

Minutes of the Town of Lake George Zoning Board of Appeals held on Thursday, April 23, 2009 at 6:00 p.m., at the Town Center, Old Post Road, Lake George, New York.

Members Present: Janie Green
 Robert Risman
 Gant Gentner
 Kevin Mulcahy

Absent: Chairman John Santiago

Also Present: Patty McKinney, Clerk
 Robb Hickey
 Jim Grey
 Attorney Jon Lapper
 Ken Collette
 Jeff Holden
 Mike Seguljic
 Dana Seguljic
 George Bristol
 Mary MacDonald
 Raymond Canavan
 Peter W. Smith
 Theresa Rescorl
 Dean Howland
 Dan Ryan
 Gary Koncikowski
 Dawn Koncikowski
 Melissa Vito
 Mike Sullivan
 Ingrid Schaut

Vice-Chairman Green opened the meeting at 6:00 p.m.

A motion was made by Kevin Mulcahy and seconded by Grant Gentner to accept the March 19, 2009 minutes with the correction on Page 8 of changing the word practicable to practical.

All in favor.

Motion carried.

PUBLIC HEARINGS

1. Area Variance Application #2-2009 submitted by Cohold, LLC to construct a 27 unit townhouse development, for property located at Route 9L (264.08-2-30, 264.08-2-31, 264.08-2-32, and 264.08-2-33).

Attorney Jon Lapper was present representing the applicant.

Attorney Lapper stated that the project has been reduced by 3 units so the proposal is now for 27 units. He stated they did supply the architectural plans for the two buildings and the floor plans. Both the cabins behind East Cove and the units on the Cohold site are in need of replacement and they feel that this project will clean up the property to look more attractive for the neighborhood.

Dan Ryan of Vision Engineering stated that they are re-developing an already improved site. It does have outdated facilities, old structures, an old hotel and an inground pool. Everything on the site as existing will be razed. He stated they have submitted a plan with 27 units. They reduced the length of the road and improved the buffer on the north corner. They did submit water and sewer flows. They have revised the sewer flow calculations to include numbers for both existing and proposed conditions utilizing the flows that are required by the Town Code. The existing and proposed flows are in proportion to each other with the outcome that the proposed development will have a slight reduction equal to design flows of the proposed condition. They did discuss removing the existing restaurant from the calculations. By removing the existing restaurant facility that exists there now, but hasn't been operated in years, the outcome is essentially the same where the existing sewer flows are slightly higher than the proposed. This does utilize the Town's required flows per unit.

Kevin Mulcahy stated a concern with sewage flows as he stated the lower level which is completely walk-out which could easily be converted to a bedroom/dining room situation and a 3 bedroom unit could easily become a 4 bedroom unit, which would add 10 more bedrooms to be included in the sewage flow.

Attorney Lapper stated that they would do whatever they board wanted to ensure that they could not be converted to a 4 bedroom.

Kevin Mulcahy stated that the amount of building that is there is going to be significant. He stated this is considerable for that site.

Attorney Lapper stated they are trying to show they are similar to what is existing. What they are hoping for this the board seeing this as a positive project in cleaning up the what is there, dealing with stormwater management that does not exist at all, consolidating the driveways and dealing with the neighborhood.

Kevin Mulcahy stated this lot has a 15% or greater grade. He stated that there are good soil conditions and the buildings are aesthetically more pleasing than what is on the site. He stated he does not know if the stormwater will work for the density that is there.

Attorney Lapper stated right now there is no stormwater controls so everything is just sheet flowing off the site.

Dan Ryan stated they have done preliminary calculations for stormwater in accordance with DEC requirements for emergency storm events up to a 100 year storm. The improvements that are going to be involved because of the permitting required by DEC for this project are going to be very substantial improvements. Without this, this site will continue to deteriorate. It is identified in a stream corridor study by Warren County Soil and Water and they have taken those considerations as well.

Kevin Mulcahy stated that the Comprehensive Plan shows that this is an area for development. However, he stated the Comprehensive Plan has to work with the Land Use Plan and they are at a 270% variance with this. The Comprehensive Plan and the Land Use Plan are not working together on this project.

