

Town of South Bristol Zoning Board of Appeals Meeting Minutes Wednesday, September 28, 2016

Present: Robert Bacon
Tom Burgie
Albert Crofton
Jonathan Gage
Carol Dulski
John Holtz

Absent: Tom Brahm

Guests: Bill Grove, Architect
Guy Rogers, Pine View Gravel Mine
Dan Millen, Contractor
Dan Marshall
Steve Cowley

Call to Order:

The meeting of the Town of South Bristol Zoning Board of Appeals was called to order at 7:09 p.m., followed by the Pledge of Allegiance. A roll call of board members present except for Tom Brahm.

Minutes:

Chairperson Burgie called for a motion to approve the June 22, 2016 meeting minutes. A board member noticed that there was one change needed at the top of page nine *“The proposed use will adversely affect the character of the neighborhood.”* It has been changed to read *“The proposed use will not adversely affect the character of the neighborhood.”*

Jonathan Gage made a motion to approve the updated meeting minutes which was seconded by Robert Bacon. The motion was unanimously accepted by all board members present.

Carol Dulski: Relayed the Rules of Order - Applicants should be reminded that:

- The board members are their friends and neighbors and as such will grant relief whenever reasonably possible.
- That we need to balance the needs and wants of the applicant if granting the variance, against the potential detriment to the community at large as defined in the town code.
- The board must by statute only grant the minimum variance it deems necessary while at the same time preserving the general character of the neighborhood.
- The board may at its discretion impose reasonable conditions that are directly related to and incidental to the proposed use of the property.

Chairman Burgie: Okay. I will read the official newspaper notices into the minutes.

LEGAL NOTICE, TOWN OF SOUTH BRISTOL, NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that the Town of South Bristol Zoning Board of Appeals will hold a public hearing on the following application:

Application #2016-05-Z Pine View Gravel Mine owned by Guy Rogers located at 6500 Route 64, Tax Map #184.00-1-56.110 is looking for a special use permit per §170.90-91 of the town code to expand the existing mine within the confines of his property.

SAID HEARING will take place on the 28th day of September, 2016 beginning at 7:00 p.m. at the Town Hall, 6500 Gannett Hill Road, in the Hamlet of Bristol Springs, NY. All interested parties may appear in person or by representative.

LEGAL NOTICE, TOWN OF SOUTH BRISTOL, NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that the Town of South Bristol Zoning Board of Appeals will hold a public hearing on the following application:

Application #2016-06-Z Dan Millen for property owned by Karen Lindquist located at 7055 State Route 21, Tax Map #195.05-1-6.000 is looking for area variances for 36 inch side setback where 10 feet is required and 12.5 feet rear setback where 25 feet is required per §170.90-91 of town code to construct a new landing and stairs with stair lift for ADA access.

SAID HEARING will take place on the 28th day of September, 2016 beginning at 7:00 p.m. at the Town Hall, 6500 Gannett Hill Road, in the Hamlet of Bristol Springs, NY. All interested parties may appear in person or by representative.

First we will consider the special use for the mining. First, if you would like to present your case that is going to be considered.

Bill Grove: I am Bill Grove, Grove Engineering. I have prepared the site plan on behalf of Guy Rogers for the Pines View Gravel Mine. Guy has operated the mine for a number of years. The mine was under a previous owner prior to that with an operation before Guy bought it. He got about 12 acres of mining operations in place and his proposal is to expand that an additional 3.4 acres. We had to meet all the requirements of the DEC with respect to soil and water, noise, dust control and a number of items that have to be found on their checklist in order to get approval to do the mining in that area. We do have that approval from DEC. We were here a week ago for the planning board meeting and got site plan approval for the expansion so we are here in front of you tonight for the special use permit. It is my understanding that the special use permit is required even though mining operation has been in operation for a number of years. It was grandfathered in prior to the zoning and then when zoning came in it made mining in this district allowable by special use permit, but it they did not make Guy come in and get the special use permit because he had not proposed any changes to it. Once we proposed the change the additional 3.4 acres that triggered the need for the special use permit. I think we got all the approvals in order like I said DEC and site plan have been satisfied. The SEQR requirement were all met. The DEC took lead agency on that. We satisfied all the requirements of that and so this is the last piece of the puzzle to get the special use permit so Guy can expand into that area.

Chairman Burgie: Our normal flow chart talks about the reasons for disapproval. This is not a disapproval. Special Use is not considered a disapproval in any way. It is an allowable use in the town as long as certain requirements are met for the mining operation. We have a number of things that we are going to have to address.

Do you have any visitation reports?

Jonathan Gage: No.

Chairman Burgie: I have not visited either. I have read the SEQR information, back and forth with the DEC about the information that you had supplied to them. My understanding is also that there is an area variance required here because you have setback requirements after review and looked up. You were going to penetrate into some of that required setback but that has been resolved.

