

Minutes of the Town of Lake George Zoning Board of Appeals meeting held on Wednesday, February 13, 2013 at the Town Center, 20 Old Post Road, Lake George, New York 12845.

Members Present: Whitney Russell, Chairman
Janie Green
Peter Keating
Steve Drino
Peter Bauer
Karen Hanchett

Also Present: Robb Hickey, Adele Behrmann, Jim Grey, Dana Seguljic, Mike Seguljic, Kathy Bozony, Todd Felleg, Denise Keating, Linda Kissane and others.

The meeting is called to order at 6:00 p.m. by Chairman Russell.

Acceptance of Minutes:

Peter Bauer abstains from accepting the minutes since he recently joined the Board.

A motion is introduced by Steve Drino; seconded by Karen Hanchett to accept the minutes.

All in favor, motion carried.

REGULAR MEETING:

1. **Application for use variance UV#21-2012 submitted by Sean Quirk requesting a use variance to operate a marina in the RCM-1 zone. Proposing to erect a 40 ft. x 56 ft. repair/maintenance shop with commercial boat storage on the property; for property located at Route 9. Tax ID# 224.04-1-9. Zoning Classification RCM-1. Property size 1.75 acres.**

Chairman Russell announces that this application was heard several months ago; it has been tabled for the last few meetings while contemplating what the outcome would be and this is the meeting when a decision needs to be made. He reminds the Board Members and informs the public that when a use variance is granted the criteria is much different than an area variance; in a use variance all the triggers are being hit negatively. The three main bullet points to consider are listed below. In looking at the criteria the question then has to be "have any of these triggers been hit or are there any that would prevent the Board from granting the variance." He proceeds to list all the allowable uses in the zoning area associated with this property.

A motion is introduced by Chairman Russell that based on the criteria listed below, the area use variance be denied; Janie Green seconds the motion.

Chairman Russell reads the criteria:

1. Under applicable zoning regulations, the applicant cannot realize a reasonable return provided that the lack of return is substantial as demonstrated by competent financial evidence.

The applicant has given the Board enough financial information however as he stated previously, they cannot show that they cannot get a reasonable return on the permitted uses within the zone.

2. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the

district or neighborhood.

The entire area is pretty much the same character all the way through mainly residential with very little commercial application and although commercial zoning is allowed and there have been small businesses in and out over the years, he does not believe that it is substantially different than any other property in the neighborhood.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood.

It would be difficult for the Board to state that the boat storage would not create a change in the character of the neighborhood.

4. The alleged hardship has not been self-created.

It does not apply in this case since the property was left to the owner who is trying to get a return from it; there is nothing self-created that he can see.

Ayes: 4 Green, Drino, Keating, Chairman Russell
Nays: 0
Abstain: 1 Bauer

Motion carried.

PUBLIC HEARINGS:

1. **Application for Area Variance AV38-2012 submitted by Curtis D. Dybas as agent for Richard Barton requesting an 8 ft. variance where 15 ft. setback is required; the north side setback will increase from 0.5 ft. to 7.0 ft. The south side setback remains at 9.1 ft.; requesting 5.9 ft. variance where 15.0 ft. is required to build a single family residence.**

Janie Green reads the application into the record.

A motion is introduced by Chairman Russell; seconded by Steve Drino to accept the application as read.

All in favor, motion carried.

Peter Keating recuses himself since the applicant, Mr. Barton, is his neighbor. Karen Hanchett joins the Board in his place.

Curt Dybas is representing Richard Barton. Mr. & Mrs. Barton recently purchased this seasonal camp with a foot print of 1,700 sq. ft. and in various degrees of disrepair. They wish to demolish the existing 4 bedrooms camp and replace it with a four bedroom, year-round residence with a foot print of 1,240 sq. ft. and total living square footage of 2,348 sq. ft. The structure will be 31 ½ ft. tall and they are seeking two side yard variances. The structure will be set back in order to comply with the 50 ft. setback from the shoreline with a rear setback of 37.5 ft. which complies with the current code. The two side yard variances are needed in order to build a 38.4 ft. wide residence on this property.

Peter Bauer asks when the Bartons purchased the property and the response is in September of 2012. He then asks if the applicants were aware of the zoning laws when they purchased it.

Curt Dybas responds that he does not know if the Bartons were aware of the zoning codes and ordinances when they purchased the property. He provided the Board a copy of the survey with the proposed home being superimposed and some photographs however not one of the neighbor's house, Mrs. Bailey, which is the most in character with the proposed one.

