

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

Minutes of the Meeting held by the Zoning Board of Appeals on Wednesday, December 19, 2018 at 7:30 P.M., at the Town of Lewisboro Offices at Orchard Square, 79 Bouton Road, South Salem, New York.

Board Members:

Present: Robin Price, Jr. Chairman
Thomas Casper
Carolyn Mandelker
Jason Krellenstein
Todd Rendo

Also Present:

Mary Hafter, Secretary
Joseph Angiello,
Building Inspector
Anthony Mole', Attorney

The Meeting was called to order at 7:33 P.M. Chairman Price introduced the members of the Board and noted the emergency exits. (The next ZBA meeting is scheduled for Wednesday, January 30, 2019, with a site visit scheduled for Saturday, January 26, 2019.)

I. REVIEW AND ADOPTION OF MINUTES

Chairman Price advised that the minutes were not ready for review and adoption, so both November and December minutes will be placed on the January 26, 2019 agenda.

II. PUBLIC HEARINGS

CAL. NO. 17-18-BZ

Application of Bruce & Melinda Cascio, [Bruce & Melinda Cascio Revocable Trust, owner of record], 1 Old Oscaleta Road, South Salem, New York, for a variance of Article III § 220-9C(1) of the Zoning Ordinance in the matter of the proposed enlargement/extension of the office and storage area in an existing commercial structure (automobile repair shop) in an R-2A, Two-Acre Residential District.

The property is located on the northeast corner (#1) Old Oscaleta Road and Oscaleta Road, designated on the Tax Map as Sheet 35, Block 11826, Lot 2, in an R-2A, Two-Acre Residential District consisting of approximately 2.5 acres.

Michael Sirignano, representing the Cascios, asked that the matter be called later in the agenda, as his clients were not yet present. He wasn't certain his clients were coming, but asked that the matter be called later to give them time to arrive. Chairman Price agreed to recall the matter later in the agenda.

CAL. NO. 21-18-BZ

Application of Adam Rose, [Rose, Adam R, owner of record], 161 North Salem Road, Cross River, New York, for a variance of Article IV, § 220-23E of the Zoning Ordinance in the matter of a proposed utility shed and generator in an R-4A, Four-Acre Residential District.

The property is located on the east side of (#161) North Salem Road, designated on the Tax Map as Sheet 15, Block 10802, Lot 77, in an R-4A, Four-Acre Residential District consisting of approximately 29 acres.

Chairman Price noted for the record that the matter had been withdrawn.

CAL. NO. 25-18-BZ

Application of Harold J. Hovel [Harold J. Hovel, owner of record], 9 Diane Court, Katonah, New York, for a variance of Article IV §220-23E of the Zoning Ordinance in the matter of the construction of a screened-in porch in an R-2A, Two-Acre Residential District.

The property is located on the east side of (# 9) Diane Court, designated on the Tax Map as Sheet 9, Block 10798, Lot 38, in an R-2A, Two-Acre Residential District consisting of approximately 2.001 acres.

There were no objections to the notice of public hearing as published in the official Town newspaper.

Mr. Hovel was present. Chairman Price noted that the Board had done an on-site inspection the previous weekend. Chairman Price asked whether there had been a porch there previously; Mr. Hovel responded, no, there was a sort of deck but not attached to the house. Mr. Hovel continued that there was also a concrete padding, constructed by the people who built the house. He stated that the deck had been removed recently. The Chairman asked if anyone on the Board wanted to speak on the application. Mr. Rendo stated that he did not find the proposed porch even remotely intrusive and did not feel any neighbors would object to it; he continued that he saw the lay out of the previous structures and noted that the proposed porch would not be much bigger than what had been there. Mr. Hovel agreed, noting that it would be a tad bit smaller. Mr. Rendo had no further questions. Chairman Price asked if Mr. Hovel had talked to his neighbors about the proposed porch. Mr. Hovel responded that his neighbors think it is a great idea. He noted that the neighbor's house is quite far away from the proposed porch, likely 100 feet at least.

