Minutes Approved 11/10/21
Distributed 11/15/21

**October 13, 2021**

# TOWN OF EVANS

# REGULAR MEETING OF THE ZONING BOARD OF APPEALS

**Members Present:** H. Martin, Jr., D. Maglich, T. Spada, J. Kennedy, C. LaRusso

**Members Absent:**

**Also Present:** J. Hill, ZBA Liaison, B. Penberthy, Esq.

Mr. Martin, Jr. opened the meeting with a quorum at 6:00pm. The meeting was held in the Municipal Building Court room, 8787 Erie Road, Angola, New York 14006.

Mr. Martin, Jr. explained the procedure in which the meeting will be conducted. The procedures are that old business matters are heard first and then appeals are heard according to the order of publication in The Dunkirk Observer. The staff report prepared by the building inspector is read. The board has had your file for a week. We have had an opportunity to review your appeal. The appellant is then given the opportunity to speak, and then those in favor or in opposition are allowed to speak. After hearing the respective matters, the Board will either vote or reserve the right pursuant to our local statue to adjourn to executive session to deliberate. Motions granting and rejecting appeals are voted upon in the public portion of the meeting.

Mr. Martin, Jr. asked for a motion to approve the minutes from September 8, 2021.

Mr. Kennedy made a motion to approve the minutes from September 8, 2021, seconded by Ms. Spada. All in favor, motion carried.

RECEIVED
NOV 15 2021
Lynn M. Krajacic
Town Clerk
Town of Evans

**New Business:**

**Alyssa O'Connor aka Alyssa Creek, 291 Kennedy Ave., Angola, NY 14006, is requesting to construct a fence, in violation of the Town of Evans Zoning Law Section 200-35 corner lot setback of fence and 200-34 C height of a fence in front yard of said address.**

**Applicant is requesting to construct a fence, in violation of the Town of Evans Zoning Law Section 200-35 corner lot setback of fence and 200-34 C height of a fence in front yard.**

**The applicant would like to construct an 8 foot fence on a corner lot, increasing the allowable height from 2' in the front yard and 4' in the front yard to 8'.**

**No one was present for the appeal.**

**Mr. Maglich stated applicant was supposed to bring in survey and have property staked out. Mr. Martin, Jr stated he went to the property and there is a temporary fence.**

**No one spoke for or against the appeal.**

**Mr. Martin, Jr. made a motion to deny, seconded by Ms. Spada.**

**All in favor:**

**Mr. Martin, Jr., aye**
**Ms. Spada, aye**
**Mr. LaRusso, aye**
**Mr. Maglich, aye**
**Mr. Kennedy, aye**

**Daniel Egan, 6583 Revere Dr., Derby, NY 14047, is requesting to construct an addition, in violation of the Town of Evans Zoning Law Section 200-12 C (1) (f) [3] side yard setback of said address.**

**Applicant is requesting to reduce the side yard setback from 5'to 1', in violation of the Town of Evans Zoning Law Section 200-12 C (1) (f) (3). After inspection the applicant also is requesting a reducing the required separation from 10' to 5' from the garage in violation of Town of Evans Zoning Law Section 200-10 C (2) (a) 1.**

**The applicant would like to follow the existing side of the house to construct a 6'4" X 7'8" additional living space. Since applying for the variance, the applicant has removed the back part of the house, which was an enclosed porch in order to rebuild,**

as you can see in the photo below. By doing so, the applicant now needs a variance for the separation between the addition and garage.

Present for the appeal was Daniel Egan.

Mr. Egan stated he already applied for a variance 2 ½ years ago and it was approved. He was unaware the variance expires. He had a permit for a roof. Mr. Martin, Jr. asked work has started. Mr. Egan stated yes. Mr. Maglich asked how to the neighbor's garage. Mr. Egan stated 9.1 feet. Mr. Maglich asked if the garage was there for the first variance request. Mr. Egan stated yes.

No one spoke for or against the appeal.

Mr. Maglich made a motion to approve with the condition fire rated drywall is used, seconded by Mr. Kennedy.

All in favor:

Mr. Martin, Jr., aye
Ms. Spada, aye
Mr. LaRusso, aye
Mr. Maglich, aye
Mr. Kennedy, aye

Annette Heller & William Heller, 50 Glen St., Springville, NY 14141 is requesting to construct a pole barn on SBL# 252.00-1-37.111 located on Southwestern Blvd, in violation of the Town of Evans Zoning Law Section 200-8.2 B principal structures and 200-17 B principal structures on a lot of said parcel of land. Applicant is requesting to increase the size of an accessory structure from 1200 sqft to 2400 sqft, in violation of the Town of Evans Zoning Law Section 200-8.2 C (8) (b) [3].

Applicant is requesting to construct a 30' x 30' barn, in violation of Town of Evans Zoning Law Section 200- 8.2 B principle structures and 200-17 B principle structures on a lot.

The applicant would like to construct a 30' x 30' pole barn/ garage on a vacant lot they recently purchased with the intentions of possibly building a house in the future.

Present for the appeal was William Heller.

Mr. Martin, Jr. asked if the applicant wants to build a barn before a house. Mr. Heller stated yes.

**Mr. Heller stated his intent is to build a house next year depending on lumber cost. Mr. Martin, Jr. asked what the need was to build the barn first. Mr. Heller stated he wants to build a rustic home and want to use wood from the property. He wants to store his equipment and have a place for the wood. Mr. Maglich stated if the house is not built, the board has a problem with a barn without a primary structure.**

**No one spoke for or against the appeal.**

**Mr. Maglich made a motion to deny, seconded by Mr. Kennedy.**

**All in favor:**

**Mr. Martin, Jr., aye**
**Ms. Spada, aye**
**Mr. LaRusso, aye**
**Mr. Maglich, aye**
**Mr. Kennedy, aye**

**Gary & Suzanne M. Andelora, 5570 Coachmans Ln., Hamburg, NY 14075, is requesting to construct house/addition at 8812 Lake Shore Rd. SBL# 234.12-4-21, in violation of Town of Evans Zoning Law Section 200-12 C (1) (f) [2] combined side yard setback, 200-12 C (1) (f) [3] minimum side yard setback and 200-12 C (1) (f) [4] rear yard setback of said address.**

**Applicant is requesting to reduce the combined side yard, minimum side yard and rear yard setback in order to construct a two story house/ addition. The applicant proposes to move the existing house 3' from the side property line on the north side instead of required 5', and the 6'6" on the south side with a combined side yard of 9'6' instead of required 15' setback and a rear yard setback of 5' and 11' , in violation of the Town of Evans Zoning Law Section 200-12C(1)(f)[3] side yard setback from 5' to 3'; 200-12 C(1) (f)[2] combined side yard setback from 15' to 9'.6'' and 200-12C(1) (f)[4] rear yard setback from 30' to 5' & 11'**

**The applicant would like to construct an addition to the side of 8812 Lake Shore Road, Angola reducing both the side yard and rear yard setbacks.**

**Present for the appeal was Gary and Suzanne Andelora.**

**Stanley Radwan, 8816 Lake Shore Rd spoke in favor of the appeal.**
**Ralph Lorigo, 101 Slade Ave, West Seneca, NY, representing Mr. and Mrs. Edward Voltz spoke against the appeal.**
**Richard Biryla, Boston, NY, representing Gary and Suzanne Andelora spoke in favor of the appeal.**
**Therese Voltz, 8810A Lake Shore Rd spoke against the appeal.**
**Michelle Ruggerio, 8568 Walk Ave spoke against the appeal.**
**Karen Biel Costantino spoke against the appeal.**

**Nancy Tucker, 8818 Lake Shore Rd spoke in favor of the appeal.**
**Chris Tucker, 8818 Lake Shore Rd spoke in favor of the appeal.**
**Marie O'Connor, 8812A Lake Shore Rd spoke against the appeal. She submitted photos to the board.**

**Mr. Martin, Jr. stated the public portion of the meeting is closed and the board will now deliberate. The variance was approved on May; the approval will now be framed using the five factors. He stated he welcomes any comments from the board.**

**Factor 1: 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.**

- The community is studded with lakeside cottages in very close proximity to one another
- The development pattern of the neighborhood clearly endorses the ability of homeowners to build and expand their houses within feet from their neighbors' homes and property lines
- The owners of the neighboring properties have renovated or expanded their houses similarly to the manner in which the applicants are attempting to do now
- The neighbors at 8810-A Lake Shore Road are concerned over the ability of emergency and utility vehicles to access their property and their ability to use their access easement (*i.e.* the sidewalk that connects their house to the street) given the narrow space between the houses – they believe further constricting this space will create a detriment to their property
    - Here, the tight spaces between the homes is a preexisting condition stemming from the unique development pattern
    - Completion of the project will not block the sidewalk providing access to 8810-A Lake Shore Road
    - The applicants have the largest setbacks among the four neighboring cottages, which will not change following completion of the project
    - Letter from Andrew Zamrok, Chief of Department at the Evans Center Fire Company: The project would not impede a fire or rescue operation at 8810-A Lake Shore Road, and long as a sidewalk is present to that house, the Fire Department will be able to access it

**Ms. Spada stated that a legal parking space is approximately 13 feet.**
**Mr. Maglich stated that it is not a detriment to the neighbor.**

**Factor 2: whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.**

- The Applicants are seeking to move and expand the house to accommodate year-round use as their permanent residence, and the only way to meet their needs for increased living space is how they have proposed it—requiring the variances
- They considered other methods to achieve the proposed expansion, but ultimately chose not to pursue such alternatives due to a lack of feasibility
- Excavating a basement would likely be a more onerous undertaking than a linear expansion, and such a costly excavation project would not be a feasible alternative
- Although the applicants could choose to forego the proposed renovation of the house entirely, an alternative that doesn't allow for the desired benefit is not a feasible alternative

**Ms. Spada stated that moving the house, would allow work to be done without damaging the neighbor's house.**

**Factor 3: Whether the requested area variances are substantial**

- The substantiality of a requested variance cannot be considered by the ZBA in a vacuum—it must be considered within the context of the overall impact of the variance
    - Substantiality can be determined based on the deviation from the code requirements *and* from the cumulative effect of the variance
- This determination is not purely a mathematical calculation, but rather depends significantly on the unique facts of the case, including conformance to the character of the neighborhood and the overall impact on the community
- The applicants are proposing to deviate from the required 5-foot side yard setback on the south side by 2 feet and deviate from the required 15-foot combined side yard by 3.5 feet
    - These are fairly modest deviations
    - These modifications also allow for increased space on the south side of the property, increasing that setback beyond the required 5-foot minimum to 6.5 feet
        - This further addresses the neighbors' safety concerns regarding lack of space between the houses
- The applicants also propose to deviate from the required 30-foot rear yard setback by 25 and 19 feet at different portions of the rear of the house

This is clearly a much more substantial deviation, however, the discrepancy between the dimensions proposed by an applicant and the dimensions required by

- a zoning code are not the only consideration – the overall impact of the requested variances must be taken into account as well
    - The impact of the project on the neighborhood, and specifically on the neighboring properties, is negligible, or in some instances, beneficial
    - To most of these neighbors, the impact is overwhelmingly positive
- Additionally, even with completion of the project, the applicants will still have the most space around their house than any of the other three surrounding houses and the project will actually enhance safety and access by increasing the setback on the south side of the property to more than 6 feet

