

October 24, 2019

Application #Z2019-06

The legal and administrative history of successfully granting Variances in NY the primary case for granting a variance is that the zoning regulations pose a unnecessary hardship to the Applicant.

This Board must assure that if this Variance is granted and the neighborhood or interested parties pursue an Article 78 of the decision that to prevail the decision in court the Board must endeavor to prove; 1) whether the decision was not "arbitrary and capricious" or 2) was supported by "substantial evidence".

Below are my comments that preclude the Board from considering or Granting of Application #Z2019-06

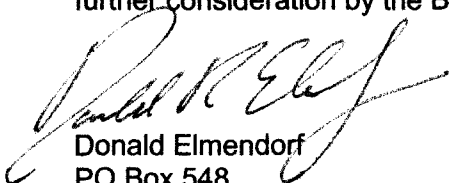
- This applicant cannot demonstrate that construction of this building of this size and magnitude is a need which the zoning regulations prevent. Thus, the Applicant cannot demonstrate and provide substantial evidence of a Hardship for granting this Variance Request.
- This Applicant cannot substantively demonstrate or provide substantial evidence that the requested use **variance**, if granted, will not alter the essential character of the neighborhood. In fact this structure of this size, magnitude and volume would significantly alter the Character of the Neighborhood – which is small homes and camps that have existed for nearly 100 years as we see them today.
- In as much as this structure would substantively alter the essential character of the neighborhood, this triggers a positive declaration for an EIS as required per SEQR prior to consideration of the Applicant's request.
- The Granting of the requested use variance is not **hardship**, but is a **self-created condition**. As such the granting of the requested variance is not justified and should not be considered.
- The Applicant has an opportunity to reduce the size of the building. The building size is a **self-created hardship, not a hardship caused by the regulations**. In turn, no Zoning Variance is justified.
- The Applicant has an opportunity to move the building to another part of the parcel. **This is a self-created hardship, not a hardship caused by the regulations**. In turn, no Zoning Variance is justified.
- The Applicant cannot demonstrate that the physical surrounding, shape and topographical conditions of the property presents a particular hardship to the applicant, not a mere inconvenience. Again, Zoning Variances cannot be granted on the basis if **mere inconvenience** or a **self-created condition** – which this Applicant's request is.
- The Applicant proposing to construct a garage of this magnitude is out of character to the neighborhood and community thus is not a **need** of the Applicant. The Applicant has not clearly identified a hardship reason requiring construction of this proposed large garage.
- This request for Variance will substantially change the character of the neighborhood. Again, the present and historical character is forest community small seasonal and scattered permanent homes. None of which have large commercial sized garages or structures. In turn, no Zoning Variance is justified as this is a self-created condition and presents a significant potential, as defined in State Laws and SEQR, to permanently change the character and environment of this neighborhood.

- The Applicant has not clearly identified a need or hardship for construction of this proposed large garage. The zoning and State Environmental Codes and Laws do not allow segmentation or staging of a project with one initial character proposal with hidden agenda or self-promoting future intent for a different use or the conduct of commercial businesses. The Board and Town would have to secure a guarantee from the Applicant that the future intent of this structure will not be morphed or segmented into a commercial operation or housing a business not permitted by Zoning.
- NYS SEQR laws do not allow Applicants of a proposed action to segment a project or construction of buildings or facilities in such a manner that it circumvents SEQR, Zoning and building codes related occupation and use regulations as defined in those codes. In summary construction of this structure of this size and magnitude gives the appearance that the ultimate intended use is more than indoor parking for personal vehicles and appurtenant recreational equipment. Such a large structure which is just a skeleton structure for future modification or use transformation violates the intent of Zoning and Environmental Laws and Codes. The Town and Boards will have to secure a substantive guarantee from the Applicant accepting that no commercial uses or occupancies are ever to be acceptable for occupation of this structure, and determine at the time of granting a Variance, if granted, that the Applicant will at the applicant's cost and time restore the use to that defined in the Zoning Regulations or Variance.
- The Applicant must demonstrate beyond a reasonable doubt that the conditions upon which the petition for variance relates would be applicable generally to other property within the same zoning district. This Applicant cannot demonstrate that any other location within this Town or nearby communities a this proposal of this magnitude has been or would be granted.
- This Board must consider that a Variance cannot be granted which can be challenged in court if the proposal is detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located. This proposal would detrimental to the neighborhood and would be out of character with structures and activates in the neighborhood.
- The proposal has the potential to interfere with the common driveway that has been in place for nearly 100 years and shared with the property owners on West Lake. This would be injurious to those properties and use of those properties. That fact alone precludes consideration or granting of the Applicant's Variance.

In a more subjective matter the Board that must be consider the Character, Historical Actions and Good will of this Applicant to the neighborhood and compliance with Local and State Laws and Codes.

The applicant has demonstrated, and continues to demonstrate, a complete disregard for local and State codes and regulations. The Applicant has demonstrated that his character and will is to "ask for forgiveness rather than ask for permission" to modify or construct on his parcels. There is a historical evidence that the Application has willfully violated local and State Laws. This is not an individual that demonstrates consideration for neighbors, the neighborhood or the character of the neighborhood.

In summary, this Applicant's proposal has no demonstrated, or substantive need or hardship that would safely allow the Board to grant a Variance. In fact, the above negatives preclude any further consideration by the Board.



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