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September 14, 2022

TOWN OF EVANS

REGULAR MEETING
OF THE
ZONING BOARD OF APPEALS

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

Members Absent: T. Spada, J. Kennedy for first appeal and part of second

Also Present: T. Fischione, Code Enforcement Officer, 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.

New Business:

Brian Morrison, 445 Roat Dr., Angola NY 14006, is requesting to construct a garage, in violation of the Town of Evans Zoning Law Section 200-17 A (4) size of an accessory structure

Applicant is requesting to increase the size of an accessory structure from 900 sqft to 1,600 sqft, in violation of the Town of Evans Zoning Law Section 200-17 A (4).

The applicant would like to construct a 1,600 sqft garage.

Present for the appeal was Brian Morrison.

Mr. Morrison stated he owns a double lot located at 445 Roat Dr. and would like to put the garage on the empty lot. Mr. Martin, Jr. asked if a garage could be built on an empty lot. Mr. Fischione stated the lot is one lot and not separate. Mr. Martin, Jr. asked the purpose of the garage. Mr. Morrison stated he has sport cars, a bot, ATV and jet skis.

Douglas Dannebrock, 451 Roat Dr. spoke in favor of the appeal.
Lindy Lovell, 437 Roat Dr. spoke against the location of the garage.

Mr. Maglich stated the garage would be the largest building in the neighborhood, and is not a modest increase in the allowable size.

Mr. Maglich made a motion to deny, seconded by Mr. LaRusso.

All in favor:

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

Michael & Mary Beth McCormick, 713 Lake St., Angola NY 14006, is requesting to construct a garage, in violation of the Town of Evans Zoning Law Section 200-12 C (2) (b) height of a garage and 200-17 A (4) size of accessory structure.

Applicant is requesting to increase the size of an accessory structure from 900 sqft to 1,500 sqft and height from 16' to 20' in violation of the Town of Evans Zoning Law Section 200-17 A (4) and 200-12 C (2)(b).

The applicant would like to construct a 1,500 sqft garage 20' in height.

Present for the appeal was Michael McCormick.

Mr. McCormick stated he wants to build the garage for vehicle storage and storage upstairs. Mr. Martin, Jr. asked if the garage would be at the end of the driveway. Mr. McCormick stated yes. Mr. Martin, Jr. stated the height request is also substantial.

Mr. Martin, Jr. read an affidavit marked "Exhibit A" against the appeal.
Mr. Martin, Jr. read an affidavit marked "Exhibit B" for the appeal.

No one spoke for or against the appeal.

Mr. Maglich made a motion to deny, seconded by Mr. Martin, Jr.

All in favor:

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

Louis Gubala, 961 Sturgeon Point Rd., Derby, NY 14047, is requesting to construct a garage, in violation of the Town of Evans Zoning Law Section 200-17 A (4) size of structure and 200-10 C (2) (b) height of a garage.

Applicant is requesting to increase the size of an accessory structure from 900 sqft to 1,600 sqft, in violation of the Town of Evans Zoning Law Section 200-17 A (4).

The applicant would like to construct a 1,600 sqft garage.

Present for the appeal was Louis Gubala.

Mr. Gubala stated he needs a garage for a boat, trailers, cars, collector motorcycles and space to work on cars and motorcycles. Mr. Kennedy asked why not behind the house. Mr. Gubala stated he would have to remove trees and put a driveway all the way back. Mr. Maglich asked what building is back there now. Mr. Gubala stated a shed. Mr. Maglich stated a 24' x 32' shed is more like a garage. Mr. Kennedy asked if he would go down in size. Mr. Gubala stated he could on the height. Mr. Maglich stated there are no large buildings in the area.

Kathleen Horohoe, 957 Sturgeon Point Rd. spoke against the appeal. She stated there is a staggered setback for the subdivision.

Mr. Martin, Jr. stated there is no request for a setback variance. Mr. Fischione stated the setback is 40 feet and if there is a special setback for the area, he does not have that information. Ms. Horohoe stated there was a setback restriction when the subdivision was approved by the town. Mr. Fischione asked Ms. Horohoe to email the information. Mr. Martin, Jr. stated there is not a request for a front yard setback and if there were a restriction, the applicant would need to come back.

Jeffrey Palumbo on behalf of Karlyn Dickinson, 948 Sturgeon Point Rd. spoke against the appeal.

Jean Aleksandrowitz, 941 Sturgeon Point Rd. spoke against the appeal.

Mr. Maglich stated the request is a substantial increase. Mr. Martin, Jr. stated the request is double the size that is allowed in the district.

Mr. LaRusso made a motion to deny, seconded by Mr. Maglich.

All in favor:

Mr. Martin, Jr., aye
Ms. Spada, absent
Mr. LaRusso, aye
Mr. Maglich, aye
Mr. Kennedy, 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. Kennedy made a motion to adjourn, seconded by Mr. Maglich.