**Factor 4: Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district**

- The project will not adversely affect the physical conditions of the neighborhood
    - The houses in the community are located close together and have been for an extensive period of time
    - Most of these homes have undergone similar renovations and expansions
    - These neighbors view the project as just another one of these home renovations, conforming even further to the development pattern of the neighborhood
    - The applicants have even proactively attempted to minimize the greatest potential impacts by verbally agreeing with their neighbors at 8816 Lake Shore Road to take out an insurance policy—naming the neighbors as insureds—in the event the construction damages the neighbors' property
- No evidence was presented that the project will pose a negative environmental impact to the community
    - Both the expansion of the Applicants' home and the ZBA's granting of the variances are considered Type II Actions under the State Environmental Quality Review Act ("SEQRA")
        - Type II Actions are not subject to environmental review given the State Legislature's determination that such actions do "not to have a significant impact on the environment ..."
    - Because the property is within 500 feet of a county road, the application was referred to the Erie County Division of Planning ("County Board") for review pursuant to General Municipal Law § 239-m
        - The County Board made no recommendations and determined the action to be solely of local concern

**Factor 5: Whether the alleged difficulty was self-created**

- The hardship the applicants are currently facing was self-created, but that does not require denial.
- The applicants are seeking to make improvements to their home which will violate Sections 200-12(C)(1)(f)(2)-(4) of the Zoning Law
- The Applicants wish to make these modifications in order to reside at the Property full-time, rather than seasonally
    - The second story of the existing house does not have actual rooms, which they would like to construct
- While these reasons are valid for seeking to renovate and expand their home, the applicants are choosing to move and expand the house rather than leave it as is, in violation of the Zoning Law

**Mr. Martin, Jr. read numerous affidavits into record.**

**Carol Voltz LaDuca in favor of the appeal.**
**Victoria Glamuzina in favor of the appeal.**
**Mary Buckreis, 8783 Lake Shore Rd in favor of the appeal.**
**Nancy Tucker in favor of the appeal.**
**Victoria Voltz VanHorn in favor of the appeal.**
**Col (R) Laurence Plumb, MD, 8774 Lake Shore Rd in favor of the appeal.**
**Lisa and Jim Grampp, 8734 Lake Shore Rd in favor of the appeal.**
**Karlene Jo Agrisano 8810B Lake Shore Rd in favor of the appeal.**
**Janet Andelora in favor of the appeal.**
**Georgia Waczkowski in favor of the appeal.**
**Gisela Driscoll against the appeal.**
**Kathleen Voltz against the appeal.**
**Marynell Callahan Hirsch, 8570 Walk Ave against the appeal.**

**Mr. Martin, Jr. asked for a motion to adopt the decision and approve the variances.**

**Mr. Kennedy made a motion to approve, seconded by Ms. Spada.**

**All in favor:**

**Mr. Martin, Jr., aye** **Mr. Maglich, aye**
**Ms. Spada, aye** **Mr. Kennedy, aye**
**Mr. LaRusso, aye**

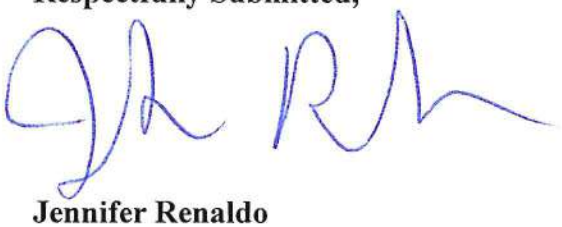
**Mr. Martin, Jr. asked if there was anything further for the board.**

**Mr. Martin, Jr. asked for a motion to adjourn to the next scheduled meeting.**

**Mr. Martin, Jr. made a motion to adjourn, seconded by Mr. Kennedy.**

**All in favor:**
**Vote: Mr. Martin, Jr., aye**
**Ms. Spada, aye**
**Mr. LaRusso, aye**
**Mr. Maglich, aye**
**Mr. Kennedy, aye**

**Respectfully Submitted,**



**Jennifer Renaldo**
**Secretary**

8870 Lake Shore Road
Angola, Ny 14006

September 15, 2021

Zoning Board of Appeals
Evans Town Hall
8787 Erie Rd
Angola, NY 14006

Dear Zoning Board of Appeals members,

I understand there is an appeal to a recent variance granted by Town of Evans Zoning Board of Appeals to my good neighbors Suzanne and Gary Andelora. The board, in a wise decision, granted Andelora's request to build a new home on their current property at 8812 Old Lake Shore Road. The objection to this new construction from those who oppose your decision seems to be minor, perhaps frivolous, in nature and I'm hopeful you will prevail in standing by your decision to stay this variance. The Andelora's want to become full time residents of the Town of Evans. They are wonderful neighbors, good citizens and we wouldn't want to lose them.

Sincerely yours,

Carol LaDuca

Carol Voltz LaDuca

Exhibit A
10/13/21

8836 Old Lake Shore Rd
Angola, NY 14006

September 17, 2021

Zoning Board of Appeals
Town of Evans
Evans Town Hall
8787 Erie Rd
Angola, NY 14006

Dear Sir or Madame,

My letter today is in hopes that you will continue to defend the variance you have already granted to Gary and Suzanne Andelora in their request to build a new home on their current property at 8812 Old Lake Shore Road. I'm a nearby neighbor to Gary and Suzanne on the Old Lake Shore. Their new home certainly will be an improvement to our neighborhood.

Revitalization of the century-old camp cottages throughout Evans has finally begun. We should embrace new construction so our waterfront remains enticing to visitors, vacationers and prospective owners. With each new construction a fresh, vibrant neighborhood emerges. The Andelora project will certainly be an aesthetic improvement to our beachfront community.

Sincerely yours,

Victoria T Glamuzina
Victoria Glamuzina

Exhibit B
10/13/21

8783 Lake Shore Road

Angola, New York 14006

Town of Evans
Zoning Board of Appeals
8787 Erie Road
Angola, NY 14006

Dear Mr. Howard Martin:

As a resident of the neighborhood for nearly 50 years, I welcome updates and renovations on houses and structures within the immediate area of Hickory Road/Lake Shore Road. It is comforting and exciting to see people willing to maintain the integrity of the properties and take steps to prevent them going into abysmal ruin, dilapidation, dereliction and/or abandonment. Houses are becoming homes; summer cottages are being turned into yearlong residences. I feel, this revitalization enhances growth in our town.

Consequently, I am in support of the planned structural updates/renovations on the residence at 8812 Lake Shore Road in which Gary and Suzanne (Perez) Andelora plan on making their permanent year-round residence. It will be heartening to have people there during the bleak winter months. Since, I am the sole resident of my home, I welcome neighbors who will be available should an emergency arise. Many of the residences and properties in the immediate and adjoining area of 8812 Lake Shore Road have recently been renovated and are actually "New Builds." Hopefully, this will continue the revitalization trend in the neighborhood.

As a byline, I actually like the modern storage facility that was recently placed on the property at 8801 Lake Shore Road! It adds a bit of "class" to the adjoining parking lot.

I support that approval be granted for renovations to the property in question.

Sincerely,

Mary Buckreis

Mary Buckreis

Linda L. Bannister

LINDA L BANNISTER
NOTARY PUBLIC - STATE OF NEW YORK
REGISTRATION #01BA6042230
QUALIFIED IN ERIE COUNTY
COMMISSION EXPIRES MAY 22, 2023

cc: Gary and Suzanne Andelora

Exhibit C
10/13/21

# Evans Center Fire Company

FIRE – RESCUE – EMERGENCY MEDICAL SERVICES
HQ: 8298 Erie Road – Town of Evans NY 14006
www.evanscentervfc.org - 716.549.1221 – FAX.549.2290

To whom it may concern,

After reviewing the proposed addition and house modifications to 8812 Lake Shore Rd, I can confirm that the scope of work will not impede a rescue operation or fire suppression operation to the residence of 8810A Lake Shore Rd. As the property sits, we would never try to maneuver a piece of apparatus in between the houses at that location. As long as a sidewalk is present to the rear residence, we will be able to access the structure.

Thank You,

Andrew Zamrok

X _____ 9/20/21

Andrew Zamrok
Chief Of Department

Exhibit D
10/13/21

September 26, 2021

Town of Evans -Zoning Board of Appeals
8787 Erie Road
Angola, NY 14006

Re: Gary A. & Suzanne M. Andelora
8812 Lake Shore Road
SBL # 234 12.4.21

Dear Zoning Board Members:

Please let this letter serve as follow-up to my original May 4, 2021 letter regarding the previous requested variance associated with 8812 Lake Shore Road, owned by Gary & Suzanne Andelora.

I continue to be in **full and complete** support of the requested variances and would urge the Board to remain steadfast in its original decision to approve the requested variances, in spite of the frivolous lawsuit brought against the Town of Evans, the Town of Evans Zoning board members, and Gary & Suzanne Andelora. As neighbors, there are none more deserving of the ability to transition the cottage, passed down through the generations, to a loving home.

As a Town taxpayer, I am **appalled** by the legal action taken by Mr. and Mrs. Edward and Therese Voltz in regards to this matter. I cannot think of a bigger waste of Town of Evans taxpayer dollars, than the legal fees associated with the defense of this frivolous lawsuit. The time for Mr. & Mrs. Voltz to present **valid and compelling** reasons for their opposition to the variances requested occurred at the May Town Zoning Board meeting. Instead, upon receiving a non-favorable response to their opposition, they waited several months to further impede the Andelora's ability to move forward with the renovations to establish their permanent family home.

All lakeside residents fully know and understand, the western view, i.e. lake views are those coveted by residents. For the Voltz' to impede the requested variance/changes to the Andelora property based on safety vehicle access, their view of Lake Shore Road and other ridiculous and baseless reasons is frankly unconscionable. This, in spite of the fact that they themselves have made several modifications to their original dwelling.

As I stated in my original letter, as a permanent resident, there are very few homes nearby that are occupied year round. Transitioning the Andelora's cottage to a year round home would provide additional safety and activity in the area.

Renovating the current cottage will also have a positive impact on both the neighborhood, as well as the property values of the surrounding dwellings. In addition, the requested variance is similar to others provided in the area, and will provide a consistent, updated look to the home, similar to other renovations that have been completed.

Exhibit E
10/13/21

In closing, I would ask that the Zoning Board members uphold the original decision made earlier this year to allow the Andelora's to complete the requested renovations to their cottage, so as to create their dream home to be enjoyed by them and their extended family for many generations to come.

Thank you for your consideration.

Sincerely,

Nancy A. Tucker
Owner, 8818 Lake Shore Road, Angola, NY

September 30, 2021
Zoning Board of Appeals
Town of Evans
8787 Erie Road
Angola, NY 14006

To Whom It May Concern on the Zoning Board of Appeals

I'm writing in support of the proposed new home construction at 8812 Old Lake Shore Road and strongly oppose the variance challenge that is now before this board. I'm a nearby neighbor to Suzanne and Gary Andelora and very familiar with their property. I think the new-construction home they're planning would be an aesthetic asset to our tight knit community here on the Old Lake Shore.

New construction seems to be happening frequently up and down the Old Lake Shore and with each new project our community is becoming more aesthetically pleasing. I hope you will work diligently on behalf of the Andelora's to see that their dream home will happen. All of us in this community will benefit from their commitment to make Evans their forever home.

