

A regular meeting of the Town/Village of Lima Zoning Board of Appeals was held on Monday, December 20, 2021 at 7:00 PM at the Lima Town Hall 7329 E Main Street, New York 14485

PRESENT: Chairman John Bailey, Vice Chairman Jim Van Dick, Members Dennis Neenan, Duane Fuller, Andy Mathews, Duane Thompson, Steve Werner, and Alternate Member Cindy DePuy

ABSENT: None

OTHERS: Code Enforcement Officer Charlie Floeser, Supervisor Mike Falk, and Secretary Sharon M. Knight, MMC/RMC

VISITOR: Applicant Mike Schunk, Maureen Fenat, Tom Downall, Robin Schunk, Mark Schuck, John and Sarah Sokolofsky, and Planning Board Member Wayne Childs

Chairman Bailey called the meeting to order at 7:02 P.M. and led everyone in the Pledge of Allegiance. Chairman Baily request everyone participate in a moment of silence for the passing of Town Board Member Bruce Mayer.

Chairman Bailey request Secretary Knight read the following legal notice that was published in *The Sentinel* on November 3, 2021.

LEGAL NOTICE

VARIANCE APPLICATION

NOTICE OF MEETING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Code of the Town of Lima, that the Zoning Board of Appeals of the Town of Lima will hold a meeting and public hearing at the Town Hall, located at 7329 East Main Street, Lima, New York at 7:00 p.m. on Monday, December 20, 2021, for the purpose of hearing a request for an area variance. The variance application has been received from Michael Schunk. The request for relief relates to an area variance that would permit applicant to reconstruct a single-family residence larger than was originally present on a property that is a pre-existing non-conforming lot and does not meet the minimum 2.50 acre size as required in the Agricultural District as per section 250-13 A. of the Town of Lima Zoning Code. The subject property is 0.799 acres in area and is located at 1560 York Street, Lima, New York, also being designated as Tax Identifier Map Parcel No.: 37.-1-4.

All persons interested in said matter will be heard at said public hearing.

Dated: November 3, 2021

By Order of the Zoning Board of Appeals of the Town of Lima

Chairman Bailey stated the neighbors were notified by mail and the required posting at the property was posted.

Applicant Mike Schunk addressed the Board sharing information on his application including but not limited to the following:

The property was divided in the early 1900's.

He was surprised to learn he would need to apply for a variance.

Zoning laws were adopted in 1966.

There is no additional land available to purchase to increase the size of the lot.

He is requesting to add corners to the back side of the house.

Each corner would be 12 x 12 additions.

He had Engineers recommend approval of saving the rest of the house.

He is increasing the square footage in some areas and reducing in other areas.

There is a new roof.

The shed would be moved to another location on the property and a two-car garage would be added in the future.

The property is larger than other lots within the Village.

A lot of work has been done by himself and his son.

The front south corner is the only place the home is closer than the required ten-foot setback. The property line goes away from the house as the property goes back.

The backside of the house will be a full basement to be used for a furnace and other utilities such as water.

Another corner in the basement will need to be fixed.

Chairman Bailey asked Code Enforcement Officer Floeser what the side set back is for this property, and he replied to the side set back is twenty feet as the property is located within an Agricultural Zoning District. In the Residential Zoning District, the side set back is ten feet.

Chairman Bailey asked the Board if they had any questions and their topics of discussion follows:

Will the tress be a concern in the future, and will they be taken down?

A part of the home was removed due to collapsing. The slab was not removed.

The Board should not approve making the property lines less conforming than they were.

The property is an undersized lot.

CEO Floeser stated he requested the Applicant stop taking down the home to allow for the Board to be able to identify where the original house was located.

The difference in a concrete slab and the foundation was discussed.

The footprint is still there.

There is only an eighteen-inch slab giving access to the well. It will need to be increased. The well has not been used in at least ten years.

The location of the old septic tanks was discussed and it will not be used in the future.

Improvements to the driveway were completed.

This is a non-conforming area as it is an undersized lot with a building that does not meet setbacks.

The Historical Preservation Commission provided the Developer with a 1900 photo of the property, and it was shared.

