

Minutes of the Town of Lake George Zoning Board of Appeals meeting held on August 2, 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: Adele Behrmann, Jeff Meyer, Esq., and Mr. Cannone, Jeff York, James & Robert Brenner, Carla Peters
and others.

Acceptance of the Minutes

The Board Members were not able to review the June, 7, 2017 & July 5, 2017 minutes therefore they'll be placed on the September agenda.

PUBLIC HEARINGS

Chairman Moon announces that the first agenda item, Notice of Appeal NOA1-2017, has been tabled until next month as per the applicant's request.

1. **Application for Area Variance AV11-2017 submitted by Jane Irish with Jeffrey R. Meyer, Esq. as agent with a proposal of a boundary line adjustment that would enable the conveyance of a portion of a private paper street to the surrounding property owner; for property located at 16 Newton Street. Tax Map No. is 251.20-171. Lot size is 0.32 acres. Zoning Classification is RSH. Code References are 175-17 & 175-95(C)(3). SEQRA is Type II.**

Tom Jenne reads the application into the record.

A motion is introduced by Karen Hanchett; seconded by Denise Paddock to accept the application as read.

All in favor, motion carries.

Robert Risman asks Tom Jenne if he read all the applicant's answers on the application. Tom Jenne replies that he read exactly what the applicant wrote in his application.

Jeff Meyer, Esq.: for the record, my name is Jeff Meyer, attorney with Meyer and Fuller, LLC in Lake George. I am here on behalf of Ms. Irish who is seeking a boundary line adjustment jointly owned with her neighbors Ms. Weale and Ms. Quay jointly and commonly known as Newton Street and Park Street. The property that is being adjusted is literally just the road. There is no adjoining property that goes with it; it is the road and through a quirk of the Lake George Zoning and through the interpretation of the Zoning Officer, it was decided that this road is in fact a lot and because it's a lot and it's less than 1 acre, it requires an area variance. We're here for an area variance for that 14 ft. x 50 ft. sliver. You may remember me from the prior subdivision which this is related to but it's completely separate and apart from that other matter. We are literally just looking at the road and at the way the code is interpreted. We argued that it's a road and not a lot and therefore cannot be subdivided and it is exempt and we could have done just a lot line adjustment, it wasn't the case. When you go through the criteria there is no harm; this is strictly a paper street that was never opened up to the other homeowners in the Woodfin Park area because they're the ones that oversee the management of the internal roadways and because of that they're essentially cleaning that up and conveying it to Ms. Irish; I am here on her behalf. Are there any questions?

Chairman Moon: what's the benefit to Ms. Irish?

Jeff Meyer, Esq.: the benefit to Ms. Irish is that it clarifies her title and provides her with certainty as to her access, the parking area and the easement area with Ms. Weale who owns the adjoining property.

Dan Barusch: they also needed to get the minimum road frontage requirement that you approved the variance for a couple of months back.

Jeff Meyer explains to the Board that Ms. Irish authorized Cannone Properties to apply for the subdivision and the property she is conveying is under contract.

Jeff Meyer, Esq.: the boundary line adjustment had always been contemplated to the point where regardless of whether Cannone Properties purchased the Irish lot; it was going to be handled as part of a single transaction for expedience. The intricacies of the Cannone's transactions, a decision was made to go it alone. A deed was prepared, signed but never recorded for good measure. Had it been recorded, it would have been in violation as it appeared later. The fact that as per the code, the sliver is a lot and a variance was needed, was caught at the Planning Board during the approval of the subdivision.

Robert Risman: it was delivered and accepted.

Jeff Meyer, Esq.: it was delivered and accepted. Money changed hands although it wasn't officially delivered for recording which is the only reason why we're not paying the double fees for an application, violation and everything else. It just wasn't caught at the time. To carry it one step further, I am here on behalf of Ms. Irish because as this process started almost one year ago, regardless of Cannone Properties, the sliver is going to be hers, if this gets approved.

Robert Risman: what's the co-relationship between the variance from several months ago and this and the order in which it should have been presented and arrived; or it didn't matter because (interruption).

