

**ZONING BOARD OF APPEALS
TOWN OF LEWISBORO
MINUTES**

Minutes of the Meeting held by the Zoning Board of Appeals on Wednesday, October 30, 2013 at 7:30 p.m., at the Town of Lewisboro Offices at Orchard Square, Cross River, New York 10518.

Board Members: Present: Geoffrey Egginton, Chairman
Jason Krellenstein
Robin Price, Jr.
Carolyn Mandelker
Thomas Casper

Also Present: Aimee Hodges, ZBA Secretary

The Meeting was called to order at 7:30 P.M. Chairman Egginton introduced the members of the Board and noted the emergency exits. He announced that the next ZBA meeting will be Wednesday, November 20th with a site walk scheduled for Saturday, November 16, 2013.

I. Review and adoption of the Minutes of September 25, 2013

Chairman Egginton moved to adopt the minutes of September 25, 2013. The motion was seconded by Mr. Price; In Favor: Mr. Krellenstein, Mr. Price, Chairman Egginton, Mrs. Mandelker and Mr. Casper.

II. PUBLIC HEARINGS

- **CARRIED OVER**

CAL. NO. 26-13-BZ

Application of Lonnie Lum, 15 Holly Hill Lane, Katonah, New York 10536 [Owners of Record: Lonnie Lum Curran & Thomas Curran] for a variance of Article IV § 220-23D(8)(d) of the Zoning Ordinance in the matter of the storage of manure required to be stored 150' from the street, property line, watercourse or wetland area (40.5' existing from the side yard) and for a variance of Article IV § 220-23E in the matter of an "As-Built" pre-fabricated shed (existing 49.2' where 50' is required) from the side yard property line in a R-4A, Four-Acre Residential District.

The property is located on the north side of (#15) Holly Hill Lane designated on the Tax Map as Sheet 14,Block 10556, Lot 7, in an R-4A, Four-Acre Residential District.

Lonnie Lum was present.

Chairman Egginton advised that all five members of the Board walked the property again on Saturday October 26th and noted that most of the violations had been corrected. The Board is still troubled by the dumpster and the manure. He noted that because the property is long and narrow, that no matter where the dumpster was located that a variance would be required. The Board suggested locating the dumpster behind the first barn structure as this may mitigate some of the impact.

Mr. Casper stated that he didn't mind the current location of the dumpster because it is shielded from the neighboring property and street. He suggested that a smaller dumpster be used so that it would need to be removed on a regular basis.

Dean Herbert, who resides at 15 Holly Hill Lane, advised that the neighbor was upset when the dumpster was left in the driveway; the location that was the subject of the original violation. He advised that he had spoken with the neighbor who seemed happy with the new fencing, which now blocks his view of the machinery and trailer. The neighbor further indicated his pleasure with the intent to install fencing around the dumpster.

In response to a question of Mr. Egginton, Mr. Herbert agreed to utilize a 20 yard dumpster rather than the 30 yard dumpster and have it removed at more frequent intervals.

Mr. Krellenstein advised that he could not support the application as it is his belief that the variance being sought is too great. He appreciated the efforts to remediate the problem, but the code requires that the manure be stored 150 feet from the property line and the application seeks approval to store it 50 feet from the property line. He believed that there were feasible alternate locations for the dumpster on the property. The application does not seem to be consistent with the character of the neighborhood. Although the property is long and there is a unique hardship, he did not believe that the applicant met the other criteria for a variance.

Mr. Herbert advised that both of the neighbors expressed concern with the odor from the dumpster when it was closer to their property. The current location is the best spot to address this concern because it is the furthest location from the pool. Moving the dumpster to the location as suggested by the Board would not work because of the proximity to the neighboring property.

Mr. Krellenstein understood the logic, but advised that he was not comfortable granting such a large variance.

Mr. Casper agreed that the math was important, but this Board deals with the unusual situations and exceptions. A smaller, shielded container would be acceptable to him.

Ms. Mandelker agreed that the request is for a substantial variance, but should be looked at in context of this property and the neighboring properties. She noted that the dumpster is located in a wooded area, not right up against where the neighbors are entertaining. She too agreed that she could accept a smaller container and believed that it is a reasonable location for a long, skinny property.

