

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

Minutes of the Meeting held by the Zoning Board of Appeals on Wednesday, September 26, 2018 at 7:30 P.M., at the Town of Lewisboro Offices at ~~Orchard Square~~⁹, 79 Bouton Road, South Salem, New York.

Board Members:	Present:	Robin Price, Jr. Chairman Thomas Casper Todd Rendo Jason Krellenstein
	Absent:	Carolyn Mandelker

Also Present:	Aimee Hodges, Secretary Joseph Angiello, Building Inspector
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The Meeting was called to order at 7:34 P.M. Chairman Price introduced the members of the Board and noted the emergency exits. He announced that the next ZBA meeting is scheduled for Wednesday, October 24, 2018 with a site walk scheduled for Saturday, October 20th.

I. Review and adoption of the Minutes of August 22, 2018

Mr. Rendo moved to adopt the minutes of August 22, 2018. The motion was seconded by Mr. Casper; To approve: Mr. Rendo, Chairman Price, and Mr. Casper. Abstain: Mr. Krellenstein Absent: Mrs. Mandelker

II. PUBLIC HEARINGS

CAL. NO. 13-18-BZ

Application of Jonathan Mazella & Vivecca Underwood, 25 East Street, South Salem, New York, for a variance of Article I §220-2 and Article IV § 220-23D (11) of the Zoning Ordinance in the matter of a proposed accessory building greater than 600 square feet in floor area (1802 square feet proposed) and exceeding 20 feet in height (23' 11" proposed) in an R-1A, One-Acre Residential District.

The property is located on the north side of (#25) East Street, designated on the Tax Map as Sheet 53, Block 9834, Lot 38, in an R-1A, One-Acre Residential District consisting of approximately 2.036 acres.

Jonathan Mazella was present with the project architect Re Hagele, RA.

There were no objections to the notice of public hearing as published in the official Town newspaper.

Mr. Hagele displayed the proposed site plan. Mr. Hagele advised that the design intent was to build something that would fulfill the applicant's needs but also would be appropriate for the property. The proposed barn is set back and would not require any setback variances. In addition the building

coverage proposed is 4.39% is well below the permitted 12%. The barn is set well below the house and would have very little imposition to the street. He provided computer generated models to scale of what would be seen from the road. Although a large variance, the proposal is modest. The applicants have a large enough property where they could construct three 600 square foot accessory buildings that would not benefit them, the neighborhood or the Town in anyway.

In response to a question of Mr. Krellenstein, Mr. Hagele advised that they were also seeking a roof height variance of 24' from 20' but he maintained that because of the topography the height would appear to be less than 20 feet from the road. Mr. Hagele stated that what was being proposed was aesthetically pleasing and situated on a very nice property where they had spent a significant investment and wanted to put their roots down. They would accept as a condition of approval prohibiting the construction of any further accessory buildings.

Mr. Krellenstein referred to Section 220-23D(11) of the Town Code and stated that he read this section to mean one accessory building up to 600 square feet.

Mr. Hagele advised that he read this section differently and noted that there were several parcels in the Town of Lewisboro that had multiple accessory buildings. He stated that this would be the only accessory building on this property. The existing garage will be removed.

Chairman Price questioned whether the finished floor elevation was proposed to be 542 and was advised that the elevation would be a little bit lower in the rear and at 543 at the front.

Mr. Mazella stated that his home was part of the Ruscoe Homestead. His house was constructed in 1821. He displayed a drawing of a barn that was located across the street, part of the same property until it was demolished in the 1970's. The vision they have is to bring back an agricultural feel to the area. It is his belief that creating this landmark would bring value to the community. The structure would not have an agricultural component.

Mr. Krellenstein advised that his objection to the application was not the aesthetics or the purpose of the building, but that it is three times of what is permitted. This becomes less of a variance and more of a legislative change. The applicant had not justified the need for a building that is three times what the code permits.

Mr. Hagele believed that this building could be connected by conditioned space to the residence and would therefore not require a variance. This was confirmed by Mr. Angiello.