Bill Grove: Correct. The DEC requires a setback I think it was 25 feet from a property line but local code requires 100 foot setback from the edge of excavation so that we did not finally have to show that we will be a 100 foot away from the property line.

Chairman Burgie: Okay. The next item is SEQR status and as you have already stated that NYSDEC has taken lead agency on that having completed the SEQR review and have declared the project to be deemed a type I action with a full environmental assessment form being completed and determined the proposed project would not result in any significant adverse environmental impacts. So from a SEQR status standpoint we are an interested agency with them but they are the lead agency and they repeated that. Any comments from anybody on the board about the result of their declaration?

So no further action is required since we should as we are making findings for this. Make a finding that we accept the DEC result and no progression is required there. The next thing we should do is open this for public hearing. Is there anyone else in the public who has an interest in this and would like to make a statement or ask questions or anything of that nature this is the time to do so?

Public Hearing Opened

Steve Cowley: It's all good.

Chairman Burgie: You are all good.

Steve Cowley: Yes. I live next door. Guy does a great job. Looks good.

Chairman Burgie: Good. Okay. So that is it? Then we will close the public hearing.

Public Hearing Closed

Chairman Burgie: Any public or municipal officer documentation is appropriate to this case. One thing we do have is a proposed resolution from the planning board. I will not read the entire thing. The planning board does indicate one of the requirements in the town code for the special use is that a site plan has been submitted to the planning board for review. The planning board indicates that they have reviewed the site plan and that they found DEC declared the project a type I and full environmental assessment form being completed and would not result in any significant impacts. They did conduct a

public hearing on it and they are awaiting the special use to be provided by this board before they give site plan approval. Based on the materials they have submitted. DEC full SEQR completed, mining permit issued, testimony given to the board on August 17 and September 21. The planning board hereby grants approval to the application for Pine View Gravel Mine owned by Guy Rogers to preliminary and final site plan. Such approval is subject to the conditions that zoning board of appeals grants a special use permit. So that is the only thing that they are waiting on. They have reviewed and will grant that.

We need to review other public or municipal officer's documentations appropriate to the case and one thing that has been submitted that is pertinent is from the Ontario County Planning Board. Their response to us is:

The referring board is encouraged to look at the proposed storm water infrastructure and its ability to handle larger rain events. Storm water infrastructure should be sized so that no sediment laden water is discharged offsite.

We need to have that addressed. Was that addressed by the planning board?

Bill Grove: Yes.

Chairman Burgie: Size of the

Bill Grove: They questioned it and I verified that we sized everything appropriately. The DEC did the storm water calculations and verified that no sediment would be leaving the site except what is in the truck, I guess. There is an existing storm water pond. There is actually existing two storm water ponds. They are sized to handle the run off that the additional 3.4 acres will create as well as existing mining operations there. I think we got that covered.

Chairman Burgie: Okay. Thank you.

The referring board is encouraged to understand the useful life of the mine and its total extent of development. It is suggested that all reclamation plans are provided as part of the record to ensure that the Special Use Permit and Site Plan approvals are based on those details. The Town is encouraged to work with NYSDEC to understand what level of reclamation has been done to date and to utilize their ability to place conditions on the applicant during the Special Use Permitting Process to ensure updates and/or inspections are provided to the Town.

Chairman Burgie: So that is the one thing we, as a board, should be considering we have conditions in place that we understand the reclamation plan and that it is available for updating us on any inspections that are required for that.

Bill Grove: Okay. I addressed the planning board last week at the planning board meeting about the reclamation plan. It is Guy's intention to reclaim the land after he is done with the mining operations. He has a financial obligation and financial advantage to reclaim those portions of the properties that he is not mining anymore. The DEC requires that he post a bond to cover the reclamation of that which is essentially returning it into grasslands. It does cover any future development and Guy does not have any plans for future developments. It requires him to post a pretty sizeable bond. I believe it was in the neighborhood of \$50,000 for the expansion part to cover the future reclamation of that. He also pays on his permit an annual permit fee based on how much land there is that is under mining operations and not

reclaimed. So for every acre that is not grass covered he has to pay a certain amount for that, for the permit. So it is to his advantage to reclaim as soon as he is done with it. He has reclaimed a good portion of the property there and has plans to reclaim more of it once he finishes with the current mining operations.

Chairman Burgie: Any questions?

John Holtz: The reclaiming and who makes sure..? Does the DEC check on that or does our code enforcement guy check? When you say it is done, who says yeah your right it is done?

Bill Grove: The DEC would come in and they do is it annual inspections of it? Every year they come in and make sure he is in the life of mine operations. That he is doing everything according to the mining plan.

John Holtz: So regular scheduled inspection?

Bill Grove: Correct. They would verify if it has been reclaimed or not.

John Holtz: Okay.

