

**ZONING BOARD OF APPEALS
TOWN OF LEWISBORO
MINUTES**

Minutes of the Meeting held by the Zoning Board of Appeals on Wednesday, December 16th 2009 at 8:15 p.m., at the Town House, 11 Main Street, South Salem, New York 10590

Board Members: Present: Carolyn Mandelker, Acting Chairperson
Thomas Casper
Robin Price, Jr.
Jason Krellenstein

Absent: Geoffrey Egginton

Also in Attendance: Alex Posadas
ZBA Secretary

The Meeting was called to order at 8:15 p.m. Ms. Mandelker introduced herself and the Board members; Mr. Krellenstein, Mr. Price, and Mr. Casper.

Ms. Mandelker announced that in the preparation of a Resolution, a decision is drafted from the minutes of all Public Hearings on a particular application; therefore, it takes approximately thirty to forty-five days to prepare a Resolution. Ms. Mandelker announced that the next ZBA Meeting will be Wednesday, January 27th 2010 with a site walk scheduled for the morning of Saturday, January 23rd 2010. She stated that the site walk is part of the public hearing and all interested parties may attend.

Review and adoption of the Minutes of the ZBA meeting of November 18th 2009 were held. Mr. Price moved to approve the minutes as amended. The motion was seconded by Mr. Krellenstein; In favor: Mr. Krellenstein, Mr. Price, Mr. Casper and Ms. Mandelker; Absent: Chairman Egginton; Abstained: None;

I. DECISIONS- (Tentative)

CAL. NO. 08-07-BZ Wendy Gennimi, 19 Lower Salem Road, S. Salem, NY 10590
Application for a variance of Article III, § 220-12E (b) (d) of the Zoning Ordinance in the matter of existing fencing (actual 151 feet) which is longer than 100 feet in length on the street than permitted in an R-1A, One Acre Residential District. Violation dated November 14, 2006.

The property is located on the east side of Lower Salem Road, designated on the Tax Map as Sheet 32C, Block 10819, Lot 15, in an R-1A, One-Acre Residential District.

No one was present to represent the applicant.

Ms. Mandelker stated that this matter will be adjourned until such time that litigation in the Federal Court in White Plains involving the applicant and the Town is resolved.

CAL. NO. 25-07-SP Douglas K. Paulding, 20 Wakeman Road, South Salem, NY 10590 [Owner of record: Linda B. Paulding, 20 Wakeman Road, South Salem, NY 10590]
Application for the renewal of a Special Permit pursuant to Article V, Section 220-38 of the Zoning Ordinance to authorize the storage of Contractor's Equipment.

The property is located on the south side of Wakeman Road, designated on the Tax Map as Sheet 47C, Block 10066, Lot 15, in an R-2A, Two-Acre Residential District.

No one was present to represent the applicant at the meeting.

Ms. Mandelker stated that this matter will be adjourned until such time that litigation involving the applicant and the Town is resolved.

CASE ADJOURNED.

CAL. NO. 24-09-BZ
10590

John Eckerson, 27 Old Oscaleta Road, South Salem New York

Application for [1] a variance of Article IV § 220-23E and [2] Article IV § 220-23D(11) of the Zoning Ordinance in the matter of the proposed construction of a new two story boat house on an existing foundation (proposed boathouse on shore line shown to be the property line, where 50' is required) and that will be larger than permitted (proposed 1626 square feet where 600 square feet is permitted) in an R-4A, Four-Acre Residential District.

The property is located on the north side of Old Oscaleta Road, designated on the Tax Map as Sheet 35, Block 11826, Lots 3 in an R-4A, Four-Acre Residential District.

No one was present to represent the applicant.

Ms. Mandelker stated that the application has been adjourned until February.

THE PUBLIC HEARING IS HELD OPEN.

CAL. NO. 26-09-BZ
11901

Henry Silverman, 267 Peconic Bay Blvd., Riverhead, New York

Application for [Property location 68 Hemlock Road, South Salem, New York 10590] for [1] Article IV § 220-23E and [2] Article III § 220-9D(2) of the Zoning Ordinance in the matter of the proposed reconstruction of a residence on an existing foundation that is closer to the side lot line (existing/proposed 3.1' where 15' is required) and to the front lot line (existing/proposed 7.4' where 30' is required) and that will result in an increase in non-conformity other than use than permitted in an R-½A, One Half-Acre Residential District.

