

TOWN OF WARWICK
ZONING BOARD OF APPEALS

Members Present:

Chairman Jan Jansen

Attorney Jeremy Havens

Diane Bramich

Jim Mehling

Marc Malocsay

Chris Daubert

Mary Garcia, ZBA Recording Secretary

PUBLIC HEARING OF 138 PINE ISLAND TPKE LLC - regarding property located at 138 Pine Island Tpke, Warwick, New York, and designated on the Town tax map as Section 29 Block 1 Lot 74 and located in a RU district for an area variance for the construction of a new detached two-story garage creating a singular accessory building comprising 5,549 square feet, where a maximum of 1,200 square feet is permitted; and having a greatest median dimension of 80'6" where no more than 48' is permitted. **Continued from the 9/25/23 ZBA Meeting.**

Representing the Applicants: Dennis Lynch, Attorney and David Niemotko, Owner of Architect Company

Attorney Lynch: Chairman, <inaudible> for the applicant. Our professionals are a little bit late. Can we be put at the end of the calendar?

David Niemotko: No, I'm here.

Attorney Lynch: I didn't see you.

David Niemotko: Hi Board. Good evening Board. Good to be here to present. I drew the lot, so it's my turn to present and I was hoping to get to talk to you further about the project. We have not received any further information to help clarify things so I can go ahead and reiterate some of the things that we discussed in the past and some more information that would further elaborate on if that's agreeable with the Board.

Attorney Havens: Sure.

David Niemotko: David Niemotko. N I E M O T K O. So with no further clarifications, we're here to confirm our ZBA request for an area variance of building size to 3,952 square feet. Your zoning code, as you know, allows for multiple accessory structures of 1200 square feet, approximately five feet off the lot line. We're proposing one structure, 15 feet off the lot line that would comprise approximately a little more than three accessory structures. The accessory structure is a garage use. It is in no way intended to be habitable; we never labeled that on our plans, we did not do a building code review consistent with the habitable space. But that provides the basis for our request. It seems that so many codes are being used. What are the consistent line of thought that should be applied with this project? It's a Zoning Board request. The zoning code governs yet residential code has been brought into effect. How does the residential code apply? Well I'm here to tell you after reviewing the codes consistently and thoroughly, and I'm happy to report that this project complies with both the zoning and the residential code. How so? The zoning code is first initiated by gross floor area and then occupied space. So in gross, before it even gets to a habitable space condition, we're proposing on our lower level, which is now a carport, is about 1,540 square feet. That carport is open on both sides on two sides, which is compliant with the residential code and is not listed in your zoning code as a use. Yet it would fall under gross floor area. So the definition for gross floor area is includes the exterior building walls of all floors of a building or structure. GFI shall include all occupiable areas minus the following deductions: vehicular parking and loading areas within the structure. So in this lower level of 1500 square feet as a carport, it's only used for vehicular access or vehicular parking. We're not including that in our calculations. At grade level is a garage. The garage is defined by gross floor area and occupied space according to your zoning code. So that area is 3,952 square feet. It is part of the gross floor area, and it's also an occupied space since the ceiling height is over seven foot. We agree. And that's one of the basis for our request for the variance. The attic space is 2,443 square feet and again, falls under the definition in your zoning code of occupied space, or it doesn't, since we reduced the ceiling height to below the seven foot as defined by an occupied space, it is no longer part of the gross floor area calculation, since gross floor area calculations include <inaudible> in all aspects. Again,

the carport complies with the construction and requirements of the code for such a structure. The garage meets the residential code in all aspects, and the attic is a not habitable space. How so? Well, a space in a building for living, sleeping, eating or cooking, bathrooms, toilet rooms, closets, halls, storage, or utility spaces, and similar areas are not considered habitable spaces. In addition to that, habitable space is defined by many different things, light and ventilation requirements, egress requirements, conditioning of the space, finishing of the space. We are not proposing that in any sense, the attic it's not finished. It has no legal means of egress. There are, it's not conditioned space, it's not a heated space. In fact, I doubt could even meet the ventilation requirements. So it is an attic space as you would have in your own house. If you have an accessible attic patch, remove the attic patch, look up, you'll see a structure up there. Probably it's unfinished. That would be the same for this building—for this accessory structure or garage. We are asking that this remain in its current location or the proposed location for the following reasons. One is it's situated where an old structure used to be. Yes we know it was torn down, but that is the lowest plateau within this property. In your ridgeline district code requirements, it asks that the structures be situated as low in elevation as possible. Your ridgeline district starts at elevation 600. We are near that. And we did another cross section through the site. Putting it further beyond the house would disrupt the area and be in actual violation of the zoning code because it calls for less mitigation to put in the accessory structure or any structure. So putting it behind the house would call for more clearing of the land, which may perhaps call for some stormwater management around the structure. We'd have to get electricity to the garage or door openers, and it would create more of a disturbance. In addition to that, it's higher up on the elevation. You'll see in our cross section that we did, the first one we did just went up to the house, but we expanded it across the whole site to show how it plateaus and comes up. And putting it behind the building would definitely impact that ridgeline site distance or site visibility. You have the testimony of two to three others from the public stating that situating this accessory garage structure at this location would not impact the view or would not be a hindrance. In fact, one said it would enhance the area and marketability of the different houses and the surrounding area. Based on that, we ask that you grant the variance for a building size and knowing that we are compliance with the zoning and building <inaudible>.

Chairman Jansen: Okay. Thank you. Anyone have any questions at this time?

Marc Malocsay: I have some questions. The first one that I think a lot of us are confused on, and it's the Zoning Board is the only Board that has the ability to interpret the code. So with that, we ask other people questions and try to come up with some answers. One thing that you brought up numerous times and we're talking about the size of the building and the calculations. A lot of the things that you're talking about for that measurement deals more with a residence itself and not the accessory structure. Because when I contacted the Building Department, it's interesting when we talk about an attic if it has the headroom that's over the 7'6". I'm not a hundred percent sure of the code, if it has that, but yet the attic is on the third floor and it is unheated and doesn't have egress windows, et... It's not counted as a floor area. But we're moving now from a house to an accessory structure. So it's difficult to say because there's in most garages or accessory structures, these aren't heated buildings. So we've just eliminated that whole area not in the residence, but in the building itself. Just because it isn't heated and just because the ceiling height might be less, doesn't mean that we don't count that as square footage of the building. Basements generally in a house aren't counted as square footage because it's not livable area. That's the reason that they're not counted. A square footage in a building that's going to have two stories now because the basement might be exposed on one side so cars can go in and if it's half exposed, it's been our determination that counts as square footage. The second story, which in your case might be the first story, would definitely be square footage by your own definition even as a residence. When we get into the attic, I would admit that is a gray area even for an accessory structure because you want these buildings to look pleasing to the eye and to put dormers in to make it look more like a barn, maybe or a cottage. It is an accessory structure. So with that, I don't want to dwell yet on the square footage of the building to

go from, say, between the areas of 3,000 square feet and 5,000 square feet. What is before the board is an application that is for an accessory structure over 1200 square feet.

