



Town of South Bristol
6500 West Gannett Hill Road
Naples, NY 14512-9216
585.374.6341

Zoning Board of Appeals Meeting Agenda

Wednesday, February 27, 2019
7:00 p.m.

Call to Order

Pledge of Allegiance

Minutes

Approval of October 24, 2018 Zoning Board of Appeals Meeting Minutes

New Business

Area Variance Application #2019-0001

Owners: Bertino Living Trust (Matthew and Karen Bertino)

Representative: Gary Schmitz

Property: 7040 State Route 21

Tax Map #: 195.05-1-1.200

Special Use Permit Application #2019-0002

Owners: Sierra Kilo India LLC

Representative: Scott Harter, P.E.

Property: 6586 County Road 33

Tax Map #: 183.00-1-25.110

Old Business

Other

Motion to Adjourn

Town of South Bristol Zoning Board of Appeals Meeting Minutes Wednesday, February 27, 2019

Present: Robert Bacon
Thomas Burgie
Albert Crofton
Jonathan Gage
John Holtz
Barbara Howard

Excused: Carol Dulski

Guests: Gary & Carol Schmitz
Peter Fernandez
Scott Harter
Ryan Stoner
Stephen Cowley
Dan Marshall
Phil Sommer

Call to Order

The meeting of the Town of South Bristol Zoning Board of Appeals was called to order at 7:03 p.m. followed by the Pledge of Allegiance. There was a roll call of board members with all present except for Carol Dulski.

Chairman Burgie: We have two items on the agenda tonight. The way that they were published is an area variance for Bertino Living Trust which we are reconsidering from a prior meeting. Then a special use permit for the Sierra Kilo India LLC. I would like to go in that order.

Minutes

Chairman Burgie called for a motion to approve the October 24, 2018 meeting minutes. Robert Bacon made a motion to approve the meeting minutes which was seconded by Jonathan Gage. The motion was unanimously accepted by all board members present.

The Rules of Order was read by Robert Bacon.

New Business

Area Variance Application #2019-0001

Owners: Bertino Living Trust (Matthew and Karen Bertino)

Representative: Gary Schmitz

Property: 7040 State Route 21

Tax Map #: 195.05-1-1.200

LEGAL NOTICE
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 #2019-0001 for property owned by Bertino Living Trust located at 7040 State Route 21, Tax Map #195.05-1-1.200. The owner and representative are looking for a 42 foot variance with an 8 foot front setback based on 25 foot right-of-way from the centerline of State Route 21 for placement of a 12 foot by 24 foot two-story storage shed on the west side of State Route 21.

SAID HEARING will take place on the 27th day of February, 2019 beginning at 7:00 p.m. at the South Bristol Town Hall, 6500 West Gannett Hill Road, Naples, NY 14512.

Application is available for review at the Planning and Zoning Office prior to the above meeting date.

All interested parties may provide written comments, appear in person or by representative.

Chairman Burgie: We have already had a hearing on this request, but new information has come forward and things have changed a little bit and, therefore, we are going to readdress the variance that was granted at that time. Would you like to present your case to us, please?

Gary Schmitz: Mr. Burgie and the Board I was going to read this and I still can. My name is Gary Schmitz and my wife, Carol. We are here representing the Bertinos. They make their summer living residence at 7040 along State Route 21. They are looking for a 42 foot variance with an eight foot front setback based on a 25 foot right of way from the centerline of State Route 21 for placement of a 12 foot by 24 foot two-story storage shed on the west side of State Route 21. The only thing I would like to add is that would be a replacement for an existing smaller building approximately seven by twelve foot right now that will be torn down. That is our case.

Chairman Burgie: What has changed since we discussed this back in October?

Gary Schmitz: I think we discussed almost everything back there and the original board's decision was positive, but it was based on a 33 foot state right of way and it has been verified through surveys and talking with the state. They verified that they could go with the 25 foot right of way rather than a 33 foot based on any maps that they could find in their holdings.

Chairman Burgie: Just to clarify the communication from the DOT. DOT stated it is 25 feet between markers and they include this property 25 feet on the west side of the road. It is not applicable on the east side of the road. Their correspondence said that it was 25 foot right of way on the west side of the road. We still have to go with a 33 foot right of way on the east side of the road.

Gary Schmitz: I am not here to argue, but I know where I am the next house down. You know where I am. It is a 25 foot variance down there.

Chairman Burgie: You said 25 foot there?

