

TOWN OF NEWFANE ZONING BOARD OF APPEALS

2737 MAIN STREET, NEWFANE, NY 14108

December 19, 2023

MEMBERS PRESENT: Acting Chairman Donna Lakes, Members Charles Maynard, Marcy Ferington, Jeremy Irwin, and Tyler Finley.

MEMBERS ABSENT: Colleen Schultz and Philip Baehr

OTHERS PRESENT: Jim Sansone, Town Attorney, David Schmidt, Building Inspector and Connie Kyle, Secretary.

The meeting was called to order at 7:00 p.m.

Acting Chairman, Donna Lakes then welcomed everyone and asked everyone to please be advised this is a public comment period. Your comments should be restricted to the Board and should be limited to three minutes. Slanderous remarks, ridicule or comments meant to defame will not be tolerated. When you wish to speak, we ask that you stand and state your name and address for the record. She also asked that they please silence their phones. Chairman Lakes said we are going to reopen two hearings from last month that were adjourned to allow the applicants to bring in the information that the Board requested. We will start by asking the Board members if they have any further questions pertaining to last month's meeting. Chairman Lakes asked if there were any questions from the audience and there were none.

Acting Chairman Lakes, stated the first case would be Jean Morse and they were asked to bring in the survey showing where the house would be located. All Board members had a copy and were satisfied with what they saw.

JEAN MORSE, residing at 6572 & 6574 Wheeler Road, Lockport (Town of Newfane) NY 14094, has applied for an area variance under the Newfane Zoning Ordinance, upon premises known as 6574 Wheeler Road, Lockport (Town of Newfane) NY in the Town of Newfane, NY, located in an Agricultural Residential District (AR District) to construct a single family ranch style residence upon said premises, which premises only have 33 feet of frontage upon said highway, in violation of the current frontage restrictions set forth in an AR District in said ordinance, which require a minimum of 200 feet frontage.

Chairman Lakes asked if there was anyone in the audience that wished to speak.

Ralph Palmer of 6546 Wheeler Road, Lockport, asked if he might approach and Chairman Lakes said yes. He stated he was really here for edification for long term ramifications. He stated he was hospitalized at the time of the first meeting and have heard that there is 80 acres owned by the Morse's. Is that correct?

Jean Morse, 6572 Wheeler Road, Lockport, said Mr. Palmer was correct. Her son Mark showed Mr. Palmer on the GIS map that there was approximately 30 acres and that there was a separate parcel that butts up against this property that is owned by his father and his brother.

Marcy Ferington asked if the section they were looking at was 33 acres. Mark told her with his parents two acres it was.

Mr. Palmer was questioning the acreage. Jean explained that back in the day, before we purchased the property, there was 80 acres owned by Mr. Silvis. It was my understanding that there were some financial issues with him and his bank. He told us they would not allow him to sell all his property to us. To keep the bank happy, he sold the 33 acres to us and the remainder he had to keep. Mr. Palmer questioned if they owned all the way to Tops and they said yes. But Mr. Silvis still owns a small portion of property next to Tops. Mr. Palmer stated that Morse's property comes right behind his pole barn. I'm not impacted by the construction of this home. Where I'm coming from is this is my property, here is the access road. With the granting of this variance, does this ultimately let them have a thoroughfare to develop this entire property? Mark stated that at the last meeting, we are only allowed up to three homes before it is considered a subdivision. Back in 2012, the town agreed to two houses and a pole barn. The water is there, and the electricity is there. There is no room for anything else there. Mr. Palmer asked for edification from Council. Jim Sansone, Town Attorney, in order for them to prepare a subdivision map, they would have to go through the whole subdivision process. That property is zoned AR – Agricultural Residential. A subdivision would not be allowed there. Chairman Lakes then read the letter from Mike Mills, Water Superintendent, stating that in 2018 the town installed a two-inch water tap and a meter pit at 6574 Wheeler Road, anticipating supplying two houses. The Morse's had the approval for two houses and a pole barn from the Building Inspector. Mark stated he was a hunter and Mr. Palmer said he was also. Mark said they have no intention of disrupting nature. Attorney Sansone said that would have to be rezoned. Mr. Palmer said he had lived in five different states, and he has seen rezoning. Trucks even brought in stone to fill in wetlands. I am going to take these people's word. Attorney Sansone said hopefully you will not see that done in Newfane. We are all concerned about that very thing. Mr. Palmer said thank you, I needed that edification. I hurt myself on the first day of deer season and was unable to attend the first meeting. I appreciate the feedback I got. Thank you.

