



**TOWN OF WILLSBORO**  
ZONING BOARD OF APPEALS

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**TOWN OF WILLSBORO**  
**ZONING BOARD OF APPEALS REGULAR BOARD MEETING**  
**TUESDAY, AUGUST 18<sup>TH</sup>, 2015 – 7:00PM AT THE WILLSBORO TOWN HALL**

IN ATTENDANCE: Robert Bruno, Carol deMello, Barbara Paye, Pete Sowizdrzal

ABSENT: Jason Morgan

PUBLIC: Patrick Leary, Laura Smith, Edward Smith, Jason Jaquish, Lanny Bruno, Phillip Kennedy

CALL TO ORDER: Vice Chairwoman deMello called the meeting to order at 7:05pm.

MINUTES:

The following corrections were made to the minutes of the July 21<sup>st</sup>, 2015 meeting minutes:

Discussion/Corrections: Leary Variance Update – 50 foot setback versus 50 yard setback.

Ms. deMello noted that in the second sentence under the first paragraph of the Leary update should state 24 x 24.

Ms. Paye noted that the last statement above the moment should state simply variance, not re-hearing.

**Ms. deMello motioned to approve and Ms. Paye seconded. Aye – 3, Bruno – Abstained due to excused absence.**

PUBLIC HEARING

*Application #2493 - Jaquish Variance – After the fact variance for garage in the front yard*

Mr. Bruno asked if the board could brief him on the case. Mr. Sowizdrzal explained what the applicant was seeking variance from within the ordinance and what was requested of the applicant. Ms. Paye noted that the board discussed “required rear yard” thoroughly. Ms. deMello noted that the board asked the applicant what he wanted considered rear and side yard as his lot is on a corner. Ms. deMello asked the applicant to confirm again his rear yard designation. The board discussed the dimensions of the lot and the placement of the garage being 10 feet from the lot lines. Ms. deMello noted that Woodlawn is considered the front yard and that she feels the applicant also needs a front yard.

Required rear yard means a conforming yard. Mr. Rock noted that since the applicant’s building envelope is only 24 feet he has a non-conforming situation. He noted that the ZBA has the ability to interpret the ordinance and correct him when he is incorrect. Ms. Paye asked how many feet

away from the road the truck would be if parked in front of the garage. Ms. Paye asked if there is a concern with impediment upon Woodlawn Lane traffic. Mr. Jaquish stated that he does not feel that it would negatively affect traffic. Mr. Rock noted that Beth Schiller informed him that she is not aggrieved by the project at all, but that she wanted to know what it was about. Mr. Sowizdrzal asked what wording would be used for the variance itself. Mr. Rock noted that he thinks that it is the section within the ordinance discussing required rear yard area. Mr. Bruno asked how many feet the applicant had from the garage to the road. Mr. Jaquish confirmed the distance and referred to the application materials. Mr. Bruno asked what the variance request actually is for this case. Ms. deMello explained the required rear yard based upon the lot being a corner lot. Mr. Rock noted that he actually missed the section of required rear yard (50 foot from the road) initially. He noted that because of the size of the lot and its location he does not have a conforming rear yard. Ms. deMello noted that the front yard setback is less than the required setback and should also be part of the variance.

The board discussed the new ordinance.

**Public hearing opened.**

Mr. Phillip Kennedy noted that Mr. Jaquish's request is clear, but the wording of the ordinance is cloudy and that perhaps before the next corner lot case comes up. Mr. Bruno noted that that is why he made the comment about the Zoning Ordinance updates. Mr. Kennedy noted that if a variance like this is issued, the applicant sells and things backfire, it falls back on the board. Mr. Bruno noted that it is not that easy to make changes to the Zoning Ordinance. He noted that it is not that it can't be done, just that there is a lengthy process. Ms. Paye noted that when there is an issue that is cloudy, that is where the board is asked to make an interpretation. Mr. Kennedy asked if a garage existed before the ordinance on a corner lot if it were grandfathered. Ms. Paye confirmed. Ms. deMello noted that if the structure was torn down it may have to go for a variance. Ms. deMello reiterated that the ZBA is here to look at cases and interpret those sections that are unclear.