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

Respectfully Submitted,

Jennifer Renaldo
Secretary

confidential to the Board/Inspections 9/14/2022

Town of Evans Inspections
8787 Erie Rd
Angola, NY 14006

Dear Building Inspector:

I am opposed to the building of the garage at 425 Road. The property currently contains a garage on the property. This address is being rented out to others.

The property does not need to be a storage area for large trucks and other equipment used by the owner, who resides down the street. This area does not need additional golf carts, ATV or other trucks that cause noise to the area.

The building will also create a blockage to neighbors on the side of the property. This is a residential area that needs to remain neighborly to others in the area.

I strongly disagree with your proposal of the current drills and allowing this to happen.

Exhibit A

Respectfully
Sandra O'Connell
418 Road

689 Lake Street
Angola, NY 14006
September 13, 2022

Ms. Jennifer Renaldo
Secretary, Zoning Board of Appeals
Town of Evans
8787 Erie Road
Angola, NY 14006-9600

Dear Ms. Renaldo

SUBJECT: RECOMMENDATION FOR DENIAL OF APPLICATION TO BUILD LARGE GARAGE AT 713 LAKE STREET, ANGOLA

We have lived two houses north of 713 Lake Street since 1953. 713 Lake Street has historically been a single-family residence with four-sided brick exterior and a modest sized front lawn. This Hanson/Senn homestead has always been an attractive home in a residential section of Lake Street.

Recently, industrial service trucks and heavy equipment has been parked in the front yard of this residence, and a second driveway and parking lot has been added at the site.

Constructing an oversized garage/warehouse is not in keeping on this lot, as there is little setback possible. Delaware Creek passes close to the rear of the house, and there is no room for building set-back. The site may look like a large storage building with a house attached. This equipment and this building do not belong in this well-maintained residential neighborhood.

We request the application be denied.

Sincerely,

Mary Jo LaClair

Richard and Mary Jo LaClair
716-839-1922

RECEIVED
SEP 14 2022
Building Department

Exhibit A

713 Lake Street - Michael and Mary Beth McCormick

From: holl mary (mholl264@yahoo.com)

To: kmart2521@gmail.com

Date: Wednesday, September 14, 2022 at 10:59 AM EDT

Good morning Mr. Martin and Zoning Board Members:

I received correspondence from the Town of Evans Zoning Board of Appeals regarding a public hearing to be held on Wednesday, September 14, 2022 at 6:00pm. More specifically #2 on the published legal notice regarding construction of a garage at 713 Lake Street, Angola, NY 14006, Michael & Mary Beth McCormick.

Mr. & Mrs. McCormick have made numerous improvements to their house/property over the years and continue to do so. They are considerate, attentive and helpful neighbors in ever aspect.

I reside next door at 701 Lake Street, Angola, NY 14006 and I am in favor of granting the variance.

Thank you.

Mary Holl
701 Lake Street
Angola, NY 14006
(716) 725-5958
mholl264@yahoo.com



Exhibit B

KATHLEEN E. HOROHOE, ESQ.
957 STURGEON POINT ROAD
DERBY, NEW YORK 14047
(716) 947-0312

September 9, 2022

Town of Evans
Zoning Board of Appeals
8787 Erie Road
Angola, New York 14006-9600

Re: Louis Gubala, 961 Sturgeon Point Road, Derby, New York 14047 Town of Evans Zoning Law Variance application - Zoning Board of Appeals hearing 9/14/22

Dear Zoning Board of Appeals:

I am an adjoining property owner in the Town of Evans to my next door neighbor, Louis Gubala, and I object to the variance he seeks from the Zoning Board of Appeals.

I did not receive notice of the above application or public hearing except second hand, and I do not subscribe to nor purchase the Dunkirk Observer where legal notice was published.

I have never met Mr. Gubala nor do I have first hand information as to the variance he seeks, but if the second hand information I have received is correct, I object to the variance.

I object to placement of an 1,800 square foot metal garage that is taller than 16 feet high in the front yard of my next door neighbor's house, set back 33 feet from the street.

Mr. Gubala's property, as part of the seven-lot residential subdivision along our stretch of Sturgeon Point Road, has a 110 foot set back requirement and 2,000 foot minimum residence square footage.

A commercial style building approaching the size of his house in the front yard would violate the residential character of this zone and intent of the subdivision requirements, to the detriment of the value and happiness of other subdivision lot owners, including me.

Mr. Gubala was familiar with the property, has a 2-car attached garage and a very large pole barn in the back yard, and could review the zoning law prior to purchase.

Although I desire to be good neighbors with Mr. Gubala, please deny the application.

Sincerely,

Kathleen E. Horohoe

Kathleen E. Horohoe

Exhibit A

BLLB Block, Longo, LaMarca & Brzezinski, P.C.
ATTORNEYS | SINCE 1933
9276 MAIN STREET, CLARENCE, NY 14031
OFFICE: (716) 854-4080

WWW.BLOCKANDLONGO.COM

PARTNERS:

MARK J. LONGO, ESQ. PRESIDENT/CEO
JOY LAMARCA, ESQ. VICE PRESIDENT
KEVIN E. BRZEZINSKI, ESQ. VICE PRESIDENT
JAMI DURANTE ROGOWSKI, ESQ.
GEORGE R. SLINGERLAND, ESQ.
BRITTNAY M. MCMAHON, ESQ.

