TOWN OF WILLSBORO

ZONING BOARD OF APPEALS

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MARCH 17TH, 2015 AT 7:00PM AT THE TOWN HALL

In Attendance: Chairman: Robert Bruno, Carol deMello, Peter Sowizdrzal, Jason Morgan, Barbara Paye - Absent

Public in Attendance: Doug Rock – CEO, Bill Wright, William Kissell, Jeremy Fowler – Branon Construction Rep. (Dalton/Hobelsberger), Ransom Shaw, Carlotta Shaw, Kevin Hall, Jim Torczyner

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

MINUTES

Chairman Bruno called for a motion to approve the minutes of the December 2014 board meeting.

Mr. Bruno made note that corrections had been made by the secretary to indicate that Ms. Paye had been absent, as well as the additional comments in red highlight within the December minutes. .

Ms. deMello noted that under Concerns & Information it should be added that "according to existing ordinance there should be a form for the appeal process." She noted that the meeting adjourned at 9:57pm not 10:57pm.

Mr. Bruno motioned to approve the minutes as corrected. Ms. deMello seconded. 3 – Aye, 1 - Abstain

Chairman Bruno called for a motion to approve the minutes of the February 17th, 2015 board meeting.

Ms. deMello motioned to accept the minutes as written and Mr. Sowizdrzal seconded. All voted in favor and the motion carried.

PUBLIC HEARING

2841 – Nolen Woods Property (Fink, Shaw, Drotleff) – Willsboro Point Road- 21.17-1-32.121 & 21.17-1-23.122 – RL-5 – Appeal to the Zoning Officer's Decision – Section 3.26, 3.50, 3.64, 3.62

Mr. Bruno asked Mr. Hall and Mr. Kissell to present their case, with Mr. Rock to follow with his stance. Mr. Hall presented how the the case has transpired to where it is today. Mr. Hall provided the board members with the map that was submitted to the planning board at the initial meeting. He noted that Mr. Shaw's family wanted to keep a small portion of the property and the major portion was to be subdivided off to be sold. Mr. Hall noted that the subdivision was approved by the Planning Board. He noted that the next step was APA review and flagging of the wetlands. He noted that he applied for a letter of non-jurisdiction from the APA, after determining that the building envelope (including septic) on lot A was in compliance with wetland setback requirements. Mr. Hall noted that lot B was approved by the APA in April 2013. He noted that the map was filed at the County thereafter. Mr. Hall noted that he spoke with Brian Grisi and Mark Rooks

regarding the wetland buffering. He noted that he re-submitted a JIF to the Agency this year and received a response indicating that a buffer would be needed. Mr. Hall referred to his submittal and the APA's response. He noted that he met with the APA Monday. Mr. Hall indicated that it was noted to him by the APA that if a 25 foot buffer was established for the building envelope that a non-jurisdictional letter would be provided from the APA. Ms. deMello asked about the indication of the silt fence and whether it would be permanent. Mr. Hall noted that the fence would be temporary. She then asked about the APA's wetland class designated. Mr. Hall noted that he would have to review the material to determine what class the wetland was given, but that it was designated at a higher level because of its connection with the lake. He noted that his intention is to re-apply to the APA with a 25 foot buffer indicated on the survey map. Mr. Hall noted that the proposal is to be within the 50 foot setback that was originally indicated as being the setback, by Mr. Jim Kinley.

Mr. Kissell noted that he submitted the form that was requested by the ZBA with the narrative attached to it. He explained that the narrative was to present both sides of the case, Mr. Rocks and the Shaw's. He presented a summary of the submittal to the ZBA members (attached). Mr. Kissell referred to the ordinance sections referenced. He noted that the property does not directly abut the neighbor's property, that there is a 33 foot right-of-way intervening. Mr. Kissell referred to Mr. Rock's citation of the ordinance regarding adjoining lots. He made note that there is not an acreage issue. Mr. Kissell noted that essentially there is no subdivision as the lot has not been sold; therefore the subdivision will not actually take place until after the lot is sold. He referred to the two-thirds rule within the ordinance. Ms. deMello confirmed that the 50 foot setback was used from the RL-5 schedule. Mr. Hall noted that the RL-5 schedule was used, that Mr. Kinley had determined that because it was a pre-existing non-conforming lot. Mr. Sowizdrzal asked if any of the changes being made in the new ordinance have a detrimental effect on this case. Mr. Bruno noted that it depends on Mr. Sowizdrzal's definition of detrimental. He noted that the new ordinance needs to indicate something regarding shoreline being considered front yard in all cases.