Dan Barusch: we weren't aware that one was needed. In fact it was irrelevant because he is now coming back for a second variance. A few months ago before they went for the subdivision plan, you approved the division of this into two lots based on a lack of road frontage that they should have had. They proposed 22 ½ ft. each for a total of 44 ft.; right now the Irish lot has 30 ft. and so without this boundary line adjustment that we overlooked, they would still have 30 ft. and not enough for the 45 ft. that was approved by you. It wasn't until they went to the Planning Board that it was picked up and made a condition of their approval. As explained in the letter, lot line adjustments are done administratively in my office and I can sign off on them as long as there is no non-conforming created or exacerbated. In this case a small a variance is needed because a non-conforming lot would get a little bit smaller.

Robert Risman: this is a low level of non-conformity.

Jeff Meyer, Esq.: it is .02 acres out of a .36 acres parcel.

Denise Paddock: is it because a non-conforming lot would be made smaller?

Dan Barusch: yes, by .02 acres.

Robert Risman: it's minimally demines.

Tom Jenne: yes but that's almost 10% of the lot size period.

Jeff Meyer, Esq.: right, but the lot is the road.

A discrepancy is discovered on the size of the lot with our records indicating 0.32 acres and Jeff Myer stating that it's 0.36 acres. Dan Barusch informs the Board that there is a discrepancy on the County GIS. A decision is made to take the acreage amount on the survey which indicates the size to be 0.36 acres.

Dan Barusch asks the Board Members if they know which section of the land is being conveyed on the map. Denise Paddock asks that Dan go over it to make sure that everyone is on the same page. Dan explains that there is a marker that points to a square containing three equal sized lots all 15 ft. x 50 ft. The eastern most site is the one that's being conveyed.

Tom Jenne: Dan does this change also effect lot 1 since it seems that the proposed street would intersect over the boundary of the property line; correct?

Dan Baruch explains that the dotted line over Lot 1 was discussed at the Planning Board meeting and it is obvious that the proposed driveway will not encroach on neighbor's property. The dotted line indicates an old survey identifying an existing gravel driveway. The applicant received an approval for the subdivision and if they are granted an approval tonight, they're not going to put a driveway on a neighbor's lot simply because of the existence of a dotted line.

Jeff Meyer, Esq.: we're going to remove the encroachment from Wiawaka.

Chairman Moon's comments are not clearly audible due to back ground noise.

Karen Hanchett: over the years, the old driveway will actually be allowed to move the other way and straighten it out.

Jeff Meyer, Esq.: correct, to the benefit of the (not audible).

Chairman Moon opens the meeting to the public for their comments.

Robert Brenner: good evening Chairman Moon and Zoning Board Members, my name is Robert Brenner and I am here on behalf of my parents, James and Evelyn Brenner, who own a contiguous property to the subject property that's here this evening for an area variance. Just by way of back ground I am a real estate attorney by trade and so if I drone on and talk about specifics; that's why. I'll just give you a little bit of background to introduce my remarks about this particular variance request and put into context. As the Planning Director and the applicant's attorney have indicated this application was before the Planning Board. It was the subject of several meeting with the Planning Board and it was ultimately granted subdivision approval. I have a copy of that approval with me this evening which is dated May 9th but I just want to point out a few things with that approval that are particularly relevant to your discussion tonight. In that approval there was a specific condition that said "the Jane Irish property Tax ID 251.20-1-68 shall complete a lot line adjustment with the neighboring property owned by Kimberly Quay, 251.20-1-71," which is the subject property in front of you this evening without creating an increase in non-conformity for either parcel. What's in front of you tonight is a request to increase the non-conformity. That particular condition on this approval invalidates the approval and there is testimony at that hearing by the applicant's attorney that said "if we were to get a conditional approval it would be fine only if something were to change, we would have to come back and re-open. So, since they couldn't work out boundary line agreements in a manner that would limit the non-conformity and here it's being exacerbated, that Planning Board approval needs to be re-opened. Because of that I want to emphasize that your hands are tied to issue an approval tonight; there has to be further discussion. This isn't as simple as a 50 ft. x 15 ft. lot that has already been conveyed out. The lot has never been conveyed out; the deed is not recorded. Maybe there was a meeting of the minds and maybe cash was exchanged but if you read that deed carefully in the legal description, it says that the subject lot is being combined. That combination hasn't occurred and there isn't an affective conveyance. To that point, the authorization was signed by Jane Irish but since the deed hasn't been recorded and the conveyance isn't affective, the authorization to apply should come from the current property owners, Quay and Weale; I didn't see that in the