Chairman Price asked if the proposed porch will be the same size as the deck that was there. Mr. Hovel advised that it is a bit smaller, the old deck being 15 x 16, and the proposed porch is 14 x 18. Chairman Price asked if anyone was present who would like to speak on the application. As no one responded, the Chairman asked if anyone on the Board wished to speak. With no response, Chairman Price asked for a motion. Mr. Rendo made a motion to approve the application; Mr. Casper seconded the motion. All members approved; motion carried. Mrs. Mandelker noted that the proposed porch is slightly larger than what was present previously on the site.

CAL. NO. 17-18-BZ

Mr. Sirignano advised he would like to be heard, as he did not know why his clients were not present. He explained the matter was held over to have a full Board present. Mr. Sirignano explained that the application was essentially to fill in a 5-6 foot gap, to be turned into an interior hallway, connecting the existing office to the three-bay repair shop for Mr. Cascio to have handicapped access between his existing office and the far side of the repair shop. The proposed addition is 296 feet. Mr. Sirignano continued that the roofline would be lower than the existing roofline of the shop and lower than Mr. Cascio's private non-commercial garage behind it. Mr. Sirignano stated that it is a reasonable accommodation and a modification of the building to allow for ADA compliance. The ADA Title Two has a technical assistance manual, produced by the regulators. Mr. Sirignano gave copies to the Board and referenced Section II-3.6000, which section explains reasonable modifications; Mr. Sirignano read the section and referenced an illustration in it, which he felt was almost exactly on point.

Mr. Sirignano reiterated that the proposal here is de minimus, is 296 feet, has no impact on the neighborhood, they are not expanding the non-conforming use of the property or the building itself, they will not be employing more mechanics, will not have additional garage bays and they are not going to store more tires. Mr. Sirignano continued there are going to be some shelving storage space along the hallway, which is just to make it easier for Mr. Cascio to access from his wheelchair. He continued that this is really about an ADA accommodation, a reasonable modification to the structure. He believes the Code allows for modification of a structure that's being used for non-conforming uses, provided it's required by law.

Mr. Sirignano advised that it is his legal opinion that this is a workplace regardless that it's in a residential zone. It is there legally because of the non-commercial status of the property, so access under the ADA is a legal requirement. Mr. Sirignano then referenced President George Bush's funeral, stating everyone would have noticed that he was a proponent of ADA and it came into effect under his administration. He continued that it is an important public policy consideration and he believes this Board, under the technical assistance manual, should find these modifications would not fundamentally alter the nature of what's going on out there. He stated that he believes the Board is under an obligation to grant reasonable accommodations in conformance with the ADA. He was happy to answer questions and had provided photographs. He provided updated schematics at the last meeting and advised that he thought there had been confusion about the addition and hoped he set the record straight.

Mr. Casper asked Mr. Mole' where the ADA fits into this application. Mr. Mole' responded that the case Mr. Sirignano cited was the most on-point he had found, as he hadn't found one directly on point to this particular issue, which is expansion of a pre-existing non-conforming use to accommodate ADA. He continued that under the ADA, the Board can certainly grant this variance as a reasonable accommodation, and would recommend if the Board does that it specify that in the approving resolution to avoid setting any precedent for a similar-type application for non-ADA purposes. He stated that the question becomes is the Board required to grant the variance under the ADA. He stated that is a very factual question, and the Board is going to have to make a judgment call in terms of whether this is required under the ADA. Mr. Mole' said that question number one is, is the use an expansion of a pre-existing, non-conforming use. In looking at that, Mr. Mole' stated the Board needed more detail, which he thought Mr. Sirignano has presented, as far as what the space is going to be used for and does that

constitute an expansion of the pre-existing, non-conforming business; it is again a judgment call for the Board to make based upon the facts that were provided.

