

Minutes of the Town of Lake George Zoning Board of Appeals meeting held on May 3, 2017 at 6:00 p.m., at the Town Center, 20 Old Post Road, Lake George, New York.

Members Present: Gary Moon, Chairman
Karen Hanchett, Vice Chairman
Tom Jenne
Denise Paddock
Robert Risman

Also Present: Dan Barusch, Adele Behrmann, Mark Schachner, Esq., Jeffrey Meyer, Esq., Frank Cannone, John Salvador, James Brenner, Eric Brenner, Steven Colletti, Hayden McLaughlin, Nicholas Abrantes, Zack Layton, Jim Grey and others.

Acceptance of the Minutes

A motion is introduced by Chairman Moon; seconded by Karen Hanchett to accept the March 1, 2017 and the April 5, 2017 minutes as complete.

All in favor, motion carries.

PUBLIC HEARINGS

- 1. Application for Area Variance AV6-2017 submitted by Cannone Properties, LLC with Jeffrey Meyer, Esq. as agent and Jane M. Irish as owner with a proposal to subdivide an existing lot into two residential lots. The variance requested is 52.5 ft. of road frontage for each lot where 75 ft. is required and 22.5 ft. for each lot is proposed; for property located at 16 Newton Street. Tax Map Nos. 251.20-1-68 and portion of 251.20-1-71. Lot size is 1.16 acres. Zoning Classification is RSH. Code References are 175-16, 175-17, 175-95(C)(3) & 150.19. SEQRA is Type II.**

Chairman Moon: we have received additional comments from neighbors which have been filed and distributed to the Board. Has anyone had a chance to review them?

The Board Members reply yes.

Chairman Moon: does anyone have any questions for the applicant? (No response). If no one has a question then we'll open it up to the public.

Jeff Meyer, Esq.: you received my letter and since you had an opportunity to review it and don't appear to have any questions, I will just draw your attention to a couple of quick points. On the board in front of you is a copy of the tax map; you received this with a copy of the original application materials and so I am not introducing anything new. What we did, we highlighted the subject property in pink but what's in yellow are all the existing lots that are non-conforming whether because of road frontage or area and what is also hatched in blue are the property locations where people commented and said that they have no complaints or issues with the proposal. If you notice there are only four properties that would be conforming, two of those have insufficient road frontage, conforming based on area and one of those has no objections. It is in keeping with the area in the community of Woodfin and what we're asking for is a road frontage variance which is in line with everything in the area. Kim Quay, we'll use her as an example, only has 30 ft. of road frontage; the road leads straight into her property. That's what we're proposing; we're proposing to utilize the stub end of Park Road which gives us access to the lots that we're creating. Everyone, even the folks that are in that location, recognize that there isn't going to be adverse impacts and when you balance the benefit of the applicant against any perceived detriment to the health, safety and welfare,

there is clearly no detriment to the health, safety and welfare. If there are no additional questions, I'll turn it over to the Board.

Chairman Moon: we'll open it to the public and I'll remind everyone to keep the comments to 3 minutes.

Eric Brenner: I know you said 3 minutes Mr. Chairman, can I request additional time; I know we had 5 minutes the last time.

Chairman Moon: sure, I'll give you 5 minutes on this.