Sincerely yours,

Victoria Voltz VanHorn

Victoria Voltz VanHorn

8832 Lake Shore Road . Angola, New York . 14006

Exhibit F
10/13/21

Town Of Evans
ZONING BOARD OF APPEALS
8787 Erie Rd.
Angola New York 14006
Public Meeting October 13th,2021

October 7th 2021

RE: Request of Gary & Suzanne Andelora
Construct House/addition
8812 Lake Shore Rd.

This letter is a follow up to our letter dated May 5th 2021, copy attached.

**First, we want to reiterate our support for the Andelora remodeling addition.**

I have recently examined the ZBA minutes from the May 13th2021 ZBA meeting and there is but one objection to this remodeling project.

My wife and I are friends and neighbors, not relatives to all the neighbors who spoke at this meeting. Over the years each of the speakers have made improvements via additions to their homes. None more obvious than the addition/changes to the Ed & Therese Voltz lakefront home.

In the minutes, Therese Voltz states that an emergency vehicle could not service a call to her lakefront home. She says this even though she owns a home immediately to the north which has a normal width driveway that goes from Lake Shore Road to her rear door.

The Andelora remodeling project will add value to the immediate Lake Shore Rd, Ahlers Rd, Hickory Rd and Lake St area, just as the recent remodeling of Lake Shore Rd homes at 8816,8818,8824 and the new home built at 8825 Lake Shore Rd. I don't think that Ed and Therese Voltz realize that the Andelora remodeling project will also add value to their lakefront home.

**We reside immediately next door to the south of the Andelora home and we firmly support the Andelora remodeling project.**

Respectfully submitted,.

Stanley Radwan

Christine Radwan

Stanley Radwan
Christine Radwan

8816 Lake Shore Rd.
Angola NY 14006
cell 716-863-3496

Exhibit G
10/13/21

Town Of Evans
ZONING BOARD OF APPEALS
8787 Erie Rd.
Angola New York 14006
Public Meeting May 13th,2021

May 5,2021

RE: Request of Gary & Suzanne Andelora
Construct House/addition
8812 Lake Shore Rd.

Because my wife and I will be out of town until the end of May, we are writing to the Zoning Board of Appeals with our thoughts and recommendations on the Gary & Suzanne Andelora project.

We reside at 8816 Lake Shore Rd, next door to the Andelora's home at 8812 Lake Shore Rd. We have been neighbors for more than 38 years. The outside walls of our homes are currently no more than 6 feet apart. We are what you call " close neighbors "!

Over the years the Andeloras have shared with us their thoughts for creating their full time Angola dream home out of their Angola summer residence.

Recently, with Chris Tucker's help, we were provided with the Andelora survey with an overlay showing the project. The overlay was created after we, the Andeloras, my wife and I and Chris Tucker discussed the distance that the Andelora house (8812) would have to be moved northward, to accommodate excavation for the southerly wall of 8812 in proximty to my home's (8816) foundation. After discussion, it was agreed that the southerly wall of the moved 8812 would be 3 feet from the southerly property line of the Andelora home.(8812)

With this verbal agreement with the Andeloras, my wife and I would only request that an insurance policy be taken out with my wife and I as the insured, to make us whole if the excavation, for any reason, causes damage or disruption to our property now or in the foreseeable future.

This project will be of benefit to the Town as it enhances the lakefront area, where other homes have recently already been recently remodeled including our home 8816 Lake Shore Rd, 8818 Lake Shore Rd.,8824 Lake Shore Rd and the newly built home at 8825 Lake Shore Rd.

We are in favor of this project.

Stanley Radwan Stanley Radwan

Christine Radwan Christine Radwan
8816 Lake Shore Rd.
Angola NY 14006
cell 716-863-3496

## NOTICE OF PUBLIC HEARING

Notice is hereby given that the Zoning Board of Appeals of the Town of Evans will meet at the Evans Town Hall, 8787 Erie Road Angola NY 14006 on Wednesday, October 13, 2021 at 6:00 P.M. The Purpose of this meeting is to conduct a Public Hearing on the following appeals Pursuant to Article IX of the Zoning Law of the said Town, and hear all persons in favor of, or opposed to, the relief requested in said appeal:

1. Alyssa O'Connor aka Alyssa Creek, 291 Kennedy Ave., Angola, NY 14006, is requesting to construct a fence, in violation of the Town of Evans Zoning Law Section 200-35 corner lot setback of fence and 200-34 C height of a fence in front yard of said address.

2. Daniel Egan, 6583 Revere Dr., Derby, NY 14047, is requesting to construct an addition, in violation of the Town of Evans Zoning Law Section 200-12 C (1) (f) [3] side yard setback of said address.

3. Annette Heller & William Heller, 50 Glen St., Springville, NY 14141 is requesting to construct a pole barn on SBL# 252.00-1-37.111 located on Southwestern Blvd, in violation of the Town of Evans Zoning Law Section 200-8.2 B principal structures and 200-17 B principal structures on a lot of said parcel of land.

4. Gary & Suzanne M. Andalora, 8570 Coachmans Ln., Hamburg, NY 14075, is requesting to construct house/addition at 8812 Lake Shore Rd. SBL# 234.12-4-21, in violation of Town of Evans Zoning Law Section 200-12 C (1) (f) [2] combined side yard setback, 200-12 C (1) (f) [3] minimum side yard setback and 200-12 C (1) (f) [4] rear yard setback of said address.

Any other business that may presently be before the board.

Joseph Bohorg
Code Enforcement Officer
Town of Evans
168420

September 30, 2021

GETMAN GB BIRYLA, LLP

Attorneys and Counselors at Law

Richard J. Biryla
Seth L. Hibbert
Aaron R. Walkow

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14 Lafayette Square
Buffalo, New York 14203-1995
Tel. No. (716) 853-4340
Fax. (716) 853-4349
www.getmanbiryla.com

Peter L. Costa
(Retired)
Jack L. Getman
(1933-2016)
Michael K. Bardo
Paralegal
Tiffany A. Zier
Office Administrator

October 8, 2021

Town of Evans
Zoning Board of Appeals
8787 Erie Road
Angola, NY 14006

**RE: Suzanne Andelora (Owner of Record)**
**Variances Request for 8812 Lakeshore Road**

Dear Chairman Howard Martin and Zoning Board Members:

I represent Suzanne Andelora as the property owner, along with her husband Gary Andelora, who have filed the request for variances to 8812 Lakeshore Road. I submit this letter to clarify issues in connection with the above request and in rebuttal to Mr. Lorigo's letter of May 11, 2021, a copy of which is attached.

A. The existing cottage is 2 stories, not 2.5 stories.

B. Mr. Lorigo misstates the side yard dimensions. In fact, the south sideline would be increased an additional three feet.

C. Attached is a letter from the Evans Center Fire Company Chief Andrew Zamrok, wherein he advises that neither a rescue or fire emergency would involve vehicles maneuvering between the existing homes. So, the proposed change makes no difference since the current width already rules out an apparatus from maneuvering between the units. As such, the Voltz's suffer no loss. Furthermore, the Voltz's conveniently forgot that they own the adjoining property to the north, which has a separate driveway. As to green space, the Votz's lot is approximately 90 % building, concrete patio and stone covering. The Voltz's want green space as long as it is provided by someone else.

D. As to their loss of "view" of the lake, since the Voltz's cottage is lake front property and Andelora is behind and offset from the Voltz's, this statement is inaccurate and deliberately misleading.

E. Further, this is not a four unit compound, rather four separately owned houses on individual lots. And, again, Voltz's claim that they would lose green space is inapplicable to the existing ownership arrangement. In essence they are trying to impose some obligation to the Andelora's to keep green space for the Voltz's benefit and enjoyment. We suggest the Voltz's remove the gravel and concrete on their lot and create their own green space. Lastly, the green space concept is one applied to subdivisions, PUD's, residential housing tracts, etc.

Exhibit H
10/13/21

Addressing Mr. Lorigo's positions as numbered:

As to No. 1 in the Lorigo Letter, they have provided no proof that the variances requested would somehow impact and be a detriment to the neighborhood. In fact, the adjourning neighbor to the south, 8816 Old Lakeshore, will see his side lot grow an additional three feet.

As to No. 2 in the Lorigo Letter, it is ironic that the Voltz's, who enclosed an outdoor porch and, in effect, turned it into an addition to their house, now want to dictate what the Andelora's can and cannot do with their property. The Andelora's have every right to request the variances. It is why the Zoning Board of Appeals exists.

As to No. 3 in the Lorigo Letter, the neighbor closest to the Andelora's will, in fact, benefit from this request. I don't know what "ability for aesthetics" means, ingress and egress for the two lake front cottages (one of which is the Voltz's) seems to have been the existing sidewalk. And, that will not be affected by the requested variances. The issue as to emergency vehicles is addressed above.

As to No. 4 in the Lorigo Letter, Mr. Lorigo strays from realty in number 4. It appears he is alleging that if the variances are granted, the now larger Andelora residence will, in fact, cause the tides on Lake Erie to rise, (of course, it would seem there first have to be tides), lake front erosion to increase and alter the very winds of the sky. It would appear that the Andelora's increase in the width of their cottage by 4 feet will in fact lead to Armageddon.

As to No. 5 of the Lorigo Letter, virtually all variances are self created. It is the very reason variances exist. Again, Mr. Lorigo is misleading in his attempt to depict the Andelora property as a four unit complex when in fact it is four neighboring independently owned lots. There is no formal master plan, no common ownership, in fact, every lot contains a dwelling that is now substantially different than its original use and configuration, except for the Andelora's.

We respectfully ask that the variances be granted by the Zoning Board of Appeals.

Very truly yours,

GETMAN & BIRYLA, LLP

Richard J. Biryla, Esq.

RJB:kmk
Enc.

H:\Client Matters\Andelora, Gary & Suzanne\Voltz\andelvol.zba.ltr.100821.wpd

FILED: ERIE COUNTY CLERK 09/20/2021 02:30 PM
NYSCEF DOC. NO. 19

INDEX NO. 810498/2021
RECEIVED NYSCEF: 09/20/2021

FILED: ERIE COUNTY CLERK 08/02/2021 10:59 AM
NYSCEF DOC. NO. 8

INDEX NO. 810498/2021
RECEIVED NYSCEF: 08/02/2021

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(not for service of process)

MARY BETH AQUILINE
FRANK J. JACOBSON
JOSEPH C. LORIGO
JON F. MINEAR*

*Also Admitted in FL

May 11, 2021

Town of Evans
Zoning Board of Appeals
8787 Erie Road
Angola NY 14006

RE: Gary & Suzanne M. Andelora
Variances for 8812 Lake Shore Road

Dear Chairman Howard Martin
and Zoning Board Members:

Please be advised that I will be representing Mr. and Mrs. Edward J. Voltz, Jr., who are the owners of 8810-A Lake Shore Road, Angola, New York, in their opposition to a variance request by Mr. and Mrs. Gary Andelora to expand their real property at 8812 Lake Shore Road.

My clients have been in Florida but had a friend go to the Building Department to ascertain what exactly the Andeloras wished to do with their property at 8812 Lake Shore Road. While they were unable to obtain a copy of the application, they did obtain copies of surveys. It appears that the Andeloras wish to expand the existing frame two and a half story cottage. Upon information and belief, the existing building is 18.4 feet wide and 34.2 feet deep. It is my understanding that the applicants wish to increase the first floor to 22.4 x 34.2 feet and the second floor 22.4 x 46.2 feet.

