

APPROVED - MINUTES

LAKE GEORGE VILLAGE ZONING BOARD MEETING

AUGUST 1, 2018 - 5 PM

**VILLAGE ADMINISTRATION BUILDING
26 OLD POST ROAD - LAKE GEORGE, NY**

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

BOARD MEMBERS ABSENT: Rob Gregor, Kevin Merry

OTHERS PRESENT: Dan Barusch (Director of Planning & Zoning), Stephanie Fregoe (Secretary), Evan Jalazo, Tom Ellett, Michael O'Connor (Attorney for Catherine Blau), Jim and Catherine Blau

ZONING BOARD OF APPEALS PUBLIC HEARING

TAX MAP:	251.18-3-70
OWNER/APPLICANT:	EVAN JALAZO
ADDRESS:	14 BEACH ROAD, UNIT 4 & 5
ZONE:	COMMERCIAL MIXED USE
VARIANCE APPLICATION:	1840

Applicant is seeking relief of Code 220-24 Sign Standards. Applicant is proposing a third business sign, where two are allowed and two exist. The size of the proposed wall sign is 42.3 square feet, where 25 square feet is allowed.

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

Mr. Jalazo addressed the board. He explained that he has been granted a temporary sign permit for Memorial Day to Labor Day for the current poster that is displayed outside his store. He explained that his type of business is challenging to explain to new customers, and his sign helps bring business in. His temporary sign is smaller than the sign he is seeking a variance for. Mr. Jalazo explained that a movie theatre uses large posters to attract business. There is nothing in our codes to address entertainment type businesses in regards to advertising. The code addresses retail and restaurant type businesses. His landlord, Kathy Muncil, does not have any issue with Mr. Jalazo putting up his sign. The new sign explains the four escape rooms inside his business.

Mr. Jalazo pointed to the picture that was presented in the application. This is the actual sign that he was asked to take down and replace with a smaller, temporary one. The sign that was hanging there prior was a list of county events such as the winter carnival. There used to be a set of doors to enter into the building, but that opening has been boarded up and created a blank space on the outside wall. Mr. Jalazo said that every three to four years he will change his rooms. It is a large expense and the large sign will help explain those rooms to visitors.

Jeff Blau agreed that the average person does not know what an escape room is. Mr. Mogren asked Dan Barusch to verify the number of signs allowed. Mr. Barusch explained that only two signs are allowed,

and Mr. Jalazo currently has two. He also explained that most of the Beach Road shops do not have walls signs because they are only one unit, where Mr. Jalazo's is two units combined. Most businesses have a hanging sign and an awning sign and do not have the frontage that Mr. Jalazo has. Mr. Jalazo said that prior there was a large polar bear shaped sign up for years that listed the Winter Carnival events, and he wants to use the same footprint. Dan Barusch said that the temporary sign that is currently hanging is exactly the same as the proposed sign, just smaller.

The Board asked Mr. Jalazo if the sign can be placed inside the business. Mr. Jalazo replied that he doesn't have the space available inside the lobby. He is limited in the amount of room he has because his register and the four rooms occupy almost all the space. It also will not get any visibility from the street.

Mr. Mogren read in a letter of objection from the Benham family. Mr. Mogren expressed his concern that if this variance is approved than many other businesses will want variances given. Mr. Jalazo explained that his business is unique and that entertainment businesses are not as obvious as a t-shirt shop or a restaurant.

Tom Sullivan agreed that everyone will want more signs for their businesses. Mr. Jalazo again expressed that an entertainment business is different and that the Code does not address this type of business. He referred to a movie theatre putting up movie posters.

Mr. Ravalli said he agreed with the previous comments, however this is a unique business. It's not a coffee shop or a t-shirt shop that needs explaining. This is a business that is unique and would be good for the community. It will bring people in. Mr. Ravalli suggested putting a cap on the variance of one year and then address any complaints that may come in.

Jeff Blau agreed that this is a unique business. The sign is not a big, flashing eyesore. It is attractive and is not advertising pollution. Mr. Jalazo is here to make a living and this is a business that people need to know about. He agreed with Mr. Ravalli about a one-year probation. Mr. Jalazo explained that his store will be open until Halloween and reopen in May. All the shops are closed down for the winter.

