

ZONING BOARD OF APPEALS

TOWN OF CANADICE

Canadice Town Hall

July 9, 2014

Present: Linda Moorhouse, Chairperson

Diane Horning

Ed Bott

Marty Gascon

Karen Scheele

Bob Best, CEO

Guest: Frederick Wolf

Greg Goodridge

New Business

An application for a area variance was presented by Greg Goodridge. The address for the area variance is 5856 Joe Bear Drive., Honeoye, NY. The area variance is for a side setback for a principal building of 5.6ft. – 10 ft. is required. Accessory building is for side setback for 5ft. – 10ft. is required.

A request for interpretation was presented by Frederick Wolf , residing at 5705 Sunset Drive, regarding the location of a permanent bench swing structure on property located at 5709 Sunset Drive, which is owned by Ron & Phyllis Fritz. Chapter 52, Construction Codes, Uniform, Section 52-5. Building permits. B. Exemptions (1)

Chairperson Linda Moorhouse called the meeting to order at 7:30 pm.

L. Moorhouse - We have two preliminary hearings tonight. One is for a variance request and the other is for an interpretation. First, we will hear the area variance for Mr. Goodridge.

L. Moorhouse - Mr. Goodridge would you explain what it is that you want to do.

G. Goodridge - I am looking to put an addition on to the place I have on West Lake Rd. The addition will be attached to the existing building that was built

about 60 years ago. This has been used primarily as a summer residence. The new addition would be winterized, so it can be used year-round. The way the property lines run, it is inevitable that there would be an issue with the setback. The south west corner of the building would be about 5.5ft. I had Gary Dutton update the survey with the proposed addition on there. And also in the future, we would like to add an attached garage. I shifted that about 6ft. down to the north and we still end up with the back corner about 5ft. from the line.

Looking at the map, Mr. Goodridge explains to the board where the proposed addition and garage are going to be located.

L. Moorhouse - The garage is going to be attached to the proposed new addition?

G. Goodridge - Yes

E. Bott - If I have these numbers right, the corner of the existing house is 8.2ft. to this line?

G. Goodridge - Yes, to the north line.

E. Bott - And your proposed addition would be 2ft. in, so it would be 10.2ft. on that side?

G. Goodridge - That's correct.

E. Bott - And the other side, you said the garage would be offset by 6ft. you have 4ft. here.

L. Moorhouse - I looks like 4ft. there.

G. Goodridge - Where is the 4ft.?

L. Moorhouse - Where the garage is offset from the addition.

G. Goodridge - That's because it is narrower, it's 22ft. wide, it's 4ft. extended that side. The south wall would actually be 6.5ft. in from the proposed addition. One is 24.5ft. and one is 22ft. It is 4ft. on the north end.

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E. Bott - So, then that makes this 13ft.?

G. Goodridge - Yes, at the east corner, it would be 13.1ft. The west end on the south side it would be 5.6ft. Then if you go up on the garage, it would be 5ft.

E. Bott - I'm looking to see how much room you could move away from that variance.

D. Horning - There is quite a bit of room.

E. Bott - It looks like you could move 4-5ft. and not have to worry about a variance for the garage and you still have a couple feet and make the addition no worse than it already is and it would give you 2 more feet on the other side, assuming you would need the full 24.5ft.

G. Goodridge - Can I explain how the house is built? I can do it, I just want to explain what is there now. There is a dormer on the back and there are pitched roofs off the side of that, that go out about 2ft. on the existing structure. On the east-west direction, where the space is on either side of the proposed addition, that roof is pitched at a 45 degree angle coming down. Right against that, where the width of the building is, the dormer sticks out. There is a flat roof there and that is where we are looking to attach the addition. I can modify the plans.

K. Scheele - Are you going to do more construction after this is done?

G. Goodridge - I don't want to change anything with the existing structure. We were just going to take the windows out and strip the siding down on that side.