This is clearly a substantial change and one that will require three variances pursuant to your Code. It is my understanding that the property is in a R-2 district. Pursuant to Section 200-12C(1)(f)(2) requires combined side yards of 15 feet. It is my understanding that the applicants are seeking a reduction from the 15 feet to 9.6 feet, a 36% reduction. It is further my understanding that they are asking for a variance from Section 200-12C(1)(f)(3) which require minimum one side to be 5 feet and they are requesting it to be reduced to 3 feet, a 40% reduction. In addition, the applicant is requesting a variance from Section 200-12C(1)(f)(4) reducing the rear yard from 30 feet to 11 and/or 5 feet which would be (at 5 feet) an 83.3% reduction and at 11 feet, a 63.3% reduction, again substantial.

Exhibit D

The Voltzs own the property to the rear right which is on the Lake. Their access to Lake Shore Road is the existing distance between the properties.

I am enclosing some picture which show the proximity of the four units. It would clearly be impossible to get emergency vehicles to my clients' property if these variances were, in fact, granted. This is true of ambulances, fire trucks, etc. but also true of large landscaping equipment or other types of utility vehicles to access and maintain the Voltz's property and the other home located at the beach, at 8812-A Lake Shore Road.

Additionally, the granting of the variance would interfere with the right-of-way that the Voltz have maintained for the last 45 years and therefore have a prescriptive easement. Due to several factors, my clients need that type of access in the event there is a need to maintain and repair public utilities and facilities such as sewer, gas, electric, water systems, cable, internet and phone.

My clients would also have a substantial loss in green space and visibility. It would narrow the now appealing and aesthetic view overlooking the lake which has great intrinsic and extrinsic value.

This four unit compound has been maintained for over 100 years and has been marked with neighborly cooperation and accommodation. However, it is very close and tight and the Voltzs are not in favor of granting the variances.

As I am sure all of you are aware, this is a "use variance". As a result, in making the determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variances are granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

Clearly, your responsibility must take into consideration the following:

1. 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. The extent to which the granting of these variances will negatively impact the character of the neighborhood or surrounding properties is arguably the most important of the five factors. The effects, as noted above, are to be given serious consideration in terms of the impact these variances would have on the remaining properties. We certainly argue that the granting of these variances would, in fact, create an undesirable change and a detriment to the neighborhood;

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. The question here is whether or not the applicant is entitled to enlarge a long-existing cottage when certainly they have other options. They certainly have the right to purchase another property along Lake Shore Road but they would also have the alternative of simply increasing living space by excavating and installing a basement;

3. Whether the requested area variance is substantial. As noted above, the requested area variances are, in fact, substantial deviants from the existing Code. Additionally, in this space, those large percentage variances do, in fact, have a substantial impact on the surrounding properties, including my clients' property. These variances will negatively impact the ability for aesthetics, ingress and egress, ordinary vehicles and emergency vehicles;

4. Whether the proposed variances will have an adverse effect or impact on the physical and environmental conditions in the neighborhood or district. This factor is similar to the first factor. However, impacts to the physical environment may be particularly relevant when the improvements that are subject to the variances could affect, in a negative way, environmentally sensitive land such as my clients' beachfront property. With the rising of the tides, erosion and winds, my clients' property is always subject to environmental issues;

5. Whether an alleged difficulty was self-created. While this, in and of itself, should not be the determining factor, here it is clear that the requested variances are, in fact, self-created. The applicant has owned this property for a number of years, purchased the property in its existing condition, knew exactly what they had over the course of these years and are now simply trying to change not only the format of their property, but the effect of the four units that are tied together in this complex.

For all of the above reasons, we ask that the ZBA deny the variances.

Very truly yours,

RALPH C. LORIGO

RCL:maw
Encs.

5037 Lakeshore Rd.
Hamburg, NY 14075
Tel: 716-560-9995
Fax: 1-866-253-5222
Email: healthoptc@aol.com

**HEALTH OPTIMIZATION CONSULTANTS**

**COLONEL (R) LAURENCE R PLUMB, MD, MC, FS, FAAFP**
*U.S. Army Flight Surgeon*
*Senior F.A.A. Aeromedical Examiner*
*Board Certified Family Practice*
*Board Certified Addiction Medicine*

Zoning Board of Appeals

10/6/2021

Town of Evans

8787 Erie Road

Angola, NY 14006

Dear Sirs:

I am a neighbor to Mr. Gary Andelora who now resides at 8812 Lakeshore Road, Angola, NY 14006. He has reviewed and shown me some construction plans.

I own the home at 8774 Old Lakeshore Road, Angola, NY 14006. I favor his plans and recommend you allow him to proceed. I feel it will enhance the neighborhood and have a general positive effect on future property values in the area.

Respectfully,

Col(R) Laurence Plumb, MD

Exhibit I
10/13/21

Town Of Evans Zoning Board of Appeals

8787 Erie Road

Angola, NY 14006

Lisa and Jim Grampp

8834 Lakeshore Road

Angola, NY 14006

September 30, 2021

To Whom It May Concern:

We are writing to you in support of the Andelora's application for a variance to rebuild and update their current cottage at 8812 Lakeshore Rd. Like the Andelora's, we also own a cottage that we hope to update and modify to become a permanent residence in the next few years.

Many homes in our beach community were constructed to be summer cottages, a place for families to get away from city life and relax and rejoice in the simple daily pleasures of the sand, water and making family memories. Cottages were meant to be used during the summer months, when heat, insulation and other year-round amenities were not needed. Gary and Suzanne Andelora are asking to have their 1910 family cottage brought into the twenty first century. They want the footprint of their home to expand in order to accommodate their family, which has also grown over the years. We have known them for 21 years and our children have grown up together.

We are thrilled that they have chosen to make 8812 Lakeshore Rd. their permanent residence, if they are granted the variance to do so. They will be an asset to the community, increase Angola's dwindling population, improve and increase their property value, increase the tax base and update our beach community, while maintaining the charm and quaintness that it is known for.

Sincerely,

Lisa and Jim Grampp

Exhibit J
10/13/21

Karleen Jo Voltz Angrisano
711 Woodland Dr.
Buffalo, NY 14223
Also
8810(B) Lake Shore Rd.
Angola, NY 14006

To: Zoning Board of Appeals
Town of Evans
Re: Renovations to Structure at 8812 Lake Shore Rd.

Said structure is on a plot of land which is a family lot with four houses, all owned by relatives. This land and buildings were purchased in 1919 by Frederick J. Voltz for his children and grandchildren. My house is closest to the Andelora structure; it is immediately next door to it at 8810(B) Lake Shore Rd. I understand all the planned renovations including moving it closer to my house. I have no objection to these plans and changes.

All of the other three houses on the lot, including mine, have made changes over the years. These include renovations inside and extensions to the exterior. Besides my house these include property owned by Marie O'Connor and Mr. & Mrs. Ed Voltz. I see no reason why the Andeloras should not be allowed to change and improve their structure to improve their living conditions and become year-round residents of the Angola we all love.

Karleen Jo Angrisano
10-6-21

Exhibit K
10/13/21

To the Members of the Evans Town Board:

As a neighbor, I can honestly say that Gary and Suzanne Andelora have been the cornerstone of this Lake Shore Road/Hickory Road neighborhood for the past 40 years. Both of them have been there for anyone who has needed help, whether they were asked or not. Their permanent residence would not only be an asset to the area, as they will continue to maintain their impeccable upkeep for their own property, but they will be the first to offer their hands to any other resident with the challenges of all four seasons of living on Lake Erie.

I realize that as a member of their family, my view of Gary and Suzanne may be considered biased, but we are a family which has the highest regard for honesty and integrity. Each one of us was brought up to always maintain our honor. You will be allowing two people of high-character to reach their dream, and allow the vast majority of the neighborhood to celebrate their year-round presence.

With sincere regard,

Janet M. Andelora

Janet M. Andelora

Exhibit L
10/13/21

Georgia R. Waczkowski
8798 Lake Shore Rd. Apt 1
Angola, NY 14006

October 8th, 2021

To Whom it may concern;

I Georgia Waczkowski am writing this letter to provide a character reference for Mr. & Mrs. Gary Andelora. As a member of the community, I'm confident the Andelora's would make a delightful addition to our neighborhood. I can say this confidently because as seasonal neighbors, I've grown to know them as friendly, respectful people.

The Town of Evans has a unique dynamic. Four months of the year it's alive and alluring to anyone looking for sun and sand. The other eight, it's almost desolate. It's in these eight months we really get to know our neighbors. We watch them and they watch us. Often we form unspoken bonds, rely on each other and trust that our neighbors will have our back whether we ever need it or not. This is precisely why I feel the Andelora's should be welcomed to the neighborhood. They grew up here, they've already built the relationships and earned the trust it takes a stranger years to acquire. We know these are people with integrity. These people have good morals and ethics, they make decisions that benefit not only themselves but those who surround them.

In summation, I cannot conjure a single, sensible reason the Andelora's should not be allowed to winterize their property and make it their permanent residence.

Sincerely,

Georgia R. Waczkowski

Exhibit M
10/13/21

Sandy Ave.
Angola, N.Y.
Oct. 8, '21

Town of Evans ZBA
8787 Erie Rd
Angola, N.Y.

Chairman Howard Martin and Zoning Board Members

My name is Gisela Driscoll and I live at 626 Sandy Ave., Angola year round. I have lived here for 20 years. I live in Lake Bay Grove and it is a very close and tight neighborhood, similar to the Fred Voltz subdivision. I am writing this letter to support Ed and Therese Voltz in their effort to preserve the neighborhood as it was originally intended with ample green space.

Fire is a major concern in a close knit community. Safety should always be paramount. If the Andeloras are allowed to move and expand their home it will compromise the safety of the two landlocked lake front homes. By increasing their living space

the Andeloras will decrease the visibility from the road of any emergency personel and or 1st responders responding to a call. The two land-locked homes will be difficult to see from Lakeshore Rd. This is a clear detriment to the Fred Voltz neighborhood. Do not grant any of the variances.

-In Lake Bay there are many empty lots. We lost about 15 homes due to fire in a close and tight neighborhood. Don't be cavalier about fire safety. Do nothing to increase the risk of fire for the 2 land locked lakefront properties.

Respectfully

Trish A. Driscoll

10/02/2021

Dear Chairman Howard Martin and zoning board members;

My name is Kathleen Voltz, I am the trustee of the Voltz Family Living Trust that includes the house at 8810 Lakeshore Rd, Angola, NY. I am writing this letter to express my support for my parents endeavor to stop the Andelora building project. My primary residence from July 2020 through October 2020 was 8810 Lakeshore Rd, Angola, NY. During my time at the house I was able to complete general home improvement projects which required the use of a mini skid steer to transport stones to the home, as well as access to the home by a fork lift for delivery of pallets of paver stones, delivered by Lowe's. When moving out of the home I was able to back my vehicle down to the house in order to pack my car. The home was accessed by all these pieces of equipment the only way possible which is now and has always been the main access to the house for the duration of my life. I feel it is a detriment to the neighborhood and our land locked home to narrow the access. What if all the homes in the community wanted to expand by seven feet? The community simply can not support this without negatively affecting the neighboring homes.