The property was purchased in the Spring of this year.

Do you know the capacity of the well and are you going to use it in the future?

Closing on the property required a test of the hand dug well water, and it passed.

The drilled well has not been uncapped but will be evaluated prior to any improvements on the home. An additional crawl space will be used for access.

The new owner stated he cleaned out the old basement and it has a dirt floor.

The property owner provided a Structure Report dated December 2nd that identified several issues that he has agreed to address.

Chairman Bailey asked that the Secretary read the email sent to CEO Floeser dated December 20, 2021, from the Lima Planning Board Chairman, as follows:

“Charlie, this application was never referred to the Planning Board for comment, so I can only give my own opinion relative to the owner’s plans. I believe that at a minimum the owner should be able to rebuild to the extent of the existing additions that were taken down. At a maximum, I believe that the owner should be allowed to add to the remaining structure to the extent that he does not violate the setback regulations in the agricultural zone. Well and septic separation should also meet the Department of Health regulations. George Gotcsik, Chairman Village/Town Joint Planning Board.”

Chairman Bailey stated the Board is required to complete a Short Environmental Assessment Form.

Visitor Wayne Childs, Member of the Village/Town Joint Planning Board reiterated that the email was an opinion of the Chairman and not a Board opinion and his opinion is different.

Chairman Bailey read the Liv. Cty. Planning Board’s Zoning Referral Form for the record.

Chairman Bailey along with the entire Board answered the questions on the SEQR form and determined, based on the information and analysis above, and any supporting documentation that the proposed action will not result in any significant adverse environmental impacts.

RESOLUTION – AUTHORIZE ZBA CHAIRMAN TO SIGN THE SEQR TAKING LEAD AGENCY FOR THE PURPOSE OF SEQR REVIEW

On motion of Member Dennis Neenan, second by Member Steve Werner the following resolution was ADOPTED AYES 7 NAYS 0

RESOLVE to authorize ZBA Chairman to sign the SEQR taking lead agency.

Vote of the Board: Members Dennis Neenan - Aye, Duane Thompson - Aye, Andy Mathews - Aye, Duane Fuller - Aye, Steve Werner - Aye, and Vice Chairman Jim Van Dick - Aye, and Chairman John Bailey - Aye.

Chairman Bailey reviewed, with the Board, the completed Agricultural Data Statement by the Applicant, Michael Schunk, signed December 6, 2021. Additional names of the property within the Agricultural District located within five hundred feet of the boundary of the property will be added to include those properties that were identified and sent a Notice of Meeting and Public Hearing.

Chairman Bailey requested Secretary Knight read the following Lima Historic Preservation Commission recommendations as follows:

Lima Historic Preservation Commission 1560 York Street The Historic Preservation Commission (HPC) members Fran Gotcsik, Robin Hargrave, and Don Brown met by Zoom on December 6, 2021, to review the Appeal to the Zoning Board for an Area Variance submitted by Michael Schunk. HPC member Fran Gotcsik also spoke with Mr. Schunk when she visited the site on December 2, 2021. Mr. Schunk is requesting an area variance in order to undertake additions to the original structure on the south, north, and west elevations. As the project is located within 500 feet of two National Register listed properties, the c. 1800 Leech-Parker House and the c. 1800 Leech-Lloyd house, advisory consultation with the HPC is required prior to issuance of a permit. These two structures are some of the oldest and relatively unaltered buildings in the town. BACKGROUND The applicant stated that the house was "built in 1853 as part of the farm" and that in 1900 the house and lot were separated from the farm. Mr. Schunk did not know which farm. The massing, shallow roof pitch, and method of construction of the house are consistent with the Greek Revival style which was very popular in Lima in the mid-1850s. Because the building has undergone extensive renovations, any original exterior design features have been removed. HPC RECOMMENDATIONS The HPC recommends that any rehabilitation be visually compatible with and respectful of not only the simple lines of the important historic buildings to the east but also the surrounding rural environment. The HPC recommends use of the following: • Clapboard siding throughout all elevations, either wood or hardy plank • Corner boards to define the edges of each elevation • Installation of double hung windows on the ground floor of the existing structure, symmetrically placed directly below the second floor windows The HPC advises against the use of manufactured stone applied to the front of the existing structure from the foundation to the windowsills. While this treatment is not included in the plans provided by Mr. Schunk, during the site visit he indicated this was his intention. While it is a popular design element at present, this wall treatment is associated with 1900-era Craftsman style structures, not ones from the mid-1800s. 2 The submitted plans show manufactured stone knee walls for a new north entry. The HPC recommends either full porch posts or using natural instead of manufactured stone because of its greater durability.

