

Minutes of the meeting of the Town of Lake George Zoning Board of Appeals held on March 17, 2011 at 5:30 p.m. at the Town Center, Old Post Road, Lake George, New York.

Present: John Santiago, Chairman
Janie Green, Vice Chairman
Tom Jenna

Absent: Grant Gentner
Peter Keating

Also Present: Patty McKinney, Planning and Zoning Clerk
Mark Schachner, Robb Hickey, Adele Behrmann, Jon Lapper, Gary Filippelli, Irene O'Connor, John Caffry, Leah Kelly, Dana Seguljic, Mike Seguljic, Kathy Bozony, John Wells, Ed Rechak and others.

Chairman John Santiago calls the meeting to order at 5:30 p.m.

Tom Jenna makes a motion seconded by Janie Green to approve the February 17, 2011 minutes as complete.

All in favor. Motion carried.

PUBLIC HEARING

- 1. Area Variance #30-2009 submitted by Charles LaPlante requesting further consideration in light of Supreme Court decision of January 6, 2011 for property located at 3722 Lake Shore Drive (226.05-1-26).**

Chairman Santiago:

He summarizes what has happened with this application. Due to a Supreme Court Decision, this application was sent back to the Zoning Board for review and clarification of the screening issue of the fence that existed on the property but no permits were in place.

Mark Schachner:

He is not 100% in agreement with Chairman Santiago's characterization of what is being done tonight. He is being picky on the semantics of it recognizing that this matter has already been subject to litigation and it will most likely be subject to future litigation. He would like everyone to be as careful as possible with the precision of the semantics. He does not characterize the Court's decision as sending it back for the consideration of screening. He believes that the Court's decision is for the applicability of the screening requirements of the shore land overlay district. He recognizes that he is being picky but it is for a purpose.

John Caffry:

It is his opinion that this section of the code is a matter for the Planning Board and for Robb Hickey to address. If for some reason this matter could not comply with the Planning Board than they would have to come back to the Zoning Board. During the litigation the neighbors' attorney, Mr. Liebowitz, submitted an affidavit of approximately 20 pages and he would like to read part of it specifically paragraph 44: "further the Zoning Officer not the ZBA is bestowed with the responsibility for making the determination that the development within the shoreline overlay district will conserve ..." Basically he is also saying that it does not apply. Code 175-23 refers to the commercial design standards which are all Planning Board issues. This code only requires that there would be three trees per 100 feet and it does not say that they have to be within a particular part of the fence. Therefore it is quite possible that this can be done without any more variances or anything else. He does not believe that it affects the decision made by Chairman Santiago previously. He also has Jon Lapper's letter dated March 14, 2011 which he just saw. He does not agree with any of their arguments that the Board should amend their determination; they are talking about site plan review which they have not filed yet. He knows that

if the Planning Board determines that this project needs a variance, they will table it until the variance is obtained. Lastly Jon Lapper's letter mentions an "alternative that would be acceptable to their client and might remove this matter from your continuing consideration." He will certainly discuss this with Mr. LaPlante to see if there is room to try to settle this whole mess so it is no longer a problem for the Town. He has just seen this letter and he cannot settle this case tonight since it is not their current application and he believes it is not an issue for the Board as well.

Jon Lapper:

He states that in certain respects he does not disagree with Mr. Caffry and he believes that some of these issues are Planning Board issues. He will read the letter into the records but essentially the real issue is the view of the lake from the property. He suggested an attractive rod iron fence that would still separate the property but would allow view of the lake as oppose to a stockade fence. He believes that this compromise would accomplish everybody's purposes, it could be landscaped and still allow a view of the lake. It would take this issue away from the Zoning Board as well.

Mr. Lapper reads the letter a copy of which is on file in the Planning and Zoning Office.

A motion is introduced by Tom Jenna and seconded by Janie Green to close the Public Hearing.

All in favor. Motion carried.

Chairman Santiago:

He reiterates that the issue of screening is a Planning Board issue therefore he asked the Town's Attorney, Mark Schachner, to draft a Resolution which is an addendum to the Zoning Board of Appeals decision.

A motion is made by Janie Green seconded by Tom Jenna to introduce the Resolution. She reads the application into the records.

