

Chairperson Pam Knapp called the regular meeting of the Zoning Board of Appeals of the Town of Walworth to order at 7:03 PM. Members present: Tony Laga, Gerald Champagne, Pam Knapp and Michael Bagne. Jim Hinz was absent. Town employees present: Phil Williamson, Code Enforcement Officer and Denise Munson, Town Attorney.

Tony Laga made a motion, seconded by Michael Bagne, to approve the minutes of June 2, 2008 as presented.

Roll Vote:	Tony Laga	Aye
	Gerald Champagne	Aye
	Pam Knapp	Aye
	Michael Bagne	Aye
	Jim Hinz	Absent

Motion carried.

- 1. Application of Michael Schneider for an area variance to build a front entrance to a single-family residence at 2161 Finley Road which would extend into the front setback. Applicant seeks relief from Walworth Town Code Section §180-10.1F(1). Property is zoned: RR-1 Single-Family Residential.**

Chairperson Knapp opened the public hearing.

Michael Schneider, owner of the property was present to answer questions about the application. He explained that he would like to remove the existing front porch and concrete stairs and landing and replace with a more attractive front entrance that would be more in keeping with the "old schoolhouse" character of the house. Unlike the existing front entrance, the proposed design would have the front door facing the road. Mr. Schneider provided the Board with pictures of front of the house as it looks today, scaled diagrams showing the front and side elevations of the proposed addition, as well as a written description of the scope of the project (foundation/wall construction, roof construction, siding and interior finish). An instrument survey of the property was also presented to the Board.

Chairperson Knapp questioned the size of the porch addition? Michael Schneider said the proposed entrance addition would be 20 ft. wide and 10 ft. deep. The addition would be inset about 1 ft. on either side of the original structure. Mr. Schneider was asked how far the front landing would be from the road. Mr. Snyder responded that it would be 35.3 feet from the road. that extends about 5 ft. into the minimum 40 ft. setback. Discussion ensued about the design of the landing. The Board suggested other options for the stairs that could possibly save a couple of feet on the landing. The applicant stated that he preferred the design he provided, both for aesthetic reasons and to allow space for some plantings. Chairperson Knapp stated the applicant would need to seek a variance, in either case.

Tony Laga questioned if there were any other properties nearby that are as close to the road as his house? Mr. Schneider responded that his house that was built in 1929 as a schoolhouse was probably the closest building on the street. Mr. Schneider commented that an area variance was granted on August 6, 2001 to allow a pole barn (garage) on the same parcel that was 15.7 feet from the road. Chairperson Knapp commented that according the records, the setback was 60 feet, but because of the shape and topography of the property there were limitation on where the garage could be placed. Tony Laga commented that this front entrance would be quite a bit of further back that the garage and the Zoning Board granted a variance for the garage.

Tony Laga commented that the proposed porch would be a great improvement to the overall look of the house. Mr. Snyder added that he did not feel that there would be any negative effect to the community. In fact, he felt that the neighbors would support that he is trying to preserve the old schoolhouse.

There were no comments from the public.

Chairperson Knapp closed the public hearing.

A motion was made by Mike Bagne, seconded by Tony Laga to approve the application of Michael Schneider for an Area Variance.

I move, after considering the benefit to the applicant and the detriment to the health, safety and general welfare of the neighborhood or the community that would occur as a result of the variance being granted and taking into consideration the five factors set forth in section 267-b (3b) and finding:

1. The granting of the variance will not cause an undesirable change in the character of the neighborhood or a detriment to nearby properties because it improves the overall appearance of the property.

2. The benefit sought by the applicant cannot be achieved by some other method feasible for the applicant to pursue because based on the architectural design, there are no other options to construct the front entrance.
3. The area variance is substantial because it is approximately 25% of the total adjusted setback of 40 feet.
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood because the proposed addition improves the overall look of the property and there is already an existing structure close to the road on the same parcel.
5. The alleged difficulty was self-created, however the existing building being brought back to schoolhouse structure and size causing positioning limitations on the lot.

And further finding the variance is the minimum variance that it deems necessary and at the same time preserves and protects the character of the neighborhood and health and safety and welfare of the community.

This Board finds that the findings it has made as set forth in factors 1, 2 and 4 outweighs the findings it has made as set forth in factors 3 and 5 and that substantial emphasis be given to factors 1, 2 and 4 and by reason thereof, the Board concludes that the variance be granted since the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community.

Roll Vote:	Tony Laga	Aye
	Gerald Champagne	Aye
	Pam Knapp	Aye
	Michael Bagne	Aye
	Jim Hinz	Absent

Motion carried.