Attached are some of the pictures from work done in 2020.

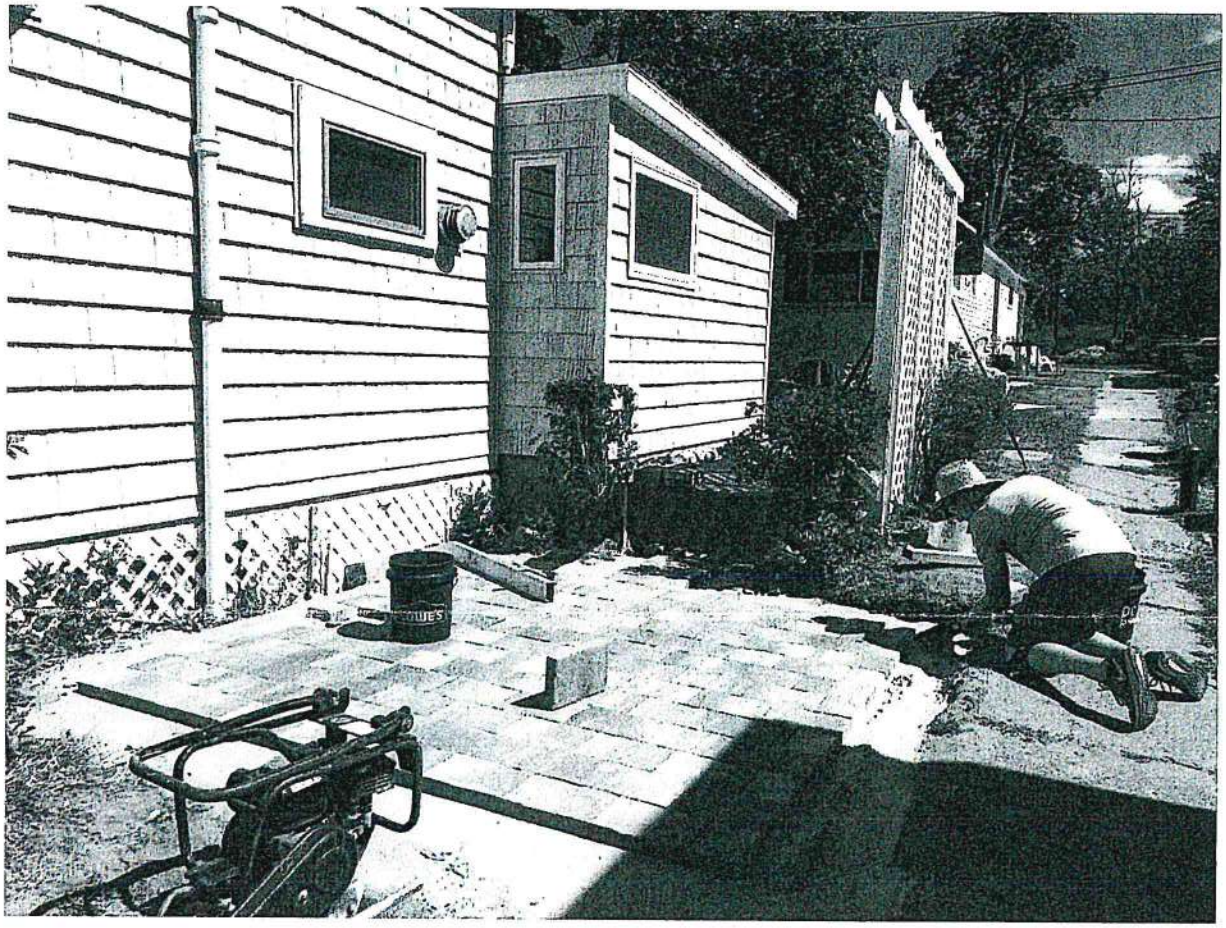
Sincerely,

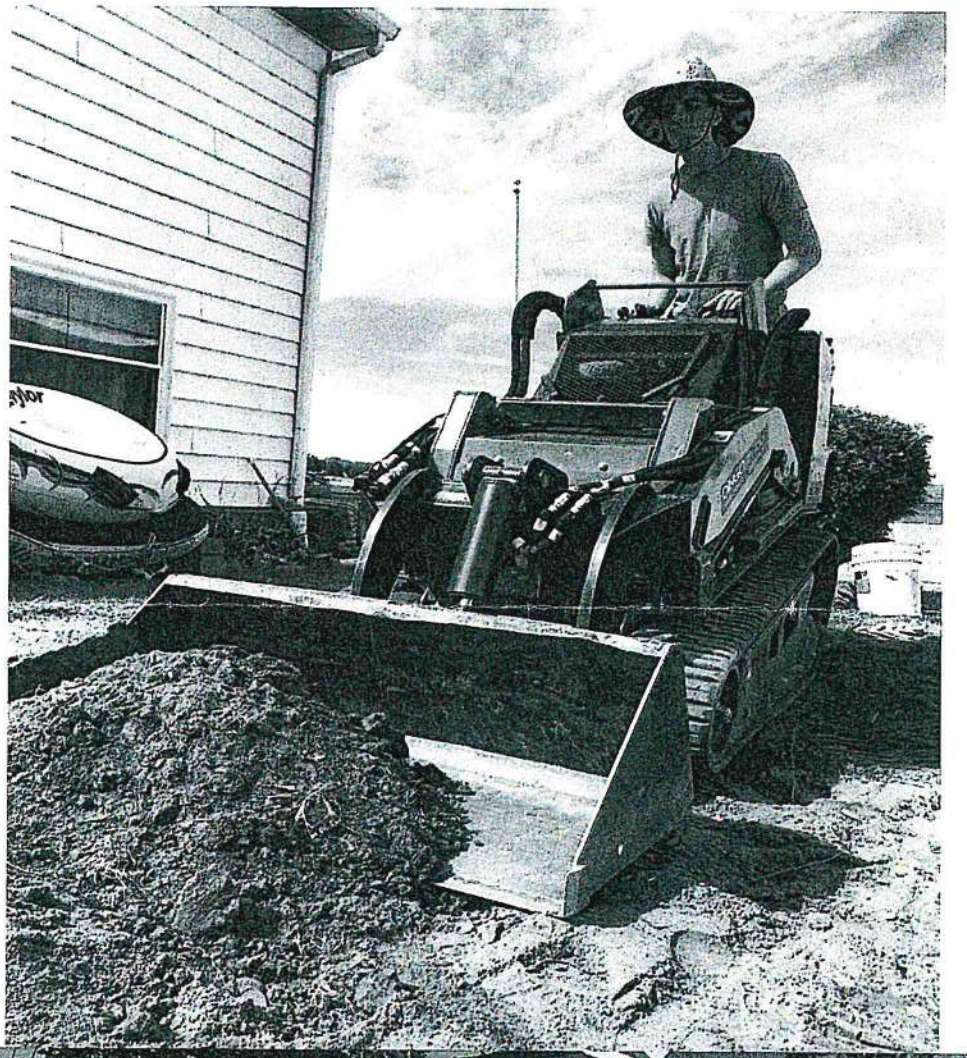
Kathleen Voltz

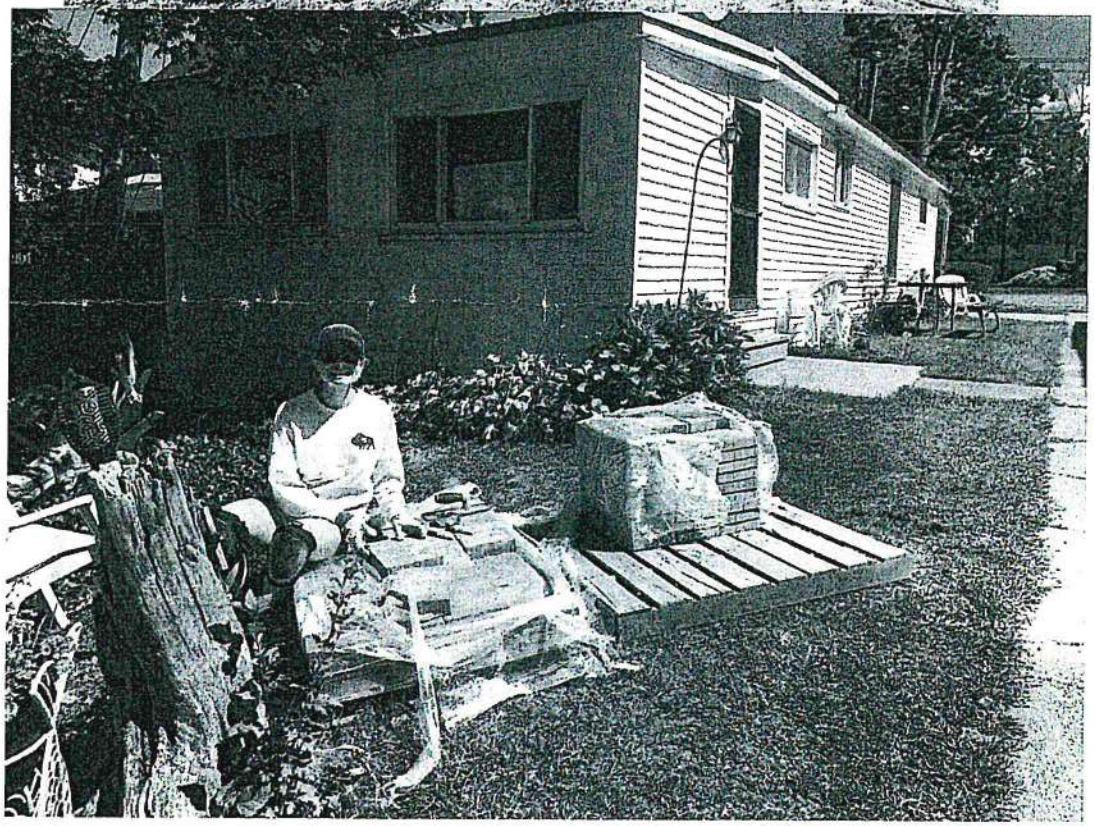



Exhibit O
10/13/21

pg 1 of 3


LOWE'S





Friday, Oct. 4, 2021

Town of Evans
Zoning Board of appeal
8787 Erie Rd.
Angola, Ny 14006

My family has lived in Lake Bay Grove as summer residents since 1912. It is a very crowded and dense neighborhood. All summer long I can hear my neighbor to the south and my neighbor to the north as they converse with one another on their open porches.

Most people, not all, are respectful of their neighbors and try to keep their socializing quiet.

There have been a number of fires in this cottage grove.