The Chairman acknowledged the following e-mails in support:

- 7/16/2018 from Peter Cirpriano & Mannello Family
- 7/25/2018 from Nick Puglisi
- 8/20/2018 from Rich McKay
- 7/30/2018 from Jo Ann Lopolla & Viola Cogswell
- 7/31/2018 from David & Autumn McPhillips
- 8/1/2018 from Tom & Terry McCullough

Peter Cipriano, 5 East Street stated that he lives across the street from this well maintained property. He will look directly at this barn when he pulls out of his driveway. He believed that it would be a fabulous sight. Even though it is larger than what is permitted, barns are traditionally large structures. In order for it to look proper, the size is needed. The barn will be sited low so it will not look so massive. He believed that the improvements his neighbor has done in addition to the proposed barn will improve the neighborhood. He feared that if the variance were to be denied that Mr. Mazella would sell the property and move out of town.

Mr. Hagele stated that the footprint is slightly less than 1000 square feet making it 50% over the allowed area.

Mr. Krellenstein noted that the issue was that the entire barn was a bigger building than what is allowed. It is 1800 square feet.

Elmir Pasalic, 16 East Street stated that he believed that this barn would bring value to the neighboring homes. If the Board did not approve this application, the applicant would find something else. This was concerning because the applicant had significantly improved his property.

Mr. Rendo questioned whether there was an opportunity to reduce the height of the building.

Stephen Mannello, 30 East Street stated that he understood Mr. Krellenstein's position but improving the property attracts others who want to improve their properties and improving the property values of this area. Mr. Mazella was a part of the effort to paint the schoolhouse at the end of East Street and is a part of the garden club. He endorsed this application because it would improve the neighborhood.

Mr. Krellenstein understood and appreciated the argument about improving properties. He stated that he is bound by the code which has certain standards that must be met. The greater the variance, the greater the burden to meet those standards. This applicant has not demonstrated hardship but is saying this is a good project for the property so overlook the size. He doesn't want to turn down anyone's application, but in his mind, this is too large of a variance.

In response to Mr. Rendo's question as to whether the height could be reduced, Mr. Hagele imagined that it could. He had kept the roof pitch the same as the house. They could bring it down, put dormers on it and make it not look like a barn. Changing the area would reduce the function.

With regard to the statement that this barn is three times what is permitted under the code, Mr. Hagele stated that it had been argued that zoning restrictions are arbitrary on some level. He hoped that this Board would look at the fact that yes the Building Inspector had denied it because it is his job to enforce the code but would see its mission as looking where the code lets down the applicant and can see when a project does not fit the rigid mold of the standards, but does not have a negative impact on the neighborhood, but helps it.

Mr. Krellenstein did not agree that the code was arbitrary but agreed that it was a good point that the application did not have a negative impact on the neighborhood. This was only one of the four criteria that this Board must consider. He referred to and read into the record Section 220-74D (2) (a-d) of the Zoning Ordinance which is the criteria this Board must take into consideration when granting or denying a variance. This application does not hit any of the criteria with exception of the last one. It is difficult

because the barn is massive and the roof is too high. He added that the neighborhood support is compelling.

In response to a question of the Chairman, Mr. Hagele advised that the existing garage to be demolished is 336 square feet. It was further noted that there is a two bay garage under the residence.

Mr. Casper disagreed with Mr. Krellenstein regarding the criteria. Approval after approval this Board grants variances and he believed that he could make an argument for all four of the criteria. The proposed building is deeper than it is wide. It is situated below the street level by eight to ten feet. The property is a two acre parcel in a one acre zoned district. The proposed barn is attractive. There is an unusual number of neighbors who are not just saying that they do not have a problem with the project but they want it. These are neighbors that are active in improving the neighborhood. One of the neighbors in favor has lived next door for 70 years. If the property was only one acre, he might be thinking differently about it. He believed that although the applicant could live without it, in terms of what he is trying to achieve it would be a hardship to him in that he could not achieve his goals for the property.