Eric Brenner: I'd just like to expand some points that we made at the last meeting as well as my new submission to the Town. First I am going to address Mr. Meyer's latest letter and I'd also like to note that my brother, who is the attorney listed on the record with Mr. Meyer for the purchase and sales agreement that we have with the applicant, has tried repeatedly to get an answer for the past month by phone and email from Mr. Meyer about how they're planning to proceed with the contract. This outreach was done for the sole purpose of trying to be on the same page as the applicant so we're not unduly wasting the Board's time with comments. In addition, from the research I have done, it is very common for a neighbor seeking a variance to conduct outreach to address neighbor's concerns to the maximum extent practicable; none of that has happened here in regard to us. In his letter, Mr. Meyer made a statement that we offered irrelevant and misinformation however he doesn't provide any basis for this whatsoever rooted in fact or law; he just offers his own conclusions. Any mention of our contract is 100% relevant to your decision here tonight; all he is trying to do is distract you from some of the factual issues that we're raising. Never once did he state that he's not moving forward with the subdivision if he doesn't get the variance; I think that this in itself shows that there is no reasonable alternative if it does exist. I'd ask the Board to get him to commit to a position on that. He also progresses his argument as follows with this and the Planning Board: first he's saying that no contract exists then he's saying one may exist but it's not valid and then at the last meeting only after it was brought up, he says it may exist but the price we're not in agreement with. Now he is also saying that this is a civil matter and the Board can't even consider it; so the argument keeps progressing. I think that the Board needs to focus on the legal standards and the relevant facts that are being brought to your attention by us and see that the applicant is avoiding trying to address the most material facts to your decision. He knows the balancing test but I would like to say "what for" since any support from Woodfin Park all the facts were heavily against him. Essentially it's a 100% self-created problem by someone who is under contract to buy property and he is exacerbating the existing conditions of these bottlenecked lots. I would like to remind you that you're giving a variance to two lots a 70% deviation.

In terms of the contract, we have a fully executed contract dating back to the fall of 2006 and prior to the Zoning Board meeting there was no opposition whatsoever by the applicant of his contract. The letters that we've submitted as exhibits 2 are submissions out in the past few weeks that show exhibits A & B submissions he made to the Planning Board showing our inclusion and saying that this plan meets all the road frontage requirements and then in his application and at the meeting all of a sudden this is not feasible? I question those representations to the Town and what made it not feasible in a few weeks; I don't understand that. Also the applicant uses the term unconscionable and for the record what makes it unconscionable? The agent who executed it is an attorney, Mr. Meyer is the attorney of record on the contract and the contract was negotiated with terms that they came up and sent to us and so I don't understand what makes it unconscionable and he has not said anything about that other than a mere conclusion. He also talks about undeveloped land, again a mere conclusion with no facts. He offers the conclusion that our lot is not marketable; to the best of my knowledge, I don't think he has done any research to make this a true statement and I often question why he's making that representation to the Town. He also states that just because our property is undeveloped we're not impacted whatsoever. That's a disingenuous statement and very inappropriate to make since just because someone's property doesn't have a home on it, the value of their opinion for their land rights doesn't mean anything to the Board? I think that's ridiculous. In terms of his statement that the terms of the purchase agreement are not relevant, any authority that I found actually says the opposite. I submitted quotes from McKinney's that specifically reference that the Zoning Board must take into consideration alternative options such as: "under appropriate circumstance effort to obtain property from adjoining neighbors in order to eliminate a variance or to sell a sub-standard lot to a neighbor, may be an important consideration for the Board." Also going along with that in McKinney's, which is the practice commentaries for the Town Law here: "as it has been the case historically, the mere fact that a property

would be worth more or be more profitable if an area variance were to be granted does not provide a basis for relief." Clearly, unlike Mr. Meyer who would have an ideal world, the Zoning Board of Appeals' powers aren't limited to the four corners of the application; just because something is included as a conclusion, doesn't mean that the Zoning Board shouldn't question the applicant especially when there is such strong opposition coming. We're trying to protect our land use interest in our property and we're doing our best to get this to the Board since the applicant hasn't even disclosed any of these facts in his original application. They also rely heavily on letters from Woodfin; I'd like to point out that a lot of guidance should not rely on public opinion on how they feel about a project but to impact all the factors as a whole. Each factor should be considered objectively to see how it weighs. All of the properties we're talking about are from the 1900s and 1950s. As for the road frontage, I have the same map here and I have highlighted some of the road frontage of lots in Woodfin Park which is just a sampling of the road frontage of lots that he says are pre-existing and non-conforming. (He reads the road frontage measurements for the lots which average in the 140 ft.) The applicant is looking for 22 ½ ft. for a much larger lot in 2017. At the end of the day, it is important for the Zoning Board to consider the following: what you have before you is an applicant who meets the very definition of "self-created hardship." He doesn't own any of the properties that are subject to the application and he's asking for a 70% deviation from the frontage requirements on two lots as the most contiguous owners are the ones raising opposition; we'd appreciate it if the Board would value that. I'd also like the record to reflect that we still have very real concerns about the Board's compliance to SEQRA and would like to note. I would close by reiterating that if the applicant intends to acquire a parcel as he is in contract to do so, we wouldn't have concerns about the future development of our parcel as quite obviously we wouldn't be retaining it. However, to the extent that we retain the parcel, we have very real concerns about the applicant's compliance to the area variance standards and I would ask the ZBA to deny his application as I understand they have done other matters seeking even less relief. The ZBA is intended to be a safety net where a property owner can establish hardship; here you have a holder under contract that doesn't establish true hardship or lack of reasonable alternatives; frankly at a basic level he hasn't even said what the hardship is and why the property has to be subdivided and why it can't remain one home since Mrs. Irish owned it. Thank you.