The property is located on the west side of Hemlock Road, designated on the Tax Map as Sheet 42E, Block 10284, Lots 4, 5 & 7 in an R-½A, One Half-Acre Residential District.

No one was present to represent the applicant.

Ms. Mandelker stated that the application has been adjourned until January.

THE PUBLIC HEARING IS HELD OPEN.

CAL. NO. 28-09-SP
York 10590

Diane and Kenneth Jacobson, 1208 Route 35, South Salem, New York

Application for a Special Permit pursuant to Article V, § 220-40 of the Zoning Ordinance in the matter of a proposed accessory apartment in an existing residence in an R-2A, Two Acre Residential District.

The property is located on the north side of Route 35, designated on the Tax Map as Sheet 31, Block 10805, Lot 42 in an R-2A, Two-Acre Residential District.

No one was present to represent the applicant at the December 16th meeting.

Ms. Mandelker stated that a site walk was conducted on the morning of Saturday, December 12th. She asked if anyone wished to comment on the site walk.

Mr. Price stated that basically it was one large room with a bathroom. He stated that it could be an apartment for a couple and there was adequate parking. Mr. Price stated that previously a family occupied the apartment. He stated that he sees no reason why the Special Permit should not be granted.

Ms. Mandelker asked if anyone wished to be heard either in favor or opposed. No one responded.

Ms. Mandelker stated that the application meets all of the criteria of the Zoning Ordinance for a Special Permit. She stated that as such the applicant is entitled to it as a matter of right.

Mr. Price moved that the application be approved as presented. He stated that as such the applicant is entitled to it as a matter of right.

The motion was seconded by Mr. Krellenstein; In favor: Mr. Casper, Mr. Price, Mr. Krellenstein, and Ms. Mandelker. Abstain: None; Absent: Chairman Egginton;

THE APPLICATION IS APPROVED.

CAL. NO. 29-09-BZ Steven Helmes, AIA, 184 Katonah Avenue, Katonah, New York 10536 [Owner of Record: Ted and Mary Dardani, 41 East Ridge Road, Waccabuc, New York 10597] [Property Location: 6 Post Office Road, Waccabuc, New York 10597]

Application for [1] Article IV § 220-23E and [2] Article III § 220-9D(2) of the Zoning Ordinance in the matter of the proposed addition and alteration to an existing residence that will be closer to the side lot line (existing 22.4', proposed 22.9' where 40' is required) and to the rear lot line (existing 59.8', proposed 46' where 50' is required) and that will result in an increase in non-conformity other than use than permitted in an R-2A, Two Acre Residential District.

The property is located on the south side of Post Office Road, designated on the Tax Map as Sheet 22, Block 10803, Lot 38 in an R-2A, Two Acre Residential District.

Mr. Steven Helmes, AIA was present and accompanied by Mrs. Dardani at the December 16th meeting.

Ms. Mandelker stated that a site walk was conducted on the morning of Saturday, December 12th. She asked if anyone wished to comment on the site walk.

Mr. Casper stated that it is a very unique property in a unique location. He stated that in another spot perhaps there might be folks that would be concerned about it but there is only one residence that abuts the property, the golf course is to the rear and the Waccabuc Post Office is on the other side. Mr. Casper stated that it is unsubstantial as much as because of its location and the size of the changes that the applicant is proposing to make. He stated that he does not see any problem with meeting the criteria of the statute.

Ms. Mandelker stated that the property backs up to the Waccabuc golf course and in the back there is a bay window area that they are adding onto the house that extends into the setback area and closer to the lot line.

Mr. Price stated that the front extension was basically within the footprint and does not protrude any farther toward the front line.

Ms. Mandelker stated that the impact was minimal.

Ms. Mandelker asked if anyone wished to be heard either in favor or opposed. No one responded.

Mr. Casper moved that the application be approved as presented.

Ms. Mandelker stated that the application is approved for the following reasons:

- That there will be no undesirable change in the character of the nearby property;
- That there is no practical alternative to the requested variance;
- That the area variance is relatively unsubstantial;
- That there will be no adverse environmental impact;
- That the difficulty is not self-created;

The motion was seconded by Mr. Price; In favor: Mr. Casper, Mr. Price, Mr. Krellenstein and Ms. Mandelker. To Deny: None; Abstain: None; Absent: Chairman Egginton;

THE APPLICATION IS APPROVED.

