

# Planning Board meeting

## May 17, 2018 Minutes

Chairman Kozakiewicz called the meeting to order at 7:00pm.

Roll call:

Al Kozakiewicz — present

Kim Hart — present

Fred Franko — absent

Mike Voght — absent

Peter Kiernan — present

Lynne Delesky — present

Rick Gilmour — present

Members of the public in attendance: Doug Smith, John Mellen, Lynn Garski, Kenneth Coirin, Douglas Purcell, Frank Malagisi, Kathleen Ellerby, Peter Welker

Agenda for the meeting:

Application Number: P2018-02

Owner: David Falvo PO Box 310 Caroga Lake NY 12032 of the property located at: 135 Green Lake Road and identified as parcel **#52.11-2-16** for a Site Plan Review of the Town of Caroga Zoning Ordinance.

Owner Desires to: build an 8'×20' front deck and enlarge the garage. Percentage of ground cover is at issue, Shoreline and side yard setbacks are at issue. As it pertains to Article 4 Section 4.050 and Article 9 Section 9.010 of the Town of Caroga Zoning Ordinance.

[The following is a verbatim transcript of the salient discussion points.]

Chairman Al Kozakiewicz: The only piece of business before us tonight is a two-part application because after it leaves us it will go to the Zoning Board of Appeals. This is a site plan review for David Falvo, living at 135 Green Lake Road. I'll open the public hearing. Why don't you explain to the board what it is that you are doing.

David Falvo: The first part is the garage. Its going to get a little bit bigger. You have the numbers in front of you. Just trying to make it a bit wider, maybe just a tad bit longer just to get a boat in there. Also, changing the pitch of the roof. Its just a really almost flat pitch roof, all pitching towards the house, So, I'm going to pitch it normally. So, that's the garage. And then the deck, there's just an existing stairs and a little platform out front. I just wanted to put a deck going across 8 by 20. 20 feet is the width of the house.

Chairman Al Kozakiewicz: Does anybody on the Board have any questions for Mr. Falvo?

Rick Gilmour: I'd like to know how you are dealing with that rock and how you are putting that deck over the rock. So, you can't put the normal joists.

John Mellen: I talked to John [Duesler, Code Enforcement Officer] about that and he said as long as I could pin it to the rock.

Rick Gilmour: Pin it?

John Mellon: Yes. Drill into it.

Rick Gilmour: So, that's how you are going to do it? What is the construction like, six inch or eight inch joists?

John Mellen: 2 inch by 8 inch.

Rick Gilmour: You won't be able to do that based on what I saw, in terms of how high the rock sticks out.

John Mellen: Right.

Rick Gilmour: Its going to have to be an inch or something over the highest point of that rock.

John Mellen: No, no, it will only be maybe an inch or two taken off the bottom.

Rick Gilmour: Is that all it is?

John Mellen: Yes. An the highest spot of the rock [speaker was interrupted]

Rick Gilmour: I looked at it from the driveway, from the side view, it looked like there wasn't going to be much choice on top of the highest point of the rock.

Rick Gilmour: This garage, what you have now, I would classify it as a shed. You're really putting on a garage. Its a lot higher, that's for sure.

Rick Gilmour: None of the neighbors complained?

Chairman Al Kozakiewicz: we received no correspondence except this, which is from Mr. Falvo, which is essentially a clarification.

Doug Smith: I'm Doug Smith. I'm two houses down. I didn't see any problem as far as I was concerned. It will be a nice addition, especially the front of the house. I'm not too aware of what he's planning on in the back, but the front of the house would be a nice addition. He's done a beautiful job on the house.

Rick Gilmour: I did look down the road and a lot of people have the same type of a deck out in the front of their house. I don't know how it corresponds with the water distance.

