

## **ZONING BOARD OF APPEALS TOWN OF CANADICE**

Canadice Town Hall

September 8, 2021

Present: Linda Moorhouse, Chairperson  
Diane Horning, Vice Chairperson  
Ed Bott  
Jesse Hallett  
Marty Gascon - Absent

Guest: Brian Carey  
Bailea Carey  
Joseph Palma  
Sean Palma

### **PUBLIC HEARING – Brian & Bailea Carey**

Chairperson, Linda Moorhouse called the meeting to order at 7:30 p.m.  
Chairperson, Linda Moorhouse introduced the Zoning Board of Appeals members and stated that a quorum was present to hear the application. The criteria, which the Zoning Board of Appeals uses to make decisions regarding an area variance were reviewed.

- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
- Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance.
- Whether the requested area variance is substantial.
- Whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- Whether the alleged difficulty was self-created, in which consideration shall be relevant to the decision to the Board of Appeals but shall not necessarily preclude the granting of the area variance.

S. Smith called Brian and Bailea Carey on the phone, since they live in NYC.

S. Smith - Hello Brian, we are all here for the public hearing.

L. Moorhouse - Read the permitted action of the board of appeals.

L. Moorhouse - The request for the variance is for 16 ft. and it is supposed to be 50 ft. We are looking for a variance of 16 ft.

E. Bott - They have 34 ft. and need 16 ft.

The board discussed the plans and the set-back requirements.

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E. Bott - Is there anything else you would like to add, since this is the public hearing. There is no one else here, but you and us?

B. Carey - Nothing has changed since we met the last time.

E. Bott - Made a motion to accept the application as it stands, seconded by L. Moorhouse, all in favor.

L. Moorhouse - We vote on accepting the application, then we vote on the variance.

Roll Call Vote to accept or deny:

L. Moorhouse **YES**, D. Horning, **YES**, E. Bott, **YES**

L. Moorhouse - 1. No, 2. No, 3. No, 4. No, 5. Yes - **YES**

D. Horning - 1. No, 2. No, 3. No, 4. No, 5. Yes - **YES**

E. Bott - 1. No, 2. No, 3. No, 4. No, 5. Yes - **YES**

L. Moorhouse - Your request for a variance has been approved.

B. Carey - Thank you very much. They gave their current address to mail the decision letter.

The Public Hearing concluded at 8:15 p.m.

**PRELIMINARY HEARING - Joseph & Jo-Ann Palma**

L. Moorhouse invited Joseph and Sean Palma to come and sit before the board.

L. Moorhouse - You need a variance for a deck?

J. Palma - Correct.

D. Horning - They already built the deck, now they need the variance for it.

S. Smith - It was also built without a permit.

E. Bott - Is that the property line right there?

J. Palma - Yes, it is.

L. Moorhouse - Are you good friends with your neighbors?

S. Palma - That's one of the points we would like to make. The folks that live next door to us,

whose property line it is on, we gave permission for a variance to build a home that blockades our view to the lake. We try to be good neighbors and we hope it could be reciprocated.

J. Palma - I talked to Paul and Nancy Hogan, who are the neighbors on that side and they have no problems with it. It defers our grandchildren from walking on their property, because they are walking on the deck now.

L. Moorhouse - Did they just build that house?

J. Palma - Yes, the blue house.

S. Smith - They demolished two cottages and built a new house.

D. Horning - They were here two years ago.

E. Bott - You made the statement that you granted somebody a variance?

S. Palma - Correct. We didn't grant the variance, you guys granted the variance. We wrote something stating that we didn't have a problem with it.

E. Bott - I want to clarify something. A variance is irrelevant of who owns it. The variance stays with the property.

S. Palma - Out of curiosity, what is the rule for property lines to structure, because I don't know?

S. Smith - It's 10ft. side, 20ft. to a private road and then to the lake side.

S. Palma - We are just talking about the side. Already our home is violating that rule.

E. Bott - No.

S. Palma - Yes sir, yes sir.

E. Bott - Excuse me, don't interrupt.

S. Palma - I apologize.

E. Bott - If your home was pre existing before the rules were put in place, then it is called just that a pre existing condition. It doesn't violate anything.

S. Palma - When was the rule put in place?

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D. Horning - 90's

J. Palma - Was it before 2000?

L. Moorhouse - Yes.

J. Palma - The point we are trying to make is when that property was spaced and all the next door places. When we purchased, the property line that came about is not 10ft. from our structure.

E. Bott - The building was already there.

S. Smith - So, that's irrelevant.

E. Bott - What should have happened, is they should not have allowed you to split that without a variance. But that is irrelevant. The building was already there, the building was pre existing. So, the building wasn't built in violation.

J. Palma - I am not saying that. What I am saying is that the property line that was approved was within the 10ft. structure line.

