

**TOWN OF ARIETTA  
ZONING BOARD OF APPEALS  
Old Piseco Road  
Piseco, NY 12139**

Public Hearing Dated:  
Monday March 25, 2019 - 6:00 P.M.  
Piseco Community Hall

Minutes - Town of Arietta Zoning Board of Appeals was called to order by Chairman Frank Sczerzenie at 6:05 PM.

**Members present:** Frank Sczerzenie, Chairman Barry Baker Kevin Dorr Doug Stobo Secretary Marie Buanno Zoning Officer Mel LaScola **Absent:** Bill Hotaling

**Others present:** Bob & Michele Mikus, Doug Phelps, Bill Dorr, Christel Dorr, Victoria Orr, Sarah Rudes, Judy Hilton, Diane Holiat

Chairman Sczerzenie went over regulations for a quorum vote and the criteria by which the ZBA makes its determination on variances.

**Case #1902** –Bob & Michele Mikus wish to tear down their camp at 857 Old Piseco Road, add to the foundation and rebuild closer to the lake which is not in compliance with Section #11.010 A (3) “Shoreline setback and cutting. In no case shall any increase or expansion of any building or structure, or any shoreline cutting, increase non-conformance, in any direction including height, with the minimum setbacks from shorelines and shoreline cutting restrictions without obtaining an area variance. Expansion of an existing non-conforming structure not meeting the shoreline setback requirements of 100 feet must also comply with the following standards: (a) Expansion of structure cannot increase the present setback non-conformance. (b) Expansion does not increase the height of the existing structure. (c) Setback will be no less than 25 feet from sideline and finished structure will not exceed 50% of lot width. (d) There must be enough area to upgrade and accommodate septic system expansion as may be required by the NYS Department of Health.

At the variance hearing of February 11, 2019, Bob & Michele Mikus’ application had been denied. They came back with plans to “downsize” and move the project to the west. They also did away with the roadside addition presented at the last hearing to allow for the septic system. They felt the ZBA had said (at the last hearing) that this would be acceptable. Barry Baker noted that Zoning Officer Mel LaScola had told them that the building cannot be larger than 50% of the lot width. The lot is 72 feet wide, therefore, the building can only be 36 feet and they are asking for 40 feet. They said that it is the only variance they are looking for. Barry felt they are actually asking for several variances. When you remove a building and replace it you must adhere to the regulations. Michele Mikus said that is why they are in front of the ZBA, because they are doing something other than what the codes book says. Barry continued with the fact that they are expanding in multiple directions (width and height). By doing this they are expanding the level of non-conformity. Barry also noted that plans should have been submitted to tell where the placement of the building, septic and well are right now so the ZBA has something to compare the project plans to. This way the Zoning Officer can tell if you have exceeded the dimensions or not. Chairman Sczerzenie read into record a comment from absent ZBA member Bill Hotaling who agreed that the Mikus house cannot exceed 50% of the lot width.

No one was present to speak for or against the project. The return receipts of neighbors notified within 500 feet of this project were on hand. The members of the ZBA had no other comments.

Chairman Sczerzenie asked the ZBA members to vote on criteria required in the variance process.

(1) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. All 4 voted No – Baker, Dorr, Stobo and Sczerzenie.

(2) Whether an undesirable change in the character of the neighborhood will be produced or a detriment to nearby properties will be created by the granting of the area variance. All 4 voted No – Baker, Dorr, Stobo, and Sczerzenie.

(3) Whether the requested variance is substantial. All 4 voted Yes – Baker, Dorr, Stobo, and Sczerzenie.

\*\*The Mikus' did not understand that they would need a variance to do anything to this property. They do not feel the project is substantial.

(4) Whether the proposed variance will have an adverse impact on the physical or environmental conditions in the neighborhood. All 4 voted No – Baker, Dorr, Stobo, and Sczerzenie.

(5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the ZBA, but shall not necessarily preclude the granting of the area variance. All 4 voted Yes – Baker, Dorr, Stobo and Sczerzenie.

The vote whether to approve the variance: 3 voted No – Baker, Dorr, and Sczerzenie. 1 voted Yes – Stobo. The variance was denied.

It was suggested by ZBA member Barry Baker that this case be left open so the Mikus' could come back with a smaller project plan at the April 8<sup>th</sup> ZBA meeting. All were in agreement.

Michele Mikus noted she was going to find out more about variances and told the ZBA members that what they did tonight was not legal.

Attachments: Chairman Sczerzenies agenda. Mikus denial letter from Zoning Officer  
Mikus two hand drawn plans. Mikus APA JIF  
Mikus computer outline.