Mr. Mole' continued that if not, then essentially it would be an area variance for expanding the building. If it is an expansion of a pre-existing, non-conforming use, then it's the use variance standard for the expansion of the building. Mr. Mole' then stated that step two is does the ADA apply. He stated it is certainly within the Board's purview to grant it under the ADA for that purpose but thinks question number two is, is the Board required to do so if it were not otherwise inclined to do so. Mr. Mole' couldn't find a case directly on point to this one, but found it a kind of a judgment call for the Board. He was not that concerned about setting a precedent for the expansion of a pre-existing, non-conforming use, as long as the Board puts that language in the approving resolution. He continued that the case Mr. Sirignano went over was one to provide access for the public to a public business. He noted that this is a use in a residential zone; however, it is a pre-existing, non-conforming business. Mr. Mole' stated he doesn't know the details of whether that space would be accessed by the public patronizing the business or used by the workers themselves. He stated if you hire a worker who is disabled themselves, you have to accommodate them, and they cannot work unless they can do this, you have decide if you would view it the same way. These are the parameters and considerations the Board will have to make.

Mr. Sirignano stated that they would have no problem with the Board writing in its resolution the specific facts so that there is no question the Board is not establishing a precedent. He stated he'd like to direct the Board's attention to Subsection E of 220-9 which specifically contemplates improvement or change of non-conforming uses or structures. Mr. Sirignano read Section 3. Mr. Mole' said that if you look at the top of 9-E, it deals with making the use more conforming and goes down from there. Mr. Sirignano stated he believed that is the goal of it, to bring it into greater conformity with the chapter. Mr. Sirignano continued it also empowers the Board, although he is not asking it to do this, if you believe the proposed changes would alter the site, to refer it to the Planning Board and make them go through a site review.

Mr. Sirignano also wanted to set the record straight that there were some comments by Board members at the last session that Mr. Cascio should have, some ten years ago, made this ADA compliant. He continued that 10 years ago Mr. Cascio was not the owner of the business, didn't work in the shop or office on a daily basis, and he was the owner of the land but there was a tenant who was running the business when some improvements were made. Mr. Casper stated that the improvements were made by Mr. Cascio. Mr. Sirignano stated that the improvements were made on Mr. Cascio's property at the expense of the tenant and that is to what Mr. Cascio testified. Mr. Casper stated that Mr. Cascio was in charge of the construction. Mr. Sirignano said, yes, as Mr. Cascio was the owner of the property but the owner of the business who wanted to make those improvements at the time, was not a handicapped person and there was no need that arose. Mr. Sirignano said that he doesn't think it's fair for any Board member to punish Mr. Cascio because his tenant didn't make these improvements 10 years ago. Mr. Casper said nor is it fair for Mr. Sirignano to suggest anyone is punishing Mr. Cascio.

Chairman Price stated that he believed one of the points being made was that Mr. Cascio could not go down the side wall between a lift and the wall with his wheelchair. Mr. Sirignano noted that when there is a car on the lift or in the bays, Mr. Cascio has tremendous difficulty in maneuvering the wheelchair from his office to the rear and far ends of the garage. Chairman Price asked if Mr. Cascio could move the lift over another foot. Mr. Sirignano noted there are three bay and it is not an oversized structure; as far as he knows there is no room to move lifts to accommodate a wheelchair; he also does not think that is the test here, particularly when the proposed addition is de minimus at 296 feet, and it has no

impact on other premises, and it's not an increase of the business. He feels the short answer is, and if the Board wants to adjourn again, he will confirm with Mr. Cascio, that it is his understanding that there is no room to start moving lifts around, plus the expense to do that. Mr. Sirignano said it does not make sense and noted that Mr. Cascio is not interested in it, even if it's possible to do. He thinks it's an unreasonable request.

Chairman Price stated that he thinks one of the Board's big concerns is that it is an increase in non-conforming use because it is part of the building that is non-conforming.

Mr. Mole' said that is a procedural issue he had meant to bring up. He said that the application is for an increase in non-conforming use. He continued that if the application is now changing to something else, e.g., increase in area, area variance, there would have to be some type of amendment to the application to reflect that because what's in front of the Board is an expansion of use. Mr. Sirignano stated that Mr. Cascio filed the application by himself before he came to Mr. Sirignano.