Tom Jenne: I am going to give you another two or three minutes to answer that last paragraph again; your last statement. Take a look at your last statement and without lecturing us on what our job is regarding our duties as a Zoning Board, give me the fact on what you find on the road frontage itself.

Eric Brenner: I think that was a presentation just made that was inferring that other lots have similar road frontage when the road frontage is 22 ½ ft. I don't understand how much lower we can possibly go because below that you can't even drive a car through and so I'd just like to point out that a lot of the lots are over 100 ft. I admit that there are some that probably rely on the 45 ft. shared access but that's only maybe a handful and there isn't something with 22 ½ ft. of frontage servicing a ½ acre lot; that's what my point was. Based on the lack of response from Mr. Meyer, the attorney representing us on the purchase and sale agreement, we're just trying to make sure that we're all on the same page. Now he is not responding to us and we believe that he is in contemplation of a breach and so we have to protect our land interest.

Tom Jenne: yes, but that's not relevant to us.

Eric Brenner: I think it absolutely is. The authority says that you have to consider neighboring parcels and (interruption).

Tom Jenne: right, but it's not pertinent to us whether or not there is a contractual agreement outside of the scope of our realm that's important.

James Brenner: we're not asking you to adjourn or make a decision on the contract itself, consider it an alternative to allowing a variance.

Eric Brenner: I am not trying to be argumentative but I would request what authority says that, because anything I found in the practice commentaries that land use attorneys rely upon says the opposite; it says that efforts to buy from neighboring parcels is a consideration.

Tom Jenne: it's a consideration but not a necessary fact.

Chairman Moon: we cannot make an applicant purchase a lot in order to avoid a variance.

Tom Jenne: it might be one point in feasibility for the criteria but not (interruption).

Eric Brenner: I don't understand; it says right here in reference to a case "a concession of subject property could be subdivided without the need for a variance as an implicit concession the applicant has not met her burden of establishing practical difficulties." I don't understand if we're putting on the table that there is an agreement to purchase it and so essentially what can happen is that the applicant can get a variance and we're still bound under contract to sell it.

Chairman Moon: but that's not this Board's purview. It sounds like you don't agree with the process; you need to make that in legal matters because we're looking at a narrow application. The application that's been presented to us doesn't include the sale of that lot.

Eric Brenner: I am sorry; I don't mean to be argumentative. The applicant submitted something in February to the Planning Board showing the inclusion and what you're saying is that a strategic reason for not including the lot on the part of the applicant is allowable and the Zoning Board of Appeals will not care that, in my belief, is not included deliberately.

Tom Jenne: no, because the February Planning Board inclusion of that property would have negated us being here tonight. Since this is not the same application in regards to that property is the reason we're here tonight.

Eric Brenner: I don't understand because if I own properties A, B & C and I put that I only own property A on an application, you can't consider that I own B & C.

Tom Jenne: it's a plan and it's contingent on a, b & c happening and then having it all wrapped up in one complete project.

James Brenner: may I ask the Board what the hardship is being created that the applicant has espoused to you?