Chairman Burgie: Any other questions or discussion? Okay. The way special use permit works is if it meets the requirements of the town code in accordance with the guidance the town gives us, then a special use permit is granted, is required to be granted. If it doesn't, then it is required that we cannot grant this. So we need to as part of our findings to support any future litigation that may come up, somebody else disagrees later on, whatever. We need to address certain things. In the application that you received the letter here tells that you must tell the board how you intend to satisfy the following seven general conditions:

1. *The proposed use is consistent with the Comprehensive Plan of our Town.*
2. *The proposed use is consistent with the purposes of the zoning law of our town, such as the promotion of the health, safety, and general welfare, and the conservation of the natural beauty of the land, its lakes, streams, forests and hills. The proposed must also be consistent with the regulations or the zoning district in which the proposed special use is to be located.*
3. *The proposed use will not adversely affect the character of the neighborhood.*
4. *The proposed use will not be detrimental to nearby properties.*
5. *The proposed use will not have an adverse impact on the physical or environmental conditions of the neighborhood or district.*
6. *The proposed use meets all conditions for land conservation districts...*

Albert Crofton: Did you say that this was or was not in a land conservation district? I do not think it was.

Chairman Burgie: Was in an agricultural district?

Robert Bacon: It is in an agricultural district. Yes.

Diane Graham: Yes.

Chairman Burgie: And that was part of the application?

Diane Graham: Yes.

Chairman Burgie:

...or any other restrictive overlay districts, if appropriate.

7. *The proposed use meets all the conditions required under the State Environmental Quality Review Act (SEQR).*

We have already addressed the SEQR. The rest of it needs to be addressed. Also in the town code, mining operations may be permitted as special use provided that:

- A. *The minimal lot area or any such use shall be 10 acres.*

This is well over ten acres.

- B. *All buildings and excavation shall be located or shall occur not less than 100 feet from any lot line. Setback areas shall not be used for any use in conjunction with any excavation, storage of materials or waste or appurtenant activities.*

It meets that requirement.

- C. *All equipment used for excavation and processing shall be constructed, maintained and operated in a manner, as far as practicable, to reduce noises, vibrations and dust conditions which may be injurious or a nuisance to any persons living within the vicinity.*

Yes?

Bill Grove: Yes. I wasn't sure if these were questions, but yes.

Chairman Burgie: Well, these need to be met so we need to know that this, in fact, being done and then we can document those as findings.

- D. *All operations shall be conducted between the hours of 7:00 a.m. in the morning and 7:00 p.m. in the evening, except in the case of a public or private emergency or whenever reasonable and necessary repairs to equipment are required to be made.*

What are the operating hours there?

Guy Rogers: Well, I do not start until 7:00 a.m. now and I'd like to get done by 5:00 p.m.

Chairman Burgie: But not after 7:00 p.m.?

Guy Rogers: No.

Steve Cowley: I will attest to that.

Chairman Burgie:

E. All lands which have been excavated must be rehabilitated in accordance with reclamation plans which shall be approved by the Planning Board as part of its site plan approval.

Reclamation was addressed by the Planning Board?

Bill Grove: Yes. In so much that it is a requirement of the DEC permit process.

Chairman Burgie:

F. The site shall be enclosed by a fence, berm or by other measures to ensure that the health and safety of the residents are protected.

Bill Grove: Yes. There is a safety berm around the excavated area.

Chairman Burgie:

G. All topsoil shall be stripped from the excavation area and stockpiled to be used as part of the restoration plan. The location of the stockpiling shall be identified in the site plan. Additionally, the site plan shall show drainage plans and sediment control measures.

We already addressed the sediment control. Does it address thei

Robert Bacon: There is a section entitled top stone stockpiling?

Bill Grove: Yes.

Robert Bacon: It is close toí ?

Bill Grove: Yes. The silt fence is on the lower side of it.

Albert Crofton: That is on 2.5 acres continue to be mine mined. How are you going to be mining that and store top soil on ití ?

Bill Grove: They defined it as 2.5 acres continue to be mined meaning that it was not at a point to be reclaimed yet because it is still where the haul road goes through there, the storm water basin is there and topsoil stock pile is going to be there. It is still under operation. I do not know if there is any more mining that can be done. Any more depth that can be gained in that area but it still has to be considered part of the active mine because of the operations that occur there. The area next to it, the five acres, could be reclaimed because there is no more work that needs to be done or can be done on that portion of it. Do not think of it as mining operations to continue to excavate and haul material out of that area. It is a vital area to the expansion of the mine. He needs to still be able to operate within that area.

Chairman Burgie: Questions?

H. No site preparation or construction shall commence until all required permits have been issued by the New York State Department of Environmental Conservation under the New York State Mine Land Reclamation Law and/or any other appropriate governmental agencies.

And those have been issued?

Bill Grove: Correct.