David Niemotko: Correct.

Marc Malocsay: Doesn't have anything to do right now with the proximity to the property. The answer is it has to be 5 feet or more from a property line. And again, that's not before us because you're proposing it to be at approximately 15 feet. So just moving forward, I just want to not dwell on the size of the building yet, because we might not have to go there. And I'm going to say yet. But there were some interesting things that were brought up when we looked into the code, and I wanted the lawyer to go over some of those things.

Attorney Havens: Marc, I did look at it more closely and I actually prepared some notes related to this application, the progress of the application, the square footage, the stated uses, and so forth. I wanted to address those because while I understand that you may not want to focus completely and specifically on the square footage, we can't move forward until we type this action as far as SEQR is concerned. We can't type it for SEQR until we come up with a square footage. If it's over 4,000 square feet, it would be an unlisted action and require SEQR review. If it's under 4,000 square feet, then it's a Type 2 action and it would require no further SEQR review.

Marc Malocsay: I can understand that completely. But if we're interested in giving a variance at 4,000 square feet or under 4,000 square feet, we don't have to go to that next level anyway. So if we want to spend the time to determine the square footage if it could be smaller or if it could go on the property someplace else, we haven't decided on those two things that we had asked for.

Attorney Havens: Marc, technically speaking, we can't make any other further determination until we type it as either an Unlisted Action or Type 2 Action. We have to calculate the square footage. We have to come to a determination on what the square footage of the building is before we can make any other decision about anything else. Unfortunately, that's just the SEQR regulations. We're not permitted to make any determination on any issue until we do SEQR.

Marc Malocsay: Okay.

Attorney Havens: So for the benefit of those people who were not previously here for the prior meetings, and also for clarification of the record, the applicant's initial architectural drawing submissions for this application specified 5,549 square foot building area, including the "ground floor of 3952 square feet", and the "lower floor of 1597 square feet." That was listed on sheet T.01 titled 'New Garage and Workshop for Anthony Napolitano'. That was the original submission that the building inspector was relying on, and the basis for why the notice of the hearing specified an application for a garage of 5,549 square feet, because that's what was actually calculated on sheet T.01 that was initially submitted for this application to the building inspector.

Marc Malocsay: Can you stop there? So again, I'm just trying to make this move forward. So that's the application in front of us, I think we have to then do this as a Type 2 Action?

Attorney Havens: That wouldn't be a Type 2 Action. That would be an unlisted action.

Jim Mehling: Because it's over 4,000.

Attorney Havens: But that being said, the applicant has a legitimate position under SEQR; floor area of a building is not defined under SEQR. It's left to the local municipality to determine floor area of a building. And our code exempts under various portions of the building for purposes of square footage based on its intended use or non-use. We will get there as to what the Board can do.

Marc Malocsay: Okay.

Attorney Havens: At the public hearing on August 28th, the applicant questioned why the public notice was sent out identifying a proposed building with 5,549 square feet instead of just 3,952. I just explained why. At that meeting, the neighbor, a licensed architect and engineer objected to the application with submission of detailed analysis, diagrams and calculations in writing and testimony, highlighting a multitude of discrepancies and contradictory measurements. The applicant was given an opportunity to revise their drawings to clarify the dimensions and uses of the structure, and the public hearing was held open for further public comment on the revised submissions. At the continued public hearing on September 25th, 2023, further and additional objections of technical nature were made with respect to the revised architectural drawings as testified by the neighbor architect. The applicant's resubmitted plans show additional ceiling joists in the attic below, and in addition to the original collar ties that were previously shown, and the neighbor architect testified that these additional ceiling joists serve no structural basis and therefore could simply be removed or never installed without requiring a permit or Building Department approval. The neighbor architect alleged that such ceiling joists were added merely to circumvent provisions of the code that would've otherwise required inclusion of the floor area of the upstairs storage and attic space in the calculation of gross floor area of the structure. As a result of the disagreement between architects on how to calculate the applicable square footage, the applicant requested referral to the building inspector and town engineer for analysis and calculation of dimensions and square footage of floor area. Additionally, at the September 25, 2023 public hearing, applicant's attorney insisted that what is being proposed is not a garage as written on the ZBA application and drawings submitted for issuance of a building permit, but that the owner's wishes to construct a new "barn" with a diversity of intended uses, some of which are not specified in the drawings, to replace the previously existing non-conforming barn that the owner removed prior to submission of the current application to make way for new larger structure in its place. A meeting of the ZBA Town Engineer, Building Inspector, and ZBA Attorney was conducted on October 12, 2023 at Town Hall to review the application. The town professionals were unable to determine the right precise gross floor area for the following reasons: A) the Town Engineer not being a licensed architect advised that she's not the right person to determine the accuracy of the measurements of the drawing submitted by the applicant's architect and refuted by the neighbor architect. B) the calculation of gross floor area is dependent upon the intended use of each space. For example, under Section 164-43.2, off street parking regulations, those areas of a "private garage to be used for parking of motor vehicles" is not included in the calculation of gross floor area. And C) since the applicant's attorney insisted at the immediately prior meeting of September 25, that the intended structure was a barn with a variety of uses instead of a garage, as noted in the submitted plans, the applicant's professional representatives contradicted each other creating confusion therefore failed to sufficiently articulate the intended use of each space within the proposed structure. Moreover, based on the Orange County Department of Real Property Tax Service Agencies Image 8 online property report regarding improvements, the previously existing structure on the applicant's property was actually classified as a shed with two carports, not a barn like the applicant's attorney was trying to argue. So with too many variables and applicable provisions of the code subject to interpretation by the ZBA as a Board, a precise calculation could not be made. Since the applicant failed to sufficiently articulate the precise dimensions of the structure and the respective intended use for each portion of such structure, the ZBA may consider the appeal based on the uses as specified in the submitted plans, and weigh the testimony of the applicant's architect as compared to the neighbor architect with respect to the discrepancies of the dimensions of the structure in the submitted drawings. The drawings that were submitted by the applicant identified the following uses: on the lower level, 1,597 square feet identified as a "garage showing parking for six cars". On the main level, 1,541 square feet identified as a heavy equipment garage. On the main level, also another 1,519 square feet identified as a workshop. On the main level as well, 699 square feet identified as alpaca's winter feed storage. The top floor, whether you want to call it a story or not, but upstairs from the main level, 2,312 square feet that were identified as parts storage and attic at a 7'6"

