

Minutes of the Town of Lake George Zoning Board of Appeals meeting held on January 6, 2016 at 6:00 p.m., at the Town Center, 20 Old Post Road, Lake George, New York.

Members Present: Peter Bauer, Chairman
Peter Keating
Karen Hanchett
Tom Jenne
Gary Moon
Bob Risman, Jr. (Alternate Member)
Denise Paddock (Alternate Member)

Also Present: Adele Behrmann, Dan Barusch, Todd Fellogy, Andrew Allison, Matt Fuller, Esq., Dan Ryan and others.

The meeting was called to order at 6:05 p.m. by Chairman Bauer.

Acceptance of the Minutes:

The following correction was made to the minutes: on page 2 the reference to “Doug Moon” was corrected to Gary Moon.

A motion is introduced by Karen Hanchett; seconded by Gary Moon to accept the minutes with the above correction.

Ayes: 4 Moon, Keating, Hanchett, Chairman Bauer
Nays: 0
Abstain: 1 Jenne

Motion carries.

PUBLIC HEARINGS

- 1. Application for Area Variance AV7-2015 submitted by Beach Road Properties with Andrew Allison and Matt Fuller, Esq. as agents requesting 10 ft.9 in. setback relief in order to construct an outdoor fireplace attached to an existing patio for property located at 220 Beach Road. Tax Map No. is 264.08-1-28.1. Lot size is 1.48 acres. Section is 175-29B & 176-16. Zoning Classification is RCH.**

Chairman Bauer: Dan, there were some issues that we asked you to look into with the applicants last meeting; could you give us a status report please?

Dan Barusch: yes, the two issues that were discussed at the last meeting were the placement of the stage on the western area of the site and a notice of intent to not intensify the music with this new use. We turned that into a letter which was drafted by Matt Fuller. I don't know if anyone has seen it but the stage has been removed and again we'll give the applicant a chance to talk and you can discuss as far as the stage goes I would recommend that you put that as a condition that it doesn't come back unpermitted.

Chairman Bauer: to put something up like that they would have needed a permit.

Dan Barusch: yes, a Land Use and Development Permit and do you all have the letter from Matt right in front of you?

The Board Members reply yes.

Chairman Bauer: Dan, thank you. The public hearing is still open and so why don't we hear from the applicant about the project. Dan we have to recognize Matt Fuller as a project representative and to do that we simply recognize the letter that you've provided us?

Dan Barusch: yes, the additional authorizations form.

Chairman Bauer: we have an authorization to act as agent for Thomas Davey by Matt Fuller.

Matt Fuller, Esq.: good evening; happy New Year. I am Matt Fuller with Meyer & Fuller here in Lake George I have worked before on the overall reconstruction of the Garrison when we had that through the site plan and now what we're proposing to do is to add a fireplace on the front of the deck out front closest to Beach Road. 25 ft. is the setback that's required but the actual specific measurement is 14 ft. 2 5/8 inches which is about a 10 ft. encroachment. I wasn't here at the last meeting but I know there was a discussion about the outdoor music which was also a Planning Board discussion, if I recall correctly. You have asked for a letter and so I put it in writing; obviously I have the authority to bind my client as the applicant but this is not to create an outdoor music venue. As you can see with similar other outdoor establishments, the fireplace has become an inviting inclusion in a restaurant experience; that's really the idea here. The one thing that I clarified meeting with Dan is that from what I have seen some of them start with wood fired and may want to switch to gas because it's easier to deal with and a little cleaner to burn and so I included that as an option if they wanted to put the gas insert in there and not violate a prior approval because it said wood and not gas but you have our representation that it's not intended to nor will it increase outdoors. We still have the noise setback or the noise ordinance that we have to comply. I read the minutes and there was discussion about that too but they have never been in violation although they did have the one even out there that Ed talked to the Town before end but the stage did not have the permits. I made it clear to them that before we came back here that thing had to be gone and Tony did make sure that it was removed before we came back. If you have any technical questions about the drawings, I know that Andy has submitted them to you before and has updated them with color renderings and things like that and we can answer any questions about the project.

Peter Keating: Dan, I have a question. In your letter it says "please note that there have been no reported violations of the Town's Noise Ordinance at the property." My understanding is that the music was so loud that more than one neighbor actually contacted Doug Frost after hours and Doug actually came over although there wasn't a violation issued but I consider that important to know that it occurred.

Matt Fuller, Esq.: when I was meeting with Dan and coming in here, I talked to my client about it and he said that they have had no violations and I am not being technical about that but he said that no violations were issued; obviously we don't want to cause them since we have to remedy them. If someone says that the music is too loud then we'll turn it down even with the noise ordinance.

Peter Keating: I understand that another neighbor called the local police and asked to come over and they did.

Matt Fuller, Esq.: I talked to them about that (interruption).

Peter Keating: this is what neighbors have told me; I have not personally experienced it but I have no reason to doubt that the neighbors called the police.

Dan Barusch: I don't doubt that they have but the only way that it turns into a violation is when we have a recorded decibel meeting when we respond.

Peter Keating: and my understanding is that Doug didn't have a meter when he came.

Dan Barusch: we have one.

Peter Keating: now, maybe.

Dan Barusch: it's in the Town car; he probably didn't have the Town car at that point but I have already assured him that we'll be calling him this summer for that reason.

Matt Fuller, Esq.: like I said I talked to them about and they don't know (pause). Playing louder music doesn't necessarily increase the (not audible). If you've been over there and see the guitarist playing or something like that; it's not a rock show. In that case you can't hear, you can't talk at the table you can't enjoy a drink with someone and so it's not their intent.

Chairman Bauer: the stage would have been more conducive to a full band but not the deck since it doesn't have space; it has tables and you want to have people sitting out there.

Matt Fuller, Esq.: I stopped through that day when that thing was going on and at first I said what's going on here and then I thought that it wasn't crazy loud; not that I am the judge of sound but now they know. It wasn't dialed back like some of the shows at the park but I think it was inadvertent from both sides with no intent of violating anything. It wasn't without notice to the Town or some clandestine show that they put on out there.

Chairman Bauer: Dan is there anything that makes a difference if it's a gas fireplace in that location as far as lines and tanks or whatever then having a wood fireplace.

Dan Barusch: it's just a gas insert right?

Matt Fuller, Esq.: yes. Again, it wasn't the plan. When I was talking to Dan, you know I work for the Village and when John Carr put his fireplace out there, he started with wood and then put in gas.

Karen Hanchett: I think it would be better to convert to gas because we had concerns with it being so close to other buildings and in the down draft and maybe sparks could travel and so I think (interruption).

Dan Barusch: I know there are sparks arrestors. I think the benefit of putting it on now is that so they don't have to come back because if they do make that decision later they'd have to come back and jump through another hoop.

Chairman Bauer: Dan, you said that we have to acknowledge the stage issue and the permit by putting in a condition that they should (interruption).

