

Town of Middlesex

1216 Route 245
Middlesex, New York 14507

ZONING BOARD OF APPEALS
Thursday, October 3, 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. # 071024 - ZBA

Dawn Aprile, owner of property at 1321 South Lake Road, Middlesex, NY, 14507 (Tax Map ID# 21.79-1-4), is requesting an area variance for front and side setbacks for a residence and retaining wall.

Bill Grove of Grove Engineering and Mrs. Aprile were representing. Mrs. Aprile explained that her property contains an existing house and two cabins, one used as an office and the other as a bunkhouse. She indicated that she would like to make renovations to the existing house and put in a two story addition, with the lower level being a screened porch and terrace, and the second floor a living space. She indicated that there would be no additional bedrooms, only a kitchen and family room in the upper level. Mrs. Aprile explained that the proposed addition will be built further back from the centerline of the road than the existing house, however it still doesn't meet front setback requirements and so will need a variance.

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Mrs. Aprile also explained that a proposed new driveway entrance further to the north will reduce the slope of the driveway and create a diagonal approach to the road and garage. This will allow her to park in a level area, which will require a new retaining wall around the parking area. She indicated that she is seeking two variances for this portion of the project, one for the driveway at 14.4 feet from the center road line and one for the wall at 7.5 feet. She also indicated that there is an existing stone retaining wall four feet from the center road line, so the new wall will be further back from that.

Mrs. Aprile continued that she has owned the property for fourteen years and is now looking to make it a full time home, thus she would like more space and livability. She commented that she doesn't believe it's reasonable to build the addition without also making the driveway more usable, as currently car doors won't stay open when parked on the driveway because of the steep grade, and it will be difficult to use in the winter. She said that she feels a usable garage and driveway goes hand in hand with the new addition.

Mrs. Aprile indicated that the back corner of the existing garage is pre-existing, non-conforming at 7.5 feet from the property line. She expressed concern that building the addition further back to avoid a variance would require cutting into the hillside and therefore cause more disturbance, and it would not be in line with the current house. She commented that the variance ask is less than what's already existing, and the new build will be in keeping with the character of the existing house.

Mrs. Parshall inquired if any letters had been submitted on behalf of the project, and CEO Kane indicated that she had received a text message from a next door neighbor expressing that they have no problem with the variance requested.

Mr. DeMallie commented that while the current structures are pre-existing, non-conforming, zoning law states that they cannot make something more non-conforming, and this sounds as though it will be more non-conforming. He asked whether this would go against zoning law. Mr. Grove responded that the existing house is 22.4 feet from the center road line at its closest point, while the addition will be thirty-five feet back. Mr. Harper asked if the property goes a long way back, and the applicants indicated it goes back eight acres.

Ms. Parshall opened the public hearing.

Gordon Stringer, in attendance, commented that while he is a member of the Town of Middlesex Planning Board, he is here speaking only for himself as a Town resident and in no way is representing the Planning Board this evening. He commented that the lots on South Lake Road are small and were traditionally just small summer homes and

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cottages, but the homes are getting increasingly larger and most are requiring variances to fit into their lots. He believes that applicants are asking for larger and larger variances, and he believes the thirty feet variance being requested by Mrs. Aprile is excessive.

He commented that the Town zoning laws were put in place for a reason, with the last revision made in 1982 by local citizens who put a lot of time and effort into making them. Mr. Stringer read from page thirteen of the Town Master plan, and specifically referenced the intent to preserve the Town's rural character and open space, and to encourage limited new development. Mr. Stringer expressed that he understands it's tough to say yes to one person then no to the next, but at some point it will snowball and the Town will end up with a situation where town zoning laws don't make a difference at all.

Mr. Carman asked whether the Planning Board had reviewed this application, and CEO Kane responded that they had, however they had made no decisions or recommendations, and the Planning Board asked for the applicant to come back after presenting to the ZBA. She indicated that the Planning Board is concerned about drainage on the site, but they gave preliminary approval and sent the application to the ZBA.

Mrs. Aprile commented that she has participated in drafting comprehensive plans before, so is familiar with zoning and does take it seriously. She addressed Mr. Stringer, commenting that he has valid points generally but she doesn't see her project being in conflict with Town code. She reiterated that she is also trying to maintain the character of the house, and the setback is in keeping with the character of the house.