Mr. Mogren agreed to a conditional approval. He is concerned about complaints and setting a precedence for others who will want to add more signs. The Board discussed dates for next year and waiving the application fee of \$250.00. Mr. Jalazo will schedule a date with Mr. Barusch.

Mr. Mogren asked if anyone from the public wanted to speak on the matter. No one replied.

Mr. Sullivan made a motion to close the public hearing.

MOTION 2ND: Ron Mogren

Ron Mogren	Tom Sullivan	Mike Ravalli	Jeff Blau
Aye	Aye	Aye	Aye

Ayes =4 Nays = 0 Motion carried.

Mr. Mogren made a motion for approval. This approval will be conditional on a one-year trial period. Any complaints will be addressed then.

1. An undesirable change will not be produced in the character of the neighborhood or will not be a detriment to nearby properties because the signs are well designed and are not an eyesore.
2. The benefit sought by the applicant cannot be achieved by some other method feasible for the applicant because there is not adequate space inside his store to display his sign.
3. The proposed variance is not substantial because it has been granted a one-year conditional approval.
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because there is no environmental impact.
5. The alleged difficulty was not self-created.

MOTION 2ND: Ron Mogren

Ron Mogren	Tom Sullivan	Mike Ravalli	Jeff Blau
Aye	Aye	Aye	Aye

Ayes =4 Nays = 0 Motion carried.

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

Application was tabled from July 11, 2018 Zoning Board. 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, and Code 220-78(B) and C (1) to expand a pre-existing, non-conforming structure. 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. The current structure is pre-existing and non-conforming.

§ 220-78– Nonconforming buildings, structures and lots.

(B) Expansion. Nothing in this chapter shall prevent the strengthening or alteration to a safe condition of all or part of a building or structure that is nonconforming, provided that the repair or alteration will not increase the height, size or volume of the building or structure or otherwise increase the nonconformity.

C (1) – A nonconforming building, structure or lot shall not be added to or enlarged or altered in any manner, in a way which increases its nonconformity.

Ron Mogren stated that this public hearing is still open. Mike Ravalli recused himself from the meeting.

Mr. Mogren asked Dan Barusch to refresh the Board on why the application was tabled from the previous meeting. Mr. Barusch explained that the addition to Mr. Ellett's house was approved back in the 1990's when the zoning code was different. It is a grandfathered non-conformity. At the last meeting it was decided that even though it is a grandfathered non-conformity, it does not exempt Mr. Ellett from needing a variance request to expand a non-conforming structure. Both variance requests were not noticed in the paper for last month's Zoning Board meeting because Mr. Barusch did not believe that the non-conformity variance was necessary. At the last meeting it was decided that the second variance was needed. The code states that you cannot expand a non-conformity structure without a variance, but it does not specify whether or not you can expand a grandfathered non-conformity structure. The first variance is for the setback. The second variance is to expand a non-conforming structure.

Mr. Ellett addressed the Board and shared a visual of the plans. The red marks are what he has eliminated from the plans in the previous meetings. 360 square feet have been removed from the original request sent to Dan Barusch back in the spring.

Mr. Ellett explained that after the July meeting, the Blaus' lawyer contacted his attorney, Mike Borgos. The Blaus' said they will allow the deck to be approved if Mr. Ellett paid to trim trees on the side of his own house, along Scotty's Motel side, to allow them (the Blaus') to have a lake view. Mr. Ellett informed his attorney to contact the Blaus' attorney that he would not pay to trim his trees. If the Blaus' wanted to pay for the tree trimming themselves, then Mr. Ellett would allow the trimming on his own property as long as the trees were not harmed or killed and that the stay level with the eaves of his house. The Blaus' also requested an easement so they could have access to Mr. Ellett's property forever. Mr. Ellett stated that he had an issue with that. A third request was made for Mr. Ellett to add a fence. Mr. Ellett went on to explain that at the first meeting, Zoning Board member Rob Gregor asked that negotiations be made. So far no compromises have been suggested involving the deck itself. It has been about trees and a fence, but not the deck.