clearance height. There's also calculations based on a 6'6" clearance height. There were no calculations based on a 7" clearance height, which is actually what's applicable under the code. So if you add all of those together based on what was submitted by the applicant in their drawings, you have 7,668 square feet of "occupied space" as defined under Section 164-22 in the Town of Warwick building code. And that doesn't include the low headroom areas that are below 7'6" in clearance in the upper floor. If you subtract from that 1,597 square feet for the parking space in the basement, then you get a gross floor area under Section 164-43.2 related to off street parking of 6,071 square feet. What's debatable is whether or not the attic space needs to be counted according to the architectural drawings. If we subtract the 2,312 square feet of the upstairs for parts storage and attic based on a reduction of ceiling clearance height to 6'6" based on the recent submissions with the added ceiling joists, then you end up with a gross floor area of 3,759 square feet pursuant to section 164-43.2 of the off street parking. Based on the above calculations and giving the applicant every favorable inference, this structure could arguably qualify as an accessory building with less than 4,000 square feet of gross floor area. And therefore, as presented in the applicant's most recent submission, this application could arguably qualify as a Type 2 action under SEQR regulations 6 NYCRR §617.5(c)(9). If that's the case, it would warrant no further formal SEQR review. If that's not the case, then we have to type this as an unlisted action and do a SEQR review and determination of significance before this Board can make any determination or decision on any other part of the application. Do any Board members have any comments

Chairman Jansen: What is the Board's feeling?

Marc Malocsay: We have a number to go with on the square footage. Taken everything into consideration and the benefit to the applicant that we have now have a number of less than 4,000 square feet.

Attorney Havens: Any other comments from other Board Members?

Diane Bramich: I agree with Marc.

Chris Daubert: Yes.

Diane Bramich: I just want to make sure that is the square footage we're talking about.

Marc Malocsay: Well by us giving the variance and if there are changes to the building and the square footage is changed, they would have to come back before us. And if it's going to be an increase, then it's going to be Unlisted action. We would have to follow through with SEQR. But it's going to be a different application at that point. And again, the Building Inspector could know what we're giving the variance for.

Attorney Havens: So the question that this Board needs to determine in order to come to a conclusion on what the gross floor area is under our zoning code is whether or not we're going to accept the applicant's proposition that by adding these additional ceiling joists in the attic, that 2,312 square feet is not included. Under the zoning code if it's less than 7 feet, it doesn't count. They have articulated on their most recent submission that they were going to install additional ceiling joists below the collar ties to lower that ceiling in an unfinished attic to 6'6" which is below the 7 foot threshold.

Diane Bramich: *(Speaking to David Niemotko)* That's not what was said by you. You said 7 feet just now.

David Niemotko: It meets the zoning code of being below 7 feet.

Chairman Jansen: So what do they need to show us in order for us to go with this decision?

Attorney Havens: It's a question as I stated, of whether you're going to consider whether or not the installation of a lower ceiling joist below the structural collar ties in the attic is sufficient to not count that space, or it's irrelevant and you count it anyway. Here's a picture of the drawing. *(Shows and explains diagram to Diane)*.

Diane Bramich: Right.

Attorney Havens: ...and then there's a ceiling joist below it.

Chairman Jansen: Okay. Any further questions at this point? Comments? Go ahead.

David Niemotko: If we want to save the client money, we can eliminate the collar ties. Just go with the ceiling joist.

Chairman Jansen: Is that sufficient?

Marc Malocsay: It's still as long as we're below that threshold for that height. That would be perfectly fine.

David Niemotko: It's fine.

Marc Malocsay: Yes.

Jim Mehling: Saves money.

David Niemotko: I'm going to need the collar ties, keep the ceiling joists that will act as collar ties only at the third point of the attic construction.

Chairman Jansen: Okay. So where do we go from here?

Attorney Havens: Is everybody okay with that proposed change and interpreting it as a 6'6" ceiling height?

Marc Malocsay: No question.

Attorney Havens: Jan, could you poll the Board on that?

Chairman Jansen: Sure. Yes or no? (*Asking Board Members*).

Jim Mehling: So that puts us below the 4,000-foot threshold?

Marc Malocsay: Yes.

Chairman Jansen: Yes.

Jim Mehling: So it classifies it as a Type 2 Action.

Board Members: Yes. (*In reply to Chairman Jansen's poll*).

Diane Bramich: That would bring it down to 6'6".

Attorney Havens: 6'6", which is below the 7-foot threshold.

Chris Daubert: It brings it down to 3000 square feet

Attorney Havens: 3,759 square feet.

Diane Bramich: Okay. 53?

Attorney Havens: 59.

Chris Daubert: Yeah

Chairman Jansen: Is that a yes, Diane?

Diane Bramich: M-hmm.

Chairman Jansen: Is that a yes, or no?

Diane Bramich: I'm there.

Chairman Jansen: You're there? Does that mean you are ok with it?

Diane Bramich: I'm there.

Chairman Jansen: Alright. So let's go from there.

Attorney Havens: Okay. So do we have a motion to accept that the square footage under the gross floor area as defined under section 164-43.2 off street parking, would be 3,759 square feet?

Chairman Jansen: Can I have that motion?

Marc Malocsay: I'll make the motion.

Jim Mehling: I'll second it.

Chairman Jansen: Motion and a second is made. Any discussion?

Marc Malocsay: Yes. Just so that we're clear by doing this and moving forward, the issue of if the variance is if it is going to be granted or not? we don't know. And by doing this, and if for some reason a denial or for a granting of a variance, and then if the building is being built differently and the building inspector sees that it's not being built per the plans, then it becomes a big issue. They would have to come back before us for another variance. I just want to be clear on this. I want to be given a number on this so that we could move forward.

Attorney Havens: Understood.

Marc Malocsay: So okay. So anyway, I made the motion, do we have a second? Yes we do.

Attorney Havens: Yes.

Chairman Jansen: All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: Okay. So with a 3,759 square foot gross floor area as interpreted and defined under the code, do we have a motion to type this action under SEQR as a Type 2 action under §617.5[C][9]?

Jim Mehling: I'll make such a motion.

Marc Malocsay: And I'll second it.

Chairman Jansen: Motion by Jim, seconded by Marc, any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: Alright. We have managed to come up with a calculation of gross floor area for SEQR purposes. Establish what that is.

Chairman Jansen: Okay.

Attorney Havens: So you've already presented that with the exception of removing the collar ties and utilizing the ceiling joists at 6'6" foot height in the top area that you would modify the plans and submit it based on that. Do you have any other further comment or confirmation that you'd like to make with respect to the application?

David Niemotko: No. I'm here to answer your questions. And this Board has been around for a while. You have the mechanisms in place to make terms that are acceptable to you. You can grant the variance request as a draft final resolution conditioned on things that would be acceptable to you. The other municipalities you hear things of an applicant needing to submit for building permit within six months, the Building Department confirming that the following items which were of thought to you need to be confirmed, such as data construction or the ceiling height and things of that nature. You can condition things that would be acceptable to you in that draft or final resolution, so we ask that we get to that point.