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Gary Schmitz: I have a survey that shows the existing right of way on the east side of our property that it is 25 foot.

Chairman Burgie: That is interesting because he did not address that where your property is and that is fine. We are not here to argue that.

Gary Schmitz: No. I understand that. That must change.

Chairman Burgie: It does and that is the confusing part, unfortunately. That is the first thing that has changed. We have a definitive guidance or response from the Department of Transportation that we did not have in October that it is 25 foot right of way where we are discussing this shed being built on the west side of the road. We based our variance determination, our approval on a 33 foot right of way at that time.

Gary Schmitz: The other one is you have a correct map in the positioning of the shed.

Chairman Burgie: Right. What we see that was presented in October versus now the shed is actually five foot closer to the road than what was. Can you give us some insight as to why the shed is not placed where it was on the original one?

Gary Schmitz: If it were placed where the original one is now that would mean it would have to go five foot back into the steep slope. I have no idea. I know there are steep slope laws and I told the owners if they have to get into that I do not know what it entails, but I am sure it is engineering studies, how many cubic feet of dirt you are going to be taking out. Now I may be wrong in all that, but from what I have heard and read that is what it would involve. If it were I, the cost of that would be much larger than the cost of the unit that he is putting in. Again, I am speaking with what my feelings are. I am sure he would agree with it too.

Chairman Burgie: So the necessity to move it five foot closer to the road is really so that you do not disturb or cut into the steep slope.

Gary Schmitz: The only disturbance in that area is where the shale is falling down now against that building and where he has talked to Mr. Rogers for the part of the retaining wall would be there to keep it from as it sheds off that bank.

Chairman Burgie: Anything else that you would like to add?

Gary Schmitz: No. Just looking for whatever questions that you might have.

Chairman Burgie: Let's hear from the code enforcement officer. Do you have anything to add to this discussion?

Phil Sommer: Absolutely not. With all that conversation with Greg Trost I am glad that is finally over with. As far as I am concerned, for what they are doing is what they should be doing instead of trying to get into that shale bank.

Chairman Burgie: Thank you. Visitation reports? I think everybody talked about this back in October.

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Robert Bacon: I think he clarified the subtle changes and why we are here again so that is very helpful. The next item is to determine the SEQR status. We did determine this earlier. Nothing really has changed in that regard. This is a construction, expansion or placement of a minor accessory or appurtenant residential structure including garages, car ports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density. This should be considered a Type II action under paragraph 617.5 (c) (10), which requires no further review. We also discussed back then whether the issue of historical site or endangered species and both of them have been addressed in the prior minutes. Both of them have been resolved. I do not think we need to discuss that anymore. Just refer back to the discussion in the prior October minutes. If there are no issues with that we will make that the first finding when we start findings.

Public hearing opened at 7:16 p.m.

Chairman Burgie: We now open it up for the public hearing. Does anyone present wish to address this application that has not spoken so far? Okay. We will close the public hearing.

Public hearing closed at 7:16 p.m.

Chairman Burgie: We do have one piece of documentation. A letter that came in that addresses an issue here.

Diane Graham: I will read the letter.

Chairman Burgie: Please.

Diane Graham:

Zoning Board of Appeals

Re: Variance application for 7040 State Route 21

Dear Members of the Zoning Board of Appeals:

My wife, Elizabeth, and I are the owner of property located at 7031 State Route 21, which, on the east side of Route 21, is immediately north of the above referenced property. I write to call to the Board's attention the concerns about the above application as it impacts our property.

While the proposed variance relates to that portion of the Applicant's property to the west side of the Road and does not directly impact the use of our property, which is on the east side of the road, we believe that there is a real and potential impact on safety. The placement of a structure of the size proposed will significantly limit the Applicant's space for parking on the east side of the Road, as it appears that there will be scarcely enough space for the width of one vehicle (perhaps two vehicles could fit with one parked behind the other) between the cottage and the proposed structure, as we are therefore concerned that the Applicants or their guests will resort to parking on the east side of the Road. Parking in that location would significantly limit the line of site that we would have entering the roadway from our property. The parking of any vehicles to the south of our property, particularly on the east side of Route 21, would virtually obstruct any view that we would have of north bound traffic on Route 21.

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We therefore suggest that should the Board, in applying the standards set forth in Town Law Section 267-b, approve this application, that it be conditioned upon the Applicant's not using the east side of the road for parking. While we respect the Applicant's space limitations, we believe that public safety is of paramount concern, and placing this limitation upon the approval of the variance will address this concern.

