

LIVONIA JOINT ZONING BOARD OF APPEALS
November 21, 2022

Present: Chairman M. Sharman, R. Bergin, D. Major, J. Prato, CEO A. Backus, Zoning Compliance Assistant Julie Holtje, Recording Secretary A. Houk

Excused: B. Weber, Attorney J. Campbell.

- AGENDA:**
- (1) Accept and approve the meeting minutes of October 17th, 2022*
 - (2) John Wenderlich – 5707 Big Tree Road, Livonia, NY*
 - (3) Nancy Hughes – 5914 Big Tree Road, Livonia, NY*
 - (4) Michael Knope – 3659 Pebble Beach Road, Livonia, NY*

Chairman Mike Sharman brought the meeting to order at 7:00 p.m. and opened with the Pledge of Allegiance.

Chairman Mike Sharman requested that the meeting minutes from October 17th, 2022, be approved at the next scheduled Zoning Board of Appeals meeting to give the Board members additional time for review.

(2) John Wenderlich – 5707 Big Tree Road, Livonia, NY

PLEASE TAKE NOTICE that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a Public Hearing on Monday, **November 21, 2022**, at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York, to consider the application of **John Wenderlich** for a Conditional Use Permit pursuant to Section 150-17 B of the Zoning Code of Livonia.

The Conditional Use Permit and an Area Variance are requested for an accessory dwelling unit in an existing accessory building per Section 150-31 D (1). The current structure (the main house is listed at 1932' and the accessory building at 1392'. We don't know exactly how much of the accessory building is habitable, but it seems substantial) exceeds the 40% requirement per Section 150-60 and requests an Area Variance for the increased square footage in an accessory dwelling. This property is located at **5707 Big Tree Road**, Livonia, New York, Tax Parcel # 65.-1-73.1, and is Zoned Neighborhood Residential District (NR). The application is on file in the Building & Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

ZCA Julie Holtje polled the Board for site visits:

Chair M. Sharman: Yes
R. Bergin: Yes

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D. Major: Yes
J. Prato Yes
B. Weber: Excused

Chairman Mike Sharman asked John Wenderlich to come forward for the proposed Conditional Use Permit. John stated that he & his wife currently live in Penfield. When his daughter got married in Livonia, they decided they would like a home here in Livonia. They would like the Carriage house to be a dwelling so they can use that as their second home. Chairman Mike Sharman asked for clarification on how much of the accessory dwelling was habitable. John stated that the first floor is a little over a 1000 Sq. Ft., and a couple of upstairs rooms could be used for bedrooms or storage. John thought it was approximately 100-130 Sq. Ft. upstairs. Joe Prato asked if that was finished space. John said it was semi-finished. Rosemary Bergin asked if they would make the Carriage house their residence. John confirmed that is what they would consider their sleeping quarters. They are willing to bring the Carriage house into compliance if need be. Rosemary Bergin asked CEO Adam Backus if the residence can be used as an Air B & B, and the second building used as a secondary dwelling. You can't rent out both of those, correct? CEO Adam Backus confirmed that was correct. The owner of the property has to live in one or the other. It could be difficult to determine what occupying one or the other is, but it should be their primary residence, or they are the primary occupant in one or the other. Rosemary said you could use the accessory building and rent out the main dwelling. CEO Adam Backus confirmed that was correct. Chairman Mike Sharman asked John if that was what his intentions would be. John said that the Carriage house would be their residence, and they would rent out the main house. Chairman Mike Sharman asked if they would rent the Carriage house. John stated that, currently, that is not their plan. Chairman Mike Sharman recommended that the applicant address this issue with the Building and Zoning office for compliance. CEO Adam Backus said the his understanding is that their intention is to move to this property and live in one of the dwellings. John stated that this would be their second home for the time being. Sometime in the future, they intend to move into the home in Lakeville. Doug Major stated that the Carriage house would be left in place, and the applicant would make it habitable. John said that was correct. Currently is 99% habitable now.

