

**Town of Geneva
Zoning Board
September 27, 2022
DRAFT**

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

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

Others present: 14 members of the public

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

Pledge of Allegiance

**Public Hearing – Area Variance – ZB2022-006
Bucklin Property**

The applicant wishes to place the deck 5ft. (67% variance) from the side property line and install the pool and deck 6ft. (60% variance) from the rear property line. Per Town of Geneva Code 165-24 Accessory Buildings B. Any accessory uses that are not in an enclosed building shall be allowed in the side or rear yard and shall be a distance of 15 feet from the nearest property line. The noise and glare shall not adversely affect the character of any neighborhood.

Joe Bucklin presented his request to the board members. He explained that they want to put the pool in the southwest corner because they do not want to take the tree down that is in the middle of the yard, explaining that the tree provides sun cover and that it is a small lot.

John Wilson asked if there were any other members of the public wishing to speak. There were not. Motion made by John Robbins to close the Public Hearing. 2nd by John Wilson. All in favor, motion carried.

John Wilson asked Floyd for his comments. Floyd explained that it is a straightforward request for the side and rear setbacks for an accessory structure.

John asked Steve High for any input from the Ontario County Planning Board. Steve confirmed that the application was a Class 1 referral and was not brought forward for discussion at the meeting. The referral was returned with comments to the Zoning Board.

John Robbins asked Floyd if he received any other letters from neighbors other than the one included in the applicant's packet. Floyd confirmed he did not.

John Wilson asked the applicant is there was way that they could move the pool toward the house to get 10 ft for the rear setback or if there was a way that they could move the deck to the opposite side of the pool to get a larger side setback. Joe explained that they could not do either due to the location of the tree. With the current plans, there will already be tree limbs over the pool.

John Wilson led the board members through a discussion of the five criteria for consideration of an area variance. The Board agreed that the benefit could be achieved by other means feasible, as the applicant could cut the tree down. It was agreed that there would not be an undesirable change to the neighborhood. After discussion, it was decided that it was a substantial

request at more than 50 percent on two sides. The Board agreed that there would not be adverse physical or environmental effects. The board members agreed that the alleged difficulty is self-created because the applicant wants a pool. John asked for more discussion or a possible motion.

Motion made by Phillip Ilacqua to grant ZB2022-006 as requested. 2nd by Robert Rose.

Roll Call Vote:

Jim Smith – Deny

John Robbins – Deny

John Wilson – Deny

Phillip Ilacqua – Grant

Robert Rose – Grant

Motion denied. Variance request denied.

Public Hearing – Area Variance – ZB2022-007 Brewery Ardennes

The applicant is asking for a 100% variance (no vegetated buffer) on the east side of the property along Snell Road. Per Town Code 165-15 Section (I)(3) as amended by L.L. #4-2022. (3) Where the property on which Agricultural Commerce or Agricultural Tourism events will take place abuts a residential parcel or a residence, there shall be a vegetated buffer area conforming to the standards set forth in section 165-40, not less than 15 feet in width, planted with trees and shrubs spaced in a manner that will result in a continuous visual screen along the property boundary abutting the residential parcel or residence.

Derek Edinger presented to the Board. He went over the rationale for their request of the variance. He explained that the vegetated buffer is not necessary, due to their property use and setting, is a significant hardship upon their business, may invalidate their eligibility for listing on the National Historic Register, and that Local Law 4-2022 is in violation of Section 305-a(1) of the New York Agriculture and Markets Law. He went over each of these in detail, the information also provided in their application letter, which is on file in ZB2022-007. To the significant hardship section, he added that to install and maintain a buffer would be approximately \$20,000 and they are working very hard at this point just to remain profitable. He also went over to alternatives and consequences and explained special circumstances for their property. These items are also explained in detail in their application letter.

John Wilson asked for other members of the public wishing to speak. Carole Higgins, of 569 Snell Road, addressed the Board. Carole spoke in opposition to the variance request. A copy of her letter to the Board is on file in ZB2022-007. In addition to the points in her letter, she added that Derek had spoken about the view from their property being a major attraction to their business. She explained that the view from their property is her yard.

Matt Higgins, son of Tom and Carole Higgins, also addressed the Board. He explained that earlier this year when the Town Board updated the definition of agricultural commerce, he does not believe it was the intent of the Town Board for businesses to come in and get variances from the Zoning Board for the requirements put in place to protect the residents. He explained that there has been a suggestion that maybe it should be up to the individual homeowners to put up vegetated buffers in these scenarios. He does not think that this burden should be placed on the homeowners. He also talked about the comparison to other businesses in the Town. He explained that businesses on State Route 14 in the Lakeview Overlay District are not a fair comparison as State Route 14 has its own Tax ID and is a different setting with different traffic. He also talked about the statement from the applicants that there has been no change to the brewery, so no buffer should be needed. He explained that previously, the lot was a farm, there were no picnic tables or seating out front. He also added that the Town Board did not define any

exclusions to the buffer requirement based on the distance of the neighboring homes. He echoed Carole's concerns that the view is his parents' yard. To the concern of ineligibility for the National Register of Historic Places, he explained that since the site was historically a farm, he would think that a vegetated buffer could be done in a way to maintain the historic nature. Matt added that this is the only winery or brewery in the ag zone to take advantage of the new law and that the business owners had a lot of input during the creation of the new law. He thinks that the Town Board was trying to strike a balance between the business owners and the residential owners.