Chairman Burgie:

I. A site plan shall be submitted with the application for Planning Board review and approval.

Which we already said has been established. Those are the requirements from the town code for that to happen. Okay. Time to document our findings on this to demonstrate that we have done our due diligence in this case. Does anybody have a proposed finding?

Finding #1: Per the map we've documented that there are two retention ponds and the calculation for storm water is sufficient such as there is no discharge from the property.

Chairman Burgie: Which then addresses the county's concern. That is the proposed finding?

Robert Bacon: That is the proposed finding.

A motion was made for finding #1 by Robert Bacon and the motion was seconded by Chairman Burgie.

All in favor: Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Finding #2: The nine requirements in the town code for the special use to be issued the special use permit conditions have been met.

A motion was made for finding #2 by Chairman Burgie and the motion was seconded by Jonathan Gage.

All in favor: Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Finding #3: The proposed use is consistent with the comprehensive plan of the town.

A motion was made for finding #3 by Chairman Burgie and the motion was seconded by Albert Crofton.

All in favor: Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Finding #4: The proposed use is consistent with the purposes of the zoning law of our town, such as the promotion of the health, safety, and general welfare, and the conservation of the natural beauty of the land, its lakes, streams, forests and hills. The proposed must also be

consistent with the regulations or the zoning district in which the proposed special use is to be located.

Propose finding that it meets that requirement.

A motion was made for finding #4 by Chairman Burgie and the motion was seconded by Carol Dulski.

All in favor: Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Finding #5: The proposed use will not adversely affect the character of the neighborhood and will not be detrimental to nearby properties.

A motion was made for finding #5 by Chairman Burgie and the motion was seconded by Albert Crofton.

All in favor: Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Finding #6: The proposed use will not have an adverse impact on the physical or environmental conditions of the neighborhood or district.

All in favor: Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

A motion was made for finding #6 by Chairman Burgie and the motion was seconded by Albert Crofton.

Finding #7: The proposed use meets all conditions for land conservation districts or any other restrictive overlay districts, if appropriate.

A motion was made for finding #7 by Chairman Burgie and the motion was seconded by Jonathan Gage.

All in favor: Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Finding #8: The proposed use meets all conditions required from the State Environmental Quality Review Act (SEQRA).

A motion was made for finding #8 by Chairman Burgie and the motion was seconded by Albert Crofton.

All in favor: Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Chairman Burgie: Since the DEC is already in charge of the inspection of the reclamation process, I am not sure that we need to set conditions because it has already being met. What are your feelings?

Robert Bacon: I would agree with you. In the permit process DEC is the lead agency.

Chairman Burgie: So that meets as the DEC is the lead agency that meets the requirement to address the concern of the County Planning Board that we set a special condition for inspections that has already been taken care of.

Anything else? Then I will petition the board members to offer a motion to approve or deny the applicant's request for special use.

A motion to approve the application was made by Albert Crofton and it was seconded by Robert Bacon.

Super majority roll call vote of the board ó Aye: 5; Opposed: 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Chairman Burgie: Okay the motion was carried and you have your special use permit.

Bill Grove/Guy Rogers: Thank you.

Chairman Burgie: Okay next item.

Dan Millen: Hi, I am Dan Millen. I am a contractor representing Karen Lindquist on a piece of property in Woodville, 7055 Route 21 a small cottage on the lake. We are asking for an area variance. It's a non-conforming lot anyways. It is a tiny, tiny lot. She is handicapped and we applied and got a permit to put a wraparound ramp for her that came back into an existing landing that was there. We took the stairs out that went down parallel to the house and now we would like to put a four foot landing off of where the existing one was with a set of stairs going down parallel to the house and platform lift on it to get down into the back yard. The complications we have had with it is that there is only ten inches on one side of the piece of property when she bought it and the other side goes only about 36 inches. We ate up that with a ramp going around so there is no legal way to really get to the front of the property. She had to have two exits. We put one in the side and she had sliding glass doors in the front but both of those lead around to the same spot again so in essence it is really two exits. We have to have an exit off that front too so that is what we are trying to accomplish from all of this.

Chairman Burgie: So in other words you are saying that there is a single egress from the home?

Dan Millen: Yes. We've got two openings that exit but there is only a single egress way to get off. The one in the kitchen should be implicated with fire or something. Chances are that ramp part there too and she would not be able to get from the front sliding glass doors around and down but she would be able to go off and down her lift into the front yard. She wants use of it. It is a small piece of property. It is a postage stamp. I think you have a picture of the lift system. I talked to the people in Buffalo on that and they said they have put in hundreds of them on the lakes and around and nobody has had any problems with them because they are a good looking unit. They have back up, all these units do, if the electrical is out, there is a backup power pack with it.

Chairman Burgie: So safety.

Dan Millen: Yes. She was going to come tonight but she was ill again. She has a lot of complications with her handicap. She has been in a wheelchair for thirty-eight years.

Chairman Burgie: I have been looking for the visual of the lift system and I do not see it. There it is.

