

Zoning Board of Appeals September 7, 2021 Minutes

Quick links to applications within these minutes:

- [Z2021-05 Smith](#)
- [Z2021-06 Eldred](#)
- [Z2021-07 Franz](#)
- [Z2021-08 Macek](#)

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

Members of the public in attendance: Kathy Powell, Stephen M. Smith, Brian Franz, Lane Franz, Kristin Franz, Penny Macek, Peter Macek, Elayne Ireland, Code Officer Jennifer DeRocker-Blowers.

Chair Douglas Purcell announced that for the ease in publishing the minutes for tonight's meeting, this session is being recorded.

Chair Douglas Purcell asked for a roll call.

Chair Douglas Purcell: Present.

Frank Malagisi: Present.

Kathleen Ellerby: Present.

John Byrnes: Present.

Kenneth Coirin: Present.

Quorum was established.

Chair Douglas Purcell said the meeting minutes of the June 29, 2021 meeting were published to the web previously. He asked if

there were any changes or corrections to the minutes. He said that, hearing none and seeing none, he moved to waive the reading of the minutes and accept the minutes as published.

Kathleen Ellerby seconded the motion.

All were in favor. None were opposed.

Chair Douglas Purcell continued, saying there were four applications before the board. He said each would be two parts for each application: a public session and a closed session. He said that during the first part the board would hear from the applicant and entertain comments from the public and hear any correspondence. He reminded those in attendance to address comments to the board. He said that during the open session the board would refrain from questions or comments: the board would do that during the closed session. He said once all parties have an opportunity to speak concerning the application, the board will then go into closed session. He said the applications would be heard and reviewed in the order in which they were received.

Chair Douglas Purcell said that at this time the board would hear application [Z2021-05](#) by Stephen M. Smith for the property located at 152 Sand Point Road and identified as parcel [SBL#52.20-1-1](#), He said the property owner proposes to build a 26 by 32 foot garage, replacing an 8 by 10 foot shed. He said the applicant is seeking relief for side yard setback. He said the proposed structure is 10 foot within the allowed 20 foot side yard setback. He asked the applicant to present the application and justification.

Stephen M. Smith said he was looking to build a garage where the existing shed is on his driveway. He said it was a floor and a half structure. He said the current shed is twenty feet from the Marder

property to east. He would like to tuck the proposed structure back ten feet further. He said the proposal would mean taking down two fewer trees.

Chair Douglas Purcell asked if anyone in the audience wished to speak to the application. He asked the clerk about correspondence.

Stephen M. Smith said there were letters from Maider and Fenoy. He said he'd walked the property boundary with Dick Maider, who was fully supportive, as was Fenoy.

Chair Douglas Purcell asked the clerk to reference the letters in the minutes. He then closed the open session.

The two neighbor letters appear below.

Date: Tue, 27 Jul 2021 08:04:56 -0400 [08:04:56 EDT]

From: Andy Fenoy

To: james@jameslong.com

Subject: Steve Smith's Canada Lake Neighbor

Good Morning James,

I am writing to you on behalf of my family's home at 156 Sandy Point Road (old 156 South Shore Road) on Canada Lake. Our neighbor Steve Smith has emailed us his plans for constructing a garage on his property and we are fine with his proposal. Many thanks.

Best,

Andy Fenoy

Date: Mon, 26 Jul 2021 20:33:07 -0400 [20:33:07 EDT]
From: Dick Maider
To: Steve Smith
Cc: james@jameslong.com
Subject: Re: Quick email

Hi Steve-Thanks for sending the survey with the garage footprint.

We are fine with the proposal that the garage will be no closer than 10 feet from the property line.

I have cc'd Mr. Long at your request.

If he needs any additional information, my cell number is [redacted]. Of course, he can email me as well.

My sister Laura Dolan and her husband Gerry are aware of your request and consent as well.

We will be at the Lake this weekend if you want to discuss further.

Enjoy your week off. Best. Dick Maider

Open session closed at 7:04pm.

Chair Douglas Purcell asked the board if they had any questions or concerns.

Frank Malagisi asked where the survey line east. He said he found the east boundary marker near the shoreline. He asked where the south boundary marker was.

Stephen M. Smith said that the rod splits his driveway.