Chairman Egginton moved that the application be approved as amended subject to the condition that the manure container size is reduced 20 yards maximum, that it remains in its current location and screened with fencing as effectively as possible so that it is less obtrusive to the eye. The application was approved for the following reasons:

- There will be no undesirable change to the character of the neighborhood.
- There is no realistic alternative to the requested variance.
- The variance for the shed is not substantial.
- Although the variance requested for the manure storage is substantial, its location is reasonable in terms of the neighboring properties.
- There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood due to the fact that the applicant is mitigating the impact by reducing the size of the manure container in addition to screening it with fencing.

The motion was seconded by Mrs. Mandelker; In Favor: Mr. Price, Chairman Egginton, Mrs. Mandelker and Mr. Casper. To Deny: Mr. Krellenstein.

CASE CLOSED.

CAL. NO. 06-13-BZ

Application of Judith Gerst, 22 Deerfield Lane, Katonah, New York 10536 for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the “As Built” breezeway that is closer to the rear lot line (existing 5’ where 30’ is required) in an R-1/2, One Half Acre Residential District.

The property is located on the south side of Deerfield Lane, designated on the Tax Map as Sheet 9C, Block 10793, Lots 68-75, in an R-1/2, One Half Acre Residential District.

Cal. NO. 17-13-BZ

Application of Judith Gerst, 22 Deerfield Lane, Katonah, New York 10536 for a [1] variance of Article III § 220-9D(2) and [2] Article IV § 220-23E of the Zoning Ordinance in the matter of an increase in non-conformity other than use due to the “As-Built” conversion of an existing carport to garage that is closer to the rear lot line (existing 5’ where 30’ is required) in an R-1/2A, One Half Acre Residential District.

The property is located on the south side of (#22) Deerfield Lane, and designated on the Tax Maps of the Town of Lewisboro as Sheet 9C, Block 10793, Lots 68-75, One Half Acre Residential District.

Judith Gerst was present for both applications with her attorney, Jeffrey Kane, Esq. and architect Heike Schneider, R.A.

Chairman Egginton noted that the Board had made two visits to this particular site in light of the extensive variance requests.

Mr. Kane advised that Ms. Schneider had prepared and submitted plans for the proposed changes to the breezeway that would be made if the Board is inclined to approve them.

Ms. Schneider advised that she could not certify the integrity of the breezeway structure until the changes shown on the plans she prepared dated September 5, 2013 had been implemented. Ms. Schneider displayed and reviewed the plans and photos of the existing structure.

Mr. Krellenstein questioned whether any of the proposed changes mitigated the need for a variance and was advised by Mr. Kane that the proposal addressed the structural issues. While appreciating the applicant’s efforts to address any structural deficiencies in the as-built structure, Mr. Krellenstein advised that this Board’s purview was the fact that there are two as-built structures that were built five feet off the property line where 30 feet is required.

Mr. Kane advised that the plans were prepared in response to the Board’s request to address the structural integrity of the breezeway with the Building Department, which has been done. He further advised that there has not been any change to the proposal or physical change to the structure.

Mr. Casper noted that it was his understanding that the house pre-dated zoning and that a good portion of it was located within the setbacks. He further noted that he understood the desire for the overhang but what was built was excessive. He noted that he was more comfortable with the garage structure.

Ms. Schneider questioned whether the Board would consider a scaled back breezeway.

Mrs. Mandelker advised that the burden is on the applicant to convince the Board that this is a necessity.

Mr. Kane reminded the Board that Ms. Gerst's disabled adult child resides with her. The intent was to not only provide a private area but to provide a covered access to the garage. The only potential visual impact is to the Rinaldi home.

Chairman Egginton noted that the requested variance is substantial, even though it is a pre-existing non-conforming structure, the non-conformity is being increased. He appreciated the architect's efforts to reinforce the structure to make it code compliant and stable. This Board's purview is the setback. Scaling it back would not win his vote.