Mr. Rendo said that as he has watched this over the last few months, it has morphed into an ADA-compliant situation as opposed to what he was originally asking for. Mr. Sirignano said that is fair; the original application talked about storage. Mr. Rendo said that is what has set a few of us back. Mr. Casper asked what the proposal is now; Mr. Sirignano replied it is a 5-foot-wide hallway that is going to run in between the two buildings; it is going to connect his office around to the back of the shop. Mr. Casper inquired about the front of the building; Mr. Sirignano said Mr. Cascio goes out into the elements. Mr. Casper stated he wanted to figure out a way to approve this but it is really hard for him to do because it is in a central residential district where there is already a huge structure there, legally so, but this seems to create one much larger building. Mr. Casper inquired that if this isn't a use variance application, is it properly noticed; he further asked what kind of variance it is seeking.

Mr. Sirignano answered he deemed this to be an area variance. He stated that counsel had pointed out that perhaps the application needs to be re-noticed to clarify that. Mr. Sirignano noted that what troubles the Board or distinguishes this matter is that the illustration he used was in commercial zone and this application is not. He added that he did not want to speak for the Board's counsel but he thought he heard counsel tell the Board that Mr. Cascio stands in the same legal position as if this were a commercially-zoned parcel because of Mr. Cascio's legal status as a non-conforming use. Mr. Casper asked whether that was beyond the walls or within the walls. Mr. Mole' stated that it was within the area of existing use. Mr. Casper noted that it is not the same position as Mr. Sirignano had stated. Mr. Mole' stated that for purposes of procedure, the Board has to reach a consensus as to what type of application this is: is it an expansion of a non-conforming use, which would be based upon use of the space; if so, the Board proceeds under the current application but if not, then it would be an area variance and the application should be amended to reflect that.

Mr. Casper stated that when you make the structure of a non-conforming but legal use bigger, you are expanding it; Mr. Mole' said that is what our Code says. Mr. Casper stated that if that is what is before us, that doesn't sound like what Mr. Sirignano is saying. He continued that going from a use variance to an area variance is a big deal, especially if the Board is supposed to say it is not a use variance, when the building is getting bigger. He would at least want to see it re-noticed. Mr. Mole' stated the applicant could submit an application with an alternative, which Mr. Mole's said could be done now. Mr. Mole' said that the physical construction to the site would be the same; he stated that the Board would have to re-notice if the applicant is seeking something more than what was noticed, but if it is an area variance and the applicant is actually seeking lesser, the Board doesn't have to re-notice, but the result

would be the same: the applicant is seeking 296 feet additional feet of space. Mr. Mole' said that could be made verbally on the record. Mr. Mole' stated that if it is an expansion of a pre-existing non-conforming use, it's use variance criteria; if the ADA comes into play, it gives the Board the ability to apply that standard and you can grant it as a reasonable accommodation to the current Code provision, which would be a tool you could use to grant the variance even if the applicant doesn't otherwise satisfy all the other use variance criteria. It does not mean the Board is required to do it; it means the Board can do it.

Mr. Sirignano agreed that the Board has the power to do it and you can be specific in your resolution that that is one of the many factors that led you to grant the area variance. Mr. Sirignano noted that there is only an area variance because they are not intending to increase or increasing a non-conforming business use; he also said they met all the setbacks. Mr. Casper then asked where the area variance is. Mr. Sirignano stated that it is because the ordinance is rather awkwardly worded; they are there because there is a non-conforming use going on inside the structure, and they want to enlarge it. The specific facts of this case is that they are not enlarging the use, they are enlarging the existing portion of the building, which is a non-conforming use. Mr. Mole' said it would be use variance criteria as it would be expansion of a non-conforming space. Mr. Casper said he doesn't see the area variance, unless we're saying this structure is already bigger than what's permitted. Mr. Casper stated he doesn't see where the area variance comes in, and he doesn't think it applies

