

Village of Geneseo  
Zoning Board of Appeals  
Public Hearing for  
Patricia Viele- Rep. David Van Epps  
4 Dorchester Drive  
Tax Map Id# 81.5-1-74.38  
July 13, 2010; 4:30 p.m.

Present:

Carolyn Meisel, Chair  
Marlene Hamilton  
Paul Schmied  
Thomas Wilson

Code Enforcement Officer

Dean O'Keefe  
Ronald Maxwell

Absent:

Ronald Palmer

Applicant:

Patricia Viele  
Howard Viele  
Rep.: David Van Epps

Public Present:

Scott Calabrese

Chair C. Meisel called the Public Hearing to order at 4:30 p.m. The hearing is a request for permission to erect a eight (8') foot x fourteen (14') foot deck when the deck addition fails to meet minimum rear set back range of thirty (30') feet per Bulk and Use Table 130-131 for R-2 Residential District per the Zoning Code of the Village of Geneseo. It was noted three (3) certified mail notices were sent and three (3) responses received. Proper notice was published. The Board members were introduced and the applicants were invited to speak.

Contractor D. Van Epps said the proposal was for an eight (8') foot by fourteen (14') foot deck with stairs and a sixteen (16') foot long ramp for handicap accessibility. The rendering presented should have the stairs and ramp reversed but the software program would not reverse the placement.

P. Schmied asked if the ramp had to be that long. D. Van Epps responded ramp length was determined by the two (2') foot difference in height from ground level to the back door. He called various sources including Home Depot for the standard length versus height ratio. CEO R. Maxwell said he believed it to be one to twelve (1:12) slope for a ramp. M. Hamilton asked if it should be longer and if this impacted the variance. R. Maxwell stated steps and ramps are not a consideration as they are deemed a necessity. D. Van Epps noted the ramp runs parallel to the house and does not impact the size of the requested variance.

C. Meisel asked how much of a variance is being requested. D. Van Epps stated an eight (8') foot variance would be needed. T. Wilson commented it would actually be a seven (7') foot variance as one (1') foot is within the specified zoning code set backs. Chair C. Meisel asked if the deck was wide enough to allow a wheelchair to be brought out and have room enough to turn around for ramp access. D. Van Epps stated it was.

C. Meisel noted one neighbors' son, Scott Calabrese, was present. She asked who the other neighbors were. P. Viele responded Hector Valencia-Franco and his wife and

the Calabreses. The other neighbor is David & Hilda Geiger. Chair C. Meisel read in the Calabreses' letter:

4177 Lima Road  
Geneseo, New York 14454  
July 05, 2010

Ms. Carolyn Meisel  
Chair, Geneseo Village  
Zoning Board of Appeals  
119 Main Street  
Geneseo, NY 14454

Re: Patricia Viele  
4 Dorchester Drive, Geneseo

Madam Chair:

We have been notified that the Vieles have again applied for a variance to construct a deck on the rear of their house, which would not meet the setbacks required by the Zoning Code of the Village of Geneseo.

At the prior hearing, on the 4<sup>th</sup> of May, our objections to the variance were stated and they have not changed. To summarize they are as follows:

- The hardship is self-created; the builder built a handicap accessible house for the Vieles and then installed a sliding glass door to the rear knowing that the required set back is 30' and the rear wall of the house is 31' from the lot line.
- There is more than ample room for a deck to be constructed on the south side of the house.
- A patio can be constructed in the area selected without a variance. Wheelchair access to the patio can be obtained by a walkway from the garage.

While we sympathize with the Vieles, we do not believe that we should be encumbered by the shortsightedness of their builder. Installation of the sliding glass door, in a handicapped accessible home, 31 feet from the lot line is clear evidence that he knowingly set about creating a difficult scenario for both the Vieles and the Calabreses. Mr. VanEpps is responsible for this situation and it should be up to him to correct it.

Unfortunately, we are unable to attend the meeting on the 13<sup>th</sup>, but wanted you to be aware that even though this request is for less of a variance there are solutions, which avoid a variance entirely, and we are still opposed to any variance. Thank you.

