

**ZONING BOARD OF APPEALS
TOWN OF CANADICE**

Canadice Town Hall

March 9, 2022

Present: Linda Moorhouse, Chairperson
Diane Horning
Stephanie Seeley, Alternate Board Member
Steve Smith, CEO

Guest: Kris Singer
Kristy Wright
Jonathan R. Tantillo, Esq.

Chairperson, Linda Moorhouse called the meeting to order at 7:30 p.m.

L. Moorhouse - All these photos you sent me, we don't have a photo other than this one from your living room window of the barn. These other ones are all before pictures?

K. Wright - Yes.

K. Singer - I think I have one on my phone.

S. Smith - I have before pictures also. Different ones than you have there.

L. Moorhouse - This one is of the barn?

K. Singer - Yes, that's it.

L. Moorhouse - This is Mr. Castronova's house, correct?

K. Singer - That's his house on the lake side, yes.

S. Smith - I have one here before the construction started. I will pass it around.

K. Singer - He put it in the front yard, the whole front yard. He moved the tree out.

K. Wright - He removed the and then he built that up.

L. Moorhouse - Towards the road, not towards the lake?

K. Wright - Correct.

L. Moorhouse - Ok. Do you know how high this was here? It looks like it was built up.

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S. Smith - It's level with the road, right there. It's access to the road, right there. It's Pickeral Point.

L. Moorhouse - But, this is going up higher?

S. Smith - Yes. There is a parking area.

K. Singer - Actually, right here, it slopes way down to the house. It drops off, which is why it got built up.

S. Smith - It does slope. That's why he built the rock in the back and brought in fill, to keep the building level.

L. Moorhouse - To keep the building level with?

S. Smith - The road front.

L. Moorhouse - The road frontage?

S. Smith - Yes.

K. Singer - The lower level isn't the problem. The second story is the problem.

L. Moorhouse - It looks to me like it is quite high there from the back of the house.

S. Seeley - He had to build it up to keep it level.

K. Singer - Yes, level from the road is not an issue. It's the second story height that's the problem.

L. Moorhouse - This picture floored me. I thought wow!

K. Singer - That's from her living room window.

L. Moorhouse - The permit that Mr. Castronova applied for, he put on that permit that he wanted two story?

S. Smith - Yes.

K. Singer - Why does it say 24 by 22 by 10?

S. Smith - Right here is what he gave me for the application.

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L. Moorhouse - So, this whole thing is 20ft. tall?

S. Smith - It's 22ft.

K. Singer - Then you've got the 16ft. trusses and everything else. It's higher than that. But, the problem is it is built up from the ground down below.

L. Moorhouse - Exactly.

S. Smith - Which is still under 35ft.

K. Singer - If you measure it from the lower ground, the original ground without it being built up, the road is, I mean it slopes up to the road anyways.

S. Smith - I measured from the peak of the building down to the ground where it is, even past the stone, it is still under 35ft., after the build up.

L. Moorhouse - How long ago did you buy this house?

K. Wright - I have been there a year and a month.

K. Singer - And bought it from him.

L. Moorhouse - Exactly, and it seems to me that I remember that one of the attributes in that ad was the view of Honeoye Lake.

K. Wright - Yes, lake view.

K. Singer - If he wants to cover the whole lot, we don't care. Cover it all you want, although it technically probably exceeds it. His square footage is coming over onto her side of the road, it actually counts the roadway. His lot actually counts the road width.

J. Tantillo - The public right of way is being counted as his square footage?

K. Singer - The square footage of his lot, because that is where the property lines are. The coverage isn't disagreeable with us. If he doesn't want any lawn to cut, that is his issue.

L. Moorhouse - One of the things also, I took issue with is according to our laws, view is definitely important.

K. Singer - The other question I had was on the square footage. When it says gross square

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footage, say if you were building a house. The gross square footage, is that all the floors?