There was no further comments.

Mr. Casper moved to approve the application as noticed for the following reasons:

- There is no undesirable change to the character of the neighborhood or detriment to nearby properties. The neighboring property owners fully supported this application and maintained that it would significantly improve the neighborhood and the values of their homes.
- The Board found that the requested variance might be substantial but there were factors that would support the granting of it. The proposed barn is eight to ten feet below the street level and would not look massive from the street. The property is a two acre parcel in a R1A zoned district. The neighboring property owners overwhelmingly supported this application.
- There will not be an adverse effect or impact on the physical or environmental condition of the neighborhood.

The motion was seconded by Mr. Rendo; To Approve: Mr. Rendo, Chairman Price and Mr. Casper.
Absent: Mrs. Mandelker. To Deny: Mr. Krellenstein.

CAL. NO. 16-18-BZ

Application of Elizabeth Edwards Murray, 113 Upper Lake Shore Drive, Katonah, New York, for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of a proposed addition that is proposed to be located closer to the side property line (7.48' where 15' is required) and closer to the rear yard lot line (6.55' where 30' is required) in an R-1/2A, One-Half Acre Residential District.

The property is located on the southerly side of (#113) Upper Lake Shore Drive, designated on the Tax Map as Sheet 9A, Block 10791, Lots 76-79, in an R-1/2A, One-Half Acre Residential District consisting of approximately 0.29 acres.

William O'Neill, architect was present representing the applicant.

There were no objections to the notice of public hearing as published in the official town newspaper.

Mr. O'Neill advised that they would like to extend the second story above an existing patio in line with the rear and side of the existing dwelling to enlarge the master bedroom. The applicant is seeking a variance similar to one that was granted in 1986.

Mr. Krellenstein noted that the property appeared to be a bit disheveled and wondered whether this was part of some broader renovation.

Mr. O'Neill stated that it was part of a project to improve the property. The applicant is also proposing a screened porch above the garage on the opposite side of the house that did not require a variance. He noted that there are a number of leaks that will be repaired. In addition there is currently some site work being done.

The Chairman acknowledged three emails in support of the application:

- 9/26/2018 from Christopher Mazzini-Chin
- 9/26/2018 from Patricia & John Petrillo
- 9/26/2018 from Cornelius Graubner

There was no further public comment.

The Chairman advised that the four members present this evening walked the property on Saturday, September 22nd and noted that what was being proposed is modest.

Mr. Krellenstein 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 nearby properties.
- There is no practical alternative to the variances. The applicant is constructing a second story master bedroom addition above an existing patio.
- The requested variances are not substantial. The proposed application will improve the property.
- There will not be an adverse effect or impact on the physical or environmental condition of the neighborhood.
- The Board found that the difficulty was not self-created.

The motion was seconded by Mr. Rendo; To Approve: Mr. Krellenstein, Mr. Rendo, Chairman Price, and Mr. Casper. To Deny: None. Absent: Mrs. Mandelker.

CAL. NO. 17-18-BZ

Application of Bruce & Melinda Cascio, [Bruce & Melinda Cascio Revocable Trust, owner of record], 1 Old Oscaleta Road, South Salem, New York, for a variance of Article III § 220-9C (1) of the Zoning Ordinance in the matter of the proposed enlargement/extension of the office and storage area in an existing commercial structure (automobile repair shop) in an R-2A, Two-Acre Residential District.

The property is located on the northeast corner (#1) Old Oscaleta Road and Oscaleta Road, designated on the Tax Map as Sheet 35, Block 11826, Lot 2, in an R-2A, Two-Acre Residential District consisting of approximately 2.5 acres.

Bruce Cascio was present.

There were no objections to the notice of public hearing as published in the official Town newspaper.

Mr. Cascio explained that he would like to remove a window from the rear of the building and install a door and build a small store room. There would not be any visual impact from the front. The size of the bays would not be increased but would give him a little room to move around in the office. With the current configuration with cars on the ground, he cannot get from the office to the west side of the building in his wheelchair. This change would allow him to move from the shop to the office.