L. Moorhouse - This is going to be a one-story?

G. Goodridge - The addition will be 2 1/2 stories. We want to put a basement in for the utilities.

Mr. Goodridge explained the position of the addition with the existing roof line, showing the board members on the survey map.

E. Bott - You are making a change, when you have options to minimize the

setback and you are creating the setback situation by the angle in which you are moving these two buildings. If you moved it more to the one side, or made it shorter.

D. Horning - He doesn't have much choice because everything is on an angle.

E. Bott - The length of it, drives that 5.6ft. and the offset from the 2ft. And even more so, the garage. You could move that over another 3-4 feet to this side. You are really asking for two variances.

G. Goodridge - Correct.

L. Moorhouse - You are still going to need two variances.

E. Bott - If you move the garage over 4ft. you will have 9ft. on either side.

G. Goodridge - I could move the garage without changing my overall plans.

E. Bott - The only other way you could do it, is to make it shorter. I don't know how much you would gain by doing that. You could gain 2ft. by moving it over.

L. Moorhouse - It would still require two variances.

E. Bott - Yes, it just wouldn't be as big a percentage. What we have to consider is the percent of impact on the variance and if you have other methods to accomplish the same thing you want to do.

G. Goodridge - I was just trying to keep it relatively square and a simple layout. I'm open to your suggestions.

K. Scheele - Do you understand what Ed is talking about with the percentages being substantial.

G. Goodridge - I understand.

D. Horning - Was there a garage across the street at one time?

G. Goodridge - Yes, I removed that about five years ago.

D. Horning - Would you consider building another garage across the street?

G. Goodridge - Yes, I could do that. I'm just looking for some way to have it be more convenient in the winter time. I don't want the garage to be a deal breaker. If I need to just forget about that, I will, just to get the house fixed. I just figured I would get them both passed now and I could build the garage when I got ready.

E. Bott - My biggest concern about that, is it could be moved over without any structural changes. You should really move it over as much as you can. I see what you are doing, lining it up with the existing section there. If you move it over a couple of feet and then the length causes a bigger issue with the 5.6ft. You could shorten that a couple of feet.

G. Goodridge - Originally I layed it out at 24.5X24.5. But, the 2 feet in that direction isn't going to gain anything.

E. Bott - The garage could clearly be moved over.

L. Moorhouse - Do any of the Board Members have any other questions?

E. Bott - We have to assume this is two different applications, correct? This is two different variances on two different structures?

D. Horning - You can do it on one application.

E. Bott - The problem is, if part of it passed and the other part didn't, the whole application would be turned down.

G. Goodridge - If there is a risk that it won't pass leaving the garage on there, I will just take that off and just do the addition. When the day comes that I want to build the garage, I will just come back for another hearing.

E. Bott - So, you would have to do another application and hearing. You could make changes to this application before the Public Hearing. We have to accept the application as it stands at the Public Hearing.

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G. Goodridge - If it is an issue, I will just take it off.

L. Moorhouse - Why don't we address this as 2 applications.

B. Best - I can ask Kris on Friday or Monday, if we need 2 applications or not.

L. Moorhouse - We will not make a decision on the application tonight. We can put it on hold until the Public Hearing.

G. Goodridge - Do I have to wait to go to the Planning Board until this is approved.

B. Best - You can put your application in to the Planning Board.

E. Bott - They just can't approve anything until the variances are approved.

L. Moorhouse - We will be setting the Public Hearing for Wednesday, August 13, 2014 at 7:30pm.

B. Best - Two signs, one on the property and one up by the road.

G Goodridge Preliminary Hearing concluded at 7:50 p.m.

An application for Interpretation was presented by Frederick Wolf, regarding the location of a permanent bench swing located at 5709 Sunset Drive.

L. Moorhouse invited Mr. Wolf to come and sit before the board.

L. Moorhouse - You are asking for an interpretation regarding the placement of the swing structure?

F. Wolf - That is correct.

L. Moorhouse - Now, your feelings are that the swing structure does not comply with the code?

F. Wolf - That is correct, may not comply with the code. Mr. Best, through his

emails, when I ask about the setback requirements, he just states that you don't need a building permit for a swing set. I have gone through your code very carefully and there is no place in the code that it says, you don't have to meet the setbacks. (Mr. Wolf passed out paperwork to each Board Member for their review) As I understand, this is a preliminary hearing. This paper will give you a better idea of what I am talking about.

