

TOWN OF EDEN
ZONING BOARD OF APPEALS
2795 EAST CHURCH ST, EDEN, NY 14057

PUBLIC HEARING DATE: December 20, 2018

BOARD MEMBERS PRESENT: Kristin Kent, Chair
Phil Muck
Drew Riedel
Curtis Neureuter
Doug Scheu

BOARD MEMBERS EXCUSED: Joseph Winiecki
Candice Pineau

APPLICANT PRESENT: Connie Logan

CODE ENFORCEMENT OFFICER David Rice

RESIDENTS PRESENT: Edward Krycia – Eden Chamber

RE: **Appeal No. 2018-14**
Ms. Connie Logan
2365-2345 Hemlock Road

Ms. Kent called the second hearing to order at 9:05 p.m.

Ms. Kent then read the Legal Notice for this matter published in the “The Sun”:

Logan: Application for area variances at 2345 and 2365 Hemlock Road (1) to allow a side lot yard smaller than permitted under the Bulk Regulation, Code section 225:A3 and (2) to allow the keeping of horses closer than 75’ to any lot line, prohibited under Code Section 225-10 C(9).

Ms. Kent stated that our secretary, Ms. Diane Herzog, reviewed the proof of Notice given, and it is in substantial compliance with our Code requirements. Ms. Kent then explained the order of hearing and appeal process. The decision of this board will be filed with the Town Clerk.

Ms. Kent then asked Ms. Logan to explain why she is seeking the variances. Ms. Logan said she has lived at 2365 Hemlock Road for 25 years, and her mother lived next door at 2345 Hemlock, where a barn for horses was built. Her mother is deceased, Ms. Logan inherited the property, and she needs to sell one of the homes. She needs to split the properties in a way that will have the horse barn placed on her lot rather than her mother’s lot, and she could then sell her mother’s home with its detached garage.

The mother’s property was the larger of the two parcels, and when the barn was built it complied with the side setback rules.

The Board and Mr. Rice reviewed the plot map and aerial photos of the two parcels, marked to show the existing boundaries and the proposed new dividing line between them. They noted that proposed

new 2345 Hemlock parcel, the mother's property, would be compliant with the side setback rule because the garage is more than 5' from the new property line. (The garage is less than 15' high, the basis for the 5' rule.)

Ms. Logan's proposed new parcel for her home at 2365 Hemlock, drawn to encompass her existing home and the barn, would not be compliant, in two ways:

1. The barn is only 9' rather than 15' from the side lot line.
2. At 9' from the lot line, the barn also would violate the 75' lot line distance required to keep horses. It would be 66' closer to the lot line than is allowed for horses.

Mr. Neureuter asked the applicant what she would say if someone asked her if they could split the property this way. Ms. Logan replied that she would look at all factors and see if it would work. She needs to sell Mom's property, and whoever would buy it would know that the barn and horses are already there. She added that all her neighbors come and visit her horses, and new owners would be well aware of the horses before purchase.

Mr. Scheu asked about frontage, and Mr. Rice confirmed both parcels would have adequate frontage after the new division; only 100' is required in this zoning district. He added that many houses on Hemlock which predate the Zoning Code have buildings close to lot lines. This proposal is not going to stand out.

Ms. Logan was asked the questions required for Area Variance review: *(her answers are in italics)*

- **Will there be an undesirable change in the character of the neighborhood?** *No, I am not changing anything but a lot line on paper.*
- **Will there be a detriment to nearby neighbors?** *No. They already visit the barn to see the horses.*
- **Can you achieve complying lot lines by another feasible method?** *No, it's not feasible for me to move the barn, I can't afford to do it, and I don't want to take down Mom's garage.*
- **Do you feel the barn variance for keeping horses is substantial - 9' instead of 75'?** *No, and a buyer would know that the barn and horses are located there.*

Mr. Neureuter commented that 9' versus 75' would be a substantial area variance, and the board has to consider not just Ms. Logan's issues but concerns of the next buyers of the property.