Chairman Jansen: Okay. So at this point we need final confirmation.

Attorney Havens: I think we just got that.

Attorney Havens: The only other item would be before closing the public hearing is whether or not we have any new comments that need to be added?

Chairman Jansen: Are there any new comments that need to be added in the public hearing? If not, I'll close the public hearing. We are going to be adjourn it to the November 27th meeting for the final deliberation decisions.

Attorney Havens: Yes. Unfortunately we have four other matters on our agenda for this evening, and we can't have everybody sitting here. We may or may not end all deliberations and so forth before we get to it. So at the moment, there's nothing else scheduled for the November 27 meeting. Your application would be first on the agenda.

Several members of the public and Board Members speaking simultaneously regarding the date of the next meeting

Chairman Jansen: Okay. Your application will be continued at the November 27, 2023 meeting.

David Niemojko: Thank you.

Joseph Tomczak & Laura Krill - regarding property located at 364 Liberty Corners Road, Warwick, New York 10990, and designated on the Town tax map as Section 1, Block 1, Lot 36.3 and located in the RU district for area variances from the access requirements under Town Law §280a to permit access to the property from a private road for new construction of a proposed single-family dwelling.

Representing the applicants: Joseph Tomczak, Applicant and Laura Krill, Applicant

Chairman Jansen: So do you have all your access now?

Joseph Tomczak: Yes. Most of it..

Laura Krill: We have everything, we got the....

Joseph Tomczak: We still have the easement signed right now, we didn't know if we were to do those first or after we get...

Laura Krill: We got it surveyed, we sent out the letters, and we had spoken with the lawyer and everything, but we didn't know if we should get it approved first before we got the title company to approve it.

Joseph Tomczak: File or something.

Chairman Jansen: Well I'll defer to the attorney.

Attorney Havens: Alright so just for the record, we need to clarify a point. first and foremost, that the original application was incorrect and in fact it identified this property as being in the SL district, which it is not. I reviewed it myself and discovered that it's actually in the RU district, in the rural district as opposed to suburban low density. Because the property is actually within the rural district, that is one of only three districts in the town that are recognized and designated by the Town Board as open development areas. And that's a necessary qualification for a private residence to be developed first and foremost on a right of way or an easement as opposed to a formal public street or highway. The only other option would've been subdivision, which was done before you guys owned it and you had an easement approved through your neighbor's property, but it was at a different direction. So that would've been permissible because it was reviewed and approved by the Planning Board as part of the original subdivision of that parcel. That's why you guys ran into difficulty because that way it doesn't work for you for whatever reasons, topography and so forth. So I just wanted to clarify for this Board that the application was incorrect by stating that it was in SL district on Page 1 of the application, when in fact it's the RU District. It is designated by the Town as open development area and therefore this Board does have the legal authority to at least consider granting this application. Had it been in the SL district, we would not even have the legal authority to consider granting it.

Chairman Jansen: Good thing.

Attorney Havens: Okay? The Orange County Planning Department was sent a GML 239 referral. A response was received on September 20th and the county had no further comment and felt that this was a local determination only. Did the applicants present the certified mailing receipts? If you can give those to the secretary.

Mary Garcia: Thank you.

Attorney Havens: Okay. So just generally speaking, if you can discuss the project and address the right of way and easement rights that you're trying to seek so that the Board has a true understanding of what

you're trying to accomplish this time around, because you were going a different route the last time you were here.

Joseph Tomczak: This time we're coming off of Liberty Corners and we're going onto Devon Rose and it crosses the first property, the Felters', then it goes through the Tomczak's property at the top, and we go right to our property that is Lot Block...

Attorney Havens: Oh we have that Section 1 Block 1 Lot 36.3.

Joseph Tomczak: That's the, I basically go from Liberty Corners through Devon Rose to the top of the Tomczak's property into that section block lot. That's how it's a good horseshoe.

Laura Krill: It's already an existing road.

Joseph Tomczak: Yes it is existing.

Attorney Havens: Instead of using the subdivision access cutting through the front of this property, they are looking to extend it up behind and then along the other neighbor's property, which is a different Tomczak.

Joseph Tomczak: We going through two different easements for the Tuckers and Tomczaks.

Chairman Jansen: Okay. Now do they need to submit any new paperwork showing that they have that easement?

Attorney Havens: Yes. We don't have that. That's what you were just saying. You've talked with them, but nobody's actually prepared the documents.

Joseph Tomczak: Yeah. We just don't know if we should have did it before this meeting or after this meeting?

Laura Krill: We would've had to get the title company to do it and then it would've been approved. But then if we didn't get it approved, I didn't know then we would get it extinguished or how it would've worked. I was so...

Joseph Tomczak: But they're ready this week or so to go sit down, sign.

Laura Krill: <Inaudible> what the process would be then to file it with the town or...

Attorney Havens: Okay. And let's see, I had a couple of questions. If you can just address some of these questions if you can. On the short form EAF that was submitted in support of the application, question number 10 asks, "Will the proposed action connect to any existing public or private water supply"? And you checked 'yes'. But I thought that you're doing a septic and well.

Joseph Tomczak: Yeah, no.

Laura Krill: No.

Joseph Tomczak: Rest of the access. Get a septic and well.

Laura Krill: Oh no, that's the one I did online. And those are the pre-populated questions and it said not to change that, or no?

Attorney Havens: Well number 10 wouldn't have been populated automatically.

Laura Krill: Oh that should be 'no', yeah.

Joseph Tomczak: We'll have our own septic and our well.

Laura Krill: Yeah.

Attorney Havens: Alright. And number 11, "Will the proposed action connect to existing wastewater facilities"? Again, you checked yes, but...

Laura Krill: That should be 'No' then as well.

Attorney Havens: Correct. Question 12b, "Is the project site or any portion of it located in or adjacent to any area designated as sensitive for archeological sites on the New York State Historic Preservation Office, archeological site inventory"? That is one that's pre-populated...

Laura Krill: Yeah.

Attorney Havens: ...by the EAF Mapper and it said yes. Did you find out or make any inquiry on what that might be?

Laura Krill: We did not. We could do that.

Marc Malocsay: I only thought that came up relevant if it was from a new subdivision? If it's an existing lot then that does not apply. That was my understanding.

Attorney Havens: Okay.

Marc Malocsay: That's my understanding. If it is a pre-existing lot, I don't think it applies.

Attorney Havens: Alright. And then so question 15 on the EAF, "Does the site of the proposed action contain any species of animal associated habitats listed by the state or federal government as threatened or endangered"? And the pre-populated response under the EAF Mapper stated yes, including the Indiana Bat, Short-eared Owl, and I think there was one more. Yes. Northern Harrier. So as the applicant, you need to know and understand that there's limitations on development when you can do certain things in relation to those endangered species and you have to take certain mitigation steps before you go in there with a bulldozer and start clearing trees to put up your house. So knowing that those exist, you need to educate yourself on what limitations and restrictions apply for each and make sure that you're complying with those so you don't end up with building permit violations.