- 2. Application of Andrew Babish for an area variance to increase the size of a pre-existing, non-conforming structure at 289 Farmview Drive. Applicant seeks relief from Walworth Town Code Sections §180-43D(1) – expansion of a non-conforming use and §180-12G(2) – side setback. Property is zoned: R-Residential.**

Mr. Babish was present to answer questions from the Board.

Mr. Babish explained that the original shed was constructed in 1967 and is located about 5 ft. from the property line on the north side, instead of the 15 ft. The intent is to increase the size of the shed and maintain the same distance of 5 ft. from the property line.

Chairperson Knapp read a letter from Dr. Brian Brozost, 291 Farmview Drive, dated July 2, 2008 who owns the adjacent property.

“This correspondence is to provide commentary to the Zoning Board regarding the intention of Mr. Andrew Babish, residing at 289 Farmview Drive, Macedon, NY to augment and expand his rear yard shed. This shed borders my property and the proposed alteration will in no way interfere with or affect my property. Mr. Babish is a responsible and attentive homeowner and I am certain that these proposed improvements are designed only to enhance his property. Therefore, with this document my wife Lisa and I heartily affirm and support Mr. Babish's proposal and intention. It is my hope that the Board concurs and will allow the improvements to proceed.”

Tony Laga asked the applicant how much larger the new shed would be? Mr. Babish answered that it would extend 4 ft. to the side and 8 ft. to the back. Jerry Champagne asked if he intended to tear down the original building. Mr. Babish responded that he did intend to tear the structure down. Mr. Champagne commented, “When you tear the building down, couldn't you just move it over?” Mr. Babish responded, “I could move it over about 4 ft. but any more and I would have to destroy two apple trees which I am trying to avoid.” Mr. Babish stated that the trees are 6 ft. and 10 feet from the existing shed.

Discussion ensued as to other locations on the property where the building could be constructed. Tony Laga suggested moving it further back on the property and 15 feet from the property line. Mr. Babish commented that putting the shed there would interfere with his garden.

There were no comments from the public.

Chairperson Knapp closed the public hearing.

The Board adjourned at 7:52 P.M. to meet with Denise Munson, Town Attorney.

The meeting reconvened at 8:05 P.M.

A motion was made by Tony Laga, seconded by Mike Bagne to deny the application of Andrew Babish for an area variance.

I move, after considering the benefit to the applicant and the detriment to the health, safety, general welfare of the neighborhood or the community that would occur as a result of the variance being granted and taking into consideration the five factors set forth in Section 267-b(3b) and finding:

1. The granting of the variance will not cause an undesirable change in the character of the neighborhood or a detriment to nearby properties there are other similar properties in the neighborhood.
2. The benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue because there are other suitable areas on the property to locate the shed that would not require a variance.
3. The area variance is substantial because the shed is 10' into the 15' side setback, or 2/3 of the required setback.
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood because it is a pre-existing structure and it matches neighboring properties.
5. The alleged difficulty was self-created; however there is a lack of accurate measurements regarding the property lines and proximity of the existing structure to the property line. In addition there are alternate locations on the property for the applicant to erect the permanent structure.

This Board finds that the factors it has made as set forth in factors 2, 3 and 5 outweigh the factors in 1 and 4 and by reason thereof the Board concludes that variance be denied since the detriment to the health, safety and general welfare of the neighborhood or the community outweighs the benefit to the applicant.

Roll Vote:	Tony Laga	Aye
	Gerald Champagne	Aye
	Pam Knapp	Aye
	Michael Bagne	Aye
	Jim Hinz	Absent

Motion carried.

- 3. Application of Tim Craft to seek relief from Walworth Town Code Section §180-10A(2) which in part states, "Customary agricultural operations shall include cutting, splitting and sale of firewood harvested from trees grown on the premises." Mr. Craft seeks a use variance to allow him to bring in logs not harvested from trees growing on the premises to be split and sold as firewood. Property is located at 1601 Atlantic Avenue, at the corner of Atlantic and Downs Roads. Property is zoned: RR-1 Single-Family Residential.**

Chairperson Ruth opened the public hearing.

Tim Craft, 1560 Plank Road was present to discuss the application and his request for a use variance to allow a firewood business on property located at 1601 Atlantic Avenue. Chairperson Knapp and the Board members asked the following questions:

- You are not presently the owner of the property?
No, I would like to purchase the property.
- Do you have a purchase offer in on the property?
Yes.
- Are there any contingencies?
It is contingent upon town approval to operate a firewood business.
- Looking at the property where do you intend to do the cutting and splitting of the wood?
At the back part of the property, the driveway that goes to the lower level.
- When I visited the property, it appears that it is heavily wooded and not visible to neighboring property.
I haven't actually been on the other property, but it is wooded and I don't think it would be visible.

