

**Town of Geneva
Zoning Board
July 26, 2022
DRAFT**

Present: James Smith, John Robbins, John Wilson, Phillip Ilacqua, Robert Rose

Absent: Pat Cardinale

Staff: Floyd Kofahl, Code Enforcement Officer, Amy Naegele, Clerk of the Board, Steve High, Ontario County Planning Board Representative

Others present: 10 members of the public

Chair John Wilson called meeting to order at 6:30 pm.

Pledge of Allegiance

**Public Hearing – Area Variance – ZB2022-002
Balduzzi/Evangelista Property**

The applicants are requesting a variance for the side setbacks. They are requesting an 8 ft setback on the northside and a 6 ft setback on the southside. The setback of the existing structure is 19.5 ft on the northside and 6 ft on the southside.

John Wilson opened the Public Hearing. Jessica Evangelista presented to the board and introduced Ann Hansen, the architect for the project. Jessica confirmed that they are requesting an 8 ft setback on the north and 6 ft setback on the south. She explained that she and her husband purchased the property last fall. They have since found that the property is in bad condition. They have had inspectors, structural engineers, and architects look at the property and have determined that the foundation is crumbling. She explained that they want to use the property safely and would like to start fresh with a proper foundation that will last for many generations.

John asked if there were any members of the public wishing to speak and there were none. Motion made by John Robbins to close the Public Hearing with a second by Phillip Ilacqua. All in favor, motion carried.

John asked the code enforcement officer for his comments. Floyd explained that the existing structure already has a 6 ft setback on the southside and has just over a 19 ft setback on the northside. He confirmed the applicant is asking to keep the 6 ft setback on the southside and is asking to reduce the setback on the northside to 8 ft. The requirement in the R3 district is 12.5 ft, so this would be a variance of 4.5 ft. He explained that he has looked at the structure and confirmed that it is in very bad shape and would expect that the cost of repair would exceed tearing it down and rebuilding. He also explained that if they were to tear down the existing house and rebuild on the same footprint, they would not need to ask for a variance. He received one call in support of granting the variance and received a couple of inquiries. He also confirmed that there are other houses in the area that are just as close or closer to the property line.

John asked Steve High for comments from the County Planning Board. Steve explained that this referral was listed as AR2, meaning that it is reviewed by the County Planning Department and not the Planning Board. Their comments have been provided to the Zoning

Board and are on file in ZB2022-002. He did add that he would expect the recommendation of denial came from the failed septic system, which is already planning to be replaced.

Board discussion was opened. Phillip Ilacqua asked if the foundation would be expanded, and Floyd confirmed that the current structure would be demolished, and a new foundation would be put in. John Robbins asked about the square footage gained. Ann Hansen and Jessica calculated the new house would be roughly 400 sq ft larger. Jessica added that they were not building any closer to the lake than the existing structure in order to maintain the neighbors' views.

John Wilson led the Board through a discussion of the five criteria of an area variance. It was decided that it could be achieved by other means as it could be built on the same footprint as the existing or they could build across the road. It was noted that, if built across the road, it would not match neighboring properties. The board members agreed that it would not be an undesirable change to the neighborhood as most of the other properties in the area have less than 12.5 ft setbacks. It was decided it is not a substantial request as it is less than 50%. The board members agreed that it would not have adverse physical or environmental effects. It was determined that the alleged difficulty is self-created due to the desire to build, but consideration was given on the existing house structure.

James Smith asked about the new septic and questioned if there were concerns about where it would fit. Floyd confirmed that there would be room for the new septic.

Motion made by Phillip Ilacqua to grant ZB2022-002 as requested. 2nd by Robert Rose.
Roll Call Vote:

Jim Smith – Grant

John Robbins – Grant

John Wilson – Grant

Phillip Ilacqua – Grant

Robert Rose – Grant

Motion Carried.

Public Hearing – Area Variance – ZB2022-003

Phillips Property

The applicant is requesting a variance to allow a shed to be placed in the front yard of his property and for a side setback variance to allow a 6 ft side setback.

John Wilson opened the Public Hearing. The applicant was not present. John asked Floyd to present the information to the Board. Floyd explained that the applicant is requesting to place a shed in the front yard of his property. He added that the shed has actually been placed and the materials used match the house. He explained that in his letter, the applicant talked about topography concerns and how it made more sense to him to put the shed in the front off of the driveway for access. The applicant's letter is on file in ZB2022-003.

Floyd added that he had received 2 calls against the application and 1 call in support of it. John Wilson confirmed that there were no other members of the public wishing to speak. Motion made by John Robbins to close the Public Hearing with a second by Phillip Ilacqua. All in favor, motion carried.

John asked the code enforcement officer for his comments. Floyd confirmed that the request was for a 100% variance for the shed to be located in the front yard. He explained that after the application was submitted, he found out that there are deed restrictions on the properties on Bay View Terrace and that accessory structures are not allowed. He explained that deed restrictions are not enforced by the Town and would be a civil matter, but he did speak with the Town Attorney, and he confirmed that the Zoning Board can take deed restrictions into

consideration. Floyd added that the Zoning Board could not consider that the shed has already been placed. He explained that he spoke with the applicant prior to the installation and informed the applicant that he could not get a permit as he would need to apply for a variance. The shed was installed after that. Floyd also added that there are no other accessory structures on Bay View Terrace. Robert Rose asked if there was room on the side on the house. Floyd confirmed there was, but it would still require a side setback variance.