Thank you for your consideration.

Sincerely,

John A. Schuppenhauer

Chairman Burgie: So we have a concern. The parking that are shown in the pictures that we reviewed back in October has the parking on the west side of the road in front of the existing shed. Moving the shed five feet closer to the road will make it impractical to park there in front of the shed, I believe. It would be very close to the road. That is not the concern that was stated in this letter. If you look at the pictures that we had from October, the cars were parked three feet from the road in front of the existing shed. If you now move the shed five feet closer to the road, there is not going to be enough parking on the west side. The concern in this letter is that if they now move this parking to the east side of the road that is going to obstruct their vision.

Gary Schmitz: What I have here is showing the existing shed where the new proposed one would be and there still would still be enough room.

Diane Graham: Is this a new picture or last time?

Gary Schmitz: Last time picture. This is the shed. It is coming outside the existing.

Chairman Burgie: So you are saying they could put their bumpers right up against the shed and still be able to fit them in there?

Gary Schmitz: It is not quite up against the shed. I brought this because it does show the two vehicles that they had parked.

Chairman Burgie: It is within a foot of the line. If the shed comes out to that line, they are going to have their bumpers within a foot of the shed and this picture the same cars within two feet of the road.

Gary Schmitz: Okay.

Chairman Burgie: So it is going to be difficult to park there. Not to say that it is illegal to do it, but it is going to be difficult to park there. The concern from this letter is he does not want them to move the parking to the east side of the road.

Gary Schmitz: I see his concern there. I can also see where there is two cars. He is parking three vehicles there now with room to spare. As you said with the two of them, with only a foot on each one, but I find it hard to believe when you look through Woodville and you see where the cars are parked down there and they are across the white shoulder.

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Chairman Burgie: Really. I have not seen that, but I do not doubt it.

Gary Schmitz: Is it a concern for the Schuppenhauers? Yes. It might be for me too, but for the amount of cars that may ever be parked on the east side of the road would be minimal seeing that generally they are only there for two months.

Jonathan Gage: Do you find in the past that you had cars parked along the road down by your house and the Bertino's house?

Gary Schmitz: On the east side of the road?

Jonathan Gage: Either side. Do you park them along the west side?

Gary Schmitz: West side, yes. Where he might be concerned the Bertino's do have relatives come in for two weeks out of the summer off and on. They do not all come at once. Yes, in the past there has been cars that have been parked over there, but they are clearly off the road. They are not even on the shoulder of the road over there.

Chairman Burgie: Over there being east side or west side?

Gary Schmitz: East side. Where his property goes down to the lake.

Chairman Burgie: So there is actually more room?

Gary Schmitz: He has more room. He can pull vehicles right down. They can clearly be completely off the road. When company does come, he moves one of his vehicles down there and uses the spaces on the other side.

Chairman Burgie: So you are saying in your opinion that it is actually more distance away from the road, better visibility if they are parking on the east side than on the west side?

Gary Schmitz: If they do, but not for the Schuppenhauer's concern. They are concerned about getting out of the driveway as everybody is down there. There are two houses just on my side of the road that have the mirrors out on the poles. I believe myself that the way those cars are parked and told them there is no problem.

Robert Bacon: East side of the property is that owned by the Bertino's?

Gary Schmitz: Yes.

Robert Bacon: So the concern from the neighbor is just access coming out of their driveway and visibility?

Gary Schmitz: If they park on the east side. It is not an everyday occurrence is what I am saying.

Chairman Burgie: They have had family when they come down and visit for those two weeks?

Gary Schmitz: There is usually one car that I know of that is parked over there. Yes.

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Robert Bacon: It does look like there is a fair amount of space. As you said, they can park farther away from the road into the grass and maintain that visibility.

Gary Schmitz: Yes. They can be completely off the shoulder of the road.

Barbara Howard: If they do park in that area across the road on the grass, is that what the Schuppenhauerø are concerned with by having a car there on a regular basis? That is what blocks their vision to get out of the driveway? It sounds to me that it is not that they are parking on the shoulder of the road. By using this legitimate space is now blocking their driveway.

Gary Schmitz: I cannot answer that question without knowing what their thinking is. If the cars are parked legally off the shoulder of the road across their white line, I do not believe that should be an issue. Especially since the Schuppenhaerø have a turnaround in their driveway that they can back into and pull up and not even back out.