Janie Green asked about the sewer credits.

Robb Hickey stated if it was an even swap then it would be okay. It was already included in the sewage flows.

Janie Green opened the comments to the audience.

Raymond Canavan: "I'm the President of the Mockingbird Hill Homeowner's Association. I'd like to thank my neighbors because Jeff did take the time to include us on planning for the project and we were hoping to come to some agreement at some point. There was an assertion made that this would be more attractive and I think we should ask the neighbors about this. These are pretty large structures we're talking about and it's not one or two large structures, there are several large structures. Even 10 is a pretty significant kind of development for that property. I don't mean just the square footage just the 3 story building on that property is pretty significant especially when you cut down a lot of 50 and 100 year old trees. There was another assertion that the project would be positive. We're going to lose a lot of greenspace. We will have some more tax revenue and some people might see some trees gone and get a view of the lake, but I'd rather see some trees than the buildings and the lake. Essentially the project, there appears to be not a disagreement with the project from the board, but the variance is what we're talking about, those 17 additional units. That's the big issue. I'm not opposed to the project. I'd rather see them one story or two story buildings, so be it. To ask for a variance to go from 10 to 27 is pretty significant. If you could buy the property and make money on 10

units, build 10 units. If you can't make money on 10 units, why would you buy a property where you know you're going to need 17 more? Thank you."

Melissa Vito: "The citizens of the Lake George basin rely on the local boards to make decisions that are in keeping with the Town Code as far as possible or allow some small variance that is clearly reasonable and fair and won't cause environmental degradation. A project that requests nearly three times the density allowed by code is not at all within keeping with Code. If someone purchases land with the intention of developing it, he has to accept the density and other limits of the project he'll be allowed to build. It wouldn't seem to be the board's responsibility to allow a project several times greater than code so the developer can make as much profit as he wants. Nor is it the responsibility of the board to assist the developer in figuring out just how many units would enable him to make enough profit to satisfy him. If you're considering what's fair to the applicant, please also consider the people it's not fair to. To grant allow such an enormous variance, it would not be fair to all the rest of us in the Lake George Basin who will have to look at the crowded, citified project and deal with the traffic and other problems that the writers of the town code never intended us to have to put up with. Increasing the tax base should be achieved with sound, appropriate development that's at least for the most part in compliance with the town code. We're relying on our boards to deny all the others that come before them. As for the technicalities of this application, I don't see how the board could even spend time considering an application where there is no source of water available and no way of knowing when that water sources will become available. Thank you."

Kathy Bozony: The Lake George Waterkeeper has reviewed the application for the above referenced variance application and offers the following recommendations for discussion:

- 1) At the Town of Lake George Planning Board meeting in March 2008, the Planning Board Chairman concluded that there were sewer hook-up and density issues, as was the same concern expressed by the Zoning Board of Appeals (ZBA) on March 19, 2009.**

A required minimum lot size per dwelling unit In RH and RCH zones is 20,000 sq ft, for a total of 10 townhouse units that could be reasonably permitted on this site. The proposed 27 townhouses exceed the density variance by 17, or a 270% variance relief requested.

- 2) The estimated water usage for the existing development does not reflect actual usage, but is a calculation of water usage based on Town of Lake George Zoning Code A180-7 Quantity of Sewerage**

Flows (which differs from NYSDEC Design Standards for Wastewater Treatment Works previously submitted. Both appear to be substantially inflated.

The water records have been reviewed for all existing meters on the four parcels for the period 2003 through 2009. The average daily usage for the Cohold, LLC subdivision (proposed townhouse parcel) between 2003 and 2009 is below 2000 gallons per day (gpd), with a peak average daily demand of 4654 gpd between July and October 2008 (based on August, September and October 2008 water meter readings). As the summary data implies, the actual historical water usage from the meters on the proposed townhouse parcel (and even when including the usage from Peter Smith's parcel) is considerably lower than the 12,135 average gallons per day stated in the application.

