

**Town of Geneva
Zoning Board
November 24, 2020**

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

Absent: Douglas Roll

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

Others present: 17 members of the public

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

Pledge of Allegiance

**Public Hearing
Fox Property ZB2020-009**

The applicant is requesting a rear setback variance for decks to be built onto the house. The proposed deck would need a 50% rear setback variance. Shawn Peisher presented a review of her request to the board members. She spoke about each of the five criteria for an area variance. She stated that it would not be an undesirable change, highlighting that other lots in the area have decks that are closer to the lot line and that the house previously on the lot had a deck that was 12 ft. 9 in. from the lot line. They are asking for 12 ft. 6 in. from the lot line. She also went through the reasons why they felt that there is not another feasible way to accomplish the benefit. Relocating the home/foundation would be too costly and removing the decks would cause safety issues. She stated that she did not feel the request was substantial as only a small portion of the deck would require a 50% variance, with the majority requiring far less. She also commented that they tried to propose a deck that was usable but not extreme or substantial. She stated that it would not have adverse physical or environmental effects as there are many other decks in the area, there would be no environmental impacts such as drainage and the neighboring properties would not be affected. She explained that the hardship was not self-created as they had been granted a permit for the foundation and the codes changed after the build had started. She also discussed the delay of construction due to court cases and the code change affecting the line to measure rear setbacks from. Shawn also spoke about the previous meeting when she had spoke about other variances being granted. She looked into this after the meeting and found that there have been 4 or 5 variances requested and granted for rear setbacks on lake properties and no denials.

John Wilson asked if there were any public comments. Mark Petzold of 4587 North Whites Point spoke against granting the variance. He went through each of the five criteria, stating that there are other means to achieve the benefit and that it would be an undesirable change to the neighborhood, highlighting the area with the 50% requested variance as high concern. He also explained why he thought it was a substantial request, why it would have adverse physical effects, and why he feels the difficulty is self-created. He provided a letter to the board with this information. This letter is on file in the Zoning Board file ZB2020-009.

Shawn Peisher asked to address the comments made. She reexplained the portion of the deck needing the variance, which does not include the portion on the north and south sides of the house. She also explained that the northeast corner of the house is already past the 25 ft. setback requirement so to have a deck they would need a variance. She also explained that as lake property owners they would like to have a deck that allows them to enjoy the view, not just the minimum for egress.

John Wilson asked Floyd for his comments. Floyd explained that the Town of Geneva did adopt a new definition for setbacks on lake properties. When the applicant recently came in for the building permit for the house, it did include the decks but because they did not meet the setback requirements, it was denied. The applicant chose to remove the decks from the plans so that they could begin their build without further delays and then apply for the variance. He also confirmed that the proposed deck on the north side and south side of the house does not require any variance. He also confirmed that there is a need for exits for the bedrooms on that floor level and explained that the minimum requirement would be a 3 ft x 3 ft landing with a stairwell down to grade.

Phillip Ilacqua asked if the deck they are proposing is 10 ft. at the widest portion and Floyd confirmed that on the lake side, 10 ft. is the widest portion of the deck. Phil also asked if the original plan for the house (before the foundation was built) included decks. Floyd confirmed that the original plan did include decks but that only the foundation permit was issued at that time.

John Wilson asked Steve High if there was any new information from the County. Steve explained that there was nothing new to add from the county and that all comments had been provided at the last meeting.

Motion made by John Robbins to close the Public Hearing with a 2nd by John Wilson. All in favor. Motion carried.

John Wilson opened the discussion among the Board. He asked the applicant if there was any reason for the deck on the north side to connect to the deck on the east side other than convenience. Shawn explained that it would just be for easier access to move from area to area. Robert Rose confirmed with Floyd that no variance was needed for the south side of the house. Phillip Ilacqua commented that this could have been prevented at the very first permit application and Floyd explained that there were no notes in the file from his predecessor as to why the foundation permit was granted.

John Wilson led the board members through a discussion of the five criteria. There was a discussion of whether deck was necessary for egress points. Floyd explained that technically the requirements for egress could be met with a 3 ft x 3 ft landing with stairs at each exit. John Robbins commented that this would still not meet the setback requirements and Floyd explained that the egress requirement would outweigh the setback requirement. After further discussion regarding the egress points it was decided that there are other means feasible for the benefit to be achieved.

John Robbins stated that there would be an undesirable change since the neighbors are not in support and it is blocking their view. John Wilson countered that there are many places on the lake where the neighbors block others' views. Phillip Ilacqua explained that aesthetically one continuous deck would look better than three separate ones and that any deck would change the view. John Wilson and Phillip Ilacqua confirmed that there would not be an undesirable change.