Chairman Al Kozakiewicz: Well that's the issue and I'm going to take the time. Why you are here before both boards: All the structures at the time the zoning ordinance was adopted were grandfathered in, however they were. Now, in your particular case, it is called a legal nonconforming structure because it encroaches on the setbacks for the LF-2.5 zoning district you are in. What happens is when you have a nonconforming structure the zoning ordinance wants us to make sure you are not making a bad situation worse, which is why you have site plan review. There's a lot of other reasons why you do a site plan review and there's a whole checklist in here that mostly have to do with commercial development. The thing is the the part of the ordinance that refers to this:

“Subject to the provision of this article, a non-conforming structure or use or a structure containing a non-conforming use may be continued and maintained in a reasonable repair but may not be altered, enlarged or extended as of the date this ordinance becomes law, except by site plan approval of the Planning Board.”

That's why you are here. The problem is the next paragraph:

“In no case shall any increase or expansion violate or increase non-compliance with the minimum setback requirements of the shoreline restrictions.”

Which means that we're obligated to turn it down as it is, just because of that. This is not an area where we are given discretion — which is true of most of these things — we're expected to use our judgment to figure out — especially you've got a neighbor come and say it would be a great improvement to the neighborhood. We want to give you the ability — at least I do that. If I read the drawing here in your application, it looks to me like

the only thing that encroaches are the stairs. In other words, it looks to me like the deck itself is back the 75 feet. What you could do is — I would be willing to approve this with this modification. There may be others: we haven't had our internal discussion yet. By taking the stairs and putting them on the side or having them run parallel to, so that they are close to the house and run down that way. It may not be aesthetically pleasing, but at least it gets them out of the setback for the shoreline.

What say the rest of you board?

Rick Gilmour: Yes, if they did that it would be right into the driveway.

Chairman Al Kozakiewicz: You've got two sides.

Rick Gilmour: Well, the other side is right into the neighbors property: its really close. So, you can't really go closer than that. As it is, it is supposed to be 25 foot setback, as it is.

Chairman Al Kozakiewicz: And that's why the Zoning Board of Appeals is here because that's not our purview. So, they'll hear that and make a decision based on that.

Peter Kiernan: I had a similar thought: Can't you cut the stairs into the deck?

Chairman Al Kozakiewicz: That's another alternative too. In other words: the goal is there isn't anything within the shoreline setback. And, by the way, if we were to approve it because we didn't look at this, the Adirondack Park Agency would kick it back.

David Falvo: We sent it to the APA originally, but I guess in the town we've got two setbacks: the 50 foot and a 75. Unfortunately, it sounds like I'm in the 75.

John Mellen: In the back of the packet there's actually a letter from the APA saying that they don't have any jurisdiction over that.

Rick Gilmour: Over what?

John Mellen: Over the setback from the water after the 50 feet, and they're OK with it.

Kim Hart: There's a letter in the back of the packet. Is there a specific part that we can look to?

John Mellen: Everything you have — the drawings and everything — I sent to them with a JIF [Jurisdictional Inquiry Form] and this was their response.

Kim Hart: The very first sentence says: “The proposed addition of a deck and stairs to the existing single family dwelling described in the materials received on March 20, 2018 does not require a permit or variance from the Adirondack Park Agency (Agency), provided the facts submitted are accurate and complete, and provided there is compliance with the restrictions below. ”

John Mellen: And then they actually sent a lot of things on wetlands and stuff and it wasn't an issue at all.

Lynn Delesky: The setback from the shoreline is one thing but the other thing that stands out is how much of the lot is going to be covered.

Chairman Al Kozakiewicz: And that's, by the way, is a question that they're going to ask and consider when they [the Zoning Board of Appeals] do their [review].

Lynne Delesky: Because as it says in the Denial Notice, “the total footage of the property is 5,760 square feet”. And, 10 percent of

that would be 576 square feet. It is currently 1,020 square feet and proposed for 180 square feet more, so we are going to be over by 624 square feet.