Chairman Lakes then stated she had received another communication pertaining to this property. She then read the letter from Burf Bowman, 6590 Wheeler Road, and stated that he did speak to this at the last meeting. He couldn't attend this meeting but is against the variance. Chairman Lakes asked Attorney Sansone if he had any comments. After reading the letter, Attorney Sansone stated that the property was split 3 ways. Chairman Lakes stated that it was not the Morse's that split the property. It was the seller. Attorney Sansone said we can't address what happened 11 years ago.

Marcy asked Jean Morse if they went before the Zoning Board 11 years ago and was told no. Chairman Lakes stated it was just approved, and Jean agreed.

Jeremy Irwin asked at what point did they split the two acres off the property and Jean said they were told they had to in order to build her house, so it was done in 2019. Jeremy then asked if that is when the frontage went from 66 feet to 33 feet. The surveyor asked if they just wanted to split the driveway down the middle and Jean said it didn't make a difference, it's all family owned. Jeremy then asked where they put the two inch water tap in. Mark Morse replied that it comes down the left-hand side of the driveway and splits off just outside his mother's property line. The majority of it is on her property and then it splits to a one inch line that goes to the pole barn. Jeremy asked if when they split that, did they put easements in for the other property. The reason I ask is that you say it's family property but that may not always be the case. If for some reason you needed to sell the property, without an easement,

you couldn't go over to that property. Jean stated that financial arrangements have been made that will cover that property for all of their lives and their son's life. Attorney Sansone asked where that water line was and David Schmidt, Building Inspector asked Mark to come up and show them. He showed them the water line is on one side of his parent's home and the power is on the other side. Mark said if it were ever sold, they would need a legal document and Jeremy said that is where an easement comes in. Jeremy suggested they do it now and also for the electricity. Attorney Sansone said the best time to do this is now, while you have all the parties related. Jean questioned what an easement was. Attorney Sansone explained that an easement is a written document, where the person writing the document is giving the other party permission to do something on your property. Your lawyer would have no problem. That easement would be recorded and run with the land for any future owners. It will affect the marketability of this property if you don't have it. If it were sold, they would have trouble with financing without it. It's in your best interest to have it.

Chairman Lakes asked if both properties would need an easement and Attorney Sansone said for practical purposes yes, but tonight we are only talking about this property. Jean asked a question that Attorney Sansone didn't understand. Marcy clarified the question as you would need an easement on the 33' driveway. Attorney Sansone said no, the driveway would be part of the sale. The application needed to be amended to 33'. Marcy then questioned if they were voting on splitting the driveway and Attorney Sansone said that was correct, that was one vote. Chairman Lakes stated that they can only put an easement on the property they own. Attorney Sansone stated that the architect, engineer, surveyor will figure out the exact dimensions of these things.

Chairman Lakes asked if there was anything else that needed to be addressed in Mr. Bowman's letter. Marcy said he brought up about the tax bill and Mark said that was addressed at the last meeting. Chairman Lakes had discussed this with the Assessor and was told taxes were not based on frontage of property but on the building and the property. Jean also sat with the Assessor and discussed that with Mark on speaker phone, so everyone is on the same page.

Attorney Sansone stated that on voting, they will be amending the 66' to 33' on each side of the driveway.

Chairman Lakes asked if there were any questions. She had a question for Mark. She wanted to know if this home is going to be a ranch style and he said yes. So, it's going to be lower in sight than the pole barn to which Mark replied "much lower".

Charles Maynard asked what the foundation would be and Mark said he is between poured and a superior wall which is an interlocking foundation. Charles then said but definitely a basement, to which Mark said yes.

Chairman Lakes then asked if any of the Board members had any further questions. No one did. Then she asked if any of the audience members had any further questions before we poll the Board. Since there are no further questions, I'm going to ask that a motion be made to amend the westerly 33' of the property. Motion made by Jeremy, seconded by Tyler. All in favor – aye. Nobody opposed. The motion is carried.

Chairman Lakes said now I am going to poll the board on a motion to grant the variance subject to a right-of-way, or easement for the water line on the easterly 33' of the property. Motion made by Tyler, seconded by Chuck Maynard.

Marcy Ferington – deny the variance.

Chuck Maynard – grant the variance.

Tyler Finley – grant the variance.

Jeremy Irwin – grant the variance.

Donna Lakes – grant the variance.

Attorney Sansone said that is subject to the easement for the water line on the easterly 33'. Chairman Lakes agreed. Motion carried.