Exhibit P 10/13/21

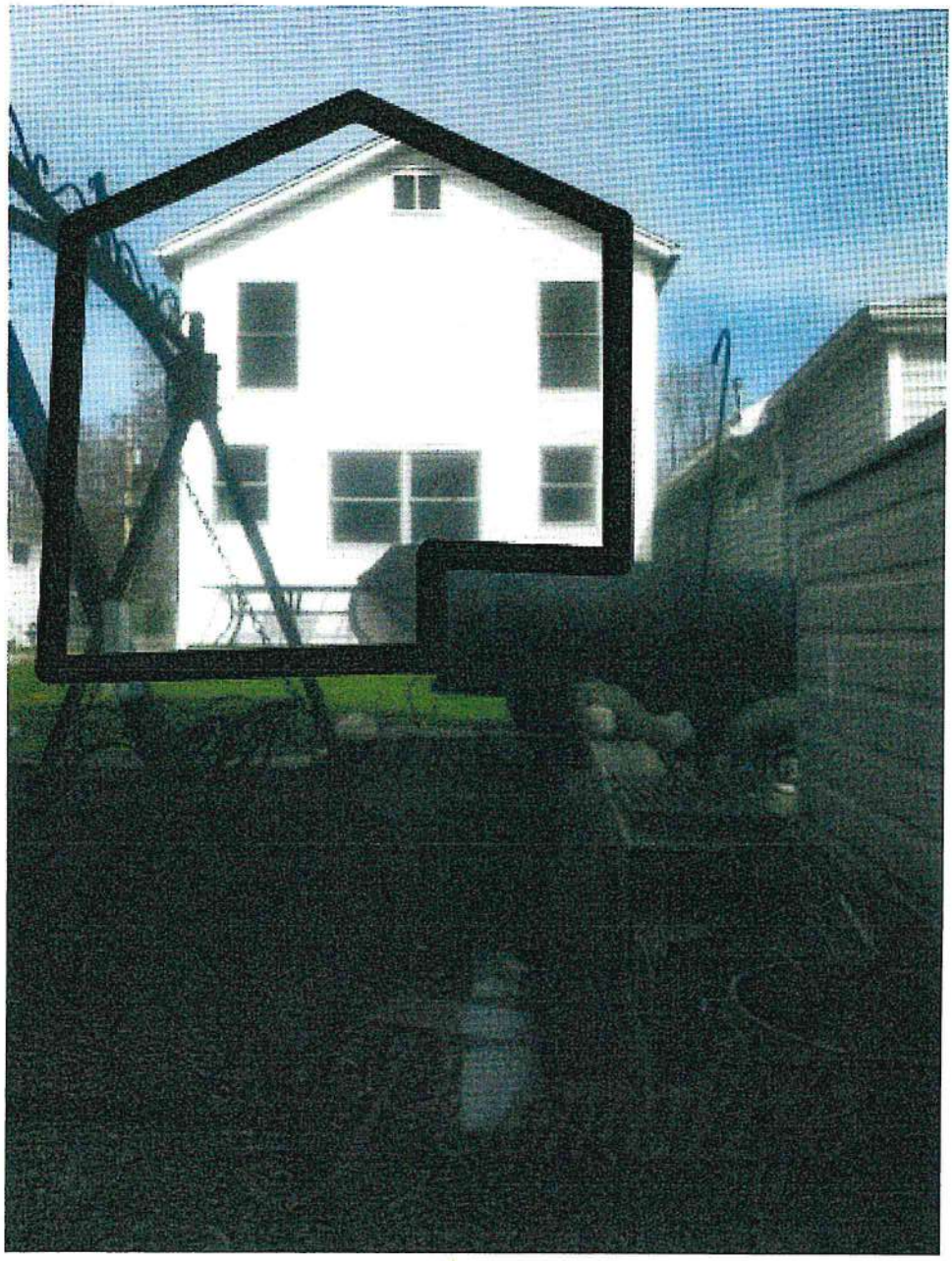
Fire safety has always been a grave concern to the residents in this community.

My property, like Ed and Therese Volty's property, is landlocked. I do not have a driveway nor even parking access close to my cottage.

I do not live on a street. It is only a footpath, so getting emergency help or first responders is problematic.

I support Ed and Therese Volty in ~~his~~ raising concerns regarding safety and noise levels. As a good neighbor, I oppose granting the proposed variances requested by the Andelora.

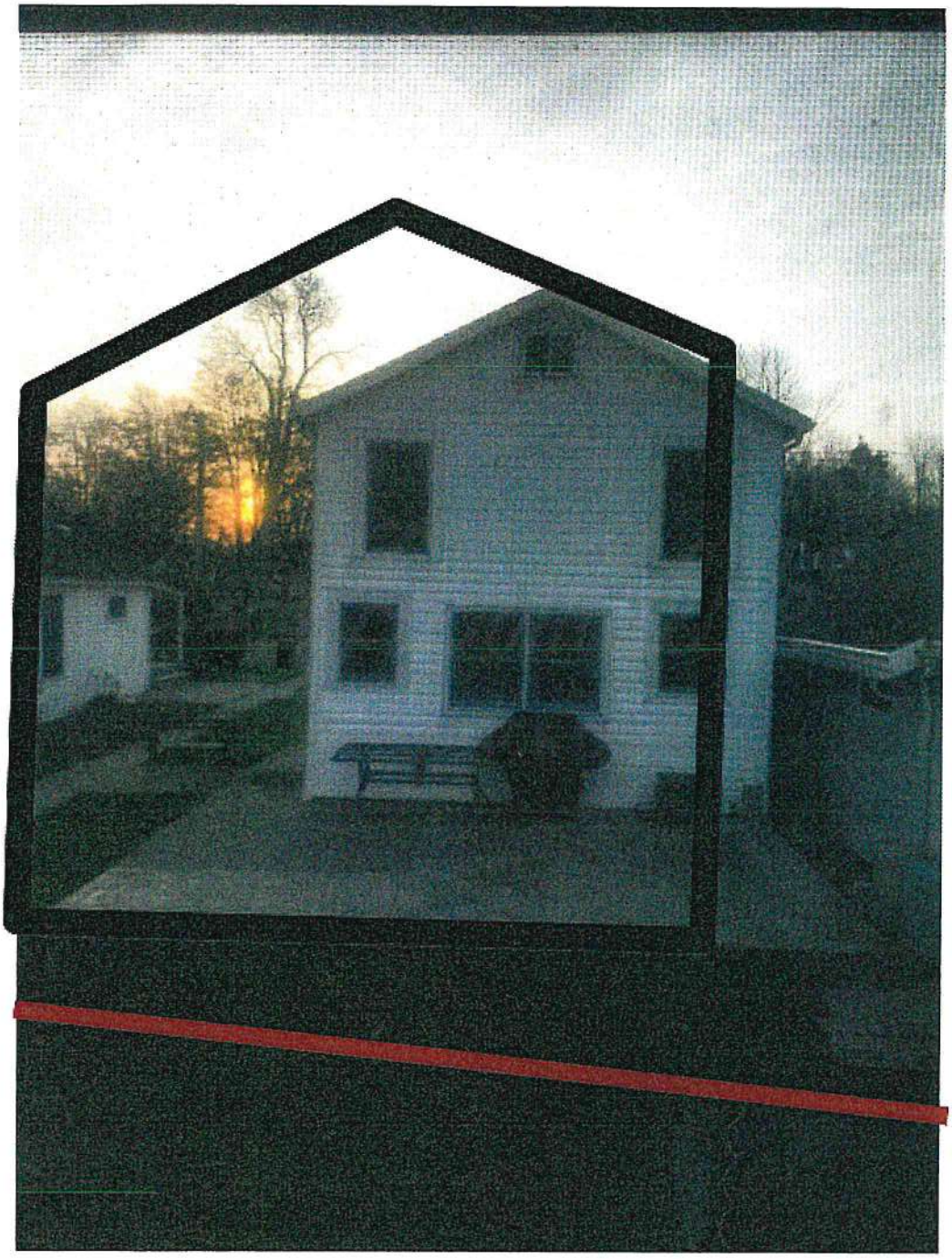
Respectfully,
Marynell Callahan - Hirsc
8570 Walk
Angola on the Lake
New York, 14006