Chairman Russell comments that the overhang on the existing building seems to be overhanging onto the neighboring property; Curt Dybas confirms that it does so, it has been this way for many years and no one knows how it happened. Chairman Russell then confirms with Curt Dybas that the proposed set back would be increased to 7 ft.

Curt Dybas continues and states that he included the colored rendition of the elevation after the fact so the Board can see the proposed color scheme for the home as well as a preliminary schematic that Toadflex prepared of the plantings which will be refined at a later time. Chairman Russell assumes that the shallow foundation and small crawl space is designed to meet the code and for frost protection; Curt Dybas replies that the intent is to stay out of ground water; the area is swampy and filled in over the years by nature.

Peter Bauer would like to see a comparison between the current stormwater mitigation system and the proposed one.

Curt Dybas replies that currently there is no stormwater remediation other than the existence of a 78% permeable area in fact the site is all grassy except for the area with the dwelling. In the packets he included 50 year stormwater calculations based on roof runoff by using eave retention around the entire structure which is due to the hip roof. According to his calculations 66 cubic feet are required, the proposed trench storm volume is 437 cu ft. making it 6 ½ times bigger. As for infiltration, based on 4.8 inches of rain fall in a 24 hour period 637 cu ft. is the total however if he were to use just the bottom of the trench 2,516 cu ft. would be available which is 4 times the required amount. This site is over designed with the eave drain around the structure necessary to get the bottom below frost. The footing drains for the crawl space will be on the inside and draining out of the building which will keep any permeation from going back into the crawl space.

Peter Bauer asks if a planting plan has been proposed to which Curtis Dybas replies that a tentative one has been prepared by Toadflax however it will need some updating due to some talk about a patio.

Curt Dybas comments that he is not certain whether the final number will show a 7% increase in permeability however the intent is to landscape the front and rear, keep the grassy parking area but potentially adding a plastic insert with concrete but no asphalt. A buffer will be created in by the lake to keep the geese away as well as softening the site.

Chairman Russell announces that he walked the site and it is evident that currently all water ends up into the lake. One of the things he will be looking for in the design is some type of vegetation to slow down the runoff to the lake. Knowing that there is little room between the structure and the lake is he proposing some type of underground drainage to pick up the extra drainage?

Curt Dybas states that one of the things they are considering is a patio as a retention basin and by the lake the buffer area will be made up of mulches and native plants; not necessarily a rain garden but a softened area all along the shoreline.

Karen Hanchett asks if there are any signs of erosion by the lakeside in the front of the property; Curt Dybas responds that the lake front is in disrepair like the rest of the property and something has to be done with it. Karen Hanchett states that it seems as though the original seawall was at some point backfilled in as a lawn.

Curt Dybas replies that in looking at the topography of the entire area it is evident that runoff filled it over the years.

Karen Hanchett asks if by rebuilding the new seawall he will be going further into the lake or will he be repairing what is currently there.

Curt Dybas responds that this property is one of the few left that owns 37 ft. of the land out into the lake.

Janie Green questions the fact that the application and the agenda state that the use is seasonal; Robb Hickey confirms that it needs to be corrected on the agenda to year around and the application lists that the current use of the property is seasonal.

Denise Keating, who lives adjacent to the Barton property. She reads a letter submitted by neighbors Mr. & Mrs. Spitzer offering their support of the project. A copy of the entire letter is on file at the Planning & Zoning office; following is a summary. Mr. Spitzer mentions that this application, with its proximity to the lake, is more difficult however he feels that the variances that are asked for in this case are totally justified since a quick view of what is now on the property will prove how much better the Bartons' proposal will be for the neighborhood and the surrounding community. "After all, isn't the zoning law there to make our community better? We think so and we urge you to grant the requests made by the Bartons." Mrs. Keating adds her own comments. If the variance increasing the set back from 0.5 ft. to 7.0 ft. will be granted, it will move the overhang that is currently on their property off which will be beneficial to them. Part of the roof is also on their property and it makes it difficult for them to walk to the lake when there are people at the Bartons' house; technically the Bartons are on their property for a short distance. The increased set back would not only allow the ground to absorb more run off but add space for landscaping which would also be beneficial for the runoff. If the variance is not granted the Bartons will have to build a house with the same footprint as the existing one which will keep the overhang on their property. They are in favor of this project. The fact that the proposed house is two stories instead of one will make it much nicer. At this time the structure is in disrepair but since the Bartons have purchased the property they have already made some improvements. She believes that it would be beneficial to the neighborhood and their property if the variance is approved.