Mrs. Aprile indicated that the Planning Board did bring up drainage concerns, but she commented that her property doesn't have the problems that her neighbors have regarding sheet water flow. She said that the only problem with drainage had been from the Watkins property next door, which had been causing erosion of her timber retaining wall, however since they've done their improvements it has greatly improved. She continued that the Planning Board was concerned with where the water behind the garage and retaining wall goes, but Mrs. Aprile commented that she spoke with the Highway Superintendent, who told her he will look at the project and speak with CEO Kane, but doesn't believe the drainage on her property will be a problem.

Mrs. Aprile commented that she owns the property across the street as well, so she doesn't want water going there either, and she's trying to come to a reasonable solution. She commented that while she doesn't want to have to ask for a variance, the ZBA

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exists for these circumstances to find better solutions and a more livable area. She continued that the existing house looks like it's been in neglect, but she's been waiting until she was prepared financially and had made the decision to move here full time to make improvements.

Mr. Stringer reiterated his concern about continuing to grant large variances, and Mrs. Aprile reiterated that she believes it's reasonable to make a more usable driveway and make a space more livable without knocking down the house and going back into the bank, but rather working around the existing footprint with a 1,000 square feet addition. Mr. Grove commented that 1000 square feet is the total between the two floors.

Mr Grove also commented that the steep slope law was put into place to ensure development happened on the most feasible portions of lots, and that without a variance Mrs. Aprile would need to cut into a steep bank. He indicated that they are presenting the minimum variance they can ask for and still achieve Mrs. Aprile's goal.

Mr. Harper inquired whether the Planning Board could request changes to the plan if the variances were approved by the ZBA, and CEO Kane indicated that they could make adjustments to the design criteria.

Mr. DeMallie commented that when he first looked at the map it appeared as though the addition would block the view to the lake from across the road, but with the design of the porch underneath that is not the case. Mrs. Aprile commented that the porch will not go all the way to the corner of the garage to allow for a grill area. She also commented that the view still looks past the office, so will not change much, and the trees will stay.

There were no other questions and Ms. Parshall closed the public hearing.

Mr. Carman Ted commented that there's a lot of mass going into this project and it's in an area that's backed by a very steep slope. He indicated that a house to the north has had extensive impact from water runoff and has had tens of thousands of dollars of work done to remediate the damage and readjust drainage patterns, and two houses to the south, which sit in the crux of a gully, have had several instances of extensive water damage from storm events, including blow out of a septic and driveway.

Mrs. Aprile commented that both of her neighbors have had water problems, but she's been fortunate not to, and that her basement wall that goes into the eastern slope has always been dry the entire fourteen years she's been there.

Mr. Grove commented that the existing house sits on a crowned, triangular shaped area with natural water diversion. Mrs. Aprile indicated that the portion of the bank that they

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will cut into will be in line with the existing stone wall, and the wall will be replaced and extended. She commented that since Watkins put in their retaining wall the problem of water coming to the side of her driveway has been resolved.

Mr. Stringer asked where the dome would go once they put in the addition in and flatten out the slope. Mrs. Aprile indicated that the whole property is a dome, and there is already a flat area for the project.

Mr. Harper commented that water drainage sounds like a Planning Board issue and not a ZBA issue, and he's not prepared to talk about water mitigation.

Mr. Harper made a motion to approve all three variances, Mr. Demallie seconded, and there was no further discussion.

Per the criteria (see attached documentation), Mr. Harper answered the following:

1. No, it won't change the character of the neighborhood as it's already growing and there are more large houses already.
2. No, because of the steep slope in the back, and there is less of a variance than the pre-existing, non-conforming situation on all sides, so there's no other option.
3. The request is substantial but has no negative impact on approval.
4. No, the project engineer will make sure there is no erosion.
5. Certainly, because she bought the property knowing it was pre-existing, non-conforming, but that doesn't preclude the granting of area variances. The project will make it more livable, the current parking is not safe, and this will make it more habitable. South Lake Road is fairly narrow so this will be a help to health, safety and welfare.

All Board members voted in favor, none opposed, and the motion passed.

2. App. # 082424 - ZBA

Thomas Massachi, owner of property at 635 East Lake Road, Middlesex, NY, 14507 (Tax Map ID# 11.51-1-1), is requesting an area variance to subdivide a 3.816 acre lot.