The Board agreed that if you consider anything over half is substantial, there is only a small portion that would be considered substantial, relative to the whole request. It was also agreed that the request would not have any adverse environmental effects and that physically it would block views, however this is typical.

There was discussion as to whether the difficulty was self-created. John Wilson explained that the code had changed since the applicant had originally come in with their plans. He asked Floyd that if the codes at that time would have allowed this deck. Floyd explained that they would still have needed a variance, but it would have been less of a variance than what is now needed. John Wilson explained how that aspect was not self-created and the fact that they were not denied the permit at their initial application was not self-created.

John Wilson asked the applicant if there would be any way to shorten the decks to require less of a setback. Shawn explained that they tried to design the decks to minimize the variance needed while still allowing common usage and enjoyment of the decks. There was a discussion between the board members and the applicant regarding having the section of deck in the northeast corner that measures 8.8 ft. being reduced to 5.2 ft. Shawn explained that it would be feasible but that they would like to have as much space as possible to enjoy.

A member of the public wished to speak and John Wilson explained that the Public Hearing had already been closed and they would not be able to.

Motion made by Phillip Ilacqua to approve the variance as requested. The board members discussed the motion and possible conditions that could be added. They discussed reducing the section that measures 8.8 ft. from the house being reduced to 5.2 ft.

Motion made by John Wilson to approve the variance requested with the condition that the section that measures 8.8 ft. from the house be reduced to 5.2 ft. Seconded by John Robbins.
Roll Call Vote:

James Smith – Grant

John Robbins – Grant

John Wilson – Grant

Phillip Ilacqua – Grant

Robert Rose – Grant

Motion Carried.

Five minute recess.

Public Hearing

Bournique Property ZB2020-011

The Applicants, Marissa Turnbull Bournique and Neal Bournique, request that the ZBA review the Code Enforcement Officer's interpretation of 165-39. Timothy Buckley, attorney for the applicants, asked to speak to the Board. He disclosed that he has done legal work for two of the board members in the past. The legal work done is not related to the issue at hand tonight. Marissa and Neal presented their request to the board. Marissa explained the history of how she was born and raised in Geneva and they had decided they eventually wanted to purchase lake property and return to the area. She explained that during the purchase process they had confirmed with the third party rental management company that was managing the property for the previous owner that the short-term rental permit was valid and that there was nothing they needed to do at that time. They purchased the property in January of 2020. When they decided to manage the property on their own and use a national company to list and market the property, they provided the permit number of the previous owner and the property was listed under that number. Marissa explained the reasons they decided to move back to Geneva in June and how

they now live less than 4 miles away from the property. She explained that in August, after having problems with renters she contacted Floyd. It was at this point that she realized that the permit was not transferable and was the first time they were notified of the code change. She also commented on how other property owners in the town had been contacted between January and the code change in July and given a chance to comply. They received the denial letter for their application in September. She explained that the home was purchased under the old code, and that they were advised by two professional companies that they did not need to do anything. There was no timeline stated in the previous code for the transfer of the permit to a new owner and they were not notified by the town that they were not in compliance, as others were. She also explained that their property has been a rental for the last 13 years, mostly managed by a third party. She also explained the financial hardships that they have faced and why they financially must rent the property for all 12 months of the year.

John Wilson asked the Board if there were any questions and then opened the floor to the public. Timothy Buckley asked if he could speak after other members of the public, which the Board agreed to.

John Cleere, resident and owner of 4795 Harmony Beach and owner of 4791 Harmony Beach, spoke in support of the Code Enforcement Officer's decision. He spoke about the previous code regarding transfers and the changes that went into effect when the new code was adopted. He also explained that he complained of issues with renters to both the Code Enforcement Officer and the Town Supervisor and it was only after this that the applicants applied for a Short-Term Rental Permit. He explained that since the new code had been adopted, the applicants would have to meet the new code. He provided his comments in writing to the Board. This document is on file in the Town of Geneva Planning Board file PB2020-011.

Pamela Bell of 4783 Harmony Beach also spoke in support of the Code Enforcement Officer's decision. She explained that she is in favor of the new code and that is unfair that the applicants have been renting out the property without a permit.