Mike Seguljic from Diamond Point. He does not know the particulars of this application but is familiar with the Rose Point area since he has been vacationing in this area since the 1960s. He has a picture of Rose Point taken from Beach Road and states that this area is not what it used to be, quaint bungalows have been replaced by larger and larger homes that are reminiscing of Westchester and Rockland Counties and not befitting of Lake George. One of his concerns pertaining to the lake shore is the grassy areas; when people have lawns they tend to fertilize them which is harming the lake. Fertilizers, whether phosphorus or not, are getting into the water damaging the water quality of the lake. He urges to do away with some of the lawn and condition the application that no fertilizer of any kind be used. He also reminds the Zoning Board that expanding non-conformities of properties is not the mission of this Board. The picture shows how the ZBA and not necessarily the current members, has allowed large homes to be built amongst small bungalows thus destroying the character of the neighborhood. As for the silt fence, he asks that the Board obtain permission from the neighbors. He called the Warren County Building Department and was informed that they do not get involved with septic systems when it entails a demolished home. He understands that this dwelling is on a sanitary sewer however since it is over 100 years old and there was no sanitary sewer in place at that time, potentially that there could be an old septic system and/or drywell, water well or oil tank somewhere on these grounds which should be found and removed. He mentioned to both Boards several times that proper abandonment of homes should be conditioned on approvals.

Chairman Russell informs Kathy Bozony that the Board could not review the letters she submitted but she is welcome to read them in the minutes.

Kathy Bozony appreciates the Chairman's comments and will discuss the meaning of public hearings at another time. As for the Barton's project, 20,000 sq. ft. is the required maximum foot print per single family dwelling in the RSH zone and the size of this lot is 6,752 sq. ft. The current foot print is being reduced by 7% but it appears that the house size is being increased by 56%. In addition to the first and second floor there seem to be attic windows which indicate a third floor. A 31 ½ ft. hip roof is pretty tall for two stories. Redevelopment of an existing parcel creates an opportunity to reduce negative impacts of land use and bring properties in stormwater management compliance and therefore should be required. Although the renovation in itself does not trigger the threshold limits for required stormwater management, the re-developed site should include stormwater management that is in compliance. Stormwater calculations have been submitted but no information showing actual depth to groundwater or perc tests have been provided since this area is swampy, the calculations have been provided on what is being proposed to be infiltrated but can this land handle this. She is sorry to hear that there is no stormwater management on this site which needs to be addressed as retrofits by making each homeowner responsible to do what they can so the stormwater does not flow into the lake. As for the landscaping plan, she recommends that deep rooted vegetation be put on the shoreline as a buffer and a variable height canopy should be included to minimize the impacts of heavy rains to the lake. She has not been on the property and has not seen the seawall in disrepair however she recommends that the applicant get in touch with DEC and look at the regulations for seawalls since they are not being permitted at this point and if a more natural shoreline can be re-established instead of rebuilding the seawall, it may be a great opportunity to add vegetation that blocks nutrients and erosion.

Todd Fellogy comments that in general he is not totally opposed to the new home, he is concerned with the height however, with a few minor changes to the application, the Board has an opportunity to grant a variance that is fair and equitable to the majority of homeowners in the neighborhood. The replacement of the one story structure with a two story and possibly 3 story home with the attic, may impact his and other neighbors' lake views. He feels that when possible, zoning codes should be adhered to and enforced; unfortunately granting large variances in this area has become the norm rather than the exception. The south setback should be 15 ft. as per code which would give more green space and decrease density in the area. The north setback would still be out of code but the other three will be in compliance. Another option is to split the difference of the additional 7 ft. setback to the north. Add 3.5 ft. to the south variance and lessen the north setback by 3.5 ft. The height of 35.2 ft. is a concern as well since the third story could become living space. He suggests that the east side be more architecturally pleasing since it is the side most people consider the main entrance. The application states that a 4 bedroom house is being replaced with another 4 bedroom house when in fact the tax assessor has it listed as a 3 bedroom house. Too often at board meetings spaces are called different things such as hallways, storage areas etc. in order to fit a certain criteria however whatever the name, they still take up the same amount of space. He then questions why the application has a date of 2012 when the number should be 2013. As for the public hearing sign, it was placed in an area where no one could see it since this is a gated community; it should have been placed in a more visible area. The public notice verbiage should reflect what is being sought in this variance; it did not indicate that the current house would be a tear down and is being replaced by a year around home and not a seasonal one. He received the public hearing notice at his home in Connecticut on February 6th with a response deadline of February 7th at 12:00 p.m. giving him not enough time to respond. In conclusion he agrees that a nicer home would look better however he is concerned with the height and asks the Board to consider how it will affect everyone in the neighborhood. He recommends a compromise where everyone wins some and some don't lose everything. . (The entire version of the letter is on file at the Planning & Zoning office).