Mr. Rock referred to his letter submitted to the ZBA in December of 2014. Mr. Rock started with the description of the RL-5 district. He referenced the setback requirements and the Side Yard 75/100 noting that it was indicated by professional consultant Scott Allen, AES Northeast that the 100 does not make sense as all other districts indicate a doubled number for the "both" side yard setback requirement. Mr. Rock referenced the RL-5 district requirement goals of privacy. Mr. Rock noted that the ordinance does specify that in some cases the shoreline is considered the front yard, but that he did not feel that this lot was a typical case. He referred to section 3.26 of the ordinance regarding pre-existing non-conforming lots, noting that that is why Mr. Kissell referred to this section applying to the case. Mr. Rock noted that if the pre-existing disclosure is considered for "after-subdivision" cases that it does not set a good precedent. Mr. Rock referred to section 3.62 & 3.64 of the ordinance which refers to the setback from water. Mr. Rock noted that the minimum lot width at the shoreline is specified as 350 feet. He noted that he does not feel that the minimum lot width at the shoreline of this lot (252 feet) allows it to be considered for shoreline requirements. Mr. Rock noted that the setback is greater for shoreline requirements, which are different from other districts on the shoreline. He noted that it seems as though there are other alternative locations that would make the building envelope more conforming to the shoreline setback requirements. Mr. Rock noted that he believes that this should have been reviewed by the ZBA before now because of the shoreline setback requirements. He noted that the setbacks presented were not consistent with the district requirements. Mr. Rock referenced the previous wetlands discussion. He discussed Mr. Hall's reference to the APA's response and requirement of a 25 foot buffer. He concluded that that is why he felt building site B had insufficient setback.

Mr. Bruno referred to the letters submitted to the ZBA regarding the case for the public hearing. Ms. Blanchard read the letters to the public and board.

Letters submitted from: Louise B. Elliote, Audrey Wright, David Kemp, T. Tremblay

Mr. Bruno opened the public hearing.

Mr. Jim Torczyner noted that he is a neighboring property owner to the parcel. Ms. deMello asked if Mr. Torczyner's property is located directly across from the proposed building site B. Mr. Torczyner confirmed that he is across from the property. He stated that he agrees with the inconvenience, impacts, etc. Mr. Torczyner noted that he is a professor of sociology and that he assists with peace agreements. Mr. Torczyner noted that Mr. Colin Fink had wanted to create a nature preserve out of the property. He noted that the family had felt that the property taxes that have significantly increased over the years. Mr. Torczyner stated that the first question is why the property is being so highly taxed if it is not buildable. He noted that he did send a letter regarding the taxes to the Fink/Drotleff family proposing that a join effort amongst the neighbors be established to assist, but that he had not yet received a response.

Mr. Wright noted that in 1987 the case was approved by the Planning Board and denied by the Zoning Board of Appeals. Mr. Wright noted that he does have the minutes from the meeting. He questioned why the neighbors were not notified in the same manner as in 1987. Ms. Blanchard explained the past practice of notification of the board members.

Ms. deMello asked Mr. Shaw to introduce himself, and discuss the case a bit. Mr. Shaw noted that their original choice was to not have any house sites, but that Mr. Kinley had noted that a building site and perc test was created. Mr. Shaw noted that they bought the property for $133,000 that it was increased to $340,000 by Mr. Rowe in his last year as assessor. He noted that Mr. Rowe had indicated that the assessment was inaccurate after visiting the property. Mr. Shaw noted that the Board of Assessment Review ended up reducing the cost to $202,000 (both lots) due to the conditions of the properties. Mr. Shaw noted that the families are very conservation minded. He noted that there is a cost associated with keeping the lot in its present state. Mr. Shaw noted that throughout the entire process the family really tried to cover all of their bases with regard to the requirements of both the town and the APA. Mr. Shaw noted that the family was under the impression that they were under the classification of pre-existing non-conforming.

