

# Zoning Board of Appeals November 30, 2021 Minutes

Quick links to applications within these minutes:

- [Z2021-10 Code](#)
- [Z2021-09 Burton](#)

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

Members of the public in attendance: Code Enforcement Officer Jennifer DeRocker-Blowers, Town Clerk Linda Gilbert, Falvo family members, Code Enforcement Officer Anthony Fancher.

Chair Douglas Purcell stated for the record that for the ease in publishing the minutes for tonight's meeting, this session is being recorded. He then asked for a roll call.

Chair Douglas Purcell: Present.

Frank Malagisi: Present.

Kathleen Ellerby: Present.

John Byrnes: Present.

Kenneth Coirin: Absent.

Quorum was established.

Chair Douglas Purcell said the meeting minutes of November 17, 2021 were published to the web late Sunday [November 28, 2021]. He asked if the three other Board members had an opportunity to review the draft minutes.

Kathleen Ellerby said yes.

Frank Malagisi said yes.

John Byrnes said yes.

Chair Douglas Purcell said great. He then asked if there were any changes or correction to the minutes.

All Board members said no.

**Motion:** Chair Douglas Purcell said hearing none, he moved to waive the reading of those minutes and approve the minutes as published. He asked for a second.

Kathleen Ellerby seconded the motion.

All were in favor and none were opposed.

Chair Douglas Purcell said the Board had one application for tonight. He said this meeting will be a two-part hearing; a public session and a closed session. He said during the open session, the Board will hear first from the applicant. He said the Board would then entertain comments from the public and hear any correspondence. He reminded those in the audience that the comments should be addressed to the Board only. He said once all parties have had a chance to speak concerning the application, the Board will go into closed session.

Chair Douglas Purcell said that at this time, the Board would hear [Application Z2021-10](#), by Code Enforcement Officer Jennifer DeRocker-Blowers, requesting an interpretation with regard to the granting of permits 2021276 for a 40 foot by 60 foot garage 2021277 and for a 30 foot by 50 foot single-family dwelling on property owned by David Falvo, located at 300 County Highway 111, and identified as parcel [SBL#68.5-2-2](#). He said that at issue is an interpretation regarding [Article 10, § III\(B\)\(1-12\)](#). He said that

before the Board gets started, in his 12 to 13 years of being on the Zoning Board of Appeals, this is certainly the most unique application he has ever seen. He said he believed he had only been present for two interpretations and in both of those interpretations, it was an interpretation of a Denial Notice, not an Approval Notice. He said that before the Board hears from the applicant, he believed the Board should review the rights and responsibilities of the Zoning Board of Appeals. He said that first of all, the act of a town board in adopting a zoning ordinance necessitates the creation and existence of a zoning board of appeals. He read the [definition from the current Zoning Ordinance of the Zoning Board of Appeals](#):

The entity charged with carrying out the requirements delegated to it by this Zoning Ordinance, including but not limited to: interpreting the provisions of the Zoning Ordinance; reviewing actions of the Code Enforcement Officer; and the granting or denial of variances.

Chair Douglas Purcell then read from [Article 11, § II\(A\)\(1\)\(a\)](#):

The ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the Code Enforcement Officer and to that end shall have all the powers of the Code Enforcement Officer from whose order, requirement, decision, interpretation or determination the appeal is taken.

Chair Douglas Purcell said that in terms of interpretations, [Article 11, § II\(A\)\(2\)\(a-b\)](#) say:

- a. The ZBA shall decide all appeals involving the interpretation of any provision of these regulations, including the determination of the exact location of any zoning district boundary, if there is uncertainty with respect thereto, or any other determination made in the administration or application of these regulations.
- b. All interpretations shall be considered and rendered by the ZBA only upon appeal following and based upon a determination made by the Code Enforcement Officer.

Chair Douglas Purcell read [Article 11, § III\(A\)](#) which states who can appeal:

1. Appeals may only be taken by:
  - a. Any person aggrieved by a written decision, determination, order, requirement or interpretation made by the Code Enforcement Officer.
  - b. The Town Code Enforcement Officer or any other officer, department, board or bureau of the Town charged with administering and enforcing the Zoning Ordinance.
2. The determination of whether an applicant is aggrieved shall be determined by the ZBA, after hearing, as part of the appeal process set forth below.

Chair Douglas Purcell then read from [Article 11, § III\(B\)](#):

1. Time to Appeal:

- a. An appeal from an order, requirement, decision, interpretation or determination of the Code Enforcement Officer, shall be taken within 60 days after the filing in the Town Clerk's office of such order, requirement, decision, interpretation or determination of the Code Enforcement Officer.

Chair Douglas Purcell said he had just covered a lot of ground for the Board. He asked if, before the Board heard from the applicant, the Board had any questions or comments with regard to the authority to hear and adjudicate this application.

There were no questions or comments from the Board.

Chair Douglas Purcell said everybody is good — OK. He asked Code Enforcement Officer Jennifer DeRocker-Blowers to present and discuss her application.

Code Enforcement Officer Jennifer DeRocker-Blowers said that as stated in the Denial Notice, [Article 4, § III](#), the Use Table, the first permit application was for a [Garage](#) which was an enclosed [Accessory Structure](#) and the structure does not constitute a [Principal Building](#). She said that was the reason the application was denied when the applicant brought it to the Code Office. She said there is nothing with the application other than what the Board has. She said that as the Board can see, [Article 10, § III\(B\)](#), lists items that someone needs to bring in when submitting their application.