Chairman Burgie: Thank you. Any other documentation we have received?

Diane Graham: No.

Chairman Burgie: It is time for ZBA discussion and debate. Do you have any other questions or discussion?

Jonathan Gage: It seems like all our concerns from last time have been addressed by the different agencies and verified that they do not have any problems with this. That is a good point. The Schuppenhauerø concern, I can see that because I have been down on that road that is almost directly across and pulled out. The visibility is kind of bad there. You do not have a line of sight. Good to work out not parking there so much if they can avoid it.

Chairman Burgie: The next question would be is that worth specifying a condition of this variance? It does not address, specifically, the variance we are granting, but if moving the parking from there to the other side we are causing a bigger problem then maybe it would be worth considering a condition.

Jonathan Gage: Making it so they have to park on the west side, is what you are saying Tom?

Chairman Burgie: It is still open for discussion. I am suggesting that it does.

Robert Bacon: Seems to me the concern is close proximity to the Route 21. If the cars are parked away from Route 21, we believe issue goes away.

Chairman Burgie: On the east side.

Robert Bacon: Correct. So I think it is reasonable to look to the two neighbors and say put some sort of condition there that they maintain the visibility when backing out. I do not know. Can you put that in specific quantifiable distance?

Chairman Burgie: How would you enforce it?

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Barbara Howard: Are you setting precedence. They own that property. You own that property, but you cannot park there?

Robert Bacon: I am not saying you cannot park there. It is more out of respect for their neighbor.

Barbara Howard: I agree. They need to talk to each other and come to some agreement about what is going to work for them. Good neighbor type thing.

Chairman Burgie: That could certainly be a recommendation that we could make, but I do not know how you could make that a condition.

Barbara Howard: I agree with you. A strong recommendation from this Board that they get together and figure out how to make life happy down in Woodville.

Chairman Burgie: Could you pass that recommendation too? I think you're a neighbor, obviously, you are concerned about those issues too down there.

Gary Schmitz: Alright. I think those people down there with the parking issue. There is really nothing you can do except to talk to people and say, hey, can I park in your driveway? A lot of things like that.

Barbara Howard: As you said if you are there for a few weeks with extra people, can I make arrangements for one of their cars to be in an odd position parallel or perpendicular, whichever makes it easier for the neighbors to get in and out of?

Gary Schmitz: I am quite sure something can be worked out there. There is room to park six or seven cars in that area. Tom, I know you parked there, when you came down one time. It is in a turnaround. Everybody thinks it is the states, but it is a woman that lives next to me, not lives there, but she has her property there. It is her property. She rents out some of the spaces at times. Things can be worked out is what I am trying to say without saying too much because it is not my property. I am sure Matt can work it out with Schuppenhauers one way or another or he could work it out with me. When he is back, he could park one of his vehicles over on my front yard.

Chairman Burgie: When you live that close together, you have to be good neighbors I guess. Thank you. Is there any further discussion at this time? Alright.

It is time to determine findings. Findings are the evidence we present for why we make a decision. If this should ever go to court, then they are going to look at our findings and say okay did that support the decision that the Board made in this case.

Finding #1:

A motion was made that the SEQR is a type II action under paragraph 617.5 (c)(10) and therefore, requires no further study.

Robert Bacon: This is the second time we have addressed the variance even though there were two unique numbers in 2018 and 2019. Can we reference the October hearing and use those existing findings and just address the new issue?

Chairman Burgie: We accepted this as a new application?

Diane Graham: Yes.

Chairman Burgie: Then I would say it would be more complete if went through these.

The motion for finding #1 was made by Thomas Burgie and it was seconded by Robert Bacon.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, J. Gage, J. Holtz

Motion carried.

Finding #2:

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.

We addressed this earlier. This is five feet closer to the road, but we also have more leeway from the right of way and it is significantly back from the right of way from where the existing houses are on the west side right now.

A motion was made that an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the area variance.

The motion for finding #2 was made by Thomas Burgie and it was seconded by Albert Crofton.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, J. Gage, J. Holtz

Motion carried.

Finding #3:

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

We addressed this in the earlier discussion. There is no storage there. They cannot store in their basement. There is no other feasible method because of how tight the lot is. The steep slope and everything else.

A motion was made that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than the area variance.

The motion for finding #3 was made by Thomas Burgie and it was seconded by Robert Bacon.

All in favor.