**VLG Water Meter History Report
Summarized by Year for Cohold, LLC**

Year	Total Flow (gpd)
2008	1752
2007	945
2006	887
2005	1994
2004	554
2003	386

The Caldwell Sewer District has allocated **10 Equivalent Dwelling Units** (EDU's) to this new parcel.

3) Stormwater will have an impact to the environment and the community.

The Preliminary Stormwater Management Report does not address the runoff from the existing impervious areas as required for redevelopment projects as per the Town Code, and therefore underestimates the infiltration required. In addition, the report assumes the existing soils of the heavily developed site will be adequate for infiltration (exclusive of the compaction and impacts from proposed development).

This variance request to allow three times the allowable density on land that has steep slopes should not be approved by the ZBA. Based on the SEQR EAF that was filed, 31% of the land has greater than 15% slope. Overall impact to the land will exceed the ability to mitigate the affect of this development. Contrary to the applicant's representative, there will be a considerable increase, not an overall reduction in sewer flows to the Caldwell Sewer District. Currently, the allowable number of connections

for the Caldwell Sewer District (49) allocated by the Village of Lake George has been exceeded (per Mayor Blais' March 6, 2009 correspondence). Therefore, the Caldwell Sewer District has **no available capacity**. As with all variance applications before the ZBA, this project should not be compared to similar proposed uses. The Lake George Waterkeeper looks forward to working with the Town of Lake George Zoning Board of Appeals in defending the natural resources of Lake George and its watershed. Thank you."

Theresa Rescorl: "I live on Mockingbird Hill Road. I'd like to say my property does not directly adjoin the parcel in question here today. As most of the property owners, I do not object to redevelopment of the property below us. What I do object to is the density that they are proposing. It's zoned for 10 units. They are asking for 170% over what it is currently zoned for. That's outrageous. These properties are designed for people coming in as second homes and using it as a vacation spot. I can not see why the board would grant a variance that large when it has no overall benefit to the community. It's not helping out the community of Lake George to grant a variance that large. The development yes. A variance that large, no, absolutely not. Reducing it by 3 units is not enough. It's much too large a density for that property for many reasons. That's my objection, to the units. It's not the development. It's the density issue. Thank you."

Mary MacDonald: I also live on Mockingbird Hill. I do like the idea of the project getting redeveloped however, the size of the project is a real issue. Water runoff has already been eloquently spoken to. The ponds being there, if they do catch the runoff, I'm concerned about mosquitoes and black flies. Right now up on Mockingbird Hill we have a water pressure problem. During the summer months when we have a lot of traffic in town, I have neighbors that can't take showers. Another big thing is the traffic. Currently there is about 5 cars parking up in that property. Adding an additional, 20, 30, 60 cars depending on how many cars per unit there coming out into that already horrendous intersection that is there right now I don't think is going to be healthy for the residents living on that hill. Thank you very much."

Mike Seguljic:

- "Since this is a Public Meeting and Hearing, we respectfully ask that Plans, which are being discussed & presented to the Board also be positioned so that the plans are able to be viewed by the Public so that the Public can follow the discussion.
- It would also be helpful if the agenda indicated what variances are being sought.