packet that was forwarded to me this evening. This is just a little back ground on the particular variance request that's in front of you but I want to go through the particular responses to these standards that were in the applicant's letter. I would like to mention one other thing; if folks at the Town disagree with my interpretation of that condition and I think it's very clear, I based it on the testimony at the hearing before the Planning Board as an inducement to approve; that does need to be open but not withstanding that, under New York Law section 276 of the Town Law Sub-section 11, if you don't file a subdivision map within 62 days after it has been approved, it expires and so this approval is expired; it expired by my math on July 10th. There may be something that I am not familiar with, but that approval is expired and the Planning Board matter needs to be re-opened and so I think any action by the Board tonight would be premature. With respect to the particular criteria, just to close the loop on those, the first factor "will an undesirable change be produced in the neighborhood," the response there says that it seeks to remedy the issue of a small paper street by a remedying it with an adjoining property for the benefit of the Town and the neighborhood. I have a copy of the tax map that I'll show to you. This is what we are talking about here (referring to a map); this is how it exists today and it has not been conveyed out. This stuff is critical to the lot that my folks own and we're here talking about tonight because it provides frontage on 2 fronts. This is an unimproved property and if it were ever to be improved, this road which has been in existence since the Lake George Camp Association was put into place, provides a corner and a developer of this lot potentially, if it is ever developed, it is a priceless lot of selecting which is the front which is critical, as Dan will indicate, it is a pre-existing and non-conforming lot in the Town and there are certain grandfathering information that run to the benefit of this lot and depriving it of that corner status, has a material impact on its ability to be developed. This is something you have to consider and wasn't discussed at the last Zoning Board meeting nor at the Planning Board; that's a material issue. So, this response for criteria one is somewhat disingenuous since it does impact the neighborhood and the ability to develop this lot. It says that there is no feasible alternative for the applicant to pursue and I know that there was a lot of chatter and discussion at the last meeting, the developer of the approved subdivision which has since lapsed on the Irish property was and still is under contract to purchase the lot that my folks own. If you think it's beneficial and would like to have it for the record, I have a copy of the purchase agreement and I can submit and the chatter about a confidentiality provision is incorrect; there is nothing to that affect. Would the Board like a copy?

The response from the Board is "no."

Chairman Moon: previously with the subdivision application, it was mentioned several times that the property your parents own is a little lot and not developable. So, what is the actually injury to your parents from this variance on the neighbor's lot?

Robert Brenner: when folks say that it's not a developable lot, it is somewhat of a conclusory statement and a conclusion. There is a long standing history of titling in Woodfin Park Association and I have reviewed much of it. Many of the lots in there have restrictions and covenants that touch and burden each of them. The likely intent was to impose some sort of regulation on these types of associations before town wide zoning regulations were put into effect. The restrictions and covenants that you see touch and concern many of the parcels in there was likely an attempt to limit and regulate development. A lot of those covenants throughout the association have been violated on their terms. There are restrictions, setback restrictions contained in deeds throughout where folks have sheds that are in violation, etc. For the record, my position Mr. Chairman is that it a conclusory statement that that lot is undevelopable. No one tested it or studied it; it potentially could be and I would tend to lean toward the fact that it could be. It is not fair for someone who read the deed to say that it's not buildable and what I am trying to preserve is the ability to develop.

Robert Risman: can't those covenants be updated?

Chairman Moon: your short statement is that you believe that it may be developable and you want to preserve that. This move of 15 ft. of this property line to the adjacent lot somehow damages that.

Robert Brenner: yes; it deprives it of corner lot status which is a material impact for a lot that's 50 ft. x 120 ft. pre-existing, non-conforming in the Town of Lake George. There are specific grandfathered provisions that apply to those types of lots. If we were before this Board seeking an area variance, you'd most likely ask us to minimize the area variance that we're seeking

and try to develop with the least intrusive means to come up with a development proposal. Any restrictive covenants or restrictions that can be exorcised by a neighbor are a separate issue just like this Board didn't want to see a copy of the purchase contract. Again, if we deprive the lot with that corner lot status, we then have a lot with a depth of 50 ft. instead of a lot that could potentially have a depth of 120 ft. which materially impairs its developability at least as far as the Town is concerned and the application of its zoning regulations.

Tom Jenne: was this lot purchased prior to 1970, prior to the APA regulations?