Chair Douglas Purcell said OK.

Code Enforcement Officer Jennifer DeRocker-Blowers said that the problem is many, many other people have spent thousands of dollars getting the proper paperwork to create their property into something that they want it to be — sanitation work, survey work, plans for homes, plans for garages — and there wasn't anything like that with this application.

Chair Douglas Purcell asked whether Code Enforcement Officer Jennifer DeRocker-Blowers is asking for an interpretation of the granting of this application, without all this information being presented.

Code Enforcement Officer Jennifer DeRocker-Blowers agreed.

Chair Douglas Purcell asked if there was anything else that Code Enforcement Officer Jennifer DeRocker-Blowers would like to add.

Code Enforcement Officer Jennifer DeRocker-Blowers said no.

Chair Douglas Purcell asked if there was anyone in the audience who would like to speak, reminding the audience to please address the Board if they have comments they would like to make.

Code Enforcement Officer Anthony Fancher said that the application that was approved has the design plans both for the garage and a sketch plan for the house, along with cross-section. He said he is waiting on plans for sanitation until after the lot is cleared. He said “there are measurements for the wetland markings” from the APA biologist. He said that the proposed house is under 1,500 square feet and does not need an engineer's stamped drawings. He said everything else met qualifications.

Chair Douglas Purcell asked if there was anybody else who would like to speak.

There were no others wanting to speak.

Chair Douglas Purcell asked if there was any correspondence.

Clerk said there was no correspondence.

Chair Douglas Purcell closed the open session for the application at 7:11pm and went into closed session to discuss the application. He said he wanted to first return back to the point he made at the beginning. He said he felt that the applicant has met the criteria for a valid interpretation of the determination made by a code enforcement officer. He said it had been less than 60 days since the permits were approved. He said the Code Enforcement Officer is assigned the duties and responsibilities to enforce the Zoning Ordinance and therefore meets the qualifications for being eligible to appeal. He said he thought, from his perspective, that the Board should be able to proceed to make a determination of an interpretation on the application. He then asked if any Board member had anything they would like to say with regard to that.

Frank Malagisi said he agreed.

Kathleen agreed.

John Byrnes agreed.

Chair Douglas Purcell asked if any Board members had any questions of either of the two parties.

There were no questions at this time.

Chair Douglas Purcell said he would kick it off. He said to Code Enforcement Officer Anthony Fancher that the officer claimed to have had designs for the building but the ZBA had not received them. He said that the ZBA application is supposed to include all of the materials that were presented for the approval of the application. He asked if there were more materials that the ZBA did not see — he agreed that there were plans for a garage but he did not see anything other than a little square drawn on a map for the house.

Code Enforcement Officer Anthony Fancher said it was in the folder for the application.

Code Enforcement Officer Jennifer DeRocker-Blowers asked if that included the sanitation plans.

Chair Douglas Purcell asked even one for the house? He said his question would be do we know if it is less than 35 feet high, because nothing he has seen says that.

Code Enforcement Officer Anthony Fancher said there is a cross-section in the folder for a single-family three-bedroom.

Chair Douglas Purcell asked Code Enforcement Officer Anthony Fancher knowing there were more things to come, why did Code Enforcement Officer Anthony Fancher issue the permit for the house.

Code Enforcement Officer Anthony Fancher said that the garage itself was eligible because it was a [Principal Building](#) based on it being over 1,250 square feet.

Chair Douglas Purcell said no, hold it, hold it right there. He said he had read that section and the last section of the definition of a [Principal Building](#) state very specifically:



An accessory structure does not constitute a principal building.

Chair Douglas Purcell said it is [right in there in the Code](#).

Code Enforcement Officer Anthony Fancher said an accessory structure is considered a principal structure if it is over 1,250 square feet.

Chair Douglas Purcell said no.

Code Enforcement Officer Anthony Fancher claimed there had been precedence on this.

Chair Douglas Purcell said that precedent has not been challenged because, going back to the appeal process, if somebody had brought this to the Zoning Board of Appeals within 60 days of it being done, the Zoning Board of Appeals could have made an interpretation on that, however at the time nobody did. He said that in the past, under the old Zoning Ordinance, garages — accessory structures — were not permitted and came before the Zoning Board of Appeals for a [Use Variance](#). He said the ZBA would discuss it and the ZBA could put criteria on it. He said that when the new Zoning Ordinance went into effect, the Zoning [Use Table changed all that from blank to Special Use Permit](#). He said that as an [Accessory Structure](#) alone without any other [Principal Building](#), it should go to the Planning Board — only speaking as one member, he would try later to get some agreement from his other members here — would go to the Planning Board for a [Special Use Permit](#), where the Planning Board could put criteria on it, with regard to yes we'll give it approval but you've got to put the [Principal Building](#) in place within two to three years, for example, or put money up front so if the applicant doesn't build

the [Principal Building](#) within a certain amount of time, the Town has funds to tear it down if the Town so chooses. He said those are all things that the Planning Board has the power to do. He said he sees some nods of agreement from his fellow Board members, and asked if the ZBA was pretty much all seeing the same thing with regards to: an [Accessory Structure](#) not being 1,250 square feet making it a [Principal Building](#), when it [clearly states](#) an [Accessory Structure](#) can not be a [Principal Building](#)? He said it was as plain as day.

Code Enforcement Officer Anthony Fancher said his interpretation of it, when it calls a Principal Building anything over 1,250 square feet.

Chair Douglas Purcell asked Code Enforcement Officer Anthony Fancher what he would do with that last sentence. He asked how that last sentence applies then.