**Public hearing closed.**

*Application # 2517 – Patrick Leary – 382 Bay Lane 20.20-1-43.000 – RL-1 – Variance from side yard and shoreline setback requirements*

Mr. Bruno asked why this ended up being a public hearing for this case. Ms. deMello noted that there was a difference of opinion as to whether the applicant needed a variance or not. Ms. Paye noted that Mr. Rock sent the applicant back to the ZBA because he felt that there were a number of significant changes. She noted that because of those changes the board noted that they were unsure as to whether the case would have been approved at the December meeting had the changes been presented then. Ms. Paye noted that her understanding was that the applicant would be coming before the board with a completed approved plan and completed application. Ms. Paye noted that the applicant is seeking variance from the front yard versus the rear yard. Mr. Bruno noted that he does not feel that the applicant is ready. Mr. Leary noted that the plan is remaining the same as what was originally proposed, but that a deck was being added. Mr. Bruno noted that

if anything is within that 50 feet the applicant can tear down a structure and build it down, but that they can't make certain changes to it based upon the APA requirements. The board referred to the Park Agency's regulations, section

Mr. Bruno noted that the applicant is not going to want to infringe on the 50 foot requirement and that the deck would. Mr. Bruno confirmed that the applicant would only be going up 1 foot in height. Ms. Paye noted that why the board brought the applicant gone back had the ZBA known about the changes initially. She noted that the board had requested the high water mark and complete plans. Ms. Paye noted that it was a very emotional meeting and noted that the board was concerned. Ms. deMello noted that they can keep the public hearing until next month. Mr. Leary asked if there is anything else other than the 1 foot that is an issue. He asked if he would need a variance if he reduced the wall height.

Mr. Bruno noted that he is sure that he realized that it is a slap in the face to the ZBA that the plans changed significantly beyond what was presented and granted. Mr. Leary noted that he did not intend to change things beyond what was granted, that he did not think that he would need a variance if he built exactly within the footprint.

Ms. deMello referred to her notes regarding the case (see attached). She noted that the question last month was based upon the footprint not meeting the standards. Ms. deMello noted that regardless the applicant will need a variance for front yard setback. The board discussed the APA's 50 foot setback. Mr. Bruno noted that based on APA's standards he does not need a variance because he is grandfathered. He noted that the APA's regulations would overrule anything that the ZBA decides anyway. Ms. Paye asked about the variance that was previously granted. Ms. deMello noted that the previous variance is not in front of the board again. The board noted that the facts that the variance was based upon originally are completely different. Ms. deMello asked what the applicant is actually seeking relief from. Ms. Paye noted that she is just saying that she feels that the original plan needs to be re-approved. Mr. Rock noted that he can't issue a permit to rebuild within the 50 foot setback. Ms. deMello noted that she has had two 50 foot setback variances for rebuilds.

Discussion ensued amongst the board members. Ms. deMello noted that if the board does not feel that they have adequate information they can table the public hearing. Ms. deMello noted that the board needs to know what they have for a request. Ms. Paye noted that the original approval is based on facts that are not true, therefore requiring the side yard setback to be re-reviewed and the front yard setback to be reviewed for approval.

Further discussion ensued. Mr. Bruno noted that if the entire wants to do this application right and clean that they put it all in one (re-review of the side yard setback and review of the front yard setback).

Mr. Rock noted that the variance that Mr. Leary was granted was for an addition to match the existing structure and that did not happen, which would therefore require a new variance for what he is doing now.

The board confirmed that the applicant would need to seek relief from Section 3.64 (RL-1) and 3.61 for side (40 feet) and front yard (50 feet) setbacks. Ms. deMello asked if the footings and slab will be removed. Mr. Leary noted that he had planned to rebuild a porch or deck. The board discussed the deck placement. Mr. Leary reiterated that he doesn't need the deck. Mr. Bruno suggested that the board review the APA regulations.

The board asked the applicant to clarify what he is actually doing with the project.

*The following was composed based upon the facts provided: The applicant seeks to reconstruct the building with encroachment on the side (by 15 feet) and front yard setbacks.*

Mr. Leary noted that he wants to get exterior construction completed before winter. The board noted that the height of the building is acceptable, but that it needs to be noted in the plans. Mr. Bruno noted that the front porch is a grey area, but that the board can't tell the applicant to go one way or another. The board noted that the applicant has to decide what he wants to apply for regardless of whether it's in the 50 foot setback or not. The board discussed the height of the original building, noting that it would behoove them to have both the old and the new height dimensions.

