

# **Zoning Board of Appeals June 29, 2021 Minutes**

Chair Douglas Purcell opened the public hearing at 7:00pm.

Members of the public in attendance: Lynn Garski.

Chair Douglas Purcell announced that the meeting would be recorded.

Chair Douglas Purcell asked for a roll call.

Chair Douglas Purcell: Present.

Frank Malagisi: Present.

Kathleen Ellerby: Present.

John Byrnes: Absent.

Kenneth Coirin: Present.

Quorum was established.

Chair Douglas Purcell said that just for the record, this meeting is being recorded to help with the minutes. He thanked everyone for being flexible with regard to the rescinding of Executive Order 202 through 202.111. He spoke about a series of emails questioning the ZBA's ability to have this meeting today without further public notice. He said there was an opinion offered by the Committee on Open Government that the ZBA should have notified the public of this meeting. He noted that it was an opinion: they state right in their opinion that they are not a legal authority. He said he had attended a training course offered by the New York State Department of State specifically about Open

Meeting Law. He said that during that training session, a slide was presented about adjournment and continuation which he read:

If prior to ADJOURNING, board ANNOUNCES time and place of continuing session, then public notice need not be given again.

Chair Douglas Purcell said that is the means by which the ZBA is having tonight's meeting. He said the ZBA Clerk had published the meeting minutes of June 16, 2021 to the web previously. He asked if there were changes or corrections to the minutes from that meeting. Hearing none, he moved to waive the reading of the minutes and to approve the June 16, 2021 minutes as published. Kathleen Ellerby seconded the motion. All were in favor. None were opposed.

Chair Douglas Purcell said that at this time the ZBA would return to session of the application [Z2021-04](#) by Lynn Garski for the property located at 621 South Shore East Caroga Road and identified as parcel [83.13-7-5](#). He said the property owner proposes to build a 14 foot by 24 foot garage. He said the applicant is seeking relief on lot coverage and side yard setback. The proposed structure will exceed the allowed lot coverage of 1,127 square feet by 333 square feet and is 3 feet 4 inches within the allowed 13 feet 4 inch side yard setback. He said that at that time, further discussion was tabled on June 16 due to discrepancies in the application documentation regarding the dimensions of the proposed structure. He said that as the applicant and the public were allowed to discuss with the ZBA during the June 16 open hearing, he asked whether or not the secretary had received any further correspondence regarding the application. There was none. He said the ZBA would return to the closed session to discuss.

Chair Douglas Purcell advised the ZBA that he and the applicant had an *ex parte* communication concerning the area coverage overage figure discussed during the meeting of June 16. He said that during the discussion, he recalled that he had advised John Byrnes that the overage was 30%. He reviewed the arithmetic, saying 30% was the overage represented by the 333 square feet overage divided by the 1,127 square feet allowed, which, he said, works out to 29.54%. He said the proposed structure results in a coverage of 12.96%. He noted that the application approved in 2020 granted a variance of 12.17%. He said that the current proposal is increasing the coverage an additional 0.8 percentage points. He said that in a separate communication with the applicant when he was changing the meeting from virtual to in person, he discussed the materials that would be used for the base of the structure, as the elevation diagrams were not from grade as requested and it needed to be on the record that the structure would be on a concrete pad or stone essentially at grade. He asked the applicant to address that concern so that it would be on the record.

Lynn Garski said it would either a concrete pad or crushed stone on grade.

Chair Douglas Purcell asked if anyone on the board had any other concerns.

Kenneth Coirin said he did not have any concerns, once the ZBA determined the application was actually for 14 foot by 24 foot.

Frank Malagisi said he was satisfied

Kathleen Ellerby said she was fine.

Chair Douglas Purcell said the next step was to review the Short Environmental Assessment Form. He said the SEQR determination would fall into a Type II action and he quoted from [N.Y. Comp. Codes R. & Regs. tit. 6 § 617.5\(c\)\(9\)](#):

construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities;

Chair Douglas Purcell said this means this is a negative SEQR determination. He said there being no additional questions or comments and with a no significant adverse determination by the Zoning Board of Appeals during the SEQR review, the Board will review the criteria for an area variance. He read from the [Zoning Ordinance Article 11, § II\(3\)\(a\)\(2\)\(ii\)](#).

In making its determination, on an area variance application the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the ZBA shall also consider:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

Kenneth Coirin said no.

Frank Malagisi said no.

Kathleen Ellerby said no.

Chair Douglas Purcell agreed.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

Kenneth Coirin said no.

Frank Malagisi said no.

Kathleen Ellerby said no.

Chair Douglas Purcell agreed.

3. Whether the requested area variance is substantial;

Kenneth Coirin said not that much more than previously approved, so he was fine with it.

Frank Malagisi said no.

Kathleen Ellerby said no.

Chair Douglas Purcell agreed.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

Kenneth Coirin said no.

Frank Malagisi said no.

Kathleen Ellerby said no.

Chair Douglas Purcell agreed.

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.

Kenneth Coirin said no.

Frank Malagisi said no.

Kathleen Ellerby said no.

Chair Douglas Purcell agreed.

Chair Douglas Purcell quoted from the [Zoning Ordinance Article 11, § II\(3\)\(a\)\(2\)\(iii\)](#).

The ZBA, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Chair Douglas Purcell said he would entertain a motion.

Kenneth Coirin moved to approve [Z2021-04](#).

Frank Malagisi seconded the motion.

Roll call vote:

Chair Douglas Purcell: yes.

Frank Malagisi: yes.

Kenneth Coirin: yes.

Kathleen Ellerby: yes.

Chair Douglas Purcell said the variance has been granted and will be referred by the ZBA to the Adirondack Park Agency. He said the APA has 30 days after receiving a complete referral to reverse the variance and if it is not reversed by the APA, Code Enforcement will notify the applicant, at which time the building plans will be reviewed and a determination made as to whether to issue a building permit. He said the ZBA clerk would submit the package to the APA.

Chair Douglas Purcell asked if there was any other business to be brought before the board.

There was none.

Frank Malagisi moved to adjourn.

Kathleen Ellerby seconded the motion.

All were in favor. None were opposed.

The meeting adjourned at 7:14pm.

Respectfully submitted  
James McMartin Long  
Town of Caroga Town Board Member,  
Zoning Board of Appeals Clerk/Secretary