CAL. NO. 30-09-BZ Akiko Fasolo, 40 Lakeview Pass, Katonah, New York 10536
Application for a variance of Article IV § 220-23 of the Zoning Ordinance in the matter of the proposed replacement of an existing deck that will be closer to the rear lot line (existing 24', proposed 21.1' where 30' is required) than permitted R-½A, One Half-Acre Residential District.

The property is located on the south side of Lakeview Pass, designated on the Tax Map as Sheet 9C, Block 10792, Lots 35-42 in a R-½A, One Half-Acre Residential District.

Mr. Viktor Solarik, AIA was present and accompanied by Ms. Fasolo at the December 16th meeting.

Ms. Mandelker stated that a site walk was conducted on the morning of Saturday, December 12th. She asked if anyone wished to comment on the site walk.

Mr. Krellenstein stated that the proposed variance compared to the existing is very minimal, approximately 1-2' and seems not to impact anything there. He stated that the nearest house is up a slope and seasonally will be screened by the trees and a diminutive request for a variance. Mr. Krellenstein stated that he would not have a problem granting the request.

Ms. Mandelker stated that it is in a lake district where homes are close together so we are sensitive to that. She stated that this is so small that the impact will be practically nothing, a no-brainer. Ms. Mandelker asked if anyone wished to be heard either in favor or opposed. No one responded.

Mr. Krellenstein moved that the application be approved as presented.

Ms. Mandelker moved that the application be approved as presented for the following reasons:

- That there will be no undesirable change in the character of the nearby property;
- That there is no practical alternative to the requested variance;
- That the area variance is relatively unsubstantial;

- That there will be no adverse environmental impact;
- That the difficulty is not self-created;

The motion was seconded by Mr. Price; In favor: Mr. Casper, Mr. Price, Mr. Krellenstein and Ms. Mandelker. To Deny: None; Abstain: None; Absent: Chairman Egginton;

THE APPLICATION IS APPROVED.

III. PUBLIC HEARINGS

CAL. NO. 32-09-BZ
New York 10597

Matthew J. Lustig, PO Box 467, 36 Perch Bay Road, Waccabuc,

Application for a variance of Article III § 220-10(E)(2)(d) of the Zoning Ordinance in the matter of the construction of a new residence on an existing building lot outside of the contiguous buildable area with a new septic system within the contiguous buildable area.

The property is located on the north side of Perch Bay Road, designated on the Tax Map as Sheet 25A, Block 10813, Lot 05, in an R-2A, Two-Acre Residential District.

Ms. Mandelker asked if anyone objected to the notice as it appeared in the Lewisboro Ledger. No one responded.

Ms. Geraldine Tortorella, Esq. was present and accompanied by Ms. Beth Evans, Environmental Consultant to represent the applicant at the December 16th meeting. Ms. Tortorella stated that they are before the Planning Board for a Wetland Permit. She stated that they would like to discuss the characteristics of the property as well as the neighborhood and how what they are proposing relates to the criteria to base the Board's decision on.

Mr. Krellenstein asked when Mr. Lustig purchased the property.

Ms. Evans responded about 3 years ago.

Ms. Tortorella stated that the application was for the construction of a new residence outside the contiguous buildable area, the plan otherwise meets all the zoning criteria in area and dimensional conformance to the Code.

Ms. Evans stated that the applicant purchased the property with the intention of redoing the existing house in some way. She stated that they spent about 2 years with the architect looking at ways to accommodate their family with 4 young boys and the house simply did not lend itself to that. Ms. Evans stated that they came up with a plan to rebuild the house on the high point of the property and set back from the lake. She stated that they had been before the Planning Board for 6 months processing a Wetland application. Ms. Evans discussed the site plan including the 150' wetland setback from the lake as well as the 150' setback from the intermittent stream that runs through the property. She stated that the lake side of the property is within the 150' regulated wetland area and they have been processing the application with the Planning Board. Ms. Evans stated that the existing house is 205' from the lake edge and the septic is in front of the house towards the lake. She stated that the house was built in the 1960's and has a functional septic approved for 5 bedrooms. Ms. Evans stated that as part of their application to the Planning Board, they will rebuild a new septic on another location on the property and bring it up to the current standards and then abandon the current septic system. She stated that the new septic will be 500'

from the lake and at least 360' from the intermittent watercourse whereas the current septic is 60' from the intermittent watercourse. Ms. Evans stated that the contiguous buildable area is 46,769 square feet but the existing house and septic are outside of that area. She stated that the proposed septic area would be within the contiguous buildable area. Ms. Evans stated that if they were to slide the house all the way back, the house would be much further from the lake but also into a valley 10' to 15' lower. She stated that the current house is approximately 35'-38' above the lake and the new house is proposed on that same promontory to take advantage of the lake views.