Doug asked what the Variance request was for. ZCA Julie Holtje stated that the square footage provided to the Board was for the habitable square footage in the Carriage house. Worst case, it would be 52% instead of 40%. With the first floor and the available second floor that is currently two bedrooms now, the square footage is 1392 Sq. Ft. Joe Prato stated that a Variance will allow for a larger than 40% in the existing structure. CEO Adam Backus noted that the Carriage house was previously approved for an office, and apparently, they finished it afterward into a habitable space. The applicant is trying to make that legal before closing on the property. John stated that they would like to make the Carriage house legal and hope to close on the property next week. Joe Prato asked if they would be renting the main house. John confirmed they would.

CEO Adam Backus noted that there were discussions with the applicant regarding the concerns about rental properties in the area. Currently, this would be the applicant's second home, but he

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plans to make it his primary residence in the near future. The intention is not to rent both of them out at the same time. He asked the applicant to elaborate on how he plans to utilize the property. John said that when their daughter got married, many families came from out of town, and they rented a house in Lakeville. It wasn't big enough to accommodate all their family. When they go on vacation, they come to Conesus Lake. Having four children with their spouses and children, they need a bigger place to accommodate everyone. They know that other families have this same issue. Those are the kind of people they would like to rent to, with bigger families that all want to stay together. It is difficult to find a bigger cottage on the Lake for rent. They don't want parties and have no plans of renting to college kids. John noted that they currently have ring doorbells on the property so they can see any coming and going on the property. They are also purchasing a device that measures sound levels inside the home. In addition to that, he also has a program that alerts him to how many cell phones are on the property. This would let him know if it is being used over the occupancy limit. He would end the rental immediately if there were any sound disturbances. This information is included in the rental contract, and noise issues will not be tolerated. It's important to him that the neighbors are not disturbed at any time. They want to be good neighbors, and they will be good neighbors.

Chairman Mike Sharman opened the Public Hearing. He asked that they state their name and address for the record.

Julie Smith, the Realtor, stated that she is the listing agent for this house. There is a double house across the street, and many houses on Big Tree have accessory living spaces. This proposal would not have any impact on the area. The property has a beautiful park-like setting. It is not set up for parties on the Lake. It is for people who want to visit the area with their families. There are many Air B & B homes in this area. We live in an area where many people coming to the Finger Lakes would like to be.

Chairman Mike Sharman closed the Public Hearing.

Chairman Mike Sharman asked the Board if there were any further questions.

This application was determined not to require Livingston County Planning Board review per Section 239-m and 239-n of Article 12 of the General Municipal Law agreement (# 10).

This application was determined to be a Type II action, and SEQOR was not required per # 12 of the New York Codes, Rules, and Regulations 617.5 Type II Actions.

Chairman Mike Sharman asked the Board to go through the Conditional Use Permit criteria:

- (1)** Will the proposed building or use will be in harmony with the general purpose, goals, objectives, and standards of the Comprehensive Plan, this chapter, and, where applicable, Chapter [125](#), Subdivision of Land?
 X Yes No

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- (2)** Will the proposed building or hours of operation or use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety, and general welfare? ____Yes XNo

- (3)** Will the proposed building or use will be constructed, arranged, and operated so as not to dominate the immediate vicinity or to interfere with the development and use of neighboring property in accordance with the applicable district regulations? XYes ____No

- (4)** Will the proposed building or use will be adequately served by essential public facilities and services?
XYes ____No

- (5)** Will the proposed building or use comply with all additional standards imposed on it by the particular provision of this chapter authorizing such use? ____Yes XNo Area Variance req. for Sq. Ft. Accessory Dwelling.