Joseph Tomczak: Okay.

Attorney Havens: So because you're proposing access to a private residence on not a public street, but through a right of way or easement across at least two other people's property before it even gets to yours, any approval if granted, would be subject to minimum design conditions because this Board has a duty and obligation under state law to make sure that they don't grant a variance that could create unsafe access for emergency vehicles when a residence is involved. If it was a cell tower, who cares. But when it's a residence then the Building Department needs to make sure that it's constructed in such a way that it meets the requirements to provide safe and reasonable access to emergency vehicles, for your own benefit and for anybody you sell the house to in the future. So any approval if granted, would be subject to minimum design conditions. I've already provided your attorney with a copy of those design conditions.

Joseph Tomczak: Okay, thank you.

Attorney Havens: So he already knows what those are.

Joseph Tomczak: Yes.

Attorney Havens: And for your reference, that would be §A168-19 related to driveways and Chapter 79 related to driveway permits.

Joseph Tomczak: Thank you. We have to get an engineer or anything for the driveway right now? Because of easements? Or no?

Attorney Havens: I'm sorry?

Joseph Tomczak: Because the driveway is existing already, we have to do like an engineering of it all or just...because it's already existing?

Attorney Havens: Well you're going to have to put together plans...

Joseph Tomczak: Right.

Attorney Havens: ...for the Building Department. And because you're creating an access roadway, it will be subject to inspection by the town engineers...

Joseph Tomczak: Right, okay.

Attorney Havens: ...before you actually do construction.

Joseph Tomczak: Right, right.

Attorney Havens: Before you start laying anything down, the town engineer's going to have to inspect it and make sure that your plans meet the necessary requirements.

Joseph Tomczak: Okay.

Attorney Havens: That's all I have, if you want to open the public hearing.

Chairman Jansen: Sure. Is there anyone from the public that would like to address this application?

Bonnie Nolan: I just got a question. My name is Bonnie Nolan. Can I come up or do I stay?

Chairman Jansen: Sure, you can come on up.

Mary Garcia: Can you spell your last name please?

Bonnie Nolan: Nolan. N O L A N. I just want to know if the Board grants this with the two easements onto his property, access from Liberty Corners Road, is this something that's going to be like an attachment to the deed where it follows the property?

Attorney Havens: Yes.

Bonnie Nolan: Where down in the future there's not going to be an issue at all?

Chairman Jansen: No.

Bonnie Nolan: Okay.

Attorney Havens: Correct, yes. Any approval would require the preparation of a shared driveway maintenance agreement and declaration that would have to be recorded with the County Clerk and it would be a permanent...

Bonnie Nolan: It'd be recorded up in the County where somebody would go find it and look at it.

Attorney Havens: Yes. It would have to be publicly recorded with the County Clerk of...

Bonnie Nolan: Is it in the deed office? Is it like I say, it's in the back...

Attorney Havens: Same office with the deeds, correct.

Bonnie Nolan: Okay, okay.

Attorney Havens: Yes.

Bonnie Nolan: Because I couldn't find out the previous access to that land back in 89 when it was subdivided. I went up to the County looking for anything and there's nothing there...

Attorney Havens: It was probably...

Bonnie Nolan: ...it had been taken away.

Attorney Havens: It was probably only listed on the filed subdivision map. So it wouldn't have been a declaration...

Bonnie Nolan: It wouldn't have been recorded separately?

Attorney Havens: ...because it was approved as part of a subdivision.

Bonnie Nolan: Is the next owner going to have the same problem? I border right there.

Attorney Havens: That would be an additional condition on any approval if there is a shared driveway maintenance agreement and declaration.

Bonnie Nolan: Okay.

Attorney Havens: That would be recorded in the County Clerk's office prior to issuance of a building permit.

Bonnie Nolan: Okay. That's my only question.

Attorney Havens: And the preparation of that document would be subject to town attorney review.

Bonnie Nolan: Okay.

Attorney Havens: that would be prior to filing.

Chairman Jansen: Okay.

Bonnie Nolan: I didn't realize the zoning, has it been changed in the last year from an...

Attorney Havens: No that wasn't changed. That's been the case for many years.

Bonnie Nolan: <inaudible - *speaking at the same time as Attorney Havens*> 13 months ago when we started this whole thing with court. Tomczak's trying to get his house built, that a zoning like that was, a mistake like that was never picked up.

Chairman Jansen: Nothing's easy anymore.

Bonnie Nolan: Well, if he got different requirements with different zoning, it's a major issue, you know?

Attorney Havens: Yep.

Bonnie Nolan: Okay. Thank you for your explanation.

Chairman Jansen: But at least now everything should fall into place.

Joseph Tomczak: Yes.

Marc Malocsay: I do have a question. And I realize it's on a filed map, but does their property have the access onto Liberty Corners?

Attorney Havens: Yes. Please explain that.

Laura Krill: Where the driveway is supposed to go off of Liberty Corners, it's like a really a steep rock wall. So we would have to blast rock and then the entrance would be a really steep driveway. And it's hard to kind of see when you come off it at that point.

Jim Mehling: This is a photo what it looks like off of Liberty Corners.

Joseph Tomczak: That's the only access we have to Liberty from that.

Laura Krill: It's a small area. Our property goes into a tiny, small portion. We touch it very briefly at Liberty Corners there.

Marc Malocsay: Yeah. When they did the subdivision, I had to ask the question because why was it subdivided that way? It looks clearly like they wanted the driveway to come off of Liberty Corners. But just wanted to look at that.

Joseph Tomczak: The driveway was right here in front of...this was the easement when it got subdivided, it was right here (*Joseph Tomczak showing Marc Malocsay on diagram/map*). It wasn't on Liberty Corners, it's on Devon Rose. It was taken out a couple years ago.

Marc Malocsay: I don't think it changes anything

Joseph Tomczak: This is all rock.

Diane Bramich: Oh.

Chris Daubert: I know the rock. That is a real big heavy rock.

Attorney Havens: Yeah. I think that's why the subdivision was initially approved the way it was granting an easement through the fault Felker's property originally was because the rock wall on Liberty Corners was so huge.

Marc Malocsay: And I guess it's just a small technical thing that a 280a is given when they don't have access to it. A 280a if they don't have the access to a public road, and they do, but they're opting and we're giving them the okay that they don't have to use it by giving them the variance. You know what I mean? When we do the 280a's we don't have access to a public road. I want to say out of the last hundred with the exception of yours. So that's why I am bringing it up, that the way it reads that they don't have access. They do have access, but in this case they can't use it. Or what we're saying is that for financial reasons that blasting and carving rock and stuff is...So again, I am perfectly fine with the application. I just want to make sure that we can still give the variance the way that it is noting that they do have access to Liberty Quarters.