Robert Brenner: no, it wasn't purchased prior to 1970 by us but to my knowledge it has existed as a separate parcel although they were under common ownership with the property across the street. To my knowledge it has existed as a separate tax id parcel for a long time.

Tom Jenne: are you able to testify as a real estate attorney, that the "authorization to act for" form is null and void due to the fact that the person signing was not authorized to do so?

Robert Brenner: I can't speak to whether they're authorize to do so because I don't have any copies of any contracts that are in the background, but on its face, I check today, the deed that's in your package has not been recorded with the Warren County Clerk's office and so the relevant test should be that if that deed has not been recorded, ownership as far as the Town, County and State are concerned is not vested in jane Irish but rather it's still in Weale & Quay and they should be the ones signing the authorization. Much like they did with the prior application in front of you. The last time they were here they signed an authorization but not for this application.

Robert Risman: I don't know about that; New York is a recording State and so if someone records before the other individual they get a bite of the apple.

Robert Brenner: but no deed has been recorded.

Robert Risman: but its existence is valid.

Robert Brenner: but there is a contingency in the legal description that says (reading of the description is not clear).

Robert Risman: what does that have to do with recording?

Robert Brenner: because it can't be recorded until the combination occurs. I think it's disingenuous to deliver a deed and say that the deed has been conveyed and now you have no choice but to combine.

Robert Risman: disingenuous, maybe; it's an opinion. You mentioned the threshold of impair and you also mentioned that your property is deprived in some way but wouldn't it stand that the other parcel would benefit?

Robert Brenner: which parcel; the Irish parcel? I would argue "no".

Robert Risman: how are you deprived and if you are deprived, the other would benefit.

Robert Brenner: how are we deprived? Again, we lose the corner lot status.

Robert Risman: which you don't have at the moment.

Robert Brenner: the corner lot status? We absolutely do. (Referring to a map) This is the strip that's being proposed to change from a right of way to a private parcel and so right now (interruption).

Robert Risman: do you have a right-of-way over this parcel? Wouldn't it maintain if it's conveyed?

Robert Brenner: from a legal perspective it could but based on the way they're trying to develop it; that's a separate legal issue.

Robert Risman: it's a separate legal issue, yes. You're not harmed.

Karen Hanchett: does your deed state that you have a legal right-of-way to that 50 ft. x 120 ft. parcel?

Robert Brenner: the way it works in New York State is that if there is a recorded subdivision map which I believe is a 1929 map laying out the Lake George Camp Association and the roads of the subdivision; it's at the County Clerk's office and I have reviewed it. If it is recorded and it shows right-of-ways and anyone who touches a right-of-way has the right to use it for egress and ingress. If it's a recorded map it serves the same purpose as though they're in the deed.

Robert Risman: it would also have to go back to the original intent to determine exactly for what purpose and that becomes blurred over time especially when you mention that everyone is violating the covenants which I would suspect they could amend them to their benefit. You also brought up State Law but only a portion of it and not the entire section and of course, you're not providing authority; you have to wonder whether there are conditions, exemptions or exceptions to that that you stated.

Robert Brenner: yes, and I defer it to Town Counsel 27611 of the New York Town Laws it is clear that if don't record a subdivision map within 62 days, it expires.

Robert Risman: just one sentence?

Dan Barusch: it's a little longer than that. Did you check 2767C which says "The issuance of a conditional approval on a final plat: the conditional approval on a final plat shall expire within 180 days after the resolution granting such approval."

Robert Brenner: right, but the condition has not been satisfied.

Dan Barusch: he has 3 ½ months to go back to the Planning Board and possibly (interruption).

Robert Brenner: yes, but it would have to be amended and re-approved.

Dan Barusch: the condition would have to be lifted.

Robert Brenner: right, and so there would have to be a subsequent approval re-approving the subdivision. As for the existing subdivision approval unless it's satisfied as it was written, it's not valid; that's my position.

Robert Risman: but it could be valid.

Tom Jenne: in looking over this "bargain and sale" deed which was an oversight on my part, I would like to point out that it was very clearly stated on March 25th that the Weils did convey the property to Jane Irish on a document that was notarized therefore this is a legal document stating that the land was conveyed. I am not an attorney but I definitely accept the authorization to act form because she does have the right to move forward with that.