Kitchen window 1st floor looking east



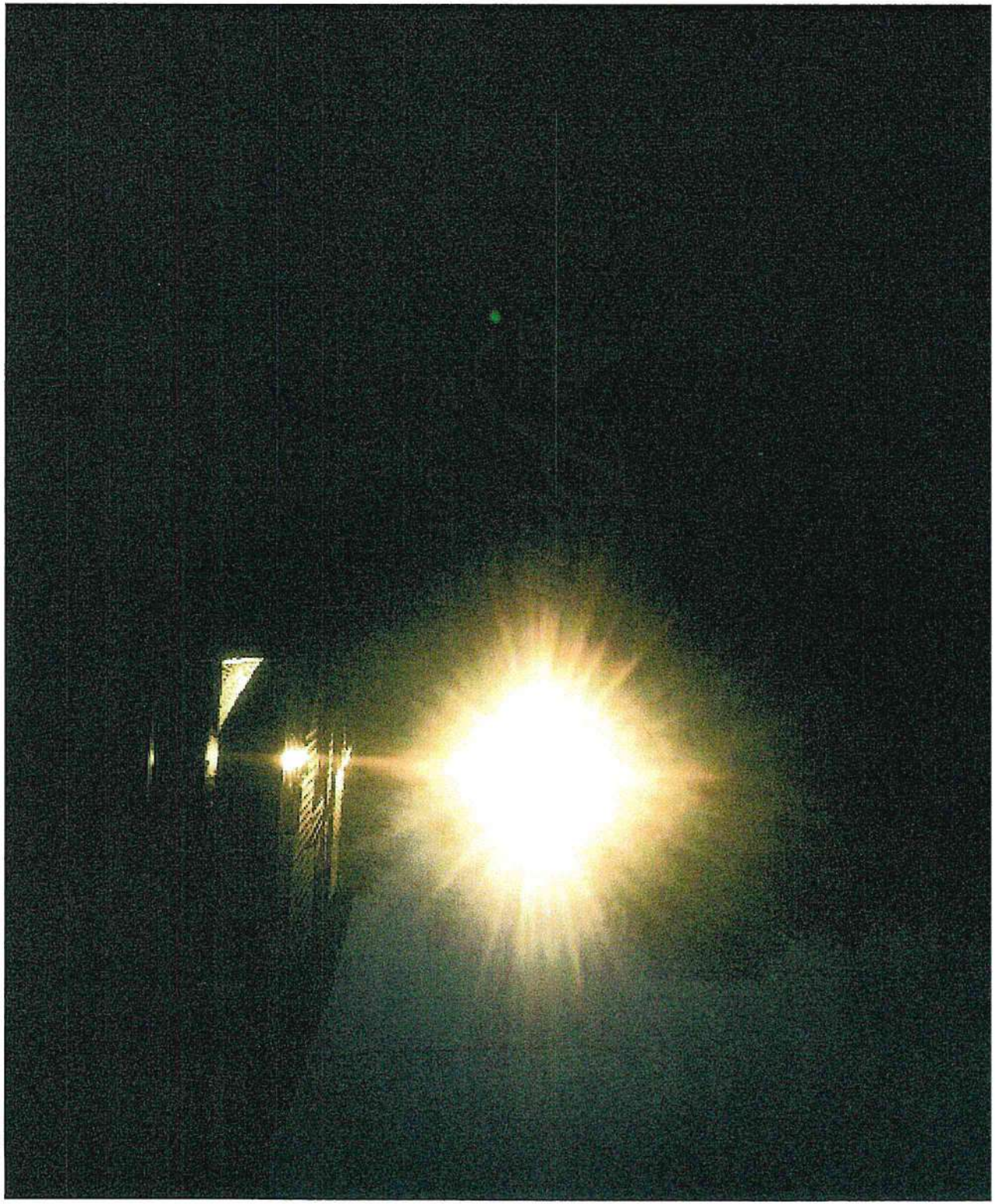
Corner of house looking east to Lake

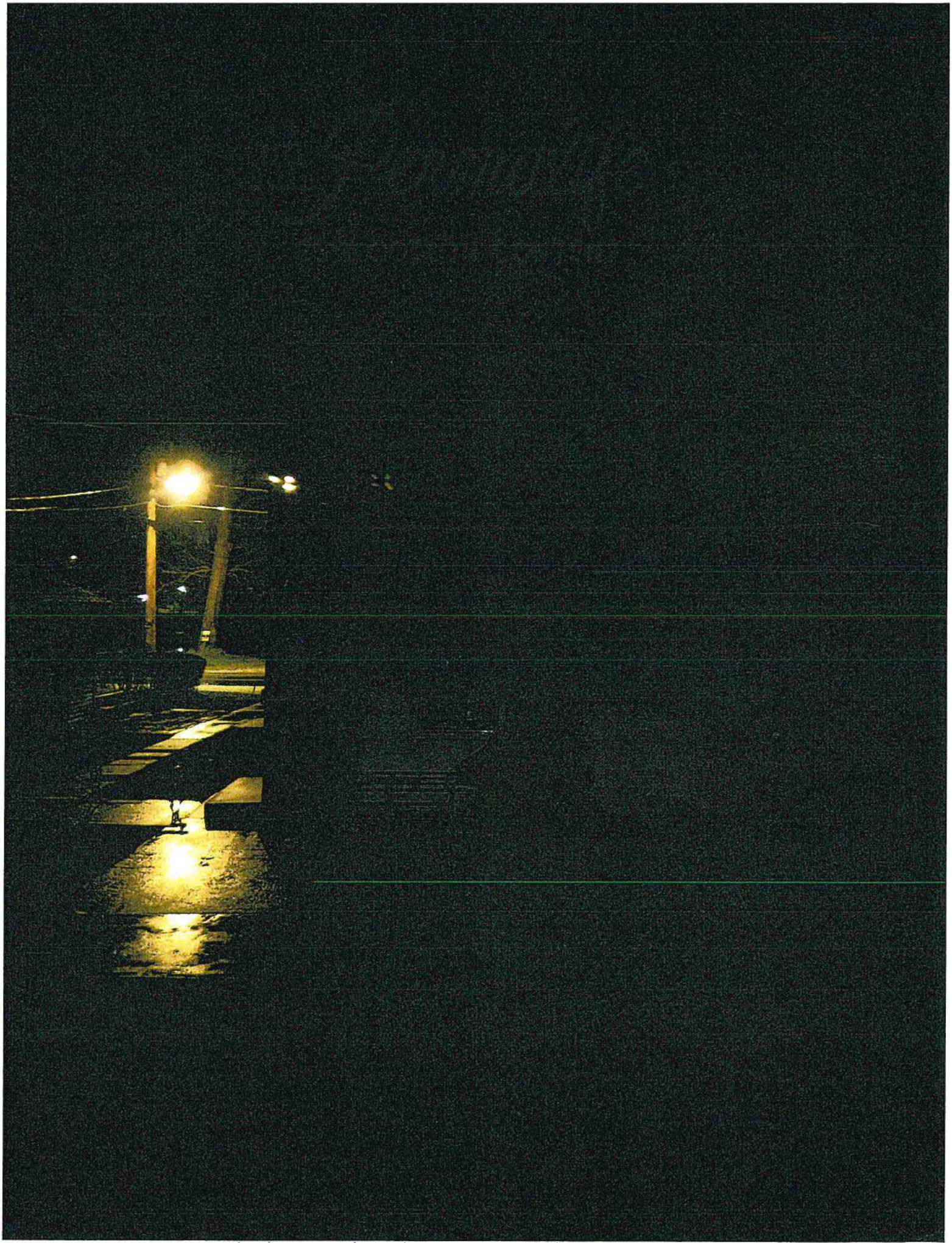


2ND story bdrm looking east



View looking South at p line

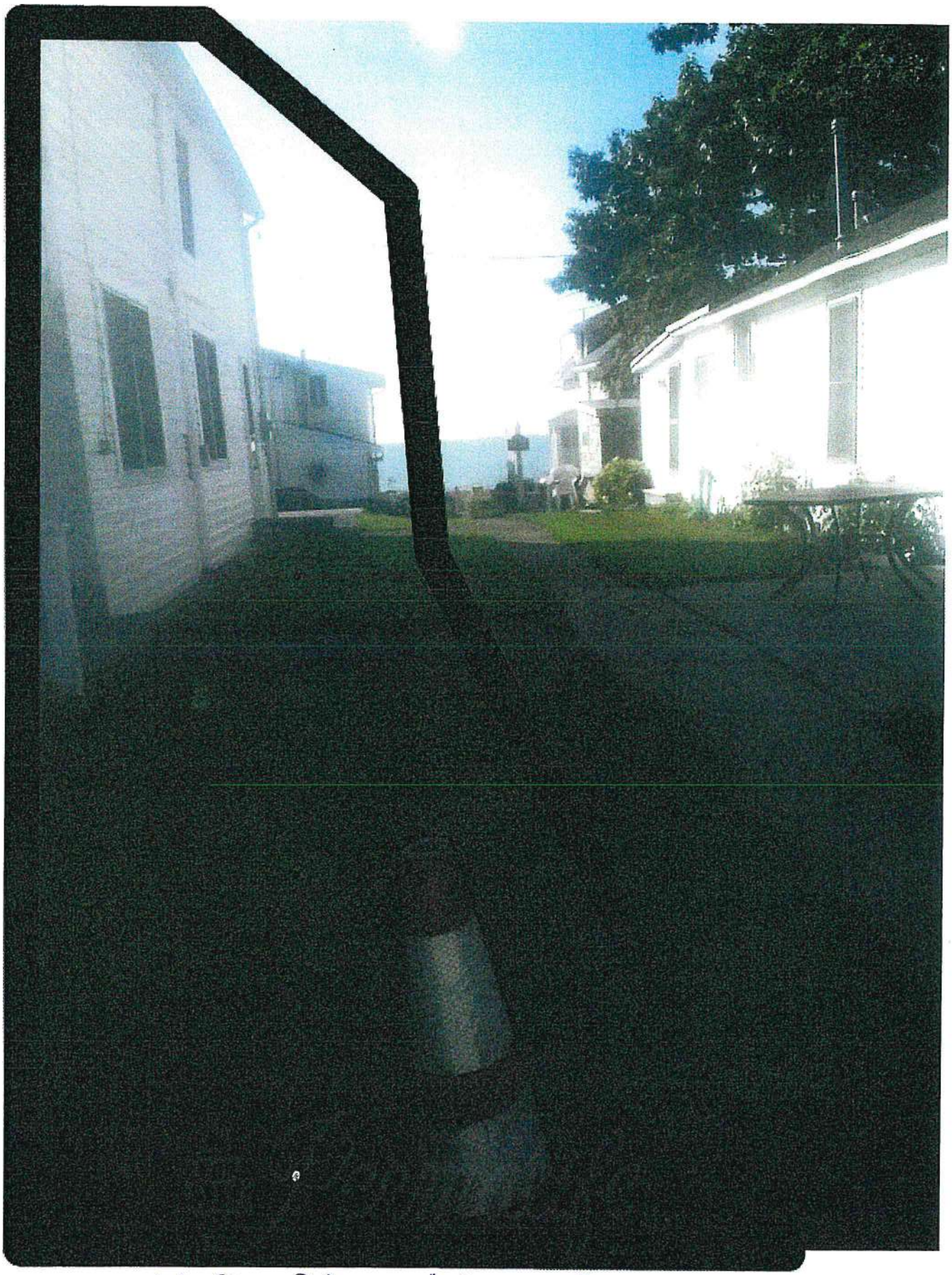




Night shot looking east to Lake Shore from bedroom



West from Lake Shore Rd



Lake Shore Rd view looking west


MY
FATHER'S
HOUSE


BILLS

**TOWN OF EVANS ZONING BOARD OF APPEALS**

**Decision on the Rehearing of Three Area Variance Applications**

Property address: 8812 Lake Shore Road, Angola, NY, SBL No. 234.12-4-21 (the "Property")
Applicant: Gary and Suzanne Andelora (the "Applicants")

## Background

The Applicants are seeking to renovate their house currently existing on the Property located in the Town of Evans (the "Town") at 8812 Lake Shore Road. The Property is zoned in Residential District Two ("R-2"), along with a vast area of the surrounding neighborhood. The lots directly adjacent to the Property on the north, south, and west sides, as well as the Property itself, were improved over time with single-family homes which, given the size of these individual lots, were constructed fairly close together. The Applicants—owners of a two-story cottage, approximately 1,258 square feet—proposed to move the house three feet to the north and expand the first floor by four feet to the north and the second floor by twelve feet to the west (the "Project"). However, completion of the Project will result in violation of certain side and rear yard setback and combined side yard requirements, as set forth in Section 200-12(C)(1)(f) of the Zoning Law of the Town of Evans, Erie County, State of New York (the "Zoning Law"). As such, the Applicants are requesting three area variances (1) allowing the combined side yards to measure less than the required minimum of 15 feet ("Variance 1"); (2) permitting a side yard setback less than the required minimum of 5 feet ("Variance 2"); and (3) permitting a rear yard setback less than the required minimum of 30 feet ("Variance 3") (collectively, the "Requested Variances").

Given the following, the Town of Evans Zoning Board of Appeals (the "ZBA") approves the Applicants' request for three area variances, permitting the above deviations from the dimensional requirements set forth in the Zoning Law.

## Decision Standard

An area variance is defined by Town Law § 267(1)(b) as the "authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations." New York law also provides the standard against which area variance applications must be evaluated. *See* N.Y. TOWN LAW § 267-b(3). When the ZBA makes a determination on an area variance, it must consider "the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant." *Id.* at § 267-b(3)(b). In making such determination, the ZBA will consider each of the following factors: (1) 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; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created. *Id.* A finding that the hardship was self-created, however, will not by itself necessarily preclude the granting of an area variance. *Id.*

Further, the ZBA may only grant the minimum area variance it deems "necessary and adequate … [to] preserve and protect the character of the neighborhood and the health, safety and welfare of the community." *Id.* at § 267-b(3)(c). The ZBA may also "impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property … [to] minimiz[e] any adverse impact such variance may have on the neighborhood or community" and such conditions or restrictions must be "consistent with the spirit and intent of the zoning ordinance …" *Id.* at § 267-b(4).

## Findings and Decision

**a. The variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties**

Where there is "no evidence in the record to support the ZBA's finding that the granting of the variances [] would result in a negative impact on the physical and environmental conditions in the neighborhood ... [or] that the granting of the variances would have the effect of altering the character of the neighborhood[,]" the zoning board of appeals must grant the variances to avoid acting in an arbitrary and capricious manner. *Campbell v. Town of Mount Pleasant Zoning Bd. of Appeals*, 84 A.D.3d 1230 (2d Dep't 2011). Here, there is no evidence that completion of the Project as proposed by the Applicants will result in an undesirable change to the community or present a detriment to the surrounding properties.