Tom Jenne: we'll get to that later; I just wanted to make sure to give you the option of going with facts. If a letter is written and there are discussions about the letter's accuracy or the criteria in the letter it's not part of (pause). If the numbers are wrong then it's a different story. I was giving you a chance to state your claim, if you will with numbers as to why it shouldn't happen and I believe you did so I can understand a little bit better where you're coming from.

Eric Brenner: if I could clarify one point with the Town's attorney. It seems that the Town's position is that anything of a civil nature will never impact a Zoning Board decision.

Mark Schachner, Esq.: you can't clarify with a Town's attorney unless the ZBA wants clarification but I don't think that's a fair characterization of anything any of the Zoning Board Members said, at least this evening.

Karen Hanchett: the applicant had a previous application put together and presented as a sketch plan to the Planning Board. They then came back and amended their original plan and created a second one which was sent to the Planning Board as a sketch plan and in that second application it was noted that they would have to have a variance because the other parcel wasn't included in the second plan. It's their purview to amend any kind of application and possibly have 4 or 5 applications; it's up to them. What they presented to us is this particular plan and we, under our purview, have no rights to enforce them to fill your contract because your contract with them is a private one and doesn't have anything with the presentation of the application that they gave us now.

Eric Brenner: so, essentially in term of precedent, any individual can now put stuff on the back burner, come to the ZBA, forget about all the stuff they set up and pretend like it doesn't exist, put the application most favorable to them and then get a variance.

Mark Schachner, Esq.: Mr. Chairman, I am going to make a suggestion to the Board. As Town legal counsel, we're not comfortable with the nature of this portion of the proceeding and what the Board is doing is debating a member of the public who is exercising the absolute right they have to speak at a public hearing. You are starting to delve into your discussion and deliberation because the member of the public is asking you questions, which they're allowed to do but you're not obligated to answer them. It sounds to us that a lot of what you're answering is part of your discussion and deliberation and it would be more appropriate to be part of your discussion and deliberation rather than direct dialogue with a member of the public, who is certainly free to make comments.

Chairman Moon: we'll take the advice of our Counsel; thank you very much for your comments.

Eric Brenner: in summary, even without the contract we're still against it; we think that it fails in the criteria. Sorry for asking the questions, I didn't know (remainder of comment not clear).

Mark Schachner, Esq.: not a problem, I also have a question but it doesn't have to be until after the closing of the public hearing.

Chairman Moon: is there anyone else in the room to speak to this application?

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

All in favor, motion carries.

Mark Schachner, Esq.: my questions, if the Board knows it or you don't think it's relevant, then don't worry about but if you think it's relevant you could ask whoever might answer the question. Is it beyond dispute that there is a valid and currently valid contract for the sale of the lot that the commenter or his family own or is there some dispute as to whether there is currently legally a valid and binding contract for that sale?

Chairman Moon: we haven't seen (interruption).

Tom Jenne: all we have to do is ask and then the answer will be in the record and I'd like to take counsel up on that. I'd like to ask you if there is currently a contract in place for the purchase of a parcel that would negate these hearings.

Jeff Meyer, Esq.: yes, there is a contract for the purchase of the Brenner lot I have never said anything to the contrary. There have always been caveats with a lot of contingencies included in that contract including confidentiality and not opposing any subdivision implications. What we have said is that there may have been a breach of the contract, we were trying to cover our basis and put forth the best application that suits my client's needs. The public, in our opinion, is trying to litigate the contract at the Zoning Board level which we feel is totally inappropriate.

A discussion ensues among the Board Members and Mr. Schachner who reminds the Board that they don't have to make a decision tonight since they have 62 days to do so. Tom Jenne mentions the possibility of a workshop and other things that can be done.

