

Planning Board Meeting

December 1, 2021 Draft Minutes

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

Roll call:

Lynne Delesky — present

Fred Franko — present

Mike Voght — absent

Roderick Gilmour — present

Karen Dutcher — present

Matt Cooper — present

Chair Al Kozakiewicz — present

Attendees: ZBA Chair Douglas Purcell, Code Enforcement Officer Jennifer DeRocker-Blowers, Town Clerk Linda Gilbert, Frank Malagisi.

Chair Al Kozakiewicz said the Planning Board had one item of business and one item for discussion on the agenda tonight. He said the first is to consider an application for a Special Use Permit for a shed from Adam Matthews, who he is assuming is not here, and the other is informal discussion about procedures with the Code Office and with some members of the Zoning Board of Appeals. He asked if all Board members have had a chance to look at the application [[P2021-14 Matthews Special Use Permit](#)]. He then asked if everyone agrees that it is complete.

Fred Franko said he had a question. He said he didn't understand or was not entirely convinced that the shed is correctly located in relationship to the wetlands. He said he could not interpolate from

the survey/engineer drawing to another drawing. He wondered if it needed to be an engineer site drawing.

Chair Al Kozakiewicz said it might become a moot point, depending upon the rest of the discussion. He asked other than that – which might be an item for clarification – is there any other information missing in terms of the application packet? He said he just wanted to say that the application is complete: the clock starts as far as the § 239-m review goes. He said, hearing no objections, so noted. We'll declare it complete.

Chair Al Kozakiewicz said that as far as the Planning Board is concerned, it might become a moot point. He addressed Code Enforcement Officer Jennifer DeRocker-Blowers, saying his understanding is, first of all it is a shed, it is over 100 square feet, therefore it is classified as an [Accessory Structure](#). He said that [Accessory Structure](#), at least the way it is being interpreted by at least some members of the Code Office, if the structure is not over 1,300...

Lynne Delesky said 1,250 square feet.

Rick Gilmour said 1,250 square feet.

Chair Al Kozakiewicz said whatever that numbers is square feet, then it is a plain old [Accessory Structure](#) and it is not allowed because it is not accompanied by a residence. He said that if that's the case, and he is throwing this open to Code Enforcement Officer Jennifer DeRocker-Blowers and the rest of the Planning Board, he does not think the Planning Board should be looking at this application. He said he thought it should go to the Zoning Board of Appeals.

Code Enforcement Officer Jennifer DeRocker-Blowers asked if it was because it was not on there.

Chair Al Kozakiewicz said because it was not allowed.

ZBA Chair Douglas Purcell asked it is not allowed?

Chair Al Kozakiewicz said right.

ZBA Chair Douglas Purcell asked not even with a Special Use Permit?

Chair Al Kozakiewicz said it was allowed along with a residence with a Special Use Permit. He said to ZBA Chair Douglas Purcell, go ahead, jump in, join the lovely conversation.

ZBA Chair Douglas Purcell said he wanted to look at the [definition for an Accessory Structure](#).

Chair Al Kozakiewicz said go ahead.

Rick Gilmour asked if it was a stand-alone [Accessory Structure](#)?

Chair Al Kozakiewicz said yes it was because there is no development on the property at all.

Rick Gilmour said that according to what he was reading [some unknown document], you have the discussion – Planning Board – the Planning Board can allow it only on Special Use Permit.

Chair Al Kozakiewicz said that was proposed, that's not the law now.

Rick Gilmour said right, OK, so what is the law now, if it is not allowed?

Chair Al Kozakiewicz said correct. He said that seems to be the popular interpretation of the Zoning Ordinance, and he reluctantly agrees that is what the Zoning Ordinance says even if he may or may not agree that it makes sense and that is what we want.

ZBA Chair Douglas Purcell said excuse me for a second, then.

Chair Al Kozakiewicz said yes?

ZBA Chair Douglas Purcell read part of the definition of an [Accessory Structure](#):

Any structure or a portion of a main structure customarily incidental and subordinate to a principal land use or development, and that customarily accompanies or is associated with such principal land use or development...

ZBA Chair Douglas Purcell said that “customarily [inaudible]”

Chair Al Kozakiewicz said yes.

ZBA Chair Douglas Purcell said that he did not see anything there that [speaker was interrupted]

Chair Al Kozakiewicz said there was nothing there for it to be subordinate to.