Mr. Krellenstein stated that when Mr. Lustig acquired the house, the Code said that the contiguous buildable area requirement no longer applies to just new construction.

Ms. Tortorella responded that the Code reads as it read at that time as it does today.

Mr. Krellenstein stated that it was interpreted differently.

Ms. Tortorella stated that the Building Inspector always interpreted that provision as not applying to existing lots and only to new lots. She stated that that was the approach and the interpretation that delayed her client from coming before this Board for as long as they did while they were processing the Wetland application.

Mr. Casper asked if contiguous buildable area is supposed to have a relationship to the location of the house. He asked if the contiguous buildable area is large enough under the present Ordinance. Mr. Casper also asked if there is a question of the construction outside the contiguous buildable area. He stated that if you are doing construction outside the buildable area how does the contiguous buildable area apply to what you are doing.

Ms. Tortorella responded that they have sufficient contiguous buildable area to meet the Code requirements, so they do not need a variance for the area that is required to meet the definition of contiguous buildable area.

Mr. Casper asked if the applicant has to build the residence within the contiguous buildable area.

Ms. Tortorella responded yes, that is what they are seeking to be able to build outside the contiguous buildable area.

Mr. Casper stated that the problem with the Ordinance is, you could have sufficient contiguous buildable area in pieces that are connected by small areas less than 50'.

Ms. Evans stated that the lot actually meets the definition for contiguous buildable area.

Mr. Casper asked why the Planning Board referred this application to the ZBA supposedly inspired by this application. He stated that this application has sufficient contiguous buildable area and the question is more about the house.

Ms. Tortorella responded that contiguous buildable area has 2 arms. She stated that you have to have a certain amount of square footage of contiguous buildable area and then the principal residence and septic system need to be constructed within the contiguous buildable area. Ms. Tortorella stated that there are 2 elements to the requirement and they meet the area requirement because they have enough aggregate square footage that meets the definition and is contiguous to count. She stated that they don't have the principal structure proposed to be constructed within

the contiguous buildable area.

Mr. Krellenstein stated that in his view it entirely negates the first arm. He asked what is the purpose of having contiguous buildable area requirements if the house is entirely outside it. Mr. Krellenstein stated that he is hoping that the Town changes the Ordinance because this is a very tough one. He stated that the applicant's proposed home is outside the area and you are asking us by fiat to give the applicant a variance of great magnitude that it would negate the effect of the Zoning Ordinance entirely as if it were not there. Mr. Krellenstein stated that they would have to grant variances on each one of them. He stated that he thought the proposed change would only apply to new lots.

Ms. Evans stated that as an Environmental Planner, she seldom appears before Zoning Boards but often before Planning Boards. She stated that it was her understanding back when this Ordinance was adopted that the intent was to encourage subdivisions were there was a large buildable area and that buildable area was intended to be used to protect the steep slopes and protected wetlands. Ms. Evans stated that the concept of contiguous buildable area did not come up until the Building Inspector issued an opinion and the Planning Board was uncomfortable with that. She stated that the question is what do you do with existing lots. Ms. Evans referred and discussed an aerial view of the surrounding area. She stated that 3 out of 10 of the lakefront neighborhood homes do not meet the definition for contiguous buildable area at all.

Mr. Krellenstein stated that they could predate the Ordinance and then they would not have to.

Ms. Evans stated that it also means those 3 structures as they stand, can not be changed.

Mr. Krellenstein agreed.

Ms. Evans stated that 8 out of 10 of those structures are built outside the contiguous buildable area. She stated that all of these homes sit on the same ridge that the Lustig's home sits on. Ms. Evans stated that she hopes that the Board clarifies and that it applies to new lots because that is what it is intended to protect. She stated that in the lake front communities most of the houses do not comply with this particular part of the Ordinance. Ms. Evans stated that this is not the only house where this is going to be a problem, even if they want to renovate the house that they have will still require the same variance.