Frank Malagisi asked where the National Grid pole was relative to the boundary.

Stephen M. Smith said the poles were fully on the Maider property. He said the line at the top (south end) splits the driveway and goes straight down to the water. He said he planned to have Ferguson and Foss (surveyors) to flag the line to make sure the structure is ten feet from the line. He said he has not done that yet, but would do so before construction.

Frank Malagisi asked if Foss would flag prior to building.

Stephen M. Smith answered yes.

Kathleen Ellerby said she noticed that the building permit application was approved July 2, 2021 and then the Denial Notice came out on July 9, 2021. She said that confused her.

Kenneth Coirin said he also was.

Stephen M. Smith explained he first did not ask for a variance in locating the structure. He said he later realized he wanted to tuck the structure back in to the east.

Kathleen said the survey says “due to lack of information”. She asked if the property line is what is shaded or is it the lines that go straight down.

Stephen M. Smith said it was the lines that go straight down.

Kathleen Ellerby said if part of the driveway was on the neighbors property.

Stephen M. Smith said that was correct.

Kathleen Ellerby asked if there was any way to put the garage where the existing shed is.

He said he could, but he would have to remove two large maple trees. He said he was trying to limit the number of trees that would come down.

Kenneth Coirin had no questions.

John Byrnes asked about which trees. He thought if the applicant pushed the garage back, the applicant would be taking more trees out.

Stephen M. Smith said there was a huge tree by his generator that he does not want to take down, because it holds the bank. He said the maple tree to the left comes down. He said that to excavate for the slab, he would hit the birch and the two beech trees anyway. He said the two trees on the north side he would not have to touch at all or cause any root damage. He said he would be cutting a birch, a maple, and two small beech trees.

Chair Douglas Purcell asked if there were any other questions. There were none. He said all his questions have already been covered. He said he would go into the SEQRA determination. He asked the board members if they have reviewed the submitted SEAF part 1. He said after reading it, he came to the conclusion that 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 would mean a negative SEQR determination. He asked the board if they agreed with his negative declaration.

All board members were in agreement.

Chair Douglas Purcell 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.

Chair Douglas Purcell and the other board members 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;

All said no except Chair Douglas Purcell said applicant could put it where the applicant originally said, but the applicant gave reasons and justification why he doesn't.

John Byrnes agreed.

3. Whether the requested area variance is substantial;

All said no.

Chair Douglas Purcell said it was right on the border of what he would call "substantial" being 50 percent, but he agreed as well.

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

All 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.

All said no.

Chair Douglas Purcell said that in that case, he would entertain a motion.

Motion: Kenneth Coirin moved to approve application [Z2021-05](#).

Frank Malagisi seconded the motion.

Chair Douglas Purcell offered an amendment that construction not begin until property line is marked.

Frank Malagisi, Kenneth Coirin, and the other board members agreed to the amendment.

Roll call vote:

Chair Douglas Purcell: yes.

Frank Malagisi: yes.

Kenneth Coirin: yes.

Kathleen Ellerby: yes.

John Byrnes: yes.

Chair Douglas Purcell said the board had a unanimous decision. He said the application would be referred to the APA and the APA has 30 days after it receives a complete referral to reverse the granting of the variance. He said if the decision was not reversed by the APA, the Caroga Code Enforcement Office will notify the applicant and the building plans would be reviewed and a determination made as to whether to issue a building permit.

Stephen M. Smith thanked the Chair and the Board.

Chair Douglas Purcell said that at this time the board was scheduled to hear application [Z2021-06](#) by Timothy Eldred for the property located at Point Breeze Road, [SBL#52.14-2-12](#). He said property owner proposed to build a 10-foot by 20-foot boat garage. He said the applicant was seeking relief from side setback. The proposed structure would be 13 foot 4 inch within the 13 foot 4 inch side yard setback. He said that prior to the meeting, he received a phone call from the clerk who had received a phone call from the applicant. He said the applicant has asked to postpone the application. He said that since the ZBA had announced this as a public hearing and since he understands that there is someone who wishes to speak to the application, he would entertain those comments.

John Byrnes asked if the ZBA knows why the applicant asked to postpone.