E. Bott - You requested an interpretation, that is what this is for tonight. This is not a preliminary hearing, you asked for an interpretation of the code, the law of how it references to your situation. Then, we give you a judgement on that.

F. Wolf - So, I don't have to come to another hearing?

B. Best - We have to have a Public Hearing, we went through this with Mike

Jones. He said if we have an interpretation, then a Public Hearing follows.

F. Wolf - Well, I think you can reflect on what I have to say and then give me your opinion. I think the interpretation makes more sense than a Public Hearing. You don't have to fill the room up with a bunch of people that can either vote up or down.

E. Bott - No, they can only voice their opinion.

F. Wolf - OK, I understand. Let me just back up to my basic position. That notwithstanding, whether or not you need a building permit. Basically every accessory use or structural use has to comply with the setback requirements, if there are setback requirements. What the position that Bob is taking, is that no building permit, no concern about setback requirements. Is there any place in the code that says that? To the contrary, there is language in here that basically says that if this is a permitted accessory use, that it has to comply with all the setback requirements. My position, and it is pretty simple is that it doesn't make a lot of sense. If you took this section 52-5, you could put a swimming pool right on my property line, and no setback. Who is your Town Attorney now?

D. Horning - It is someone in Lima.

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F. Wolf - Bob told me, it was this guy in Lima, so I called and he has gone to another firm.

L. Moorhouse - I don't know either.

F. Wolf - I think you should read this little memorandum that I am going to pass around. The bottom line is, I think there is a lot of your code that suggest that you have to meet setback requirements. Whether you need a building permit or not, you have to meet setback requirements. I'm not caught up in this concept that Bob is, if there is not building permit, then there are not setback requirements.

E. Bott - There is a lot more to it than that. (Ed read out loud what Mr. Wolf had written in his memorandum) The definition of a structure, if we don't feel it is a structure, then we don't have to worry about a setback. If that is the case, then sections 2 and 3 don't apply.

F. Wolf - If I may, let me pass out something. I have attached some definitions to the paper.

There was some discussion about the paperwork that Mr. Wolf handed out.

E. Bott - If the Board Members feel they need more time to review this, then we will need more time.

F. Wolf - There is no rush on judgement for this.

E. Bott - We don't want to leave you hanging either.

F. Wolf - What I have tried to do, is focus on this July 9 memorandum. I kind of gives you more detail. Some of the definitions on structure and accessory structure and accessory use, permitted accessory uses, which just reaffirms that non-storage facilities, work shops and other structures for private use of the land owner must meet all requirements for setbacks. Like lot size and lot coverage for principle buildings. Then 120-71 that basically says the following uses are not allowed in the building district, in the Town of Canadice. F says any use not and accessory use is not allowed. If this is an accessory use, which I think it is, then you are subject to the setback requirements. If it's not an accessory use, then it is

not permitted. If this is the definition of an accessory use. If it doesn't fit the definition, then it is not an accessory use.

E. Bott - (Looking at the photos Mr. Wolf provided) This picture is not looking through your property, it is looking through your neighbors property?

F. Wolf - There are pictures on the back, did you see those pictures?

E. Bott - Yes, this is looking through your neighbors yard?

F. Wolf - Yes. I'm just to the north of that. The bushes and boat hoist are almost on the line. He has this thing permanently cemented to this raised area.

E. Bott - To see this, you have to look through your neighbors property?

F. Wolf - Yes, you have to look over the top of the bushes. This is about 10-12ft. from my livingroom window.

E. Bott - The bushes are on his property?

F. Wolf - Yes. I think the issue is the absence or presents of a building permit has any direct impact. I think you still have to deal with the setback requirements on that lot. I'm not sure anyone has done that exercise. I think Bob's interpretation up until now has been that there is an exception for swings. And the exception says, no building permit.