Chairman Russell informs Mr. Fellogy that putting the signs up is a fairly new procedure that should be credited to Mike Seguljic. It is working well however one of the problems is being able to put them on a public right-of-way and not on a particular piece of property. He understands his concerns but the Town cannot put up these signs on a public right-of-way.

Peter Bauer asks for more information on the public hearing notices. Robb Hickey informs him that everyone has a right to attend a public hearing and voice their comments or read a letter however if one prefers to submit a letter, both the Planning and Zoning Boards have asked that they are not handed out during the meetings but rather be submitted to the Board Members 7 days before the date of the meeting by 12:00 p.m., these letters are then delivered to the Board Members for their consideration and review prior to the meeting itself. The problem was that the Planning & Zoning office was being inundated with letters the day of the meeting resulting in a stack of papers being handed to the Board Members the night of the meeting.

Janie Green adds that it was difficult for the Board Members to read these comments while trying to concentrate on an application.

Chairman Russell comments that he would like to listen to someone who drove 3 hours to present his comments to the Board. As for the sign he agrees that in this particular case it should have been put up so it is visible however it is difficult at this time of the year with the ground being frozen. He understands that Mr. Fellogy had only 1 day to respond which is due to the fact that he lives in Connecticut however applications may be held up for another month if more time is given to accommodate the receipt of comments.

Mike Seguljic expresses his concern over the height of the building since it will look like a big box just like the neighboring one on the point. Something needs to be done with the aesthetic and height of the home; Adirondack style should be brought back.

Charles Lionelli who lives at 5 Rose Point Lane. He would be in favor of this project and agrees with the points that Mrs. Keating made. In reference to the height, he has seen many houses coming down and being replaced by new, higher homes. If restrictions are placed on height than they should apply to everyone in addition in order to get a view of the lake one needs to get property as close to the lake as possible. He informs that the Bartons' home has municipal sewer and water in addition to the fact that out of the 5 houses on Rose Point, 2 have received variances to build.

Curt Dybas makes it clear that this is not a three story house; first point is that one cannot have a third story with trusses, secondly the residential code in NYS does not allow three story homes above the ground plain unless it is fully sprinkled. In this particular zone, 40 ft. is the maximum height and they are well below it; he has never seen anyone successfully build a two story house below 28 ft. As for the comment about bringing back the Adirondack look, he states that Adirondack siding comes in two colors, clear and black. He believes that this camp cannot be renovated just like other camps that have been in existence for many years; they served their purpose.

A motion is introduced by Janie Green; seconded by Steve Drino to close the public hearing.

All in favor, motion carried.

Chairman Russell asks Mr. & Mrs. Keating if they would agree to allow a silt fence on their property during the time of construction. They both reply yes. Secondly he brings up the concerns about the fuel tanks, wells and septic systems. He works for Warren County and code enforcement officials report to him, he will be setting them straight on procedures for abandoning fuel tanks; septic tanks are handled by Robb Hickey.

Robb Hickey adds that this property is connected to the Village sewer system therefore if a septic tank ever existed on this property it is long gone; in addition, to properly abandon a field is to simply abandon it whereas a drywell gets filled in.

Chairman Russell agrees with Curt Dybas that there will not be a third story. The floor plan shows a closet at the head of the stairs on the second floor thus a stairway cannot go there. He makes it clear that this application is for a two story home and not a three story home.

Peter Bauer would like clarification on the walkway around the house, the patio and the driveway; are they being counted as permeable surfaces.

Curt Dybas states that more information will be submitted since they have not determined how to address these areas. They may remain grassy although he has seen projects done where the patio can actually become a retention basin filled with stone. If the variance is granted, they will provide details to the Planning Board. He has not discussed the patio with Robb Hickey however they have no intention of getting any variances for it. As for permeability it will remain at or better than it is now.

Peter Bauer states that since the distance to the lake is 50 ft., how is the applicant going to accomplish what he proposes to do? Robb Hickey explains that it is 50 ft. from the principal building and as for the patio, it is a structure which can be within 5 ft. of any property line. He adds that he has not reviewed or discussed the patio with Curt Dybas yes.