Chair Douglas Purcell said the applicant wants to speak to a neighbor who has some concerns and address those concerns before the applicant presents the application to the ZBA.

Kathy Powell said that the drawings the applicant submitted don't agree with what is there. She said that the buildings were listed as 10x20 instead of 20x20 as they actually were. She said the SBL numbers don't make sense. She said she walked all over, trying to figure exactly where it was, based the few buildings that have names on them. She said she was trying to figure out which one was owned by Corsi. She said she did finally figure that out. She said she has no objection.

Chair Douglas Purcell said the documents submitted leave a little bit to be desired.

Kathy Powell agreed. She said it would be nice if the application was a little more clear. She wants to make sure it doesn't impinge on the road.

Chair Douglas Purcell said, yes, it was pretty close and that was one of the concerns.

Chair asked if anyone else who wanted to speak to the application. There was not. He then tabled the application.

Clerk confirmed with Chair Douglas Purcell that neighbor notices would again be required.

Chair Douglas Purcell said the board would hear application [Z2021-07](#) by Brian Franz for a property at 272 Sand Point Road and identified as [SBL#52.19-1-7](#). The applicant proposes to demolish the existing structure having a 1520 square foot footprint and replace it with a 1779 square foot footprint structure. He said both existing and proposed structures are within the 75 shoreline setback. He said the applicant is seeking relief for shoreline setback. He said that additionally there is an increase in bulk within the shoreline setback. He said it is 13.9 feet within the allowed 20 foot setback but is is a nonconforming lot, so the applicant is allowed 13.3 foot for the setback, so the proposal is in compliance with the side yard setback. He asked the applicant to present the application and justification for the proposed project.

Brian Franz said the old camp was a Sears and Roebuck kit circa 1929-1932 that is at the end the of its useful life. The environment is too harsh. The rafters and the roof are 2x4 on 24 inches on center. He said in today's code, that pitch would be 2x10, 16 inches on center. He said they also have drainage issues causing rot and water entering into the camp. He said it is also sliding towards the lake. He said that lastly, there are three bedrooms

upstairs, but no bathroom. He said that was the old camp. He continued, saying he would like to rebuild, to age in place and stay close to the original design, footprint, and character. He intends it to be energy efficient and ADA compliant. He said the board could see the old camp inside the new camp. He said it was no closer to the lake or the sides. He said the design goes back 7 foot 10 inches to accommodate a downstairs bedroom and bath. He said that he would keep the footprint but go back an additional 350 square feet.

Chair Douglas Purcell asked if there was anybody in the audience who wanted to speak to this application.

Elayne Ireland, a direct neighbor, spoke. She said the roof line would be busy from the lake. She said more importantly, there is an active lawsuit. She said the applicant has brought suit against her. She said one of the concerns is the property line and where it lies and that could alter the determination of the setback.

Brian Franz said that for full disclosure, he is suing for among other things, trespassing, building an illegal extension off the roadway, harassment, vandalism, a whole laundry list. He said this was not unexpected that Elayne Ireland would show up at the hearing because if follows suit with everything that has been going on. He said that there is a boundary dispute as well. He said he has taken that into consideration and either way the lawsuit goes, it will not effect the side line because the proposal does not go any closer to the existing line.

Chair Douglas Purcell said the board had correspondence from Elayne Ireland's attorney and he read the letter from Attorney Schur:

From: Ronald Schur <Schurlaw@hotmail.com>
Date: Tue, Sep 7, 2021, 3:29 PM
Subject: Attention Jennifer Blowers Zoning Board of Appeals
To: codes@caroga.town <codes@caroga.town>
Cc: elayne ireland

Please be advised that I represent Elayne Ireland and Odette owners of property contiguous to Brian Franz. It is our understanding there is a hearing at 7:00 p.m. tonight. There is pending Supreme Court litigation regarding boundary lines, access, and easements regarding Mr. Franz and the Irelands. That matter is scheduled for jury trial in March of 2022. The Irelands strongly object to any permit being issued to Mr. Franz as suggested in the notice of hearing. Mr. Franz and his workers would most likely have to trespass on the Ireland's property, and we will not consent to same. Should the reader of this notice have any questions, you can contact me at my law office (518) 661-5001.

Ronald R. Schur, Esq.