- **Were your issues self-created?** *No, my mother's house is too small for me or my family or I would have moved there with the barn on that property. My father and ex-husband decided where to put the barn. They didn't ask me.*

Discussion of the horse barn.

Ms. Kent commented that the barn isn't unique and the requested variance is substantial mathematically. Could a variance here cause issues by others owing horses, llamas, goats, etc. under the keeping animals language in the Code? Mr. Muck indicated that the 75' requirement for animals has come up many times in past years, and that variances have been given, and also there's a lot of

non-compliance in town, for example on Sandrock Road the fences for horses are right up to the road. It's not unusual.

Ms. Logan noted her horse stalls are in the area of the barn farthest from the property line - would that be the distance measurement? Ms. Kent said the Code makes the building the point of measurement, not the way the interior is used.

On the applicant's point that a buyer would be aware of the horses, Mr. Scheu suggested that owners after the first buyer (for example, inheriting children of the buyer) could unfortunately be tied to a property condition that they are not necessarily thrilled with. He agrees this is a substantial relief request, and the 75' requirement didn't just come out of the sky; people no doubt discussed the pros and cons and decided it was appropriate.

Discussion of the garage.

The board then considered whether the garage could be moved or removed, allowing the lot line to be placed closer to the mother's house, thus reducing the barn's non-compliance on both issues. Ms. Logan said tearing it down would be a financial hardship because it would reduce the value of her mother's property.

Mr. Scheu noted the best case scenario could reduce the mother's parcel frontage to 100'. This would add 19' to the barn's distance from the new dividing line. He and Mr. Neureuter mentioned three or four similar cases in town where the distance problem is present, so it's hard to ask for tear-down of a building to gain 19' of relief.

Mr. Rice said that you would be losing a garage in a situation where the barn was approved previously, and many residents already are non-compliant under these rules. The Building Department would like to see the rule re-visited. (He also asked whether a variance can be given in one person's name, so that it expires when the property is sold. Ms. Kent said that area variances generally run with the land, rather than being granted only for the time of one person's ownership.)

Mr. Neureuter asked whether removal of the garage could be a compromise, to reduce the non-compliance of the barn. Mr. Riedel said that requiring the removal of a good, sound garage seems outlandish; Mr. Scheu added that removal of the garage could cost Ms. Logan \$20,000 in value.

Further Discussion.

Ms. Kent said we know that the requested variance for the horse barn is substantial, but we also probably would conclude that the proposed shift of the lot lines doesn't create an undesirable change in the character of neighborhood. There doesn't seem to be another feasible way to achieve the horse barn distance, and the problem wasn't self-created. For those reasons and also based on the prevalence of similar violations of the Code, either permitted by variances or by lack of enforcement, she leans toward approval of both variances.

Mr. Neureuter said that there are others who violate the 75' rule, which can justify the granting of the variance even though it's substantial.

Mr. Scheu said that he has less of an issue with the 15' side line non-compliance than with the keeping of horses non-compliance. His opinion is that the 15' variance for the barn is minor but the 75' non-compliance is significant. While his inclination initially was to deny the barn variance because it's substantial, we've identified about three similar cases and there probably three times that

many based on our discussions, so his inclination now would be to grant the keeping horses variance as well.

Mr. Neureuter made a motion to grant (1) the variance to allow the side lot yard to be nine feet from the barn at 2365 Hemlock to the proposed new lot line with 2345 Hemlock, as shown on applicant's map, and (2) the variance to allow the keeping of horses in the barn at 2365 Hemlock closer than 75' from that lot line, in recognition of the prevalence of other existing non-compliant situations regarding horses.

The motion was seconded by Ms. Kent. All members voted "Aye" and the motion was approved. Ms. Kent- Aye, Mr. Muck- Aye, Mr. Riedel- Aye, Mr. Scheu-Aye, Mr. Neureuter-Aye.

Respectfully submitted,
Diane Herzog, Secretary Eden Zoning Board of Appeals
January 11, 2019

The above minutes were reviewed and approved on _____, 2019 by