Dan Barusch: you don't have too; it's up to you guys. The stage is gone and so the unpermitted structure and the non-compliance are gone and wiped.

Matt Fuller, Esq.: I'll make it easier for you, for the record, the applicant acknowledges that he can't have a structure like that without an applicable permit and so regardless of the condition it's still was a zoning condition that would have to be remedied therefore we acknowledge it and we will not have any structures that are unpermitted.

Karen Hanchett: I don't think we have to put any conditions on it.

Dan Barusch: you have his word.

Matt Fuller, Esq.: I mean it was a violation that had to be corrected which is inherent with all permits that you're not supposed to violate the law.

Chairman Bauer: you weren't here last month (referring to Tom Jenne), do you need to see the location of that formal site plan?

Tom Jenne: I have seen the location but I would like to make a statement and so could I please see those plans?

Andy Allison: just for the record I am Andy Allison and we're the architects on the renovations. Andy Allison approaches the dais and shows Tom Jenne the plans.

Andy Allison: as far as the fireplace goes, it is a masonry one with the option of having a gas insert and it will have natural stone instead of cultured stone with granite or concrete tops on it and a rod iron spark arrester at the top. It stands about 5 ft. tall at the mantle and then the total height is about 11 ft. This fireplace is designed to draw and draft better than most fireplaces which adds a nice effect to it. We've gone through it and we're ready to submit to the Building Dept. to get the foundation approved for it since it does carry a lot of weight. The fireplace will be flushed with the current deck so the fire box will be actually at the same level in order to avoid a tripping hazard. Since there isn't a lot of space on the deck we pushed this off the edge which is really what creates the need to get the setback adjustment. So, that's what the fireplace looks like and then we did a quick photo realistic inlay of what the fireplace will look like from the Beach Road side and it's nice for them because it does a couple of things; it blocks the traffic but it also maintains the little bit of view of the lake which comes off the side here.

Chairman Bauer: do we have questions?

Tom Jenne: I do pertaining to the project as a whole. As a Zoning Board Member obviously I am sworn in to try and be a part of advocating for circumstances to make something happen and as part of the criteria I have to consider five different things that need to be done such as “whether or not an undesirable change will be produced to the character of the neighborhood,” “whether it’s substantial,” “whether the benefit can be sought in some other form” and what I consider to be very important “whether the alleged difficulty was self-created” and whether it can be something that we can reach out as a Board and advocate to make happen because of such circumstances. I am finding it hard to see this as something that is necessary for me to be an advocate for. There are several other options as Peter mentioned in the minutes of the last meeting such as placing it towards the lake side which would make it not needing a variance. There are several other avenues that could be approached but the applicant doesn’t want to choose that because obviously it will take away from the lake side. Now, the Garrison was purchased with the structure at hand, the way it is, and we all want to keep up with the economy and so we have to do things that make that happen. I don’t see the precedence of a variance for something like this to be necessary; maybe I am asking for some kind of an explanation as to why for the criteria that I am not comfortable with as being met should be overwritten for this fireplace.

Andy Allison: one of the reasons that the owner feels compelled to do this is because many of the other establishments have it. In the swing season they’re going to go down to John Carr’s place because now he has a fireplace and so he feels that he needs to have it too. Our initial idea was to put it back here in order to avoid that very thing however the problem is that because we were working within the existing footprint of the building as much as possible we didn’t want to encroach on the parking because we kept the patio along the side minimal and so there is just enough room to walk by here and walk by the two or three small tall table top seats there. When the owner decided to expand he expanded the restrooms and kitchen facilities so he can make the building work better that it did before. We moved the bar over which now opened up windows to the lake which if we put the fireplace here (referring to a map) it would then block the view of the lake from this edge for the patrons inside and not allow anyone to sit in front of it and so there would be no reason to put it at that point; the owners wouldn’t do that because it provides no benefit and it would actually be a deterrent for the people inside because the view we are providing of the lake is now blocked by a fireplace and no one can sit in front of it. This was the owner’s original intention and then I walked through it with him and advised him that it wouldn’t be the best place to put it. We specifically spent additional money for the building to move the bar to where it is now so that we can open up the view inside the building to get that experience which, if you’ve been in there, it’s much nicer than what it used to be. You can swing it down in here as well but again it still impacts how the seating works. I think that if we start pushing it down here then we’ll start to encroach on the parking, the handicap accessibility along the side, we have to move sidewalks and those type of things. So, for the use of the building and for what it is intended to do, which is to create a space where the guests can sit around and enjoy the seasons, this is the best place to put it.

Tom Jenne: I understand that but I am trying to weigh out pre-existing non-conforming with hardship. It was purchased the way it is and now you want to make conversions. On my part, I am trying to weigh out the different scales. Dan, what kind of pre-existing non-conforming conditions apply to the building and the deck as it exists right now?

Dan Barusch: unfortunately when they did the deck there was a slip on the part of the Planning & Zoning office in 2013 and no variance was ever sought. It wasn’t on their end; it was on our end.

Tom Jenne: and that means me too because I was part of the Zoning Board back then and so let’s exclude the deck as far as condition goes. Are there any others as far as the building goes that are pre-existing non-conforming?

Dan Barusch: no. The only one is the setback of the deck and honestly that’s why we’re here.

Tom Jenne: and the setback of the fireplace because it’s outside of a (pause).

Dan Barusch: yes, that’s why they’re here and to build off of what Andy was saying, there are minimum distances from combustible structures for fireplaces and so there is only a certain amount of places that they could put it. It couldn’t be placed in front of the windows with the view of the lake or along the side. We discussed this at the last meeting but you were not on the Board at that time; aesthetically it’s a nice fireplace the discussion is on the setback.

Tom Jenne: what are the legalities if the Board approves a fireplace on a deck that isn't legalized? What kind of legalities could the Town possibly face?

Peter Keating: there has to be a legality issue there.

Tom Jenne: there has to be.

Peter Keating: a non-variance deck that is up and we are now approving a fire structure to go (interruption).

Tom Jenne: on a non-approved deck; that's my question. This would almost make us liable for something that is not conforming or legal.

Dan Barusch: I don't know the answer to that question.

Matt Fuller, Esq.: are you talking negligence liability?

Tom Jenne: not only negligence by law because if we are to approve something to add onto a non-approved structure regardless as to whose fault it is, than we're taking the liability for approving something that is not of our power to approve.

Chairman Bauer: last month when we talked about the existing violations on the property we talked about the stage; the deck was never mentioned.

Dan Barusch: I mentioned it last month. The deck was approved by Keith.

Chairman Bauer: it was approved; did they have to go for site plan?

Dan Barusch: did you have to go for site plan?

Matt Fuller, Esq.: yes.