The community is studded with lakeside cottages in very close proximity to one another. *See* Photographs 5-12. The ZBA members have knowledge of and familiarity with this particular area and affirm that no undesirable change to the neighborhood would result, nor would there be a detriment to nearby properties by granting the Requested Variances. The development pattern of the neighborhood clearly endorses the ability of homeowners to build and expand their homes within feet from their neighbors' homes and property lines. The owners of the neighboring properties have *all* renovated or expanded their houses similarly to the manner in which the Applicants are attempting to do now. *See* Letter from Stanley and Christine Radwan to Town of Evans Zoning Bd. of Appeals (May 5, 2021) ("This project will be of benefit to the Town as it enhances the lakefront area, where other homes have recently already been [] remodeled including our home 8816 Lake Shore Rd, 8818 Lake Shore Rd., 8824 Lake Shore Rd and the newly built home at 8825 Lake Shore Rd."). Another neighbor, Nancy Tucker, noted in her letter to the ZBA

in support of the Project that it will "continue to enhance the 'look and feel' of the Grandview Bay area, similar to improvements made at our home and others on Lake Shore..." Letter from Nancy Tucker to Town of Evans Zoning Bd. of Appeals (May 4, 2021). Mrs. Tucker also noted that the Applicants' "requested variances are consistent with other enhancements that have been completed in the Grandview Bay Area" and that benefits to the Town as a result of the Project would include increased tax revenue and use of local merchants. *Id.*

As such, taking the development patterns of the community into consideration, it is clear that granting the Requested Variances would not produce an undesirable change in the character of the neighborhood. Quite to the contrary, the Applicants would actually be increasing the conformity of their home to the character and layout of the neighborhood.

Additionally, concerns were raised by the opposing neighbors at 8810-A Lake Shore Road over the ability of emergency and utility vehicles to access their property and their ability to use their access easement (*i.e.* the sidewalk that connects their house to the street). These neighbors believe the existing space between the houses is already quite narrow and that allowing Applicants to move and expand their house will further constrict this space, creating a detriment to their property. However, when evaluating any potential detriment to nearby properties, if the current development pattern of the neighborhood created an existing condition, the zoning board of appeals cannot deny an area variance application on this ground alone; instead, the requested area variance must present *additional material impacts*. 2 N.Y. ZONING LAW & PRAC. § 29:13 (2021) (*citing Korean Evangelical Church of Long Island v. Bd. of Appeals of the Village of Westbury*, N.Y.L.J. Feb. 28, 1996, p. 31, Col. 2 (Sup. Ct. Nassau Co. 1996) (emphasis added)).

Here, the tight spaces between the homes in this neighborhood is a preexisting condition stemming from the unique development pattern. The Applicants are seeking to move

and expand the house by a matter of feet, which will not block the sidewalk providing access to 8810-A Lake Shore Road. Moreover, the Applicants have the largest setbacks among the four neighboring cottages, which will not change following completion of the Project. Public Hearing, Town of Evans Zoning Bd. of Appeals (May 13, 2021), https://zoom.us/rec/play/5nk0Auyw9xRXI3g61xKDVaiJ_O2x2kbvErc7hAJNnozxwXdf0nNnbPNE_fA1ixZ8FAqbVVMPAUe-oJ_o.NiuZAbPQf5ALMU5N. Lastly, Andrew Zamrok, Chief of Department at the Evans Center Fire Company, made clear in his letter dated September 20, 2021 that the Project would not impede a fire or rescue operation at 8810-A Lake Shore Road because, as the layout of the cottages exists now, the Fire Department "would never try to maneuver a piece of apparatus in between the houses[.]" Letter from Chief Andrew Zamrok. Instead, as Chief Zamrok stated, "[a]s long as a sidewalk is present to the rear residence, [the Fire Department] will be able to access the structure." *Id.* As such, the Project will not cause an additional material impact and is thus not a detriment to any of the neighboring properties, including 8810-A Lake Shore Road.

The ZBA determines that the Requested Variances will not produce an undesirable change in the neighborhood or detriment to nearby properties.

**b. The benefit sought by the Applicants could not be achieved by another feasible method, other than an area variance**

The Applicants have demonstrated that there is no other feasible way to achieve the desired renovation of their house without the Requested Variances. The Applicants are seeking to move and expand the house, which they currently use as a seasonal cottage, to accommodate year-round use as their permanent residence. The only way to meet their needs for increased living space is how the Applicants have proposed it—requiring the Requested Variances. Further, as

noted by Suzanne Andelora during the May 13, 2021 public hearing, the Applicants did in fact consider other methods to achieve the proposed expansion without requiring any variances, such as adding a basement to the house, but ultimately chose not to pursue such alternatives due to a lack of feasibility. *See* Public Hearing, Town of Evans Zoning Bd. of Appeals (May 13, 2021), https://zoom.us/rec/play/5nk0Auyw9xRXI3g61xKDVaiJ_O2x2kbvErc7hAJNnozxwXdf0nNnbPNE_fA1ixZ8FAqbVVMPAUe-oJ_o.NiuZAbPQf5ALMU5N. Similarly, the opposing neighbors noted that the Applicants could alternatively increase their living space by excavating a basement. Though technically possible, such further excavation work sufficient to add the required additional living space (in addition to the additional space to be gained through the adding of the planned basement) would be a much more onerous undertaking than a linear expansion and would not be feasible. The ZBA determines that a costly massive excavation project (in addition to the adding of planned basement space) would not be a feasible alternative. Lastly, of course the Applicants could choose to forego the proposed renovation of the house entirely, however, "an alternative that does not enable the applicant to achieve the desired benefit is not truly a feasible alternative to obtaining an area variance." 2 N.Y. ZONING LAW & PRAC. § 29:14 (2021) (*citing Baker v. Brownlie*, 248 A.D.2d 527 (2d Dep't 1998)).

As such, the ZBA determines that the Applicants' goals cannot be achieved by any feasible means other than by granting the Requested Variances.

**c. The variances are not substantial**

The substantiality of a requested variance cannot be considered by the zoning board of appeals in a vacuum—it must be considered within the context of the overall impact of the variance. *See Feinberg-Smith Associates, Inc. v. Town of Vestal Zoning Bd. of Appeals*, 56 Misc.3d 1217(A) (Sup. Ct. Broome Cty. 2017) (substantiality can be determined based on the deviation

from the code requirements *and* from the cumulative effect of the variance). As such, this determination is not purely a mathematical calculation, but rather depends significantly on the unique facts of the case, including the conformance of the variance sought to the character of the neighborhood and its overall impact on the community.

Here, the Applicants are proposing to deviate from the required 5-foot side yard setback on the south side by 2 feet (*i.e.*, Variance 1) and deviate from the required 15-foot combined side yard by 5.5 feet (*i.e.*, Variance 2). These are fairly modest deviations from the requirements set forth in the Zoning Law. These modifications also allow for increased space on the south side of the Property, increasing the setback beyond the required 5-foot minimum to 6.5 feet. As noted by Christopher Tucker, contractor for the Applicants, this further addresses neighbors' safety concerns regarding lack of space between the houses. *See* Public Hearing, Town of Evans Zoning Bd. of Appeals (May 13, 2021), https://zoom.us/rec/play/5nk0Auyw9xRXI3g61xKDVaiJ_O2x2kbvErc7hAJNnozxwXdf0nNnbPNE_fA1ixZ8FAqbVVMPAUe-oJ_o.NiuZAbPQf5ALMU5N.

The Applicants also propose to deviate from the required 30-foot rear yard setback by 25 and 19 feet at different portions of the rear of the house (*i.e.*, Variance 3). This is clearly a much more substantial deviation. However, as noted above, the discrepancy between the dimensions proposed by the applicant and the dimensions required by the zoning code are not the only consideration for this substantiality determination. The overall impact of the requested variances must be taken into account as well. As made clear throughout this decision, the impact of the Project on the neighborhood, and specifically on the neighboring properties, is negligible, or in some instances, beneficial. To most of these neighbors, the impact of the Project is in fact overwhelmingly positive. Additionally, as mentioned above, Christopher Tucker stated at the May

13, 2021 public hearing that (1) even with completion of the Project, the Applicants will still have the most space around their house than any of the other three surrounding houses and (2) the Project will actually enhance safety and access by increasing the setback on the south side of the Property to more than 6 feet. *Id.*

Thus, although Variance 3 presents a substantial deviation from the relevant requirement in the Zoning Law, given the overall benign impact of the Project on the neighborhood, and the actual safety benefit of the increased setback on the south side of the Property, the ZBA determines that the Requested Variances, taken together, are not substantial.

**d. The Applicants have demonstrated that the variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district**

As discussed fully above, the Project will not adversely affect the physical conditions of the neighborhood. The houses in the community are located close together and have been for an extensive period of time. Additionally, a vast majority of these homes have undergone renovations and expansions similar to the one proposed by the Applicants. Such neighbors view the Project as just another one of these home renovations, conforming even further to the development pattern of the neighborhood.

Moreover, there was no evidence presented that the Project will pose a negative environmental impact to the community. On the contrary, both the expansion of the Applicants' home and the ZBA's granting of the Requested Variances are considered Type II Actions under the State Environmental Quality Review Act ("SEQRA"). *See* 6 NYCRR § 617.5(c).[1] Type II

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[1] *See* 6 NYCRR § 617.5(c). Type II Actions include "(11) construction or expansion of a single-family, a two-family or a three-family residence on an approved lot…[;]" "(16) granting of individual setback and lot line variances and adjustments;" and "(17) granting of an area variance for a single-family, two-family or three-family residence[.]"

Actions are not subject to environmental review based on the State Legislature's determination that such actions have been determined "not to have a significant impact on the environment ..." 6 NYCRR § 617.5(a). Additionally, because the Property is within 500 feet of a county road, the application was referred to the Erie County Division of Planning (the "County Board") for review pursuant to General Municipal Law § 239-m. After review, the County Board made no recommendations and determined the action to be solely of local concern. *See* Referral to County of Erie, N.Y. and Reply to Municipality (April 26, 2021).

Additionally, the Applicants have even gone so far as to proactively minimize the greatest potential impacts from the Project. The Applicants verbally agreed with their neighbors at 8816 Lake Shore Road to take out an insurance policy, naming the neighbors as insureds, in the event the construction work done as part of the Project damages their property. *See* Letter from Stanley and Christine Radwan to Town of Evans Zoning Bd. of Appeals (May 5, 2021).

As such, the ZBA determines that the Requested Variances will not negatively impact the physical features or environment of the neighborhood.

**e. The hardship was self-created**

The hardship the Applicants are currently facing was self-created. The Applicants are seeking to make improvements to their home which, as it is currently proposed, will violate Sections 200-12(C)(1)(f)(2)-(4) of the Zoning Law. The Applicants wish to make these modifications in order to reside at the Property full-time, rather than seasonally. The second story of the existing house does not have actual rooms, which they would like to construct. While these reasons are valid for seeking to renovate and expand their home, Applicants are choosing to move and expand the house rather than leave it as is, in violation of the Zoning Code. Thus, while not

dispositive, the ZBA determines that the difficulty was self-created, which weighs against the granting of the Requested Variances.

The ZBA also determines that the area variances to be granted to the Applicants are the minimum necessary and adequate to achieve the Applicants' goals, while also preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community. As discussed above, allowing the requested deviations from the minimum yard and setback requirements will not present a negative impact to the neighborhood, but rather, will enhance the Property's conformance with the character and layout of the community.

The ZBA hereby determines that the Applicants' requests for Variance 1, Variance 2, and Variance 3 are GRANTED.