Mary Bogin, of 221 Slosson Lane, also addressed the Board. She requested that the Board deny the requested variance. She explained her previous tenure on the Ontario County Planning Board and her experience with the County Planning Board often recommending a vegetated buffer. She added that, in a situation where a commercial property is in a residential area, the burden should be placed on the business owners.

Carole Higgins asked to speak again. She shared an excerpt from the Town's entry in a local publication, stating that in it, the Town declares a priority of fiscal prudence and a goal of striking an agreeable balance between economic development and quality of life of its residents.

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. 2nd by John Wilson. All in favor, motion carried.

John asked Floyd for his comments. Floyd explained that the request is for a variance on the vegetated buffer requirement. He explained that the new law that was passed earlier this year was worked on for several months by a committee and then brought to the Town Board for review. The Town Board agreed that the wineries and breweries should have the ability to have events, which would help with tourism and economic development for the Town. The Town Board recognized concerns from the residents and put considerations into place when passing the law. One of these considerations was that a 15 ft buffer would be required for visual screening and noise reduction.

John Robbins asked what Local Law #4-2022 defined as a buffer. Floyd explained that a 15 ft wide staggered buffer would be required wherever there were residential properties for visual and sound buffering. John asked if there were specifics for what type of vegetation was required. Floyd explained that it was to be based on the Town's Design Standards but would be evergreens. John asked if any specific height was listed in the local law. Floyd confirmed that there was not.

Robert Rose asked if the property met the buffer requirements on the other three sides of the property and Floyd confirmed it does. Bob added that due to the architecture of the building, he can see why one would not want to hide it from the street. John Robbins asked for confirmation that this was a 100% variance. Floyd confirmed that it is a 100% variance along the east side of property. Phillip Ilacqua asked about the location of the buffer in regard to utility easements and rights-of-way. There was a small discussion on where things would be allowed and who they would need to get approval from.

John asked Steve for input from the Ontario County Planning Board. Steve confirmed that the application was a Class 1 referral and was brought to discussion. He tried to answer questions from the County Planning Board as best he could, and the referral was returned as part of the block vote with comments.

Board discussion was opened. John Robbins explained that due to it being a 100% variance request, he feels a precedent could be set. He mentioned the possibility of another

project on Snell Road with a venue and the precedent they could be setting for that now. Other board members showed their agreement.

James Smith clarified that this variance request is only for the front, bordering the road. There was a discussion between the Board and Floyd regarding the height requirement based on the design standards. It was confirmed that the height of the vegetated buffer would have to be 6 ft. James Smith added that he agrees it is a unique building and appreciates wanting to preserve that but does not know how the agricultural portion of the applicant's argument fits as they do not have sheep. He also added that he could see lowering the requirement but does think it needs something. There was a brief discussion between the applicant and the Board. Derek explained that there are some trees along the road now, so it is not a 100% variance. John Wilson asked about the possibility of other options and Derek confirmed that there could be another possibility but that they do not want a full screen. The board discussed wanting to see other options and their hesitance to grant a 100% variance. The applicant agreed that they would come back with an amended proposal for the Board to review at the next meeting.

Motion made by Robert Rose to table the application until the next meeting. 2nd by John Robbins. All in favor, motion carried.

Public Hearing – Area Variance – ZB2022-008 Hedworth Property

The applicant is asking to build on 3,920.4 sq. ft. (34.66% variance) lot, with width of 37.76 ft (24.48% variance) and length of 79.43 ft (20.57% variance). Per Town Code 165-10 R-3 Residential Lakefront District. (E) (1) Maximum site density shall not exceed seven dwellings per acre or one dwelling for each 6,000 square feet of site area, (2) Minimum lot width shall be 50 feet, and (3) Minimum lot depth shall be 100 feet.

Daniel Long, architect for the project, presented to the Board. He explained that his clients, the Hedworths, were also in attendance to answer any questions. He explained that the Hedworths purchased the property, which is a nonconforming parcel. Some of the parcel had previously been split off and deeded to the property to the north. The remaining parcel is comparable to other lots to the south on Harmony Beach. His clients wish to build a small 2-bedroom cottage on the lot. There was previously a cottage on the lot, but it was torn down. The parcel does not meet the current size requirements for a buildable lot, but they have tried to comply with the current front, side, and rear setback requirements with the plans. They are before the Board to see if they can have the ability to develop. He explained that he spoke to the considerations for a variance in his application letter, which is on file in ZB2022-008. He added that it would not alter the character of the neighborhood as there are other examples up and down Harmony Beach where the house takes up a larger footprint on a similar parcel size.