Chairman Bauer: and so it was approved by Keith and was approved by the Planning Board but they should have come to the ZBA first for a variance. The liability, and I am not quite clear what the liability is, but the liability is if the law is not being upheld because now we're made aware that this deck doesn't conform.

Matt Fuller, Esq.: we were replacing the deck that was there with a smaller deck and so there was a decrease in conformity. We were further away from the road and more conforming.

Dan Barusch: how old was the deck that was there?

Matt Fuller, Esq.: since I was a kid.

Tom Jenne: a long time.

Karen Hanchett: but it had also been expanded at some point too.

Tom Jenne: it was too and so the footprint was not the same; it's like apples and oranges but either way to add something to something that doesn't theoretically exist is out of our hands; I personally believe that we cannot make any kind of a legal decision on something that doesn't legally exist unless it's structured so that is conforming. It is almost like a property line. To approve something not knowing exactly where the property line or structure ends is irresponsible.

Bob Risman: I would think my apotheosis and experience would be that any applications brought in the Planning Department I would think that the zoning official would be the one who would determine whether or not it requires a variance or site plan review. If the official decides that it needs site plan review and goes to site plan review and receive an approval and a permit I would personally review it as permitted. My question, I guess, becomes whether or not

there was an encroachment or a violation and whether or not it requires some sort of compliance; I should make a phone call. I view this as being permitted.

Chairman Bauer: yes and that is my question to you Dan; was the deck built as permitted by Keith and the Planning Board?

Dan Barusch: yes; that's good.

Karen Hanchett: I am agreeing with you. Yes it was when it went to site plan and it received approval. There was a minimal decrease in space that the new deck would take and they were going to take it back away from the encroachment that had taken place many years ago off the original one and bring it back a little more in compliance with the setback.

Peter Keating: but still out of compliance.

Karen Hanchett: still out of compliance but no issue was brought up as that time about having to have a variance on it.

Chairman Bauer: but for the Town to ask an applicant or someone undertaking a project of this magnitude when they went through all the proper channels they were led to believe by the proper channels, namely the Town code officer and our brothers and sisters on the Planning Board and Zoning Board that they had done what the Town asked of them; that's my point.

Bob Risman: for safety which my first concern, potentially an application could be made to the Zoning Board concurrent with and the application reviewed, approved or disapproved and then you have a sort of "after-the-fact" permit perhaps to be conditioned that no work be done until (interruption).

Peter Keating: the problem that I see with that is that if there are a lot of legally non-conformings out there and if people heard the discussion you just had, which I understand where you're coming from, they'll put a deck on and when they're caught they're going to say "Oops, ok, now I'll go and apply for my permit." This is going to open up Pandora's Box for the Town and for the Planning & Zoning Boards.

Chairman Bauer: Peter, is there not a difference in this case because they had the approval of the Zoning Officer and the Planning Board and it is the Town's fault that they didn't catch it. Doesn't this separate it from all the other non-conforming uses out there that people may deliberately and knowing they do without a permit?

Peter Keating: I think that the argument could be made that it mitigates it but I don't believe it justifies it.

Tom Jenne: and if it does it should be put added into this record so that when any decisions are rendered then we can fall back on that recognizing that it was approved and inspected and it was conforming to those standards and it can be looked at this as being part of that.

Chairman Bauer: let's defer to counsel for a moment to weigh in.

Matt Fuller, Esq.: if I could, thank you. A couple of thoughts on this; one it is a little bit different and you asked about the liability which I want to get back to because I don't think we fully addressed that part but there is a difference on a zoning application. When you come in and a Zoning Administrator makes a decision for site plan, area variance or whatever you need, you as an applicant have two choices. You can do what the Zoning Administrator has decided or you can appeal him and that also applies to anyone else; the public can either agree with him or appeal him with a 60 days statute of limitations on that. When the 60 days are over then his determination is binding on us and on the public. From a liability stand point that 60 days statute of limitation that is in the Town law and your law is clearly wrong. As for a non-conforming use, if you build something without approval there is no statute of limitations on that so you can have a deck that's been there for 30 years that statute of limitations is on that every single day. Property rights people have fought through the legislature to try to get a statute of limitations adopted and so the thinking is that if it's been there for 20 or 30 years and no one cares maybe I should be able to keep it; that is not the law of our state; you violate the law and no-one has caught you is not a defense. The different scenario of this project is that when you go through that process, the Town Law protects you. When you properly apply, get a zoning approval, build, etc. that what that 60 days statute of limitations is for; it's that type of protection but I do agree with you Mr. Jenne that the error made in the

past should be noted that the Zoning Administrator nor the Planning Board caught it and any conditions that you put on here acknowledge that that deck was built without approval and an area variance but gets acknowledged as part of the process. It seems as though that's the idea you headed to and I think that would be appropriate; I represent a lot of municipalities too; things happen. I was here a year or so ago when you had someone who did something wrong and I can tell you that your precedent is that you make people fix them if not have them taken down all together. From a precedent stand point this Town is fine; you're more aggressive than most of your neighbors but in this instance to try to hold up a review or penalize someone for something that was previously approved I think you need to use common sense; it was a good comment but I think you just have to say (interruption).

Tom Jenne: so you confirm that the deck is compliant as per the Planning Board.

Karen Hanchett and Matt Fuller both reply yes to the above comment.

Karen Hanchett: it is compliant with the final approvals of the Planning Board and they met all of the conditions and everything that was listed on their initial plan but unfortunately the Planning Dept. missed that and as you said the statutes have run out since it's been two years now. I think we can just make a note that a discussion was held on this now for the liability portion of it.

Matt Fuller, Esq.: to Mr. Keating's and Mr. Jenne's comments your general principle that the passage of time doesn't necessarily help, I agree with that because again there is no statutes of limitations on a zoning violation; there are dozens of cases on that. But when you've gone through that process you get a little more protection and as you we, the Village and the Town, don't administer the state building code and so there are actually two additional statutes of limitations time frames that kick up. One is when you get a building permit or sign off for your site plan or variance from Dan's office and secondly when you go to get your CO at the County in which case they have to go back out which is actually another 60 days statute of limitations that allows any neighbor to come along and say "that project wasn't built in conformance" or the Town can say "you didn't built it in conformance" and so you have to go back to the Planning Board or the ZBA and there are actually two 60 days' time frames that kick up with that process.

Bob Risman: I agree in so far as precedence; there was no variance granted. Perhaps as a suggestion the applicant can apply for an "after-the-fact" permit to just tighten up the application to send a message but also to support your finding that the applicant's manner sought the correct channels and he received a permit vs. a willful act to avoid the review and so a person who would come in and raises an argument that this slipped through the door and don't if it would hold muster as opposed to the distinction that this applicant did go to the a zoning official who sent him to get a permit but it does remain that it wasn't (interruption).

Tom Jenne: it wasn't closed and I appreciate that but as long as we mention the fact that it was an item of discussion and it was rendered as being completed even though after the fact.