John Wilson asked Steve for county input. Steve confirmed that this referral was a class 1 and not brought to discussion at the meeting. He added that it is the County Planning Board's position that if a municipality has a comprehensive plan and the zoning has been reviewed, then it should be abided by.

John led the board members through the discussion of the 5 criteria for consideration. It was agreed that the benefit could be achieved by other means feasible, as it could be put in the back yard or side yard. The board members agreed that it would be an undesirable change to the neighborhood, noting that the deed restrictions are being recognized in that there are no other sheds on Bay View Terrace. The Board determined it is a substantial request at 100%. It was agreed that there would not be adverse physical or environmental effects. The board members agreed that the alleged difficulty is self-created due to the desire to have a shed.

Motion made by John Robbins to deny the request to put the shed in the front yard. 2nd by Phillip Ilacqua.

Roll Call Vote:

Jim Smith – Deny

John Robbins – Deny

John Wilson – Deny

Phillip Ilacqua – Deny

Robert Rose – Deny

Motion Carried.

Public Hearing – Interpretation Appeal – ZB2022-004 Brewery Ardennes

The applicant is requesting that the ZBA review the Code Enforcement Officer's interpretation of the "vegetated buffer" requirement of Town Code 165-15 Section (I) as amended by L.L. #4-2022 and defined in 165-40.

John Wilson opened the public hearing. Derek Edinger presented to the board members. He explained that they had recently been before the Planning Board for a change in their site plan due to the passing of Local Law #3-2022. He went over the requirement for a vegetative buffer required per Local Law #4-2022. He explained that their property does abut parcels to the north, west, and south that have residences on them. They provided pictures of the current vegetative buffer on these three sides of their parcel. They are asking for an interpretation of parcels located across a non-private road (Snell Road) and if they are considered abutting. He explained they did not find a definition of abutting in the Town Code but that in other real estate laws it is meant to mean parcels that are touching each other, and not if they are on opposite sides of a publicly owned road. He also brought attention to the identical vegetative buffer requirement that is in the general business and lakeview overlay districts. He explained that the implementation of this requirement by the Town has not involved vegetative buffers across roads. He explained there is a list of businesses provided in their application letter. If it is decided that a vegetative buffer is required, they would be asking for additional consideration for their property.

John Wilson opened the meeting to the general public. Matt Higgins addresses the Board. He explained that his parents live at 569 Snell Road, directly across from the brewery. He

confirmed that the board had received a copy of the letter from his mother, Carole Higgins. The Board confirmed they had received a copy, which is on file in ZB2022-004. He explained that out of the 9 wineries and breweries in the town, this one is unique. It is not on State Route 14 and is not grandfathered in. It is in a quiet agricultural district on Snell Road with residential neighbors. He explained that the side where they are requesting no buffer, is the side of the building with lawn seating and most likely where events would be, making buffering more important. He talked about State Route 14 being a busy state highway that is with heavy traffic. The impact of the noise of the highway is greater than the impact of the businesses, making the need for a vegetative buffer less. Also, residents in this area are aware of what to expect when purchasing their property and are expecting a busy highway. In contrast, Snell Road is a quiet, agricultural road. It is his opinion that the intent would be to provide a visual screen between business activities and residential properties and that this screen would be required across the road as well. He also referenced the petition that over 100 residents signed stating that they were opposed to the definition of agricultural commerce being changed. In acknowledgement of those concerns the Town Board placed restrictions on operations, including the need for a vegetative buffer.

John confirmed that no other members of the public wished to speak. Motion made by John Wilson to close the Public Hearing with a second by Phillip Ilacqua. All in favor, motion carried.

John asked Floyd for his comments. Floyd explained that his interpretation was based on being involved in the committee that worked on Local Law #3-2022 and #4-2022 and the Town Board's actions. When the Town Board took into consideration changing the definitions of Agricultural Tourism and Commerce to allow for events, they placed certain restrictions on the businesses to lessen the impact on neighbors. One restriction was the requirement of a 15 ft visual and sound buffer. He explained that since he has been at the town, the town has adopted new design standards and the new projects that have been approved, such as Seneca Turk Resort and CCMI, have been required to put up buffering. He explained that many of the businesses identified by the applicant predate the code change and even the formation of the lakeview overlay district. Floyd also explained that the railroad and State Route 14 have their own Tax Map IDs and parcels. Town roads do not and are similar to a utility easement or right-of-way. Snell Road is a municipal road and is not its own tax map parcel. Therefore, he took this into consideration as well as the intent of the Town Board.

