

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

PUBLIC HEARING DATE: March 21, 2019

BOARD MEMBERS PRESENT: Kristin Kent, Chair
Philip Muck
Joseph Winiecki
Curtis Neureuter
Douglas Scheu
Candice Pineau

BOARD MEMBER EXCUSED: Drew Reidel

TOWN BOARD LIAISON Gary Sam

APPLICANT: Joseph Violanti Jr.

CODE ENFORCEMENT OFFICERS Jesse L. Baker, David L. Rice

RESIDENTS PRESENT: Donald Lyndsley
Pat O'Brien
Mr. Emmel
Also Keith Marquis – design professional

RE: **Appeal No. 2019-1**
Joseph Violanti Jr.
2233 New Jerusalem Road

Ms. Kent called the hearing to order at 7:00 p.m.

Ms. Kent made a motion to approve the minutes from the December 20, 2018 meeting for Eden Center, LLC and Ms. Connie Logan; seconded by Mr. Neureuter; all members present voted "Aye." The minutes were approved. The approval for Eden Center, LLC is a temporary variance for 5 years only, and Ms. Kent asked the Building Department to monitor that.

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

Violanti: Application for a variance at 2233 New Jerusalem Road, under Code section 225-32N, to allow construction of a pond on a lot with an area of less than 3 acres.

Ms. Kent stated that our secretary, Ms. 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 noted Mr. Violanti created a pond to help with a serious water problem on his property and asked him for background about the pond and water issues.

Mr. Violanti explained that when he bought the property five years ago, water was coming up to his back deck; a full acre of his 2-acre lot was covered. He dug the pond to veer the water to the ditch

and he put a drain in the ditch also. One of the pond pipes was not large enough for the amount of water in the pond, and the water spilled into his neighbor's yard.

Mr. Violanti was then asked questions by the board members related to the requirements for an area variance: *(his answers are in italics)*

Ms. Kent – When you constructed the pond did you apply for a pond permit? How long has the pond been in place? *No, I only applied after it was built; the pond has been there about a year.*

Ms. Kent – The issues for the variance include that your lot is too small, and whether the pond would change the character of the neighborhood or be a detriment to nearby properties. How would you address those issues? *After discussing the pond with the Building Department and my engineer, I think the pond can be reconstructed to work for everyone. The way it is now can be altered. Yes, I would say it is a problem now. That's basically the reason I was taken to court.*

Ms. Kent – Can the relief you are seeking, the variance, be achieved by any other method? Could you remove the water from your property by any method other than a pond? *I don't think so but I'm not an engineer, that's why Mr. Marquis is here.*

Ms. Kent – Will the pond have an impact on the physical or environmental conditions of the neighborhood? Will your pond solve a problem or create problems? *It should solve a problem for my property and the seepage on my neighbor's property if it's constructed properly.*

Ms. Kent – Was the difficulty that causes the need for the variance self-created? *I created the pond but not the standing water.*

Mr. Scheu – Is the pond on the south west side of your property, and is the ditch you refer to at the road? *Yes. The pipe is 4" solid corrugated.* He shared photos of the pond and ditch.

Mr. Scheu – What's the purpose of the pipe? *It acts like an overflow for the pond.*

Mr. Scheu asked Mr. Marquis if he engineered the pond, and he said no, he got on board a month or so ago to help alleviate the problem.

Ms. Pineau – Do you have any plans on paper showing how this is going to be fixed? *No.*

Mr. Neureuter and Mr. Scheu asked about the size of the pond (15' by 50') and the topography of the property (relatively flat, with a large berm at the back of Mr. Violanti's lot).

Mr. Scheu – Can you expand on the history of the problem with your neighbor? *I dug the pond and we have always had water issues, my house, the house next to me and the house next to that and in the opposite direction up to 3 to 4 houses away. We were all getting washed out and I didn't want to have a full acre of my property unusable. I thought I would be able to control the water by getting it to a lower spot (the pond) and then getting it to the ditch.*

Mr. Scheu – Has the installation of the pond improved the conditions in your and everyone's backyards? *My backyard substantially; I don't know about the neighbors.*

Mr. Marquis from Marquis Engineering was asked to introduce himself and confirmed he came on board about a month ago. He has looked at aerial photos only, and hasn't visited the

property. The pond is collecting water, not only from Mr. Violanti's property but from the adjoining properties also; his lot appears to be a low spot. Mr. Violanti tried to alleviate the situation, and if it's approached in a proper manner, making sure all T's are crossed and I's are dotted, we can come up with a solution that would be approvable by the Town.

Mr. Neureuter asked Mr. Marquis about his drainage background and he replied that he's done town drainage studies, commercial developments and subdivisions. He said he will have to look at the size of the piping for the additional water, possible underground detention to slow the water down to get it to the ditch, and do the calculations.