Mrs. Mandelker and Mr. Price questioned whether the breezeway could be built in the front of the house.

Mr. Kane believed that the thought at the time of construction was that the breezeway would have much less of a visual effect on the neighborhood in the rear.

Ms. Schneider advised that there is already a hardship. The fee to remediate the existing structure, including her fees is \$5000; to remove the structure and rebuild in the front would cost in excess of \$15,000. She asked if they could find a compromise.

Mrs. Mandelker advised that she is always grieved when people spend money and then find a problem. In this particular situation and property, she would not be inclined to grant the variance because it is a self created hardship; there are other options, and the variance being requested is substantial.

Mr. Krellenstein advised that he could live with the garage; the applicant enclosed an existing carport, a structure that is a utility, the need for which is obvious. It is unobtrusive and consistent with the character of the neighborhood. It is useful in this instance to understand the financial impact, but it is hard to support the application for the breezeway when one adds up the facts.

Mr. Kane questioned whether the Board would consider approving the breezeway if it were reduced and was advised by the Chairman that it appeared that the Board members were unanimous in their determination that the breezeway would not be approved but the carport/garage would be approved. Chairman Egginton did not wish to belabor the matter by asking his client to return or to spend any more money.

Mr. Kane asked for an opportunity to return after their architect had an opportunity to look at all of the alternatives.

Mr. Price reminded the applicant that there was a variance granted for the carport, which is now enclosed. The applicant knew that the variance was granted for the carport, not the garage and pushed the envelope on this. Then the breezeway appeared, a poorly built and unattractive structure, very close to the property line. He advised that he could live with the enclosed carport because it was there and there is not much of an impact. If there was proper planning, the breezeway could have been built in the front in a way that could have been attractive. He warned that even if they came back with a reduced structure, he would be inclined not to grant a variance for it in the back yard.

Mr. Kane requested that the Board not entertain a decision on the breezeway this evening, but consider the application for the garage.

Mr. Casper forewarned Mr. Kane that it would be highly unlikely that anything in the rear would be approved.

Chairman Egginton moved to approve the application under **Cal. NO. 17-13-BZ** in the matter of an “as-built” conversion of an existing carport to a garage as presented is approved for the following reasons:

- Although the variance request is substantial, it is an existing carport for which a variance had been granted at an earlier date and has now been converted into a garage. There is no increase in non-conformity with that conversion.
- This conversion does not cause an undesirable change to the neighborhood.
- The variance request is substantial, but there will not be an adverse effect or impact on the physical or environmental conditions of the neighborhood as a result of the garage.
- The difficulty is not self-created because it was an existing structure.

The motion was seconded by Mr. Krellenstein; In Favor: Mr. Krellenstein, Mr. Price, Chairman Egginton, Mrs. Mandelker and Mr. Casper. To Deny: None.

CASE CLOSED.

Cal. No. 16-13-BZ in the matter of the “As-Built” breezeway is held over until such time as the applicant advises whether they wish to withdraw or remain on the calendar.

- **NEW BUSINESS**

Cal. NO. 34-13-BZ

Application of Michael DeCandia, 174 North Salem Road, Katonah, New York 10536 (Owner of Record: Malcolm Frank & Tara Owen, 9 Jonah’s Lane, Katonah, New York 10536) [Property Address: 53 Cove Road, South Salem, New York 10590] for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the demolition and reconstruction of a residence that will be closer to the front line (15’.2” proposed where 25’ is required), both side lot lines (proposed 10’.5” & 11’.9” where 12’ is required) and closer to the street center line (proposed 26’ where 50’ is required) in a R-1/4A, Residential District.

The property is located on the north side of (#53) Cove Road, designated on the Tax Maps of the Town of Lewisboro as Sheet 33A, Block 11366, Lot 8, in an R-1/4A, One Quarter Acre Residential District.

Tara Owen was present with the project architect Michael DeCandia.

Mr. DeCandia displayed the proposed site plan advising they are presenting essentially the same design as previously approved on June 26, 2013. After consulting with several contractors, they are now proposing to demolish and reconstruct the structure in its entirety. Health Department approval has been granted. As the existing foundation is not in good shape; they will dig the basement a little deeper and will build a new foundation on the same footprint. The overall height of this structure is the same as what had been previously approved.