Chairman Price read the description of the work on the building permit application. Mr. Casper stated that that is a use variance, as it is expanding the use. Mr. Sirignano stated that when he was first retained, in advance of the first hearing, he wrote the Board a letter detailing the facts and that they were not going to be expanding the use. Chairman Price said if you are going to put in storeroom, you are expanding the business use. Mr. Mole' noted that Mr. Sirignano was referring to the use within the existing space. The Code says that if you are expanding the building that contains the pre-existing non-conforming use, you're then increasing the use – this is where the minds aren't meeting. Mr. Casper gave an example of expanding the use. He continued it doesn't mean we should turn down the use variance but he doesn't see why the Board is trying to apply lesser standards. He is not sure how an area variance fits. If it doesn't, then the Board is back to a use variance, and neighbors have spoken out about the property. This area is supposed to be residential but they were able to pre-date the structure to a time when it wasn't zone residential. Mr. Casper said so he would go back to a use variance and would need to hear the criteria, which is very strict, and then the Board can overrule all of it for ADA purposes. Mr. Casper stated expanding the building is expanding the use.

Mr. Casper reiterated that the need for storage in his building is not necessarily the case. Mr. Sirignano stated that storage should then not be in the resolution. Chairman Price said that is truly for Mr. Cascio's ADA issues to have a hallway, it should be only 4' or 5' wide, with no storage and no doorway. Mr. Sirignano agreed, saying to cross the door out, as it's not essential to the application. The application is about getting to the office but Mr. Casper disagreed, as the door would not have been drawn, connecting the buildings. Mr. Casper stated the neighbors do not have to see the business expanded or see it easier for the business to operate; he is not addressing the ADA question at all. Mr. Casper continued that Mr. Cascio does not need to have it but that it is nicer for him to have it; but that is not why they are here, especially in this kind of structure, in this kind of use, in this kind of neighborhood. Mr. Sirignano asked for a vote on the application before the Board and read the application.

Mrs. Mandelker stated that by putting in the shelving, some might interpret that as expanding the use; by doing away with the shelving and just making it a hallway, she asked if it solved the problem. Mr. Casper said the Board has never gotten to why the use is necessary; he doesn't recall originally the part that goes toward the front of the building. He stated when the Board went in the building, Mr. Cascio pointed that it was in the corner, but now it goes all the way out the other way. Mr. Sirignano stated it wraps around the office to the rear but they have no problem removing the storage shelving from the application and eliminating the door to his private garage. Mr. Casper stated he is all in favor if it is for Mr. Cascio to comfortably get around his building; what he needs is something wide enough for his wheelchair to go from his office, around back into the back of the workspace; he doesn't need storage space. Mr. Sirignano said that whatever minimum width the Building Inspector says they need, they will not go an inch wider.

Mr. Casper stated he would still like to consult with counsel on what they're doing and what they'll be opening for future uses. Chairman Price asked that the Code be read regarding expansion of non-conforming uses. Sections 220-9(A) 1-3 and (C) 1-2 were read.

Mr. Mole' stated what an approval would look like, based on the previous discussion: an approval of the application to expand the pre-existing, non-conforming use, and then the Board should say what it should not be used for, and a basis for that approval would be to accommodate under the ADA, as a reasonable accommodation of the Town Code.

Chairman Price stated that the applicants should redraw the plan with just a minimum hallway on the back part and the side with no entry into the other garage. Mr. Sirignano stated he had no problem with that but asked whether it was necessary before a vote was taken. Mr. Casper also noted there should be no storage. Chairman Price said he did not know what it was going to look like after it was changed, as it did not know how big it would be. Mr. Sirignano stated it would be the minimum width for wheelchair access according to the Building Inspector in consultation with our architect, essentially a hallway. Mr. Casper added that while the Board shows flexibility, this should be relatively specific, and nothing before the Board is. Chairman Price noted that the Board is willing to meet somewhere on the application but the Board wants to see the plan; he held the application over for the next month.

CAL. NO. 26-18-BZ

Application of Chaim Lebrecht (42 Old Bedford Road, LLC, owner of record), 42 Old Bedford Road, Goldens Bridge, New York, for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of installation of three (3) 120-gallon proposed propane tanks in an R-2F10 Residential District.