Dan Millen: It folds up and pretty much out of the way when it is not in use.

Chairman Burgie: The only thing that will be really visual, this being folded up, is there was also a stairway coming down?

Dan Millen: Stairways going down. Yes.

Chairman Burgie: Off of the ramp.

Dan Millen: Yes.

Chairman Burgie: Okay. So you are asking for two variances?

Dan Millen: Yes.

Chairman Burgie: In the application you are asking for a three foot setback from the sides where a ten foot is already required.

Dan Millen: On the north side. Yes.

Chairman Burgie: But that is also flush with the existing structure.

Dan Millen: It is just about flush with it. Yes.

Chairman Burgie: The existing structure goes into that ten foot setback.

Dan Millen: Yes. The lift platform itself the stairs come down and they are going to be back about four foot from the corner of the cottage itself then there is a the lift platform and we will put a small pad there that hits the other concrete pad coming down. So when she come off that is all concrete on to it and one on the north side of it.

Chairman Burgie: From what I see here it doesn't go out as far as the home does.

Dan Millen: No.

Chairman Burgie: A little shorter.

Dan Millen: Yes.

Robert Bacon: I think I have a question because the drawing is not clear to me. Where it says you have a new landing on the south side of the house. Is that a concrete pad?

Dan Millen: No. That is the landing coming this sets up on its got about a six foot basement section in a five foot actually so this landing there is a landing that sets up coming into the existing one. The sliding glass doors are up off the ground about six feet.

Chairman Burgie: When you are referring to the landing, I think you are actually talking about the deck structure.

Dan Millen: Yes. We consider it a landing for the stairs but it is a deck structure.

Robert Bacon: So it is part of the deck in addition to the existing deck?

Dan Millen: Yes.

Chairman Burgie: Right.

Robert Bacon: Okay. That clarifies that.

Dan Millen: Yes. I see what you are saying on that.

Chairman Burgie: So we need a variance. You are requesting a variance for three foot where ten foot is required from the side setback and also a 12.5 feet from the lake where 25 is required. In talking with the code enforcement officer he brought up that this is a safety issue. He wasn't ready to just authorize it based on safety he wanted it reviewed by the board, but it is a safety issue. There is a single egress for a woman in a wheelchair. Having a second egress especially a battery backup lift down to the lake to move away from the house if the house were on fire and the single egress will be a very beneficial thing.

Dan Millen: I did submit a paper from both neighbors on both sides of it and they did not have a problem. I showed them the lift itself and they were fine with it. I actually did two neighbors on the north and one on the south there is a kind of a bump out and the people on the other side of that I really never could catch them. They could only really see it from the dock anyways. So I figured the important part is the neighbors on each side.

Chairman Burgie: When we get to that point, I am going to read their names in to the record so that we can substantiate that also. Okay. Dissertation reports?

Jonathan Gage: I went down to look at it and it is as he said it is very tight area there so your options are very limited. The framework is, as I understand it, he has done the best that he could in the space available.

Chairman Burgie: I also want to emphasize about a year ago when this application was first submitted it was pretty obvious you can't get by the house to the grassy area between the house and the lake without going on the neighbor's property.

Dan Millen: Correct.

Chairman Burgie: There is absolutely no access. So there is no option to be able to use it. They need to use the neighbors land unless they have access which is going to require the various on the lake side.

Robert Bacon: I also went to the property. I drove by recently but I was there a year ago. I agree with what were even stated. I had two questions. One I wasn't aware from the application that it was an egress issue so that is good news to hear that. The second question I had since it is a battery backup is it literally a battery or are you going to install some form of a generator?

Dan Millen: She could do generator. The one that they have is a battery backup. It has to be serviced. She's got one in her home but there she has a generator backup. It is also has a battery backup and the system is checked about once every six months.

Robert Bacon: Okay. And that is stored underneath the deck?

Dan Millen: Yes.

Robert Bacon: Okay.

Chairman Burgie: Would that be visible from the lake?

Dan Millen: I do not believe so. I mean I think the pack will be in tight to it. If she put a generator in, it would be visible. It would sit on the concrete pad that is underneath the existing deck system there.

Chairman Burgie: The existing deck so that would not require a variance?

Dan Millen: No.

Carol Dulski: I also looked and it is just a tiny property.

Dan Millen: It is a postage stamp.

Albert Crofton: I did as well and everyone is correct. It is a tight situation.

Dan Millen: Matter of fact none of the parking even next to it goes with it so only out front she can park. So she has two spots kitty corner across the road for company. It is small.

Chairman Burgie: Yes it is. Any other reports from visitation? Okay then the next item on our flow chart here is to determine the SEQR status. Everything needs to be reviewed for SEQR and anything we are going to do. In looking at the SEQR regulation I believe this goes under paragraph 617.5 C(10) which is a type II action.