Curt Dybas comments that he has been in contact with Toadflax and agrees that the intent is to cover up the lower portion of the building with something such as plantings in front of a patio and blend it all into the landscape. 50 ft. is not a lot of distance therefore whatever will be done by the house and the lower portion by the shoreline is important; it needs to be softened with processes that will diminish the lawn. The Bartons are not agreeable to blacktop or anything else for parking or grass although something will be needed to park the cars since grass will not be able to hold the weight. Landscaping will be extensively refined in the next few weeks.

Karen Hanchett asks if a berm will be created on the shoreline; Curt replies that there is a drop off in front of the house of approximately 1 ½ ft. followed by a lower plain both of which will be dealt with but does not have any answers as of yet. She then asks if there will a dock and the response is that currently there is a State dock which is not permitted; his client is considering putting in a dock but this area is very shallow.

Robb Hickey informs the Board that the Town no longer governs docks.

Karen Hanchett's concern is that the proposed buffering on the shoreline will change to accommodate a future dock. Curt replies that he does not believe so since the LGA requires 6 feet of open water to the first crib and the shoreline cannot be altered.

Peter Bauer asks if the applicant would object to having a much wider and robust buffer with more trees, shrubs etc.

Curt Dybas replies that the neighbor, Mrs. Bailey, informed him that she would be very upset if any tall trees block her north side view of the lake. As for the buffer, they do need some front yard in order to be able to enjoy the lake.

Peter Bauer asks if the size of the patio will be reduced since the schematic shows all patio and grass. A considerable variance is being sought with not a lot of buffering. Curt Dybas responds that he is not sure what will be done but believes that the patio could be reduced and a 10 or 20 ft. buffer should be sufficient.

Janie Green comments that when contemplating applications, she takes all the information being mindful of the chapters on an application. An applicant is always seeking a variance from a dimensional or area requirement of the chapter and until such time the codes change what the Board goes by is the dimensions and setbacks i.e. what they are and what is being asked. The Board takes into consideration the information on the application; over the years she has seen a lot of discussions on the visuals, styles, landscaping, stormwater regulations which are all handled by the Planning Board; once a variance is granted the next step for the applicant is to go for site plan review which is where all of these issues are rehashed.

Peter Bauer feels that very often a Planning Board is restricted by the decisions that are made at the Zoning Board level and then they are trying to make projects work when often times they do not work but nevertheless they are approved. It is what the Zoning Board does or does not do that creates a great deal of practical difficulty for the Planning Boards.

Chairman Russell adds that a Zoning Board approval does not obligate a Planning Board to approve a project as well; Peter Bauer adds that often when an applicant appears in front of the Planning Board he does so with the weight of the variance granted which has a great deal of influence on the Planning Board's decision; it creates a presumption of blessing and a presumption that the granted variance will work at the Planning Board level.

Chairman Russell and Janie Green disagree with Peter Bauer's statement. Chairman Russell feels that the Planning Board's Chairman will make his own decisions however Mr. Bauer is entitled to his opinion and he does not disrespect it.

Chairman Russell adds that one of his struggles in dealing with waterfront properties is the fact that in this case there is a pre-existing building, everything is going into the lake and nothing is being done to prevent the runoff on this property. The applicant is asking for variances, some of the setbacks are getting better although it is basically impossible with the way zoning is written to get a compliant property since the Board is constantly weighing the variance and how the shoreline is being treated; part of the struggle is whether this is better than what is there now. He believes that with proper plantings and proper design the end result could be better run off than what is currently there.

Peter Bauer states that this may be the Board's only opportunity to try to mitigate a property that has negative impacts.

A motion is introduced by Janie Green; seconded by Steve Drino to approve the application with conditions.

Janie Green reads the criteria into the record.

- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

She believes that the changes on the property will be a benefit to the character of the neighborhood by correcting some of the setbacks.

- 2) Whether the benefit sought by the Applicant can be achieved by some method, feasible for the Applicant to pursue, other than an area variance.

No, because of variances are needed to build the proposed dwelling.

- 3) Whether the requested area variance is substantial.

Although the relief is substantial, she believes that it will be erased by its outcome..

- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

No, she believes that there will be restrictions in place with the stormwater management that will correct all physical and environmental conditions whereas currently there is no stormwater management.

- 5) Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

She does not believe that the difficulty was self-created since the property is the way it is.