Brian Franz said it sounds like Mr. Schur. He said the litigation has no bearing: any objections would be part of the same long-standing harassment. He said there is no legal binding reason that would give the neighbor the right to object to the proposal.

Lane Franz said she has no objection.

Brian Franz said he has legal easements to cross all of the lots.

Chair Douglas Purcell said that since there are no other comments from the audience, he was closing the open session.

The open session ended at 7:31pm.

John Byrnes asked whether the applicant would be trespassing.

Kristin Franz said no.

Brian Franz said no.

Elayne Ireland said the other piece in dispute is the footpath.

Frank Malagisi asked where the footpath was located.

Brian Franz said the footpath was along the shoreline and it runs along the entire South Shore.

Chair Douglas Purcell said he'd used the path many times.

Kenneth Coirin said yes, he had.

Brian Franz said he did not know why the Irelands would be suggesting that workers would be crossing the footpath because they would be coming down the road.

Chair Douglas Purcell said coming down the road.

Elayne Ireland said the footpath was not part of South Shore Trail.

Chair Douglas Purcell said it was hard to tell at some point.

Elayne Ireland said the South Shore Trail starts at the end of South Shore Road [Sand Point Road].

Brian Franz said that was her opinion.

Chair Douglas Purcell said he had probably trespassed many times.

Brian Franz said the Chair was not trespassing. He said it was a public right of way and has been for a hundred years.

Chair Douglas Purcell asked if John Byrnes had a question.

John Byrnes said he had a question about South Shore Trail. He wanted to know if the house is rebuilt, whether the the trail will still be accessible.

Brian Franz said they are very cognizant of the trail and would continue to allow access — by all means they need to allow access to anybody and everybody who wants to use the trail.

Frank Malagisi asked if there was a current survey map with the property.

Brian Franz reminded Frank Malagisi that Frank Malagisi has that survey.

Frank Malagisi asked if all the boundaries are good.

Brian Franz affirmed that.

Elayne Ireland said that was what is in dispute.

Brian Franz said that there was a mistake made that was made years ago and Elayne Ireland discovered the mistake. He said the mistake probably goes back to the 1930's. He said the old line was put in at an unknown time. He said the footpath and part of the driveway cross the line. He said that's in dispute and a court would decide if prescriptive easement rules apply or not, but no structure that is across the disputed boundary.

Chair Douglas Purcell asked if Kathleen Ellerby had any questions.

Kathleen Ellerby said no.

Chair Douglas Purcell asked if Kenneth Coirin had any questions.

Kenneth Coirin said yes, about the contractor. He read “dirt gravel drive”. He asked if the contractor would be staging his equipment there.

Brian Franz said presumably. He said they have to get down to the camp and demolish the existing structure.

Kenneth Coirin asked if the applicant would be creating a roadway.

Brian Franz agreed.

Kirsten said they would have a landscape architect make it work. She said it is not an easy hill to negotiate. She said they want to preserve it as much as possible and improve it.

Chair Douglas Purcell asked Kenneth Coirin if that was all.

Kenneth Coirin said that was all.

Chair Douglas Purcell asked John Byrnes and Frank Malagisi if they had any other issues.

Frank Malagisi said he has a couple concerns. He noted that there is a dispute going on right now. He said if the applicant tears down the camp and the applicant receives an order to stop construction, at that point it is creating a disaster. He said he'd like to see the applicant and the neighbor solve the problem before the construction starts.

Brian Franz said that is entirely probable. He explained that the court date is in March, 2022.

Chair Douglas Purcell said the applicant was not likely to start demolition at this point in the season.

Brian Franz agreed. He said he had another summer to take apart the existing camp to try to recover some items. He said that in all likelihood, he was looking at late 2022 or early 2023 before construction and that was assuming he could find a contractor who is available.

Chair Douglas Purcell asked Frank Malagisi if he had anything else.

Frank Malagisi said no.

Kathleen Ellerby said she agreed with that.

Kristin Franz asked Frank Malagisi why Frank Malagisi conjectured there could be a stop work order.

Frank Malagisi said he was just a thought that came through his mind as he is listening to both parties.

Kristin Franz said the building that is proposed is not being affected by the property line. She said if the litigation goes in favor of the neighbor, then it is still not over the property line as proposed. She said if the litigation goes in favor of the applicant then it still is not over the property line. She said it is within the new property line that is in dispute.