Chairman Bailey asked for any comments and neighbor John Sokolofsky provided a map for clarification of existing home and planned construction.

The following written comments were provided to the Secretary. Some of the information was not read as they were already discussed prior to reading but it was requested they become a part of the public hearing:

Section 2: Property information: false hoods

- Part 5: the lot size is only 0.79 acres stated on the Survey map by Barry J. Carestio

- Part 8:
 - when comparing the survey map and the architectural design. Mr. Schunk does NOT plan to stay within the existing footprint. the section of the house of the south side of the existing structure was only nine' off the main part of the house and the purposed drawn to be is 12'. Pushing the south wall of the house 3' closer to the property line changing the property line set back from 12'-10" to 9'-10"
 - This would go against two portions of our town code.
 - **the non-conforming use and structures section 250-75 part J** "*...no building shall be altered, added to or reconstructed to extend farther into an already deficient yard space or to reduce an already deficient amount of land area per dwelling.*" , and
 - **250-13 Agriculture zoned area, setback, and heights restrictions part D:** *Side setbacks. "There shall be two side setbacks, each having a width of not less than 20 feet.*
 - The east to west: the pre-existing structure was only 37' 7" the purposed house is drawn to be 38' PLUS an addition 12' deck extending farther into yard space
 - The north deck is also drawn to add an addition 8' farther into already deficient yard space

Section 3: Area Variance Question: False Hoods

- Part 3. this would be a substantial footprint square footage increase of the structure on an already deficient yard space.
 - In comparison to the lot size and square footage of the original home this is a substantial increase to the build and a substantial decrease to the non-conforming lot size.
- Part 4. This variance would have environmental impact because Mr. Schunk plans to move the septic system closer the existing well. Has a full engineered design and soil testing been submitted and reviewed by the county health department?
 - Our minimum lot size of 2.5 acres is designed around the fact that the lot needs to supply drinking water from an onsite well and a septic system to handle the human waste and make sure there is plenty of separation between those two systems so that the well water does get contaminated by the septic run off. The village has sewer and public water negating the lot size health requirements
- Part 5. This is a self-created issue:
 - Code 250-100 part E Self-created hardship: *...The Board of Appeals may find that the applicant suffers from a self-created hardship in the event that the Board finds that... iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.*
 - Mr. Schunk was well aware of this non-conforming zoning restriction before purchasing the property. The previous owner, myself, and Charlie Floeser told Mr. Schunk, I know this because during the meeting I had with him and the previous own standing on the property, Mr. Schunk says "I know I can only rebuild inside the preexisting footprint."

Although it's nice to have the area cleaned up, please stick to the Code as written, please hold him to zoning regulations and not let him build outside of the existing code.

There was further discussion on the requirement of acreage required for septic and water.

The detailed map does not show the septic and water which may become obstacles in the future. They will be required on the Engineered on a map.

Visitor Wayne Childs stated he works for General Code and is speaking as a private citizen and is on the Town/Village Planning Board. He lives at 7625 East Main Street. We have codes to protect the quality-of-life and safety. Zoning needs to consider unintended consequences as they happen. This is a clear cut self-created issue, the Code was known, the person purchased it and now we are trying to get around the Code. The Code should be used for persons that experience bad situations not those that create them.

The owner could redesign the improvements that could avoid the need for a variance. If the Board does not find in favor of the applicant, then the applicant would have a lower return on investment. That is a part of the hardship. We do not have an Engineering drawing that shows where the septic should go. This is a health/safety issue.