**Case #1903** – Lorilyn Cooley and Douglas Phelps wish to demolish the current house and construct a larger four season house on their property at 130 Higgins Bay Road which is not in compliance with Section 11.010 Nonconforming Uses, Structures, & Property. A. Any lawful non-conforming use, structure, or property existing on the effective date of this ordinance or any amendments thereto may be continued, subject to the following requirements: (1) Enlargement, alterations and/or repairs of buildings and structures. (a) Buildings and structures which contain a non-conforming use shall not be enlarged or extended unless the use therein is changed to a conforming use. A Structure containing a non-conforming use may be repaired, maintained, or converted, provided that no such activity shall create new non-conformity or increase the degree of existing non-conformity. This shall not be construed to permit any unsafe use, or to affect any lawful regulation or prohibition of an unsafe use. (b) A structure containing a permitted use, but which does not conform to the requirements regarding height, width of lot, size of lot, setback and/or any other lot or yard requirement for the district in which it is located, may be enlarged or altered provided that any additions are constructed within the applicable setback and yard requirements. (c) Buildings and structures which do not comply with the minimum setbacks specified in these regulations shall not be permitted to expand their non-conformity in any direction, including height, without the issuance of a variance by the Zoning Board of Appeals. (d) Any non-conforming building or structure or portion thereof declared unsafe by proper authority may be restored to a safe condition. Nothing in these regulations shall prevent maintenance, or the strengthening or restoring to a safe condition. Also, Section #11.010 A (3) "Shoreline setback and cutting. In no case shall any increase or expansion of any building or structure, or any shoreline cutting, increase non-conformance, in any direction including height, with the minimum setbacks from shorelines and shoreline cutting restrictions without obtaining an area variance. Expansion of an existing non-conforming structure not meeting the shoreline setback requirements of 100 feet must also comply with the following standards: (a) Expansion of structure cannot increase the present setback non-conformance. (b) Expansion does not increase the height of the existing structure. (c) Setback will

be no less than 25 feet from sideline and finished structure will not exceed 50% of lot width. (d) There must be enough area to upgrade and accommodate septic system expansion as may be required by the NYS Department of Health. Setback from the Road – A building shall be at a minimum be set back 75 feet from near edge of the pavement of a state highway and 50 feet from near edge of the pavement of a public highway other than a state highway, provided that no building shall be within a public highway right of way.

Doug Phelps cited the reason the application was denied was specifically the setbacks from the road and from his neighbor. He wants to make the currently dilapidated house into a four season house. He would like to build it larger plus have a garage. Everything is further than the 100 ft. mean high water mark and will have a new well and septic system. He does not know what the actual footage is from the road due to the high snow banks. It is not their intent to go closer to the road. Doug Stobo noted the current house appears to be 25 feet from the road and the new proposal appears to be approximately 15 feet from the road. Doug Phelps said that is just due to sloppy drawing. The new building will be angled so it will be no closer to the road. The plan is for approximately 2,040 square feet with three bedrooms, not including the finished basement. There were two sets of plans submitted. One had an attached garage, one did not. The proposed plans that are correct are the ones with the garage attached.

The return receipts of neighbors notified within 500 feet of this project were on hand.

A letter was read and entered as record with these minutes from Neil Woodruff of 126 Higgins Bay Road who was not in favor of the building being so large. He also noted his concern about access to the new garage via the easement through the Woodruff driveway. Doug Phelps took this to mean Mr. Woodruff had concern about increased traffic through there and his answer is no, there will not be increased traffic. In fact, the garage will be on the other side of the property and have its own access from the road.

Several neighbors spoke in favor of the project. Bill Dorr feels it will enhance the neighborhood. He can see it from his house. Christel Dorr said there are many large houses in that particular neighborhood and does not see what the concern is with this house also being large. She feels it will blend in. Diane Holiat does not see the concern with it being two stories in height. The existing building is already a two story building.

Doug Phelps stated the height of the building from the foundation to the chimney will be 38 feet.

No other members of the public requested a chance to speak. The members of the ZBA had no other comments.

Chairman Sczerzenie asked the ZBA members to vote on criteria required in the variance process.

(1) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. 3 voted No – Baker, Dorr, Stobo. 1 voted Yes – Sczerzenie.

(2) Whether an undesirable change in the character of the neighborhood will be produced or a detriment to nearby properties will be created by the granting of the area variance. All 4 voted No – Baker, Dorr, Stobo, and Sczerzenie.

(3) Whether the requested variance is substantial. All 4 voted Yes – Baker, Dorr, Stobo, and Sczerzenie.

(4) Whether the proposed variance will have an adverse impact on the physical or environmental conditions in the neighborhood. All 4 voted No – Baker, Dorr, Stobo, and Sczerzenie.

(5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the ZBA, but shall not necessarily preclude the granting of the area variance. All 4 voted Yes – Baker, Dorr, Stobo and Sczerzenie.

The vote whether to approve the variance: 2 voted No – Stobo and Sczerzenie. 2 voted Yes – Baker and Dorr with the stipulation from Kevin Dorr that they adhere to the road setback and build no closer to the road. Barry Baker seconded that stipulation and added that they adhere to Article 11 A. (8) (c) An as-built survey by a

licensed professional of all on-site improvements shall be required by the Land Use Officer to verify existing conditions prior to any replacement of a non-conforming structure. The variance was denied. Case closed at 7:09 PM.

Attachments: Cooley/Phelps denial letter from Zoning Officer

Cooley/Phelps Letter from Neil Woodruff in opposition of the variance request.

Cooley/Phelps 4 page project maps

Cooley/Phelps APA JIF

Respectfully Submitted

Marie C. Buanno