John Wilson opened the Board Discussion. John Robbins agreed with Floyd and commented on the amount of time the Town Board had worked on this and their intent. John Wilson explained that he understood the applicant's position and believes it comes down to whether the roadway is a separate parcel. He doesn't believe it is and agrees with Floyd on the intent of the Town Board. He attended most of the meetings while the Local Law was being developed and feels the intent was to shield the neighboring properties. Robert Rose asked about the types of trees required and Floyd confirmed the list of trees has been revised. Phillip Ilacqua brought up the possibility of the neighboring lots putting a berm on their property. John Robbins spoke against this idea.

Motion made by John Robbins to uphold the decision of the code enforcement officer. 2nd by John Wilson.
Roll Call Vote:

Jim Smith – Yes
Phillip Ilacqua – Yes

John Robbins – Yes
Robert Rose – Yes

John Wilson – Yes

Motion Carried.

There was a short discussion between the Board and the applicant regarding consideration for a variance. It was confirmed that a separate application would be required.

**Public Hearing – Area Variance – ZB2022-005
Goldstone Garcia Property**

The applicant is requesting a variance for the front and side setbacks. They are requesting a front setback of 15 ft from the center line of the private road and a side setback of 1.9 ft. This is an existing accessory structure (garage) that the applicant wishes to convert to a habitable space.

John Wilson opened the public hearing. Elliot Garcia addressed the Board. He explained that his wife, Robin Goldstone Garcia, had inherited the property in 2015. They are currently full-time residents of Florida but in 2017, they tore down the existing structure, due to its bad shape, with the intent to rebuild. Due to the onset of the pandemic, rising costs to build, and a change to the town's short-term rental code, the couple decided it was not the right time to build. He noted they would still like to build in the future. They would like to convert the existing structure into a habitable space so they can use it in the summertime.

John Wilson confirmed that they are asking for a setback of 1.9 ft. He confirmed that there were no members of the public wishing to speak. Motion made by Phillip Ilacqua to close the Public Hearing with a second by John Robbins. All in favor, motion carried.

John asked Floyd for his comments. Floyd explained that the existing structure is less than 2 feet from the property line from the north and less than 15 feet from the center of the road. The setback requirement is 25 feet from the center of the private road and 12.5 ft from the side. Since the applicant wishes to convert the structure to a different use, the setback requirements for a house must be considered. He also mentioned that the Board should consider possible safety concerns with the house being so close to the road, even though it is a private drive. He confirmed that the demo permit was issued in 2017 and that at that time it was noted the intent was to rebuild. Robert Rose asked about a septic and Floyd explained that if the variance was approved, everything would need to meet code and a new septic would need to be installed.

John Wilson asked Steve for input from the County. Steve explained that this was also an AR2 referral and reviewed by the Planning Department, not the Board. He commented that he believed the denial recommendation was made to force the need for a super majority vote.

James Smith asked the applicant if the intent would still be to build down the road if the variance was granted. Elliot confirmed they would still like to build a house in the future. John Wilson asked if a residence that close to the road would be out of character and Floyd stated he thought it would be, with most of the other houses closer to the lake, with accessory structures near the road. He did comment that there was one exception, a house that was probably close to 25 ft from the center of the road.

John led the board through a discussion of the five criteria. It was determined that the benefit could be achieved by other means feasible as they could build a house on the property that meets code. The board members were not in agreement as to whether an undesirable change in the neighborhood's character or to nearby properties would occur. Some board members thought that there would be an undesirable change as it would be the only house that close to the road, and others thought that it would be a desirable change, because it would improve the nature

of the lot. It was agreed that it is a substantial request, asking for 1.9 ft setback instead of 12.5 ft. The board members determined that there would not be adverse physical or environmental effects. It was agreed that the alleged difficulty is self-created due to the desire to build a house.

Motion made by Phillip Ilacqua to grant ZB2022-005 as requested. 2nd by James Smith.

Roll Call Vote:

Jim Smith – Grant

John Robbins – Grant

John Wilson – Grant

Phillip Ilacqua – Grant

Robert Rose – Grant

Motion Carried.

Meeting Minutes from April 26, 2022

Motion made by John Robbins to approve minutes with a 2nd by John Wilson. All in favor. Motion carried.

Steve High's Report

Steve spoke about a recent fire at a cottage on Canandaigua Lake and the fact that it was hard to access by the fire department because it was downslope. There was a discussion among the County Planning Board about setbacks affecting a homeowner's fire insurance. After speaking with 3 insurance companies, Steve confirmed that they do not take setbacks into consideration.

Steve also referenced a document from Tom Harvey that had been distributed to the Board and the comments on the NYS Draft Scoping Plan. He pointed a number of figures and potential problems cited by Harvey with upcoming climate act goals.

Other Business

Floyd provided a short update, noting that over 100 permits have been issued already this year. This number includes more single-family homes than last year. Right now, future commercial development and subdivisions are still on hold.

There was a discussion regarding the need to change the date of the August meeting due to elections. It was agreed that the Zoning Board will meet on Tuesday, August 16th.

Motion made by John Robbins to close the meeting with a 2nd by Phillip Ilacqua. All in favor. Motion carried at 7:40 pm.