Attorney Havens: So legally speaking, the definition of access is a 15-foot area adjoining the public right of way.

Marc Malocsay: They have 50 feet.

Attorney Havens: I'm sorry?

Marc Malocsay: They have 50 feet.

Attorney Havens: Oh, right, right, yes. But it specifically states 'provides reasonable and safe access for emergency vehicles'. And my presumption is—I didn't study the topos—but my presumption is the rationale for why the Planning Board granted an easement in the first place across a neighbor's property instead of coming directly off the road was because the topography was such that making that a reasonable access...if the pitch is too steep—even if you do the blasting and the grading—if the pitch is too steep, then it's not going to be safe and appropriate access.

Marc Malocsay: Like I said, I've no problem with it at all. Just making sure that we can still in fact give the variance because of that. And the other part in knowing what they do for these subdivisions is they created that, but they should never have created it if it wasn't something that was ever going to be used. They're giving them a piece of property that they can't do anything with.

Attorney Havens: So I did research this and even with a 50 foot frontage on a public street, if there's a reasonable determination that it's not going to result in proper access for emergency vehicles, then the 280a variance can still be granted but only in an open development area in a zone that's previously designated...

Marc Malocsay: Got it.

Attorney Havens: It is under the town code for 280a.

Marc Malocsay: Yes.

Attorney Havens: The only time we can grant that is if the property is within a designated open development area, that has to be designated by the town board and it has been.

Chairman Jansen: Okay, so let me close the public hearing.

Attorney Havens: Any other comments?

Chairman Jansen: Anyone else? If not, I'll close the public hearing and go ahead. Well then do they need to bring these other things prior to us doing a final decision?

Attorney Havens: That's up to the Board to decide. You do have the ability to specify the conditions upon which this application would be granted. And so unless the Board has further questions for the applicant then it could be determined with specific conditions to be imposed.

Chairman Jansen: Well the specific conditions would be the maintenance of the right of way, correct?

Attorney Havens: Affirmative.

Chairman Jansen: And what else do we need?

Attorney Havens: So it would require a recorded driveway maintenance agreement and declaration between all property owners that have access and whose property it crosses.

Chairman Jansen: And you got agreements on those?

Laura Krill: Right.

Chairman Jansen: Okay.

Attorney Havens: That agreement would be subject to town attorney review prior to recording.

Chairman Jansen: Get them done soon because he's retiring.

Attorney Havens: The declaration would have to include the standard town declarations with respect to the endangered species habitats that are applicable. The declaration would have to be recorded prior to issuance of a permit.

Chairman Jansen: Go ahead. I'll poll up a vote.

Marc Malocsay: You don't have to.

Attorney Havens: The actual construction of the driveway would be required to meet all minimum standards § A168-19 related to driveways, as well as Chapter 79 related to driveway permits. Would require town engineer review of the proposed plans before issuance of a building permit for the driveway. Does the Board have any other questions, concerns, or additional conditions that they wish to impose?

Chairman Jansen: No.

Diane Bramich: I don't think so, no.

Attorney Havens: So first of all would the Board like to type this action under SEQR as a Type 2 action under §617.5[C] subsections 11 and 17 in respect to granting a 280a variance?

Chris Daubert: Yes.

Diane Bramich: So moved.

Chris Daubert: Second.

Chairman Jansen: I have a motion by Diane, Seconded by Chris.

Attorney Havens: Yep. I'm writing my notes in the wrong spot.

Chairman Jansen: All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried. And I'll include Marc in that (*Marc had stepped away momentarily*).

Attorney Havens: I'm going to say he was absent.

Chairman Jansen: No. He approves.

Marc enters the room

Attorney Havens: Marc, we have a pending motion to type this as a Type 2 action under SEQR 615.5[C] subsections 11 and 17. Are you in favor?

Marc Malocsay: Yes.

Attorney Havens: Okay.

Chairman Jansen: You don't believe me, huh?

Attorney Havens: It's not that; we have to establish a record. Alright. Any further discussion by the Board?

Board Members: No.

Attorney Havens: Would someone care to make a motion either granting or denying a variance as advertised?

Marc Malocsay: Move that we grant the variance as advertised.

Jim Mehling: Second.

Chairman Jansen: Motion by Marc. Seconded by Jim. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: You'll get a determination subject to these conditions, it'll all be spelled out in the determination. Your attorney will get a copy.

Laura Krill: Awesome. Thank you so much.

Joseph Tomczak: Thank you very much.

PUBLIC HEARING OF SUTTON-MAGEE – regarding property located at 4 Sander Lane, Greenwood Lake, NY 10925, and designated on the Town tax map as Section 76, Block 1, Lot 54 and located in the SM district for area variances permitting an increase of all side yard setbacks and lot coverage for demolition of existing nonconforming 1-story 2-bedroom residence and construction of a new single-family nonconforming 2-story 2-bedroom residence on existing property, where the property lies within 100 feet of Designated Protection Area of Greenwood Lake.

Representing the applicants: Brian Friedler, Friedler Engineering and Thomas Magee & Bernadette Sutton, Applicants

Chairman Jansen: Please identify yourself for record.

Brian Friedler: I'm Brian with Friedler Engineering.

Chairman Jansen: Okay. Did you guys have any mailings?

Brian Friedler: Yes. I just handed them over.

Mary Garcia: I received the mailings.

Chairman Jansen: Alright, go ahead tell us, what you want to do?

Brian Friedler: Right now, there's an existing single-story house there, it's 432 square feet. They want to take it down and build a two story home, which is of course bigger than that, so it's encroaching on a few setbacks and it's within a hundred feet of the lake. So right now, we're in front of the Planning Board also and we got referred to you for those variances.

Attorney Havens: So just a couple of quick points. With respect to the application, there was apparently some outstanding Building Department violations. There's an expired permit number 23551 for a wood stove and footings under the dwelling and a septic pump-out receipt is overdue. So I don't know if you guys were aware of that, but those would need to be addressed.

Brian Friedler: Yeah. So they're all in the Planning Board comments. We're going to be taking care of them as we go forward.

Thomas Magee: Can I just comment on the wood stove? That was submitted and then Wayne got sick and I didn't hear from him and I remember I kept calling and he basically said he was getting sick and he said to the secretary, "just tell him to go forward with it and I'll follow up."

Attorney Havens: Okay.

Thomas Magee: That's what it was.

Attorney Havens: Not that it's significant for the ZBA, I'm just raising it as an issue that'll need to be addressed before you'd be able to move forward.

Thomas Magee: Yeah.

Brian Friedler: But we're going to address them. We have to address them before we get to the Planning Board.

Chairman Jansen: Well, it's kind of mute because it's gone.

Bernadette Sutton: We're taking it down.

Thomas Magee: Well we're taking it down, yeah. And it just happened to be, I remember I came here because...