Jeff Meyer, Esq.: I think we're getting lost in things such as prior approvals and red herrings that have no relevance here. The corner lot argument and the existence of this paper street, if this is truly a road, than Jane Irish has 80 ft. of road frontage because I get the benefit of that. But it is not truly a road; it's under private ownership, it's not part of the lot and actually if

you look at the Brenner deed, he doesn't have rights to that. Those are questions of law that need to be decided by a Court and aren't necessarily relevant to this inquiry. What we're proposing is the boundary line adjustment for this sliver; the deed was delivered and I could record it tomorrow morning but then I get a letter from the Town saying to I need to get an approval for this. That doesn't change the nature of the conveyance or the fact that the deed was property executed and recorded. I think that we should focus on what the issues are and not get bogged down with what happened previously because it's not relevant to this. It doesn't impact this, he is trying to re-litigate all these issues and we're looking at the 15 ft. x 50 ft. strip that we're merging to an adjoining property that may or may not be part of a larger plan that was already examined and determined not be a detriment to the adjoining properties. We are not here to weed into all that; we're here for this little strip.

Denise Paddock: Jeff, you mentioned that the Brenner property's deed doesn't say that they have a right to this piece of property.

Jeff Meyer, Esq.: they have rights for ingress and egress along Newton Avenue to 9L.

Denise Paddock: but nothing about this piece of property.

Jeff Meyer, Esq.: correct but again similar to a deed restriction, that is a private covenant or a contractual right by the property owners; it's not the prevue of this Board which is why we both wear suits and argue all day. It belongs to the Supreme Court and it's not for this Board.

Tom Jenne: in all due respect, it does apply to a detriment to the neighborhood and in the long run it sure is. This is a valid point that we have to consider. You are right as far as the monetary damage that's done which can escalate to the Supreme Court but in our view point every little factor that is determinable needs to be determined.

Jeff Meyer, Esq.: sure, but even if he had access, we're not proposing limiting it. We're talking about the underlying status of the ownership of the real property and not rights-of-way.

Carla Peters: and I am the president of the Woodfin Park Homeowner Association. We are here to support his transfer of this little sliver. Our job is maintain all the properties, the common roadways and areas in the association and it would give us more clarification on exactly who owns what pieces; it would make the lines more straight and uniform. Everything is all chopped up, different people own different parts of the roads in the association and therefore they have turned everything to us, the association, to maintain and keep since we are private roads. I never realized that this little sliver was part of that larger piece and I can see how it can make it more uniform for all of us and as ownerships change in the association, it would make it more understandable on how things lay in Woodfin Park.

James Brenner: I am the owner of the parcel that's adjacent to the 15 ft. x 50 ft. parcel in question. As a follow up to the comments by the President of the Homeowner Association, the roads in Woodfin go back to the 1800s and there are two streets in and one street across; it's very clear on the maps and so there is no problem in defining what exists and I'd like to set the record straight on that. Secondly, we have been before you several times already and discussed what our concerns are. What concerns me is the piecemeal attempt for this project. As a corner lot owner, I believe that this lot is developable and our concern is the impact of this project to this lot. We'll have to take it to a higher level to see what the ramifications are and not here. If the corner lot status is taken away it will severely affect the ownership of that lot. That intersection has been around for years, which is how Ms. Irish gets into her property there. I am not a lawyer but my point is, isn't there a term that if you something for so many years it retains its status as a roadway? There is no misunderstanding what that piece is for and how it's been used; it will limit my access to my property because as you come down the hill, you can't turn into the lot because it grades down on my property; it's easier for me to go around and come in on that piece. Dissecting this lot or moving it around is going to affect me and my property value and I have stated this multiple times here and there are other alternatives. Before you, you have a statement that there is a contract for sale that would have made this whole process

significantly easier and we wouldn't be here tonight. I, therefore, respectfully request that you seriously look at the whole picture and find out what this piece meal approach is. Even though all of know that the lot is not worth much, this would affect me significantly and my concern is that before, you were To approve a project from Mr. Cannone with all the necessary steps but my understanding is that not all of the steps have been satisfied. We conditionally approving these things one at a time; what is the overall picture here? Please address that.

Dan Barusch: Jim, I have a few questions for you. (Robert Brenner states that he will answer the questions for his father). Do you have a building on your property that you need to access right now?

Robert Brenner: I don't understand the question a vacant lot still has to have access.

Dan Barusch: please answer the questions yes or no. (Robert Brenner replies no.) Is it safe to say that if you did put a building, which you can since you have space, that you can access it from Newton and have to drive down further off the Park Street terminus.