ZBA Chair Douglas Purcell continued reading from the definition of an [Accessory Structure](#):

... including a guest cottage not for rent or hire that is incidental or subordinate to and associated with a single-family dwelling. ...

ZBA Chair Douglas Purcell said that the definition says “customarily” and that it doesn’t say “required”, because by that definition, all the Accessory Structures would end up going to the Zoning Board of Appeals for [speaker was interrupted]

Chair Al Kozakiewicz said no, because he is telling ZBA Chair Douglas Purcell what is the interpretation of literally half the Code Office and half the Planning Board has been so far and that is: structures that would be considered accessory are not so and not allowed if there is no primary structure. He said that actually he is looking for it right now – there is actually some additional information in one of the supplementary regulations – which he is looking for.

Rick Gilmour said he thought that’s what the Planning Board would like to see. He said he was under the impression that wasn’t the case up to this point.

ZBA Chair Douglas Purcell said that he would agree with [inaudible] just said.

Chair Al Kozakiewicz continued searching for some information.

Code Enforcement Officer Jennifer DeRocker-Blowers asked Chair Al Kozakiewicz if he was looking for the [definition of Principal Building](#).

Chair Al Kozakiewicz said no, no, no, no, to Code Enforcement Officer Jennifer DeRocker-Blowers and he kept looking.

Chair Al Kozakiewicz asked if anybody knew where the 1,200 square foot [sic]?

Multiple persons answered simultaneously, including Lynne Delesky and ZBA Chair Douglas Purcell.

ZBA Chair Douglas Purcell said yes, it was in the [definition of Principal Building](#).

Lynne Delesky said yes, [paragraph number 9](#).

ZBA Chair Douglas Purcell agreed with Lynne Delesky.

Code Enforcement Officer Jennifer DeRocker-Blowers said that's why she asked Chair Al Kozakiewicz if that's what he was looking for.

Chair Al Kozakiewicz apologized to Code Enforcement Officer Jennifer DeRocker-Blowers.

Code Enforcement Officer Jennifer DeRocker-Blowers asked if Chair Al Kozakiewicz had read her Denial Notice.

Chair Al Kozakiewicz said actually he didn't, because he assumed the denial was because it requires a Special Use Permit. He said that was normally the process. He said that's what it says. He read from [Article 4, § II\(C\)](#) with some additional comments:

Uses Allowed with Special Use Approval (SUP): A use listed in the Use Table as subject to Special Use Permit approval for a given zoning district shall be allowed in that district when approved in accordance with [Article 7](#) hereof, provided all other requirements of this Zoning Ordinance are met.

Chair Al Kozakiewicz said he would circle back to the original question: is a stand-alone [Accessory Structure](#) allowed on the lot or not. He said he was not asking the Planning Board for a determination. He said he was throwing it open to everybody, because he wants to understand if the Planning Board should even

be looking at this application, because if the Planning Board's interpretation is that it is not allowed, it goes there [referring to Zoning Board of Appeals].

ZBA Chair Douglas Purcell said that his reading of the [Use Table \[for Accessory Structure\]](#) is that it is allowed by [Special Use Permit](#).

Rick Gilmour said that was what he thought.

ZBA Chair Douglas Purcell said that actually last night during the interpretation [meeting that the Zoning Board of Appeals had with regard to a couple other applications](#), somebody tried to use the 1,250 square foot criteria for a [Garage](#) and he had said that if there was nothing there, it does not hold by the [definition of a Garage](#), there is no other [Principal Building](#) and if you look at the [definition for Principal Building, the last sentence says](#):

An accessory structure does not constitute a principal building.

Chair Al Kozakiewicz said he doesn't want to hear a bunch of – because he knows the why – but the issue is that if you look under the [definition of Principal Building](#), number 9 says:

Any other structure which exceeds twelve hundred fifty (1250) feet of floor space constitutes one principal building;

Chair Al Kozakiewicz said it was for density purposes [for use by the Adirondack Park Agency] – it is between the lines, but it

doesn't say that there and the Code Office has issued building permits for [Garages](#), using exactly that criteria.

ZBA Chair Douglas Purcell said the Zoning Board of Appeals gave them the interpretation last night that that will not happen in the future – that that is not the correct interpretation, otherwise what... [speaker was interrupted]

Chair Al Kozakiewicz asked but, what is that based on?

