

TOWN OF NEWFANE ZONING BOARD OF APPEALS

2737 MAIN STREET, NEWFANE, NY 14108

November 21, 2023

MEMBERS PRESENT: Acting Chairman Donna Lakes, Members Philip Baehr, Marcy Ferington, Colleen Schultz, and Tyler Finley

MEMBERS ABSENT: None

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.

Donna Lakes welcomed the public and thanked everyone for coming. She then said the first order of business was the appointment an Acting Chairman through December 31, 2023. Tyler Finley made a motion that Donna Lakes take that position. Colleen Schultz seconded it. Motion was made and Donna asked, all in favor and everyone said aye. Any objections: none. Donna said motion carried.

Acting Chairman, Donna Lakes then welcomed everyone again and asked first that they please silence their phones. Secondly, 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.

We will follow the agenda as it is.

Acting Chairman Lakes, stated the first case would be Jean Morse.

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 Jean Morse to stand and address the Board. Jean stated she purchased the property in 2012, after working with the realtor and owner. We made it clear we intended to build two homes and a pole barn. The pole barn was built in 2012. One house was built approximately 3 years ago on a parcel of two acres. Currently, we are looking to build the second home. In 2012 Doug Nankey was the Building Inspector that was working with us. He approved us to do this, so we signed the contracts. We were promised that was allowable. Never once did anyone tell us that 66' was not an allowable frontage. It was not brought to our attention, but it was approved on Town letterhead and signed by the Building Inspector. Chairman Lakes asked if the pole barn was built in 2012 and when was the home built: Jean said yes, the pole barn was built in 2012 and the home was built in 2019 or 2020. Chairman Lakes asked if they applied for a building permit for the house at that time and were

given the building permit and the response was yes. At this time Chairman Lakes opened the floor for questions from the Board.

Marcy Ferington stated that 66' was the frontage for the shared driveway going in, so the actual frontage was 33' for each side of the shared driveway. Jean said yes, they had just done that. The surveyor said we could just utilize ½ the driveway for each property. This property will always be family owned, never sold to anyone else. This is the only house to be built on that property because you can only go back so far and there is a huge drop off to the woods. Chairman Lakes asked the total acreage and was told approximately 33 acres.

Tyler Finley asked if the property was bigger when this letter from Doug Nankey was written. He was told no. Tyler stated that it says the property was 70 acres. Jean stated she did not know where that came from. Her son, Mark stood up and said the original owner had 50 or 55 acres. He had monetary issues with the bank so he couldn't sell the entire property. He separated it into 33 acres and approximately five years later, sold the other 15-18 acres to my father and brother. So, our family has the whole property, but at the time it had to be split.

Chairman Lakes stated that when looking at the GIS map only one entrance shows. Where is the other entrance for the property? Mark stated that the property has road frontage down the road and the property belongs to his father and brother and has nothing to do with this. Chairman Lakes then asked the Morse's to take a seat. She entertained questions from the audience.

Stephen Chunco, 6568 Wheeler Road, Lockport stated that they never received notification of the first variance, but they were notified this time. So, it only had 66' to begin with and now they are trying to build a second house and only have 33' for each property. We had to have a second sump pump put in because we have so much water and I'm afraid if they do more digging, what's going to happen. Chairman Lakes asked where he was located to what is already on the property. He said the right of way goes between his house and his neighbors, so that house sits right behind us. We've been in our house for 25 years. The previous assessor said they could only build one house. My concern is now two houses and a pole barn, when is it going to stop. Chairman Lakes asked Jean's son, Mark, where in location to this gentleman's house is the new house going to be. He stated it would be way far back. Mark also said the houses up front are on higher ground, so the water is coming towards the new houses. Mr. Chunco said he had no water problems for 12 years, now he has to have two pumps in the winter, and they have to constantly change them. Chairman Lakes asked who "he" is that gave him that information, and he said the plumbers.

Philip Baehr asked what the plans were for the new house. Jean said she would be staying in her home and the new house was for her son.

Burf Bowman, 6590 Wheeler Road, Lockport – When I look out my back windows, all I can see is the pole barn. The new house will be south of the pole barn, but I will still see it. Like this gentleman said, we didn't get any notice that the 66' was for a right of way for a subdivision. That was shot down after the town changed the lot size. The previous owner wasn't going to have another survey done. Are the two properties separated now, the 72 & 74? The answer was yes. So that property was already divided once, how many times can they divide a property for it to be classified a subdivision? Chairman Lakes said 3.