Tim Buckley addressed the board. He stated that his clients bought the property under the old code, which did not have a timetable for new owners to register with the town. He also explained that any comments of conduct at the rental property should not be a factor in the decision of the board. He talked about how the property has been a short-term rental for the past 13 years, and therefore would not be changing the neighborhood. He explained that the applicants relied on 3rd party rental agencies and went over the previous code again. He also talked about how others in the town, that were not complying with the code, were notified, and given a chance to apply for a permit before the code change. He spoke about how his clients live nearby, specifically relocating here and emphasized the timetable of their purchase, the code change, and their application. Next, he discussed the financial hardships that the applicants would be under if they are not allowed to use the property as a short-term rental. He also mentioned that his clients did not defy the law or rent illegally, until the code change. He ended that if there are future issues with renters, those issues would be handled accordingly under the new code.

John Wilson asked Floyd for his comments. Floyd clarified for the board members that the application is for an interpretation of the code enforcement officer's determination of the existing code, not for a use variance. He explained that, as the applicants had pointed out, the Building Department had been going through listings in the town for short-term rentals. When a listing was found for a property that did not have a current permit, notifications were sent out to the owners that they were in violation and that they needed to come in for information to apply

for a permit. He explained that this process was started before the new code had began to be discussed. He explained that the applicants were not notified because our records showed that the previous owner had gotten a renewal and was still the owner of record. Floyd realized that there was a new owner when there was a complaint regarding renters at the property and he tried to contact the previous owner.

He also explained that the new code was adopted due to concerns about losing the residential nature of the town. Since adopting the new code, other applications have been denied. He also talked about the old code and the requirement for new owners to come in and register with the town. He explained that when the applicants came in at the end of August, he reviewed the new code, which upon adoption all applications must meet, and determined that the application was denied. He spoke to the town attorney regarding the events and it was determined that the applicants could ask the Zoning Board for an interpretation.

He reiterated that the applicant was correct in the fact that there was no timeline under the old code for new owners to register with the town, but once a new code is adopted any application must meet that new code. He also addressed concerns from the public about the applicants still renting out the property and explained that because the applicants have applied for an interpretation, the law requires it to go under a stay and they can continue to rent until the Board has decided on the application.

John Robbins asked Floyd about the initial violation at the property and there was a discussion as to how violations would be handled under the new code. Robert Rose asked if the property was up to code for a short-term rental and Floyd explained that at the last renewal inspection for the previous owner it was. The Board confirmed with Floyd that other properties that have been denied short-term rental permits since the code change and that the applicants do not live at the property. James Smith asked Floyd if notifications would be sent to the applicant or the management company and Floyd explained that notifications were not sent, as our records indicated that the Short-Term Rental Permit owner was the legal owner of the property.

Tim Buckley addressed the board again, stating that the town had been notifying property owners not in compliance with the code. He discussed the fact that the town assessor gets notified of ownership changes and tax records change, and new owners should have received the same notifications as others. He explained that his clients were complying with the old law up until the code change.

John Wilson asked the Board if there were any questions. Phillip Ilacqua confirmed with Floyd that the section of the code requirements that were not met was owner occupied or owner supervised and there was discussion on the definition of these terms.

Motion made by John Wilson to adjourn the Public Hearing and hold it open until the next Zoning Board meeting, scheduled for December 22, 2020. 2nd by John Robbins. All in favor. Motion carried.

Meeting Minutes from October 27, 2020

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

Steve High's Report

Steve shared information on the number of referrals made to the County Planning Board for the year and for the month. He highlighted concerns of solar storage, explaining that many

towns are putting moratoriums into place. He also spoke about mixed-use developments in Farmington.

Other Business Training

Floyd spoke about training requirements and asked the board members about a training from MRB. The Board discussed and would like to hold the training from 4-6 before the next meeting on December 22.

Businesses Throughout the Town

Floyd highlighted the following businesses:

- CCMI is looking to build on State Route 14 N across from Gambee Road. They have outgrown their current location in the city and would be relocating.
- Geneva Crossing – due to funding and Covid issues, the 80-unit apartment building that had been approved has been pushed back to late 2022 or early 2023. The owner may also be returning to the Town Board to modify the PUD to add 30,000 sq. ft. of mini-storage.
- There has been interest in the old Allison's from Ollie's, an outlet center throughout the U.S.
- Floyd has been informed that Missick is looking to sell all of his properties or partner with a developer. There was a discussion about an area of land that had been cleared by a farmer and whether this land could be farmed.
- There was a discussion about a property on Armstrong Road that had been before the Board earlier this year and a potential code change. Floyd explained that the Town Board would be reviewing potential code changes at the beginning of next year.

Motion made by Robert Rose to close the meeting with a 2nd by John Robbins. All in favor. Motion carried at 8:20 pm.