- (6)** Have all steps possible been taken to minimize any adverse effects of the proposed building or use in the immediate vicinity through building design, site design, landscaping, and screening? XYes ____No

- (7)** If appropriate, a performance bond or other suitable financial guarantee has been provided to assure compliance with the conditions of the conditional use permit. ____Yes ____No XN/A

Chairman Mike Sharman asked the Board for a motion to approve or disapprove the proposed Conditional Use Permit for the Accessory Dwelling, subject to the Area Variance approval. Joe Prato made a motion to approve the Conditional Use Permit as submitted. Motion to approve. M/2/C (J. Prato/R. Bergin) Carried: 4-0.

Chairman Mike Sharman asked the Board to go through the area variance criteria:

- 1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by granting the variance? No

- 2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? No

- 3. Is the variance substantial? Yes – 40% to 52%

- 4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood? No

- 5. Is the alleged difficulty self-created? Yes

Chairman Mike Sharman asked the Board for a motion to approve or disapprove the proposed Area Variance for the Accessory Dwelling. Rosemary Bergin made a motion to approve the Area Variance. Doug Major added the condition to the approval that the Carriage house is not rented out to the public, or that only one of the dwellings is rented at a time. Motion to approve. M/2/C (R. Bergin/D. Major) Carried: 4-0.

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(3) Nancy Hughes – 5914 Big Tree Road, Livonia, NY

PLEASE TAKE NOTICE that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a Public Hearing on Monday, **November 21, 2022**, at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York, to consider the application of **Nancy Hughes** for a for an area variance pursuant to Section 150-17C and a Conditional Use Permit pursuant to Section 150-17 B of the Zoning Code of Livonia. An area variance is requested for a proposed 24' X 32' detached Garage which will violate the side setback requirements according to Sections 150-31G (2) and 150-71. A Conditional Use Permit is requested for an accessory dwelling unit in the second story of the proposed detached Garage per Section 150-31 D (1). This property is located at **5914 Big Tree Road**, Livonia, New York, Tax Parcel # 65.72-1-26, and is Zoned Neighborhood Residential District (NR). The application is on file in the Building & Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

ZCA Julie Holtje polled the Board for site visits:

Chair M. Sharman:	Yes
R. Bergin:	Yes
D. Major:	Yes
J. Prato	Yes
B. Weber:	Excused

Chairman Mike Sharman asked Nancy Hughes and Architect Jack Sigrist to come forward for the proposed Conditional Use Permit. Jack stated that the property has 60' on the road and 50' on the lakeside. The property comes to a point where they would like to place the Garage. It would be less than the 60' required. They are proposing to take down the existing 20' X 20' garage since it is falling apart. They are proposing to construct a 24' X 32' two-story garage. The first story is for cars and boats, and the second story is for a general residence with a bathroom. They have looked at different options, and this was the best way. They tried turning it 90 degrees, but it wouldn't allow them to get any cars or trucks with trailers in the garage. Joe Prato referred to the drawing; it looks like the new garage is further away from the property line. Jack confirmed that was correct. The existing garage is 1-1/2' off the property line. They are proposing the new garage be 3' off the property line. Rosemary Bergin asked for clarification on the second story's use and if it will be used for storage. Jack stated that it would be used for storage and overflow grandchildren. Chairman Mike Sharman asked if the accessory dwelling would be used as a rental. Nancy noted that they have six children and nine grandchildren, and she does not plan to rent it out. This area will be used for family. Doug Major stated that the main house is currently 4.2' from the property line and 3' in another area from the property line. Chairman Mike Sharman asked if the Deck on the proposed garage would face the Lake. Jack confirmed that was correct. Rosemary stated that the house that goes with this property is rather

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big, and it was used as an Air B & B. Jack noted that the house is about the same size as the garage that is being proposed.