The property is located on the north side of (#42) Old Bedford Road, Goldens Bridge, NY and designated on the Tax Map as Sheet 004C, Block 11116, Lot 12, in an R-2F10, 10,000 Square Foot Residential District consisting of approximately 5,589 square feet.

There were no objections to the notice of public hearing as published in the official Town newspaper.

Patrick Croke, architect, was present; Mr. Lebrecht could not be. Chairman Price noted that the Board conducted an on-site inspection the prior weekend, and they viewed where the proposed tanks were to be placed. He asked whether there had been any discussion on burying a tank and inquired whether they needed to have three, as there are three apartments. Mr. Croke responded that a buried tank

requires greater setback distances and there's no place on the property to put it. Mr. Croke continued they would need to be 10 feet from the building, 10 feet from the property lines, and 10 feet from driveways because when you put it underground you have to have a bigger tank. Mr. Krellenstein said, but you are not 10 feet from the property line, as it is now proposed. Mr. Croke stated it is because it is a smaller tank; with a 120 you are allowed to go right up to the property line or right against the building. Mr. Krellenstein asked if that is why they have three 120; Mr. Croke responded yes. Mr. Rendo asked if it were for heating the house; Mr. Croke responded it is for hot water and the kitchen. Mr. Angiello said the house is heated using oil. Mr. Casper asked if they would get the hose to the tanks all the way around the side of the house where the Board had walked. Mr. Croke said yes, because it is an odd-shaped, triangular lot, and the house is right on the property line.

Mr. Krellenstein stated they walked the site, and he did not see a reasonable alternative; he stated he thinks the application meets the criteria for a variance. Mr. Croke noted that it is in the historic district. The Chairman stated that there is a side yard 2 foot 6 inch setback where 10 feet is required, so the variance is 7 feet 6 inches. Chairman Price questioned the notation that the location of the tanks has a setback of 2.2 feet'; Mr. Croke responded that measurement is to the corner of the building. Chairman Price noted there is a 6' foot fence there, hiding the view from the neighbors; Mr. Croke said that was correct. Mr. Rendo asked whether they were getting rid of the fireplace or whatever is sitting there; Mr. Croke said yes, the pads for the tanks will go there. Chairman Price asked if the fence was from the people next door; Mr. Croke said yes. Chairman Price said that rear yard setback is 7 feet 6 inches, where 20 feet is required, so the variance is 12 feet 6 inches. Mr. Krellenstein noted that the variances are large, but there does not seem to be another place to put them.

Chairman Price asked for the square footage of the house; Mr. Croke stated he wasn't sure. Mr. Krellenstein reviewed plans and asked whether it was 1,402 square feet. Mr. Croke stated yes, that is the footprint. Chairman Price noted that the total building coverage is 1,459 square feet and the proposed parking area is 1,420 square feet, which is almost 2,900 square feet and the lot is only 5,500 square feet. He stated it does not give a lot of options. Chairman Price asked whether there had been any correspondence with the people next door. Mr. Croke responded he did not know. Mr. Casper asked how much space was between the back left corner of the house and the property line. Mr. Croke responded two feet. Mr. Casper noted that the propane company had to navigate a two-foot space to go around the back of the building. Mr. Croke said that was correct and noted a point where there were no fences or barriers. Mr. Casper noted it does raise an interesting question for down the road and asked whether the propane company would go down the opposite side but noted he did not think it was the Board's concern at this point. Mr. Croke said that someone could erect a fence but he wasn't sure what ACARC would say about a fence being proposed. Mr. Casper said he thinks it could be put in if it were four feet high. Mr. Casper moved to approve the application. Chairman Price asked if anyone from the public would like to speak on the application. Mrs. Mandelker seconded the motion. The motion was approved.

CAL. NO. 27-18-BZ

Application of James Shapiro (James Shapiro, owner of record), 12 Glen Drive, South Salem, New York, for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the construction of a swimming pool in an R-1A, One-Acre Residential District.

The property is located on the south side of (#12) Glen Drive at its intersection with Douglas Drive, designated on the Tax Map as Sheet 49A, Block 9846, Lot 4, in an R-1A, One-Acre Residential District consisting of approximately 1.019 acres.