The Board of Appeals, in the granting of an Area Variance, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Imposition of Conditions: The Board of Appeals shall, in the granting of both use variance and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, or the period of time such variance shall be in effect.

Such conditions shall be consistent with the spirit and intent of the Ordinance, and shall be improved for the purpose of minimizing any adverse impacts such variance may have on the neighborhood or community.

Peter Bauer would like to see conditions placed on this approval namely 4 conditions: no fertilizers or pesticides are to be used on the property, an inventory needs to be made for proper abandonment of wells, tanks and septic systems, there needs to be a 20 ft. buffer made up of trees, plants and shrubs between the building and the lake with no lawn, the new construction will not go below the existing 78% permeable surface limit.

Janie Green states that she cannot condition the 20 ft. buffer and Karen Hanchett voices that it is impractical for this property; she believes that a reasonable amount of shoreline buffering with native trees and shrubs and still leaving a little bit of a lawn is better; the 20 ft. buffer will be right by the house.

Peter Bauer asks what is reasonable. Janie Green inquiries about any buffering requirements on the shoreline to which the answer is none; in this case the Board is creating something that is not there. Peter Bauer rebuts that the Board will be creating something that is beneficial to the lake which will serve as an example to others since this is the only opportunity the Board will have. Karen Hanchett comments that they are looking at a first draft of the planting plan with the applicant having to submit a final draft to the Planning Board for approvals. Peter Bauer would like to see a footage put in that will bind the Planning Board towards a strong direction as to what is expected otherwise he is concerned that not much will be done.

Chairman Russell adds that he is quite confident that there is no septic system, wells etc. on this site however he has no problem adding the condition.

Robb Hickey response to Janie Green's questions is that there is a town wide ban on fertilizers with phosphorus within 20 ft. of the lake however the Board can put a condition that this site shall never be fertilized.

Chairman Russell goes over the conditions of approval which are as follows:

- **No pesticides and fertilizers shall be applied.**
- **Inventory shall be made for proper abandonment of septic systems, wells and tanks.**
- **A mixed trees, plants and shrubs buffer agreeable to the Planning Board shall be applied.**
- **The permeable area, as stated by the applicants, shall not go below 78%.**

Ayes: 5 Green, Bauer, Drino, Hanchett, Chairman Russell
Nays: 0

All in favor, motion carried.

Peter Keating resumes his seat on the Board and Karen Hanchett steps down.

- 3. Application for Area Variance AV2-2013 submitted by Maria Famosi with John Famosi as agent requesting a 15,170 sq. ft. variance where current sq. ft. is 24,830 and 40,000 sq. ft. is needed to change existing building use from retail/office on the first floor and apartment upstairs to a 2 family dwelling; for property located at 2747-1 State Route 9. Tax Map # 251.06-1-2. Zoning Classification is RCH. Property size is 0.57 acres.**

Peter Bauer reads the application into the record.

A motion is introduced by Chairman Russell; seconded by Peter Keating to accept the application as read.

All in favor; motion carried.

Linda Kissane is the representative for her mother Mrs. Famosi. She is seeking an area variance to change the building to a duplex. The variance is needed due to financial hardship caused by the lack of consistent rental of the lower unit as commercial space due to its small size and location. This request is the best feasible alternative since it will be expensive to modify the commercial space. The granting of this variance would not produce an undesirable change in the character of the neighborhood since no changes will be made to the exterior of the building. Although the requested area variance is substantial, it is not substantial in practicality and if the variance is granted the total living space of both units will be approximately 1,500 sq. ft. which is comparable to a single family dwelling with only 2 bedrooms, 1 bedroom per floor. Granting this variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood since there will be no increase in foot print. Granting the variance from commercial to residential may possibly reduce the environmental impact due to less water usage. The need for a variance is not self-created as the building has been pre-existing in its current form for many years; for these reasons they feel that the variance should be granted.

Peter Bauer asks if the building is currently on a septic system and its age; **Linda Kissane** confirms that it is on a septic system however does not know its age and informs that it was recently inspected by Bradley's Septic Service who found it in good conditions.

Linda Kissane comments that the last business in the building was Tina's Hair Affair and agrees with Chairman Russell that this business produced a fairly large amount of water usage. **Robb Hickey** states that it is on village water.

Chairman Russell states that the 1,000 septic tank is acceptable for a two bedroom unit. **Robb Hickey** adds that by the town's standards it would be the equivalent of approximately 100 linear ft. of leach fields or as per DOH standards would be approximately 94 linear ft.