- With regards to our specific comments concerning the Cohold project, our comments are not any reflection of the character of Ken Collette, his partner, or Peter Smith – all of which we understand to be straight up businessmen with good reputations in the community.
- Concerning opening comments of the ZBA, we agree that the area is evolving, but that does not justify burdening the area with heavier density than allowed by Town Codes. We were also happy to hear the ZBA state that the Codes should work in Tandem with the Master Plan. As you know, we've been having problems getting the Planning Board to acknowledge the Master Plan when a project is proposed for a site that contains lands that are “unsuitable for development.” For some reason in those instances the Master Plans appears to be ignored.
- Our specific comments concerning the proposed project are presented as follows.
- The intersection of Route 9L, Beach Road, and Bloody Pond Road is becoming very dangerous due to increasing density.
- The increase in density in Lake George is being exacerbated by density variances being granted by the ZBA.
- Increased density also tends to significantly increase stormwater runoff, water usage & generates more sewage
- Is adequate water & sewer capacity available? (It became apparent during the meeting that there is NO available sewer capacity and water pressure in the site vicinity appears to be an issue as well).
- Twenty Seven town-homes (regardless of whether seasonal, or used as a second home or primary residence), will generate a large number of vehicular and pedestrian trips, and increase water usage and sanitary waste flow).
- If the Town Homes become seasonal rentals, the tendency is for renters to maximize their dollar value, usually manifested in large numbers of people staying in a single unit. This could further stress our infrastructure.
- We would like to express to the Applicant that no matter what is built, we sincerely hope that it will be in character with the project's location in the Adirondacks, especially since it is situated right at the intersection which serves as a “gateway” to the head of Lake George.
- In other words, proposed structures should have an appearance reflective of the Adirondacks and not that of a New Jersey or NYC suburb, which unfortunately the Condos across the street seem to be reflective of.
- Just because flat decorative rocks are placed onto a building's face, that does not make it an attractive Adirondack building. The appearance seems to actually ruin the intended charm because it looks fake.

- Although it was good to read in the last meeting minutes that John Santiago indicated that the "amount of units seems very excessive to him." His next comment in which he "asked what the number was that would make this project work" seems irrelevant and beyond the limited scope of the responsibility of the ZBA. We feel that the financial viability of a project should have absolutely no bearing on the decision making process of the ZBA.
- We again ask the ZBA to be cognizant of the fact that granting excessive variances related to density, increases the potential for losing the character of our beautiful area and tends to significantly increase the burden on our infrastructure and Lake George itself.
- Every variance granted to allow increased density is slowly beginning to strangle our area and degrades the ability of our area to absorb the development.
- We ask the ZBA to remember their mission and do what they are supposed to do to protect our area.

Ingrid Schaut: "My husband and I bought a house on Mockingbird Hill for our retirement. It was at the time wonderful, peaceful, quiet, nature, wildlife, exactly what we were looking for. Now we are finding out that not only there is a new development right in front of us being planned, there is another one on Bloody Pond, not to talk about the 8 townhouses that they built on 9L and Beach Road. It's like living in the city again and that's exactly what we moved away from. As mentioned before, the traffic already is horrendous. Many times at night we wake up when the Garrison closes especially during Americade and we hear all of the brakes squeal and there are so many near misses. It's a very dangerous intersection. Also with an additional 27 townhouses, can you imagine the noise. Some of them probably have patios, balconies, people are out there with radios. Right now it's a peaceful, quiet area and that's what Lake George is except during the season in the Village and we put up with that, we know that. But this is not just four or five months in the summer. It's also fall and spring and winter; when it is really quiet and enjoyable. In addition we have quite a bit of wildlife and that's what we really love. There is a meadow just below Mockingbird Hill between the motel and Mockingbird Hill and the deer gather there. Last night I saw a fox coming up from the motel across the street crossing our front lawn. That's all going to be gone. The water issue was addressed already. One thing that worries us is there going to be any blasting like the development on Bloody Pond. We also have propane tanks in the ground. That could be very, very dangerous. Also, with 27 townhouses, they are probably summer homes. As was mentioned before, there are whole families, relatives in one townhouse for the summer, which is fine if they are quiet. What happens if they are rented out as it often happens in this area? People stay there for a week, think they own the whole area, and do as they please. How about if those townhouses are being rented out, how about security? If

somebody just rents for a few days, who knows who it is. There is going to be a frequent turnover. There could be drug activities if they are staying there for a short period of time. Do we really want that in our neighborhood which is nice and peaceful and quiet. Our main concern is the traffic, privacy and water. If there is a few houses being built, fine. The property will improve and we really appreciate that. If there is 27, we wouldn't even be able to sell our house again. It would look like a big city and that's not what people are looking for when they come to Lake George."

Peter Smith: "I just want to make the board aware, I had 10 units behind the restaurant since 1980 that I rent year around. There is absolutely no stormwater protection behind the East Cove. If we get a hard storm, it goes right into the lake so this will definitely be an improvement. Thank you."