"Construction, expansion, or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density."

As such is a type II action it requires no further review under SEQR. We will make that a finding when we get to the findings. Any comment on that anybody?

Robert Bacon: I agree with your statement.

Public Hearing Opened

Chairman Burgie: Then this is the portion open to public hearing. Anybody from the public that would like to comment on it. Yes sir.

Dan Marshall: I am Dan Marshall from the town. I can give you some history on that property. Many years ago when my first go around in the town, I was on the Zoning Board of Appeals at that time and

there was a single wide trailer on the site and it burned. It was unusable. It could no longer be used. The owners at the time still wanted to be able to access the lake. This was probably, I am sure it was pre-SEQR days. We did not worry about such things and the approval to build the building that is there now was given at that time to replace what, otherwise, would have been an empty lot. That's the history.

Chairman Burgie: Were there any concerns or conditions placed upon it at that time? It is going back a ways.

Dan Marshall: Respectfully, I cannot remember what I had for breakfast. I am not quite sure I can answer those questions.

Chairman Burgie: Thank you.

Dan Marshall: I know there was some concerns about the side setbacks but again what were we to do because the size of the lot.

Chairman Burgie: Thank you. Any other comments from the public? Alright we will close the public hearing.

Public Hearing Closed

Chairman Burgie: Relate any public or municipal officer documentations appropriate to this case. We do have a petition signed by five neighbors of the property.

We the undersigned, are neighbors to the above address and upon reviewing the plans for an outside lift, feel that it is ecstatically pleasing and does not interfere with the enjoyment of our own property.

Signed by: Tom Miller, Gary Schmitz, Carol Schmitz, Dana Butters, Mark Butters

From the Ontario County Planning Board:

Policy AR-5 B. Applications involving one single family residential site, including home occupations – Development of lakefront parcels

The intent of this policy is to address impacts to ground and surface waters. The following applies to all development on parcels with Lake Frontage that require:

*Variances pertaining to lot coverage or,
Variances pertaining to side yard setbacks or, (which does apply here)
Variance pertaining to lake shore setbacks (which does apply here)*

The CPB's role of reviewing and making recommendations on county wide development has provided a unique perspective on the trend of more intensive development and use of lakefront lots. Of particular concern are the incremental negative impacts to water quality and the character of our lakefront neighborhoods. This policy is a result of discussion and debate spanning 18 months as well as

consultation with outside agencies directly involved with water quality issues in Ontario County. The intent is to address over development of lakefront lots and support the clearly stated interest by local decisions makers to do the same.

Findings:

- 1. Protection of water features is a stated goal of the CPB.*
- 2. The Finger Lakes are an indispensable part of the quality of life in Ontario County.*
- 3. Increases in impervious surface lead to increased runoff and pollution.*
- 4. Runoff from lakefront development is more likely to impact water quality.*
- 5. It is the position of this Board that the legislative bodies of lakefront communities have enacted setbacks and limits on lot coverage that allow reasonable use of lakefront properties.*
- 6. Protection of community character, as it relates to tourism, is a goal of the CPB.*
- 7. It is the position of this Board that numerous variances can allow over development of properties in a way that negatively affects public enjoyment of the Finger Lakes and overall community character.*
- 8. It is the position of this Board that such incremental impacts have a cumulative impact that is of countywide and intermunicipal significance.*

Final recommendation is disapproval.

Now in my reading these, the reason I read them is there are two main concerns that they have stated in here.

1. Impact to our water quality, and
2. Impact to the character of the area, which in this case, we are going to be seeing from the lake, boaters on the lake, or neighbors who have addressed that they are fine with that.

We need to address their concerns in our findings here and make sure we take that into account in whatever decision we make here. My opinion is that this lift is not going to affect water quality. One of the main concerns that I expressed to you earlier and I think you have addressed especially giving us the visuals of the lift is that is not going to be an eye sore to anybody going by the lake on the boats. The only two concerns that they have here to me don't see that really is any impact. So I open that to discussion.

Albert Crofton: My comment it is not making it less dense. It is making it more dense. Not by very much in fact infinitesimally. The argument is however how long does this go on before the lake is wall to wall all the way around. That statement seems to ridiculous but ridiculous is by instance small increments. Is this a serious enough one to stop or when do you say stop. At some point we have to say stop. I am not sure I will pick my fight here but that is the whole part of it is who is going to pick the fight and when.

Chairman Burgie: Which is their concern about incremental affects.

Albert Crofton: Yes. Incremental affects it is. Is this enough to make you want to blink your eyes. No it really isn't. If you can do that, but you can add to the density around the lake. At some point someone has to say stop. I do not think this is perhaps the one to make your case on. When do you say stop.

Chairman Burgie: As far as the density and wall to wall around the lake, this doesn't extend the width of the wall. This takes it four feet closer to the lake. From a density standpoint how could you even tell?