- Will you be harvesting any trees on the property?
No they will all be brought in.
- It is my understanding you are applying for a home occupation, major, category A? Is that correct?
Yes.
- How many acres do you intend to purchase?
24.
- Where do you currently handle your wood splitting today?
I currently operate in two locations in Ontario. I am hoping to eliminate going between my house and two other places. I travel about 50 miles a day, back and forth to my house several times a day. If everything is at one place I would save travel expenses and well as the time that is currently wasted traveling back and forth and could do away with leasing property.
- Is there a cost involved?
I have a copy of the lease on the one property for \$3,600 a year. I have a barter and trade arrangement with the other property owner, with a value of about \$2,000 a year.
- Where do you get the trees?
I clear properties for several builders, mainly in the Webster area. I also operate a residential tree removal service.
- Would you be supplementing the trees that you cut with any additional shipments?
Occasionally, but not on a daily basis.
- What type of machinery would you be storing on the property.
The vehicles needed for the business, log truck, dump trucks for delivering logs and firewood processor.
- Are you planning on living on the house?
Yes.
- What would your business hours be?
Mainly daytimes hours, usually 8 to 5.

Chairman Knapp questioned whether there are other businesses in the area. Phil Williamson responded that Dolomite was zoned Industrial. The golf course owned by Dolomite and a nearby horse boarding farm are both allowed in a Residential district with the issuance of a Special Use Permit. Both businesses comply with Zoning Law.

Chairperson Knapp read from Walworth Town Code Section §180-43.1 Home Occupation Major – Category A(2)(f) which read: firewood sale, including the cutting of firewood for sale, provided the premises contains a minimum of two acres.

Phil Williamson referred to Section §180-43.1(D) Requirements (2)(a) which read: The property is in full compliance with the provision of Chapter 180 of the Municipal Code of the town.

Mr. Williamson then referred to Section §180-10A(2) which read: Customary agricultural operation on a farm as defined herein; provided, however, that no storage of manure or odor-producing substance is permitted within 100 feet of any property line. Barns and other buildings housing livestock shall be located at least 100 feet from the property lines. Customary agricultural operation shall include cutting, splitting and sale of firewood harvested from trees growing on the premises.

Mr. Williamson stated this would not be considered an agricultural operation. Then he referred to Section §180-12 Definition of farm: Customary agricultural operation on a farm as defined herein, provided, however, that no storage of manure or odor-producing substance is permitted within 100 feet of any property line. Barns and other buildings housing livestock shall be located at least 100 feet from property line. Customary agricultural operation shall include cutting, splitting and sale of the firewood harvested from trees growing on the premises.

Mr. Williamson commented that since the trees are being harvested from trees growing elsewhere, a use variance must be granted as the Home Occupation would not be allowed as the Zoning Law is now written.

Chairman Knapp questioned if we need to comply with SEQR. Denise Munson, Town Attorney responded, yes that SEQR would need to be complied with.

The Board adjourned at 8:40 P.M. to meet with Denise Munson, Town Attorney to review SEQR requirements.

The meeting reconvened at 9:15 P.M.

The public was invited to speak.

Terry Maxell, 1651 Atlantic Avenue stated that he resides east of the Dake property. Mr. Maxwell stated that he had spoken with the real estate agent and that it wasn't correct that he didn't have concerns about the operation. In fact, he is "majorly concerned" about the noise and the resulting truck traffic that the business would bring. Mr. Maxwell commented that his property was originally subdivided from the Dake property. A deed restriction on his property states that the property can never be used for commercial purposes. He questioned why this type of business use would be allowed now?

Patty Maxell, 1651 Atlantic Avenue stated that she is also very much against it because they have horses that the family enjoys riding on the property and she is concerned that the noise of chain saws and other machinery will frighten the animals. Mrs. Maxwell also stated that at one time trees were logged on the Dake property and although she tolerated it at the time, she found it very difficult to work from home. Further, "I feel that if this business is allowed we cannot use the property as we have always intended." She also expressed concern that if they were ever to sell their home, there would be a negative impact on the resale value.

Phil Williamson commented for the record that deed restrictions are not enforced by the Town, but would be a legal matter.

There were no further comments from the public.

Chairperson Knapp then referred the matter back to the Planning Board to review the SEQR application and Home Occupation requirements, with the understanding the public hearing would continue at the August 4, 2008 meeting of the Zoning Board of Appeals.

The application will also be sent to the County as the property is located on a county road.

Jerry Champagne made a motion, seconded by Mike Bagne to adjourn the meeting.

Chairperson Knapp adjourned the meeting at 9:26 P.M.

Respectfully submitted,

Gail Rutkowski
Zoning Board Clerk