Mr. Childs share a personal situation regarding unintended consequences with a septic system.

Visitor Tom Downall addressed the Board in favor of the variance. He has hoped the neighbors will work together not against each other. He shared his ideas of the applicant taking down a house that was falling apart and rebuilding thus increase the tax assessment. He is just filling in the corners. The laws should make sense.

Sarah Sokolofsky shared her experience with the prior owner's not able to use the well and septic. She shared her concerns of the property getting flipped to a new owner that will have the same types of issues as the previous owner. She is interested in having the structure sound.

Comments continued as follows:

There are two drawings showing septic, where will it be located?

The County would be approving were the septic and it's location prior to getting approval to build even with a variance.

Although the County may approve, there could be issues in the future that are not solvable because the property is landlocked. An example of what could go wrong was given.

There are wetlands behind the property.

We need all the facts for septic and water.

There was discussion on why the pumps were not working.

Prior to getting a Certificate of Occupancy the wells would need to be working. It was suggested that the property owner could be investing a large amount of money building the home then later find out the septic is a costly issue.

Granting the variance would be setting a presentence, the laws with minimum acres were made for a reason. In the future, you would need to defend why you would not grant future variance.

Chairman Bailey closed the public discussion and reviewed with the Board the Variance Criteria. The questions were asked and answered.

Trying to improve the neighborhood

It could be configured differently and not encroach further to the property line. The deck is a huge infringement and the back corners are a small infringement.

Is the variance substantial?

It is now 1397 square foot; the Engineering drawings is 1586 square feet. The difference is an additional 189 square feet of enclosed space. The deck and the porch are not included in these numbers.

Adverse actions, no.

Self-created hardship, yes.

Chairman Bailey stated the intention of the zoning ordinance is to protect the health safety and welfare of the community. The property owner should have come before this board sooner.

Chairman Bailey asked for any comments from the Board, and they follow:

Is the foundation or the wall the footprint?

There is a discrepancy in the square footage.

Garage is being converted to living space.

Building a foundation off the back or on the side where the porch is located was discussed.

Increasing the square footage requires the variance.

The deck is considered permanent with required footers.

What could the owner do to decrease the square footage request?

This is a challenge and he appreciate the frankness.

Changing the footprint on the south side of the house.

Adding a garage would not be considered in this variance.

The deck does not have a roof.

RESOLUTION - GRANT A VARIANCE

On motion of Member Werner, second by Member Thompson, the following resolution was ADOPTED AYES 7 NAYS 0

RESOLVE to grant an area variance with the following conditions:

1. Applicant will not decrease already non-conforming setback on South Side and front of building.
2. It is okay to fill in the back corners of existing building as in new design drawings.

3. Address all issues brought up in the structural assessment report.
4. All State & Local Building codes to be followed.
5. Do not demolish any more existing house structure, except to address the two safety measures included in the Structural Assessment Report dated the 2nd of December.
6. Strongly urge applicant to give serious consideration to the Historic Preservation Commission's recommendations.
7. This variance does not include separate out buildings.
8. Reduce deck size to 12 x 16 and new entrance to 8 x 12 on North side
9. Prior to any further construction work on the house applicant must get approval of Livingston County for new septic system and well placement location and construction.
10. Keep within the footprint provided by Meehan Architecture drawing, dated October 5, 2021.

Vote of the Board: Members Dennis Neenan - Aye, Duane Thompson - Aye, Andy Mathews - Aye, Duane Fuller - Aye, Steve Werner - Aye, and Vice Chairman Jim Van Dick - Aye, and Chairman John Bailey - Aye.

DISCUSSION – ORGANIZATION ITEMS

The following organizational items were shared:

1. Minutes are prepared and provided to Board Members for consideration of approving within one week. Board Members agreed to respond with any suggestions for deletions/additions/corrections for the Secretary's consideration. Minutes will be placed on the Town of Lima website within two weeks of the meeting. Then, considered for adoption at the next regular meeting.
2. Agenda items with supporting documents are provided to the Secretary three weeks prior to the meeting. Town provided emails will be used to send an agenda, any legal notices, and supporting document two weeks prior to the meeting, except Andy Mathews he will be sent my mail by the Town Clerk. Items to be considered for Board action will be posted on the web site 48 hours prior to the meeting.
3. Vouchers are signed at each meeting for stipend to be paid by the Town of Lima.
4. An excel spreadsheet will be developed to keep track of the four hours of required annual training. All training certificates will be provided to the Secretary.