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Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, J. Gage, J. Holtz

Motion carried.

Finding #4:

Whether the requested area variance is substantial.

A motion was made that the requested area variance is substantial. 42 foot out of 50 foot required is substantial.

The motion for finding #4 was made by Thomas Burgie and it was seconded by Jonathan Gage.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, J. Gage, J. Holtz

Motion carried.

Finding #5:

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

A motion was made that the variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The motion for finding #5 was made by Thomas Burgie and it was seconded by Robert Bacon.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, J. Gage, J. Holtz

Motion carried.

Finding #6:

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.

A motion was made that the alleged difficulty was not self-created.

The motion for finding #6 was made by Thomas Burgie and it was seconded by Robert Bacon.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, J. Gage, J. Holtz

Motion carried.

Chairman Burgie: Any other findings the Board would like to propose? No. Any conditions that we can actually specify and enforce? We had a long discussion about what a potential condition would be, but I do not know how to do that.

Robert Bacon: I like the ultimate comment that we made and that is working with the neighbors.

Chairman Burgie: No conditions. Okay.

John Holtz: If this parking in his visual line of sight turns out to be an issue, would they contact state to maybe create a no parking area or something like that? Could somebody else determine that parking is not allowed if it is a safety hazard?

Chairman Burgie: I can see that happening if they were parking in the state right of way. I do not know how the state would preclude someone.

John Holtz: Isn't that the problem. Isn't parking right next to the road so you cannot see approaching traffic?

Barbara Howard: It is really not. Their driveway comes out over here and this is the extra parking area there. It is not that they are in the road or on the road, but right now there is nothing there. This is vacant land. If they park a car there, it blocks.

John Holtz: I thought if they park the car next to the road they cannot see to enter the road. Maybe I misunderstood.

Chairman Burgie: I think they are concerned with parking in the right of way. I think they are concerned with not having enough visibility down the road for northbound traffic. How do you stop someone from using their property if it is not in the right of way?

John Holtz: I guess you can't.

Gary Schmitz: It is not like they are parking right up to the driveway that the Schuppenhauers would be exiting from because there is a culvert there that is probably six feet wide and on Schuppenhauers side of the culvert has probably three or four feet of grass. It is not like Matt or Karen would be parking to completely block the view. I know blockage of view drives me crazy too. You are trying to get out even out of a parking spot if you cannot see. If they parked right up against the driveway, I think it would be a greater problem and he cannot do that because of that ten or twelve feet with the culvert. He would not be right up to the road. He could park on his grass area. As you said, to tell someone you cannot park on their own property that is kind of difficult. The best way is for them to talk about it and have communication with him. I have to leave that up to Matt. I cannot promise you sitting here that they are going to work it out together.

Chairman Burgie: The code is written such that they cannot build within fifty feet of the right of way without a variance. There is nothing in the code that says you cannot park up to the right of way so it is really out of our purview, I believe, to be able to state that kind of condition.

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John Holtz: The parking is really a hypothetical, right? We do not know if he is or isn't.

Gary Schmitz: Right. It is really not all the time like I said. I think in the summer maybe once or twice he may have had his car over there.

Carol Schmitz: The Schuppenhauers are not there the whole summer. They come weekends.

Gary Schmitz: I did not want to bring it up. I did not want to bring up the point, but I will that he has had an exchange with Schuppenhauers three or four years ago regarding his dock infringement.

Chairman Burgie: So there is a history?

Gary Schmitz: There is a small history, but not a lot. Do not get me wrong. It goes on all the time in Woodville because how close you are. If you look at a boat out in the water, they are sure going to violate the guy next to you because you are close. I would hope they could work it out and I will leave it at that.

Chairman Burgie: Okay. Thank you. Any other discussion? Alright may I have a motion to approve or deny the applicant's request for a 42 foot variance based upon a 25 foot right of way?

A motion was made by Robert Bacon to approve Bertino Living Trust, 7040 State Route 21 for a 42 foot variance based on a 25 foot right of way from the centerline of State Route 21 and said motion was seconded by Albert Crofton.

Roll call vote:

Robert Bacon ó Aye
Thomas Burgie ó Aye
Albert Crofton ó Aye
Jonathan Gage ó Aye
John Holtz ó Aye

Motion carried.

Chairman Burgie: The variance is approved.

Gary Schmitz: Thank you very much.

Chairman Burgie: Thank you for your patience having to come back and discuss it again.