D. Horning - There is also another section here that we have to consider in a site plan review. The design and placement of a structure shall minimize the impact on view from neighbors property.

F. Wolf - That only applies if you are doing a site plan review. That would be for something over 800 sq. ft., if I was putting an addition on my house.

D. Horning - How long has this swing been here.

F. Wolf - I don't know, probably a year or so. The point is, its just there. If you read these sections on the setbacks including the one on the front lake side, it takes

into consideration the setbacks on the houses on both sides.

E. Bott - It also talks about fences and there are no setbacks on fences.

F. Wolf - He doesn't have a fence, so that is not an issue here.

E. Bott - You are talking about how a structure is defined and some of these structures are being allowed. It comes down to whether we feel this is a structure or not.

F. Wolf - Yes, but section 120-11 defines setbacks for accessory structures and accessory uses. Then you have 120-21C that basically says that if it is a permitted accessory use, then it would have to meet all the setbacks required. But, whatever happens, I'm not going over to my neighbors with a tape measure. He is a decent guy, I let him store his boat hoist on by beach during the winter. I said to him one time that I wasn't sure if that was in compliance with the Town code and he said if

it wasn't he would move it or get it out of there. So, I said I would look into it. So, here I am looking into it.

K. Scheele - Your neighbor said he would move it, if it didn't comply?

F. Wolf - He said if it doesn't comply, well, I don't want to quote him exactly. I went to him, he had built this structure, it really bothered my wife more than me. She is sitting in the livingroom, reading her book, looking out the window and instead of seeing the south end of the lake, she is looking at this swing. I even offered to buy him a bench swing. He said no, my wife grew up with a swing like this, she wants it.

E. Bott - So, you are upset because it is blocking your view of the lake?

F. Wolf - I am, but I don't think I have any right to be, that is under the site plan review section. I don't think I can complain about blocking the view of the lake. I think I can require him to meet the setbacks that is spelled out in the code. Based upon the definitions that I have set forth in 120-11.

E. Bott - Which would move it back.

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F. Wolf - I'm not sure he has enough room to move it. He could put it over on the other side of his lot.

E. Bott - You do realize that he could let these bushes grow to be 10ft. tall?

F. Wolf - Look it, I'm just trying to make my wife happy.

E. Bott - You are only actually looking at the top of the swing set?

F. Wolf - That is not the point.

E. Bott - It is the point.

F. Wolf - The view is the view.

E. Bott - There is nothing that says he can't build something 100' high or let the bushes grow to 100' high. But, there is something in my mind that says he has to meet the setback requirements.

D. Horning - If he moves it over 5ft., it will still be in your way.

F. Wolf - That is not the point. One of the major setback requirements, is that this thing needs to be set back 20', or half the distance of the two houses. My cottage is set back from his cottage and the cottage on the south side is about even. What I am focusing on is the setback. If he meets the setback and wants to make it 100ft. high, then make it 100ft. high. And if he wants to let these bushes grow to 22ft., then let them grow. This structure, if it is a structure and it is an accessory use, he has to meet the setbacks. He doesn't meet the setbacks and does not comply with the code. And the setbacks are defined. And I don't believe in all fairness that anyone has gone down there and tried to figure out if he meets the setback requirements. Just because he didn't need a building permit, doesn't mean he doesn't have to comply with the setback requirements. No one has answered that question for me. Every time I ask Bob, he just says look up 1 50, whatever that section of the code is.

B. Best - If it doesn't need a building permit, it doesn't need setbacks. What

requires setbacks is any kind of building permit.

F. Wolf - Where does it say that Bob? You show me in the code where if it doesn't need a building permit it doesn't need setbacks. There is no where in the code that it says that. And to the contrary, it does say in the code, if there is an accessory use, you need setbacks.

E. Bott - It also says that fences, break walls, etc. don't require setbacks.

F. Wolf - Well a break wall would be on the property line.

E. Bott - That is an assumption. They don't have to be, they could be anywhere. They are clearly not covered by the setback requirements.