Robert Brenner: Dan, it would all depend on the site plan approval when it goes in front of the Planning Board. So, for me to say to you where the property is going to be (not audible) it's completely outside of what you or I can determine.

Dan Barusch: if this is approved, how is it going to affect your status as a corner lot? From what we just talked about, what is the impact?

Robert Brenner: I didn't articulate this earlier but if you check the County records for the parcel that's in front of you tonight, it has in its description "road/right-of-way." This parcel that's in front of you tonight it's very clearly delineated and known as a road. If that small piece is chopped off, it is going to be subsumed by the Irish property and the 15 ft. x 50 ft. small strip is going to become part of that Irish property and in its tax map description, it's going to say that it's a residential parcel. Then, from the Town's zoning prospective and I fully understand what the discussion was about private ownership rights, access and all of that, I understand that that is a separate issue and I acknowledge that it is and will be dealt with it separately but if I approach the Town and I talk to the Planning Director and this Board, I think it would be a reasonable position for you all to take. If that's no longer laid out as a road and it has been subsumed by an adjacent large parcel, you're going to say that Newton Street is straight from 9L to the shore of Lake George where Kimberly Quay's house is. It's going to be a straight road and no terminus in the north toward Wiawaka and so it's going to deprive us for zoning and not legal purposes of that corner lot status. I am not going to be able to talk to the Planning Director and show him a tax map that doesn't have our lot on the corner any longer and say that it's a corner lot.

Dan Barusch: but what I am asking is what the impact is. Is there a tangible thing that you can say now we have less of?

Robert Brenner: yes, it's a deprivation of the former grand fathered protection and the percentage of deviations that you're entitled to for setbacks. For instance, if I have two fronts and I can select my fronts, I have one depth that's 50 ft. and I have another depth that is 120 ft.; that materially impacts the size of the building and the way I can orient it on the site.

Robert Risman: so, you have access as Dan was saying.

Robert Brenner: no, that's not what I am saying.

Tom Jenne: I believe that what you're saying in layman's terms is that you want to choose which is the front?

Robert Brenner: this is material because it impacts the view of the home to the lake, the setbacks and the size of the dwelling unit that you can build and potentially construct. I agree that this is a quirk in the zoning law and with 15 ft. x 50 ft. parcel it sounds silly to be having this debate and I am not intending to be disrespectful in any way and I apologize if our

approach is coming across that way, but this is a serious thing. In connection with the 15 ft. x 50 ft. parcel, it sounds silly and it may seem like a dog and pony show to you but it is a serious thing that needs to be considered.

Robert Risman: isn't that the exact reason why there is a Zoning Board of Appeals? You're claiming that there is a right-of-way on the County map, are you claiming that you have the right-of-way? Did you bring the map with you?

Robert Brenner shows the Board a current map obtained from the County's records and proceeds to detail the directions and lot lines for the lots in question showing how one front of their lot will be gone thus leaving the parcel with one front instead of two which is due to loss of the corner. He feels that they'll be left with an onerous front and rear setbacks subject to the grandfathered status vs. less onerous side setbacks. The Board Members inform him that he could seek a variance in the future.

Tom Jenne: if we were to approve this, could we add a condition that his parcel cannot be affected regarding the front and side setbacks that he now has with any kind of change in the future so that if he decides to build on that lot and choose that 50 ft. section as a front lot, there could be verbiage that would allow him to do so without jumping through hoops.

Robert Risman: is that a reasonable imposition?

Dan Barusch: I am not completely sure if that could be conditioned.

Robert Risman asks Tom Jenne to make a motion however Dan Barusch feels that the Board is not ready to make a motion.

Denise Paddock: what was mentioned here that if this transfer would occur that it would lose the right-away-status and become residential; can we convey that right-of-way status along with the property.

Dan Barusch: no; because it is legal and it doesn't change the use and it is going to remain in a residential area. The fact of the matter is that it is not used as Park Street but as access to Ms. Irish's parcel. Once one crosses Newton Street, then you're in Ms. Irish's driveway and/or in the parking easement.

Tom Jenne: right, but if he were to ask you, Dan today to use that 50 ft. as a front yard, you'd say "yes;" but if he were to try to do it after conveyance and an approval then it would be questionable.