Sincerely,  
Rocco S. Calabrese  
Mary C. Calabrese

P. Schmied stated his concern that the Zoning Board had not heard back from the Town as the property under consideration is within five hundred (500') feet of the Village/Town Boundary line. Secretary D. Lund noted the Town Board minutes of June 24, 2010 stated "notification of a Village ZBA hearing for a variance request to build a deck at 4 Dorchester Drive was in board packets. There were no comments on this request at this time." CEO R. Maxwell commented the Town Board receives notices for properties on the lake for variances within five hundred (500') feet of Long Point Park and does not comment on them. They usually leave the decision up to the designated Board hearing the case.

C. Meisel asked for a straw vote to determine the general feeling of the board. M. Hamilton said she would be inclined to grant the request. T. Wilson had visited the property and noted evergreens block the visual view of the property from the Calabreses. He would take H. Vieles's physical condition into consideration.

P. Schmied would be opposed to granting the variance. The request is in a new section of the village unlike the recent request for a garage. The garage was in an older built up neighborhood and had similar garages on the street. The garage matched the other garages in style. He felt this was the proper use of a variance. The builder blundered building an entrance three (3') feet off the ground such that a wheelchair cannot get in and out of the house. While he sympathizes with the Vieles plight, as he understands from training sessions, the Zoning Board makes a decision on the land not the people. The owner's handicap or lack thereof is not a valid reason for granting a variance. The house was placed on the lot as per the Code Office's direction. CEO R. Maxwell responded the current builder is the third one to own the development; it was started around 1996 or 1997. The house is set according to zoning and the approved plans. The surveyor sets the stakes before the foundation can be laid.

M. Hamilton noted the Planning Board had decided not to allow a similar situation in the rest of that phase of the development. R. Maxwell said there are only two lots left in that phase. M. Hamilton remarked the builder is not going to do anything about the problem at this point. People should not have to suffer for an error and this is a way to make it right. P. Schmied asked if the ADA had been contacted per the suggestion at the May 04, 2010 meeting. D. Van Epps responded he had tried unsuccessfully to contact them. R. Maxwell noted he had given D. Van Epps the numbers. R. Viele stated they had contacted a lawyer and were told to try to resolve the issue by coming back to the Zoning Board with a new deck plan. If this fails, the next possible step would be to go to Court for a judicial ruling on the matter. It was suggested a smaller intrusion on the property line might be acceptable to the Board, as a smaller variance would be needed.

P. Schmied said one neighbor had sent a letter opposing the variance and had a son present, as they could not attend the meeting. C. Meisel stated the other two neighbors had not responded. Board member R. Palmer could not make the meeting but had called and stated he would be opposed to granting the variance. The Vieles could put a pathway around the north side of the house to a patio on the east side and have a much larger patio area to enjoy. The embankment is not too steep for a pathway.

The questions were reviewed:

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? Yes \_\_\_\_  
No X The Calabreses cannot see the deck from their property.

2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? Yes 1 No 3. With great difficulty and expense if they could not use their doors.
3. Is the requested variance substantial? Yes \_\_\_ No X. Less than 25%, which is an allowable amount.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? Yes \_\_\_ No X
5. Is the alleged difficulty self-created? Yes X No \_\_\_ . Builder caused issue.

M. Hamilton moved to grant permission to erect a eight (8') foot by fourteen (14') foot deck when the deck addition fails to meet minimum rear set back range of thirty (30') feet per Bulk and Use Table 130-131 for R-2 Residential District per the Zoning Code of the Village of Geneseo with a seven and one-half (7 ½') foot variance as the variance will not adversely impact the neighboring Calabreses and the Board should give consideration to Howard Viele's physical condition. T. Wilson seconded the motion. The vote was as follows: Chair C. Meisel- aye; T. Wilson – aye; M. Hamilton – aye; and P. Schmied- nay. The motion carried three to one.

The Vieles thanked the Board and exited the meeting. S. Calabrese and D. Van Epps exited the meeting as well. P. Schmied moved to close the public hearing at 5:00 p.m. C. Meisel seconded the motion. The vote was as follows: Chair C. Meisel- aye; M. Hamilton- aye; T. Wilson- aye; and P. Schmied – aye. The motion carried and the hearing closed.

The June 1, 2010 Strong minutes were reviewed. P. Schmied moved to accept the minutes as presented. M. Hamilton seconded the motion. The vote was as follows: Chair C. Meisel- abstained as she was absent from the meeting; M. Hamilton- aye; T. Wilson- aye; and P. Schmied – aye. The motion carried.

T. Wilson moved to close the meeting; P. Schmied seconded the motion. All were in favor and the meeting closed at 5:15 p.m.

Debra L. Lund  
Secretary