Chairman Jansen: Yeah, Wayne passed away so we...

Thomas Magee: I know.

Chairman Jansen: That was...yeah.

Bernadette Sutton: So...

Brian Friedler: So you need their names.

Mary Garcia: Yes, please. I don't know who's who, Sutton or Magee.

Thomas Magee: Thomas Magee. And this is my wife Bernadette.

Bernadette Sutton: Maiden was Sutton.

Attorney Havens: And with respect to Orange County Planning, a GML 239 referral was submitted, response was received on September 20th, and their recommendation was that this is a local determination and they had no further comment. We've received the...

Mary Garcia: Mailings, yes.

Attorney Havens: ...certified proof of mailing. Alright. So can you give the Board a better idea on this is as was discussed, this is within the traditional neighborhood overlay so the setbacks aren't the same as in the tradition in the standard bulk table. They're much, much smaller and you have greater flexibility. Can you address that for the Board as to what setbacks you actually need, if any? Setback, variances?

Brian Friedler: So the only ones that I could pick up from what you sent me was the side yard still.

Attorney Havens: Okay.

Brian Friedler: The way they worded it with the garage, the garage was allowed to be zero feet off the property line. We're going to be 3.9 feet. I had a hard time reading through those notes and trying to pick up exactly what the setbacks were so we're still requesting the one side is 7 1/2 feet, the other side is 3.9. So those are the side setbacks. The front we're not encroaching anymore, we're actually set back more than what the existing building is. But when it's all said and done, they might do a 4 foot overhang so that's going to bring us right up to where the existing building is on the front yard.

Attorney Havens: With the overhang, would you need a...

Brian Friedler: No.

Attorney Havens: ...variance for that?

Brian Friedler: No. Because right now the existing is 30 feet.

Attorney Havens: Okay.

Brian Friedler: So we're going to stay within that 30 feet.

Diane Bramich: Oh right, the cantilever?

Brian Friedler: And we're encroaching setting it back more.

Diane Bramich: The cantilever?

Brian Friedler: Yeah.

Diane Bramich: So how do you...you don't count the cantilever. You don't have to count the...?

Marc Malocsay: You do.

Brian Friedler: No, you do.

Marc Malocsay: You do.

Brian Friedler: For setback purposes you do.

Diane Bramich: It's not part of the foundation.

Jim Mehling: It's still part of your setback. It's still attached to the structure.

Attorney Havens: Yep.

Brian Friedler: Yeah. So we were...

Attorney Havens: He still wouldn't need a front yard variance.

Diane Bramich: Okay.

Attorney Havens: ...even with the additional 4 foot cantilever coming off from the existing location.

Brian Friedler: Yeah, the existing is 30, the building without the cantilever is 34. The building with the cantilever is 30. It's going to be a 4 foot.

Diane Bramich: Okay.

Chairman Jansen: What else?

Attorney Havens: With respect to, since this is within the Greenwood Lake Designated Protection area it lies within 100 feet of the Greenwood Lake Designated Protection area. So regardless of where the back of your property is, you're going to need a variance because you're not more than a hundred feet from the water. Can you tell us what that variance is? Is it from the mean water level height?

Brian Friedler: So right now we're 35 feet to the property line. And the property line is approximately 5 feet from the water. So it would be 40 feet...

Attorney Havens: Your property line doesn't actually connect...

Brian Friedler: No.

Attorney Havens: ...to the water's edge?

Brian Friedler: No, it's a little bit off the water edge.

Attorney Havens: Interesting. Okay.

Brian Friedler: Well from the survey, the survey shows it being...

Attorney Havens: So you're saying it's 35 feet combined from the edge of the new construction to the water's edge.

Brian Friedler: 35 feet to the property line, probably about 40 feet to the water.

Attorney Havens: Okay, 35 feet to the property line.

Brian Friedler: Yeah, to the rear property line. The existing house is 54 feet; this one's going to go back to the 35 feet.

Attorney Havens: Alright. So for purposes of the Greenwood Lake designated protection area, the variance you're seeking for the back of the property is 40 feet from the water's edge as opposed to the 100 foot setback that's ordinarily required.

Brian Friedler: Yeah. So to be safe, can we do a 35 foot rear setback to the lake?

Chairman Jansen: Would you rather have a 40?

Brian Friedler: What's that?

Chairman Jansen: Wouldn't you rather...

Attorney Havens: No, he's saying he wants that we give him an additional 5 feet of clearance.

Chairman Jansen: Okay.

Brian Friedler: Yeah.

Attorney Havens: Because if you have a deck or something that's going on that side, that has to be counted; not just your foundation.

Brian Friedler: So then there is a wood deck; there is a deck.

Attorney Havens: So that's what we need to articulate here; what is the smallest setback that you need in order to approve the proposed construction. I don't want you to have to come back here for another area variance just to add your deck.

Brian Friedler: So we have 20 feet to the property line. So it'll be 25 feet to the lake. So can we do 20 feet? And that's the...yeah, that's the deck.

Attorney Havens: That'll be up to this Board.

Brian Friedler: Okay.

Attorney Havens: Keeping in mind that this Board is required to grant the minimum variance necessary to grant the property owner the relief that they're seeking, that they would otherwise not be capable of obtaining.

Brian Friedler: Yep.

Chairman Jansen: Okay. Do you want us to vote on that now?

Attorney Havens: No.

Chairman Jansen: Okay.

Attorney Havens: We're discussing this. You need to open the public hearing.

Chairman Jansen: Public hearing is open.

Jim Mehling: One at a time, one at a time.

Chairman Jansen: Okay. If There's no one here to address this application. I'll close the public hearing

Attorney Havens: No. We're going to first type it into SEQR.

Diane Bramich: Marc, did you go down?

Marc Malocsay: No. I mean, I know where it is from the road, but I did not go down to look.

Attorney Havens: So...

Diane Bramich: I was there today.

Thomas Magee: You were?

Diane Bramich: Yes, sir.

Thomas Magee: You sneaking around?

Bernadette Sutton: You should have knocked on the door.

Board members discussing the neighborhood with Applicants while other Board Members review the diagram of the property

Diane Bramich: That's the house and this is the property here. This is the property on the other side. And that's another one there.

Inaudible — several discussions occurring at the same time

Marc Malocsay: I just wanted to see the one setback where the deck is that they're putting in. I just wanted to make sure that everybody else had <inaudible>.

Diane Bramich: I think it's the only bungalow left down there. Everything's two story.

Bernadette Sutton: Yes, we look a little silly.

Diane Bramich: You're the tiny little house where everybody...

Bernadette Sutton: I know, but that was our little weekend place. Now we live there so we need a house...

Thomas Magee: <Inaudible> the house to Greenwood Lake as an historic landmark. No, I'm serious...

Bernadette Sutton: One of the last ones.