Mr. Krellenstein stated that he understands the argument and there is a lot to like about this application, for example the house is farther away and the septic is new and further back. He stated that just asking this Board to ignore that aspect of the Town Code that is before the Town Board and the subject of so much debate. Mr. Krellenstein stated that he does not know how he could vote for an application where zero of it is within the contiguous buildable area. He stated that he gets the part about the character of the community and has read the cases that Counsel has cited but the scope of what is requested troubles him. Mr. Krellenstein stated that he does not know how he will vote.

Mr. Casper stated that they are expanding the existing house site.

Mr. Krellenstein stated that they are not expanding; they are doubling the size of the existing house that they are taking down entirely.

Ms. Mandelker asked for the proposed square footage of the house.

Ms. Evans stated that in rough numbers it is a 6800 square foot footprint.

Mr. Krellenstein asked for the square footage of the existing house.

Ms. Evans responded about 2000 square feet.

Mr. Krellenstein stated that none of that is before us, just the contiguous area variance. He stated that you want us to grant a house that is 100% outside the 40,000 foot area. Mr. Krellenstein asked what do they tell the next person who comes along.

Ms. Tortorella stated that she would like to respond to that on a couple of levels, the first is right now the Board has two types of improvements that are required to be within the contiguous buildable area. She stated that they are taking one of those elements, the most environmentally sensitive out of the outside area and putting it into the contiguous buildable area. Ms. Tortorella stated that they are diminishing the nature of the nonconformity. She stated that secondly this whole idea of contiguous buildable area is defined because you need to define it objectively because you need to be able to define it. Ms. Tortorella stated that you need to look beyond the mere definition of the fact that you have to have your principal residence and your septic area in the contiguous buildable area. She stated that the way the Code is written, the applicant could have flat area and another flat area and be connected by an area that is 25 wide with one area fine for the septic and the other area buildable for a principal residence but because there isn't a wide enough connection, they would not meet the contiguous buildable area requirement. Ms. Tortorella stated that even if the land area is suitable for development and that is what she believes they should look at. She stated that you have to look at what are the purposes behind the requirement of having construction within the contiguous buildable area and are those purposes offended or met by the proposal.

Mr. Casper stated that the crucial difference between the new and old ordinance is the narrow connections between substantial buildable areas should not frustrate legitimate construction. He stated forget contiguity, the applicant is building in non-buildable area as defined.

Ms. Tortorella responded no, there are areas with slopes less than 15%. She stated that they are not connected sufficiently because they can not call it contiguous buildable area. Ms. Tortorella stated that there is an area where the existing septic is that would be suitable for construction but the choice was not to bring the residence closer to that area. She stated that there are Codes that have the contiguous buildable area requirement that don't require construction on those areas. She stated that their recognition of the fact that in those instances it may be appropriate to build on slopes; it may make sense on a particular site so it is not a universal assumption that you have to build in the contiguous buildable area to protect the environment.

Ms. Evans stated that on this lot there are flat areas they could have extended their buildable area into but it is the driveway, the backyard or things that in their opinion do not meet the intent of the Code as defined. She stated that in terms of the disturbance outside the contiguous buildable area it is literally a few feet of separation from the house in terms of erosion or long term instability that they would be concerned with. Ms. Evans stated that they have taken a property that evolved in the 1960's that has no storm water management and the water currently runs all over the place. She stated that with the new construction, they will install new state of the art storm water management and treatment within the contiguous buildable area that will take all of the runoff, capture it, treat it and infiltrate as much as possible into the ground and whatever is left will go through a natural rock pile that was left and eventually make its way to a vegetative

buffer to the intermittent stream.

Mr. Krellenstein asked why the house can't be pushed back.

Ms. Evans stated that if they had done that, the Lustig's would have fired them a long time ago because they want this as lakefront property. She stated that it is a beautiful view and they want to preserve the view which is the reason they purchased lakefront property. Ms. Evans stated that if they moved the house back, they would be down hill and not be able to see the lake and lose the view.

Mr. Krellenstein stated that he does not want to apply the Code mechanistically and he gets the point. He acknowledged that the applicant is doing some great things. Mr. Krellenstein stated that the applicant's remedy is with the Town Board. He stated that he is uncomfortable granting a variance of such magnitude and does not want to make these kinds of distinctions every time someone applies for a variance. Mr. Krellenstein stated that this brings the whole language and distinction between new lots and old lots that the 2004 amendment created in the Code. He stated that he has to presume that there is a reason that that word was taken out in 2004. Mr. Krellenstein stated that he will go out and look at the property and reiterated that the remedy is with the Town Board.