Frank Malagisi said that may be but it was still his opinion.

Chair Douglas Purcell said it was a concern Frank Malagisi is expressing.

Chair Douglas Purcell said he had a few concerns, one is the proximity to the lake. He asked whether from the pictures he has seen of the existing camp, if the existing structure was behind the seawall.

Brian Franz agreed.

Chair Douglas Purcell said the distance is not specified that he could see on the plot of the existing structure. He said he did not see a plot with the new structure on it with setbacks from the lake, setbacks from the side. He said that everything he saw looked like it was referencing the existing camp. He said he saw a lot of floor plans but he did not see a plot that says this is where the camp is going to be, showing the distance to the lake and distance from the side.

[inaudible]

Chair Douglas Purcell said not exactly. He said that was the assumption he was making but it does sit back and it is obvious when he looks at the floor plans, but the submitted drawing is the existing camp.

Brian Franz said they were going to build on the same lines.

Chair Douglas Purcell said that one of the things that was supposed to be submitted for consideration is a plot of the proposal. He said he didn't really see that in what was submitted. He said he could make assumptions, but it would be very helpful to see what the proposed structure is going to look like set on that plot.

Brian Franz said what he could see on G101 is that it shows a distance of 4.4 feet on the enclosed porch to the beginning of the...

Chair Douglas Purcell said that is on the existing.

Brian Franz said still on the retaining wall.

Chair Douglas Purcell said OK.

Brian Franz said that on drawings A101 through A103, the heavy dashed line is the existing structure and the porch is going to be in the exact...

Chair Douglas Purcell said his point is that it is not on the plot.

Brian Franz agreed and said that was curious. He said he had surveyors come out four times.

Chair Douglas Purcell said the applicant was not getting what he was paying for.

Brian Franz agreed and said he'd gone through four surveyors and are looking for a fifth. He said Chair Douglas Purcell was right.

Chair Douglas Purcell said he had the same issue when he came to the side yard. He said he was concerned that the applicant was withing the twenty foot setback but, he realized it was a nonconforming lot because the lot size is supposed to be 2.5 acres. He said the applicant only has one, so therefore the applicant is allowed relief of one third of the setback which makes the side yard setback 13.3 feet. He said because the applicant does not have a plot with the proposed structure on it, he is making the assumption that it doesn't look like it overlaps. He said he doesn't

like to make assumptions because he knows what happens when one does.

Kenneth Coirin said you're not kidding.

Chair Douglas Purcell said that his final concern is that he doesn't really have anything that tells him the height of the existing structure. He said that in order to calculate bulk, he needs to have three dimensions, length, width, and height. He said he made more assumptions that the existing structure is probably no higher than the proposed structure, maybe even a little bit less, but he said he didn't know that. He asked the applicant if the applicant was following him.

Brian Franz said yes.

Chair Douglas Purcell said that he then compared the square footage of the enclosed part of the proposed structure. He said that by his calculations the applicant is proposing to increase the bulk by about 50% within the 75 foot shoreline setback. He said that to his mind this was a pretty significant increase in bulk inside the shoreline setback. He said all he was doing was comparing square footage of the footprint for each of the floors to the square footage of the existing structure. He said that his concern that if the ZBA decides to move forward and approve and then submit this to the APA, it is going to come right back to the ZBA. He said that he makes this prediction based on what has happened to the ZBA several times before and the APA has asked where were the elevations for the existing structure.

Brian Franz said OK, he could certainly get that. He said it was supposed to have been done.

Chair Douglas Purcell said he had these data for the proposed structure but not the existing structure. He said his honest opinion and he's not sure he can convince his colleagues on the ZBA of this, is that the ZBA really has an incomplete application. He said that what he would like to have before the ZBA moves forward is the plot with the proposed structure on it with setbacks and the same thing including elevations from grade for the existing structure.

Brian Franz asked if there is some sort of code that he is not aware of for percentage by which one can expand.