Chairman Bauer: Dan, do you have a recommendation as to an after-the-fact permit rather than an acknowledgement?

Dan Barusch: I would say that you just roll it into this. You don't want to approve, deny or table this fireplace and then have them submit another application for a deck that's already there.

Peter Keating: I still have a concern over the liability issue of granting the variance, I am not trying to put an anchor on this project please don't misunderstand me, but I strongly suggest that we go back to Mark Schachner and run the liability issue of granting the variance for this on something that has slipped by and it's something that I believe could be done very quickly.

Chairman Bauer: Peter what's your time frame; are you asking us to call Schachner right now?

Peter Bauer: if Dan has the ability to do that, I have no problem with it. I am just concerned about the liability issue on the Town and the Board.

Chairman Bauer: and the liability, other than the precedent, the liability is what?

Peter Keating: is granting a variance to put a fireplace up on something that slipped through and there is no variance for it that should have been applied for.

Matt Fuller, Esq.: there is no liability.

Peter Keating: that could very well be true but (interruption).

Matt Fuller, Esq.: I represent the applicant and so you can/t take my word for it but taking that off (interruption).

Peter Keating: I don't mind taking your word for it but I want to protect the Board and the Town; that's my job.

Chairman Bauer: Adele will you note in the minutes that Dan is trying to call our counsel?

Matt Fuller, Esq.: I will tell you that the immunity that is granted to a Town Board, Planning and Zoning Boards is so high of a hurdle where you have to willfully disregard a known public hazard in order to tag a municipality with a liability. I think more to your point is probably the precedent question; it's not a liability question but a precedent question but in terms of criminal or civil to attack a ZBA or Planning Board is one of the highest hurdles; probably higher than getting a use variance.

Chairman Bauer: Dan, were you able to reach counsel?

Dan Barusch: no, he didn't pick up; I didn't imagine that he'd be in his office.

Chairman Bauer: Peter, are you going to move that we're unable to act on this application subject to getting that information?

Tom Jenne: are we going to have a consensus.

Peter Keating: why don't we ask for an unofficial consensus now as to where the Board stands; I don't want to see this put off if we don't have to. If we have the ability to protect the community, ourselves, the Town and if everyone is good I have no problem with that. Why don't we take an unofficial consensus of the Board now as to whether this application will pass or not.

Chairman Bauer: very good, we'll do that. Karen, I am going to start with you.

Karen Hanchett: I feel that you can add it into this application and make the statements pertaining to liability, the mishap that happened to begin with, clarify everything and if at some future point they needed to come in a variance application could be submitted but I think that if we leave this open we should tie it into this but make sure that everyone in the public is clear on the issues around it.

Tom Jenne: I think I am asking a consensus on which direction we're going with the fireplace, correct?

Karen Hanchett: yes, but tie in the missed variance on the deck that was non-conforming, the original one, with the fireplace.

Peter Keating: no.

Tom Jenne: my consensus is the same as Karen's with tying in the legalities of the deck but my direction is no on the fireplace and I just want to point out that I am not clear on whether Karen is going yes or no in the direction of the fireplace part of it.

Karen Hanchett: yes for the fireplace.

Gary Moon: regardless of the deck encroaching on the property line, I feel that adding this additional structure where it is the hardship to the applicant is overstated and the benefit of the location is understated and I would tend to decline and say no on the approval.

Chairman Bauer: I am with Karen on this. All right that's our poll but in order to make a decision we need to continue the public hearing if there is anyone here.

Dan Barusch: if we're tabling this and there is no decision tonight you might as well keep it open.

Chairman Bauer: I am not sure that that's where the Board wants to go. Peter and you guys, it doesn't seem like you're supportive of the fireplace variance.

Tom Jenne: I am not supportive.

Peter Keating: I am not supportive of the fireplace. I have no problem rolling over the ok for the lack of the variance for the deck.

Chairman Bauer: counsel, do you guys have any last words?

Matt Fuller, Esq.: just a couple of comments and thoughts. One, on the question of the deck it would be probably the first area variance I have seen that wasn't self-created. Secondly, someone needs to keep in mind that we're in Lake George and year-around businesses are tough and so to the extent that now you have someone who stays open in the off season, take the slow nights and make money on the good nights. You have a legitimate business and we're trying to keep more businesses year around. If we go back to the area variance test, the overall balance is the impact to the neighborhood vs. the benefit to the applicant; that's what you're dealing with. A use variance has a much higher and difficult test but an area variance, I believe, is a common sense test. If you look at it and say "what is the legitimate impact of an area variance of 10 ft. vs. the impact to the neighborhood and is there a benefit? I think there is a clear benefit since we're able to extend our shoulder season into September, October and maybe we can open a little earlier such as May or June during the colder nights and generate more revenue which keeps a year-around business open. I know of another substantial pub type atmosphere business who cherry picks the weekends; the business could try to stay open during the week but doesn't because weeks days are tougher. Let's face it, we all know, I try to drive by the Garrison every night when I go home on the east side of the lake but they don't; they push through and try to keep it open and I think that you have to take that stuff into account when you talk about the benefit to the applicant which is what the common sense test is when you balance the impact to the neighborhood and benefit to the applicant particularly with the deck, the chairs, the tables, these are part of the existing project; this is minor, I just don't think a large impact to the neighborhood. It seems as though it's going to go down 3 to 2 and we'll probably withdraw it but we're going to be really disappointed because they have done a lot and have made a substantial investment to a bar that was really run down. They have done a lot and are trying to extend the season a little bit; we'll see what we can do, maybe we can modify it a little bit and try to come back with something.

Peter Keating: Matt, my concern is that the proposed structure I feel doesn't benefit the bar or the neighborhood. At 11 ft., it is excessive when I originally heard that a fire pit would be going there which is what I think would be a lot more reasonable and safer to have there. The fact that it could potentially be gas vs. wood is a good thing because there are a lot of dry woods around there and we get considerable winds. In my opinion, the right thing there would be a gas fire pit; I think that would suffice to achieve everything that everyone is looking for. I think it would fit into the neighborhood's decorum; I think it would be safer and wouldn't obstruct any view. The only thing that potentially from your presentation it would not accomplish is to cut down a little on the noise of going up or down the hill on Beach Rd but I can tell you from Americade you could put up a deadening wall there and it isn't going to quiet down the noise.

Gary Moon: yes, to add to what Peter is saying, I am not saying that there shouldn't be a fireplace there, just not this fireplace.

Matt Fuller, Esq.: is it the size?

Gary Moon: yes, it's the size, the proximity, the location to the road. Previously I had asked if this is intended to be a road block for the noise and the answer was no and so in that case it doesn't have to go up against the road. It's not that there shouldn't be a fireplace for all the purposes you mentioned, just not this fireplace.

Chairman Bauer: what other viable location is there? I went to look at this today and I couldn't see one; you want them to scale it down (interruption).