Chairman Al Kozakiewicz: Yes, but again, if you look at Article 5 and there are the considerations are in here for site plan review. It is really more aesthetics and in keeping with the character of the town. It is not technical like that. We're supposed to figure out what the effect is on existing water quality, effect on natural sedimentation or dilatation, effect on topography, vegetative cover, air quality, noise levels, its effect on fish and wildlife. It is all stuff like that. It doesn't get into the technical detail which, because of what they're doing, would require a zoning variance to do. And I've been through their [the Zoning Board of Appeals] meetings and go through and they figure that out. I know that's part of their process.

Kim Hart: Just to help clarify, the last meeting we had an application to put a porch on. It was a deck and they wanted to make a porch. Prior to those people doing that, it was a deck with stairs. Somehow, they moved the stairs to the side. How is this different?

Chairman Al Kozakiewicz: There's two things. Because, what they were doing in that particular case was: they were not extending the structure. In other words, they were modifying the structure within the existing footprint. Which means they weren't changing the setbacks or anything else. And, because it was a legal nonconforming structure it required site plan review where we all did was say "look what your doing with the roof" and all the neighbors said "we want it to happen" and we voted on it and it happened. In this particular case, they are making changes. They are ever so slight, but nevertheless because they are changing, it already doesn't meet the setback requirements. And, they are

making changes, albeit very slight, require both us to look at it for the same reason as the other one because it is a modification to a legal nonconforming structure plus it require Zoning Board of Appeals because it requires a zoning variance to make the change.

Rick Gilmour: The fact that the square footage is over: all the square footages are over.

Chairman Al Kozakiewicz: No, not all of them. Many of them are, especially the smaller lots.

Rick Gilmour: There's no complaining from the neighbors and it's just going to increase a little bit of tax revenue for the town and it's going to be a nicer place for him to enjoy. I don't really a problem with it.

Chairman Al Kozakiewicz: Do you have an issue with modifying the plan to get the stairs out of — in other words, modify it in some way so that no part of it is within the shoreline setback?

David Falvo: No, I don't have an issue. I just want to make sure it aesthetically looks good for my neighbors and for the neighborhood. But, if we have to modify it, that would be fine. It just seems like it would just flow and look better [speaker was interrupted].

Chairman Al Kozakiewicz: No, I agree. The road is between you and the lake. If that's not a structure I don't know what is. Plus your neighbors are closer to the lake than you are. Because it was all done in the 1920's and you know this is someone's attempt and we're still trying to do this. Bring it up to date and make it consistent.

John Mellen: This letter says there's no problem with them then what is the problem?



Chairman Al Kozakiewicz: The only problem that I see — first of all, the Zoning Board of Appeals has to make a decision because it changes the setback. That's one. And, number two, normally I'm going through this trying to find a reason to make sure there's no reason to deny it. And that's when I caught — and I had highlighted it yellow sometime before — the shoreline setback. I had forgotten that was an issue and that's one of the things that would be changing here. And it is written in such a way as to say “In no case shall you” basically grant a permit or the site plan review if it is making whatever violation is there worse or would result in a violation where there wasn't one before.

Rick Gilmour: Right. I would just say that if it isn't a problem with the state, having the stairs off the side is an issue because the driveway is right there and it would make no sense for the stairs to go the other side. If it wasn't a problem, I think the stairs should remain.

Chairman Al Kozakiewicz: The way I read the ordinance is we don't have the authority to waive that provision. In other words that's not something that's reviewable.

Rick Gilmour: So the letter doesn't even count?

Chairman Al Kozakiewicz: No, because it's our zoning ordinance which is more restrictive probably in that location — I'm not sure it — but, I suspect — I thought the APA was 100 feet which means ours is less restrictive. [They are in conformity, the two.] They may not have understood what district it is.

Rick Gilmour: But, with this letter or not you say it is still going to the state?

Chairman Al Kozakiewicz: No, I don't believe so.

David Falvo: If you approved it and the state approved it, would that satisfy all legal requirements?