Mike Seguljic wishes the applicant good luck on this application although he wants to point out that he agrees with the statement made by the Board on the prior application that variances granted by the ZBA bear a significant

weight upon the decisions of the Planning Board; quite often he sees Planning Board members struggle and their hands are tied because the ZBA granted an excessive variance. Please be careful in the future.

Kathy Bozony states that she was confused by the site map; it shows a square labeled as septic and a round figure showing 1,000; this size is adequate for two bedrooms but she does not understand what it all means and what Mr. Bradley actually did since she has not seen his letter. She would like to know the age of the system and feels that this change of use should require that it can accommodate the two bedrooms. This site is on English Brook and judging from the GIS view there seems to be vegetation between the brook and the home. She feels that due to the septic system's proximity to the brook, it should be inspected and certified by a licensed, professional engineer. As for stormwater management, she would ask that the Board ask if one currently exists; the large impervious area which is the parking lot, should be reduced and rain gardens should be used for infiltration treatment of stormwater as well as reducing the amount of grass going back to English Brook. The variance should be seriously looked at because even though it currently is a two bedroom home, the potential exists that it can be torn down and be replaced by two large townhouses in the future. The ZBA should condition the approval that no expansion shall occur in the future.

Chairman Russell asks Robb that if any changes are submitted in the future, would they have to go through the same process.

Robb Hickey replies that if the two family dwelling should be modified with no requirements for setback variances than it does not have to go to the Board however if the location of the building is being changed than the septic may have to be relocated as well.

Melissa Vito is approaching the podium; Chairman Russell offers his apology to Mrs. Vito for abruptly cutting her off at the last meeting and although she was beyond the allowed time, he feels that the way he cut her off was rude. She replies that this is an unusual courtesy and appreciates the apology.

A discussion ensues between Mrs. Vito and Robb Hickey about the day and the time by which comments need to be received by the Planning and Zoning office.

Melissa Vito encourages this Board to condition approvals of variances in order to make a project much better and not rely on the Planning Board. If the Board would like to see something taken care of then they need to grab the opportunity. Even though stormwater management or rain gardens are not mandated on certain projects, the ZBA should consider the advice of the new member who is very knowledgeable, experienced and professionally trained on what is going to protect the lake. Some projects that fail meeting the codes are being approved; at the last Planning Board meeting 8 items of code were not followed for projects' plans and not one of them was addressed. She does not understand why it would happen and suggests that the ZBA members possibly attend the meetings to see for themselves. She asks that since this site is by English Brook, the applicant should be asked to reduce the impervious surface, prepare the proper stormwater management, do test pits, and put a buffer to keep pollutants out of the brook.

A motion is introduced by Steve Drino; seconded by Janie Green to close the public hearing.

All in favor, motion carried.

Peter Bauer asks the applicant if she would be willing to buffer English Brook in the back yard, making it a no cut area and letting it re-vegetated. He drove by the site but was not able to determine the size of the buffer.

Linda Kissane responds that it is currently quite re-vegetated in fact it is difficult to walk in the back. Janie Green adds that there is quite a bit of distance between the yard and the brook with Linda Kissane commenting that the

lawn is only mowed up to the garage with the remaining are being all rocks and brush. Chairman Russell agrees that other than the motel the remainder of this area is brush and rocks.

Linda Kissane states that Mrs. Famosi would be agreeable with conditioning the approval that the building remains at 15,000 sq. ft. and not larger.

Chairman Russell's only request is that the applicant submit to the Planning Board that a conforming septic system can be installed in the designated area in the front in the event that the current one fails. There is no reason to believe that the septic system is not going to continue to work however since there is plenty of room to expand on this site, a designated area can be shown on the map. Robb Hickey adds that the designated area should accommodate a septic system. Chairman Russell states that showing where the 100 ft. line to the brook can be indicated on the plan also.

Robb Hickey asks if the Board would want to suggest to the Planning Board that the septic system be designed by a septic person. Chairman Russell replies that it does not have to be designed since there is enough area and it would fit in fact he would like to change his proposal that in order to obtain a Land Use & Development Permit a site plan with a 100 ft. line showing the availability of land for a replacement septic system needs to be shown.

Peter Bauer expresses his belief that in this situation a condition be placed that a professional engineer perform an assessment of the condition of the septic system and a report be submitted.

Chairman Russell informs that what Peter Bauer is proposing is required by the Department of Health and only in the event that the numbers of bedrooms are increased or complete replacement of the home; he is not suggesting that replacing the current system is a requirement at this point.