Mark Schachner, Esq.: one thing you can think about is, if there is a direction as to which way you want to go, have someone prepare a draft decision because it's not wildly speculative to suggest that by denying the variance application there may be an Article 78 challenge. It is also not wildly speculative to suggest that if you approve the application there may be an Article 78 challenge. Our generic advice and not specific to this matter whatsoever, is that if there is a feeling of a legal challenge if

there is any complexity to an application sometimes it's sometimes hard to fashion a decision right shooting from the hips in the heat of the meeting, and this Board has many, many times over at least the 30 something years that I am affiliated with it, has asked staff or a member or a counsel to prepare a draft decision or decisions to make sure that the criteria are reflected. Again, neither staff nor we put words in your mouth; you could prepare a draft decision as well as staff and counsel also; it doesn't matter who. You don't have to do this but our generic advice when there is a matter that seems to be fiercely contested such as this one seems, you shouldn't feel compelled to craft a decision on the fly.

Tom Jenne: Mr. Chairman, I would suggest that we you ask for a temperature test to see which direction we're going.

Chairman Moon: whenever we come to this when it could go either way, I write my own decision for and against, take a look at them both and one usually outweighs the other and I did so in this case. Knowing that, there is a lot of money at stake for someone and that's the whole point. For that reason, I guess there is going to be an Article 78 either way.

March Schachner, Esq.: there may or may not be one. What we tell Boards is when lots of lawyers are involved there is a better chance of an Article 78 challenge and in this case lots of lawyers are involved. We have an applicant represented by counsel; we have a very concerned neighbor represented by counsel. We can't say for sure that there will be a challenge; we're just saying that it seems there is a good possibility.

Chairman Moon: it's certainly not a certainty but a high likelihood; just as you said. In my opinion, why don't we call it tonight and let that happen. How do the Members feel about it?

Tom Jenne: I am not feeling good about it.

Denise Paddock: I don't either; I would rather see a workshop where we can discuss this further.

Chairman Moon: you don't feel good about the decision or (pause).

Tom Jenne and Denise Paddock both state that they don't feel good about the approval. When asked by the Chairman to clarify "not feeling good about the approval," Tom Jenne adds that he is leaning towards a denial. Denise Paddock feels the same way. Bob Risman feels that a motion should be made if one of the Board Members is ready to do so.

Karen Hanchett: we might want to table it for a workshop and look at the additional information that the public submitted and look further deep into the legalities, and then possibly ask counsel to draft something for us.

Mark Schachner, Esq.: you don't have to make a motion. You only need to make a motion if someone is ready to make one.

Chairman Moon: then, I think I agree that we should table it and have a workshop and table the application for next month.

Mark Schachner, Esq.: just to clarify; what do you mean by a workshop.

Chairman Moon suggest that it might be an executive session however Mark Schachner informs him that it couldn't be an executive session and that the discussion would be an open meeting. Tom Jenne suggests that it would be a public workshop and questions whether it should be a public hearing.

Mark Schachner, Esq.: the reason that we ask what you mean by a workshop is that what we think you mean is that you want to further discuss and deliberate this application. It has to be done in an open public meeting; you cannot do it in executive session. The word "workshop" is overused and largely inaccurately used in this context. Someone said to table it until next meeting; if that's what you're going to do, then you would simply conduct your deliberation or at least begin your deliberation at your next month's meeting.

Chairman Moon: can we call a separate meeting as a public hearing?

Mark Schachner, Esq.: your public hearing is closed; are you seeking to re-open it? Let's make sure that we understand the meaning of a public hearing and a public meeting. A public hearing means anyone who wishes to speak can speak about an application; you closed the public hearing unless you have some reason that we haven't heard, to re-open the public hearing. Reconvening at next month's meeting, a special meeting or whatever meeting you want, as long as it is subject to proper notice as long as it is a public meeting, doesn't require re-opening the public hearing. It's a public meeting and anyone who wishes can attend but it doesn't require re-opening of the public hearing.

Robert Risman: why wouldn't the Board deliberate right now? Everyone has had an opportunity to review the material (interruption).

Chairman Moon: because we don't have what we're asking for in terms of reviewing the contract.

Robert Risman: the attorney mentioned something about confidentiality and I think the Board has already asked (pause).

James Brenner: there is no confidentiality in the agreement, sir.