Mr. Scheu – Are you committed to working with the engineer regardless of the cost? *Yes.*

Ms. Kent – We know the pond rules in the Code require you to go to the Planning Board for site plan review. They are the ones that would look at soil types, groundwater, legal requirements, inflow and outflow of water, etc. *Mr. Marquis -Yes, we anticipate going to the Planning Board for site plan review. I will have to get the topo of the area and Mr. Violanti will have to see what kind of feedback we get back from this board. If he does not get approval here the Planning Board may be a moot point.*

Ms. Kent asked what how court case came about, and Mr. Rice replied. There was a complaint about a pond constructed and water issues, but with no pond permit application. We sent Mr. Violanti a Notice of Violation and he didn't respond. More complaints were made. I visited the site and saw the 4" pipe that was installed is lower in elevation at the pond than it is at the road. I know from my work for the Highway Department that the area is flat and it's sandy soil that leaches. I made some measurements and concluded the outlet pipe is higher at the pond than at the road; it doesn't work. I measured 8" of water in Mr. Emmel's yard (next door neighbor to the west) and learned he had two sump pumps in his yard, plus extra sump pumps in the basement. The court case was for not seeking a building permit before construction of the pond. It's still pending.

Mr. Emmel was then asked questions by the board members: *(His answers in italics)*

Mr. Neureuter – Did you complain to the Town? And are you in favor of the pond? *No, I actually asked the Building Department what I could do about the water in my yard. I don't know if the pond could help my property or not. I bought the property to fix it up and sell it, and just as I was set to market it in 2017 Mr. Violanti dug the pond and graded the land. Potential buyers walk away when they see the sump pumps in the back yard.*

Ms. Kent – What do you do with the water in the basement? *One pipe goes into the septic system and two go out to the ditch in the front of my property. Besides the pond, Mr. Violanti covered up an existing ditch. That ditch always had water in it so we asked him to dig a swale. He said he would not do it because it would cost \$1000. I offered to pay half to get the water off my property. I used to have a section of my yard with water that was 3' by 15'. Now when it rains the area is 40' by 110' of water. I believe covering up the ditch made the water issue worse.*

Mr. Rice and Mr. Neureuter noted that if you want to move water from point A to point B you don't put a pond in to start, the first solution usually considered is drain tiles.

Mr. Emmel said he had made suggestions to Mr. Violanti about how to help the situation, but he reciprocated by posting No Trespassing signs between their properties. Mr. Emmel stated that all he

wants to do is sell his property, and explained the measures he's taken to get rid of the water in his yard and basement - 5 pumps, connectors and countless hours and money.

Ms Kent then asked other neighbors for any comments. Mr. Lyndsley said he's a 40-year neighbor, and for about 4 or 5 homes the back half of the lots are wet except in the summer. Mr. Violanti's lot is a very low spot and it's possible when he dug the pond, he may have hit a natural spring. There was always a ditch between the two properties. There was never that amount of water in the back. He asked the Town for years to put a ditch in, but they can't - the gas lines are too close to the road.

Mr. Violanti clarified that when he bought the property there was a perforated pipe full of sand in the same spot as the ditch to the road. He dug the pipe out, which created a swale, and then leveled his lot with a box scraper and filled in the swale. Since he bought the property there was no ditch to the road. (Mr. Rice indicated that in his work for Eden Highway Department for 13 years there previously was a ditch between the properties. It can be seen on town maps.)

Ms. Kent indicated the variance request presents a "chicken and egg" problem. Mr. Violanti needs a variance because he doesn't have 3 acres, the minimum under the Code. Our jurisdiction is the area variance only, not the engineering review. He also needs site plan approval from the Planning Board, including engineering studies. Our approval could only be effective if he receives Planning Board approval. If we give approval tonight, it must be conditioned on site plan approval from the Planning Board. And the Planning Board approval for the water problem might not include a pond at all.

The board, Mr. Violanti and Mr. Marquis then discussed the pond issues further, including ownership challenges for neighbors posed by the existing pond (not only excess water but child safety as well), and the need to clearly understand the topography and soils. Mr. Marquis noted that without good information, discussion of possible solutions is "just throwing darts at a dart board" since he has only seen aerial photos. Mr. Violanti added that he must get Town approval to make any fixes, per the court. He also noted that filling in the pond won't solve his water problem. Mr. Baker said a swale or drainage to the road wouldn't require a building permit, but filling in the pond would require a permit application, supported by an engineering plan.

Based on the lack of data to determine the effect of the pond on neighbors, and on the understanding that the applicant is prepared to ask for site plan review from the Planning Board, Ms. Kent made a motion to deny the application for an area variance at 2233 New Jerusalem to allow construction of the pond. Seconded by Mr. Winiecki; all members voted "Aye" and the motion was approved. Ms. Kent- Aye, Mr. Muck- Aye, Mr. Winiecki – Aye, Ms. Pinaeu- Aye, Mr. Scheu-Aye, Mr. Neureuter-Aye.

Ms. Kent noted that if the applicant receives Planning Board approval for a pond, this board will of course welcome a new request for the necessary area variance.

Respectfully submitted,
Diane Herzog, Secretary Eden Zoning Board of Appeals
March 25, 2019

The above minutes were reviewed and approved on ___April 18, 2019 by

_____Zoning board of Appeals