

APPROVED - MINUTES

**LAKE GEORGE VILLAGE ZONING BOARD MEETING
JULY 11, 2018 - 5 PM
VILLAGE ADMINISTRATION BUILDING
26 OLD POST ROAD - LAKE GEORGE, NY**

BOARD MEMBERS PRESENT: Ron Mogren – Chairman, Tom Sullivan, Kevin Merry, Mike Ravalli, Jeff Blau (Alternate)

BOARD MEMBERS ABSENT: Rob Gregor

OTHERS PRESENT: Dan Barusch (Director of Planning & Zoning), Stephanie Fregoe (Secretary), Michael Borgos (Attorney for Tom Ellett), Michael O'Connor (Attorney for Catherine Blau), Jim and Catherine Blau, Helen Ravalli, Nabil ElDib (Davies Davies & Associates Real Estate Salesperson)

ZONING BOARD OF APPEALS PUBLIC HEARING

TAX MAP:	251.10-3-60
OWNER/APPLICANT:	THOMAS & GLADYS ELLETT
ADDRESS:	10 SCRIMSHAW LANE
ZONE:	RESIDENTIAL
VARIANCE APPLICATION:	1807

Application was tabled from June 6, 2018 Zoning Board, pending review by Planning Board on June 20th, 2018. Applicant has reduced previous variance requests by eliminating a proposed patio and reducing size of proposed deck.

Applicant is seeking relief of Code 220-20-Dimensional Table. Applicant is proposing to replace and expand existing deck. Applicant is seeking relief from the rear yard setback where 14 feet is proposed and 20 feet is required.

Ron Mogren called the meeting to order at 5:00pm.

Mike Ravalli recused himself from the meeting and remained in the audience.

Michael Borgos, Attorney for Mr. Ellett, addressed the Board. Since the last meeting the applicant has made changes to try to accommodate the concerns. The ground pavers have been removed from the original application. The applicant is seeking six feet of relief. The area of the deck inside the 20-foot set back would be 75 square feet. The applicant feels that this is minimal amount of relief to achieve his desired goal of squaring off the deck with the house and having an aesthetically pleasing design. If Mr. Ellett built within the setback lines, he would have a very pointy, skinny, strange looking deck. He could build another 255 square feet. Mr. Borgos continued to explain that the applicant has moved the deck over, away from the Blau's to be less obtrusive.

Michael O'Connor addressed the Board. He stated that his clients still oppose the project, even with the changes. This is overbuilding on a small lot. Mr. O'Connor wanted clarification that the fire pit and pergola that were in the original plans have been removed from the current set of plans. Mr. Mogren verified that they are not shown on the current plans. Mr. O'Connor asked about relief from 220-78 B and C (1) as was shown in the original notice.

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Mr. Barusch explained this variance request was included in the previous application and hearing notice. It was removed from this month's notice because he did research the history of the property since the last meeting and found that when the family room was built in 1995, the property and the neighborhood of Scrimshaw Estates, was built using pre-existing zoning codes. The setbacks have changed since that neighborhood was built. Mr. Ellett's property is grandfathered in and is not considered a non-conforming lot. The family room addition was permitted at the time it was built. Mr. Barusch would not ask an applicant to apply for a variance on something that is grandfathered in.

Mr. O'Connor continued to discuss the addition being non-conforming and that there were errors made in the hearing notice. The second variance request for a non-conforming building was removed from the agenda. He also objects to the Board of Directors letter from the Home Owners Association at Scrimshaw Estates. Mr. Mogren said that this Board should not have to hold up their decision to wait for the HOA's decision. Mr. Barusch said that he was given an approval letter from the HOA in the application and regardless of their (HOA) internal procedures that we do not have the legal authority to enforce, that is a discussion between the HOA members. Whether or not their architectural committee meet or not, that is their business. Mr. Mogren agreed.

Mr. Mogren said that it appears a good compromise has been made since the last meeting. He asked the Blaus' if they would like to speak. Ms. Blau said that this project was never shared with her and that Mr. Ellett never gave her a copy of his plans. There was discussion about how close the properties are to each other and lack of privacy. Mr. O'Connor said that this is a detriment to the value of the Blau's property and that the listing agent is present to testify. Mr. Nabil ElDib, from Davies Davies addressed the Board. He has held several open houses, and it is his opinion that the houses are close together. His clients have commented on this as well.

Mr. O'Connor addressed the concern of how construction would be completed. It would be detrimental to his clients' property. He mentioned trees that were taken down by a crane over the winter and that they were laid down on his client's property and eventually removed. Oil was left behind from the crane. Mr. O'Connor continued to explain that Mr. Ellett does not have access to the back of his own property without going onto his client's property. He would like this to be considered in the case of an approval that Mr. Ellett not go onto the neighboring property during the construction of his project. He spoke about how the supports for the deck would be poured.

Mr. Mogren explained that if the Board did not approve this application, then Mr. Ellett could reconfigure his deck inside the setback lines. Mr. Borgos said he has room to do that, but it would be a strange looking deck and would be three times bigger. Mr. Mogren said the deck would be closer to the neighbor's house. Mr. O'Connor said that is his point that Mr. Ellett has a feasible alternative by just reconfiguring the deck so he wouldn't need a variance. He stated that Mr. Ellett could easily avoid the side yard set back variance.