Ms. Tortorella stated that anytime someone comes to this Board that does not have the contiguous buildable area you would have to apply the same approach.

Mr. Krellenstein stated that anytime someone comes before this Board and is building almost entirely outside the contiguous buildable area on the slim need that it gives us better views we would have to apply that approach. He stated that the remedy is not to have the Zoning Board grant an enormous variance, the remedy is to get the Town Code changed. Mr. Krellenstein stated that what you are saying has merit.

Ms. Tortorella stated that they are not seeking better views. She stated that they are seeking comparable views. Ms. Tortorella stated that it is an important distinction because if they were seeking better views they would have positioned the house slightly different.

Ms. Evans stated that the house would still be more than 150' from the lake because the wetland buffer.

Mr. Casper stated that if the Town Board passes the amendment as proposed he believed the applicant would no longer require a variance.

Ms. Tortorella stated that she found it by coincidence. She stated that they were not notified that it was even under consideration.

Mr. Krellenstein asked if the word "new" was placed back in.

Mr. Casper stated that to his knowledge the Zoning Board has never had this type of application before them. He stated that it is his understanding that the Town Board will have a public hearing tomorrow.

Ms. Tortorella stated that she did not think that any referrals were made to the Planning Board.

Mr. Casper asked if they have made their referrals to the Planning Board.

Mr. Krellenstein asked if it was done officially or if it was just a story in the paper.

Mr. Casper responded it was an official referral. He stated that you get to wear 2 hats. Mr. Casper stated that they talk about variances in terms of percentages and this one has a differential between adding on to a house that is there and knocking it down and putting in something that is better. He stated that without the Building Inspector's opinion of the actual application we are in the dark too. Mr. Casper stated that it is just shy of a 100% variance request and what you are describing makes sense. He stated that his inclination is to figure out how this could work and he wondered if they went for the whole bowl of wax and figured if this could work. Mr. Casper stated that he doesn't know if it will work, he would like to go out to the site and hear from the Building Inspector. He asked if the Town Board could vote at the end of the public hearing.

Ms. Tortorella stated that she did not know if it made the requisite referrals. She stated that she did not look at the procedural aspects. Ms. Tortorella stated that the issue of substantiality is one of the five criteria that the Board looks at and not the only one and it is not necessarily that is determined to have the most weight or not the most weight. She stated that she could provide the Board members with the cases, but case law has held that it is not just a quantitative assessment but a qualitative assessment. Ms. Tortorella stated that she appreciates the opportunity to have the dialogue because there have been cases with 127% variance and that was not deemed to be substantial because when you look at the whole picture and understand what the potential impacts are. She stated that when there is no detrimental impact and when you look at all the factors together, that the magnitude is much less than the percentage calculation.

Mr. Krellenstein stated that he does not want to look at this mechanistically and wants to think it through. He stated that there is case law on this but the Board is entitled to hear whether the precedent that would be set by granting this kind of application, when this particular issue is so up in the air, that is something that we can **not?** afford to do as a Board or whether it is something as a Board we should be doing. Mr. Krellenstein stated that has to go into the calculus also.

Ms. Tortorella asked in what respect. She stated that if the Town Board were to vote in favor of that amendment to make this application moot and having granted the variance is not binding on you.

Mr. Krellenstein stated that makes sense.

Ms. Tortorella stated that she understands the concern. She stated that you don't want anyone to come in two months from now and say that you just granted the other applicant a 100% variance, so grant me my 98% variance.

Mr. Krellenstein stated that specifically on this contiguous buildable area issue with the upheaval as a result of the Planning Board deciding that this needs to be reviewed and what could be considered a material reversal of past practices after years, this could be a real kettle of fish. He stated that it is not 100% variance as in a deck variance within the setback, it is on this particular issue and the Town should tackle this. Mr. Krellenstein stated that there was an interpretation that was followed for years and it turns out that the interpretation was contrary to the way the statute was drafted, plainly worded. He stated that they need to know what the law is. Mr. Krellenstein stated that the Zoning Board should not decide that, the Town should and that is the issue that he is wrestling with.