Special Use Permit Application #2019-0002

Owners: Sierra Kilo India LLC
Representative: Scott Harter, P.E.
Property: 6586 County Road 33
Tax Map #: 183.00-1-25.110

**LEGAL NOTICE
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 #2019-0002 for property owned by Sierra Kilo India LLC located at 6586 County Road 33, tax map #183.00-1-25.110. The applicant and owner are looking for a special use permit to construct a new single family residence in a C-1 zone.

SAID HEARING will take place on the 27th day of February, 2019 beginning at 7:00 p.m. at the South Bristol Town Hall, 6500 West Gannett Hill Road, Naples, NY 14512.

Application is available for review at the Planning and Zoning Office prior to the above meeting date.

All interested parties may provide written comments, appear in person or by representative.

Chairman Burgie: A special use permit is a use that is allowed by the Town Code. There is no variance. There is no waving of the code or anything of that nature. It is only deemed necessary by the Town Board it receives a review by a Board, which they have assigned the Zoning Board of Appeals to do that. That it meets certain criteria that may not be considered in every application for a building permit. There are seven criteria that I see you have provided this to us. Seven criteria plus the (SEQR) State Environmental Quality Review Act that we need to make sure that it is consistent with all those. If it is, then we as a Board are required to grant the special use permit. If it does not meet any of those, then we cannot waive it or do anything, but deny the permit. All we are doing is a second look at the building application making sure it meets these requirements then we will move forward from there. Would you like to present your case for what you are trying to do?

Peter Fernandez: Sure. I assume the Board is familiar with the location of the site. It is the old Ski Valley ski area. As you can see, it is 118 acres. The development that we are proposing is this little dot over here. Basically, all we are doing on the 118 acres is using existing driveways, extending the driveway a little bit off the slope to build a new log style home, timber frame house. It is going to be one house with a big back yard. I can go through the seven questions that you have, if you like?

1. The residence is located to fit into the landscape and is buffered by both existing and proposed landscaping.

In this one, we are showing how we will put some shade trees in and evergreens to buffer the house up and down County Road 33.

2. Yes. The proposed use conserves the property and the resources and is consistent with purpose of the zoning law.

The proposed use is a special use permit in the Town and as such is much less of an intense use that the use is permitted. For instance, there could be a drug store, liquor store, supermarket, clothing store, commercial shop, garbage company, and construction company. This is a very minor use turning it from basically a C-1 into a residential lot.

3. Will the proposed use adversely affect the character of the neighborhood?

It is a timber frame structure and there are other examples of that up and down the road on 33. I think it is going to fit nicely into the valley.

4. The proposed use will not be detrimental to nearby properties.

This use is set back from the property lines substantially unlike the other applicant. It is 264 feet off the road. The owner intends to remove the ski lodge that is there and clean it up. There has been asbestos remediation already. A lot of the other debris on the site has already been cleaned up. Over time additional landscape will be proposed. I think it should be a nice bucolic property. The proposed property is using existing roads as I said. There will be minimal disturbance. We are just going to do some grading around the pad for the house. The plan showed parking spaces. The owner would propose a porte-cochere with a circular drive at the top. A lot more fitting with the character of the area even though nobody would see it from 33.

Robert Bacon: Just a clarification I believe our drawings you had two four car parking locations and you are going to remove those and have a circular driveway?

Peter Fernandez: Yes. Just a circular drive. There is some gravel there. You would not have to approve it. We are showing you that you could define some areas to park. There will not be that many people there to warrant it. Also, we are putting in a new septic system, which is going to be out over here. We did some deep-hole tests and everything works really well for a new septic system. There will be minimal trenching. There is already electric to the site. They could pull power off the poles.

5. The proposed use will not have an adverse impact on the physical environmental conditions of the neighborhood.

It will not. There is less intense use, less run-off, no soil erosion, or anything like that. Minimal traffic impact.

6. The proposed use meets all conditions for the land conservation district or any other restrictive overlay districts.

There are not any overlay districts like the steep slopes down on the lake or anything like that.

7. We have the short environmental assessment form submitted. Then other than that it is pretty straight forward.

Chairman Burgie: Good. There is no refusal of a permit. This is a special review that it meets certain criteria before the permit is issued. We are not going to be asking the CEO why he refused it. It is by town code that it has to come to us for a special use permit consideration. Visitation reports? I drive by it all the time.

Barbara Howard: I drive by it ten times a week.