Chairman Al Kozakiewicz: It probably would except that I don't think we have the authority to approve it because of this. In other words, this is one of those things where you can't ignore the explicit language. There are certain things that are reviewable. The way I read this is this is not.

Lynne Delesky: It is seven feet. That's sizable. Or, set the stairs back into the [speaker was interrupted].

Chairman Al Kozakiewicz: As long as [speaker was interrupted]

David Falvo: I wouldn't be able to use the deck.

Rick Gilmour: Yes, I don't think it would be a good look, myself.

John Mellen: It is hard to fit. And I thought going through this process was going to get the approvals to do that if it changed. That's what I was hoping for.

Chairman Al Kozakiewicz: That's what I would prefer to do, but they way I read this [speaker was interrupted]

Peter Kiernan: Are stairs considered structure?

Chairman Al Kozakiewicz: Yes.

Chairman Al Kozakiewicz: What I see here are sketches. There's absolutely nothing wrong with that. I also don't want to prolong this process. I think the simplest thing for you — who knows? — these guys [ZBA] maybe going to rip you to shreds and feed you to the wolves after we're done, but I would like you to be able to do what we can do tonight and you can go on your way and there's

enough freedom if there's any question so that you don't have to come back before the board. It's not productive for you or anyone doing work for you. And there's nothing wrong with the sketch. The thing is: how accurate is the 66 feet? In other words, did you get a surveyor to do that? Did you go out and take a tape measure?

John Mellen: Did a laser measure from the high water mark.

Chairman Al Kozakiewicz: The way I read this drawing was that it was 66 feet from the high water line to somewhere in the middle of the stairs.

Peter Kiernan: Front edge of the stairs.

Lynne Delesky: So, does the line go to the bottom of the stairs?

Chairman Al Kozakiewicz: No. Where you are is the front edge of the deck is 71 feet from the high water mark. Because the stairs are five feet in depth.

John Mellen: So, the fairest thing we could do is either change the stairs or give us the Zoning Board of Appeals.

Kim Hart: Well, the deck too, though. Even if you took off the steps, you still wouldn't make it.

Chairman Al Kozakiewicz: My opinion over all, this is a good plan. Again, from the aesthetic and things we are interested in this is a good plan to improve the property. The only issue that we should have with it is the shoreline setback. I'd be willing to walk out of here tonight essentially granting the site plan review with the proviso that the shoreline setback is not violated. I think that's the only option that we have, honestly. Now, that then turns it on to you as to how you want to deal with that and figure it out. I

agree, that doesn't give you a lot of really attractive options. I don't know what else to say.

David Falvo: That's based on the local zoning that you are reading there?

Chairman Al Kozakiewicz: It's Article 9. It's online.

David Falvo: I was going to read it through, the whole section, in case there is something else there that we're missing. I was hoping it would go to a vote.

Chairman Al Kozakiewicz: We can still — and if somebody would make a motion that incorporates that — we may still vote on it with that proviso, which, first of all you've got to get through these guys [Zoning Board of Appeals] and then it kicks it back into your court, as long as you don't violate the limits that we put on the site plan review, you're OK. Whatever you decide to do.

David Falvo: So it comes out to 5 foot 3 inch would be the whole deck and stairs from the front of the house going out. That would be trying to get something that looks good in there would be tough. Let alone, would be functional and safe.

Chairman Al Kozakiewicz: what's there now?

David Falvo: There's existing stairs and it goes to a platform.

Chairman Al Kozakiewicz: There is no deck there now?

David Falvo: No.

Chairman Al Kozakiewicz: Probably — the one thing that would have saved you is if it already encroached on the shoreline restriction, you could always build within that footprint.

David Falvo: It did with the stairs going out and the platform. It is there right now today. We haven't moved it. The stairs are turned upside down, but we haven't moved it.

Rick Gilmour: Do you have a picture of that? Before?

Kim Hart: Is it in this?

Rick Gilmour: I thought it was just the stairs. I didn't see the platform.