**ADDENDUM TO ZBA DECISION
ON APPLICATION #30-2009-LAPLANTE FENCE VARIANCE**

WHEREAS, Charles LaPlante made application AV30-2009 seeking an area variance to construct a fence at his property on Lake George; and

WHEREAS, the Zoning Board of Appeals reviewed the Application, conducted a public hearing and approved the application on March 18, 2010; and

WHEREAS, neighboring property owner Edscott Realty challenged the ZBA decision in an Article 78 proceeding in Warren County Supreme Court; and

WHEREAS, a Supreme Court Decision was issued by Judge Krogmann on January 6, 2011; and

WHEREAS, the Court Decision upheld most aspects of the variance decision, but returned the matter to the ZBA for consideration of the applicability of Section 175-23(D)(3) of our Town Zoning Law, a portion of the Shoreland Overlay District rules; and

WHEREAS, Section 175-23(D)(3) of the Zoning Law requires screening of structures located within 300 feet of the shore of Lake George; and

WHEREAS, the ZBA has reviewed and considered the applicability of that provision to this application and proceeding.

NOW THEREFORE BE IT RESOLVED,

1. Section 175-23(D) (3) of our Town Zoning Law requires screening of structures located within 300 feet of the shoreline of Lake George.
2. The applicant did not seek or obtain any variance from this screening requirement from this Board and, therefore, the proposed fence construction is subject to the screening requirement.
3. Any variance granted by this Board, if upheld by the Court, does not automatically entitle the applicant to build the proposed fence, but merely authorizes the applicant to seek site plan approval for the proposed fence from our Town Planning Board, despite failing to meet the required setback. Site Plan Review is required by Section 175-23(D) (c) of our Town Zoning Law.

This Resolution serves only to clarify our previous approval Resolution adopted on March 18, 2010 in response to the Court Decision of January 6, 2011 which returned this matter to us for consideration and application of Code Section 175-23(D)(3).

DATED: March 17, 2011

Mark Schachner:

He indicates a typographical error in the Town's Codes, there is no Section 175-23 (d) (c), it should be 175-23(C).

AYES: 3 - Green, Jenna, Santiago

NAYS: 0

ABSENT: Gentner, Keating

All in favor. Motion carried.

2. **Area Variance #4-2011 submitted by Iren M. O'Connor to change deck sizes from 4x14 to 8x12 requesting a 28 foot stream setback variance for cottage #15, a 15 foot stream set back variance for cottage #16 and an 8 foot stream setback variance for cottage #24, for property located at 3454 Lake Shore Drive (225.20-1-46 and 225.20-1-47).**

Tom Jenna reads the application into the record.

A motion is made by Janie Green and seconded by Chairman John **Santiago to accept the application as complete.**

All in favor. Motion carried.

Irene O'Connor:

She explains that she is looking for an area variance to increase the deck size on cottages that are 300 ft from the lake and cottages that are within 30 ft from the stream; there are only a few cottages that it pertains to. She gives Gary Fillipelli permission to be her agent.

Chairman Santiago:

He asks if the current decks are too small and non-functional.

Irene O'Connor:

She replies that the decks are small and one can only sit on them.

Tom Jenna:

He asks if cottage #15 already has a deck.

Gary Fillipelli:

He indicates that the shaded areas on the drawings are the areas where the decks would be and the Board can see that cottage #15 has a small deck facing the road.

Tom Jenna:

He confirms that there is no original deck on cottage #15. He then asks about the variance requested on cottage #15, is it 28 feet away from the stream?

Gary Fillipelli:

He replies yes.

Robb Hickey:

He reminds Mr. Fillipelli that as for the 300 foot variance from the lake he needs to go to site plan review.