Variance Granted Subject to Easement

KEITH HARPST AND KELLY HARPST residing at 6211 Jacques Road, Lockport (Town of Newfane) NY 14094, have applied for an area variance under the Newfane Zoning Ordinance, upon premises known as 6211 Jacques Road, Lockport (Town of Newfane) NY 14094 to construct a 32' by 30' Pole Barn upon said premises, which will be located in the front yard of premises, in violation of Section 9-1-1.4 of the Ordinance, and also in violation of Section 9-42 of the ordinance requiring open and unobstructed space in a front yard.

Chairman Lakes said again, we are reopening a meeting that we had last month for their application for building a pole barn. Attorney Sansone asked the Chairman to read the notice again, which she did. We received the surveys, and everyone has had a chance to look at them. Mr. & Mrs. Harpst, do you have anything further to add.

Keith Harpst, 6211 Jacques Road, Lockport – I've done everything you asked. I had the property re-surveyed. I know one of the concerns was the fire hydrant, that's free and clear now. I did move that building 15' further east, once I knew what was needed on the property line. That's the only change that was made.

Chairman Lakes said I want to acknowledge that the Water Superintendent and also Volunteer Fireman, Mike Mills, did tell me he looked at it and it was definitely clearing the fire hydrant. You said you moved it to the east, so you did not move it back further. Mr. Harpst said no, just to the east. He stated that it is on the side lot, not in front of the house. Chairman Lakes said it is way closer to the road than your home and he agreed. What are you planning to use this pole barn for. Mr. Harpst stated that he has too many toys and he is retired. There is no reason for you to start a business there, or use it for living quarters. Mr. Harpst said that building is not designed for that. Attorney Sansone told the Chairman that they can put conditions on it. Chairman Lakes also stated that the leach lines on the new survey are not marked. Mr. Harpst said if you look at his house, about 15' in front of his garage is where the leach lines start and go to the east of the property. My septic tank is actually right on my driveway. Chairman Lakes said she was hoping the survey would show the leach lines so she could see the distance between them and the proposed pole barn. He still does not want to cut the tree down.

Jeremy Irwin asked if the leach lines are behind the tree, they are to the north of the tree, correct? You would get to the tree before you get to the leach lines, and he said yes. Jeremy asked about the 10' pad he wants to put down on the back. Jeremy asked how attached he was to the 10' pad and he said very attached. He definitely wants the pad. That's to store anything he can't fit in the pole barn.

Marcy asked what if you put the concrete pad on the south side of the building, you would be able to move the pole barn back a little bit and he said no. The building would interfere with the tree's growth.

Chairman Lakes asked if anyone in the audience had any questions. No one did. Then she asked if anyone on the board had any questions. Tyler Finley asked if the pad would be free and clear or have a lean to added. Mr. Harpst said free and clear, it's to put a trailer on it and my motorcycle.

Jeremy asked if he was still planning on coming off the existing driveway and coming over to it and he said yes.

Chairman Lakes asked the Board to look at the four criteria and see if there is a substantial negative impact from any of those criteria. First one would be an undesirable change, substantiality, environmental impact, not a self-created hardship or alternate mitigation. Anyone have any questions on those criteria?

Jeremy asked if the train trestle is coming down anytime soon? Because you won't even see his pole barn because of the trestle. I can understand if that trestle wasn't there, it would block the view, but he already doesn't have a view down the road. Chairman Lakes asked if any of the board members were interested in putting any conditions on the variance?

Marcy said they need to know that they are voting on 16 and 78' rather than 48' which was the original proposal. I think we need to take that into consideration. Tyler and Jeremy both said that was presented correctly.

Chairman Lakes asked for a motion to poll the board. Chuck Maynard made the motion and Marcy Ferington seconded it. Motion is carried.

Tyler Finley – grant the variance with no conditions.

Jeremy Irwin – grant the variance with no conditions.

Chuck Maynard – I deny the variance.

Marcy Ferington – grant the variance with no conditions.

Donna Lakes – grant the variance with no conditions.

Variance granted.

Chairman Lakes said thank you for coming and I wish you all a very Merry Christmas and happy Holiday season. Enjoy your family. May I have a motion to adjourn. Attorney Sansone said before you do that can I ask a question. Would you guys be willing to get together with me and go through some of the use, area variance and interpretations. It can probably be used as a credit. If you are willing to do that, I will work on it and everyone was in agreement.

Chairman Lakes again asked for a motion to adjourn. Tyler Finley made the motion and Jeremy Irwin seconded it. All were in favor, aye. Opposed – None.

Motion carried.

The meeting was adjourned at 7:47pm.

Respectfully submitted by:

Connie Kyle
Zoning Board Secretary

Date

Approved by Acting Chairman Donna Lakes

Date