This is the third visit back to the Zoning Board. Mr. Ellett went back to Mr. Lammon, of Lammon and Lammon Architects in Troy, for a fourth time. Mr. Lammon was the architect for Sacred Heart Church in Lake George and is very familiar with the Adirondack design, color scheme and Village rules. Mr. Ellett asked about an alternate deck design, one that would not require a variance. The deck could be made to be larger but Mr. Lammon noted that making it odd shaped, following the allowed space without a variance, would not be practical or cost efficient as it would require a good amount of product that would not be able to be used. The deck would be in a triangle, pointed shape. Half pieces of Trex decking would be used instead of full length pieces. Mr. Ellett stated that building the deck in this way would be much worse for the Blaus' because it would be closer to their house.

Mr. Ellett shared the following: "On a more personal side I want to share with the Board. In 277 days, I will be 55 years old. Any day after that I will have the opportunity to retire and make 10 Scrimshaw Lane my permanent home. When that day arrives 277 days from now, or sometime later, this reasonable person plans on offering my volunteer time to sit in a seat like each of you, to do just what I hope you will do, the reasonable thing. Allow this very patient person a reasonable task. To improve a home that is not an investment home, this is and will be our home for the rest of my life and my wife Gladys. As I stated during a toast at our open house, which the Blaus' attended, I said publicly, I plan on dying in this home, which I truly do. I love Lake George, from three months old vacationing for six weeks on Big

Burnt, to watching my mother serve on the Board of Wiawaka for more than two decades, following her mother, who served for over a decade in the 1960/70s. I will not do anything to ruin the look or feel of the Adirondacks. I will allow the Blaus' to trim the trees at a reasonable level, to allow them to have their view from the porch, and I'm sure that I will do the same for a new reasonable neighbor when that time comes.

I truly believe I have presented this Board (three times now) a reasonable request. I now ask you to do the reasonable thing and approve this request to a future longtime fulltime resident of the Village of Lake George who will give back to this community in ways like each of you do. Thank you for your on-going time and review on this request."

Mr. Mogren asked about the space where the deck could be built. Mr. Ellett said that if he built within the setback lines, the deck would be much worse for the Blaus'. Mr. Mogren said that at the first meeting it was important for him to see that a compromise was made. Mr. Ellett could redesign the deck and a variance wouldn't be needed. Mr. Ellett agreed, but the design of a triangular deck wouldn't be appealing as the deck would be jutting out. He again stated that he would allow the trimming of the trees.

Mr. O'Connor addressed the Board. He did offer different proposals to Mr. Ellett's attorney, Mr. Borgos, but an agreement was not made. The trees were a compromise as the Blaus' feel they are giving up a significant amount of privacy and value. In leu of that, the Blaus' wanted to get something in return. It was suggested that they get a better view of the lake. That might make up for the difference in value of their home. There was an agreement with the previous owner of Mr. Ellett's property that the trees would be trimmed to allow the Blaus' to have a lake view. A specific easement was discussed where the Blaus' would have the right to come onto Mr. Ellett's property and cut the trees to a certain height. The applicant (Mr. Ellett), would be bound by it and anyone he sold the property to.

Mr. O'Connor explained the fence. Since the proposed deck would be about 500 square feet and could hold large gatherings it would be helpful if a privacy fence was put in around the deck. It would cut down on the noise and preserve some of the privacy of the Blaus'. An agreement wasn't made. Mr. O'Connor explained that 75 square feet could be removed and the setback variance wouldn't be needed. Mr. Ellett has another 255 square feet available if he shifted the deck. He hopes that Mr. Ellett wouldn't take advantage of that and build out to the point, sticking the deck in their face (the Blaus'). Mr. Ellett has a way to avoid that variance. Mr. O'Connor went on to say that he is not sure how Mr. Ellett can get around the other variance of expanding a non-conforming structure. The law is simple and says you cannot expand a non-conforming structure. There is only so much density and so much land use on a particular lot. A variance was already given to build a family room on the side of the house.

Mr. Barusch replied that the addition was built in the 90's and a variance was not required at that time due to the zoning codes, which have since changed. Mr. Ellett was not the property owner at the time of that addition. Mr. O'Connor replied that there was a variance filed, and Mr. Barusch responded that he is incorrect. A building permit was filed, not a variance. Mr. O'Connor said he wished they had reached a compromise and could withdraw their objects.

Mr. Sullivan asked for clarification. It seems that the Blau's object to the 75 square foot expansion or addition over the setback line is great, but not so great that it can be overcome by the trimming of trees. Mr. O'Connor said that was correct. Mr. Sullivan asked if Mr. Ellett is willing to have the Blaus' pay to

have his own trees trimmed then what is the problem? Mr. O'Connor replied that he would have to get back to him on that.