Dan Barusch: I would say that that's primarily correct although my description on front, side and rear setbacks comes into play when there is no front to lean the house. For instance, if they were to come in to put a house and it would be length wise, parallel to the lot, my interpretation would be that maybe this is the front and this is the rear. Even if the house was oriented otherwise, I wouldn't say to them "that's your front, that's your rear, they're overlapping and so you can't build." Yes, it is correct that if the lot were a corner lot, he could choose which one is the front.

Tom Jenne: what about a predecessor?

Dan Barusch: Keith used his discretion as well. If one has a lot on 9N, the line that's adjacent to the road is the front. If someone has no road or lake frontage and the parcel is landlocked, we use our discretion as to which is the front or the back.

Robert Risman: when was this lot first opened?

Robert Brenner: the first recorded map is the Lake George Camp Association in the 1920s.

Robert Risman: you're talking about the possibility of it being developed but it hasn't been developed up to this date.

Robert Brenner: the corner exists as it is; it's gravel and it has been improved. We have also accessed the parcel from that side. We don't use it often but, again, my concern is not about the use but the zoning distinction and I am concerned about losing that. I agree with Mr. Meyer that the Cannone application from May is a separate issue and should not be revisited however there is confusion over this. When a surveyor is laying out a subdivision plan, they're to plat existing rights-of-way. Based on the law that I cited earlier and Dan's rebuttal to that, the condition that was put on that approval has not been satisfied. They're here for an increase in non-conformity, that's fine but they'll have to go back to the Planning Board and discuss the fact that they're coming back and sought relief from the Zoning Board. As part of that, they should be plotting on that map the existing right-of-way location and they should be configuring their driveway around that.

Tom Jenne: let me be devil's advocate here. Let's say that the Planning Board deals with the increase in non-conformity issue and there is a way to figure out, should we grant an approval, to legally render that 50 ft. area as remaining a corner regardless of what happens; would that satisfy you?

Robert Brenner: it needs to be a corner, yes; that's the concern. It exists as a corner now and I would like legal counsel to weigh in on that.

Robert Risman: you just opened up a big door.

Tom Jenne: yes, but a very important big door. I am not saying that the Board is even consider that but the job of the Zoning Board is to be an advocate, to try to make things work so everything is in harmony and help those people succeed in their goal.

Robert Risman: it is to review and grant relief to a strict code.

Chairman Moon asks if anyone else in the room would like to comment of this project.

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

All in favor, motion carries.

Jeff Meyer, Esq.: as a closing thought, tax maps are notoriously inaccurate and can't be relied on. What can be relied on is what's in the deeds, the records and everything else. If he has a right-of-way on that corner lot status that he is saying, changing this boundary line isn't going to change that. Newton Street as it exists and has been used as road frontage for some which is subject to a prior right-of-way. We're not changing anybody's rights relative to use and access and forcing the Zoning Official hand as he interprets something. If it's there, he can produce a deed, show that he has access along what used to be Park Street or was never Park Street and he can orientate his house however he wants to; this doesn't change that.

Dan Barusch: I am battling with the fact that he might have to go back to the Planning Board to have the condition lifted because the condition was specifically not to do this. If you grant him approval to do this, the Planning Board would have to lift that condition. (A copy of the condition resolution is attached at the end of this document). The condition is that the lot line adjustment cannot be done if it increases the non-conformity.

Robert Risman: ok, it's a fact and they're coming back to the Zoning Board of Appeals for relief.

Jeff Meyer, Esq.: and then it becomes conforming. The Planning Board cannot act until the Zoning Board acts first.

Chairman Moon asks to see the actual resolution since it relates directly to what they're discussing. (Adele hands out copies of the resolution to the Board Members).

Robert Risman: they're merely stating that you can't do "x" without "y." They're seeking relief from the Zoning Board in order to do "x" without "y."

Tom Jenne: no, because the way I understand it is that no approval can be obtained if it increases the non-conformity of the lot.

Robert Risman: they're the Planning Board; they don't grant relief from a strict code, they review. We have the authority to grant that relief; we're an autonomous, appellate Board.

Tom Jenne: right; we granted that relief, they sent it back and now we're looking at an adjustment to that.