So, each of these properties could be split again? Chairman Lakes reminded him that Jean stated she did a pole barn, a house, and now another house. She is done. Jean said that was 100% correct. Mr. Bowman then asked if the pole barn was going with the newest house and was told yes. Jean stated she split a 2 acre parcel off and the rest of the land will go with the pole barn and new house. We do not know where the house will set, we were told we had to wait until the variance was approved. Chairman Lakes invited the neighbors to see the drawings. Burf Bowman and Stephen Chunco came to the front. Chairman Lakes said for transparency purposes I need you to speak up for the audience to hear.

Mark Morse stated the house would be as close to the pole barn as possible. Chairman Lakes understood that the water department put in extra large pipes in preparation. The water department told them it was too far back for sewer, and they would need septic, which they did. The electricity was already set up for two houses and a pole barn also. Chairman Lakes had verified that with Mike Mills, Water Superintendent.

Marcy Ferington stated it looked like the property had already been split. Chairman Lakes said yes, but with a shared driveway. Jean had spoken to several homeowners who gave her letters of support.

Jim Sansone suggested that the board get a legal survey done, which is always required to build a house. The board will need this survey in order to make an informed decision. We probably need to adjourn this until we get that. We need to look at the benefits to the applicant as opposed to the detriment of the neighborhood, and the town specifically. Whether it can be achieved by some method other than an area variance, whether it has an adverse effect on the environmental conditions, whether fire equipment can get in there. We need to reschedule this until David gets more information. Chairman Lakes asked the attorney whether to adjourn or reserve decision. Jim Sansone said it would be better to adjourn because you want to look at that survey. You can't make a decision without knowing the facts. Chairman Lakes said she strongly suggested the people interested should come back on rescheduled day. Tyler Finley made a motion to adjourn, and Colleen Schultz seconded it. All were in favor, motion was carried.

ADJOURNED

Elaine Crane, Mark Morse' significant other had a question. This will be our house. This letter from Doug Nankey, isn't this some binding legal document because it's on letterhead? Time is of the essence. Jim stated they would have to have applied for a building permit at which time the Building Inspector would have gotten into all of these things we've talked about. Every situation is on a case-by-case basis.

Jean asked how long this 200' has this ordinance been a rule and was told quite a while. Jean then said if you go down Wheeler Road, how many of these homes fit that. It's not very many.

Jim Sansone told them to locate that proposed house on the survey with the dimensions and bring it back to us.

Elaine then asked with the holiday coming up, is there any reason it would be postponed longer than usual? She was told that if they get the paperwork in, we will get it on the agenda for our next meeting. It must be before the 5-day published notice time frame and that notices have to be sent out to neighbors.

Chairman Lakes then stated that board member, Colleen Schultz needed to recuse herself from the next case for personal reasons.

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.

Keith Harpst, 6211 Jacques Road, Lockport – When I met with David and Mike, I had questions about the setbacks. I had no knowledge of the required setbacks. I measured myself, it's 43 feet. If required, I could meet that 60-foot setback, but I prefer not to. The reason we chose this side of the house is because our leach lines are on the other side of the property. If I put the pole barn on that side, I would have to move the leach lines or I would have to go to the far corner of my property, but then I would have to put in a 200-foot driveway. Chairman Lakes asked if the driveway would be separate. Mr. Harpst said it would connect with their u-shaped driveway. My reasonings were the septic. Chairman Lakes opened the floor to questions from the board.

Philip Baehr asked if the stakes put on the property were the probable site of the building. Mr. Harpst responded with yes, I needed something to measure it by. I would actually like to back that up by 10-15 feet, to which Philip said you have to be careful about sideline setbacks.

Chairman Lakes asked if they knew approximately how far from the pole barn to the leach lines. Mr. Harpst said if he put it where it's staked out, approximately 35-40 feet. Chairman Lakes asked if they had any objection with getting a survey with the location, working with the Building Inspector to get all the setbacks and side backs? She also mentioned the fact that there is a fire hydrant in the yard. She spoke with the Water Superintendent, who is also a fireman and he said they need 15-20 feet behind the hydrant. Mr. Harpst said it would have that easily. He also said if the Board needed the survey, he would get it. Chairman Lakes said it sounds like it is something you really want to do and you want to be in compliance, to which he stated yes I do.