Catherine Blau responded that she is not paying for the trees. She referred to the agreement she had with the previous owners. Mr. Sullivan stated that it is not relevant. Mr. Sullivan said that he went to the property on Monday to see how much room is available. He was very surprised by how minimal the 75 square foot request is. He referred to the size of the deck where the Board members were seated, noting that the area is small. Mr. Ellett has it marked out on the property with ropes. It is invisible from the road when coming into or going out of Scrimshaw, so there is no adverse effect on the neighborhood. There are hedges and trees that completely obscure the view of the lake from the Blaus' house. The deck is not a substantial amount of area. The protrusion or extension of the deck out to the side property lines would create a virtual nuisance. In regards to privacy, Mr. Ellett has moved the deck farther down, away from the Blau's property line. Mr. Ellett confirmed that he has moved the deck farther away from the Blaus'.

Jeff Blau stated that he also went to view the property. If Mr. Ellett were to change the deck and build out to the 250 square feet, inside the setback lines, it will be looking right at the Blaus' front door and would be their biggest nightmare. It would be an eyesore. The trees are separate and has nothing to do with the variance. Mr. Sullivan agreed.

Mr. O'Connor said the trees were his suggestion. He was trying to help two people find a compromise. Mr. Ellett does have the right to repair and replace the deck that is there, but he doesn't have the right to expand it. Mr. Sullivan asked if Mr. O'Connor is saying that the Board does not have the right to grant a variance with respect to the non-conforming structure? Mr. O'Connor replied that was correct, the Board does not have that right to grant a variance. Mr. Sullivan referred to Dan Barusch. Mr. Barusch stated that two variances are required. The ability to grant such variances are given to the Zoning Board of Appeals. This Board does have the legal right to grant a variance to the expansion of a non-conforming building. Mr. O'Connor said he agreed. Mr. Sullivan replied to Mr. O'Connor that he just stated that the Board does not have the right to grant a variance. Mr. O'Connor said but not in this circumstance because of the impact that the deck will have on the adjoining property. Mr. Barusch replied that is Mr. O'Connor's speculation. Mr. O'Connor said that a comment came back over the weekend from the realtor that a buyer said sorry, the units are too close together. Jeff Blau stated that the current extension is not going in the direction of the Blaus' house. Mr. Sullivan said these properties would be closer together with the alternative. Mr. O'Connor said that the applicant does have an alternative, and Mr. Barusch responded that the alternative is not as beneficial to the neighbor. Mr. O'Connor insisted that there is an alternative, and he would argue it in court. If there is an alternative, that is something the Board needs to consider. Mr. Barusch said the Board is considering the alternatives. He asked Mr. O'Connor if in court, the fact the Mr. Ellett has an alternative, whether or not it is more detrimental to his clients, the court would overturn the Board's approval. Mr. O'Connor said he believes so.

The tree trimming was again discussed. Mr. Sullivan stated that the Board is not in the business of sanctioning the trading back and forth of favors to grant a variance.

Mr. O'Connor brought up an email from Scrimshaw's H.O.A. vice president approving the deck project. Mr. Barusch can provide a copy of this to the Board. The approval procedures from Scrimshaw Estates were discussed at previous Zoning and Planning Board meetings. Mr. Ellett said he recused himself

from the H.O.A. approval process as he is the president. The vice president took care of the procedures. Mr. Barusch said the letter is on record, and it states that on behalf of the H.O.A. at Scrimshaw, they have no objections to Mr. Ellett's project. It does not mention that there is any procedure for an architectural review committee. The Zoning Board is not here to enforce Scrimshaw's bylaws.