Chair Douglas Purcell said the code says one can not increase the bulk within the 75 foot shoreline setback from the lake without getting an area variance. He said that the area variance that the applicant is requesting is two-fold: the footprint and the increase in the bulk. He said there is no criteria in terms of how big the ZBA will reject. He said that was subjective. He said it was for the five members of the ZBA to decide. He said he may decide that 50% is uncomfortable for himself but the other ZBA members may decide that 50% is not uncomfortable for them and they could approve it. He reiterated that the Zoning Ordinance itself says that you can not increase the bulk within the 75 foot shoreline setback. He said for the applicant to do what he wants to do without any area variance, the applicant would have to build the exact same size camp in the exact same size footprint. He said the applicant is trying to do some of the same things that the Chair did when the Chair moved up to Caroga 15 years ago full time. He said his wife has the applicant beat for knee surgeries by a factor of ten and she wanted to have everything on the first floor. He said that fortunately his camp is well outside the 75-foot shoreline setback and he probably increased his bulk by about 50% and he got everything on the first floor so he can live on the first floor and

family and friends and guests can live on the second floor. He said he understands where the applicant is coming from. He said he sees this application getting submitted to the APA and getting thrown right back in his face. He said he's had that happen with properties right along that shoreline more than once during his tenure on the ZBA.

Brian Franz said he didn't want that.

Chair Douglas Purcell agreed that the applicant would not want that and the Chair does not want that because it makes the ZBA look like it is not doing its job. He said his honest opinion is that the ZBA says to the applicant that the application is incomplete. That gives the ZBA and applicant time to get the rest of data and when ZBA has received the rest of the data, the ZBA would go through it again. He said the applicant and ZBA already have a lot of it taken care of, but then the ZBA can start addressing some of the other concerns.

Brian Franz said that was fine. He said he didn't see any of that on the application. He said otherwise he would have had that.

Chair Douglas Purcell said that he was pretty sure that a lot of that was [spelled out in the Zoning Ordinance in terms of what an applicant should have for a plot plan](#) and he had already been working with Code Enforcement Officer Jennifer DeRocker-Blowers and he had said it really didn't look complete to him but he was aware of the applicant's concern about trying to get the application in while the applicant was still in the area. He recalled saying to himself that if the applicant submitted the elevations, he would go ahead and schedule the hearing. He said he looked at the plot plans, thinking here was the existing and here was the proposed. He said he later realized that one was the existing and

one was the existing blown up so he could see it better. He said he really need to go to reading glasses to read it.

Motion: Chair Douglas Purcell moved to declare that application [Z2021-07](#) is incomplete and that the applicant provide the additional documents that he has already specified: the plot plan with the proposed structure on it as well as elevation showing the elevation of the existing structure and once those are provided, the ZBA would reschedule the hearing. He asked for a second.

Kathleen Ellerby seconded the motion.

Code Enforcement Officer Jennifer DeRocker-Blowers asked if the setbacks for the existing structure were also needed.

Chair Douglas Purcell said he already had the setbacks for the existing structure. He said he was happy with those.

He asked if any board members had anything to discuss.

No board member had anything to discuss.

He said it is better to say it is incomplete.

Chair Douglas Purcell said he did not think he needed a roll call vote for this. He asked for all those in favor.

All board members said Aye.

Chair Douglas Purcell asked for all those opposed.

There were no board members opposed.

Chair Douglas Purcell said he thought this was the smartest way to go based on his experience.

Brian Franz said he would rather do it this way than have it submitted and wait for however long it takes for the APA and then have the APA reject it. He said he would start it again next year, because he is running out of time this year.

Chair Douglas Purcell said that finally the ZBA would hear application [Z2021-08](#) by Bennett, Hefferman, and Macek for a property at 139 Vrooman Road and identified as [SBL#68.17-5-10](#). He said the property owner proposes to build a 33-foot by 40-foot Garage with a Guest Cottage above it. He said the building permit was denied on the basis of the definition of a Guest Cottage. The definition being a residential structure with a single family dwelling and which contains one half or less of the enclosed floor space of the associated single family dwelling or 2000 square feet, whichever is less. He said that the Denial Notice states that the single family dwelling has 1649 square feet of ground coverage. He said that one half of the dwelling coverage would all a Guest Cottage of 824 square feet. He said the property owner is asking for a Guest Cottage of 1320 square feet. He said that typically at this point he would ask the applicant to present the application and justification for the proposed project, however he said he wanted to address two points. He said firstly that this application was presented with a Planning Board application for a Special Use Permit. He noted that as per the Use Table, a Special Use Permit is require for an accessory structure greater that 100 square feet. He said that as the ZBA appeal application points out in the narrative, both the garage and the Guest Cottage are allowed uses by right. He said that therefore there is no action required by the Planning Board. He said he and confirmed this with Code Enforcement Officer Jennifer DeRocker-Blowers who just included it because the applicant submitted it and he had had a discussion with the chairperson of the Planning Board and they are in agreement that the applicant is all set in that the applicant does not have a