Code Enforcement Officer Anthony Fancher said you are on to the next line.

Chair Douglas Purcell said no, he was still under the definition of a [Principal Building](#).

Code Enforcement Officer Anthony Fancher said that number 9 states that anything over 1,250 square feet is considered a principal building.

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

Code Enforcement Officer Anthony Fancher said you can't have both. He said you can't have an accessory structure and a principal structure.

Chair Douglas Purcell said that was exactly why it can't be a Principal Building: it is an Accessory Structure.

Code Enforcement Officer Anthony Fancher said he had gone on based on previous Code Enforcement rulings.

Chair Douglas Purcell reiterated: "which have not been brought before the Zoning Board of Appeals for an interpretation". He said the Board would take that part as whatever the Board does here in terms of the interpretation.

Code Enforcement Officer Anthony Fancher said that back to the beginning part of the Chair's first question, to group it all together so that there was a house there, so that the property is set up a house and a garage, an accessory structure, to fit in with the rest of the community is where they went with that and Mr. Falvo agreed to pay for the permit and do the house and the garage at the same time and the only hold-back on any of the planning part or design part of it is there is significant site work to be done and when that gets done in the proper percolation test can be done to establish with the proper septic system for that said house.

Chair Douglas Purcell said OK, that's your justification for approving the permit without all of the other stuff being there.

Code Enforcement Officer Anthony Fancher asked what other stuff would the ZBA be looking for.

Chair Douglas Purcell said survey.

Code Enforcement Officer Anthony Fancher said the applicant has a site plan.

Code Enforcement Officer Jennifer DeRocker-Blowers said that because there are wetlands on the property, in order for the

applicant to put a sanitation system on there, the applicant would have to have a survey, according to the Zoning Ordinance. She said that tomorrow night an applicant before the Planning Board for a Special Use Permit, already has a survey and engineered sanitation system and the applicant is still being sent to the Planning Board for a Special Use Permit.

Code Enforcement Officer Anthony Fancher said the Adirondack Park Agency marked out the wetlands. He said he was physically on site and measured off from that to meet all the requirements that are on the site plan. He said the other measurements come from, as you are facing the property, the left hand property line, which is clearly marked, and the road. He said there were no other boundaries to go from that would dictate needing a survey to mark out what can be marked out plainly that he can physically see to determine that it meets all the setbacks.

Chair Douglas Purcell asked Code Enforcement Officer Anthony Fancher what was submitted to the Adirondack Park Agency for the Jurisdictional Determination: did it include the house or did it just include the garage? He said that it looks like from the dates of the letter, that it was only for the garage, so he would question whether or not the Jurisdictional Determination that was received from the Adirondack Park Agency really covered the entire plan that has now been approved.

Kathleen Ellerby said that what she was reading said construction of new garage and access driveway.

Chair Douglas Purcell said that's what he thought.

Code Enforcement Officer Anthony Fancher said correct. These were submitted on the 29th and were received back on November 2. The permit was not issued until November 5.

Chair Douglas Purcell said that yes but it says that the drawings that were submitted, were submitted back in September.

Code Enforcement Officer Anthony Fancher said of just the garage.

Chair Douglas Purcell said right.

Code Enforcement Officer Anthony Fancher said now added house and after.

Chair Douglas Purcell asked to the Adirondack Park Agency? He said he did not see anything in the Jurisdictional Determination letter that mentions that they received other information.

John Byrnes asked Chair Douglas Purcell if he was asking did the Adirondack Park Agency know where the house was supposed to be?

Chair Douglas Purcell said yes.

[Several persons speaking at once.]

Code Enforcement Officer Anthony Fancher said he did not have a copy of the plan to know if the plan that was submitted to the APA was the same plan that Mr. Falvo submitted to him.

Chair Douglas Purcell said he had a couple questions for both. He said based on the format of the permit numbers, he is going to presume that at least 275 permits have been issued year to date He is asking the question, for each and every application submitted, that the file will contain all the documentation outlined in [Article 10, § III\(B\)\(1-12\)](#), for example he thinks of the second story of the garage by Tor Shekerjian; he thinks of the porch replacement for Gene Centi; he thinks of the accessory structure for the parking of

Tony Russitano's tractor; the replacement deck and gazebo of Mark and Doreen Ford's house; the garage that the Jubar's just came to get an application for. He asked that if he asked to see the files, would he see all of the documentation that's listed in [Article 10, § III\(B\)\(1-12\)](#), or not?

Code Enforcement Officer Jennifer DeRocker-Blowers said she has not seen sanitation; she has not seen a survey.

Chair Douglas Purcell asked if the Code Enforcement Officer Anthony Fancher need to see sanitation if somebody is putting a second story on a house?

Code Enforcement Officer Anthony Fancher said no.

Chair Douglas Purcell asked or a garage?

Code Enforcement Officer Anthony Fancher said no.

Chair Douglas Purcell asked if Code Enforcement Officer Anthony Fancher ask to see sanitation is somebody is just putting an accessory structure across the road?

Code Enforcement Officer Anthony Fancher said no.

Chair Douglas Purcell asked if Code Enforcement Officer Anthony Fancher would ask to see sanitation for somebody tearing down and old deck and replacing it with a deck and a gazebo?

Code Enforcement Officer Anthony Fancher said no.

Chair Douglas Purcell said that was what he thought: that one of the concerns that he has is what is the criteria that determines what is necessary and when?