There were no objections to the notice of public hearing as published in the official Town newspaper.

Mr. Gregory appeared on behalf of the applicants; he stated that the applicants are seeking a variance for the construction of a swimming pool. Mr. Gregory presented an aerial photograph of the property. He explained that the pool would be built in the rear of the parcel but that running through the center of the property is a watercourse and associated wetlands. Those are not only regulated by the Town but are also state-regulated wetlands as well. Mr. Gregory stated they have been working with Paul Jaehnig, who is a soil scientist, who flagged the wetlands; they have a good location because of land surveying, and the wetlands are shown on their map. All of the property is located in a locally-regulated wetland buffer. Initially, they were going to meet with Jan Johannessen of Kellard Session; they are aware they need to apply for a wetlands permit. Mr. Gregory said what they are trying to do is maximize their distances as best as possible, staying away from the wetlands and watercourse. He continued they decided to go with a free-form shaped pool, which is offset to the side of the house, maintaining at a minimum a 50-foot distance separation from the wetlands and watercourse; as a result, they would be looking for a variance of the 30 foot setback, down to 18 feet.

Mr. Gregory stated that the pool as proposed is 20' x 33' with a 36" coping; no terraces are proposed, as they likely to utilize the patio that is already there, so they do not need to create an additional impervious surface in that area. Wherever the pool is placed, the mitigation that is going to be required for the wetland permit is going to be the same. He stated they are looking to remove some impervious surfaces, and there are going to be some plantings associated with the buffer area and possibly removing some lawn to help improve some of the conditions that are out there now adjacent to the wetlands. They are working with the soil scientist who will help develop the mitigation plan along the corridor.

Mr. Gregory stated that they had met with some of the neighbors to whom they presented the plans; several of them submitted letters. Mr. Krellenstein stated that his biggest concern was number 10; Mr. Gregory stated that number 10 was right next door and is the closest neighbor to the area. Mr. Shapiro stated that he had spoken to this neighbor several times, once prior to the site visit and after; he stated his wife had requested the neighbor to write a letter and the wife was told the neighbor would do so. Mr. Shapiro told this neighbor that he would put in bushes or screening, which was the neighbor's main concern.

Chairman Price asked what the main elevation of the coping on the pool would be. Mr. Gregory stated there was a level lawn area; for the most part, it was holding the elevation of the terrace that is currently there. There is not going to be any regrading in the buffer area; they would be shelling and cutting some of the material on the high side to keep it level; there would be no refilling or regrading in the buffer area, and any excess material would be taken off site. He continued that construction access would be off of Glen Drive, not utilizing the existing driveway. Existing septic is located in front of the house. They feel they have good access along the side to perform excavation and to bring in materials for construction. When asked about the hill, Mr. Gregory stated they would level off the area around the pool and bring in more of a slope toward the side of the house. Mrs. Mandelker stated she was thinking about the trucks; Mr. Gregory said he did not think they would be a problem and explained the process for the trucks and concrete.

Mr. Casper asked about the shed; Mr. Gregory stated it would be moved but there would be no need for a variance, as they will respect the side yard setback. Chairman Price asked about screening on the side yard. Mr. Gregory said it had been discussed, and they are willing to propose screening, which landscaping plans will be incorporated with the wetland mitigation plans. Mr. Shapiro stated he advised his neighbor he would be screening for privacy for all parties.

Chairman Price asked if anyone would like to speak on the application. With no one speaking on the matter, the Chairman asked if the Board would like to comment. Mr. Krellenstein stated he felt it would be an improvement to the property and liked the direction it was going; given the specifics of the property, the applicants have worked hard to make this work and the architect's presentation was illuminating and helpful. He continued that he feels the application meets the criteria and moved that the application be approved. Mr. Rendo seconded the motion. Mrs. Mandelker requested that if the applicant has received letters, they should be turned in to the Board. Mr. Shapiro stated he received a letter from the "farm" and stated that they back up against the farm property. He said the farm property told him to move ahead with the proposed project. Chairman Price clarified that there was no letter from number 10. Mrs. Shapiro stated she spoke to the neighbor at number 10 and had explained the plans and screening and that the neighbor agreed to it and also to sending a letter. Chairman Price noted for the record that the Board received letters from Stephanie and Bobby Russo, Joseph and Jeanine Haberny, and Cheryl Chess. Mr. Shapiro stated they had also spoken to the neighbor directly across from them, who would be seeing the access to the pool; he stated they were fine with it.