L. Moorhouse - I would think so.

K. Singer - Because, the law says gross square footage.

J. Tantillo - Actually, I sited another portion of the code in my letter. The code section on home occupations, I think the term that was used is gross floor area and it says home occupation shall not be more than 25% of the gross floor area of the residential building. So, if the interpretation was that the floor area only means the bottom floor, it would be possible to have the home occupation the size of the entire building. It's in the regulation.

S. Smith - This is a barn, not a residence.

J. Tantillo - That's just another example of the code and the use of the term.

K. Singer - The term of the gross square footage.

J. Tantillo - The question on that, does the second floor count as the gross floor area? If it did, then he would need a site plan review.

S. Smith - In residential, yes. In a single family home, yes it does matter.

J. Tantillo - I don't see any distinction of the code with the definition of gross floor area being a residential versus non residential. I guess that would be the basis of our appeal here.

S. Smith - You would have to show me where...

L. Moorhouse - It's right here. We've got two sections.

D. Horning - 120-21 and 120-22.

L. Moorhouse - Specifically, the impact on lake views from adjacent buildings and properties.

D. Horning - The design and placement of proposed structures shall minimize the impact on views from neighboring properties. In this district careful attention shall be made to minimizing the impact on lake views from adjacent buildings and properties. The setback from the lake for new or expanded buildings shall comply or be similar to the setback of adjoining properties in order to lessen intrusion on the view of the lake from these adjacent properties.

K. Singer - 120-21 (C) (6) 800 gross square footage. Which is what our question was, how do you

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interpret the gross square footage?

D. Horning - I don't know. I have never gotten involved in that.

L. Moorhouse - Well, it would seem to me...

D. Horning - It's also a percentage of what is on the lot.

K. Singer - That could potentially be an issue. That's not the most important issue as far as our issue. His property is lake access, but neither one of our properties are lake access. So, I'm not sure of that. That's establishing lake access.

D. Horning - I would think that anyone without lake access should have the right to a view of the lake.

L. Moorhouse - Exactly, that would be my interpretation. To me, the only other thing is the square footage. Also, the distance of the building from the private road is not 20ft., is it?

S. Smith - Yes.

L. Moorhouse - Not West Lake Rd., the private road.

S. Smith - It's more than 20ft. to the private road. I measured it.

L. Moorhouse - Ok.

S. Smith - The sides are fine.

L. Moorhouse - They are 10ft.?

S. Smith - Yes.

There was discussion of the property lines.

L. Moorhouse - Putting that fill in to make it level, how deep was the parking area? He put this barn partially in his yard.

K. Singer - It's all in his yard. The parking area that was there still exists. It starts at the edge of what was the parking area.

L. Moorhouse - Ok, so he put fill in to level it up to the parking area. Are there windows in the

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front of this barn towards the lake?

K. Singer - Yes, there are.

L. Moorhouse - Got it!

D. Horning - He has it high enough so it is overlooking his house.

K. Singer - Oh, it's way over his house.

L. Moorhouse - So, he has a lake view?

K. Wright - Yes, he has a separate entrance to get up to the second floor.

L. Moorhouse - Ok, Steve, this is a barn? He did not say anything about an apartment up there, or a rec room? There is two floors?

S. Smith - There is.

S. Seeley - Do you have the actual application for his variance?

S. Smith - He didn't have to get a variance.

S. Seeley - His actual application to get the building permit.

S. Smith - Yes, I have his application right here. What do you need to know? 22 by 24 by 10.

L. Moorhouse - What happened to the second story?

K. Singer - He gave a picture of it, but that is not what is on the application.

J. Tantillo - So, it was listed as a height of 10? I apologize for leaving that out of my letter.

S. Smith - After I gave him the permit, I didn't realize that he was actually going...

L. Moorhouse - Two stories.

K. Singer - Did he give you the diagram of the gambrel roof after you gave him the permit?

S. Smith - I got the truss plan later. I got the truss plan after I went down to do the area coverage. I think he gave it to me then. I gave him the permit and I didn't realize the 10ft.

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J. Tantillo - I'm currently working on the Conesus Inn. They got a permit and built something totally different.