Names and phone numbers will be added to the website. If Members are having trouble accessing their emails, please let Secretary Knight know if you need assistance. There was discussion on the email addresses and passwords.

Determining eligibility of the alternate will be determined at the beginning of the meeting.

There was discussion on what constitutes an "Official Meeting."

DISCUSSION – FAMILY DOLLAR REQUEST FOR A POLE SIGN

At the next meeting, there will be consideration for a variance for a pole sign for Family Dollar. Currently you are not allowed to list the individual businesses on a pylon sign out at the street frontage of the building, only one sign for the name of the building. Also, the Village is looking into amending their sign code. They are using the Town of Mt. Morris as a sample. Supervisor Falk is in attendance acting as a liaison for the Town Board. Recommendations from the Livingston County Planning Board are sought, and the Town Planning Board may provide recommendation. Supervisor Falk will provide a sample that the County developed regarding sign regulations.

DISCUSSION – COMPOSITION OF THE ZONING BOARD OF APPEALS

There was discussion of the composition of the current Village appointment of Zoning Board Members and their terms run with their fiscal year. The Village appointed the following three members: Duane Fuller, Steve Werner, Jim Van Dick and one Alternate Cindy De Puy.

The Town Supervisor appoints the Chairman. Chairman Bailey's term is expiring December 31, 2021, and he no longer would like to serve as the Chairman. He stated that it has been a pleasure working with all of you. He has served for seven years on the Zoning Board of Appeals and thirty years on the Planning Board. Member Neenan thanked Chairman Bailey for his leadership for a job well done. Cindy De Puy currently serves as an alternate member. An appointment will take place at the Town Board's organization meeting.

RESOLUTION – LEGAL NOTICE FOR 2022 PLANNING BOARD MEETINGS

On motion of Member Neenan, second by Member Bailey the following resolution was
ADOPTED AYES 7 NAYS 0

RESOLVE for Secretary Knight to publish in the Sentential and on the Town of Lima Website the following legal notice:

Lima Legal Notice

All regular meetings of the Lima Zoning Board of Appeals throughout the year 2022 will be held at 7:00 P.M. on the following days (generally, the third Monday of each month) in the Lima Town Hall located at 7329 E Main St, Lima, New York

1/17, 2/21, 3/21, 4/18, 5/16, 6/20, 7/18, 8/15, 9/19, 10/17, 11/21 and 12/19

Dated: December 20, 2021

Publish: January 6, 2021

Sharon M. Knight, MMC/RMC

Town of Lima Planning and Zoning Board of Appeals Secretary

Vote of the Board: Members Dennis Neenan - Aye, Duane Thompson - Aye, Andy Mathews - Aye, Duane Fuller - Aye, Steve Werner - Aye, and Vice Chairman Jim Van Dick - Aye, and Chairman John Bailey - Aye

**RESOLUTION REQUEST FOR CEO IDENTIFY AND PROVIDE THE PORTIONS OF
THE CODE TO BE CONSIDERED FOR ZBA BOARD CONSIDERATION**

On motion of Member Fuller, second by Van Dick the following resolution was
ADOPTED AYES 7 NAYS 0

RESOLVE to request CEO Floeser identify and provide the portions of the Code to be
considered for ZBA Board considerations.

**Vote of the Board: Members Dennis Neenan - Aye, Duane Thompson - Aye, Andy
Mathews - Aye, Duane Fuller - Aye, Steve Werner - Aye, and Vice Chairman Jim Van Dick
- Aye, and Chairman John Bailey - Aye**

The meeting was adjourned by motion of Member Thompson and seconded by Member Werner
at 10:30 P.M.

Respectfully submitted by:

Sharon M. Knight, MMC/RMC, Secretary