Ms. Tortorella stated that in their view and just hearing yesterday that this was pending with the Town Board, they decided to pursue their application because they do not know what the timing of the process is and her client has the resources to do something on this property and they would like to start construction in the spring. Ms. Tortorella stated that they believe in the merits of the application and that there are a lot of benefits not just for her client but for the lake and the environment. She stated that regardless of what the Town Board does, taking this application on the facts themselves, they believe that they meet the criteria. Ms. Tortorella stated that she knows that they have an issue with what appears to be the size of the variance but when you measure that against the qualitative impact of what we are proposing and what a favorable decision would result in for the neighborhood. She stated that when you consider that they are more conforming than 80% of the waterfront lots that are comparable and constitute their neighborhood, the record is pretty strong in favor of granting the variance. Ms. Tortorella stated that maybe the Town Board will render it moot tomorrow night. She stated that they never wanted to be the proponents and lead the cause to change the law. Ms. Tortorella stated she lives in Bedford and reads the paper and maybe she is not on top of it as she might be in her own local community. She stated that she did not realize it was a fight and hotly contested issue.

Ms. Evans stated that this application has a lot of environmental merit and could be used as an example of how these lake communities could be rebuilt to be friendlier to the lakes and water bodies.

Ms. Mandelker stated that the applicant said that they could not move the house because they would effectively be putting it in a valley. She asked how deep is the valley.

Ms. Evans responded that it is 10-15 feet lower than where the house is proposed.

Ms. Mandelker asked if the house could be built there.

Ms. Evans responded that if taller was the only issue, yes. She stated that the house would be nearly 400 feet from the lake.

Mr. Casper asked if the area could be flagged.

Ms. Evans agreed to flag off where the contiguous buildable area starts.

Mr. Krellenstein stated that the existing house is still there.

Ms. Tortorella stated that there is a lot of privacy on this property.

Mr. Price commented that this is the first application like this. He stated that the Building Inspector was under the belief that this did not pertain to an existing lot. Mr. Price stated that the law applies to every lot so it is a pretty interesting point because if they do not change the law back to the way it used to be, this room will be packed every night because it will affect 70-80% of the lots.

Ms. Tortorella stated that the problem is there is no grace. She stated that you can not add to an existing residence unless you are adding within the contiguous buildable area. Ms. Tortorella stated that they could not even renovate this house and again it would be a 100% variance that we

are seeking. She stated that there is an argument that this is a 50% variance because there are 2 types of improvements that need to take place in the contiguous buildable area.

Mr. Casper stated that they should go out to the property and see what the Building Inspector says.

Mr. Krellenstein stated that he has found no cases that had the word contiguous buildable area in the same sentence that considered this type of area variance. He stated that Counsel has provided cases that are analogous.

Ms. Tortorella stated that she is familiar with the concept and has seen it under other Codes. She stated that she has not seen it applied other than in this community to existing lots. Ms. Tortorella stated that is probably one of the reasons you have not seen it.

Mr. Krellenstein stated that he hears what Ms. Tortorella is saying but the word new is not there.

Ms. Mandelker asked if anyone wished to be heard either in favor or opposed. No one responded.

Ms. Mandelker stated that the public hearing will remain open and a site walk will be conducted on the morning of Saturday, January 23rd 2010.

Ms. Evans stated that the septic area is flagged and they will flag the edge of the contiguous buildable area.

THE PUBLIC HEARING IS HELD OPEN.

CAL. NO. 33-09-BZ **James Rogers Requa, 37 Lakeview Road, South Salem, New York 10590**

Application for a variance of Article IV § 220-23 of the Zoning Ordinance in the matter of an existing deck that is closer to the side lot line (existing 3.5' where 12' is required) than permitted R-1/4A, One Quarter-Acre Residential District.

The property is located on the north side of Lakeview Road, designated on the Tax Map as Sheet 33A, Block 11368, Lot 13, in an R-1/4, One Quarter-Acre Residential District.

Ms. Mandelker asked if anyone objected to the notice as it appeared in the Lewisboro Ledger. No one responded.

No one was present to represent the applicant at the December 16th meeting.

Mr. Krellenstein suggested that the Board walks the property.

Mr. Casper disagreed and stated that they should get an introduction to the application first.

Ms. Mandelker stated that they will leave the public hearing open but they will not do the site walk until an applicant or representative introduces the application.

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IV. NEW BUSINESS/CORRESPONDENCE

On motion by Mr. Krellenstein, seconded by Mr. Casper the Board voted 4-0 to adjourn the meeting.