Catherine Blau mentioned at the last H.O.A. Board meeting that one of their members was not even aware of this project. She feels that this was all done under the rug. Mr. Ellett said it is hard for him to respond to things that he doesn't think are true. He would like to focus on the issue of the deck. Mr. O'Connor has brought up so many things that are not relevant, such as the fire pit being illegal when it is not. Mr. Ellett questions the truthfulness of anything that is said from the Blaus' attorney. Mr. Ellett said he could build a monstrosity right out in front of their house, but it would be a spiteful thing to do. He doesn't want to do this. He has already tailored down his deck three times because he was asked to do so. He was forced to hire a lawyer, which he didn't want to do, in order to protect himself. If the Board wants him to amend his project again, he will, but Mr. Ellett feels that he has been more than reasonable. Mr. Ellett is upset that he now has neighbors that don't care for him anymore. As President of the H.O.A. when Mr. Blau asked for a pathway down to the beach last fall, Mr. Ellett spent time working with Dan Barusch to get that approved because he thought this would help his neighbors. He feels awful that the Blaus' are angry with him and if he could buy their house, he would do so.

Mr. O'Connor stated that he has not lied. He discussed the two types of variances again and said that Mr. Ellett does not have the right to expand a non-conformity. The Zoning Code is there to protect property values. Mr. Mogren said despite what happens here, the Blaus' can still go before their H.O.A. and fight this. It is not relevant here and it is harsh to say that a property owner doesn't have the right to apply for a non-conformity variance. Jim Blau said that Mr. Ellett spins things and isn't truthful. Mr. Mogren said that isn't relevant. Mr. Blau continued to discuss the H.O.A.'s bylaws and procedures and that the project was never discussed with him. Mr. Sullivan again said that this is not relevant. Mr. Blau continued to discuss the number of people that could be held on the deck and that it is not fair.

Mr. Mogren made a motion to close the public hearing.

MOTION 2ND: Tom Sullivan

Ron Mogren	Tom Sullivan	Jeff Blau
Aye	Aye	Aye

Ayes =3 Nays = 0 Motion carried.

Mr. Mogren stated there has been a compromise on the applicant's part by revising the plans. He explained that pursuant to 6CRR-NY Section 617.5(c)10, 12 & 13 this project is a Type II action and read the following:

(c) The following actions are not subject to review under this Part:

- (10) construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density;
- (12) granting of individual setback and lot line variances;
- (13) granting of an area variance(s) for a single-family, two family or three-family residence;

Mr. Mogren addressed the first variance request for non-conforming lots and made a motion for approval. He stated that not approving the variance for the non-conformity creates a hardship for the applicant. The applicant should be able to expand the deck in some manner even if he doesn't need an area variance.

Mr. Mogren read in the criteria for the first variance, followed by the criteria for the second. For the purpose of the minutes the criteria for both variances has been combined.

- The requested area variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties because the deck is minimal in size and the separation between the adjacent property is less detrimental than the alternative.
- The benefit sought by the applicant cannot be achieved by some other method feasible for the applicant because in regards to the expansion of an pre-existing non-conforming structure, a compliant project would require a variance to expand regardless, and this proposal will have less of an impact than the alternative which is building the deck out to the far corner of the property.
- The area variances are not substantial because the set back is being encroached upon by only six feet.
- The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because they are not substantial as the deck portion requiring a setback variance is only 75 square feet.
- The alleged difficulties were not self-created because Mr. Ellett was not the owner of the property at the time the non-conformity of the house was created.

MOTION 2ND: Jeffrey Blau

Ron Mogren	Tom Sullivan	Jeff Blau
Aye	Aye	Aye

Ayes =3 Nays = 0 Motion carried.

Mr. Mogren made a motion to approve the second variance request. He explained that the size and the separation between the deck and adjacent property is minimal. An undesirable change will not be produced in the character of the neighborhood and will not be a detriment to the nearby property owners. Mr. Mogren said that this is less detrimental than the other option which is to build out to the far corner of the property.

MOTION 2ND: Jeffrey Blau

Ron Mogren	Tom Sullivan	Jeff Blau
Aye	Aye	Aye

Ayes =3 Nays = 0 Motion carried.

Mr. Mogren made a motion to approve the minutes from July 11, 2018.

MOTION 2ND: Tom Sullivan

Ron Mogren	Tom Sullivan	Mike Ravalli	Jeff Blau
Aye	Aye	Aye	Aye

Ayes =4 Nays = 0 Motion carried.

Mr. Mogren made a motion to close the meeting.

MOTION 2ND: Mike Ravalli

Ron Mogren	Tom Sullivan	Mike Ravalli	Jeff Blau
Aye	Aye	Aye	Aye

Ayes =4 Nays = 0 Motion carried.

Respectfully submitted,

Stephanie Fregoe

August 9, 2018