CLARENCE OFFICE:

JEFFERY D. PALUMBO, ESQ., SPECIAL COUNSEL
CHRISTOPHER A. CARDILLO, ESQ., SPECIAL COUNSEL
JENNIFER A. HURLEY, ESQ., SPECIAL COUNSEL
TRACY A. MURRAY, PARALEGAL

September 14, 2022

Via Electronic Mail (jrenaldo@townofevans.org)



Howard Martin, Chairman
c/o Jennifer Renaldo
Town of Evans Zoning Board of Appeals
8787 Erie Road
Angola, NY 14006

Re: 961 Sturgeon Point Road

Dear Chairman Martin and Members of the Zoning Board of Appeals:

Please be advised my office represents Karlyn Dickinson, owner of property located at 948 Sturgeon Point Road. On behalf of our client, we are respectfully submitting this letter in opposition to the variance requested by Mr. Gubala at 961 Sturgeon Point Road.

After reviewing the Town file today, it appears Mr. Gubala is seeking the following variances for a storage building to be erected in his front yard:

(1) § 200-17 A(4) – Size of Structure – 900 SF allowed, 1,800 SF proposed

(2) § 200-10 C(2) – Height of a Garage

As the variances requested are area variances, the Zoning Board is tasked with the obligation to determine whether the benefit to the applicant if the variance is granted outweighs any detriment to the health, safety and welfare of the neighborhood. New York State Town Law Section 267(b)(3)(b) requires the Board to consider the following factors in arriving at a decision:

1. Whether an undesirable change will be produced in the character of the neighborhood.

Exhibit B

Here, the applicant proposes to place an 1,800 square foot structure, equal to the size of a new house, in the front portion of his home. This will negatively affect anyone remotely close to this parcel, particularly those immediately adjacent and across the street. It is clearly an undesirable change in the character of the neighborhood as it will be the only property in the immediate vicinity having essentially two structures the size of homes on one lot.

The applicant's only response to this factor is that it "will blend in with surrounding garages …". Clearly that is not the case. There are no 1,800 square foot structures anywhere in the area that are similar to what is proposed. This storage building appears to be located 40' from the street. The existing home on the lot is located 105.13' from the street, meaning the entire 1,800 square foot structure is located in front of the home. This will present a visual barrier to adjacent homes and anyone residing in the area will be forced to look at what is essentially a commercial structure.

2. Whether the benefit sought by the applicant can be achieved by a feasible alternative.

Although difficult to discern what the actual benefit to the applicant really is, the application simply states this is a storage building. The only thing we can tell is that it won't have hazardous waste stored in it. That is not helpful. No indication whatsoever what will be stored, why it needs to be there, why it is needed at all and why it cannot be placed behind the home. Why does it need to exceed 900'? Why does it need to exceed the height limitation? None of these questions are answered.

3. Whether the requested variances are substantial.

Here, the variance for the size of the structure is clearly substantial. The Code allows a 900 square foot building and the applicant is requesting twice what the code allows. An increase of 100%. Under any definition, that is substantial.

As for the height, particularly when combined with the enormous size of the structure, again the increase over the allow 16' is substantial.

4. Whether the variances will have an adverse impact on physical or environmental conditions in the neighborhood.

Since no detailed plans were submitted regarding the proposed structure, it is difficult to tell what type of impacts will result. For example, there will be a loss of green space and an increase in impervious area. What will that do to water runoff and drainage? Without detailed engineering, the board is not in a position to make this determination.

5. Whether the alleged difficulty was self-created.

The applicant has only owned this home for a short time. He clearly had knowledge that a structure of this size was not allowed. As a result, the only determination that can be made is that the applicant has created his own issues.

In New York, "a prospective purchaser of property is chargeable with knowledge of the applicable restriction of the zoning law and is bound by them and by the facts and circumstances which can be learned by reasonable diligence." *McGlasson Realty, Inc. v. Town of Patterson Board of Appeals*, 657 N.Y.S.2d 131, 132 (2d Dept. 1996).

In summary, it is clear that the applicant is seeking these variances for his own personal convenience. There are numerous storage facilities designed to accommodate whatever might be stored in this building. Courts in New York have consistently rejected personal convenience of a property owner as a basis for a variance. For example, variances for storage of recreational vehicles (*Burkhardt v. Zoning Board of Appeals of the Town of Putnam Valley*, 564 N.Y.S.2d 876 (3d Dept. 1991) and enlargement of homes (*Krouner v. City of Albany*, 596 N.Y.S.2d 891 (3d Dept. 1993) were denied by the Court.

We respectfully request the Board deny the requested variances as the potential detriment to the neighborhood outweighs any benefit to the applicant.

Thank you.

Very truly yours,

Jeffery D. Palumbo

JDP:bae

cc: Ms. Karlyn Dickinson