Chairman Egginton moved to approve the application as presented for the following reasons:

- There is no undesirable change to the character of the neighborhood or detriment to any nearby properties. The Cove Road neighborhood has undergone a number of renovations similar to this project.
- There is no alternative to the requested variances with respect to the sidelines.
- The requested variances are not substantial with respect to the two sidelines with the exception of the addition, which is necessary.
- There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood.
- The difficulty is not self created.

The motion was seconded by Mr. Casper; In Favor: Mr. Krellenstein, Mr. Price, Chairman Egginton, Mrs. Mandelker and Mr. Casper. To Deny: None.

CASE CLOSED.

CAL. NO. 35-13-BZ

Application of Michael J. Gulla, Neave Group, 80 Airport Drive, Wappingers Falls, New York 12590 & Jay Nussbaum [Owner of Record: Betty Nussbaum, 23 Salem Lane, South Salem, New York 10590] for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of a proposed pool and patio that will be closer to the side lot line (8'.3" where 15' is required) in an R-1/2A, One-Half Acre Residential District.

The property is located on the east side of (#23) Salem Lane, designated on the Tax Map as Sheet 36J, Block 10814, Lot 7, in an R-1/2A, One-Half Acre Residential District.

Michael Gulla was present representing the applicant.

Mr. Gulla displayed the proposed site plan and advised that due to the 20 foot setback to the leach field, there is no alternative but to encroach into the side yard set back line. He reviewed the hatched setback plan to further illustrate there is no viable alternative.

Mr. Egginton advised that during the site visit on Saturday, the homeowner agreed to shift the steps towards the street.

Mr. Gulla advised that this would require a lot of hammering because of the bedrock and would increase the cost 25 percent. In response to the Chairman's inquiry as to whether the steps could be incorporated into the outline of the pool itself, Mr. Gulla advised that they are a separate fiberglass unit that is bolted to the steel frame of the vinyl pool.

Mrs. Mandelker questioned why the depth of the pool could not be reversed so that the steps could be installed at the westerly side of the pool.

Mr. Gulla stated that this was an aesthetic issue requiring that his client walk to the end to enter the pool.

Mr. Casper questioned whether the Health Department could grant a variance of the setback from the leaching system.

Mr. Gulla advised that he had not looked into this because of his concern with fecal matter leaching into the pool. Shifting the pool down further will require a lot of tree work and would reduce the natural habitat of any animals living in the forested area as well as changing the drainage pattern. He advised that

his client recently had some work done to the septic system because some of the leaching lines were clogged; this allowed him to locate the extent of the septic system.

Mr. Egginton acknowledged receipt of and read the October 30, 2013 e-mails from Kimberly Brooks wherein she attached photographs of her property which she claimed was affected by the recent septic work done by the applicant.

Mr. Egginton read the October 30, 2013 correspondence from Leonard E. Sasso, 21 Salem Lane opposing the application in the record.

Kimberly Brooks, 42 Truesdale Lake Drive advised that prior to the septic work done on the Nussbaum property that she had no water issues whatsoever. She redid the entire downstairs after she purchased the house; if she thought that there would be water damage issues she would not have spent the money or the time on these renovations. It is her belief that the work done on the septic system impacted her property.

Nat Mundy, Ms. Brooks' fiancé, advised that the entire septic system had been dug up, not a couple of leaching pipes as represented. He questioned why the applicant did not move the septic system when thinking about putting a pool in. They noticed immediately after the first rain that the water flow into the drain at the end of their property flowed for three to four days as opposed to a day. He stated that the pitch had been changed significantly. He questioned whether the pool was proposed to be heated causing a large propane tank to be installed close to their house. He questioned where the utilities associated with the pool would be housed. He stated that the patio was not included on the plan. The overall affect is significant. He noted that a much smaller pool could be built. The pool does not fit into this lake community; there are no other pools in the neighborhood. He questioned the environmental impact on the lake if the pool overflows. He advised that they would like to have the water issue addressed prior to their even considering a pool being built.