Albert Crofton: You could not. I live on the lake and I know that this is going on all the time. Far worse in the six houses on either side of me than it is here by a longshot. All have been extended during my lifetime. Would I want to make this the case that we blow the thing out of the water? No this is not the one to do it on. At some point it's got to be done.

Chairman Burgie: This is a safety concern. The use of the building itself a single egress for a woman in a wheelchair there is a definite a safety concern here that we should be interested in.

Jonathan Gage: It would be a different concern if it was strictly for visual appearance or something else. Safety is very important.

Albert Crofton: Safety is important, but everybody has had a look at that. That is a decision that she would have to be a party to. She herself would be the user, would have to be a party to. That is her decision. There are a lot of dumb things you can do in your house that you realized you have done afterwards. After the accident has happened but this is a decision that you can say well maybe a person like this should not be in a house like this. That is a really good argument. Where the main exit, a set of stairs, or a piece of machinery should fail. I would say we got to stop here on that count. I am not hard to say that we would want to have her stop after she has considered it.

Robert Bacon: Tom I agree with you. I do not see where this setback variance would impact the water quality at all. I would use the rationale that having been in the EMS field, in the fire department and an EMT that a safety issue getting out of the building is a higher priority to me. That is a personal comment.

John Holtz: I have a question. The lift that you show us in the pictures is indoors.

Dan Millen: It is an outdoor one though. The one they have is just like it.

John Holtz: There is an indoor model and an outdoor

Dan Millen: This can be used indoor or outdoor. That is the first question I asked when I got the material on it. It shows it inside he said it can go inside or outside. He said we do not want it left to the winter cover it up or something in the winter time. It has a slip that goes over top of it you put over outside like gas grill.

Chairman Burgie: Any other discussion?

Carol Dulski: Does she live there year round or is this just a summer home?

Dan Millen: Excuse me.

Carol Dulski: Is she going to live there year round?

Dan Millen: No.

Carol Dulski: So we do not have to worry about the cover being on?

Dan Millen: No. She is not going to be there. The cover would be just laid on it. It would be something that would be weather proofed and tied down.

Chairman Burgie: Any discussion anybody? Okay. The discussion period is over and it's time to determine findings. There are five different interests that we must consider. We should address each of those as findings and then any other findings that anybody would like to make also. We can do those also.

Finding #1:

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

I would like to propose a finding that an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by granting the variance as evidenced by the neighbor's petition.

Robert Bacon: I would like to make one minor change: as evidenced by the neighbor's petition and pictures provided for type of lift being used.

The motion was made for finding #1 by Chairman Burgie and the motion was seconded by Jonathan Gage.

All in favor. Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Finding #2:

Chairman Burgie: Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

I think that this is pretty obvious that there is no other way of doing this. She is going to need a lift based on her mobility. The only place to have a different egress and especially down to the lake is on the lake end of the property. There is not any room on the side.

I would like to propose a finding that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance.

The motion was made for finding #2 by Chairman Burgie and the motion was seconded by Bert Crofton.

All in favor. Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Finding #3:

Chairman Burgie: Whether the requested area variance is substantial.

My opinion is that it is substantial. It is four feet of what is left of the 25 feet setback to the lake. The home already encroaches into that 25 feet setback so this is an additional four feet. What we have is 16.5 feet and now we are going to have 12.5 feet. On the side three foot setback well it's already the rest of the house is within that three foot of the side setback so this is just extending that clearance that the house has a little bit farther for the deck.

I would like to propose a finding that the requested area variance is not substantial.

The motion was made for finding #3 by Chairman Burgie and the motion was seconded by Carol Dulski.

All in favor. Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Finding #4:

Chairman Burgie: Whether the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

I would propose a finding that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The motion was made for finding #4 by Chairman Burgie and the motion was seconded by Robert Bacon.

All in favor. Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Finding #5:

Chairman Burgie: 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.

Was this self-created? I do not think so.

Robert Bacon: I do not have enough information to even make that call.

Chairman Burgie: She did not build this home she bought it at some point?

Dan Millen: She just bought it. Yes.

Chairman Burgie: It is not self-created, it is what has existed?

Dan Millen: Yes, exactly.

Chairman Burgie: There was no second egress. There was no way to get down to the lake before.

I would like to propose a finding that the alleged difficulty was not self-created.

The motion was made for finding #5 by Chairman Burgie and the motion was seconded by Jonathan Gage.

All in favor. Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Chairman Burgie: Any other proposed findings?

Finding #6:

Robert Bacon: I think we need to clearly state make a finding that the pre-existing house is a non-conforming home.

The motion was made for finding #6 by Robert Bacon and the motion was seconded by Carol Dulski.

All in favor. Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Finding #7:

I would like to propose that we have addressed the concerns of the Ontario County Planning Board as to effect on the lake water quality and character as it pertains to tourism and we do not believe that it would have a negative effect in this case.