Jonathan Gage: I was there last Saturday and met Mr. Stoner. We went over the property and looked at it. Everything is as addressed in here. We went over there and he was able to answer questions satisfactorily.

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Robert Bacon: I also drive by and live just a couple miles away. I welcome the change. It has been abandoned for twenty years. Really pleased with the improvements you have made already.

Barbara Howard: It already looks nice.

Robert Bacon: Substantial changes. Nice job.

Peter Fernandez: Thank you.

John Holtz: I stopped by on President's Day. I think on Monday and walked around and had a nice visit. I like everything. I think it is going to be a nice change.

Peter Fernandez: It is going to look like Switzerland. Isn't that what they say about Naples?

Chairman Burgie: I did not get a chance to stop by. As I said, I have driven by many times. Just a point of interest, are they going to maintain the lift or tear that down or what is going to happen?

Peter Fernandez: We are thinking the lift is going to be more like a historic relic. Sort of the bygone era parts of it may remain there.

Robert Bacon: I know you have the lift towers there and you also have an old tow rope. I assume that will be an antique?

Peter Fernandez: Yes. The whole system is shot pretty much.

Robert Bacon: It is lack of use and maintenance over the last twenty years. You also have a shop down by the road.

Peter Fernandez: Yes.

Robert Bacon: Will that stay there?

Peter Fernandez: Yes it will. They are using that for equipment storage.

Chairman Burgie: Any other questions?

John Holtz: What about lighting?

Peter Fernandez: I am up on Gannett Hill and I can read a book in my woods when Bristol Mountain's lights are on. Whatever the impact if he turns a light on every once and a while, it is not going to be anything like Bristol Mountain.

John Holtz: No. I did not think it would compete here. I wanted to know if there was going to be night skiing.

Peter Fernandez: You know maybe. It is in his private back yard. You string some lights up and go sledding or whatever. I think it is the same thing.

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Chairman Burgie: Thank you.

Peter Fernandez: Thank you.

Chairman Burgie: It is time to determine the SEQR status. Paragraph 617.5 (c)(9) is a type II action. *Construction or expansion of a single family, two family, and three family residence on an approved lot including provision for necessary utility connections as provided in paragraph eleven and the installation maintenance and/or upgrade of a drinking water well and a septic system.* This certainly fits into that paragraph. When we get to making findings, we will propose unless somebody has discussion on that that this is a type II action.

Robert Bacon: I agree.

Chairman Burgie: Here we open it up for the public hearing for anyone who would like to add to the discussion that we have so far.

Public hearing opened at 7:58 pm.

Chairman Burgie: No comments. We will close the public hearing.

Public hearing closed at 7:58 pm.

Chairman Burgie: Do we have any public or municipal officer's documentation? It looks like something from the Ontario County Planning Board.

Diane Graham: There are two things. There should be the septic email approval and the county's response with comments.

Chairman Burgie: It appears if I am reading this correctly from Tad Gerace.

To Phil:

After brief review of the design provided by you and at your request I provide the following:

It appears a new conventional system for a four bedroom single family home is being proposed. Will the existing metal septic tank be pumped/cleaned or removed?

Peter Fernandez: Removed.

There should be an incomplete inspection report from our office on file and at your office dated 9/4/12.

Phil Sommer: We have that. Read the newer email. This is the one we were going back and forth on.

Chairman Burgie: I am not seeing a newer email. The one up here.

Phil Sommer: This is his final answer.

Chairman Burgie: This one. Okay.

The plans state the existing seepage pit and pump station will be removed. The existing massive metal septic tank is mentioned by name in the plans. See attached 2012 system inspection. Also I copied my below comments to Linda Phillips at County Planning since they did not appear in the February draft minutes.

Is that what you are referring to?

Phil Sommer: It is at the very top.

So you agree the system is ok? He said, I am.

He is in agreement with the system.

Chairman Burgie:

Tad: So from what I read you are okay with the proposed system?

Phil: Yes, on plans. The old system is being removed and I did not see the report you spoke about. If you still have a copy, would you send it to me?

I do not see where he is okay with it?

Phil Sommer: The first two words. I am.

Chairman Burgie: A man a few words. Okay. He is okay with the system.

The comments from the Ontario County Planning Board:

- 1. Demolition debris should be reclaimed or recycled where feasible with the remainder disposed of in a licensed disposal facility.*

Peter Fernandez: Correct.