All members voted in favor; motion was approved.

III. CORRESPONDENCE AND GENERAL BUSINESS

Mr. Krellenstein stated he received an email this week which contained a letter that was sent by Edgar Muller's attorney, which letter referred to Mr. Muller's application the attorney said was filed in October. Mr. Krellenstein read a portion of the letter which said that her client had not been informed by the ZBA but had been led to believe by Town employees that the Board will not hear his application because the ZBA is under the impression that it does not have the jurisdiction to modify the required acreage for a private kennel. Mr. Krellenstein stated that he was not aware that an application had been filed in October, that he has not expressed an opinion on the matter and that he was not aware of the letter. Mr. Krellenstein stated that he feels it would be appropriate if the application was distributed to the Board, put on the agenda and duly considered by the Board. Mr. Krellenstein read the case supplied by Mr. Muller's attorney and found Sunrise Plaza v. Town Board, Second Department 1998 to be on point. He stated that he found it troubling that a Town employee is conveying the impressions of the Board without discussing it with the Board.

Mr. Mole' stated that the email he had sent to the Board advised that there is a Supreme Court decision on this very application, so it appears that the applicant is making an appeal to this Board, as opposed to going to the Appellate Division. Mr. Mole' said that this Board does not have jurisdiction to overturn the Supreme Court decision; he continued that the Supreme Court decision says that this Board does not have jurisdiction to grant a waiver or variance of the special use permit criteria of the Town Code. Mr. Mole' continued that the law that is relied upon in the letter is that under certain parameters, you are able to do that; one of those parameters is that if the Town Board gave you the authorization to do that in the Town Code, it is permissible, but no authorization was found. Mr. Mole' said that the Board can entertain any application before it; however, if this Board were to make a decision contrary to the

Supreme Court, Mr. Mole' feels it would be inappropriate, as he feels the Board would not have the jurisdiction to do that. Mr. Krellenstein stated that may well be but he disagrees with it, as he believes there to be a new application. He further stated that the letter cited two provisions of 274(b) but that his concern is whether an unnamed Town employee should be deciding whether the Board has jurisdiction, and he requested that the application be brought before the Board. Mr. Krellenstein continued that if a majority decides that the Board does not have jurisdiction, that is fine; but if the applicant paid his money, the Board should hear the matter.

Chairman Price stated that was not the case; what occurred was that Chairman Price told the secretary should Mr. Muller attempt to re-apply, then Chairman Price wanted to speak with the Board's attorney. Chairman Price said that if anyone held it back, it was him because he wanted direction from counsel before another application went through. He continued that Mr. Muller did not file an application with this Board. Mr. Angiello noted that Mr. Muller filed to legalize a shed on his property. Mr. Krellenstein stated that the letter stated Mr. Muller filed for the dog issue again, but if that did not happen, there is nothing to talk about. Mr. Angiello stated he has an application to legalize a shed but he is not calling it a kennel. Mr. Krellenstein stated that if there was an application submitted in October, he wants to see it; if no application was submitted, there is nothing to talk about. Mr. Rendo suggested responding to the letter; Mr. Casper said it may be asking to prove a negative so he suggests that counsel contact Mr. Muller's attorney, to which suggestion members of the Board agreed. Mr. Rendo stated he would like to close the loop.

Mr. Krellenstein moved to adjourn the meeting at 8:49 P.M. The motion was seconded by Mr. Casper.

Respectfully submitted,

A handwritten signature in cursive script, reading "Mary Hafter".

Mary Hafter
Secretary, Zoning Board of Appeals