Peter Keating: if they want to come back with a variance for the deck and put a caveat in there to do a little cantilevering at that corner so that you could have a gas fire pit there and have some seating around (interruption).

Gary Moon: I don't think we should be re-designing the deck.

Tom Jenne: I don't see the hardship of it being necessary.

Dan Barusch: Tom, when we talk about hardship that's usually with a use variance.

Tom Jenne: I am sorry but I don't foresee whether this overcomes the self-created criteria.

Matt Fuller, Esq.: what I am going to tell you is that 100% of area variances are most likely unnecessary. It's someone who can build the garage a little closer to their house or if the site would work or look a little better and which point you need to come back to the overall area variance test. In your Town zoning the very first question is the impact to the neighborhood and benefit (interruption).

Gary Moon: what I am saying is that if this was not a fireplace and was a brick wall, I wouldn't want them to put a brick wall in that location either. It has nothing to do with (not audible).

Tom Jenne: and the neighborhood would be impacted because there would be more traffic on the deck which is self-created which are the reasons for not liking the idea. My verbiage of hardship was incorrect and that was not the direction that my argument was going.

Chairman Bauer: Matt, do you think that with the fireplace the numbers of people on the deck will exceed the numbers of people on the deck on an 80° Saturday night?

Matt Fuller, Esq.: no, I think what it does is that it gets you into the off shoulder season; the size of the deck alone has its own occupancy laws on it.

Dan Barusch: we talked about that last month too.

Karen Hanchett: do you have a suggestion on downsizing or minimizing it?

Andy Allison: to address your concerns, Gary, to not objecting to a fireplace but rather objecting to this fireplace and so I want to go through why it ended up the way it did.

Gary Moon: I think you sufficiently did that; you don't have to do for my benefit; I do understand what you are talking about.

Andy Allison: it would be more for my client's benefit because what I am hearing from you is that you might be open to another idea and I don't want to have my client spend another \$3,000 to \$4,000 of his money re-designing this thing if you don't think it's going to work. I would never recommend to my client to build anything along here (referring to a map) since it would be a waste of money and it would provide no benefit and do nothing to increase the use of the deck. We looked at it here (referring to a map), which all things being equal, would be a good thing however there are two major problems with that. One is that we would require a greater relief to build it here and now we're producing ashes and smoke closer to the building so what we did we picked the part that was furthest away from the building which is what the County would want when it comes time for the Building Dept. review and then we also talked about a fire pit but in order for a fire pit to be successful we would have to build something like this out here which yields very little benefit because only three people can sit in front of it and get the benefit. We could build in the middle of the deck but now we have a fire pit which is more dangerous than a fireplace considering the ashes and the soot that it produces. If we do a gas one, I understand that it's a lot less dangerous, but now you have no seating and so it's completely defeating and so if we don't build a fireplace and build it here there is no point in doing the project which is what I advised my client.

Tom Jenne: are you saying that the fireplace, the higher rectangle and the lower fire pit would be approved by the County that close to the building?

Andy Allison: no.

Tom Jenne: no and neither would the fire pit in the middle of the deck.

Andy Allison: no, it would have to be gas. I would not advise my client to do that because a fire pit doesn't make money.

Chairman Bauer: Matt, anything else?

Andy Allison: the only other thing that I didn't mention is that there are concerns about the size. The size of the fireplace itself is no bigger than what you would have in your living room; it's a 45" box, the mantle is 7.5 ft. with the chimney going to 11 ft. but it also tapers down from there. I would just consider that stuff because when we met the last time I felt that the Board in general supported the overall design and we just had to get over the issues with the stage; in fact my client wanted to pull the project but I advised him that I thought it was going to be approved but it now changed the tone which has surprised us.

Comments from Bob Risman are not clearly audible.

Chairman Bauer: we are going to move now to complete the public hearing but we have had situations where alternates have made public statements.

Karen Hanchett: I believe that alternates should be allowed to make any comments and public statements as long as the public hearing is open but once the public hearing is closed, then the alternates should observe and learn.

Bob Risman: I was concerned about violating some rule. I am just going to speak and (Remainder of comments not audible).

Dan Barusch: are you going to speak?

Bob Risman: whatever you want me to do.

Chairman Bauer: are going to speak as a member of the public or the Board?

Bob Risman: I'll speak as a member of the Board if it is permitted.

Chairman Bauer: by all means. Adele, do they have microphones back there?

Adele Behrmann: no.

Several members of the Board comment that as alternates they are permitted to comment but not vote.

Bob Risman: what we have in Lake George is an increasing compatibility issue and what's beginning to happen for example is that Lake George needs upgrades, the Lake George Comprehensive Plan calls for that, the Warren County Comprehensive Plan calls for that and now with the Marriott coming we have a change in face. I suspect, with reservation, that the attraction the applicant seeks, the fireplace, that the gas or wood burning device is going to require responsible maintenance and so one would hope that if it requires responsible maintenance that if the people in attendance become unruly that a custodian curbs that. As far as a substantial change in the neighborhood, I would suspect that individuals in the area, although not commercial in distinction, use fireplaces and everyone from the adjoining roads and cottages go out at night and enjoys a quite fire. Recently they are putting in condominiums and so that further adds to the commercial change in the neighborhoods and so the neighborhoods are beginning to change. Pete's place was just sold, East Cove, it would stand the reason, speculative, that eventually they are going to want upgrades as well and bring it to a contemporary compliance and of course the argument could be made that if they see the applicant put a fireplace, they may want to put a fireplace but people have fireplaces now. My question would be if it really represents a change in the area; I would tend to think that it doesn't and it's an update. Also a gas fireplace is a fireplace similar to the Holiday Inn and even the Super 8, I believe with reservations that this becomes sort of a necessary upgrade for financial viability and while it's not part of the criteria, it is required for the viability of Lake George. We have a changing town.

Chairman Bauer: Dan, whether the applicant chooses to withdraw the application or not we still need to close the public hearing, correct?

Dan Barusch: yes, we never closed it at the last meeting.

Chairman Bauer: and so at this time I am going to see if any of the three “no” votes have changed their positions from the consensus.

Tom Jenne, Gary Moon and Peter Keating all state that they have not changed their positions.

Chairman Bauer: so, we will now take public comment from anyone in the room. Is there anybody who wishes to speak to this project? Todd come on up and please state your name in the microphone.

Todd Fellogy: yes, my name is Todd Fellogy and actually I am a neighbor and I actually live across the street from the Garrison. There are a couple of things that I liked that the Board said, specifically Peter and Gary, which is that I do like the idea of gas rather than wood. I think gas is a better fit because we don't know what kind of wood we're going to get. I do agree with Gary that it is too big of a fireplace and I would go with a lower scale fireplace or maybe something against the building; I would suggest maybe a two way fireplace so it would do something inside and outside. My main purpose for coming the last time was to get that stage down and that was done; it was crazy loud that weekend and there was parking all the way to Cedar and Beatty Roads. They were parked all over the place and I believe I called the police myself because of all the parking issues. I just want you to take that into consideration on how the Garrison operates but other than the fireplace that's about it.