John Robbins questioned the parking. There was a brief discussion among the applicant and the board members. Daniel explained that there is adequate parking for 2 vehicles and that the parking area will be improved. He added that it would not cause an issue for other properties or passing vehicles. Robert Rose asked about concerns with the incline and flooding. Daniel confirmed that is out of the flood zone to a degree, but any plans would comply with FEMA and Town Standards. He added that the footprint is approximately 380 square feet. Due to the slope, there will be a lower level and an upper level but there would be no need to go over the Town's height standards. He explained that his clients just want to have a place to stay when they come to visit the lake and utilize the existing dock.

Floyd was asked if the parcel would meet the lot requirements had it not been previously split. He confirmed that it would, other than the depth requirement of 100 ft. Daniel Long added that he thinks the structure was still there when the parcel was split. Floyd explained that he could not find evidence of the cottage being there when it was split, nor did he find any variance being granted for the undersized parcel.

James Smith asked Floyd about the septic. There was a discussion among Floyd, Daniel, and the board members. It was confirmed that the septic design would have to be approved and would be one of the challenges.

John Wilson asked if any members of the public wished to speak. Sharon Hogan, of 4715 Whites Point, addressed the Board. She explained that she has had a cottage there for over 20 years and that there were previously three small cottages to the north of this lot. Two of the cottages were torn down and a large house was built there that is now rented out. She questioned the location of the railroad property in reference to the lot and the right-of-way. Daniel Long asked to address the question and confirmed the location of the railroad property and explained that there would be nothing that would restrict his clients' plans.

Karen Tompkins, of 4779 Harmony Beach, had questions about the setback requirements. There was a brief discussion and John Wilson explained that the building plans were not in front of the Board at this time, only if the lot was buildable.

John confirmed no other members of the public wished to speak. Motion made by John Robbins to close the Public Hearing. 2nd by John Wilson. All in favor, motion carried.

Floyd was asked for his comments. He explained that this is a pre-existing nonconforming lot. The requirements in this zone are 6,000 sq. ft., 50 ft. of frontage, and a depth of 100 ft. He explained that the depth is not as great of a concern as approximately 50 percent of the lots in the area do not meet the depth requirement, and therefore there would be no change to the neighborhood. The width and the overall size are the main concerns. He explained that if the Board approves it as a buildable lot, the applicants will be tasked with making it code compliant.

John asked Steve for input from the Ontario County Planning Board. Steve explained that this was classified as AR-1 and is not generally brought before the board. The Planning Department would review and comment. These comments have been provided to the Zoning Board.

Floyd added that a letter was provided by the neighbor in opposition to the variance. This is on file in ZB2022-008. Daniel Long interjected that he nor his clients had not seen the letter and requested a copy. John Wilson explained that the application could be held over to the next meeting if they would like to wait and review or the Zoning Board could move forward tonight. The applicants decided they would like the Board to move forward.

John Robbins asked Floyd if there was any possibility of the lot getting into compliance and Floyd explained that, to the best of his knowledge, neither of the neighboring parcels were willing to sell.

John Wilson led the board through a discussion of the criteria. It was agreed that the benefit could not be achieved by other means feasible. They discussed if it would be an undesirable change to the neighborhood. The comment was made that the house would be smaller than others in the neighborhood. But this is also due to it being a small lot. It was agreed that it would not be an undesirable change. The board members agreed that it is a substantial request. The Board agreed that there would be no adverse physical or environmental effects. The board members agreed that the hardship is self-created due to their desire to use the lot.

Motion made by John Robbins to deny variance request ZB2022-008 based on the criteria discussed. 2nd by John Wilson.

Roll Call Vote:

Jim Smith – Deny

John Robbins – Deny

John Wilson – Deny

Phillip Ilacqua – Grant

Robert Rose – Grant

Motion Carried. Variance Denied.

Meeting Minutes from July 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 explained that the virtual meeting law has now been rescinded and there is now in-person attendance by all members. Locally, he reported of a fast-food restaurant that has been approved at the location of the old JoAnn Fabrics in Canandaigua.

Other Business

Floyd provided a short update, noting that planning applications have stopped, mostly due to the sewer situation with the City of Geneva. He added that a grant application has been submitted by the City and talked about the possible timeline for improvements.

He updated the Board on the Bay Heights project, explaining that things are moving along well and noted that the construction access on Turk Road has helped. He added that he has been told they have people interested and there will be upcoming open houses at the model homes.

He provided an update on the Orchard Park project, which has been withdrawn. Clearing had been done but no infrastructure. There will be nothing done for at least 2 years.

He added that the potential project on Carter Road has also been withdrawn.

Floyd also reminded the board members that they need to get their training in and that the Town Board has asked for a report of the Planning and Zoning Board members' training hours this year.

Motion made by John Wilson to close the meeting with a 2nd by John Robbins. All in favor. Motion carried at 7:45 pm.