Chairman Price stated that the issue with this application is that the automobile repair shop is a non-conforming use in the residentially zoned district. He advised that the proposed enlargement/extension of the existing commercial structure is not permitted whereas such structure shall not be enlarged, extended or altered unless the use there in changed to a conforming use per Article III, Section 220-9(C) 1 of the Town of Lewisboro Zoning Code.

Mr. Cascio advised that his plan B is to extend the non-commercial structure for a storeroom.

Mr. Casper suggested that the applicant only discuss what is before this Board now. He further advised that the applicant was not seeking an area variance, but a use variance. The Code states that he could not expand an existing non-conforming use.

Mr. Krellenstein questioned how this was a change of use. Mr. Angiello explained that what was being proposed is an expansion of a non-conforming use that is allowed to be there because it is so old but according to the code the use could not be expanded. What is being proposed is part of the business.

Mr. Krellenstein stated that his issue with the application is that it appeared that what is being proposed is a connection between a building that is a part of the business to a building that is not being part of the business. He was not sure it was a change of use.

Mr. Casper advised that he had consulted with the Town Attorney who concurred that this was a use variance.

Mr. Angiello reiterated that this is not a change of use, but rather an expansion of a use.

Chairman Price advised that he too consulted with the Town Attorney who advised that what is being sought is a use variance because it is an expansion of a non-conforming use.

Mr. Casper stated that this ordinance was necessary to prevent someone from purchasing the property and building additional bays to the garage.

Mr. Krellenstein disagreed and referred to Section 220-9(E). His problem with this application is two-fold. Although he visited the property, the plans were not clear. The second issue is that it appeared that what is being proposed is the connection of two buildings, one of which has a commercial purpose with

one that does not, thereby expanding the ability to do business in a building where the commercial activity is not permitted.

Mr. Cascio stated that there does not need to be a connection between the buildings. The architect added a doorway so that he could get from one building to another without being exposed to the elements. He stated that he could easily fix cars in the large non-commercial building but he does not and is abiding by the code. The reason why he would like the connection between the two buildings is that it is easier for him in the wheelchair to go through the big building into the work garage. He reiterated that it was not necessary to have the connecting door it would just be easier for him to not have to deal with the weather when he could easily go from one building to the other.

Chairman Price stated that it was not just the door. What is being proposed is an increase in nonconformity and is not permitted in the code. The application is seeking to increase the office space which is a part of the business.

Mr. Cascio questioned whether he could add the exact square footage to the big garage for a store room leaving the office the same size.

Chairman Price understood the code to state that the space used for the business must remain the exact size or be reduced.

Mr. Cascio noted that he is under the lot coverage requirements.

Chairman Price understood that the business had been in existence a long time, but reiterated that the code does not permit the expansion of the nonconforming use. He stated that Mr. Cascio had two options; adjourn the hearing this evening and consult with an attorney or withdraw the application. If there is a different idea or option, he should meet with the Building Inspector.

Mr. Angiello stated that what increased the non-conformity was that it appeared the store room was going to be utilized to store materials to be used for the business.

Mr. Cascio advised that this was the intent.

Mr. Angiello noted that he was being very straightforward, but this intent would increase the non-conformity. If the intent was to store materials for his personal use such as a hobby in the larger non-commercial building that may be permitted. It could not be used for the business. The personal and business uses must be kept separate.

Mr. Cascio requested clarification as to whether he was requesting a use or an area variance.

Mr. Angiello stated that he viewed the request as being a use variance because it is an expansion of a nonconforming use. He believed that the purpose for this requirement in the code was so that a business that had been in existence for a long period of time to continue but not expanded.