F. Wolf - You don't need a building permit.

E. Bott - You don't need a building permit.

B. Best - You need one for a break wall.

E. Bott - Yes, for the front, but not for a landscaping break wall and that is what they are talking about here in this section.

F. Wolf - I thought I was coming for a preliminary, lets get acquainted, lets kiss the baby or not kiss the baby. Lets see if you can understand what I am saying and what I am concerned about. When I talked to Bob, I thought we were going to have a Preliminary Hearing and then a Public Hearing. I would like someone to take the time and read these sections, either your lawyer or someone else, quite carefully and this memorandum I have and read these sections as they are defined. Whether or not they think the setback requirements are applicable in this case. Now, once he does that, and he goes down with his tape measure, he may find that the swing meets the requirements. I don't think it does, because it is so far in front of my cottage.

E. Bott - Well, sections 2 and 3 are not applicable in this.

F. Wolf - Please, just take a look at this.

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E. Bott - Your application is for interpretation and we have to look at what you have given us.

F. Wolf - Do you want me to file a new application? I will do that if you want.

E. Bott - That is up to you. This is the paperwork we have in front of us. You are asking us to respond to questions on the back through your interpretation. I can tell you right now that two of them don't apply. The first one is solely based on whether a building permit was required.

F. Wolf - You are looking at my application, just so I am focusing on what you are saying?

E. Bott - Yes.

F. Wolf - Reasons of appeal, location of our neighbors swing set does not comply with the Town of Canadice building code. Notwithstanding to the fact that no building permit was required for its construction or its placement on the lake front at 5709 Sunset Drive. That is the issue. There are additional attachments so everyone knows who is on first and who is on second.

E. Bott - And on the last page, you are asking for a response in writing.

F. Wolf - That is the application that I signed and sent to Bob.

D. Horning - That is the memorandum.

F. Wolf - That wasn't part of my application. Where does it say, see the memorandum?

E. Bott - You gave it to him.

F. Wolf - I might have given it to him, but this is the application.

B. Best - I have so much paperwork on this.

L. Moorhouse - It is dated June 12, 2014.

E. Bott - You have it right here. With the above in mind, please let me know in writing if this is or is not your opinion. That is what I am referring to.

F. Wolf - And the CEO sent me something, a copy of which was attached to his email. I wasn't trying to get all caught up in my shorts of what his opinion was. In his email, all he said was refer to chapter 52, Uniform Construction Code, section 52-5, B, exemption 1. That was his response.

E. Bott - You don't want us to rule on what you have asked for in this memorandum?

F. Wolf - Let me see the memorandum. Did I incorporate this into my application?

L. Moorhouse - The memorandum was with the application.

F. Wolf - I just sent him the application.

B. Best - First of all, you faxed a letter and the next day it came by First Class Mail. I sent a letter out prior to that fax coming through. I have so much paperwork that you have given me.

F. Wolf - Well, that's what you get paid for.

E. Bott - So do you or do you not want us to rule on what you have written in the memorandum?

F. Wolf - No.

D. Horning - You want us to decide whether this swing set is an accessory use or not?

F. Wolf - I want you to decide whether that is the case and whether you need to meet the setback requirements. In order to take this into account, if I have to, I will send in a new application. I think there are time limits on the application. If you will accept this later, in order for me to add extra stuff. A lawyer should be looking at this. I'm not trying to blow my own horn.

E. Bott - All an attorney can do is advise us. We would make the decision.

F. Wolf - I understand, I am not here to bump heads. I am here to get a solution. I have tried to treat this guy very nicely. I asked him to move it to the other side of his property and it wouldn't obstruct our view. But, then it would obstruct his view. He doesn't want to move it, he has it anchored down.

E. Bott - Earlier, you said that the obstruction of the view was not an issue.

F. Wolf - This is an issue with my wife, it is not a legal issue. She is 72 yrs. old, she sits in the livingroom and reads books and looks at this thing.