Discussion took place regarding lake view and neighboring property owners.

Mr. Bruno noted that the board needs document the before and after elevation dimensions for the APA. Mr. Leary noted that he was not purposefully trying to pull a fast one on the Town. Mr. Rock presented the updated elevation. Mr. Bruno suggested that Mr. Leary put down all of the facts both old and new.

Ms. Smith offered a point of order. She noted that as far as the APA rules the existing would have to be what's in the original footprint of the house, not the addition. The board discussed whether the APA would need to re-review the variance for the addition. The board noted that the height needs to be identified and as to whether the applicant will be doing a deck or not. The board asked the applicant to approach the table to review the plans that have been submitted. Further discussion ensued regarding the deck.

The board asked Ms. Blanchard to seek clarification on the shoreline regulations of the Park Agency. The board discussed the requirements of the town and the Park Agency. Based on the applicant's request the board removed the deck. The board referred to the additions made to the application based upon the discussion and facts presented. (See attached)

The board reviewed the Area Variance application questions with the applicant based upon the new changes.

**Public hearing opened.**

Ms. Laura Smith would like Mr. Rock to establish the original roof height and new roof height. Mr. Leary noted that he will have his engineer determine those measurements. Ms. Smith noted that the original screen porch, on the shore side, was about 6 or 7 feet wide. She noted further

that there is nothing on the plans as to where the septic would be located. Mr. Leary noted that it was submitted with the original variance application. Ms. Smith noted that the new house is proposed to be 4 bedrooms. She also asked about drainage and a storm-water runoff plan. Mr. Leary noted that a DEC representative reviewed it and that it was approved. Ms. Smith noted that originally they had no issues, but that the whole project had been completely changed after having been approved for something different. Mr. Smith noted that he is concerned that the project is a moving target, that this has been a problem in the past. Ms. deMello noted when the ZBA grants a variance, the code officer has some leeway with regard to slight dimensional changes within the parameters of the variance. Mr. Rock noted that he will need complete plans which will need to be approved prior to the start of construction. Mr. Bruno noted that the applicant needs to go with what is being presented to the board. He noted that he would highly suggest that the applicant stay within the parameters of the shoreline regulations with regard to height.

Ms. Smith asked that the silt fence be “correctly installed” at the shoreline.

**Public hearing closed.**

OLD BUSINESS

*Application #2493 - Jaquish Variance – After the fact variance for garage in the front yard*

**Area Variance Criteria Review:**

1. *How could the benefit not be achieved by any other feasible means?*

The board noted that because of the lot size and shape it could not be achieved by any other means.

2. *How will it not produce an undesirable change in the neighborhood?*

The board referred to the applicant’s answer: It will allow the yard to be cleaned up and permit indoor work to take place. It was also noted that the garage is not out of character with the neighborhood.

3. *Is the request substantial?*

Ms. deMello referred to the 15% lot size requirement and noted that the applicant is under the requirements. She noted that the front yard setback of 40 feet could never be achieved making it a substantial request.

Ms. Paye noted that in her opinion the request was more visually substantial based upon the size of the house and lot, but not substantial based upon measurement.

Mr. Bruno noted that the front yard variance request is substantial as it should require due consideration before it is granted. He also noted that considering the circumstances the applicant really does not have another option. Mr. Bruno noted that the intention of the board is to find a way to grant a minimum variance which is difficult in this case because of the circumstances. He noted that the structure is basically constructed. Ms. Paye noted that she feels that it is important that it was noted that the structure was constructed. She noted that it was an understandable oversight.

2 – Substantial

2 – Not substantial

4. *Adverse physical or environmental effects?*

Mr. Sowizdrzal noted that the applicant is installing proper drainage for stormwater runoff. Ms. Paye noted that she asked about commercial enterprise previously and the applicant stated that it is not for a business. She noted that based upon that she does not see any other physical or environmental effects.

5. *How is this hardship not self-created?*

Ms. deMello noted that the lot was created before the ordinance when into effect, as well as the construction of the house. She also noted that the lot was created prior to the placement of Woodlawn Lane. Ms. Paye noted that the lot became a corner lot, that it was not diminished in size.