Code Enforcement Officer Jennifer DeRocker-Blowers said that for the first six or seven years she worked in the Code Office, she never saw a single family dwelling permit issued without engineered sanitation plans — ever.

Chair Douglas Purcell said OK, so what Code Enforcement Officer Jennifer DeRocker-Blowers is saying is that if somebody is putting in a new single-family dwelling, that is when she starts to expect to see that. He said one of the problems that he has is, unlike the language requirements for applications for Planning Board and Zoning Board of Appeals, we have language that [says very specifically \[Article 11, § III\(B\)\(3\)\(b\)\]](#):

The ZBA may waive or add any requirements for an application submission it deems appropriate in order to accomplish the purposes set forth herein.

Chair Douglas Purcell said that for the [Planning Board \[Article 6, § IV\(B\)\]](#):

If the Planning Board finds that any of the information requirements as set forth above are not necessary to conduct an informed review, it may waive such information requirements as it deems appropriate. The Planning Board may grant such waivers on its own initiative or at the written request (that sets forth the specific requirements that are requested to be waived and the reasons for the requested waiver) of an applicant.

Chair Douglas Purcell said that he does not see any similar language when it comes to [building permits](#). He said that in fact, [it basically says](#):

Each Application shall, at a minimum, contain the following information:

Chair Douglas Purcell said that it then lists all 12 items. He said he is not going to go through here reading them, but the [first one on the list](#):

A surveyed plot plan prepared by a New York State licensed land surveyor, showing the actual shape, dimensions, radii, angles and area of the lot which a use is proposed, on which a building is proposed to be constructed, or if an existing building, of the lot on which it is situated as well as the size and location of all proposed new and existing buildings and accessory structures on the lot. The dimensions, in feet, of all sides of the lot shall be provided.

Chair Douglas Purcell said that was the first one there and yet Code Enforcement Officer Anthony Fancher is telling him that the Town does not have that. He said he had not submitted a building permit application request under the new Zoning Ordinance. He said he can tell Code Enforcement Officer Anthony Fancher, under the old ordinance, he never submitted that for a dock permit; he never submitted it for the addition on his house; he never submitted it for the addition he put on his woodshed so he could have covered wood. He said he wishes that ZBA Board Member Kenneth Coirin, because Kenneth Coirin was the only ZBA



member he knows of that submitted [application](#) under the new Zoning Ordinance, but what he is hearing Code Enforcement Officer Anthony Fancher say is that Code Enforcement Officer Anthony Fancher doesn't require this all the time. He said what he is hearing Code Enforcement Officer Jennifer DeRocker-Blowers say is that the simple fact that this is a single-family dwelling is why these requirements should be met. He said that what Code Enforcement Officer Anthony Fancher is saying "I'm going to monitor it and make sure he covers this before all the work is completed".

Code Enforcement Officer Anthony Fancher said that was correct.

Chair Douglas Purcell said that then he gets to the point where the [Zoning Ordinance \[Article 10, § II\(C\)\]](#) says:

No Zoning/Building or Sign Permit shall be issued by the Code Enforcement Officer unless the Code Enforcement Officer has determined that the proposed building, use or sign complies with all provisions of this Ordinance, the NYS Uniform Fire Prevention and Building Code and all other applicable State and local laws, codes, rules and regulations.

Chair Douglas Purcell said that one thing he wanted to point out to Code Enforcement Officer Jennifer DeRocker-Blowers is that she states is that the denial for the building permit for the a [Garage](#), which was not a [Garage](#), because there is no [Principal Building](#), making it therefore an [Accessory Structure](#), would have had to go to the Zoning Board of Appeals for a [Use Variance](#). He said that is not quite true. He said the Zoning Ordinance [Use Table](#) for an LFB said it would be a Special Use Permit. So, during the

discussion with the applicant, where Code Enforcement Officer Jennifer DeRocker-Blowers was telling the applicant that he needed to provide more information, instead of saying it would need a [Use Variance](#), Code Enforcement Officer Jennifer DeRocker-Blowers should have said Special Use Permit. He asked Code Enforcement Officer Jennifer DeRocker-Blowers if she was following his logic. He said he and done a lot of talking.

Frank Malagisi suggested it could go back to Code Enforcement where they can work out the differences.

Chair Douglas Purcell said that it was obvious that that has not happened, which is why Code Enforcement Officer Jennifer DeRocker-Blowers is here asking for an interpretation. He said either all of the list is not required, which he has heard both Code Enforcement Officers say is not true, or the permits were issued prematurely, because the requirements for an application were not met at the time that the application was done. He said that he thought if the ZBA threw it back in Code Enforcement's lap, the town would see this situation repeat down the road. He said he could understand why Mr. Falvo might have been opposed to bringing it to the Zoning Board of Appeals for a [Use Variance](#) knowing how difficult a Use Variance is to achieve approval. He said that Frank Malagisi, Kenneth Coirin, and himself have been through many of these [Use Variances](#) where people want to put up a garage or shed where it is not approved for use and the ZBA says yes, we understand that you want to put up a garage so you can store your tools and everything while you build the house. He said the ZBA did one on Beach Ridge Road, one on Hilley Road, one on London Bridge Road where the applicant did not have sufficient property to put a garage and the applicant wanted to put the garage on another parcel they bought and the ZBA approved it. He said that they do get approved. He said that personally he

thought the permits for the house should never been issued for a single-family dwelling because of the missing pieces. He said that this then means to him that the permit for the garage, which is an Accessory Structure, should not have been approved and should have gone to the Planning Board for a Special Use Permit, for the Planning Board to put whatever criteria or restrictions on, if the Planning Board was going to approve it, thus allowing Mr. Falvo to move forward with building his garage to store tools to put things in until such time as a single-family dwelling would be built and Code Enforcement would have had the documentation for what the septic system was going to be, and how it impacted, if any, the wetlands. He said that is what he thought should have happened. He said that means one has to agree with his interpretation of the definition of a [Principal Building](#), which he wished the last sentence had been at the top instead of at the bottom, because it is very easy to overlook. He said that nevertheless, one can't have a [Garage](#) without a [Principal Building](#), and if one defines an [Accessory Structure](#) and not being able to be a [Principal Building](#), that makes the building an [Accessory Structure](#) and an [Accessory Structure](#) requires a Special Use Permit in Zone LFB.