Janie Green stated there are a lot of engineering calculations that she would like clarification on.

Bob Risman stated the he agrees that the applicant could reduce the units but the screening and buffering are the purview of the Planning Board. As far as renting, this would be up to the Homeowner's Association. As far as value of the property, this could increase the value of others property or decrease the value. The board has no way of knowing that.

Attorney Lapper stated that most of the speakers that had concerns about the project acknowledged that there was something positive about the redevelopment. In order to do the redevelopment, it's a big project with big cost. They reduced it by 3 and think it fits nicely and will be an attractive project that will help the neighborhood and their values.

Kevin Mulcahy stated that the people who live on Mockingbird Hill have a requirement of 20,000 square feet per building lot and most of those lots are undersized. In looking to see how this would fit into the community, there are already undersized lots. He again expressed his concern of ending up with 10 additional bedrooms after these were built. He stated he thinks this should be reduced as this is too much for this site.

Grant Gentner asked if there were anymore buildable lots in Mockingbird Hill Association.

Raymond Canavan stated there is a 4 acre lot that is landlocked.

A motion was made by Grant Gentner and seconded by Kevin Mulcahy to hold the Public Hearing open, requesting that the Town Engineer review the concept plan of density, stormwater, water pressure, sewer capacity of 27 units verses 10 units with a detailed narrative to the Zoning Board.

Kevin – Yes
Grant – Yes
Bob – Abstain
Janie – Yes

Motion carried.

2. Area Variance Application #6-2009 submitted by Robert Phoenix to remove existing dock and replace with 8' wide straight dock with boathouse. The applicant is requesting a 3 foot side yard variance on the south side, for property located at 7 Sand Pebble Cove (251.16-1-7).

This application was tabled at the applicant's request.

3. Area Variance Application #7-2009 submitted by Robert and Lynn Wood to build a 30' x 26' garage with a one bedroom apartment above. The applicant is requesting a 10,139 square foot density variance, for property located at 2980 Lakeshore Drive (251.11-1-12).

Robb Hickey stated that after reviewing this application, the area that is needed has changed because lands under water has to be taken out of the calculation. Therefore, the variance was changed to a 10,139 square foot density variance.

Kevin Mulcahy stated this is for a second residence on the parcel and wouldn't this have to comply with the setback requirements.

Robb Hickey stated this is an accessory apartment.

Kevin Mulcahy read the application into the record.

A motion was made by Grant Gentner and seconded by Kevin Mulcahy to accept the application as complete.

All in favor.

Motion carried.

Dean Howland was present representing the applicant.

Dean stated the owner would like to construct a garage with a one bedroom apartment above it. It is on the upper part of the property. They had submitted plans to the Consolidated Board of Health which were approved. He stated that Robb had called him today to say that he had signed the proposed plan that they had put the septic in according to approval which they did and at the time of the CO application, the as-built drawings were submitted as to the exact location of the leachfield. On the proposed plan, it shows that it is 10 feet off the property line as this is the code setback. They had to move it around because they moved the driveway when the building was under construction. He stated he has letters to give to Robb which shows all this.

On the current plans, they showed stormwater management and they have to put a septic tank in and it is gravity fed to the leachfield where they have to add one more length of leachfield to meet the code.

Dean stated the intention is for the owner's private use.

Janie Green opened the comments to the audience.