ZBA Chair Douglas Purcell said the [last sentence of the definition](#) which says:

An accessory structure does not constitute a principal building.

Chair Al Kozakiewicz said he knows, but it says that if it is over 1,250 square feet it is is a [Principal Building](#), it is not an [Accessory Structure](#).

ZBA Chair Douglas Purcell said no, it does not say that.

Chair Al Kozakiewicz said, well it doesn't say what ZBA Chair Douglas Purcell said.

ZBA Chair Douglas Purcell said yes it does.

Matt Cooper read from the [definition of Principal Building, 9](#):

Any other structure which exceeds twelve hundred fifty (1250) feet of floor space constitutes one principal building;

ZBA Chair Douglas Purcell said that unless it is an [Accessory Structure](#).

Matt Cooper said it doesn't say "unless". He said the next line says an accessory structure.

ZBA Chair Douglas Purcell said the [Zoning Board of Appeals made the interpretation last night and that is exactly what the Zoning Board of Appeals said](#).

Code Enforcement Officer Jennifer DeRocker-Blowers said that she wanted to read her Denial Notice. She said when the Zoning Ordinance was created, it was the intention of all six people who met for three years straight, for two to three hours sometimes twice a month to not allow a garage-type, pole-barn-type structure to be a standalone piece. She said she could take Planning Board members in her car and show them six to eight places that have that, that are a nightmare and if you continue to allow it, you will continue to invite blight.

Several persons spoke simultaneously at this point.

Chair Al Kozakiewicz asked if the Zoning Board of Appeals was the sole arbiter of what the Zoning Ordinance is?

Clerk said [yes](#).

Chair Al Kozakiewicz said OK, he would not waste any more time. He asked where the Planning Board was with this. He then said to ZBA Chair Douglas Purcell that ZBA Chair Douglas Purcell had just said a stand-alone [Accessory Structure](#) was not allowed.

ZBA Chair Douglas Purcell corrected Chair Al Kozakiewicz, saying he had said it was not allowed to be a [Principal Building](#).

Chair Al Kozakiewicz asked, so if there is no [Principal Building](#), can you have an [Accessory Structure](#)?

Several persons spoke simultaneously.

Fred Franko said that it strikes him that the actual use of the term “Accessory”, is by definition meaning something else is there.

Rick Gilmour said, right, Accessory.

Several persons continued to speak simultaneously.

Karen Dutcher said it means living quarters, a [Principal Building](#) is living, so [Accessory Structure](#) ... [speaker was interrupted]

Chair Al Kozakiewicz said, well it isn't necessarily because a [Principal Building](#) in a [Commercial Use](#) area could be a store. He said that in the case of an automobile service building, it actually is a “garage”.

ZBA Chair Douglas Purcell said if that's the way you are going to do it... [speaker was interrupted]

Chair Al Kozakiewicz said he was not trying to dictate a way to do it. He said he is trying to point out there is a major disconnect between how people are viewing the language in the Ordinance. He said he just wants to know: do we get to look at this [application] tonight or don't we get to look at this? He asked is [Accessory Structure](#) that is only allowed with a [Principal Building](#) or not? He said that if the whole purpose of this meeting is to waste time...

Rick Gilmour said easy, easy, easy.

Chair Al Kozakiewicz said then, let's just go home now.

Rick Gilmour said easy.

Chair Al Kozakiewicz said so, are we considering this or not?

Motion: Fred Franko moved to not consider application P2021-14 under the understanding that an [Accessory Structure](#) has to have a [Principal Building](#).

Karen Dutcher seconded the motion.

Chair Al Kozakiewicz said OK, discussion.

Matt Cooper said he agreed.

Fred Franko said he had said it before: the use of the term “accessory” by definition, implies that there is a “primary”.

Chair Al Kozakiewicz said he agreed, “but there seems to be a lot of people who like to play fast and loose with the language in the Ordinance”. He said he agrees, that’s what “accessory” means.

Karen Dutcher said, “I have a pocketbook, that’s my accessory”.

Chair Al Kozakiewicz said yes.

ZBA Chair Douglas Purcell said that in all fairness, this is not unusual, because this is what used to happen under the old zoning ordinance.

Lynne Delesky asked what used to happen under the old zoning ordinance.