problem for a Use. He said that further, he was surprised upon his inspection of the site to review this application where it became apparent to him that the single family dwelling is a two-story structure. He said the enclosed floor space includes both stories. He said he came up with a figure of 2924 square feet, half of which would be 1462 square feet. He said the applicant is asking for 1320 square feet. He said he is therefore recommending that the application be changed from a request for an area variance to a review of a decision by the code officer. He said he had talked to the Code Officer so the Code Officer is not going to be surprised by this. He asked if the applicant is in agreement with these statements and agrees to the change in the proposed application.

Penny Macek said yes.

Chair Douglas Purcell asked if the applicant had any other comments.

Penny Macek asked if that meant it was going back to the Code Officer.

Chair Douglas Purcell said that if the other four ZBA members agree with everything he has said and the ZBA makes the motion then yes.

Penny Macek asked if it goes back to the Code Officer then is it just the approval of the plans.

Kenneth Coirin asked if it still had to go to the APA.

Chair Douglas Purcell said not if it was changed from an Area Variance to a review of a decision. He said Kenneth Coirin had raised a good point, nevertheless.

Chair Douglas Purcell explained that the ZBA was meeting as a board to review the decision of the Code Officer. He said he could be wrong about how he is interpreting the definition and how he is interpreting the measurements. He said he wants to make sure that at least the majority of the ZBA agree with his interpretation. He asked if there were any other comments. There were none. He asked if there was any correspondence. There was none. He closed the open session of the application.

Open session closed at 7:54pm.

Chair Douglas Purcell asked the board if they were in agreement with his interpretation.

All ZBA members said yes.

Kathleen Ellerby said that online it says 33 by 40 foot garage and on the building permit it says 44 by 30 and she wanted to know which is correct.

Penny Macek said 44 by 30.

Chair Douglas Purcell said the building permit application has it correct. He asked if anyone had anything else.

No ZBA member had any other issues.

Motion: Chair Douglas Purcell moved that whereas the ZBA interpretation of the Zoning Ordinance of a Guest Cottage includes the enclosed floor space for all floors, not the square footage of the building footprint; and, whereas the single family dwelling for the permit application includes a second floor, making the enclosed floor space closer to 2924 square feet; and, whereas 50% of the enclosed floor space would be 1462 square feet, which is greater than the proposed 1320 square feet of the second floor guest

cottage; therefore be it resolved that the applicant for [Z2021-08](#) resubmit the permit application to the Code Enforcement Officer for the issuance of a building permit as long as all other dimensional standards and building code requirements are met.

Frank Malagisi seconded the motion.

Chair Douglas Purcell said we have a second and he asked if there was any discussion.

There was no discussion.

Chair Douglas Purcell said a “yes” vote means that the ZBA is going to say that the Code Enforcement Officer made a mistake in their interpretation and calculation and have this application resubmitted to the Code Enforcement Officer for final review. He said a “no” vote means the ZBA has to go back and look at it from an Area Variance standpoint. He asked for a roll call vote.

Roll call vote:

Frank Malagisi: yes.

Kathleen Ellerby: yes.

Kenneth Coirin: yes.

Chair Douglas Purcell: yes.

John Byrnes: yes.

Chair Douglas Purcell said the Clerk might have to give a Decision Notice except Code Enforcement Officer Jennifer DeRocker-Blowers is here and aware of it.

The Clerk asked Code Enforcement Officer Jennifer DeRocker-Blowers if she would accept oral notification here at this meeting.

Code Enforcement Officer Jennifer DeRocker-Blowers said yes, though she thought she might need help with the numbers.