Kathleen Ellerby said that because of the house, the ZBA has nothing about the dimensions, height, where it is.

Chair Douglas Purcell said that he was taking Code Enforcement Officer Anthony Fancher at his word that information is in the file.

Kathleen Ellerby said the ZBA doesn't have it.

Chair Douglas Purcell said he was not going to sit there and call Code Enforcement Officer Anthony Fancher a liar.

Frank Malagisi agreed.

Kathleen Ellerby said it would have been easier if they'd had it.

Chair Douglas Purcell said the ZBA could walk over and see it when the ZBA is done, but he is not going to ask Code Enforcement Officer Anthony Fancher to go over to the Code Office and prove it to him. He said he understood expediency.

Code Enforcement Officer Anthony Fancher said that the applicant had put up the silt fence that the Adirondack Park Agency required the applicant to do.

Chair Douglas Purcell said to Frank Malagisi his thought was to take no action and turn it back over to Code Enforcement, which means that the right and responsibilities that are defined for the Zoning Board of Appeals in getting this application: in his mind, the ZBA either says go ahead and proceed — the permits were OK — or not, the permits were not OK. He said those were the two options he saw available. He said to take no action puts the two Code Enforcement Officers at a loggerhead that isn't going to be resolved, based on anything he is hearing right now. He asked John Byrnes how he felt.

Frank Malagisi interjected that the ZBA can't rule on the house because the ZBA has nothing to...

Chair Douglas Purcell said the ZBA is not ruling on the house. The ZBA is ruling on whether or not the granting of the permits met the criteria of the Zoning Ordinance. He said the ZBA has nothing before it about an appeal about the garage, nothing before the ZBA about an appeal about the house other than the fact that Code Enforcement Officer Jennifer DeRocker-Blowers feels that the Zoning Ordinance was not followed. He said that clearly, to the letter that is there, it was not. He said that he's already demonstrated that there are many permits that are issued without

all of the information specified in the Zoning Ordinance being presented. He asked true?

Code Enforcement Officer Jennifer DeRocker-Blowers said all of the neighbor's sanitation engineering was submitted with the house and garage plans.

Code Enforcement Officer Anthony Fancher said Code Enforcement Officer Jennifer DeRocker-Blowers was not comparing apples to apples. He said there is no wetlands in range. He said the house plans are no more complete than the house plans of Mr. Falvo. He agreed that the neighbor does have a septic system design.

Chair Douglas Purcell asked other the fact that the permit might have been at issue, without the single-family dwelling, there was really no reason to do the single-family dwelling, was there?

Code Enforcement Officer Anthony Fancher said that it was Mr. Falvo's idea, and he agreed with Mr. Falvo, to put it all together.

Chair Douglas Purcell said that Code Enforcement Officer Anthony Fancher knew at that time that Code Enforcement Officer Jennifer DeRocker-Blowers had already denied the application, so this was a mechanism to get around the denial.

Code Enforcement Officer Anthony Fancher denied this, saying everybody wants a single-family home.

Chair Douglas Purcell said that even though the application lacked a lot of the required information.

Code Enforcement Officer Anthony Fancher said the only information it was lacking was the sanitation. He said that if Mr.

Falvo builds a house and a garage and can not build the septic, Mr. Falvo understands the consequences.

Chair Douglas Purcell asked what the consequences would be.

Code Enforcement Officer Anthony Fancher said he does not get a Certificate of Occupancy.

Frank Malagisi said that at that point the applicant could probably use a holding tank.

Code Enforcement Officer Anthony Fancher said that holding tanks are not allowed on new construction.

Frank Malagisi asked not at all?

Code Enforcement Officer Anthony Fancher said not at all — that's in New York State.

Chair Douglas Purcell said this is why we usually just deal with the Zoning Ordinance.

Code Enforcement Officer Anthony Fancher said one can design a septic system where the water coming out of it one can drink — it is very expensive, but it can be done.

Frank Malagisi asked if that was raised-bed.

Code Enforcement Officer Anthony Fancher said there was raised-bed, ultraviolet lighting systems, filter systems, air filter systems that blow air through, bark systems, many systems that are available.

Frank Malagisi asked if the applicant had drilled a well yet.

Code Enforcement Officer Anthony Fancher said he had not drilled a well yet.

Chair Douglas Purcell said that when the applicant comes to Code Enforcement Officer Anthony Fancher, he would determine that the distances were met.

Code Enforcement Officer Anthony Fancher said the Town of Caroga does not govern the putting in of a well. He said the Department of Health governs that and the only requirement is that it is one hundred feet away from a septic system, unless it is one's own. He said the neighbor's well is already in place.

Frank Malagisi said it seems like the applicant is taking a lot of chances and he would never go the route the applicant has taken — he would want to have his septic planned out with a percolation test before spending all the additional monies to build his structures.