ZBA Chair Douglas Purcell said that “if somebody came in with an application for something where there was no other structure, it would get denied, and they would come before us for a [Use Variance](#) and have to explain to us why it was necessary”. He said

a lot of times it was situations like this. He said we [Al Kozakiewicz, James Long, Douglas Purcell, and Scott Horton] in Scott's office [to discuss development of vacant lots].

Chair Al Kozakiewicz said yes, right.

ZBA Chair Douglas Purcell said they would come to the [Zoning] Board and they would say "I want to put up a garage" – "I want to put up a shed" – "I need to have a structure" – that would become an [Accessory Structure](#) because they were going to build a house and the ZBA would say OK, and – as Fred Franko pointed out – we could put criteria on it. We could say yes, we're going to approve it, but we expect to see an application for a [Principal Building](#) within X number of years.

Matt Cooper said the problem is policing it. He said the applicant is going to say whatever they want for us to say go ahead and put it there. He asked who was going to police it. Code Enforcement Officer Jennifer DeRocker-Blowers and Code Enforcement Officer Anthony: they're going to go back six months later, two years later, and say your intent was to do this? It is really hard to undo it. He said to police it on the front side. If the applicant is that serious about it, submit your plans to build your house, have all that done, and we'll say OK, so you have your plans, you put your permit in, now you need this.

Karen Dutcher said the house should come first.

Code Enforcement Officer Jennifer DeRocker-Blowers asked how long the Planning Board wanted to give the applicant to remove the item?

Rick Gilmour asked if it had been put on already. He said he didn't even go to the application site.

Matt Cooper asked why are we even here? This is the problem.

Rick Gilmour said this is happening all the time. This is something that should change.

Code Enforcement Officer Jennifer DeRocker-Blowers said she honestly thinks the applicant will do everything he can to remove it. She said she knows the applicant wants to build there and that's – he looked all over for a property for years – he did an Adirondack Park Agency Jurisdictional Inquiry Form before he bought it.

Matt Cooper said he didn't know why people put stuff on property and then we let them submit an application: the applicant is in violation now.

Code Enforcement Officer Jennifer DeRocker-Blowers said yes he is.

Matt Cooper said not my problem – if the applicant has done all this research then he should have known that he needed to submit the paperwork before he started taking action. He said you don't tell him that the applicant is so smart that they did all this, but then they just sneaked this in and we'll fix it afterwards.

Rick Gilmour said this is constantly happening.

Matt Cooper said he is not disagreeing with that. He said he's not saying it is right. He said it constantly needs to be stopped.

Rick Gilmour said I know.

Karen Dutcher said Caroga Lake is a free-for-all and it always has been that way and its got to be stopped or it is going to be a disgusting mess after a while.

Rick Gilmour said there should be fines for this.

Karen Dutcher said right.

Matt Cooper said that was a whole other ball of wax.

Rick Gilmour said that is the only way you are going to stop it.

Chair Al Kozakiewicz said it was also out of the Planning Board's jurisdiction. He said there's a motion before the Board. He asked is there any further discussion? Shall we have a vote on the motion?

Rick Gilmour said he had a question: if there is a house on another piece of property that is adjoining, that will be an [Accessory Structure](#), then?

Chair Al Kozakiewicz said no.

ZBA Chair Douglas Purcell said no.

Rick Gilmour said, so in other words, an example, his house, he has a pole barn on another lot, across the street.

Several persons spoke simultaneously.

Chair Al Kozakiewicz said it would not be allowed under...

Code Enforcement Officer Jennifer DeRocker-Blowers asked if Rick Gilmour received a separate tax bill.

Rick Gilmour said yes. He said if you own a piece of property on the other side of the road, and it has a house on it, you can't put up a garage or pole barn or accessory structure on it?

Code Enforcement Officer Jennifer DeRocker-Blowers said you can combine your lots.

ZBA Chair Douglas Purcell said that was exactly what the ZBA told the Jubar's for theirs because he knew if they came here for a garage on the property they obtained from the Deleskys without combining the lots, they would be right were we are right now.

Lynne Delesky said that's what they did.

ZBA Chair Douglas Purcell said that's exactly what they did.

Lynne Delesky said that's what other people have done.

ZBA Chair Douglas Purcell said yes, and need to do.

Lynne Delesky said right, absolutely.