Chair Douglas Purcell said he would help with the numbers.

Chair Douglas Purcell thanked the applicants.

Chair Douglas Purcell said he had two other pieces of business. He said the Planning board approved a subdivision May 13, 2021 for a property around Washington Square. He said he wrote a letter once the minutes were published and said he could not believe they approved this. He said in his letter his interpretation is that the parcel is a nonconforming lot. He said in his letter that the Planning Board does not have the power to grant a subdivision and create a nonconforming property. He said he wanted to wait until he saw the minutes because he wanted to see the justification for what they did and basically it boiled down to the definition of the lot width and he said he quoted chapter and verse and sent the ZBA copies of what it was. He said his definition of what is the front yard setback and he recalled using that definition when the ZBA adjudicated Kenneth Coirin's garage application to determine that Kenneth Coirin actually had a nonconforming lot. He said he did it because instead of going from the road back 25 feet, he went 15 feet in front of the building, which is what the definition says. He said the emails went back and forth for almost a week. He said that on July 7, 2021 there were attempts by the Planning Board members to reopen the application for further discussion but those attempts were thwarted by Planning Board Chair Al Kozakiewicz. He said there was additional discussion on the Planning Board meeting on July 27, 2021 and again Planning Board Chair Al Kozakiewicz thwarted the discussion and it was

basically “we’ve made our decision and we’re going forward”. He said the plat was finally signed on August 30, 2021 and he believes it has been submitted to the Fulton County. He said he wanted to start with whether or not the rest of the ZBA feels as he does that the Planning Board did indeed create a nonconforming lot in violation of the current Zoning Ordinance.

All ZBA members nodded in agreement.

Chair Douglas Purcell said he sees nods.

The Zoning Board of Appeals discussed the history of that application.

Frank Malagisi suggested that the ZBA write a letter to the Planning Board.

It was proposed that the purpose of the letter would be to try to reach a consensus with the Planning Board in an effort to prevent the future creation of a non-conforming lot in the future.

Frank Malagisi said that when the ZBA writes the letter, all ZBA members should sign it.

Kenneth Coirin agreed.

Chair Douglas Purcell said he would draft it, send an email to have the members take a look at it, include any changes by the members, and then come around and have ZBA members sign it.

Motion: Frank Malagisi moved to write a letter to the Planning Board to request an audience to discuss the Putman application and get an understanding of nonconforming lots, creating of nonconforming lots, lot widths, et cetera, to prevent this from

happening in the future. The ZBA Chair will obtain ZBA member signatures prior to submission.

Kathleen Ellerby seconded the motion.

Chair Douglas Purcell asked for a roll call vote.

Roll call vote:

Frank Malagisi: yes.

Kathleen Ellerby: yes.

Kenneth Coirin: yes.

Chair Douglas Purcell: yes.

John Byrnes: yes.

The motion passed.

Motion: Chair Douglas Purcell moved:

Whereas on August 11, 2021, the Town Board passed Resolution #2021-092 directing all boards of the Town of Caroga to use caroga.town as its' source for disseminating information to the residents, taxpayers, and visitors of/to the Town of Caroga; and, whereas the townofcaroga.com website has provided a valuable resource with links to other resources and the sharing of information related to applications pending the Zoning Board of Appeals (ZBA) as well as other government agencies with which the ZBA has business dealings; and, whereas the web hosting services and updates to the website are provided at no expense to the Town of Caroga; Therefore, be it resolved that the Zoning Board of Appeals does hereby authorize and direct the ZBA Clerk to provide copies of

any and all documents associated with the ZBA Appeals for the purpose of posting on the townofcaroga.com website for the specific purpose of providing ease of access for board members and the agencies with associated business of the ZBA.

Frank Malagisi seconded the motion.

Chair Douglas Purcell asked for a roll call vote.

Roll call vote:

Chair Douglas Purcell: yes.

Kenneth Coirin: yes.

John Byrnes: yes.

Kathleen Ellerby: yes.

Frank Malagisi: yes.

Chair Douglas Purcell asked for a motion to adjourn.

Motion: Kenneth Coirin moved to adjourn.

John Byrnes seconded the motion.

All were in favor of adjourning. None were opposed.

The meeting adjourned at 8:31pm.

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