CEO Adam Backus stated that the application and the Legal Notice mentioned living space. ZCA Julie Holtje noted: 24' X 32' two-story building. Garage and storage on the first floor and living space on the second floor. Nancy noted that the second story has a bathroom, and the rest of the area is open. CEO Adam Backus stated that the main house is advertised as an Air B & B, but the garage will not be. Nancy noted that the main house is not an Air B & B, nor will the new garage be. Doug Major asked if she lived in the main house. Nancy said she does not live there 100% of the time, but it is not an Air B & B; it is for family use only.

Doug Major stated that with a 32' wide building, the Board would like them to center it on the property as much as possible. He asked if they use the gravel area to go around and park closer to the house. Nancy stated that you need to have enough room there to be able to park the car and unload the groceries. It would not be convenient to go through the garage and all the way around to get to the house. ZCA Julie Holtje noted that the second floor has a proposed deck that will also be less than 9' for the side setback. Jack stated that the deck would be at about 8' by his calculations. Doug Major asked if we were okay with the 40% size of the main house. Julie stated yes. There is 2700 Sq. Ft. of living area in the primary dwelling. 40% is 1080, and they are requesting 768, which is under 40%.

Chairman Mike Sharman asked how much room there would be on the east side of the proposed garage, from the road back to the grocery delivery area. Jack said from the lot line that it would be 8-10'. Doug said he would like the garage to be moved over, giving more than 3' on the side lot line. He would like a 5' side setback, not a 3'. CEO Adam Backus noted that fire separation wouldn't be required with a 5' side setback. Jack said they would be happy to do the 5' side setback instead of the 3'. CEO Adam Backus also noted that all stormwater would need to be managed if there is any expansion of the driveway and the impervious surfaces, such as the roof. Stormwater runoff will not be allowed to affect the neighbors. This will be addressed through the Building Permit process. The Town will require some engineering evidence that the stormwater can be managed and get to the Lake without adversely affecting either neighbor. Jack asked if a rain garden would be acceptable. CEO Adam Backus stated yes, if there was evidence of no adverse effects.

Chairman Mike Sharman noted for the record that letters from the neighbors were included as part of the application stating that they were aware of the proposal and had no objections.

Chairman Mike Sharman opened the Public Hearing. Chairman Mike Sharman closed the Public Hearing with no one wishing to speak regarding the application.

Chairman Mike Sharman asked the Board if there were any further questions.

This application was determined not to require Livingston County Planning Board review per Section 239-m and 239-n of Article 12 of the General Municipal Law agreement (# 4 & #10).

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This application was determined to be a Type II action, and SEQR was not required per # 12 of the New York Codes, Rules, and Regulations 617.5 Type II Actions.

Chairman Mike Sharman asked the Board to go through the Conditional Use Permit criteria:

(1) Will the proposed building or use will be in harmony with the general purpose, goals, objectives, and standards of the Comprehensive Plan, this chapter, and, where applicable, Chapter [125](#), Subdivision of Land? Yes No

(2) Will the proposed building or hours of operation or use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety, and general welfare? Yes No

(3) Will the proposed building or use will be constructed, arranged, and operated so as not to dominate the immediate vicinity or to interfere with the development and use of neighboring property in accordance with the applicable district regulations? Yes No

(4) Will the proposed building or use will be adequately served by essential public facilities and services?
 Yes No

(5) Will the proposed building or use comply with all additional standards imposed on it by the particular provision of this chapter authorizing such use? Yes No Area Variance req. for Sq. Ft. Accessory Dwelling.

(6) Have all steps possible been taken to minimize any adverse effects of the proposed building or use in the immediate vicinity through building design, site design, landscaping, and screening? Yes No

(7) If appropriate, a performance bond or other suitable financial guarantee has been provided to assure compliance with the conditions of the conditional use permit. Yes No N/A

Chairman Mike Sharman asked the Board for a motion to approve or disapprove the proposed Conditional Use Permit for the Accessory Dwelling, subject to the Area Variance approval. Doug Major made a motion to approve the Conditional Use Permit as submitted, subject to the area variance being granted. Motion to approve. M/2/C (D. Major/R. Bergin) Carried: 4-0.

