

Town of Middlesex

1216 Route 245
Middlesex, New York 14507

ZONING BOARD OF APPEALS
Thursday, April 4, 2024 • 7:00 p.m.

The following minutes are the official and permanent record of the actions taken by the Town of Middlesex Zoning Board of Appeals, as recorded by the Zoning Board Clerk.

Meeting called by: Rebecca Parshall, *Chairperson*

Board members present: Ted Carman
Richard DeMallie
Win Harper

Alternate: Position vacant

Staff present: Dawn Kane, *Code Enforcement Officer*
Beth Altemus, *Zoning Board of Appeals Clerk*

Ms. Parshall called the meeting to order at 7:00 p.m.

NEW BUSINESS:

1. App. # 032024 - ZBA

Gene Cardamone, owner of property at 1435 South Lake Road, Middlesex, NY, 14507 (Tax Map ID #: 31.01-1-8), is requesting an area variance for the rear setback of a fence.

Ms. Parshall addressed Mr. Cardamone, and he confirmed that he is the applicant. Mr. Cardamone explained that he has done a lot of renovation of the property, that the original fence fell down and he rebuilt it. He indicated that last year he added posts for another 30 feet of fence, which he believed was pre-existing, however he said that CEO Kane informed him that he needs a variance for the extra 30 feet of fence. He commented that his neighbor wrote a letter indicating that the extra fence length would not be a problem for him. Mr. Cardamone explained that the house is close to the road and the fence is in the right of way, and he wants the fence for privacy from the road.

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Ms. Parshall inquired how high the fence is, and Mr. Cardamone indicated that it is 6 feet high. He also indicated that he owns the property across the road.

Ms. Parshall asked CEO Kane if she has received the letter from the neighbor, and CEO Kane indicated that she was sent a digital copy and that Board members also have it.

Mr. Harper asked if the Town Highway Department had weighed in, and CEO Kane indicated that she spoke with them regarding the paving project and they indicated that it won't have any impact and they can work with the fence if approved.

Mr. Carman commented that the prior fence was in bad shape and had been damaged by traffic, snow plows, water overrun, etc. He indicated that if the Board approves the variance it should be on the condition that the town is held harmless for any potential future damage.

CEO Kane indicated that this would be possible. She commented that much of the prior damage was due to natural causes and caused great expense and inconvenience to the property owner, however it is typical to put such a condition into an approval with Planning Board reviews, so the Zoning Board should feel free to have Mr. Cardamone consider such a condition.

Ms. Parshall opened the public hearing, there was no comment, and Ms. Parshall closed the public hearing. She asked if the Board had any more questions or comments.

Mr. Carman commented that he raised the issue from the standpoint of expense to the Town and taxpayers, as the fence is in the Town right of way and there is certainly potential for damage. He asked Mr. Cardamone how he feels about having such a condition added. Mr. Cardamone indicated that he would not have a problem with the condition and understands its purpose.

Mr. Carman commented that he can see Mr. Cardamone has made a huge number of improvements and investments to the property, and the fence being there is unfortunately subject to potential future damage.

Mr. Harper asked whether Mr. Cardamone will do the work before the Town paves South Lake Road. Mr. Cardamone replied that he would as he has already put posts in concrete and just needs to put boards on now. There was general discussion about when the paving of the road will begin.

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Mr. Carman made a motion to approve the fence extension with the caveat that there's some type of agreement that the Town is not held responsible for damage to the fence. Mr. Harper seconded, and there was no discussion. Per the criteria (see attached documentation), Mr. Carman answered the following:

- 1) No, he doesn't feel that an undesirable change will be created with the extension of the fence, particularly as it rounds the corner, which increases the Cardamone's privacy.
- 2) Likely no, as Mr. Cardamone could try to do a planting for privacy, but the hill is very steep and likely shale, and it would be difficult to get the soil to support anything that would grow quickly and provide privacy cover.
- 3) Yes, most any variance to the Town zoning code is substantial, but he doesn't feel that in this case that's material.
- 4) No, he doesn't think it will, other than with Town truck access doing snow removal, as a result of the fence being butted right up to the road and inside the road setback.
- 5) Yes, it is self created as the property was no doubt purchased with eyes wide open, but there's a desire to increase the privacy to the homeowner.