Chairman Egginton advised that the Zoning Board of Appeals purview in this matter is the request for a variance. The ZBA members are not engineers and do not get involved in Planning Board issues. He reviewed the issues that the ZBA does take into consideration advising that the ZBA is not authorized to judge the water runoff issues.

Mary Curtis, 44 Truesdale Lake Drive, advised that she had lived at the address since 1973. She stated that there had always been water issues, most recently there had been an increase. Her property is located down hill from this project. The Nussbaum property has caused her issues over the years. She is concerned minimally with the noise, lighting, and visual changes to the bucolic landscape. The most serious issues are water and runoff. The proposed pool is oversized for this parcel, and nearly the same square footage as the residence. She questioned as to what the planned depth of the pool is, ground disturbance during construction, possible impact on the ground water and water table of all nearby properties, and water source for the pool. She stated that the residence is part of the Truesdale Lake Association of Property Owners and questioned whether they have been informed about the proposed pool. In severe storms the runoff will go into a drain on Truesdale Lake Drive, flow under the road and empty into the lake flooding her lot and adjoining properties. She questioned where the water would be discharged should there be an issue with the pool or when it gets drained for the winter. She stated that the proposed patio is to be pavers; depending on how it is installed there may not be adequate drainage. The septic tank and fields are and have been an issue for years. She stated that her well is located in her backyard. She reiterated her concerns with water and runoff noting that with the recent storms these issues have become more serious. The possible installation of a huge pool will significantly impact the immediate environment. This is a lake community, there are no pools. She appealed to the members of the ZBA to deny the variance.

Mr. Gulla advised that the pool will be heated with a heat pump; there will be no propane and advised that it is no louder than an air conditioner. The plans locate the pool equipment to be installed next to the existing air conditioner unit. (He provided copies of the plans to the neighbors.) The pool depth is proposed to be eight feet at the deep end and three feet at the shallow end. He advised that the area of disturbance is proposed to be just under 4000 s.f. A silt fence is proposed to be installed around the area of disturbance. The water in the pool is self contained, a cartridge filter will be used; there will be no backwashing. The water will be trucked into the site and will the pool will not be drained in the winter. The spaces between the pavers will be such that it will allow for water to drain and will be installed on a gravel base. The backyard is relatively flat with perhaps a five percent slope; there will be no change to the drainage. The pavers are permeable; they will not increase the flow. The pool is 1000 s.f.; a two inch rain storm will introduce 23 gallons of water. The pool acts as a retention basin for this increase and will for all intensive purposes remove the 23 gallons from the drainage system during a rain event. He sympathized with the runoff issues the neighbors have experienced, but did not believe that it was coming from this property because there was no grade change during the repairs of the septic system. He followed up with the excavation company who advised that they uncovered the existing leach lines and replaced them. They did not change the grading or drainage of the property.

Susan Bison questioned how the pool would be chlorinated, Mr. Gulla explained that it is a salt system; as it goes through the filter it will go through an ionizing cell.

Mrs. Mandelker questioned whether there were alternative sizes for a pool.

Mr. Gulla advised that the pool could be any size the client wished. His client has a large family and wished to swim laps. He advised that the total coverage for the lot with the pool is 14.9%; 15% is permitted.

Chairman Egginton stated that the overall size of the pool is too large for the lot. Even though it falls within the coverage, it pushes the envelope. Part of the Board's purview is to listen to neighbors. He appreciates that the owner is free to improve his property, but he feels that there are alternatives to the size and location so that it is less intrusive. He advised that he would not be in the position to vote yes on this application as it stands now because there are options.

Mr. Gulla agreed and advised that they could redesign the pool to keep it within the setbacks thereby making a variance unnecessary. He agreed that the pool is large and already discussed with the client the possibility of reducing the size.

Mr. Krellenstein stated that he did not believe that the application met the criteria for a variance; it falls short on four. The benefit sought by the applicant can be achieved by other methods. The requested variance is substantial, will have an adverse effect on the physical and environmental conditions of the neighborhood because it runs 50 feet and the difficulty is self-created.