David Falvo: It's covered. Those are the existing stairs, flipped. And then, underneath that is the platform. So the stairs came out here, which is off-centered. We measured it was 5 foot 3 inch to the center of that platform. The platform is not big but it's another two feet, maybe, that would be encroaching. That would give you 7 feet 3 inches, maybe 7 and a half. If that would work, we'll measure it, make sure it is exact and stay within that.

Chairman Al Kozakiewicz: You can do that, I don't have an issue with that as far as I'm concerned. I don't know about the rest of you.

Rick Gilmour: I want to see a picture of it on.

Chairman Al Kozakiewicz: What is it? Is it some kind of concrete pad, or something?

David Falvo: It's wood.

Chairman Al Kozakiewicz: It's wood?

David Falvo: Yes.

Chairman Al Kozakiewicz: That's even better. So, it's definitely a structure then.

John Mellen: That is the original steps.

Chairman Al Kozakiewicz: And that platform down below? OK.

Rick Gilmour: So the steps came right off of the house and then there was a platform below?

John Mellen: That's probably around 8 feet from the front of the building.

Lynne Delesky: And, how far out from the house do you think that was from the house to the platform?

John Mellen: Around 8 feet. It still sits there.

Lynn Delesky: 8 feet?

Rick Gilmour: So, what was the stairs and the platform? How much was it then? Total?

Lynne Delesky: 8 feet.

John Mellen: Out from the building? It's around 8 feet.

Rick Gilmour: So then, it's in the footprint then.

Chairman Al Kozakiewicz: Yes.

Chairman Al Kozakiewicz: Well, here — if you want to get all lawyerly, you could say you are increasing the square footage of the non-conformance, but I don't see any language like that that you have to consider that. It just says it will not violate or increase noncompliance with the minimum setback. And, this is not going to increase.

Lynn Delesky: But you still have to do something with the stairs. If you keep the deck 8 feet though, you still have to do something with the stairs.

Chairman Al Kozakiewicz: I know. That's his problem to figure out as far as I'm concerned.

Lynn Delesky: OK.

Chairman Al Kozakiewicz: What I'm saying is: in terms of the room he has to work with, because there was already a structure out there, it is OK for us to say: as long as you don't go any further than that.

Lynne Delesky: 8 feet, you figure out the stairs.

John Mellen: We were kind of thinking of just doing something like that where if this is the driveway down the side, that we'd just turn the stairs and keep that deck — that 8 by 20 feet.

Rick Gilmour: The stairs would come off on the driveway side?

John Mellen: Yes.

Rick Gilmour: And, how far into the driveway, though?

Chairman Al Kozakiewicz: No, it wouldn't.

Rick Gilmour: Set back into the side. I see.

Chairman Al Kozakiewicz: That's kind of nice.

John Mellen: So it doesn't encroach.

Rick Gilmour: I got it.

Chairman Al Kozakiewicz: Would somebody make a motion?

Peter Kiernan: A motion to allow the increase of the existing garage and to replace the existing deck [speaker was interrupted]

Chairman Al Kozakiewicz: Well, the way the motion I think should read — I'll make my own motion. We accept the site plan review as presented under the condition that the deck stays within the shoreline setback conditions that are already in place from the the existing structure.

Rick Gilmour: You want to clean that up or is that good?

Chairman Al Kozakiewicz: Let me put it this way: It will be a two-part motion. I move that we grant the site plan review to David Falvo with the condition that the existing encroachment on the shoreline is not increased.

Lynne Delesky: I'll second it.

Chairman Al Kozakiewicz: Let us vote. Al Kozakiewicz, Yes.

Kim Hart: Yes.

Chairman Al Kozakiewicz: Fred Franko isn't here.  
Mike Voght isn't here.

Peter Kiernan: Yes.

Lynne Delesky: Yes.

Rick Gilmour: Yes.

Chairman Al Kozakiewicz: Motion passes.

Rick Gilmour: I move to adjourn.

The meeting adjourned at 7:32pm.