Code Enforcement Officer Anthony Fancher said the difference is the lay of the land between the applicant's side and the neighbor's side. He said the terrain is a little different. He explained the history of the parcel.

John Byrnes said he did not see how Code Enforcement Officer Anthony Fancher could grant a permit without knowing where and if the septic is going in, so he does not think there is enough information to grant the permit in the first place.

Chair Douglas Purcell asked if there was any additional discussion and if not he would try to make a motion and see where the Board goes with it. He turned to the other Board members.

Frank Malagisi said he got the picture.

Kathleen Ellerby said she had nothing further.

**Motion:** Chair Douglas Purcell moved to direct Code Enforcement to revoke permit 2021277 for reevaluation once all requested documentation has been submitted by the applicant and with regard to permit 2021276 he moved to revoke that permit for reevaluation, again once all the requested documentation has been submitted, recognizing that it may not be the same as would be required for a single-family dwelling, but requiring requiring a Special Use Permit from the Planning Board as the original Denial Notice — which was never mailed — correctly identifies that without a [Principal Building](#), the propose building fails to meet the [definition of a Garage](#) and an [Accessory Structure](#) can not be a [Principal Building](#). The Denial Notice is incorrect in stating that a [Use Variance](#) would be required: A [Special Use Permit](#) would be required in zone LFB.

Kathleen Ellerby seconded the motion.

Chair Douglas Purcell said that basically his motion is directing Code Enforcement to revoke those two permits, asking the applicants to submit the proper paperwork including sanitation and whatever might be necessary for the garage, and if they do that the applicant can the petition the Planning Board for a Special use Permit for an [Accessory Structure](#) garage. He said it would be the ZBA's determination that the 1,250 square feet paragraph still does not make a structure a [Principal Building](#), because no [Accessory Structure](#) can constitute a [Principal Building](#), so that would at least give Mr. Falvo the opportunity to get his [Accessory Structure](#) on the property, get permits to get the work done, get his sanitation work done, designed and submitted so the building permit can be issued for the [Principal Building](#).



Frank Malagisi said that if the applicant does move the soils around and the sanitation does change, the applicant could modify that.

Chair Douglas Purcell said that was the advantage of letting them go ahead with the [Accessory Structure](#) by submitting the necessary paperwork to get a Denial Notice, make sure you've really got everything that you want, because in the original Denial Notice, it said it was missing all of this [pointing to a sheet of paper]. He said he was thinking that for an [Accessory Structure](#), the applicant probably needs a little bit more. He said the applicant has a nice diagram of what the building is going to look like. He said it would be nice to have a survey. He said he really did not understand what the problem is in getting a survey. He said he would like to think that the applicant would have a survey and that would take a later discussion, but it gives the applicant an opportunity to otherwise doing it all at once, which Code Enforcement Officer Anthony Fancher said he can't. He said the applicant can't really get the work done until the applicant has got the garage done so the applicant can get in there and clear the rest of the stuff to get the percolation test done.

Code Enforcement Officer Anthony Fancher said once the garage is cleared, the area would incorporate both the house and the garage in the land clearing.

Chair Douglas Purcell said this motion gives the applicant the opportunity to do it either way, but the motion is saying the permits should not have been issued, get the information we need, and there is nothing that says the applicant can't clear the land, and then once Code Office has the information, reissue the permits, if everything that needs to be met is met.

Code Enforcement Officer Anthony Fancher said that once the land is cleared and the applicant has a septic design, the applicant can go for a Special Use Permit or anything else.

Chair Douglas Purcell said correct, if that's the way the applicant wants to go, but the motion is saying is that the permits should not have been issued based on the Zoning Board of Appeals interpretation of the Zoning Ordinance, therefore the Board is directing Code Enforcement to revoke the permits until such time as the information can be presented for Code Enforcement to evaluate and then make a determination as to whether or not to issue the permits again.

John Byrnes said agreed.

Chair Douglas Purcell said so the Board agrees on what the motion is.

Kathleen Ellerby said yes.

Chair Douglas Purcell said Mr. Clerk take a roll call vote please.

Roll call vote:

Chair Douglas Purcell: yes, I agree with the motion to revoke the permits.

Frank Malagisi: yes.

Kathleen Ellerby: yes.

John Byrnes: yes.

Chair Douglas Purcell said you have our interpretation. He said the Board asks you to revoke those permits, talk to Mr. Falvo and ask him to get the land cleared and get the information we want

that is needed, to provide the septic system information, so that you can finally review the permit.

Chair Douglas Purcell the Board has a little bit of other business too tonight. He said that Code Enforcement Officer Jennifer DeRocker-Blowers received the additional documentation from the applicant for [Z2021-09](#) with regard to what the Board asked for at the last meeting [[2021-11-17 minutes](#)] which was a survey and an economic justification. He said he mailed what Code Enforcement Officer Jennifer DeRocker-Blowers sent him that the applicant gave her to all the Board members. He said he did not know whether the Board members have had a chance to see it or review it.

Frank Malagisi said he had seen it.

John Byrnes said he saw it.

Chair Douglas Purcell said he gave Kathleen Ellerby copies.

Clerk said he had not seen any survey.

Chair Douglas Purcell laughed and asked if the Clerk had seen what the Chair had forwarded.

Clerk said yes.