Dan Barusch: it's actually not an adjustment. What happened the entire time was that this sliver was planned to be combined with the Irish property. The maps that you saw and the variances that you approved were based on the sliver that was part of the Irish property, 45 ft. road frontage, 22 ½ ft. for each lot; then, they went to the Planning Board to get their subdivision approval. Once you granted relief on the road frontage, then the Planning Board was able to grant approval of the subdivision of the two lots which is when we noticed that the sliver has to happen because that's what your minimum approval was but in order for that to happen, it had to be done without increasing the non-conformity which was almost impossible aside from the option of the Newton Street parcel being combined with the owner's house property and then a lot line adjustment happening from there. Since both people who own those lots didn't approve of this and had already sold this little section to Ms. Irish, we realized that another variance was going to be needed for the lot line adjustment.

Robert Risman: what we decide, we decide. If someone has standing and wants to challenge the Board, it is their lawful right.

Tom Jenne: I agree but I also would like to see it legally done so that both win.

Robert Risman: we can't do that; it's not our job. This project, to a certain degree, is reliant upon this Board, one way or the other. This is a Planning Board issue what does it have to do with us.

Dan Barusch: essentially they're here to ask relief of the condition by the Planning Board but if you approve it then they go back to the Planning Board and it will be lifted because it has already been done.

A discussion ensues among the Board Members.

Chairman Moon: can I have a clarification on the map? The Irish property as it exists is the dotted property line. The Quay property seems to be not abutting that property.

Jeff Meyer, Esq.: Quay and Weale jointly own the road; Quay owns her parcel and Weale owns her parcel.

Chairman Moon: according to this it says "the Irish property shall complete a lot line adjustment with the neighboring property owned by Kimberly Quay," it doesn't say anything about (interruption).

Dan Barusch: it is referencing the Newton Street property by tax map.

Chairman Moon: can I get a clarification on which two properties we're talking about?

Dan Barusch: the Irish property, the one that was subdivided, and then the road, Newton Street, that parcel with the sliver.

Robert Risman: I have a question. It says the “Jane Irish property shall complete a lot line adjustment with the neighboring property owned by Kimberly Quay,” why doesn’t it say “owned by Kimberly Quay it’s successors and assignee?” Are we’re getting too technical?

Dan Barusch: the reason they set the condition is because it would have been a violation of the code and it would have exacerbated a non-conforming lot. If you approve this and allow for the increase of non-conformity, then they can go to the Planning Board and essentially lift the condition because is no longer relevant.

A motion is introduced by Denise Paddock to approve Area Variance AV11-2017 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.

No, an undesirable change will not be produced by the granting of the variance. The requested variance seeks to remedy the issue of a small paper street merging with the adjoining property to the benefit of the applicant, the Town and the neighborhood. There is no use or development associated with this proposal and would result in literally no change to the neighborhood or the community.

- 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 are no other alternatives that I can see.

- 3) Whether the requested area variance is substantial.

No, it’s not substantial. At issue is 871 sq. ft. that will merge with an expanding, adjoining property. The remaining lands are not developable and lot size is immaterial as it consists solely for the private road on the adjoining ownership.

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

No, there will be no adverse impact on the environment or the district.

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

No, the difficulty was not self-created since it came with history.

Tom Jenne seconds the motion but makes a statement agreeing whole hardly with Denis Paddock’s criteria responses. He would like to make part of the record his hope that this approval does not adversely affect the status of the adjacent parcel being considered a corner lot on paper and form.

Robert Risman: that is a wish and not a position or condition, correct?

Tom Jenne: it is the reason why I seconded the motion as complete and make that a part of the record as a statement.

Dan Barusch: and so, it’s not a proposed condition.

Tom Jenne: if I could make it a proposed condition (interruption).

Robert Risman: she’d have to modify her motion.

Denise Paddock asks if Tom's statement can be added to the motion. Dan Barusch replies that he is not positive.

Robert Risman: why? It's open ended.

Chairman Moon: ok, we have a motion to approve and Tom is seconding it however you're qualifying the motion but it's not a condition.

Tom Jenne: no, it's not a condition. I would like to have it just stated as a commentary in full support of your motion so that going forward should this be an issue, the applicant could easily go back to the record and see the intent of our approval.

Ayes: 5 **Risman, Jenne, Hanchett, Paddock, Chairman Moon**

Nays: 0

Abstain: 0

All in favor, motion carries.

A motion is introduced by Tom Jenne; seconded by Karen Hanchett to adjourn the meeting at 7:20 p.m.

All in favor, motion carries.

Respectfully Submitted,

Adele Behrmann
Planning & Zoning Clerk