All Board members voted in favor and the motion passed.

2. App. # 031224-ZBA

Patrick and Ann McCormick, owners of property at 356 East Lake Rd., Middlesex, NY, 14507 (Tax Map ID #: 1.76-1-3), are requesting an area variance for road setback for a tram.

Logan Rockcastle of Marks Engineering was representing. He explained that the property is very steep, with no current vehicular access to the cottage, and parking is up above on a pull-off from East Lake Road with stairs down to the cottage. He explained that the owners are proposing putting a tram just north of the stairway, and that this spot was chosen so as not to impact larger trees. Only two small trees at a maximum of six inches in diameter would be removed. He indicated that this was to ensure the development does not impact the view or character of the landscape. Mr. Rockcastle indicated that the project team is talking with Finger Lakes Tram for the installation, and they will have a geotechnical survey done to be sure everything is stable.

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Mr. Carman commented that this is the second tram on this property, and Mr. Rockcastle indicated that they had replaced an existing tram to make it safer.

Mr. Harper asked if the erosion will be controlled, and Mr. Rockcastle responded that erosion and sediment control are part of the plans, which provide details of erosion control blankets, staking plans, etc. to ensure there is no unnecessary erosion. He indicated that they are hoping to get the variance approved so they can present to the Planning Board.

Mr. Harper asked about the numbers regarding setbacks and that the addition on the plans is incorrect as it does not add up to the 31.6 feet setback requested. Mr. Rockcastle suggested that it could be a condition of approval that the math be corrected in the application.

Mr. Harper asked how they will get to the tram, and Mr. Rockcastle indicated that there will be a deck at the parking pull off to step onto the tram carriage.

Ms. Parshall opened the public hearing and commented that there have been no letters or contact from neighbors. There was no other discussion.

Mr. Demallie made a motion to grant the requested setback variance producing the 31.6 setback from center of road to the top position of the tram. Mr. Carman seconded. Per the criteria (see attached documentation), Mr. Demallie answered the following:

- 1) No, there is no undesirable change because being so far off the road it wouldn't be seen traveling by car, it's down a hill in a steep area and starts 31.6 feet down from the center of the road, and since one won't see the tram's upper level there will be no change to the character of the neighborhood.
- 2) Yes, they could have started further down the hill but that would require more steps, so it is unreasonable to start further below.
- 3) Yes, but due to the shape and angle of the land at that point this variance allows them to get closer to the parking spot, so it is substantial but necessary.
- 4) This subject can't be addressed by the Zoning Board but will be addressed by the Planning Board, and the Zoning Board assumes that when the tram is built it won't have any adverse effect. Mr. Carman commented that the concern is the responsibility of Marks Engineering and they should make sure it doesn't create a water shoot across the lake road and parking area and hit the house. Mr. Rockcastle commented that the construction method of using pilings prevents troughing, and Mr. Carman commented that the land contour won't change

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because they are driving pylons rather than excavating, so no adverse effect will be created as the construction will be done by experts.

- 5) Yes, it would not be built unless necessary, but that doesn't take away the fact that they want to allow them to build up closer to the road and it will be necessary for other projects.

All Board members voted in favor and the motion passed.

OTHER BUSINESS:

There was discussion about whether any changes should be made to the October meeting minutes and none were needed.

Mr. Demallie made a motion to approve the October meeting minutes, Mr. Harper seconded, there was no discussion, all Board members voted in favor and the motion passed.

Mr. Carman made a motion to adjourn to the meeting, all Board members voted in favor and the meeting was adjourned at 7:31.

Attached Documentation:

Criteria for Zoning Board of Appeals Variance Findings and Decision

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: _____

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: _____

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3. Whether the requested variance is substantial:

Yes _____ No _____

Reasons: _____

4. Whether the variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district:

Yes _____ No _____

Reasons: _____

5. Whether the alleged difficulty was self-created:

Yes _____ No _____

Reasons: _____