D. Horning - That is the ugliest thing I have ever seen.

S. Smith - I know some of the history of that over there.

L. Moorhouse - Ok, I guess under the circumstances, this information that we not only found ourselves and you folks brought to us, it seems to me that this building was put up wrong. I shouldn't say wrong.

K. Singer - In violation of the codes.

S. Seeley - In violation of the permit he was given.

L. Moorhouse - By not giving all the information to our Code Enforcement Officer either time, when he got the permit from you and when you went back there.

S. Seeley - Do you have any recourse with him?

S. Smith - Not at the moment, I don't. Until I get the determination from the board. When I have your determination, I might have.

S. Seeley - So, you can tell him that he needs to take that second story off?

S. Smith - If you decide that he needs to take that second story off, then I can tell him that he needs to take that second story off.

L. Moorhouse made a motion that the construction was in violation of the town code and the recommendation of this board is that Mr. Castronova should take the gambrel roof off and change it to a single story, to adhere to what he put down on the building permit application.

D. Horning seconded the motion, all in favor.

S. Smith - If he wants to put in a 3-10 pitch?

K. Singer - You don't want a flat roof.

S. Smith - Is he allowed to put a 3-10 pitched roof on there?

L. Moorhouse - Yes.

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S. Smith - So, if he reapplies for his permit with the right dimensions, he would go with a 3-10 and that would probably be about even with his cottage.

K. Singer - Those are 10ft. side walls he put on there as opposed to 8ft. side walls. At least she will be able to see over it. She might see the peak a little but she won't be looking at the back side of a barn.

J. Tantillo - It might also be helpful for specific appeals going forward, the one about needing site plan reviews for the square footage. If he were to resubmit an application.

K. Singer - If he takes that second story down, he won't need one.

J. Tantillo - What I am concerned about, is if he resubmits an application and tries to get his height back. In that case, I think he would need a site plan review.

S. Smith - I think you would consider that's over 800 square feet, usable floor area.

J. Tantillo - Yes, floor area determines the code and my letter spells that out as to why it should include second floors.

L. Moorhouse - I feel very strongly to the fact that it references the view. This has been a major problem.

J. Tantillo - I think you have a section under the code for violating permit under that section of the code.

S. Smith - I only need one violation and he put in a false application.

K. Singer - But, if he tries to go for a variance and goes to site plan to do it...

J. Tantillo - He doesn't need to do either of those things. If he just puts in an application for this height building, the view protection section would be enough to say no, even with a vaulted roof, you could say it is not in compliance there.

K. Singer - He is going to be given an order to remedy and if he opposes, he could try to come before the Planning Board and the ZBA to get a variance. If those are denied he can file an Article 78. Ultimately to change that roof, if he wins by saying he was given the permit to put it up. The Towns Errors and Omissions Insurance would basically end up having to pay for that second floor to be taken off.

S. Smith - Ok, Kris if he just comes in after the Order of Remedy and takes that top gambrel roof

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off.

K. Singer - If he takes that gambrel roof off and puts a pitched roof on, we're done. If he wants to try to keep that, then it is a whole different ball game.

S. Smith - I realize that. If he tries to keep this, he would have to come back before the Zoning Board, not the Planning Board.

J. Tantillo - I guess if he appeals the Order of Remedy, then yes.

S. Smith - I will send him an Order of Remedy that he built, not to his application.

The decision of the Zoning Board of Appeals was that Mr. Castronova will receive an Order of Remedy to remove the gambrel roof and replace it with a 3-10 pitch roof.

L. Moorhouse made a motion to table the variance application for Gabriel & Alysia Costanzo until the April 13th Zoning Board Meeting, seconded by D. Horning, all in favor.

OLD BUSINESS

L. Moorhouse made a motion to accept the minutes from the December 8, 2021 Public Hearing, seconded by D. Horning, all in favor.

D. Horning made a motion to adjourn, seconded by L. Moorhouse, all in favor.

The meeting adjourned at 7:50 p.m.

Respectfully,

Stephanie Seeley, Secretary