Anthony Venezia was representing. He explained that nothing has changed on the map and all Board members have visited the property. Mr. DeMallie indicated that he had not visited and asked for clarification on the property location. It was discussed that it's on the east side of Fisher Road. Mr. Venezia explained that the goal is to subdivide the property into two lots, keeping one within code and the other not.

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Mr. DeMallie asked how many feet along the road the property has, and Mr. Carman indicated that it has 300-400 feet of frontage.

Mr. Venezia indicated that the majority of lots along that corridor are not five acres, as the zoning law requires; to the south there are about eight properties and only one meets the zoning requirement, and the four properties to the north don't meet it either; the only property that's five acres is two properties to the south.

Mr. Carman asked if those were pre-existing, non-conforming lots, and Mr. Venezia confirmed they are, but the proposed subdivision won't change the character of the neighborhood. Mr. Venezia indicated that he'd also propose putting restrictions to bar future variances on the subdivided lot.

CEO Kane inquired what the intent is for the subdivision, and Mr. Venezia indicated that it's for the purpose of building another house. Mr. DeMallie asked if it falls within the steep slope, and CEO Kane indicated that it does not, but the access could be questionable. Mr. Venezia commented that it would have enough space as a building lot.

Mr. Harper asked if the applicant intends to keep the subdivided property and intends to build two structures, and Mr. Venezia confirmed both to be true. Mr. Harper commented that the request is 23% variance from code and is close to substantial, and asked for clarification on the sizes of nearby properties. CEO Kane indicated that every house to the south is an average of 2.5-3 acres.

CEO Kane indicated that she doesn't know that the Board can bar future variances as a condition, but they may be able to make the condition that further builds are properly buffered by setbacks.

There was discussion about whether this sets a precedent, but as requests are reviewed individually it may not, and because code prohibits more than one house on a lot this is more of a hardship issue.

Mr. Carman asked why they did not plan to split the property evenly, and Mr. Venezia responded that he thought it better to ask for only one variance rather than two smaller ones. CEO Kane commented that it also wouldn't be a reasonable split for driveway locations.

Mr. Harper inquired whether approval of the subdivision would also authorize the building of a house, and CEO Kane responded that it would not; the ZBA can only

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approve variances, and if the applicant wants to build they'll have to go before the Planning Board for a site plan review. Mr. Carman commented that they are intending to build a house.

Mr. Harper inquired what the purpose of limiting lots to a five acre minimum was, and CEO Kane indicated that it was done to keep things open and at low density. Mr. Harper inquired whether the applicant knew about lot size limits when he purchased the lot, and Mr. Carman indicated that he did because he had discussed it with the applicant.

Mr. Carman commented that he has a problem running contrary to the Town's master plan, and that more plots like this will come up. He referenced two smaller lots that were approved to allow forty-four acres to go to the Bare Hill Preserve, and that he has difficulty subdividing to less than the Town's master plan since the applicant bought the property with eyes wide open.

Mr. DeMallie made a motion to grant the variance, Ms. Parshall seconded, and there was no further discussion.

Per the criteria (see attached documentation), Mr. DeMallie answered the following:

1. No undesirable change will be produced because there are other small plots all along there, and three acres is plenty to build a house.
2. No, there isn't enough acreage to split the lot into two five acre parcels, so there's no other method.
3. No, 23% is not substantial, and three acres is plenty of land.
4. The east side of East Lake Road will not experience an adverse effect with the lot being three acres instead of five.
5. Yes, it was self created at the time of purchase, but that doesn't necessarily preclude the granting of the variance.

Mr. DeMallie commented that he did not have conditions to attach unless the Board wanted to. Mr. Carman commented that if more variances were desired in the future, they'd have to be reviewed by the ZBA based on their own merits, and the Board can't speculate on what those variances might be.

Mr. DeMallie and Ms. Parshall voted in favor, Mr. Harper and Mr. Carman opposed, and the motion was denied.

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Mr. Harper made a motion to approve the July meeting minutes, Mr. Carman seconded, all Board members voted in favor and the minutes were approved.

Mr. Carman made a motion to close the meeting, all Board members voted in favor, none opposed and the meeting was adjourned at 8:01.

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: _____

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 _____

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Reasons: _____