Chair Douglas Purcell said it did not say it was [the requested] survey. He asked the Board if what was sent satisfy what the Board needs. He said that Code Enforcement Officer Jennifer DeRocker-Blowers and Mr. Burton went to the property yesterday and looked at where stakes were. He said he did not know whether cones were supposed to be over all the stakes but he found a cone over one of them and he found the other stake on the front end of

the property. He said he did not go 230 feet back to try and find the other two stakes.

Code Enforcement Officer Jennifer DeRocker-Blowers said three of the posts. He said based on reading the deed properly, and with a compass, facing whatever the deed said, walking out from where the first one they found, it was actually very factual. She said it was amazing to her because the paper was so brittle, it was very real. She said it was everything that the Board has a copy of, said, in the drawing in the beginning and wherever the applicant had said before, it really is a 230 foot square. She said it matches up right with the little road you come it, she thought she was going to get stuck on. She said all the stakes have cones on top so one can see them better.

Chair Douglas Purcell said the second one he found did not have a cone on top of it.

Code Enforcement Officer Jennifer DeRocker-Blowers said the measurement from where the line was, based on going from cone to cone, was almost 26 feet away from the line where his original trailer sat.

Chair Douglas Purcell said to Kathleen Ellerby that she was one of the two Board members who really wanted to have a survey.

Frank Malagisi asked wasn't there a survey available.

Code Enforcement Officer Jennifer DeRocker-Blowers said the Mr. Burton thought his cousin had a survey done, but the cousin said he didn't and can't find anything.

Chair Douglas Purcell said that now the Board almost goes back to the full discussion the Board just had. He said that in the applicant's financial justification, he said he can't afford to have

the survey done, yet the Board just said that number one, have a survey plot plan. He asked if Code Enforcement Officer Jennifer DeRocker-Blowers was going to require the applicant to get a survey.

Code Enforcement Officer Anthony Fancher interjected asking why, if four corner are marked, why would the applicant need to pay for a survey.

Chair Douglas Purcell responded by saying part of the problem is that the original information that the applicant submitted showed the trailer on both parcels.

Code Enforcement Officer Jennifer DeRocker-Blowers said the applicant [drew his cabin](#) and pointed an arrow to it, so that the ZBA understood where it was and the applicant did not realize that the applicant was giving the impression that is where it sat.

Kathleen Ellerby held up the drawing.

Code Enforcement Officer Jennifer DeRocker-Blowers said yes, that was [the drawing](#).

Code Enforcement Officer Anthony Fancher said he was there before the trailer was taken out and walked around it. He said he saw what he thought was the back corner marker behind the trailer and it was twenty some feet, give or take, away from it. He said that at that time he did not know what Timothy Burton's intentions were.

Chair Douglas Purcell said that right now the applicant wished he'd never taken it off.

Code Enforcement Officer Anthony Fancher said correct.

Chair Douglas Purcell said it really created a problem for the applicant. He asked the Board if it was satisfied with what the applicant submitted as satisfying the additional pieces of information the ZBA requires to consider the application and if so, does that put us in a position where we can refer this to the Fulton County Planning Board for § 239-m review?

John Byrnes said for him it does.

Frank Malagisi said that due to the fact that Code Enforcement went up there and found the piping, he is satisfied.

Kathleen Ellerby said they can verify it.

Frank Malagisi said it has been verified.

**Motion:** Chair Douglas Purcell moved to submit the documentation that the ZBA received initially plus the two additional items to the Fulton County Planning Board in hopes that they can get in on their agenda for their December meeting.

Frank Malagisi seconded the motion.

Chair Douglas Purcell said a yes vote will be to authorize this to go to Fulton County Planning Board. Mr. Clerk?

Roll call vote:

Chair Douglas Purcell: yes.

Frank Malagisi: yes.

Kathleen Ellerby: yes.

John Byrnes: yes.

Chair Douglas Purcell said that technically the submission to Fulton County Planning should include the minutes from this meeting as well. He asked if the ZBA wanted to schedule a meeting for the end of December, anticipating that Fulton County Planning Board will take action on it during December, which would mean the 28<sup>th</sup>, 29<sup>th</sup>, or 30<sup>th</sup> or do we wait for Fulton County Planning Board before scheduling? He said Fulton County Planning is scheduled to meet on December 21 and the deadline is December 14, so if the ZBA went really late — December 30 — which is a Thursday.

The Board members agreed to meet December 30, 2021 at 7:00pm.

Chair Douglas Purcell said he only had one other piece of business — maybe two. He said tomorrow is Planning Board meeting where he has been invited to talk about the issue of subdivisions and, very specifically, the interpretation of lot width. He said that to refresh the Board's memory, [Lot Width](#) is:

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.

Chair Douglas Purcell said that his interpretation says that if one has an empty lot and nothing proposed on it, the lot width is

measured whatever the front yard setback is from that front. He said that the interpretation that went into the Putman subdivision was that the applicant could have put a structure in there and it would have been measured from 15 feet from the front. He said his point is that there was no structure there; there was no structure proposed; and in those cases one has to use the front setback and the setback for that zone was 25 feet and 25 feet from the front line — and that was defined as being State Highway 10 — within the narrow portion of that lot. Subsequent to that, he found out that it also abuts Garlock Road, so they probably had a lot width that satisfied the requirements. He asked is Board if he was all wet in his interpretation, or if the lot is empty one has to do that, unless the applicant is proposing? He said he only used that [Lot Width definition](#) once and it was [Kenneth Coirin's garage](#), because his lot width was all over the place, narrow at the front and wide at the back. He asked himself what was the lot width and he found out that using this definition — 15 feet from his Principal Building — was less than standard lot width and he had a nonconforming lot, which gave Kenneth Coirin the one-third allotment to use for his setback and the ZBA took advantage of that when the ZBA considered the application, but in that case, there was a structure already there.