E. Bott - You keep mentioning the view.

F. Wolf - It is not a site plan review. It is not applicable.

D. Horning - In a way it is applicable. Even though it is not a site plan, we have had these issues before on the lake about the view. This is obstructing someone's view.

F. Wolf - I don't like the view. I don't dislike these people. I wanted him to take the top piece off and make it a bench swing.

E. Bott - You mentioned that you want us to include the July 9 memorandum, not the other memorandum as part of your application? I want to state for the record that your statement in here about the swimming pool, you misquoted that whole section about the swimming pool.

F. Wolf - Yes, so you will take this into consideration. The rest of this stuff has relevant sections and analysis of descriptions of accessory structure and accessory use, I think applies to this. And this permitted accessory use, is in 1 20-21 for a reference. Even though it is not a principle building, I think it is an accessory use. And any use that is not an accessory use, is not permitted. If it is an accessory use, then you have to meet the setbacks. If it is not an accessory use, then it is not permitted.

E. Bott - That is only for principle buildings and structures over 800 sq. ft.

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F. Wolf - What are you talking about? Permitted accessory use?

E. Bott - Yes. If it is not an structured building, it does not apply.

F. Wolf - It says structures. So, how do we proceed here, I feel like I am banging my head.

E. Bott - We will set a return date for next month.

F. Wolf - Well are we going to discuss it more, or, are you just going to here?

D. Horning - The Board needs to discuss this to make a decision.

E. Bott - We need to review the laws.

L. Moorhouse - Our next meeting is August 13, 2014, at 7:30 p.m.

F. Wolf - So, I come back here on August 13th, and it is not a Public Hearing, we just talk about it.

E. Bott - We will give you a decision on it.

L. Moorhouse - We will give you a decision on what our interpretation is.

F. Wolf - That's fair.

E. Bott - Who is our Town Attorney, do you know Bob?

B. Best - I will have to call the Supervisor.

K. Scheele - I have a question. What I am understanding from what you have shared with us, is that at this point, there is a structure on your neighbors property that you are aware that legally you can't say that it is obstructing your view, so the approach that you are taking is to see if this structure, which was reported to you, did not need a building permit, if in fact, it still needed to meet the requirements for setback?

F. Wolf - Yes.

K. Scheele - You did contradict yourself in saying at one point he had agreed to move it and then later on in your conversation you indicated that he refused to move it. You offered some other scenarios as far as purchasing a new swing. Is this something that has been legitimately dealt with person to person? And, he won't move it, correct?

F. Wolf - He won't move it. Whether he moves it or not. Does it meet the setbacks or not meet the setbacks? I have been trying to avoid this. I live next door to the guy.

D. Horning - You want us to decide whether this is an accessory structure or not?

F. Wolf - I want you to look at this and talk to the Attorney and spend a little time on this. You may decide that the setbacks apply. And then, Mr. Best is going to have to go down there and measure this. I am not over there with a tape measure.

K. Scheele - Is your neighbor aware that this is happening?

F. Wolf - Well, I told him at the end of the year, last fall, that I didn't agree with the placement of the swing. And, he said to me, why would you offer to buy me a bench swing? I said, because I value the relationship. He said he was not going to move it and I told him that I was going to pursue this and see if we can get a solution.

D. Horning - We will discuss this.

L. Moorhouse - We don't want to be put in the middle, between you and your neighbor. If it is the law, it is the law.

F. Wolf - I will assume that I will be on the agenda for next months meeting.

L. Moorhouse - August 13, 2014, at 7:30p.m.

F. Wolf Preliminary Hearing concluded at 8:35p.m.

Old Business

Minutes were read and approved for the June 11, 2014 meeting. L. Moorhouse made a motion to accept the minutes, seconded by D. Horning, all in favor.

E. Bott made a motion to adjourn the meeting, seconded by L. Moorhouse, all in favor.

Meeting adjourned at 8:40pm.

Respectfully,


Stephanie Seeley, Secretary