Chairman Bauer: are there any other comments from the public?

No response.

A motion is introduced by Peter Keating; seconded by Tom Jenne to close the public hearing.

All in favor, motion carries.

Matt Fuller, Esq.: we're going to withdraw the application.

Chairman Bauer: duly noted; thank you very much for coming out tonight.

- 2. Application for Area Variance AV8-2015 submitted by Daniel O'Rourke with Ken Collette and Vision Engineering as agents with a proposal to remove an existing deck and replace it with a 16'x20' sunroom addition. Relief for setbacks as well as lot coverage require Zoning Board of Appeals approval. The property address is 16 Latham Road. Tax Map No. 264.07-2-32. Lot size is 0.1 acres. Sections 175-16 & 175-64. Zoning Classification is RSH. SEQRA is Type 2.**

Tom Jenne reads the application into the record.

A motion is introduced by Karen Hanchett; seconded by Gary Moon to accept the application as read in, as complete and with all the proper documentation.

All in favor; motion carries.

Dan Ryan: my name is Dan Ryan; I am a local engineer with Vision Engineering. I have assisted the property owner in preparation of this application. Our first goal was to try to figure out what type of expansion or improvements were desired and then we attempted to review code compliance issues and try to address how to incorporate the least variance necessary in order to achieve the desired improvements. This is a pre-existing building lot if you take the setbacks required for this parcel none of it is compliant; there is not one spec of land that is compliant on this parcel. If one were to put a gnome in the yard, there would be no way that it would meet the setbacks and so basically we're here trying to provide the least impact and the minimum expansion desired by the owner and so we decided to, if anyone has seen the pictures or been at the site, remove the existing deck which is of the same size (16'x20') and

replace that with a slight adjustment of the location with a one story sunroom addition which would basically mimic the deck with walls and essentially a flat roof or low line roof. In addition to the construction project he's planned a dormer just adjacent to the sunroom on the north side of this small home. The purpose of the dormer, I believe, is for a bathroom expansion on that second floor. We provided some rough sketches of what the exterior of the building might look like; those are of a conceptual nature at this point since we have to go to the Planning Board for the second step if we're successful with the variance application. The setback requirements are somewhat confusing and Dan maybe you can chime in on this, there is a 75% rule which applies to smaller, non-conforming lots and so that's why you see two sets of data which is the required setbacks as stipulated in the code and then the 75% rule for the smaller, undersized lot. Ultimately we would like to get approved for the sunroom addition with the setbacks we proposed. I think we proposed them with a little bit of a lead way +/- one foot because we don't have an accurate, up-to-date survey and we wanted a little bit of flexibility in the field and so we did +/- dimensions which have been rounded out to the foot. I'd be happy to answer any questions, we have setback variances that need to be addressed as well as lot coverage requirement that we're not able to meet.

Peter Keating: is this house on sewer?

Dan Ryan: yes, it is on Town sewer and water.

Gary Moon: I know that on a small lot you can be exempt, according to this, from any stormwater requirements but you're replacing a deck which is essentially a pervious surface.

Dan Ryan: we originally proposed it that way but we were instructed by the Zoning Office that decks are impervious and so the data reflects it in that respect.

Gary Moon: are you putting this on a foundation?

Dan Ryan: we're putting this on a foundation; as a side note we are exempt as far as runoff but if you had something in mind such as eave trenches we wouldn't object to that.

Dan Barusch: that would be a Planning Board issue.

Peter Keating: you have no place to move the water.

Dan Ryan: there is no place to go and in fact there is rock outcrops underneath the deck and so it's impervious by nature; there is nothing we can do other than grab it and slow it down so there is no erosion.

Gary Moon: because obviously where it used to settle in over an area now it's going to be running off constantly.

Dan Ryan: yes, and I have already suggested that we potentially do eave trenches on both sides just to basically capture it, give it an opportunity to be absorbed by the ground and at the very least capture it and slow it down to avoid any erosion. Again, I'll be happy to answer any other questions; we provided some pictures and that site plan pretty much lays it all out. I will point out a couple of other issues just in general, I did mention in my answers that there was low visibility; it's on the north side and this addition is tucked between the residences and the large marina on the north side which is basically a large green wall and so in terms of visibility it is pretty minimal. This is the closest house to the commercial use and so sitting on the deck does have some negatives because all you hear is trucks, vehicles and operational things during certain days and certain times of the day and so having a sunroom allows them to enclose have and more privacy which is one of the predominant factors.

Tom Jenne: how far are you from the lake?

Dan Ryan: I want to say that I was closer to 500 ft. when I did the aerial check on it; it was well over the 300 ft.

Karen Hanchett: do you have an extra survey of the land?

Dan Ryan: we don't have a survey but we found an old building permit with a site plan that was hand drawn at the time but no survey however we would adhere to whatever variances we're requesting and I do require obviously that a survey be done before any construction.

Karen Hanchett: and if the proposed sunroom is being pushed back vs. the current deck you're only ending up with approximately 4 ft. to the property line where the deck is 10 ft. away.

Dan Ryan: the deck is approximately 8 ft. to 10 ft.

Karen Hanchett: so why couldn't you keep the sunroom in that location?

Dan Ryan: basically because there is an exterior door going to the main level of the residence and if you look at the picture which I believe is at the end of the application.

Karen Hanchett: there is an outside door that goes off to the deck.

Dan Ryan: that is correct and so we're going to re-configure that corner so that there is an exit.

Karen Hanchett: would it be an exit outside and not into the room?

Dan Ryan: I guess that would go away and the ultimate (pause). Let's see if we have a floor plan in here.

Peter Keating: you have to have access into the sunroom somehow.

Dan Ryan: we will be getting into the sunroom from the exterior wall on the north side of the existing building. Let me just check my notes to see what the purpose of the positioning was because one of our contemplated scenario was to leave the positioning the same.

Dan Barusch: Dan, I think you guys aren't within 300 ft. of the water which is why you're going to the Planning Board.

Dan Ryan: we are less than 300 ft. of the water?

Dan Barusch: I think so which is why we have you on the Planning Board.

Dan Ryan: that could be. I thought I measured 500 ft. (interruption).

Peter Keating: it impressed me of being roughly 300 ft. when I went out to the site.

Chairman Bauer: I have a question about the distance of the existing porch from the property line vs. the sunroom.

Tom Jenne: I think it was 1 ft. according to the documentation.

Dan Ryan: we're shifting to the east 5 to 6 ft. If you look at drawing C1 there are two dash lines (referring to a map) which is the existing deck perimeter and so we're shifting it to the right approximately 6 ft.