Frank Malagisi said right.

Chair Douglas Purcell asked for confirmation that all ZBA members agreed with his definition.

John Byrnes said yes and asked what definition did the Planning Board use.

Chair Douglas Purcell said that if you look at the minutes of the meeting, they [Planning Board Chair Al Kozakiewicz] [said it was the average](#) and he said [to Planning Board Chair Al Kozakiewicz]



that there is no such thing in the Zoning Ordinance and it was pointed out to them [Planning Board Chair Al Kozakiewicz] that they [Planning Board Chair Al Kozakiewicz] came up with the language that says you can measure it from 15 feet in front of the structure. He said that well, there's no structure there.

[laughter]

Frank Malagisi agreed, there is no structure there.

Chair Douglas Purcell said that the response [from Planning Board Chair Al Kozakiewicz] was, well there could be. He said, well yes, and once it come before the Code Enforcement Officer, if they have that, they can use that, but until such time as they've got an application to put a structure there, they have to consider it empty. He said that's the case he will try to make at tomorrow's [Planning Board] meeting at 7:00pm.

Chair Douglas Purcell said that at this point he considers it water under the bridge. Doug said he is trying to prevent a subsequent occurrence.

Kathleen Ellerby said prevent it from happening again.

Chair Douglas Purcell said that he is of the opinion that probably the [Chaplinski \[minutes\]](#) application which the ZBA has discussed a couple of times, where he discovered what really happened was that Code Enforcement Officer Duesler denied the application. He said that when Code Enforcement Officer Jennifer DeRocker-Blowers approached him [about the Putman subdivision], he looked at the Zoning Ordinance and he said to her that she was the traffic cop, you direct where this thing goes, and according to this, it goes to the Planning Board and the Planning Board is going to look at this and say they can't do anything with it because we have

a nonconforming lot. He said he had no idea that the Planning Board was going to come up with a different definition for [Lot Width](#). He said that perhaps, as a traffic cop, saying this application can go forward — I don't have to send it to either board; this one needs an Area Variance — it goes to the Zoning Board of Appeals; this one needs a Special Use Permit — it goes to the Planning Board; maybe when you get a Subdivision or a Lot Line Amendment, that in your definition in interpreting the Zoning Ordinance, you ask does it meet the dimensional standards for the lot, you say to the applicant 'I'm sorry I can't do anything more with this, you are going to have to send it to the Zoning Board of Appeals for them to do an Area Variance and if they give you an Area Variance, then the Planning Board can determine whether or not to determine whether or not to approve'. He said he does not see anything in the Zoning Ordinance that says that's not the right way to do it. He said he doesn't see anything the Zoning Ordinance that says it is the right way to do it. He said he would like to — and hope — that he can convince the Planning Board that his interpretation is the correct interpretation. He said that unfortunately, as he pointed out at the beginning of this meeting, the ZBA is not in a position to make an interpretation until there has been some sort of action by Code Enforcement and somebody submits an application to the ZBA, for example the case of the garage on State Highway 10 that was probably one of the first cases where the 1,250 square foot interpretation was used. He said that if somebody had made an application to the ZBA within 60 days of that permit being issued — and again, a lot of people spoke to him about it but nobody was willing to make an application and whoever did so would have to be an aggrieved party — they would have to have some reason to be aggrieved by that decision — then the ZBA could have taken this up and been done with it four or five months ago.

Town Clerk Linda Gilbert interjected “my hopes were maybe that the Zoning Board could get clarification on the definitions that the Code Officers are having — and make recommendations to the Town Board that perhaps the ordinance needs to be looked at or recommendations to the Zoning Board [sic] that something needs to be changed.”

Chair Douglas Purcell said we actually tried that and didn’t get very far.

Clerk said it didn’t get very far: it is just sitting.

Chair Douglas Purcell said yes and he would try to bring it up again tomorrow and see where we get and talk very specifically about this. He said fortunately the ZBA has already made an interpretation on this.

Clerk said the interpretation was binding — it was legally binding.

Chair Douglas Purcell said yes.

Town Clerk Linda Gilbert said “but if there are things that need to be changed...”

Chair Douglas Purcell said if the Planning Board doesn’t agree with this Board’s interpretation, that’s something that they can do and he would discuss it with them because again, the Planning Board is doing another Special Use Permit on another Accessory Structure, so it is a good time to bring it up.

Town Clerk Linda Gilbert said she had not received the documents the ZBA had received late yesterday.

Frank Malagisi said to Town Clerk Linda Gilbert to give him her email address and he would forward it to her.

Chair Douglas Purcell said that he can do that too.

Frank Malagisi said OK.

Town Clerk Linda Gilbert objected to the plan to email her saying “but that was not delivery to the Town Clerk’s Office”. She said “It wasn’t part of the file”.

Chair Douglas Purcell responded saying “we’ve made it part of the record now”.

Chair Douglas Purcell said to the Board, and said he would also tell Kenneth Coirin, that if they had any candidates to replace him on the ZBA, it might be worthwhile to speak to the candidate and make a recommendation to the Town Board.

**Motion:** Frank Malagisi moved to adjourn. John Byrnes seconded the motion. All were in favor of adjourning. None were opposed.

Chair Douglas Purcell thanked the ZBA members for their time.

The meeting adjourned at 8:09 pm.

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