Chairman Mike Sharman asked the Board to go through the area variance criteria:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by granting the variance? No

2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? Yes

3. Is the variance substantial? Yes

4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood? No

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5. Is the alleged difficulty self-created? Yes

Chairman Mike Sharman asked the Board for a motion to approve or disapprove the proposed Area Variance for the Accessory Dwelling unit in the proposed detached Garage. Doug Major made a motion to approve the Area Variance as submitted with the condition that the side setback is 5', not 3'. Motion to approve. M/2/C (D. Major/B. Weber) Carried: 4-0.

(4) Michael Knope, 3659 Pebble Beach Road, Livonia, NY

PLEASE TAKE NOTICE that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a Public Hearing on Monday, **November 21, 2022**, at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York, to consider the application of **Michael Knope** for an area variance pursuant to Section 150-17C of the Zoning Code of Livonia. This area variance is requested for a proposed 16' X 18' Covered Deck which will violate the side setback requirements according to Sections 150-31G (2) and 150-71. The proposed structure also violates the maximum lot coverage requirement of 25%, according to Section 150-31F. This property is located at **3659 Pebble Beach Road**, Lakeville, New York, and is zoned Neighborhood Residential (NR). The application is on file in the Building Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

ZCA Julie Holtje polled the Board for site visits:

Chair M. Sharman:	Yes
R. Bergin:	Yes
D. Major:	Yes
J. Prato	Yes
B. Weber:	Excused

Chairman Mike Sharman asked contractor Pat Major representing Michael Knope, to come forward for the proposed area Variance for the 16' X 18' covered Deck. Pat stated that there was an existing 14' X 14' deck, but a tree demolished the deck during the June windstorm. They are proposing to replace it with a 16'x18' covered deck that would be 2' closer to the Lake and approximately 5' to the side property line. There will be an open roof with steps and a railing going down. Rosemary Bergin confirmed that the deck would not be enclosed. Pat confirmed it would not be. Doug Major asked if the roof would go over the whole deck. Pat stated that it would. There is a porch on the back with a new patio door, and there will be a step down to the deck. The property to the right has some taller shrubs, so it doesn't appear that anyone's view will be obstructed.

Pat noted that some damage was done in June next door as well. Doug Major asked if the proposed deck was getting too close to the Lake. ZCA Julie Holtje stated that there was plenty

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of room to the Lake. Julie also noted that the property had a Building Permit issued in 2003 for a 12' X 12' deck. Rosemary Bergin asked what the property's width was. ZCA Julie Holtje stated that it is 30' wide.

Chairman Mike Sharman closed the Public Hearing with no one present to speak from the public.

Chairman Mike Sharman asked the Board if there were any further questions.

This application was submitted to the Livingston County Planning Board for their review. They determined that it has no significant Countywide or inter-municipal impact. Approval or disapproval of this application is a matter of local option.

This application was determined to be a Type II action, and SEQOR was not required per # 12, #15 & #17 of the New York Codes, Rules, and Regulations 617.5 Type II Actions.

Chairman Mike Sharman asked the Board to go through the area variance criteria:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by granting the variance? No
2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? No
3. Is the variance substantial? No
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood? No - CEO Adam Backus stated that any stormwater runoff would be addressed through the Building permit process.
5. Is the alleged difficulty self-created? No

Chairman Mike Sharman asked the Board for a motion to approve or disapprove the proposed Area Variance for the 16' X 18' covered Deck. Rosemary Bergin made a motion to approve the application as submitted. Motion to approve. M/2/C (R. Bergin/J. Prato) Carried: 4-0.

Chairman Mike Sharman asked for a motion to adjourn the Livonia Joint Zoning Board Meeting at 8:12 pm. M/2/C (D. Major/R. Bergin) Motion carried: 4-0

Respectfully submitted,
Alison Houk, Recording Secretary