L. Moorhouse - We would not have approved that. Your deed is what says where your house is.

E. Bott - Unless it went through the Planning Board for review, there are no checks and balances for that. The building was pre existing and the lot line was pre existing.

L. Moorhouse - We just need to address the fact of the deck that is here now, being too close to the property line. And grant a variance for it.

S. Smith - Or a permit.

E. Bott - So, it was built without a permit?

S. Smith - Yes. The permit was denied, because of the set back issue.

L. Moorhouse - You had not asked for a permit before you built the deck?

S. Palma - Correct.

S. Smith - We sent three violation notices, order of remedy, certified mail.

J. Palma - I was on vacation. That's the reason I could not respond.

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S. Smith - For three months?

J. Palma - I was on vacation for a month, when a couple of those letters arrived at my home. I did respond, if you remember correctly, Mr. Smith. I said I would get the data for you and send it out when everything was completed.

S. Smith - I am just stating a fact.

J. Palma - And I am just stating what we did.

S. Smith - From May to August, you received notices of the violation.

S. Palma - When was the permit filed?

J. Palma - Do you remember the letter I sent to you on May 20th?

S. Smith - May 2.

S. Palma - And we sent a letter on May 20th. Do you have that in your records?

J. Palma - The check for \$75.00?

S. Smith - The check for \$75.00 was for building without a permit.

S. Palma - So, we responded within that three month period. You make it sound like we didn't respond for the three months. In reality, we responded within 20 days. Less than 20 days, correct?

E. Bott - Ok, so the issue at hand, what are the actual measurements from the line to the deck?

J. Palma - The closest point is 2 ft.

E. Bott - You want to detail it on here.

They discussed the drawing.

S. Palma - This is the existing deck and we just extended off from that.

E. Bott - So, the people before you probably didn't get a permit for that either.

J. Palma - Probably not.

E. Bott - We had a real rash of that, that is why a lot of these laws were put in place.

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D. Horning - How close is the new cottage to you guys?

J. Palma - There is a building in between us.

D. Horning - That's right, they kept the one cottage. They are spread out on that property.

S. Palma - I would say building to building, regardless of any decks, probably 30 ft.

E. Bott - Decks count too. The reason they have these set-backs that it isn't so much your property, there are laws about how close a building can be to that other structure. By having that close to your line, you are encroaching on your neighbors property. That's why it was 5 ft. on either side, which would give you 10ft. They expanded those laws. It has to do a lot with fire laws. If a fire starts over here and it jumps over to the next one, when the places are too close together. So, when someone puts something too close to their line, and we give a variance, we are also acknowledging the fact that their neighbor built within that range. The variance has nothing to do with you guys, it has to do with the structure. The reason we have the set-back laws is so you won't be encroaching on your neighbor. There are places that have natural barriers, then you wouldn't be encroaching on your neighbor.

L. Moorhouse - Like on Hogan's south side.

E. Bott - Yes.

L. Moorhouse - So, what we are dealing with is the deck that is already built. Your neighbors have not had a problem with it?

S. Palma - They gave us verbal permission.

L. Moorhouse - There is nothing else to be added here? We are just dealing with the fact that it was built without a permit?

S. Palma - Yes.

E. Bott - Or a variance.

L. Moorhouse - Anyone else have any questions?

S. Palma - We wrote up something as well. I just wanted to make sure that was in the packet.

D. Horning - Yes, it is.

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S. Palma - I will be happy to answer any questions that you might have about it.

L. Moorhouse - It is a nice looking deck.

S. Palma - Thank you.

L. Moorhouse - Any other questions?

D. Horning - No.

E. Bott - This is the preliminary hearing.

L. Moorhouse - It takes two meetings.

E. Bott - This is the preliminary and then we have the public hearing.

L. Moorhouse - October 13th, we will have the public hearing at 7:30 p.m.

S. Smith - I am thinking they should get something in writing from the Hogans.

S. Palma - We can let them know when the public hearing is. They have the option of coming in, if they want.

S. Smith - Just have them write a letter.

E. Bott - In person is the best.

S. Palma - I could send them an email and cc you guys in on it. To make it official, I will write them a letter and cc everyone on the board in it.

D. Horning - Address it to Linda Moorhouse, Zoning Board of Appeals.

S. Palma - Ok, so October 13th at 7:30 p.m.

L. Moorhouse - Ok, we will see you next month.

### **Old Business**

E. Bott made a motion to approve the minutes from the August 11, 2021 meeting,  
D. Horning, seconded, all in favor.

D. Horning made a motion to adjourn the meeting, E. Bott seconded, all in favor

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Meeting adjourned at 8:30 p.m.

Respectfully,

Stephanie Seeley, Secretary