Thomas Magee: ...because it's like in the <inaudible> of the history. Because down at the coal, Bobby had done a Greenwood Lake Historical... You saw it, right?

Chris Daubert: Yeah.

Thomas Magee: So the thing with the history of Greenwood Lake, though a lot of those homes are gone now, mine's one of the last originals. 1948.

Marc Malocsay: It doesn't really make a difference. But you were here earlier when we were talking about the accessory structures because you talked about the garage. I just had to look at the plans twice because I don't know what that setback is supposed to be. What do you have it as, 3 point...?

Attorney Havens: 3 point 9.

Marc Malocsay: 3.9 feet. We know from the character of the neighborhood, everybody is so close to everybody. And the one thing that I know we want to maintain is that you're 10 feet away from the building next to you. So you had said the garage and that's why I had to look at it. The garage is attached to the house?

Brian Friedler: It's an attached garage.

Marc Malocsay: Yeah, we don't consider that to be any more a garage. Although we could ask to make the garage smaller, go from a two car to a one car. But clearly from this, we can't go any smaller anyway so I just wanted to bring it up. I'm just not sure of what, if we're giving them a variance, I just wasn't sure on the 3.9 feet, if that's the only one that needs a variance. And then the other one would be what you had said before, going now from the 35 feet to the 20 feet. And I just wanted to know how we were going to...So I guess my first question is on the side yard at 3.9 feet, do we know with the side yard with that area what the actual variance...

Attorney Havens: Zero.

Marc Malocsay: ...that we need?

Jim Mehling: Yeah, zero.

Diane Bramich: Zero.

Attorney Havens: Zero.

Marc Malocsay: It's zero?

Attorney Havens: They don't even need a variance on that. It's zero.

Marc Malocsay: Huh.

Diane Bramich: It's going on the side that the...

Attorney Havens: It's because of the traditional neighborhood overlay.

Marc Malocsay: Okay.

Diane Bramich: ...carport, yeah.

Bernadette Sutton: Our neighbor's is right...

Diane Bramich: Yup.

Bernadette Sutton: ...up against the wall there.

Diane Bramich: Yup.

Bernadette Sutton: And that's kind of new.

Marc Malocsay: So the only one that we're really going to be looking at then is the rear? Well yeah, I guess the...

Attorney Havens: The 100 foot...

Marc Malocsay: Yes.

Attorney Havens: ...setback from the edge of the water.

Marc Malocsay: Okay.

Jim Mehling: A minimum of zero feet.

Attorney Havens: Yep.

Marc Malocsay: Okay.

Chairman Jansen: Alright. Interesting. Let's go.

Attorney Havens: So one second. Would someone care to type this action as a Type 2 action under SEQR §615.5[C] subsections 11, 16 and 17 with respect to reconstruction of a residential premises?

Jim Mehling: I'll make such a motion.

Marc Malocsay: And I'll second such a motion.

Chairman Jansen: Jim and Marc.

Jim Mehling: Come on, Diane. We're doing all the work down here.

Marc Malocsay: Yeah. Come on, Diane.

Diane Bramich: I'm going to do the next one.

Jim Mehling: Here we go.

Diane Bramich: I make the motion to approve it.

Attorney Havens: So do we have a...we have a Motion and a Second.

Chairman Jansen: We have a Motion and a Second. All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: Alright. So with respect to the five criteria for the area variance the applicant "Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby property be created by granting variance that the applicant's requesting?" The applicant stated no. And the reason given was, "The applicants propose to remove a single story dwelling which was built in 1950 and build a new two story dwelling. Most neighboring homes are two stories and the proposed dwelling keeps in character of the neighboring homes." Does this Board agree that...

Board Members: (*simultaneously*) Yes—definitely—absolutely.

Attorney Havens: Can the benefit that the applicant seeks be achieved by some feasible method other than the variance? The applicant states, "No. The lot is an existing non-conforming parcel. Building a home on the existing lot that meets all setback and development coverage requirements would be impossible." Does the Board agree with that determination?

Board Members: Yes.

Attorney Havens: Is the required variance substantial? The applicant states, "Yes, based on the reasoning that the variances requested are substantial but will keep in character of the neighborhood." Does the Board agree with this determination?

Board Members: Yes.

Attorney Havens: Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? The applicant states "No." And the rationale is, "Most, if not all of the neighboring dwellings are modern and multi-story."

Attorney Havens: Does the Board agree with this determination?

Board Members: Yes.

Attorney Havens: Is the alleged difficulty self-created? The applicant states, "Yes." And the rationale is, "The applicants are proposing the work that's otherwise unnecessary".

Board Members: Yes.

Attorney Havens: All agreed? Okay. So would someone care to make a motion granting or denying the variance as advertised?

Diane Bramich: I make the Motion to grant the variance.

Chris Daubert: I Second.

Chairman Jansen: Any further comment or discussion?

Marc Malocsay: Just on that are we putting in now in that variance for that setback from the water?

Attorney Havens: Yes.

Marc Malocsay: Okay.

Attorney Havens: You need to determine what setback or how much of a setback is required.

Marc Malocsay: So when we say as advertised though...

Attorney Havens: The footage was not advertised, it simply states that they need a variance because it lies within 100 feet of the designated protection area of Greenwood Lake. The actual requested amount was not stated.

Marc Malocsay: Okay.

Chairman Jansen: So 20 Foot?

Brian Friedler: 20 foot.

Diane Bramich: So they asked for 25...

Chairman Jansen: No...

Diane Bramich: ...on the one and 20 on the other.

Attorney Havens: 20 feet to the property line, 25 feet to the water's edge. We only care about to the water's edge. Not the property line.

Diane Bramich: Not the property line.

Chairman Jansen: Okay. Everyone agreed?

Brian Friedler: Yeah. So one question. Can we request a 20 foot to the water line?

Attorney Havens: Ask them.

Brian Friedler: We'd like to request a 20 foot.

Diane Bramich: You want 20 foot instead of 25?

Brian Friedler: Yes, please.

Chris Daubert: Yeah.

Jim Mehling: I'm fine.

Diane Bramich: Yes.

Marc Malocsay: Fine.

Diane Bramich: That's fine.

Brian Friedler: And that's the back deck.

Diane Bramich: Yes.

Marc Malocsay: Yeah the deck.

Brian Friedler: And that's the deck, yes, not the actual...

Chairman Jansen: Yes.

Diane Bramich: So 20 instead of 25.

Marc Malocsay: So I'll second our motion if we could decipher how we actually...

Chairman Jansen: Somebody already did.

Diane Bramich: It's done.

Marc Malocsay: Oh, never mind.

Diane Bramich: We're good.

Attorney Havens: Chris, you already Second it?

Chairman Jansen: Diane made the motion. Chris made the second motion.

Chris Daubert: Diane made a motion, I Second it.

Diane Bramich: I made the motion.

Chairman Jansen: Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.