Jeff Meyer, Esq.: we can produce additional information and answer your questions but as the opposition has recognized, there will not be any detriment, there is no environmental harm and there is nothing on the other side of the scale.

Mark Schachner, Esq.: I can help there. I think the Board is wrestling with at least if not other criteria, whether or not there are other feasible alternatives by which the applicant can accomplish his goal. Is that a correct statement Board? You're focusing on some of the other criteria, that's fine but it sounds to me that that is at least one thing the Board is wrestling with. Does the Board or staff know whether a contract has been physically submitted?

Everyone replies no.

Tom Jenne: Mr. Schachner, I think that the Board is also wrestling with whether or not to make a decision tonight; that's something that I think you may want to test the temperature on.

Dan Barusch: is the main goal of tabling so that you, as a Board, can potentially look at a contract and we, as staff, can potentially draft a decision?

The Board Members reply "yes."

Mark Schachner, Esq.: let's be careful about the first thing that Dan just said. I don't think, and I am not sure Mr. Risman if you have said this or I might have misheard, you have the right to require submission of a contract. The applicant and the neighbor have had plenty of opportunities to submit one but haven't done so. This is not a criticism of the applicant or the neighbor since there may or not be good reasons for submitting a contract however, it doesn't matter what the reasons are which is why I asked the factual question "is there a contract part of our record" with the answer being "no." I think that the first part of what Dan said is totally appropriate, if you want to consider letters, things that have been submitted, reflect on what you've heard this evening and discuss and deliberate, please don't misunderstand, we're not suggesting that you cannot do this right now. You can do it right now if you like or a subsequent meeting.

Robert Risman: did you say that you have fashioned a pro or against (pause).

Chairman Moon: yes, I did but now I am rethinking it.

Karen Hanchett asks Tom Jenne if he wants to review new information that the Board was given tonight however Chairman Moon adds that he doesn't need to review new information but rather the fact that other Members have opinions that they have not expressed to him and believes that deliberation is important.

Robert Risman: why can't we deliberate now on the record?

Tom Jenne: I am leaning towards the fact that I have enough information to make a motion. There is no further information coming in and if we had a public meeting where we can discuss the pros and cons, we can do that.

Robert Risman: what could there possibly be in the contract that could (interruption).

A discussion ensues about the submission to the Board of the contract with a resulting opinion that the contract is irrelevant. Robert Risman expresses his belief that there is nothing else to ponder or deliberate and a decision could be made tonight with Tom Jenne adding that unless the Board wants to hold a public meeting, he is ready to make a motion.

Chairman Moon: do you think it's a solid one that could withstand an Article 78?

Tom Jenne: yes, I do.

A motion is introduced by Tom Jenne to deny Area Variance AV6-2017 based on 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.

Yes, because there will be higher traffic and a subdivision going through the lot.

- 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.

Absolutely, they don't need to be in front of this Board if the previous solution presented to the Planning Board would have been followed through on.

- 3) Whether the requested area variance is substantial.

Most certainly yes, due to the fact that the other lots have an average road frontage of 100 ft. and this one has a road frontage of 22 ½ ft. vs. the 75 ft. road frontage that is required.

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

Yes, since it is in close proximity to the lake, an additional structure could create a large impact to the lake from the to and from of that area.

- 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.

Yes, because there was a solution that would have made this not necessary and so in that sense it is self-created.

Mark Schachner, Esq.: can I make a suggestion for a minor amendment to the motion? (Tom Jenne replies "yes, please") The criterion about a feasible alternative, I think you stated at the end of your statement "if the previous solution presented to the Planning Board would have been followed through on;" our suggested amendment would be to get some language such as "the previous solution that involved acquisition of the adjacent property which would have eliminated the need for this variance."

Tom Jenne: I would like to amend my answer, thanks to Counsel, on the feasibility question #2: **yes, this method would have been achieved with a method more feasible if the purchase of the adjoining property would have been completed as presented to the Planning Board and would have eliminated the need for this variance.**

Motion seconded by Denise Paddock.

Chairman Moon: are there any more discussions on this?