Karen Hanchett: and so you're encroaching further onto the property line.

Dan Ryan: we're moving farther to the east.

Karen Hanchett: yes, to that property line. On the other side you're moving away from here and that property line; where is the house positioning (pause).

Dan Ryan: if you look at the picture of the existing deck, you'll see how far the house is. Since it's winter there is no vegetation or leaves but that's the house in the background and I would say that it's probably (interruption).

Karen Hanchett: is there a driveway or a roadway?

Dan Ryan: yes, the driveway stops here and accesses the house on both sides. To get back to your question about the location of the deck my notes say that because of the dormer upstairs we were trying to get things symmetrical and centered. The upstairs space where the dormer fits is between two bedrooms that are existing and so we wanted to

project out at that dormer and in order to keep the roof lines from interfering we basically centered everything on each other which basically gave us the need to slide the deck and the sunroom to the east. Could it stay where it is? It could; it would look a little funny from the north side but ultimately it isn't very visible to too many people on that side. It did however have to do with the centering aesthetics of the exterior as well as the positioning near that dormer.

Tom Jenne: normally when you build or expand a house you have interior dimensions and it's all well and good that a sunroom and a dormer are being added on but I am curious as to how much more square footage is utilizable inside that house considering that it is on a postage stamp lot right now.

Dan Barusch: it's about 320 sq. ft.

Tom Jenne: the problem is that I don't see it visually. I can see the 16'x20' deck being a sunroom but the dormer being between two peaks is going to basically add another 320 sq. ft. upstairs.

Dan Ryan: no; the dormer is approximately 10 ft. wide and basically the roof line now comes down to a knee wall and so it will open up that roof for a 10 ft. width with no square footage on the floor because the floor already extends out that far.

Tom Jenne: yes, but the knee wall is 2 ft. right now right?

Dan Ryan: it varies; some of it is 2 ft. some of it 4 ft. all it does is make it more usable for that 10 ft. dormer width.

Tom Jenne: yes, but what I am saying is that it's not usable now and so now it will have an 8 ft. (not clear) for that dormer section and so it's square footage that would be usable but it is not usable now.

Dan Ryan: it has depleting headroom and so you can't really do too much with it. The dormer can be done without a variance; it is shown on here to give you a more complete picture of what we're doing for the project. We could put a second story to this house without the need for a variance.

Dan Barusch: you'll need site plan review.

Dan Ryan: the reason we're here is because we have an existing deck, we want to remove it and build a sunroom in its place and ultimately it is desired by the owner to locate it in a suitable position which is ultimately why we're here. The existing lot coverage isn't changing really what it is now because the deck and the sunroom are the identical size.

Tom Jenne: so they can build a 2nd story as long as they don't go above 30 ft. without any problems?

Dan Barusch: there are a few other things going on. If you put a second floor you're obviously adding bedrooms although you're on sewer. It's not something that I can answer right off the top of my head but he would definitely have to go to the Planning Board.

Tom Jenne: not only that but we don't know what kind of structure is there; if it is 2'x4' or 2'x6' or whatever. It's not as easy as just popping a second floor.

Dan Ryan: that is not the proposed project but my suggestion is that we're here to address variances and ultimately we have building departments that have to review the building side of things, the residential building code, etc. We have to go for site plan where we'll absolutely address stormwater as I anticipate some mitigation for runoff. This owner is not much flexible on the positioning we presented the preferred project for you guys to consider. If it is preferred that we use the existing deck footprint in the current position, we'd live with that. We would find a way to make it as architecturally aesthetic pleasing as possible.

Tom Jenne: and I didn't want to intrude. I just wanted to, with due respect, follow up on your comment that you could put a second floor.

Dan Ryan: it's never as easy as it sounds to say the least.

Karen Hanchett: could you explain the amount of variances you're looking for?

Dan Ryan: yes; essentially when you take setbacks from front, back and sides, you end up no land that is essentially compliant and so you need a variance for anything. How you quantify a variance when you overlap 4 different setbacks; I really can't quantify it. We overlap all 4 sides at all times.

Karen Hanchett: so basically you're looking for approximately 6 variances?

Dan Ryan: first of all let's address lot coverage. If you go to the site development data, we show the existing being 49.1% impermeable area and we're proposing 41.1%. We're not changing it but it is my understanding that there haven't been any other prior variances approved for this lot. We are increasing the impermeability of this site but we want to present that to make sure it's address. There is a permit from 2002 with no flagging of any variances at that time and I am not sure what codes you had in place at that time, probably the similar to what you have now. Ultimately what we want to do with the impervious cover is to remedy it if it should have been applied in the 2002 construction of the deck; it's not in the building permit file but we want to address it. We're here, let's discuss it and let's try to get that remedied so that there is a target and a resolution for anything moving forward.

Karen Hanchett: you said in 2002? Is that when the deck was added?

Dan Ryan: yes and there is a building permit filed at the Town.

Dan Barusch: another slip by my office in the past.

Dan Ryan: we're essentially trying to correct that and present the impermeability and lot coverage issue even though we're not changing it. Then there are also setback variances and if we want to through them one by one we want to make sure what we call the front, the sides and the rear. So for 1, the front line which is the left side of the lot, along the left edge of the driveway and so the required setback for this is 37 ½ ft. that goes almost ¾ of the depth of the lot and so we would need a variance for the front setback of 31 ft. proposed. The shoreline is not applicable. Side yard 1, I refer that to the north side which is the side that abuts the green monster that we call the marina, that side requires 15 ft. and we're proposing 12 ft. and it is currently about 13 ft.; the shifting to the right brought it a little bit closer because of the skew of that line. Side yard 2 which we'll call the south side is current .5 ft. for the house but obviously we're not changing that for the house and for the deck if you were to project a setback through the house even though it isn't the right way to do it; usually we'd stop at the house (not clear) which is .5 ft. away, it's 36 ft. and so it's a change of about 1 ft. again because of the sliding and the skew of the property lines.

Chairman Bauer: I am confused; the south yard south.

Karen Hanchett: the south yard south where the entrance is, is .5 ft. away from the property line and they're not changing that.

Chairman Bauer: but the required setback is what?

Karen Hanchett: 15 ft.

Chairman Bauer: so why does it say the proposed (interruption).

Dan Ryan: it is 6 ft. to the deck or to the sunroom and so another words that's compliant no matter what we do for the south setback.

Chairman Bauer: and so the building isn't but the deck is.

Dan Ryan: that's correct and so no variance is needed for the deck or the sunroom for the south setback. Is everybody caught up? The rear yard is the right edge, the east side. Again, the house is .5 ft. away, the deck is currently 10 ft. away and we're proposing to shift it to right 6 ft. and so we're proposing a setback of 4 ft. and I think that covers everything for your contemplation.

Dan Barusch: that's all the variances.