A discussion ensues among the Board Members with some noting that the number of bedrooms is being increased. Robb Hickey comments that the flow for the upstairs bedroom would be 150 gallons and the first floor commercial site would have to be designed at 2 gallons per square foot which totals to approximately 150 gallons which confirms that there is no increase in flow since it was originally designed for 2 bedrooms.

Peter Keating is informed that there is presently a bathroom on the first floor and one on the second floor as well as confirming that no additional bathrooms are being added.

Janie Green says that Bradley's Septic Service's receipt shows that the system was inspected since the hair dresser occupying the first floor which is important. She would be concerned if the tank is full and needs to be pumped but the receipt shows her that the tank and the leach field are in good condition and are working.

Linda Kissane adds that the water usage for this building is minimal; her mother pays the minimum amount per quarter.

Chairman Russell states that he is satisfied with conditioning the 100 ft. setback however Peter Bauer still has a proposal that the septic system should be inspected by a design professional therefore a voted is needed to see if this condition needs to be added.

Peter Keating asks if the current septic system is within the 100 ft. set back; Robb Hickey replies that it may not be 100 ft. but is very close. The leach field is closer to the brook with the tank at approximately 105 or 110 ft.

Peter Bauer comments that what he is asking for is what DOH is recommending. Chairman Russell reiterates that DOH recommends it for a complete home replacement. A discussion ensues. Peter Bauer believes that in comparison to a septic hauler, a licensed design professional looks at the entire system such as the condition of the leach field, the condition of the tank, the age of the system etc. which factor in the competence of the system to continue to function.

Peter Keating voices that he is not sure if it is in the Board's perview to request what Peter Bauer has just suggested. He does not believe that the Board has a right to do so since they have a document stating that the system has been inspected and is working well. He wants to protect the brook and the lake as much as anyone else but feels that to impose this condition to a property owner is wrong.

Peter Bauer replies that it is a recommendation from the Department of Health; Peter Keating states that it would apply if the applicant was making alterations.

Janie Green reminds the Members that the Board goes by the recommendations of the Town's Consolidated Board of Health and not DOH.

A motion is introduced by Janie Green; seconded by Steve Drino to approve the application.

1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

No, the existing building is currently commercial and rental with the regulations and requirements for the septic being adequate.

2) Whether the benefit sought by the Applicant can be achieved by some method, feasible for the Applicant to pursue, other than an area variance.

No.

3) Whether the requested area variance is substantial.

Yes, but the building and lot are pre-existing.

4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

No, the dimensional size of the building is not going to change.

5) Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

No, it was not self- created

The Board of Appeals, in the granting of an Area Variance, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Imposition of Conditions: The Board of Appeals shall, in the granting of both use variance and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, or the period of time such variance shall be in effect.

Such conditions shall be consistent with the spirit and intent of the Ordinance, and shall be improved for the purpose of minimizing any adverse impacts such variance may have on the neighborhood or community.

Chairman Russell lists the first condition with a poll of the Board being taken:

- The applicant when obtaining a Land Use and Development Permit shall have a line on a plan showing where the 100 ft. setback is from the brook.

Ayes: 5 Green, Bauer, Drino, Keating, Chairman Russell

Nays: 0

All in favor.

A poll is being taken for the second condition that Peter Bauer is recommending:

- The applicant shall follow the recommendation of the Department of Health that the septic system be evaluated by a licensed professional engineer for its good operating condition for the new use of two rental units..

Ayes: 1 Bauer

Nays: 4 Green, Drino, Keating, Chairman Russell

Chairman Russell states that since the second condition was not agreed upon by the majority of the Members the first condition will be added to the approval.

Roll call to approve the application with the following condition:

- **The applicant when obtaining a Land Use and Development Permit shall indicate a line on a plan showing where the 100 ft. setback is from the brook.**

Ayes 4 Green, Drino, Keating, Chairman Russell

Nays: 1 Bauer

All in favor, motion carried.

Peter Bauer asks if the condition letters mailed out to the applicants be attached to the minutes and Peter Keating asked that the Planning Board minutes be included in the packages to the Zoning Board Members. It is agreed that the condition letters and the Planning Board minutes will be included in the packets sent to the Members.

A motion is introduced by Peter Keating; seconded by Steven Drino to adjourn the meeting at 8:30 p.m.

All in favor, motion carried.

Respectfully Submitted,

Adele Behrmann
Planning & Zoning Clerk