Mrs. Mandelker stated that there are practical alternatives, the hardship is self-created. The size of the pool can be reduced and the direction of the stairs can be changed.

Mr. Casper noted that most of the variances this Board considers are for interior uses; a pool can be noisy during the months it is being utilized. Mr. Casper was trying to understand what changed that would have caused the amount of flow that the neighboring property owners are experiencing and noted that it was unusual to experience the type of increase with a septic repair when typically the land returns to its original level.

Mr. Gulla advised that he would like to withdraw the application and confer with his client.

CAL. NO. 36-13-BZ

Application of Richard and Kelly Bastardi, 2 Mohawk Trail, [P. O. Box 445, Goldens Bridge, N.Y. 10526] Katonah, New York 10536 for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of an as-built patio that is closer to the side lot line (20'.5" where 30' is required) and an as-built gazebo that is closer to the side lot line (13' where 30' is required) in an R-1A, One-Acre Residential District.

The property is located on the west side of (#2) Mohawk Trail, designated on the Tax Map as Sheet 10, Block 11152, Lot 110, in an R-1A, One-Acre Residential District.

Richard Bastardi was present with his architect Ed Gemmola.

Chairman Egginton advised that the Board walked the property on Saturday October 26th. The Board saw that the gazebo and patio encroached considerably into the setback.

Mr. Bastardi advised that he purchased the gazebo in 1988. Prior to having it delivered, he contacted the Building Department. He advised that it came in one piece and was placed on a bed of gravel. He advised that he placed the gazebo outside of the septic area.

Mr. Bastardi stated that in 1988 he received a variance and a certificate of occupancy for a two level deck with a patio on the ground level. In 1999 the deck was damaged by a tree as a result of Hurricane Floyd. At that time he changed the deck from wood to stone and brick to match his house and incorporated the patio with his deck. Where in 1988 it was two structures, in 1999 it became one. He believed that because he didn't change the footprint and had the variance already for the deck that he didn't need anything further. During the early snow storm two years ago a tree along his deck fell; he removed the other two trees and will replace with low shrubs.

Mr. Bastardi discussed the purpose of and the reasoning for the location of the gazebo.

Chairman Egginton read the October 28, 2013 letter of support from Robert and Allison Seligson into the record. Chairman Egginton read the October 29, 2013 letter for support from Mark and Abbe Goldstein into the record.

Mr. Bastardi advised that his property line is a few feet beyond the row of trees.

In response to a question of Mr. Price, Mr. Bastardi advised that he received a variance for the top and bottom deck in 1988; the variance allowed him to build the deck 20 feet from the property line.

Chairman Egginton questioned whether Mr. Bastardi would consider sliding the gazebo closer to his house so that the impact to the setback is not so great.

Mr. Bastardi advised that he would rather remove it. At the time he purchased the gazebo he contacted the Building Department who advised that because it was not on a foundation that it did not need a permit. Not realizing that there was a setback issue, he had the gazebo placed where he could enjoy his property. He stated that when the building inspector did his inspections for the house that the gazebo was already in place.

Chairman Egginton stated that he understood the history of the patio but that he had a major problem with the gazebo as it was completely within the setback.

Mrs. Mandelker advised that she had a problem with the patio. She noted that it had been extended and stated that as-builts are a problem. The site plan is not a survey and does not show the accurate locations of the patio and gazebo.

Mr. Price asked that the applicant provide a rear line survey showing the accurate locations of the structures. In addition, he requested a copy of the variance received in 1988.

The hearing is held over for one month to allow for the property to be surveyed and receipt of the 1988 variance.

THE PUBLIC HEARING IS HELD OPEN.

Mr. Casper moved to adjourn the meeting at 9:30 P.M. The motion was seconded by Mr. Krellenstein; In Favor: Mr. Krellenstein, Mr. Price, Chairman Egginton, Mrs. Mandelker and Mr. Casper.

Respectfully submitted,

Aimee M. Hodges
Secretary, Zoning Board of Appeals