Dan Ryan: so, front, side, north and rear setbacks and we're trying to correct the lot coverage issues from 2002.

Karen Hanchett: so, we basically have 4.

Dan Ryan: yes 4, I came to the same conclusion as 4.

Dan Barusch: same here.

Tom Jenne: so, you got the same thing (referring to Dan Barusch) because I know that there are differences when you get onto a corner lot property because there are two fronts and so you're agreeing with the deck side being (interruption).

Dan Barusch: yes; this isn't a corner lot.

Dan Ryan: it's a dead end road and so Latham Rd is the front.

Tom Jenne: yes but what I am asking is if you agree with the criteria that was just given?

Dan Barusch: yes; I agree with the variances and the permeability or lot coverage which are the same thing.

Chairman Bauer: any other questions?

Tom Jenne: yes; they bought it in November 2011 correct?

Karen Hanchett: yes, it was a family inherited property that was turned over to them for \$1.00, I believe.

Dan Ryan: I don't have the history but I have the deed.

Tom Jenne: the deed is from 2011 which is where Paul Frederick transferred it to Daniel O'Rourke and Deborah O'Rourke. This has been around for a while and known in the condition that it was in, correct?

Dan Ryan: yes, they purchased it in the condition it was in; I am not sure how they obtained the parcel. It is my understanding that it is mostly seasonally used and again the predominant factor is recognizing that the deck is in such close proximity to the commercial marina being literally 10 ft. to 15 ft. away and with the machine shop right there, the sunroom would provide a little more solitude being that we would have a solid wall with windows and that sort of thing and so that is one of the driving mechanisms for this desired change.

Chairman Bauer: are there any other questions? (No response) We then need to open the public hearing.

A motion is introduced by Karen Hanchett; seconded by Tom Jenne to open the public hearing.

All in favor, motion carries.

Chairman Bauer: Dan, you can have a seat please. Would anyone like to comment on this project?

Todd Fellogy: I have a couple of questions and I talked to Dan about them once. The front of the house is actually on the south side which is where the front door is and so if you do it that way all those numbers change around but I don't know if that makes a big difference. I feel that this is not a small addition; 16 ft. x 20 ft. is a large addition but I couldn't tell from the plans what the original house is but as far as I am concerned you're talking 30% or more increase on it; it's not just a little 10 ft. x 10 ft. sunroom. Most of the setbacks are already about 1 ft. or so on two sides of the house from the line and I don't see why we need to make more problems than there already are. I think that our neighborhood is already getting too crowded and by trying to put more buildings on small lots needs to stop and change. In addition, I feel that this addition would affect one of the houses on Front Street since this would take away the view that they have. I am concerned that once you get a sunroom or any kind of room then you start talking about putting a room on top of it and possible at some point have another story on top of that. One suggestion I have if it did pass, I think that I would like to see a gable dormer to match all the other angles that are gable and I think this might help out but I just feel that it's a very big addition to a very small piece of property that it's already non-compliant in just about all areas and I just don't feel it should be granted.

Peter Keating: Dan, my understanding is that if a second story is put on a legal non-conforming house they would have to come back to us for variances even though they are under the 40 ft. in height.

Dan Barusch: because you can't increase the non-conformity any further.

Peter Keating: yes, but your statement before was that he wouldn't have to come back. I believe that's something that you might want to check into.

Tom Jenne: no, I believe Dan said that there would be a couple of different (interruption).

Dan Barusch: but they're not putting a second floor on.

Peter Keating: I understand but the statement was made that if a second story were put on a variance would not be needed.

Dan Barusch: what I said was that we would have to look more into it. At the very least they would have to go to the Planning Board.

Peter Keating: we ran into that already about 1 year or so where someone came in asking to put a second story on and were legal non-conforming and had to go through the whole process.

Chairman Bauer: even though they were going up?

Peter Keating: yes, even though they were going up because they were increasing (interruption).

Karen Hanchett: because they were increasing the volume.

Chairman Bauer: with no more public comments I would entertain a motion to close the public hearing.

A motion is introduced by Gary Moon; seconded by Chairman Bauer to close the public hearing.

All in favor, motion carries.

Tom Jenne: I am ready to make a decision.

Chairman Bauer asks the other members of the Board if they are ready to make a decision with a response from all of them that they are ready.

A motion is introduced by Tom Jenne; seconded by Peter Keating to deny Area Variance AV8-2015 as per the following criteria:

- 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.

An undesirable change will not necessarily be produced but it will take a postage size parcel and enhance by well over 30%.

- 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, there is no other way that you can increase the space without getting an area variance.

- 3) Whether the requested area variance is substantial.

Absolutely, I feel that it's very substantial and overpowering for that neighborhood.

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

My thought is that it will have a physical and environmental impact on the neighborhood. Physical because of the size of the structure and environmental because of the impermeable surfaces.

- 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.

I also believe that it is self-created because the applicant purchased the property or at least had it transferred in November of 2011 and has had this for 5 years as is and such I would say that yes, it is self-created.

FURTHER RESOLVED that the Zoning Board of Appeals therefore denies the requested area variances.

Motion was subject to a roll call vote which resulted as follows:

Gary Moon	Yes
Tom Jenne	Yes
Peter Keating	Yes
Karen Hanchett	Yes
Chairman Bauer	Yes

All in favor, motion to deny carries.

OTHER DISCUSSION ITEMS

Dan Barusch: I just wanted to mention that next month we will have the Jack Gillette appeal and I just wanted you to get ready for it. With the next packet we'll get you the record which includes everything that was sent back and forth, including some stuff that was sent from the Park Commission's attorneys to Mr. Gillette and his attorney.

Chairman Bauer: Adele notified us that there is a one day training session this month and if you haven't signed up for it you might want to consider it because you get credits for 2 years.

Adele Behrmann: it's on January 27th at the Civic Center in Saratoga.

Chairman Bauer: everyone should check with Dan and Adele as to where everyone stands on their training credits and all of that.

Bob Risman addresses Chairman Bauer and thanks him for allowing him to make comments.

Chairman Bauer: Dan looked up the rules for appointment of a Vice Chair and we have to nominate one each year which is something that the Town Board doesn't do; the Board selects its own Chair and so since it's the beginning of the year we should vote on one except for the alternates, they don't get to vote on this. I would accept a motion from the Board for a Vice Chair.

A motion is introduced by Tom Jenne; seconded by Gary Moon that Peter Keating be nominated as the Board's Vice Chair.

Chairman Bauer: Peter, are you interested in the Vice Chair?

Peter Keating: I'll accept it.

Chairman Bauer: any further discussions?

All in favor, motion carries.

A motion is introduced by Tom Jenne; seconded by Chairman Bauer to adjourn the meeting at 7:45 pm.

All in favor, motion carries.

Respectfully Submitted,

Adele Behrmann
Planning & Zoning Clerk