- 2. Does the applicant or the municipality want to change site zoning?*

Chairman Burgie: Just to clarify. We have no control over site zoning. You have not requested a change to change the site zoning. That would actually go through the Planning Board to the Town Board to change zoning. We are going in accordance with the town code that allows the special use a on C-1 property to have a single family residence. So we will not be doing anything about changing the zoning. Just approving it in accordance with the town code and the zoning that exists right now.

Peter Fernandez: That is understood.

- 3. Requiring applicants to go before the ZBA for special use permits and the PB for site plan review requires a high degree of communication and coordination between the two boards and has the additional result of extending the development approval process.*

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Chairman Burgie: True. We will be communicating with them and you have submitted a site plan to the Planning Board?

Peter Fernandez: Yes. We have.

Chairman Burgie: We are simply just considering the seven conditions that we need to worry about for the special use. Anything else?

Diane Graham: There is archeological and we did receive a letter that there is no impact.

Chairman Burgie: Okay. ZBA discussion and debate period. No questions? No comments?

John Holtz: I have a check on affecting existing wetland too.

Robert Bacon: There is a pond in the front.

Diane Graham: If you look in your packet, there is a response to that from Mr. Harter.

Barbara Howard: There is.

John Holtz: There is. Okay. So no work on the pond?

Chairman Burgie: No work on the pond. So it does not affect any change to the federal wetland.

Barbara Howard: Should that box be changed on the application then?

Diane Graham: 13.a. you are talking about?

Barbara Howard: Yes.

Robert Bacon: Page two of three 13.a.

John Holtz: I am good.

Diane Graham: 13.a. says yes so he answered the question.

Robert Bacon: Basically answering the question doesn't contain a wetland.

Barbara Howard: There is stuff that could be impacted, but it is not.

Robert Bacon: They shut down operation in 2000. It was 19 years ago.

Chairman Burgie: We need to then determine findings. The findings here need to include seven items.

Finding #1:

A motion was made that the SEQR is a type II action under paragraph 617.5(c)(9) and therefore, requires no further study.

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The motion for finding #1 was made by Thomas Burgie and it was seconded by Jonathan Gage.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, J. Gage, J. Holtz

Motion carried.

Finding #2:

A motion was made that the proposed use is consistent with the Comprehensive Plan of our Town.

The motion for finding #1 was made by Thomas Burgie and it was seconded by Robert Bacon.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, J. Gage, J. Holtz

Motion carried.

Finding #3:

A motion was made that the proposed construction is in harmony with the purposes of the zoning law of our town and with the regulations of the zoning district in which the proposed special use is to be located.

The motion for finding #1 was made by Thomas Burgie and it was seconded by Robert Bacon.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, J. Gage, J. Holtz

Motion carried.

Finding #4:

A motion was made that the proposed construction will not adversely affect the character of the neighborhood.

The motion for finding #1 was made by Thomas Burgie and it was seconded by Albert Crofton.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, J. Gage, J. Holtz

Motion carried.

Finding #5:

A motion was made that the proposed construction will not be detrimental to nearby properties.

The motion for finding #1 was made by Thomas Burgie and it was seconded by Jonathan Gage.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, J. Gage, J. Holtz

Motion carried.

Finding #6:

A motion was made that the proposed construction will not have an adverse impact on the physical or environmental conditions of the neighborhood or district.

The motion for finding #1 was made by Thomas Burgie and it was seconded by Robert Bacon.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, J. Gage, J. Holtz

Motion carried.

Chairman Burgie: We have already discussed that there is no land conservation districts or any other restrictive overlay districts. That is no applicable.

Are there any other findings that need to be considered here? Any conditions need to be considered?

Then I would ask the board members to make a motion to approve or deny the applicants request for a special use permit.

A motion was made to approve the applicants request for a special use permit.

The motion for finding #1 was made by Albert Crofton and it was seconded by John Holtz.

Roll call vote:

R. Bacon ó Aye

T. Burgie ó Aye

A. Crofton ó Aye

J. Gage ó Aye

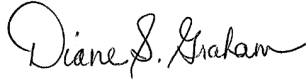
J. Holtz ó Aye

Motion carried.

Motion to Adjourn

Being no further business, Robert Bacon made a motion to adjourn the meeting and it was seconded by Albert Crofton. The motion was unanimously accepted and the meeting was adjourned at 8:12 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Diane S. Graham".

Diane Scholtz Graham
Board Assistant