The motion was made for finding #7 by Chairman Burgie and the motion was seconded by Robert Bacon.

All in favor. Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Chairman Burgie: Any other findings that we need? Any conditions that we should we impose or should we approve this? No. Okay I would petition the board to offer a motion to approve or deny the applicants request.

John Holtz: I have a question. Where are the batteries?

Dan Millen: The battery system, as far as I know, sits at the bottom back of the thing that goes up.

John Holtz: On the lift?

Dan Millen: No. There is a support system that goes up and holds the lift. I believe they put them in the back. I am not totally sure about that.

John Holtz: I am thinking in the case let's say we had high water where the batteries have already become submerged.

Dan Millen: That is a possibility. We would have to something.

John Holtz: Should we start by having the batteries removed?

Robert Bacon: You have to ask the question what type of battery. Is it a typical lead acid battery or is it a gel battery? ?

Dan Millen: I cannot answer that. I talked with them on the phone a couple of times, but we never got around to that type of what it was. We have a backup system on it that works well. I said, of course, we can hook up a generator if we choose because that is what she has in her home. He said absolutely, sure.

Chairman Burgie: Are you suggesting that we should put a condition that

John Holtz: The battery that could beí get into the water. Nobody wants battery acid in their cream.

Albert Crofton: If you get into this discussion with any distance at all, we are going to make a huge deal because I cannot imagine any dry cell battery being able to power it. Any standard battery it has to be recharged on a regular basis and I do not think we should be considering or we will be required to get into a far more sophisticated system than this woman is going to be able afford. You got to have a recharging operation that is going to be several hundred dollars over getting a battery to operate on a contingent basis for this under adverse condition when there is no power to the house. I can tell you right now the chances of that battery being effective anytime in an emergency is somewhere from slim to zero.

Dan Millen: These people put these in for years. I admit I am slightly ignorant in that part. I haven't really checked that out, but I trust the people that are telling me that they put them in that they have a backup unit that works and that they put hundreds on the lake. I have to assume that it is a safe situation. If it turns out to be something, I will build something that puts it up underneath the deck to keep it out of the water. I do not believe it is a standard battery system like he is saying. I think it is probably something that can handle all of this.

Albert Crofton: I am very surprised that you could have that kind of thing on the budget that this person is working on.

Dan Millen: She does not have anyí

Albert Crofton: It is going to keep recharging on a regular basis, automatically?

Dan Millen: Once again these people say they check every six months and do a maintenance check on them and that is all that is required so I have to take him on his word that, by the way, your battery runs out in a month or now it has to be charged. I can check into that. I surely will but that does not make any sense, at this point, that it is not going to work when they put hundreds of them on the lake.

Robert Bacon: I think the focus of this conversation is related to the potential to contaminate the lake. I would make a statement of is it a sealed battery or not?

Dan Millen: I can check that for you.

John Holtz: Looking at the picture if that is the average, the normal lake level on the ground level with batteries the lake would not have to come up too muchí

Dan Millen: I suspect that with her sitting even if it is a battery operated system that it could be put in the basement and run out to it. I do not know if it has to be right with the unit itself.

John Holtz: I am just asking a question fellow board members I did not know if we should have this as a condition to protect the quality of the lake. I do not know.

Chairman Burgie: That gets into public discussion what else is in her basement. There is an access door and crawl space and even if you put the battery inside the crawl space can flood if the lake really rose that high. Should be get into consideration of what else is in there that might pollute the lake.

John Holtz: That is pre-existing and this is new.

Chairman Burgie: It would not be difficult with a battery system just to most condition it is going to be elevated a couple of feet that if the lake did rise that would buy you some time.

John Holtz: Again, I do not know if I am right or wrong. I am just bringing it up for discussion.

Finding #8:

Robert Bacon: Tom made the suggestion. I will add the condition or the finding that the battery either be a sealed unit, or be remotely located, such as to minimize, or removable. Is that acceptable?

A motion was made for finding #8 by Robert Bacon and the motion was seconded by John Holtz.

All in favor. Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

Chairman Burgie: Okay. There's the one condition. Any other conditions that anyone feels is necessary in this case?

We are ready for a roll call vote to approve or deny. I am sorry petition to approve or deny the applicant's request.

The motion was made by Jonathan Gage and the motion was seconded by Robert Bacon.

Super majority vote of the board. All in favor. Aye 5; Opposed 0

T. Burgie, R. Bacon, A. Crofton, J. Gage, C. Dulski

The motion carries. You have the variance approved.

Dan Millen: Thank you very much. I know you will make her very happy.

Motion to Adjourn:

Being no further business, Albert Crofton made a motion to adjourn the meeting and it was seconded by Robert Bacon. The motion was unanimously accepted and the meeting was adjourned at 8:25 p.m.

Respectfully submitted,

Diane Scholtz Graham
Board Secretary