**Ms. deMello motioned to grant the variance for relief from Section 6.52 relieving the “required” rear yard dimensional shortfall (coming from the lot being narrower than is usual), Section 6.42 which defines corner lot front yards, and Section 3.50 RM-2 District which defines the front yard setback. Mr. Sowizdrzal seconded. All voted in favor and the motion carried.**

Discussion during motion: The board discussed the clarity of case for future boards. Ms. deMello noted that the board could add to the motion that because Section 6.52 says that the accessory structure must be placed in the required rear yard and that because of the lot being on a corner the case doesn't quite meet the requirements. The board noted that the case is really a unique one because of its size and the fact that it is on a corner lot.

*Application # 2517 – Patrick Leary – 382 Bay Lane 20.20-1-43.000 – RL-1 – Variance from side yard and shoreline setback requirements*

1. *How could the benefit not be achieved by any other feasible means?*

He desires to re-build a structure that was torn down due to rot being found. Mr. Rock noted that it is not the contractor's place to decide to tear down a building, that that is a job for the Code Enforcement Officer for permit issuance. Re-building and using the existing addition are the only feasible means to replace the structure.

2. *How will it not produce an undesirable change in the neighborhood?*

Mr. Leary stated that he does not feel that it will be a significant change to the neighborhood. He noted that there are 3 or 4 houses nearby that are bigger.

The board agreed that there are similar houses in the area to what the applicant is trying to accomplish and that it will approve the conditions.

3. *Is the request substantial?*

Side Yard: At the NW corner, the requested variance of 15' of the required 40' is substantial at 37%. The difference on the NE corner is only 3' of 40'--not substantial. Because of the odd shape of the lot where the lake frontage is somewhat out of proportion to the neighboring properties because of the curve of the bay, an allowance can be considered taking into account that had the lot been more rectangular in shape, their side yard setback would have been 25' which they would meet with their design. That is, their requested setback (25') is consistent with other properties of the same width in the area.

Front Yard: The board deemed the front yard variance request not-substantial at 4.5' of 50'. Neighboring properties are even closer to the lake.

4. *Adverse physical or environmental effects?*

The board determined that it would not as a new septic is being installed, runoff will be controlled, and district water supply will be applied for by the applicant.

5. *How is this hardship not self-created?*

The board referred to the applicant's answer that it was self-created. They noted that the building was torn down without the Zoning Officer having any input.

**Ms. deMello motioned to grant the variance to encroach on the side yard by 15 feet on the NW corner, as well as approve a front yard variance of 4.5 feet.** Ms. Paye noted that she would personally prefer that the height be conditioned. Mr. Sowizdrzal noted that it should also be indicated that the applicant has been advised to stay within the parameters of the APA shoreline regulations (no more than the 4.5 feet impediment of the existing footprint), that it is a teardown and rebuild in accordance with the previously existing footprint.

Mr. Leary asked if the ZBA could condition the height based upon the APA's requirement of no more than 2 feet. Discussion took place regarding the 2 feet.

**The board conditioned that the re-build cannot be any higher than what the addition currently is right now, believed to be at this date below the APA's 2 foot requirement, and no more than 20 inches above the formerly existing structure.**

Ms. Paye asked the applicant if the height of the building is within the 1.5 feet from the original height. Mr. Leary stated that he is not 100% sure. Mr. Bruno noted that he wants to make sure that the board complies with the standards of the APA.

**Ms. Paye seconded. All voted in favor and the motion carried.**

NEW BUSINESS

*Application # 2521 – Lanny Bruno – 52 Frisbie Road – 21.9-4-25.000 – RM-M – Variance from accessory structure location requirements - Section 6.52*

The board reviewed the application material submitted.

Discussion: Mr. Bruno noted that the garage will be placed in the side yard. He noted that he does not want to place the garden in the rear yard as he would like to plant his vegetable garden in that location. The applicant noted that he would like to make a 24'x 40' garage. Mr. Bruno discussed the culvert pipe issues near his property. He noted that his property floods every spring because of there not being collars on the pipes. The board recommended that the applicant consult with the Town regarding the culvert pipes. The board noted that they have everything that is needed for the application.

**Ms. Paye motioned to move the case to public hearing. Ms. deMello seconded. All voted in favor and the motion carried.**

CONCERNS & INFORMATION:

*Zoning Ordinance Update –*

The board discussed the edits and the current status of the ordinance.

Discussion ensued regarding front yard designation.

The meeting adjourned at 10:50pm.

Respectfully Submitted,

Ashley Ryan Blanchard  
ZBA Secretary