Attorney Jon Lapper: "I'm here on behalf of all of the neighbors, Guide Passarelli and his family, the Nicholson's across the street and Gary and Dawn Koncikowski. We believe that because this is a second principle residence on the property that the code requires that it has to comply with the side setbacks. This is a very important issue to the Passarelli's to the north because they are only 6 feet away. I'm going to quote from Section 175-13B2. "Every building, structure or sign shall be located on a lot as herein defined. Each principal building, as herein defined, shall require the minimum lot area in the affected zone in which it is located. More than one residential structure may be located on a lot, provided that it has received approval from the Planning Board through Site Plan Review and is located so that a separate lot conforming to all of the standards herein could be erected around each residential structure". To me, affirming to all of the standards means the 20 foot side setback on a principal residence. I believe the building needs to be moved 20 feet from the side property line. It's a real impact on the Passarelli's to have a building this size 6 feet from the line and I don't think there is anywhere on the site that it can be moved to. Beyond that, Gary, Dawn and I came up to look at the files this week and this is what led to Robb having to look into this issue about the leachfield. I can honestly say in 24 years of practice, this is the worst example I have ever seen. What the discrepancy is, is the leachfield that was approved that there is a certified as-built drawing on shows an existing leach line 10 feet from the road and this proposal shows that line that already exists being connected to the septic tank and line for this building. They're saying that they are going to add a new leach line 10 feet from the property line and that already exists. Because it already exists, the only place to add it would be on the east side of that leachfield closer to the pond so it is not going to comply with the 100 foot setback which may be 200 feet because it is down-gradient where you have to

have the leachfield separated from the pond. The issue is they already have this gazebo, they have a three car garage, they have a large house and now they want to add another three car garage with an apartment that counts as a principal residence. Just too much for this site. The impact of them making this misrepresentation and saying that there is not a leachfield line now and they are going to add one; if it's not there, it's got to be somewhere else and there is no other conforming location. When we sat down and showed this to Robb, he has now taken the position that this has to go back to the Consolidated Board of Health. Because of that, this is not a project that can be approved as it has been presented. All of the neighbors are just shocked that they are trying to shoe-horn this thing in there just because they already have so much on the property. We're asking that this be denied as it does not comply and can't comply. There is probably some more serious violation in terms of the misrepresentation but that's for the Consolidated Board of Health to deal with. Thank you."

Kevin Mulcahy stated that the determination of an accessory structure was already made by Robb so as far as the side yard setback, they only require 5 feet. If they don't agree with this, they have to appeal Robb's determination.

Dawn Koncikowski: "We feel that an undesirable change will be produced in the character of the neighborhood. The neighborhood consists of estate homes in which a one bedroom apartment would be an undesirable change. We also feel that a detriment to neighborhood properties will be created by the granting of the area variance for a one bedroom apartment situated above a garage. The number of principal uses are limited to one by the property size and were limited to one at the time of the subdivision approval and were limited to one at the time the Woods purchased the lot. At the time the subdivision was approved only one principal use was permitted and therefore only one principal use was taken into consideration when the Carroll Estate Subdivision with the deeded ingress/egress easement, shared by the Woods lot and the lot to the south of Woods lot within which they have erected a fence which is in violation of Section 175-96(3) – Penalties for Offenses & Complaints – Violations of Conditions of Approval and Section 175-90 – Land Use and Development Permit. We also feel that a detriment to the neighborhood properties will be created by the granting of an area variance for a one bedroom apartment situated above a garage located only 6 feet from the north property line. This is not only an accessory use as defined in 175-7 Terms Defined, and is not an Accessory Apartment as defined separately and has restrictions in its definition – serves as a dwelling unit and is very specific in stating that in addition, the entire lot area shall be double the lot area of that required for the principal use. The definition does not state that it can be considered as an accessory apartment if they go for an area variance. An area variance does not change the lot size and in the definition (not as a regulation) but in order to fall under the definition of an accessory apartment they must already have double the lot area or 2 acres. This is part of the definition of an accessory apartment, therefore, this garage with an apartment is not an accessory use but a principal use because it does not even meet the