Chairman Lakes then asked if there were any more questions from the board. Marcy Ferington asked if they were open to moving it back to which he said he would, but that would mean taking down a tree which is very expensive.

Chairman Lakes said she entertained a motion to adjourn, basically the same as the last case, to allow you time to work with the Building Inspector and get a survey back to the board. Mr. Harpst asked how long does it take to get a survey done? Jim Sansone suggested calling different surveyors to see what their timeline would be. Mr. Harpst asked when our next meeting was and was told every third Tuesday. He was told we would get back to you as quickly as possible once we get the paperwork. Philip Baehr made a motion to adjourn. Colleen Schultz seconded it. Chairman Lakes asked all in favor and everyone said aye.

ADJOURNED

ROBERT HARTSHORN, residing at 4535 Van Dusen Road, Lockport, NY 14094, has applied for an area variance under the Newfane Zoning Ordinance, upon premises owned by applicant located on Chestnut Road in the Town of Newfane, in an Agricultural-Residential District (A-R District), to build a single family residence on premises having a lot width of 150 feet, in violation of Section 5-3-5 of said Ordinance which requires a minimum lot width of 200 feet.

Robert Hartshorn – This property does not have an address. The closest mailbox is 5610. What questions do you have for me? This is going to be a single-family home with a setback of 140' off the road. The northeast corner of the house will be 40' off the property line. We are working on a design for approximately 1100 square feet with an attached garage. It will be closer to the east property line than the west. Chairman Lakes asked if he spoke with the Building Inspector. Mr. Hartshorn said he did, and Chairman Lakes asked if any of those proposed distances were in violation. The reason I asked is that you stated in your questionnaire that you wanted to keep your house in line with other homes on the street. There are only 3 houses, and they are really close to the road. Mr. Hartshorn said that after speaking with the Building Inspector, this came about in preparation for the perk test. They asked me to stake it out, so they knew where to do the perk test. I had to wait for the corn to be harvested. I called the Building Inspector to see how close to the road I could be. He said there was no setback requirement, which changed what I put in the application. After conversing with National Grid, they give you 150'. I knew I didn't want to go any further than that so I wouldn't have to pay additional utility costs. That's why I went with 140' because that 150' depends on where they put the utility pole. The property is like a Tetris piece, it goes back 500', then doubles, goes back 1000' and doubles again. I would adjust from 140' if necessary.

Marcy Ferington asked where 140' was measured from and was told it was measured from the edge of the blacktop. The stand-alone lot is where the house will be built.

Philip Baehr asked if he owned the corn field in the back and he was told yes, and back into the woods another 200'. Then Philip asked if he rented the corn field and was told yes. He also asked if there was another access to the corn field besides where your house is being built. Mr. Hartshorn said there is not. The corn field stops once the house is built. I have no problem with the farmer using that as access to the farm. He currently farms 11 acres of my property. I will be letting him know that we are building so that front parcel, approximately 1 acre will no longer be able to be farmed. The farmer will have 10-10 ½ acres to farm. He said coming off the neighbor's property there is a significant drop off so coming through my property is the easiest access.

Philip Baehr then stated that his concern was that his property would be land locked. Mr. Hartshorn assured him that the property is all his so he can go through to the back. Philip then said if down the road he sold it, he would need an easement. Mr. Hartshorn said he understood that.

Chairman Lakes then asked if there were any further questions. There were none so she asked for a motion to poll the board. Philip Baehr made the motion and Tyler Finley seconded it.

Philip Baehr – grant the variance
Marcy Ferington – grant the variance
Colleen Schultz – grant the variance

Tyler Finley – grant the variance
Donna Lakes – grant the variance

VARIANCE GRANTED

Chairman Lakes said I believe that concludes our business meeting for tonight. Thank you all for coming. Marcy Ferington made a motion to adjourn, and Tyler Finley seconded it. All were in favor, motion granted.

The meeting was adjourned at 8:05pm.

Respectfully submitted by:

Connie Kyle
Connie Kyle
Zoning Board Secretary

12-8-23
Date

Donna M. Lakes
Approved by Acting Chairman Donna Lakes

12-8-2023
Date