John Wells:

He lives to the south of the O'Connors. He requests that the applicant be allowed no further development until the current violations on the property are addressed and then upon careful review of the current zoning ordinances. He believes that the lot coverage has already exceeded the 60% allowable lot coverage for commercial high density lake shore frontage. In addition, cottages #2, #4, #6, #8 #10, #12, #14, #16 are in violation of the current zoning set backs and no further expansion should be allowed. In fact three of these cottages are actually on his property. Cottages #14 and #16 are approximately 5 feet off the O'Connor's property line. Last year, the applicant built a huge deck approximately 20x40 without any permits or site plan review. This deck is about 12 feet from his property line and approximately 100 feet from the shore line. The applicant installed a two story play ground about 12 feet from his property. In both cases not only did the applicant ignore the set backs but structures were built in violation of the zoning codes. In 1988 the applicant built a two story garage and they indicated that it would be 22x22 in size when in fact the garage is 24x24 two stories and it is only 7.2 feet from his property line. In 1982 the O'Connors submitted a pre-existing dock permit to DEC indicating that they had four docks of which the closest dock to his property line was 6 feet away. Currently there are five docks of which the closest dock is on his property line. Although the O'Connors received dock modifications from the Lake George Park Commission, they never received approval for variances from the Town of Lake George Planning Board. The O'Connors have existing septic lines running directly across a stream which is in violation of current codes. The current variance application did not include a scaled map showing all structures, non permeable surfaces, septic and water, floor plans as well as elevations. He gives the Board exhibits with pictures for their review.

Robb Hickey:

He states that there are no outstanding violations on this property. In addition, the cabins were built before zoning and are pre-existing and non conforming.

John Wells:

He understands however the applicant is increasing the cottages' size.

Robb Hickey:

He replies that the applicant can increase the size by asking for a variance. They are not further encroaching in the set backs, the only reasons they need variances are because of the stream and one side set back. As for the two cabins on Mr. Well's property, they are pre-existing non conforming. As for the other issues, the garage issue has been taken care long ago; the deck is a flat surface just like a patio and it is not a permanent structure. He adds that Mr. Wells can submit a list to him, he will go over it and if he feels that there is a violation, he will pursue it.

Kathy Bozony:

She asks if this application is going for site plan review to which the answer is yes. She would like to know what is being done to protect the stream during the construction of the decks.

Gary Fillipelli:

He comments that the decks are open and the cabins are not increasing living space. The cabins were built in the late 1960s there have been two previous owners with no complaints. The garage issue was a scaling problem.

A motion is introduced by Tom Jenna and seconded by Janie Green to **close the public hearing.**

All in favor. Motion carried.

Chairman Santiago:

He comments that he feels the request is reasonable since the decks are very small and narrow and it is not uncommon to put decks on structures especially in this region. The cabins have been in existence for many years prior to zoning codes and Robb Hickey has mentioned that there are no outstanding violations.

A motion is introduced by Janie Green and seconded by Tom Jenna **to approve the application with conditions that recommendations be made to the Planning Board to install silt fence and hay bales to protect the stream during construction of the decks as well as extra screening by unit #15 by the stream line.**

Janie Green reads the criteria into the record.

AYES: 3 - Green, Jenna, Santiago

NAYS: 0

ABSENT: Gentner, Keating

All in favor. Motion carried.

REGULAR MEETING

1. **Area Variance Application #1-2011 submitted by Adirondack Mountain Ridge Estates to construct a single family residence. The applicant is requesting a 21 foot variance from a driveway infiltration device 79 feet to a wetland, a 25 foot variance from a well 75 feet to a driveway infiltration device and 37 foot variance from well to a driveway infiltration device 63 feet where 100 feet is required per Section 175-21-G(2) (C), for property located at 58 Sunny West Lane (238.15-1-21).**

Chairman Santiago:

He states that at last month’s meeting, the Board tabled this application in order to think about it for 30 days. He hopes that the Board Members have had an opportunity to review it. This application to construct a residential house was previously approved. The approved house was a larger house however with the new proposal the house has been scaled back but due to the discovery of an intermittent stream it now requires set backs.

Ed Rechak:

He comments that nothing has changed, the house was designed and moved in order to have the least impact possible. Robb Hickey made some recommendations when they met and they have tried to institute as many of these recommendations as possible.

Chairman Santiago:

He asks Ed Rechak if he could refresh the Board’s memory as to how the stream was not there originally and then appeared.

Ed Rechak:

He replies that the stream is a seasonal stream and it dries up during the summer months. He is not sure when the first survey was done but it may not have been there at the time; during the spring however it flows.