definitions for an accessory apartment. Therefore, any apartment above a garage that does not meet even the definition of an accessory apartment must meet all requirements for a principal structure including not only area but also side, front and rear setback requirements. So if they go for an area variance, it must be for a principal use and meet all setback requirements for a principal use. What is the benefit sought by the applicant to add an apartment? They already have a 7,650 square foot primary residence with a basement under $\frac{3}{4}$ of the house (one wall open to the lake). They already have a three car garage. They already have a building that they store their John Deere Gator and other tools in and they already have a bathhouse for which they received an area variance for in 2004. They already have too much on their property for the usable area available. It is like putting 5 gallons in a two and a half gallon container. Just because they want something doesn't mean they should get it. They just don't have enough land and a one bedroom apartment is not a necessity. In fact, it must be considered that they are not just proposing a structure of a garage with an apartment, but they are proposing a one bedroom residence above a 2 car garage for its parking requirements because under the code an apartment must have 2 parking spaces per 800 square feet of gross floor area. In addition, the apartment then would have to meet the same setbacks front, side and rear as a primary residence. There is no difference. A residence cannot be allowed within 6 feet of a neighbor's property line otherwise everyone would be adding 4 and 5 bedroom apartments to their garage plans and not have to meet the required setbacks for a principal use. The requested area variance is substantial. The square footage of the lot is 79,981 square feet as per the subdivision map which includes the square footage of the ponds which consists of approximately 3,000 square feet of non-buildable property. They would need 87,120 square feet. Even if you counted the pond area there is almost a 10% shortage in area relief that they would need. In addition they have already received another area variance in 2004 for a bathhouse by the lake. I do believe that it must be taken into consideration also. The proposed variance will have an adverse effect and impact on the physical and environmental conditions in the neighborhood. They do not have enough land to meet required setbacks from the ponds and separations of water and sewer lines. This would cause a danger to drinking water and pollution of the ponds that drain into the lake. In addition under the code the applicant would need additional septic based on double the number of proposed bedrooms, therefore, double what they have proposed. The alleged difficulty was self-created as Dean Howland states in the application; he states yes, the owner bought the property knowing existing zoning laws. Thank you."

Janie Green asked about the fence over the easement and has this been addressed and is there a violation. This violation has been open since 2006.

Robb Hickey stated there is an open violation. He stated that the when this application was received, Mark Schachner stated that the code states you can not put an application in where there is a violation. However, if the application is different from what the violation was issued for, they can come before the board.

Gary Koncikowski: "I own the property adjacent to the Wood's property and also the property across the road. When the Woods' bought the property they knew exactly what the zoning was. They knew that they could only have one house on the property. Since then they have put a large house on the property. The Zoning Board has granted them an area variance already for another structure on the property. Now they are coming back for a third structure on the property. They knew exactly what the zoning was when they purchased it. In addition, there is a deeded right-of-way that was a condition of the Planning Board. They have violated the right-of-way, restricting our use on it both by putting shrubs and stones in there, in addition to a fence. Again, this is a deeded right-of-way across their property and our property and I believe that that should be taken into consideration in taking the square footage because that property is not usable also under the zoning because it is a deeded right-of-way so they can not build on it, they can not obstruct it so that is an extra area that should be taken out of there. In addition, it is another apartment use on that property. When the Planning Board approved it, they approved it under the idea of it being two residences. Now there could be another potential residence on it which would end up being a detriment to my property because it's more usage than what was originally applied for under the Planning Board. In addition, it is not in keeping with the character of the community. All the adjacent owners are opposed to granting this variance and I would request that the board deny it. Thank you."

Kathy Bozony: "I agree with Dawn's interpretation of the definition of accessory apartment. That is the reason why there is a variance being needed right now. It is defined as needing double the amount of space so it needs space for two single family dwellings. I also looked into some of the issues regarding the septic system and I want to share them with you.

1) Clarification is needed for the proposed expansion of an on-site wastewater treatment system (OWTS) for two separate single family dwellings.

- a) The Town of Lake George Consolidated Board of Health approved the OWTS expansion to "...add a sixth line for the sixth bedroom..." on April 8, 2009. Should a new single family dwelling (SFD) that is built as an 'accessory apartment/structure' require expansion of the OWTS for a minimum of a 2 bedroom SFD (not just one bedroom as proposed)? As stated in the **Consolidated Health District Regulations A180-9 F. Effluent Disposal Area (1)** "The required

size of the tile field or seepage pit shall be determined from the results of the percolation tests and the number of bedrooms served. In every case, the minimum area to serve two bedrooms shall be provided.”