Mr. Merry said that Mr. Ellett could not get the variance, and he could double the size of the existing deck and make it closer and more in plain sight of the concerning neighbor. Mr. O'Connor states that he understands that. Mr. Merry said that if the neighbors have a big problem with this (the current

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drawing), they will have a big problem with this (the alternative). With something small like this, it is the furthest distance from the neighbor's lot. He continued to explain that the neighbors seem to have a concern for the size of the deck and the number of people it can hold. If the deck size is increased, it can hold a lot more people. Mr. O'Connor said that the Board is charged with allowing only the minimal variance and if there is a feasible alternative, to make the applicant use the feasible alternative. Mr. Mogren agreed, but he wanted to make this point. Mr. O'Connor stated he has discussed this with his clients and the risk that they are taking of having something that they would dislike more or that would be less pleasing. He thinks that the argument of a non-conformity expansion is strong enough.

Mr. Borgos spoke about the Board finding balance. The property has a unique shape and presents a challenge for Mr. Ellett. Mr. Ellett wants to improve the existing deck which is deteriorating. A new deck would help the value of the neighboring property. It would be more attractive. Mr. Mogren addressed the area inside the setback lines that could be build on. Mr. Barusch said that just be clear, even if the deck was built inside the set back lines and a variance was not needed, Mr. O'Connor and the Blaus' would still argue the project. Mr. Borgos said that Mr. Ellett wants to be a good neighbor but the comments from the neighbors seem to be that they don't want anyone in the backyard hosting parties or gatherings of any kind due the proximity of the house. The Blau's property is up for sale and anyone coming in would be aware of the situation. Mr. Borgos does take issue with Mr. ElDib's statement that people have commented on the close proximity. It is obvious so of course people would comment on it. Mr. Borgos has not seen any comparable sales that would provide evidence that this project would have a negative effect on the sale of the Blau's home. It's a more challenging property to sell. Mr. Borgos went on to explain that staff has determined that the other variance for a non-conforming structure does not apply here, so Mr. Ellett has removed it from his application. If Mr. O'Connor would like to challenge that, Mr. Borgos believes that Mr. Barusch could put that into writing. Mr. Ellett is asking for a small relief of six feet to tuck the deck away close to the house. With regards to the trespassing, Mr. Ellett will inform the contractors to stay within the boundary lines and can perhaps spray paint lines. The construction of a deck is mostly hand work and will not require the use of an excavator.

Jim Blau addressed the Board. He spoke about guest parking and tree removal. He spoke about the crane leaving oil and cracking part of the black top at the end of his driveway. Mr. Blau said Mr. Ellett never notified him of the deck project, he was notified through Dan Barusch's office. Mr. Blau continued to talk about using a common area for large gatherings. He asked for the Board to come over and stand on his porch. Discussion continued about an agreement the Blaus' had with the previous neighbors about trimming hedges so the Blaus' can have a view of the lake. Mr. Ellett has not trimmed those hedges.

Mr. Sullivan said that it is important to sort out what is relevant and what isn't relevant. The Board has heard an impressive list about what is undesirable but for the record, the number of guests and the behavior of guests and the damage to a driveway has nothing to do with this application. These are not being considered as factors. There are three factors, one is the proximity, one is if there is a viable alternative, and one is a variance to a previously non-conforming use. Mr. Sullivan said the proximity itself doesn't seem like a major issue. The viable alternative may not be as attractive from an aesthetic standpoint.

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Mr. Merry agreed that many of the points are not relative to what the Board is here to decide on. The distance and the size that Mr. Ellett is asking for isn't unreasonable. Mr. Merry would rather see Mr. Ellett do as he is proposing to do, rather than increase the deck, making it twice the size and have a definite negative impact towards the neighbors. Jeff Blau noted that reducing the deck down to 75 square feet over the set back line is a major reduction.

Mr. Barusch discussed with the Board the previous variance for a non-conforming structure and whether he should seek Council before the Board makes a decision. The Blas' could take this to court based on a Hearing Notice technicality. There was also discussion about alternative means for the applicant. Mr. Barusch suggested tabling this application. He can make an official written decision in regards to the non-conforming variance.

Mr. Borgos said that this is a balancing test. Mr. Ellett is proposing a smaller area and putting the deck out of the way of the neighbors. Mr. Barusch agreed that there is an alternative, but that alternative may impact others more. If so, maybe it is not the most feasible alternative. An answer of "no" to one of the five variance criteria doesn't automatically mean the Board has to say "no" to the variance. This is noted in the State Law. Mr. Borgos said that his client would be willing to table the application in order to clear things up. He would like to know Staff's determination in writing and requested that the Board consider tabling this application.

Mr. Barusch will follow up with Council. Next month the Hearing Notice will be done properly.

Mr. Mogren made a motion to table the application and leave the public hearing open. The next Zoning Board meeting is Wednesday, August 1st, 2018.

MOTION 2ND: Tom Sullivan

Ron Mogren	Tom Sullivan	Mike Ravalli	Kevin Merry	Jeff Blau
Aye	Aye	Abstained	Aye	Aye

Ayes =4 Nays = 0 Motion carried.

Mr. Mogren made a motion to approve the minutes from June 6, 2018.

MOTION 2ND: Tom Sullivan

Ron Mogren	Tom Sullivan	Mike Ravalli	Kevin Merry	Jeff Blau
Aye	Aye	Abstained	Aye	Aye

Ayes =4 Nays = 0 Motion carried.

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Mr. Mogren made a motion to close the meeting.

MOTION 2ND: Kevin Merry

Ron Mogren	Tom Sullivan	Mike Ravalli	Kevin Merry	Jeff Blau
Aye	Aye	Abstained	Aye	Aye

Ayes =4 Nays = 0 Motion carried.

Respectfully submitted,
Stephanie Fregoe
July 13, 2018