Chairman Santiago:

He is familiar with this property, this was a house which had previously been approved on a larger scale and it has now been scaled back. It appears that when the survey was done the stream was not visible or dry and therefore it was not laid out and mapped and now it is. The applicant is seeking set backs from infiltration devices.

A motion is introduced by Tom Jenna and seconded by Janie Green **to grant the variance.**

Tom Jenna reads the criteria into the records.

AYES: 3 - Green, Jenna, Santiago

NAYS: 0

ABSENT: Gentner, Keating

All in favor. Motion carried.

- 2. Area Variance Application #9-2006 submitted by Charles Portes requesting an extension to previous approval on March 20, 2008 to convert year round rental cottages into condo units, for property located on Vito Road (225.16-1-19).**

Patty McKinney:

She informs Chairman Santiago that Charlie Portes is not present.

Chairman Santiago:

He comments that he does not believe the applicant needs to be present.

Robb Hickey:

He adds that normally the applicant or an authorized representative should be present however the decision is entirely up to the Board.

Patty McKinney:

She states that the application indicates that the applicant or an authorized representative needs to be present; she does not know if perhaps Charlie Portes thought he did not have to appear in person.

Chairman Santiago:

He comments that having been on the Zoning Board he is familiar with these projects, Charlie Portes's and the one by Walton Service Group. Janie Green was also on the Board when these projects were first proposed. He then asks Tom Jenna if he has reviewed the information.

Tom Jenna:

He replies that he has reviewed the information for both projects.

Chairman Santiago:

It is his understanding that there has been no significant change or any actual changes in the property description or the approval for the renewal of the last variance application therefore he is comfortable with moving forward and make a recommendation as long as the Board Members agree.

Janie Green:

He states that this is basically an extension of an approval and it is not granting them the right to build anything of any kind. This approval is so the applicant can go forth in submitting a condo application.

Chairman Santiago:

He adds that the applicant needs to go forward in instituting a homeowner association which he understands from not just talking to these two applicants but also someone else who is going through the same process and it seems as though the Attorney General tends to drag his feet with issues like this. It would be his recommendation that the Board put forth a renewal of the existing variance that was previously approved for an additional 3 years.

A motion is introduced by Tom Jenna and seconded by Janie Green to grant the area variance #9-2006 submitted by Charles Portes for three years as long as the existing information and criteria is the same as it was prior to the extension.

AYES: 3 - Green, Jenna, Santiago

NAYS: 0

ABSENT: Gentner, Keating

All in favor. Motion carried.

3. Area Variance Application #4-2006 submitted by Walton Service Group requesting an extension to previous approval on March 20, 2008 for change of use from housekeeping cottages to residential single family homes, for property located at 208 Beach Road (264.07-2-53).

The applicant, Scott Walton nor an authorized representative are present at the meeting.

Chairman Santiago:

He states that both these applicants came in around the same time and submitted very similar projects. The applications are different and one has nothing to do with the other but as he mentioned previously, understanding that no changes have been put in place, he would recommend the Board put forth a motion to approve the extension.

Janie Green:

She would like to put forth a motion to grant the extension for this application however she is concerned with the wording as it was written on the application since it does not state that it was for the condo project; the application indicates “change of use” and “residential.”

Robb Hickey:

He agrees with Janie Green and comments that the condos are considered residential and recommends changing the application to read “residential, single family condos” rather than houses; however the Board Members need to agree to this change.

Chairman Santiago:

He asks if the applicant is leaving the current structures on the property as they are.

Robert Hickey:

He replies that the original application stated condos and not homes.

Chairman Santiago:

He comments that the Board could approve the extension as it was written and approved in 2006 and 2008. Basically what ever the language was on the original approval.

A motion is introduced by Janie Green and seconded by Tom Jenna **to grant area variance #4-2006 an extension for three years as long as the original criteria and wording on the application remain the same.**

AYES: 3 - Green, Jenna, Santiago

NAYS: 0

ABSENT: Gentner, Keating

All in favor. Motion carried.

A motion is introduced by Janie Green and seconded by Tom **Jenna to adjourn the meeting at 6:20 p.m.**

Minutes typed by Adele Behrmann.

Respectfully submitted,

Patty McKinney
Planning and Zoning Clerk