- b) Per Table 4 (page A80:22), the required trench length for a 2 bedroom SFD range from 125 to 250 linear feet (depending on the soils for 2 bedrooms). It appears that the 52 ft additional run (as stated at the CBOH meeting on 4/8/09) differs from the application which shows a run of 46 linear feet to be added for an additional bedroom. Is the addition of 46 linear feet in combination with the existing 5 laterals, totaling 276 linear feet adequate for the total number of bedrooms on this site (see Table 4 page A180:22)?
- c) At the CBOH meeting, it was discussed that there is no secondary site available if the absorption field fails and needs to be replaced. Per **A180-10 H. Leaching Beds and pumping stations (9)** “...Plans for all wastewater systems that are set forth to serve other than individual residences shall show on plans submitted an on-site area reserved for the sole purpose of constructing a duplicate effluent disposal area”. Would two SFDs on one OWTS require an alternate reserve site?
- d) The additional lateral to be installed (the sixth line at 46 linear feet) is drawn in the exact location as the fifth line was drawn on the November 28, 2001 survey map. Was the original absorption bed constructed as per the approved plan? Is there available land for additional laterals in this location?

2) The stormwater trench is shown on the property line. Does the location of this trench have the proper setback from the neighbor’s septic system?

If the proposed trench is at the appropriate distance from the OWTS, can it be reasonably constructed on the property line without going onto the neighbor’s property?

3) The infiltration trench has an 8 foot drop and is proposed on an 11% slope.

Runoff directed into the trench will not infiltrate down, but will flow laterally along the bottom of the trench to the low point. The base of the trench should be level or another means of infiltrating stormwater runoff should be proposed.

4) Will the large mature trees on this site remain after construction?

It is indicated as such on the site map and would require great care not to damage their roots during construction. These large trees are an asset to this property and should remain.

5) Use of permeable pavers or comparable pervious surfacing should be recommended for new access and driveways on this site.

It appears that there are water quality issues that should be discussed prior to approving an area variance to construct an additional SFD on land that is deficient in size. The Lake George Waterkeeper looks forward to working with the Town of Lake George Zoning Board of Appeals in defending the natural resources of Lake George and its watershed. Thank you.”

Mike Seguljic: “In regard to this violation, I was at a meeting I believe it was a ZBA meeting several months ago when there was some back and forth regarding violations and whether or not they should be put onto the agenda so that the boards and the public were aware that there might be an open violation and the word came back that no, by the time an applicant came before a board, the violation would already be cleared up. Obviously that has not happened. I am back to my old comments of tracking. How are things being tracked with violations, open issues, with preliminary approvals? If there is an open violation, the board should be aware of it so at least if that issue is either indicated as a significant issue or it becomes a non-issue. I just feel there should be some tracking of these issues. Thank you.”

Bob Risman asked for the status of the violation.

Robb Hickey: “The violation is still open. When this application was submitted originally for the garage, I said that I could not accept it because of the violation. I had a conference with the Town Attorney and the Town Attorney informed me that I have to accept an application for a different project other than the violation project.”

Bob Risman questioned the wastewater capacity question.

Robb Hickey stated the wastewater has to be addressed back to the Consolidated Board of Health.

Robb Hickey stated the structure still needs a Major Stormwater Plan to go before the Planning Board because of the slopes.

Kevin stated he would like to know what the subdivision approval was and any conditions of it. He would like to see the Consolidated Board of Health issue cleaned up before they look at it.

Dean Howland also stated that Guido Passarelli and his son have a second principal residence on their properties. He stated they were supposed to be

screened gazebos. They are fully enclosed with bathrooms and kitchens and people stay in them during the summer.

A motion was made by Kevin Mulcahy and seconded by Grant Gentner hold the Public Hearing open and to request the Town Attorney to draft decisions approving and denying this application.

All in favor.

Motion carried.

A motion was made by Kevin Mulcahy and seconded by Grant Gentner to adjourn the meeting at 8:10 p.m.

All in favor.

Motion carried.

Respectfully submitted,

Patricia McKinney
Planning & Zoning Board Clerk