one (1) front setback of 11.8 ft. from the HMWL whereas 40 ft. is required; two (2) side setbacks of 7.5 ft and 2 ft. whereas 15 ft. are required and three (3) rear setbacks of 36 ft, 18.6 ft and 15.8 ft. whereas 60 ft. is required pursuant to Section #403, Schedule II of local zoning. A determination was reconvened on December 16<sup>th</sup> whereas the applicant resubmitted the application requesting four (4) variances: The first three pertain to the proposed new shed size of 14 ft. x 16 ft. from an existing 8 ft. x 10 ft. size requesting (1) a front setback of 11.8 ft from the HMWL whereas 40 ft. is required, (2) a side setback of 7.5 ft. whereas 15 ft. is required; (3) a rear setback of 36 ft and (4) a stair system leading to the shoreline, requesting a rear setback of 18.6 ft., whereas 60 ft. from the centerline of the road is required pursuant to Section #403, Schedule II for the Lake Residential Zoning District in the Zoning Code with the following findings of fact:

## 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 (1,2,3) No (4)

Reasons: (1), (2), (3) The proposed shed size requested increases the size from 80 sf to 224 sf. which is 2.8 x the original existing shed size creating an undesirable change in front, side and rear setback requests from what was existing at the shoreline. (4) locating the proposed replacement of an existing stair system 18.6 ft from the centerline of the road is safe access to the shoreline to which he is entitled.

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 (1,2,3) No (4)

Reasons: (1, 2, (3) The proposed variance requests for increasing the proposed size of the shed at the shoreline were numerous when the owner could replace the existing shed with a new one in the same size without making it more non-conforming when there were other options available to the owner. (4) The proposed stair system makes it safer to access the shoreline and is consistent with other parcels on South Lake Road where the road splits the shoreline portion of the parcel from the upland portion.

3. Whether the requested variance is substantial: Yes (1,2,3,4) No \_\_\_\_\_

Reasons: (1,2, and 3) Increasing the pre-existing and non-conforming shed by 280% (from 8 x 10 ft. to 14 x 16 ft.) as requested by the owner is substantial particularly on the waterfront properties. (4) Though the request is substantial, as a waterfront home owner whose parcel is divided by the road, the owner has the right to be able to access the shoreline as is spelled out in the Zoning Code of the Town of Middlesex.

4. Whether the variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district Yes (1,2,3) No (4)

Reasons: (1,2 and 3) Due to the size and placement of the proposed structures on the shoreline portion of the parcel whereas the owner could replace the existing shed in the same footprint without a variance creates an adverse impact in the Zoning District. (4) The proposed rear area variance of 18.6 ft from the centerline of the road should be granted with the condition that the owner realizes that the proposed stair landing that is in the Town ROW may need to be removed during Phase II of the Town's Highway Improvement project during resurfacing.

5. Whether the alleged difficulty was self-created: Yes (1,2,3,4) No \_\_\_\_\_

Reasons: (1,2, and 3) The applicant wants to increase a pre-existing and non-conforming shed size 2.8x as a replacement, however (4) it is reasonable to be able to access the waterfront portion of his parcel which is divided by South Lake Road.

### **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 Richard DeMallie, finds that:

- ✓ Variance request (1, 2, and 3): 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.*

- ✓ 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.

### **CONDITIONS:**

The ZBA finds that the following conditions are necessary to minimize adverse impacts upon the neighborhood or community: Variance request (4): Since the proposed stair system is within the Town's ROW, the rear setback of 18.6 ft variance from the centerline of the road is granted with the condition that the owner acknowledges that this

stair system may be damaged or need to be removed from the ROW during Town of Middlesex Highway Improvement projects and/or highway maintenance and so might be under the review of the Town Highway Supervisor at a future date in time.

Rebecca Parshall  
Chairperson, Zoning Board of Appeals

12-16-21  
Date

**RECORD OF VOTE**

	MEMBER NAME	AYE	NAY
Chair	<u>Rebecca Parshall, Chair</u>	<u>Var. #(4) X</u>	<u>Var. (1,2,3) X</u>
Member	<u>Richard DeMallie</u>	<u>“ (4) X</u>	<u>“ X</u>
Member	<u>Ted Carman</u>	<u>“ (4) X</u>	<u>“ X</u>
Member	<u>Elizabeth Grant</u>	<u>“ (4) X</u>	<u>“ X</u>
Member	<u>Win Harper (alt)</u>	<u>“ (4) X</u>	<u>“ X</u>

(Version update: May, 2011)