Mr. Krellenstein stated that he had a different opinion and noted that this Board could issue both use and area variances. He referred to Section 220-9E(3)(d) which states that "The alteration, improvement, reconstruction or change of nonconforming use will not be inconsistent with the purposes of this chapter and would not have a detrimental impact on surrounding properties occupied by conforming

uses." He stated that he too is concerned that by connecting the two buildings that the commercial use may be expanded into another building where commercial use is not permitted. The argument that gave him pause is the reason for the application that is unique to this applicant, his ability to maneuver. He agreed that that this is an expansion of a use, but is a unique situation. He did not agree that this Board could not consider a variance. He still had an issue with the clarity of the plans and asked that the architect attend the hearing to explain them. In addition, he asked that counsel be present to discuss what is and is not permitted under the code.

Mr. Cascio agreed to hold the hearing over to allow his architect to attend.

Claudia Boera, 12 Old Oscaleta Road stated that she has seen how this property has grown with construction over the years. She described the property as an eyesore and believed that it has decreased her property value. She understood his situation and supports local business but asked that the Board not permit any more construction on this property. The applicant claimed that he needed additional storage, but she believed that he had plenty of storage. She feared that the business would grow. There is a lot of traffic and believes that it is dangerous. She advised that she had built a fence on her property to prevent the vehicles associated with this business from turning around in their driveway. She stated that this is a residential district and if the applicant needs to expand his business, it should be moved to a commercial area. Mrs. Boera stated that she had a big issue with the very large storage area that is used for his trucking business.

Aaron McDaniel, 8 Old Oscaleta Road agreed with the concerns expressed by his neighbor. When he purchased the property in January 2016 he believed that the buildings were for a farm, not an auto body shop. The realtor explained that it was an auto body shop but that there was no signage and should not be a resale issue. They have been nice neighbors but his concern is with the congestion on the street. The traffic is an issue and the cars going to the shop back into their driveway so much that they park their own vehicles perpendicular in the driveway so that there is not an issue with their children being harmed. There are trucks going back and forth at all times of the night.

Mr. Cascio stated that there is no visual impact and that he had been out of the trucking business for ten years.

The meeting was adjourned until October 24, 2018.

CAL. NO. 18-18-BZ

Application of Jennifer Clark, 25 Bouton Street, South Salem, New York, for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of a proposed addition that is proposed to be located closer to the side property line (5'2.75" proposed where 12' is required) in an R-1/4A, One-Quarter Acre Residential District.

The property is located on the westerly side of (#25) Bouton Street designated on the Tax Map as Sheet 36D, Block 11166, Lots 23 & 24, in an R-1/4A, One-Quarter Acre Residential District consisting of approximately 0.29 acres.

Jennifer Clark was present with her builder, Michael Wetzel.

There were no objections to the notice of public hearing as published in the official Town newspaper.

Mr. Casper noted that the property is located on the east side of Bouton Street, not the west side as indicated on the hearing notice.

The Chairman noted that the four members present this evening visited the property on Saturday.

Mr. Wetzel advised that the intention of the design is to match the proposed addition to the northern extension of the residence to enlarge the existing master bedroom.

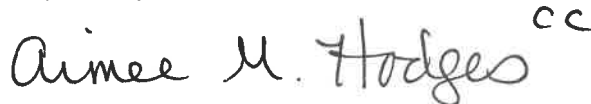
Mr. Casper moved to approve the application as presented for the following reasons:

- There is no undesirable change to the character of the neighborhood or detriment to nearby properties.
- There is no practical alternative to the variances. The applicant is constructing a small addition to increase an existing bedroom.
- The requested variances are not substantial. The proposed application will improve the property.
- There will not be an adverse effect or impact on the physical or environmental condition of the neighborhood.
- The Board found that the difficulty was not self-created.

The motion was seconded by Mr. Krellenstein; To Approve: Mr. Krellenstein, Mr. Rendo, Chairman Price, and Mr. Casper. To Deny: None. Absent: Mrs. Mandelker.

Mr. Krellenstein moved to adjourn the meeting at 8:39 P.M. The motion was seconded by Mr. Casper.

Respectfully submitted,

 cc

Aimee M. Hodges
Secretary, Zoning Board of Appeals