Ayes: 2 Jenne, Paddock
Nays: 3 Risman, Hanchett, Chairman Moon
Abstain: 0

Motion to approve Area Variance AV6-2017 is denied.

A motion is introduced by Chairman Moon; seconded by Karen Hanchett to approve Area Variance AV6-2017 with the following criteria:

(Chairman Moon reads the answers to the criteria from a prepared statement):

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:

[1] No, this area has a number of similarly sized lots and the two resulting plots will be within the minimum lot size requirements for the RSH district that the property lies within. The variance to allow shared drive access to these two planned lots does not exacerbate any conditions or worsen the character of the neighborhood or neighboring properties. The variance does not necessarily enable or preclude any future conditions resulting from development of the two lots being subdivided. It should be noted that the majority of neighboring homeowners support this subdivision.

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

[2] No, while the dimensions and layout of the two lots presented to the ZBA leave few options for access to the properties except this shared roadway that is non-compliant, an alternative has already been explored by the applicant which is to purchase an available adjacent parcel to eliminate the need for the variance. This purchase has not been presented, and the application must be viewed by the circumstances presented to the board. Nothing can compel the applicant to pursue an additional purchase they are unwilling to, and the definition of whether a method is 'feasible' to pursue remains balanced against the impact of the request. It remains that the result of the variance does not significantly impact the area.

3. Whether the requested area variance is substantial:

[3] Yes, the area variance does cut by more than half the minimum required road frontage, and the monetary advantage to the realtor and developer and the property value to future homeowners as well as the neighborhood for the value of the two lots was likely a factor by which this application was prepared. Again, the return value to these interested parties as weighed against the fact that other roadways in the area are under similar conditions amounts to a "typical" level of non-conformity for the area.

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 granting of this road frontage variance alone will not have any adverse impact. Since the area is served by municipal water and sewage there are no environmental impacts expected. The effect of this subdivision of land into two properties will not be felt until land is cleared and homes are built on the two resulting properties. The history and character of the area have been presented by owners of the property nearby, and the area is continually under pressure of

overdevelopment, but those factors are not considered by the realtor or developer, and are only made untenable at the time of construction. Those factors are important variables that are not under consideration by the ZBA in this variance. Those are appropriate Planning Board subjects.

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:

[5] Yes, the need to subdivide the lot is entirely based on the desire to create two marketable lakefront properties out of one in a congested area with no road frontage, and therefore is unnecessary. There is no actual hardship indicated here.

Mark Schachner, Esq.: may I make one suggestion? In your discussion of the criterion about whether the variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, you mentioned in some detail, I am paraphrasing, that the granting of the variance would not result in anything being built and that there would be subsequent possible development of two lots; is that correct?

Chairman Moon: actually I said that the effect of this subdivision of land into two properties will not be felt until land is cleared and homes are built.

Mark Schachner, Esq.: right there I am suggesting that “which would be subject to Site Plan Review.”

Chairman Moon: amended to say “the effect of this subdivision of land into two properties will not be felt until the land is cleared and homes are built on the two resulting properties subject to Planning Board Site Plan Review.”

Ayes:	3	Risman, Hanchett, Chairman Moon
Nays:	2	Jenne, Paddock
Abstain:	0	

Motion carries.

2. Application for Area Variance AV2-2017 submitted by John Salvador, Jr. with a proposal to subdivide a 2 acres parcel into two lots, 1.7 acres and 0.3 acres respectively. The relief requested is to allow for the increase in non-conformity of two existing non-conforming lots located in the RR-10 (10 acres minimum) zoning district; for property located at Shaw Road Extension. Tax Map No. is 225.00-1-64.1. Lot size is 57.37 acres. Zoning Classification is RR-10. Code References are 175-16, 175-95(C)(3). SEQRA is Type II.

Mr. Salvador announces that on advice of his counsel he is withdrawing his application.

A motion is introduced by Tom Jenne; seconded by Chairman Moon to adjourn the meeting at 7:30 p.m.

All in favor, motion carries.

Respectfully Submitted,

Adele Behrmann
Planning & Zoning Clerk