Chair Al Kozakiewicz said he is not sure he agrees with that because basically the combination of properties is a one-way ratchet. He said the way most of the zoning districts are dimensioned is the lots that are in them don't meet it, so once you combine them, you can't separate them. Which, when it happens in the Delesky's back forty, that's not a major loss. He said if it happens in the Town Center, that's a big deal because that cuts off potential for development.

Matt Cooper said the flip side of this is that if you look at the Avenues, and you have these houses that cannot support a family, but you could buy it, tear it down, and put a little skinny place, or you could buy two of them and put a nicer piece of property that supports a family, which then supports the school system and the community and that makes perfect sense for growing the town in the right direction.

Karen Dutcher said a garage is not going to grow a town.

Chair Al Kozakiewicz said he was sorry to diverge. He said he wanted to get back to – why don't you call a roll call vote?

Lynne Delesky asked what the motion was.

Chair Al Kozakiewicz said the motion was made to essentially kick this to the Zoning Board of Appeals, in other words, the Planning Board is determining that the application is not appropriate under the [Special Use Permit section of the Zoning Ordinance](#).

Roll call vote:

Lynne Delesky — yes

Fred Franko — yes

Roderick Gilmour — no

Karen Dutcher — yes

Matt Cooper — yes

Chair Al Kozakiewicz — yes

Town Clerk Linda Gilbert interjected about putting a time frame in the motion about the structure being removed.

Chair Al Kozakiewicz explained to Town Clerk Linda Gilbert that the Planning Board isn't even considering the application – that's up to the Zoning Board of Appeals.

ZBA Chair Douglas Purcell corrected Chair Al Kozakiewicz, saying it was Codes.

Matt Cooper also corrected the Chair and said it was Codes. He said bottom line it is Codes. He said there is an illegal structure on the property.

Chair Al Kozakiewicz said yes, that's Enforcement and that's not Planning Board's department. He apologized for misunderstanding. He said that concludes the formal part of the meeting.

The Public Hearing on [P2021-14](#) concluded at 7:25pm.

Chair Al Kozakiewicz said the remainder of the discussion is between Code Enforcement Officer Jennifer DeRocker-Blowers and the two Zoning Board of Appeals members and the Planning Board regarding procedures.

Jennifer DeRocker-Blowers said she thinks that many people don't understand the process. She mentioned the [Adirondack Park Agency land use classification area map](#). She recommended Planning Board members come in to the Code Office to discuss the process.

Clerk mentioned the Adirondack Park Agency [Hotaling Table](#).

Jennifer DeRocker-Blowers said she would add the [Hotaling Table](#) items to information she conveys to the Planning Board and ZBA.

ZBA Chair Douglas Purcell spoke. He said he sent a lot of information of nonconforming and noncomplying lots. He said he wanted to avoid what happened with the [Putman subdivision](#). He said he thought everyone was in agreement: we don't want noncomplying lots. He read from the [definition of Lot Width](#):

The distance between side lot lines measured parallel to the front lot line at a distance from the front lot line equal to the front yard specified for the district. For purposes of new building construction and in the case the lot width as

measured above is substandard and in the case all other dimensional requirements of the lot as prescribed by this Article are satisfied, the lot width shall be measured at a length defined as parallel to and 15 feet from the face of the proposed structure as it is oriented to the front lot line.

Discussion of [Putman](#) subdivision and [Lot Width](#) followed.

ZBA Chair Douglas Purcell's position was that if the lot was empty and there was no building plan, the first part of the definition governs.

Chair Al Kozakiewicz resisted this, by suggesting a hypothetical structure.

ZBA Chair Douglas Purcell cited [Chaplinski \[minutes\]](#) Area Variance.

No consensus was reached, although it appeared that a majority of the Planning Board members agreed that flag-pole lots were allowed and should not require an Area Variance.

ZBA Chair Douglas Purcell brought up the topic of [Bulk](#).

Chair Al Kozakiewicz said to call Fulton County Planning Department's Scott Henze.

ZBA Chair Douglas Purcell brought up the topic of [required documents for Building Permit applications](#).

Chair Al Kozakiewicz said he recommended a Code Office checklist.

ZBA Chair Douglas Purcell reiterated that some of the [twelve items](#) were not always required, but they are required by the Zoning Ordinance.

Discussion included missing engineered sanitation that was discussed on [Z2021-10](#).

Motion: Fred Franko moved to adjourn.

Rick Gilmour seconded the motion.

All were in favor. None were opposed.

The meeting adjourned at 8:09pm.