

Town of Middlefield  
Minutes of the Zoning Board of Appeals

Date: December 6, 2023

Meeting called to order at 7:05 PM

Present: Richard deRosa, Brennan Hoag, Lorna Wilhelm

Also Present: Neal Newman, Zoning Enforcement Officer

Applicant: James Forbes, 160 Pegg's Bay Road, Cooperstown, NY 13326

Tax Map #: 70.14-1-14

Zoning Law applicable: Article IV Sec. A, 3 e (Minimum side yard width: 25')

The proposal is to allow a 7' setback on the north setback to maintain an access lane on the south side for machines, septic pumping, tractor access and small vehicle access for maintenance. It also includes removing the existing cabin and building a new cabin farther away from the lake. The south side setback is currently 7 feet.. Since the property is a 'sub-standard' lot, as defined by Zoning Law Art. V, sect. C-1, the normal 25' setback is halved, thus requiring 12 ½'. The board did not see that allowing reduced setback footage would in any way adversely affect either this property or those adjacent, especially since adjacent properties are non-conforming as well. The proposal does not increase the non-conformity of the property. In fact, it makes it less non-conforming. It should be pointed out that because this is a minor variance, for which we have a list of waivers, a 239 referral to the county is not required.

Motion by Brennan Hoag: The setback variance requested is approved. Seconded by Lorna Wilhelm. All in favor.

Meeting adjourned at 7:25

Addendum to the September 23, 2023 ZBA minutes:

- The last sentence of the 9/20/2023 minutes suggests that there might be some ambiguity with respect to the board's understanding of 'incidental.' That is not the case. By affirming the ZEO's determination, the board unanimously agreed with his interpretation. We want that made clear.
- The minutes of the September 20, 2023 ZBA hearing provided minimal details of the discussion points leading up to our interpretation decision. In order to clarify our rationale, the following additional details from the hearing are offered:

The minutes of the September 20, 2023 meeting reflected that the ZBA concurred with the zoning enforcement officer's ruling that the Art Garage cannot be considered a home

occupation because the retail sales are not “incidental” to the business. There was much discussion about what would qualify the sales as incidental. “Incidental” is not defined in the Middlefield Zoning Laws, but the board carefully considered what might be “incidental” vs. what is necessary to the business. Ms. Waller noted that she does not have a high volume of sales, and that the sales are not the primary purpose of her business. However, by her own admission, Ms. Waller stated that the sales of artwork are vital to her business in order to attract artists to show their works there. She noted that it is important and expected for galleries to be able to sell artwork, and that artists would not be inclined to show their works at her Art Garage, if she was not able to sell their works of art. Due to her statements that her business is very dependent on her ability to sell artwork at her venue, the zoning board of appeals members voted unanimously that the sales could not be determined “incidental” to her business. The sales appear vital for her to be able to continue her current business model. It should be noted that suggestions were offered to Ms. Waller on ideas that might allow the Art Garage to fit into the home occupation category (such as: don’t sell the artwork, request that artists sell directly to customers, or set up an off-site venue where artwork could be sold). None of the suggestions were deemed feasible according to Ms. Waller. None of these other options were viable because, in essence, the standard business practices for Galleries displaying artists work was the subsequent sale of this art work. Therefore, it was deemed these sales were not incidental, but rather integral to the continued operation of the Art Garage.

Respectfully submitted, Richard J. deRosa, Secretary