Mr. Torcyzner noted that there's got to be some way that the state or some public organization could buy the property. Mr. Shaw noted that they did try to have this taken over by the Adirondack Chapter of the Nature Conservancy, but that it was indicated that it was too small. Ms. deMello asked if the Shaws had heard of the Land Trust Alliance. Ms. Shaw noted that it is her impression that the Town still requires taxes to be paid on a conservation property. She noted that it is their property that they have followed the law in the proceedings and have done their part. Mr. Bruno asked what the issue was with the other corner of the property. Mr. Hall noted that it is considered wetlands. Ms. deMello asked about the right-of-way and whether it gives access to that lot. Mr. Hall noted that neighbors were approached about the use of the right-of-way, but that it was denied, therefore resulting in the creation of a new access road for the site. Mr. Shaw stated that from a sales standpoint they would like the building envelope to be approved, but that they are not stuck on that factor. Mr. Wright noted that each property owner owns a portion of the road. Mr. Shaw noted that the Nolen Woods property is owned by the Fink, Drotleff, Shaw family, that up to a certain point they own the road with easements for the property owners on the roads. Further discussion ensued regarding the assessment of the property.

Mr. Bruno closed the public hearing.

OLD BUSINESS

2841 – Nolen Woods Property (Fink, Shaw, Drotleff) – Willsboro Point Road- 21.17-1-32.121 & 21.17-1-23.122 – RL-5 – Appeal to the Zoning Officer's Decision – Section 3.26, 3.50, 3.64, 3.62

Mr. Bruno reiterated that he understands all sides of the case. He commended Mr. Rock's efforts in applying his interpretations on cases in general. Mr. Bruno asked the board for their opinions on the case. Ms. deMello noted that she reviewed the piece of property and whether the property was lake front property. She noted that she determined that the property does have Lake Frontage which means that section 3.64 is required, superseding the requirements of the other sections. She noted that she does have an answer to all of the questions brought up at the December 2014 meeting. Ms. deMello made note of the process as indicated by the Planning Board. She referred to her submittal – findings of fact (attached). Mr. Bruno noted that he has been doing this for over the last 5 years. He noted that there are things that there is nothing cut and dry that there are several angles that can be seen.

Section 3.26 – Mr. Bruno noted that his opinion is that the existing undersized lot rule applies, but that it will be up to the board to determine. Mr. Sowizdrzal noted that the 29 acres was what was under the pre-existing clause, that by subdividing it creates two separate lots not under that clause. He referred to the shoreline requirements. Mr. Bruno noted that when he initially sat in front of the Planning Board, he questioned why they even considered this case. He noted that their rebuttal was that the applicants are not changing the non-conformity. Mr. Rock clarified that the subdivision is not being appealed that the appeal is for the building site B. Mr. Hall noted that the planning board requested that another public hearing be done. He noted that site B was reviewed and approved by the Planning Board. Ms. deMello noted that for subdivisions the Planning Board needs to see that a building site is possible, that they do not do site plan review. She noted that the real reason for the case is to determine whether the variance is needed or not for a building permit.

Ms. deMello noted that once a lot is subdivided it is no longer pre-existing. She noted that their decision was based upon the original lot. Mr. Bruno does not see where it matters, whether it is pre-existing or not, as section 3.64 refers to the setbacks for all shoreline properties. He noted that he is firm in the determination that the setback is 50 feet. Mr. Rock asked for clarification, providing the example that if someone had a 5 foot shoreline in the RL-5 district that they would only need a 10 foot setback. Mr. Bruno noted that the ordinance is not fool-proof, but that that is the past-practice. Mr. Morgan referred to the Planning Board's deliberation.

Ms. deMello referred to her findings for Section 3.26 (attached).

Findings of Fact:

Regarding Attorney Kissel's #4 question - the board determined that it is not an issue for this particular case. Mr. Bruno noted that it will not affect the decision for how the applicant's use their property.

The board agreed that due to past-precedence the lake front will be considered the front yard.

The board agreed that 3.64 does apply to this case and takes precedence over the district rules. The board referenced section 3.60 of the ordinance. Mr. Bruno noted that this does need to be clarified in the new ordinance.

The board agreed that the east side yard setback is 50 feet for the property, referencing the shoreline setback requirements 3.64.

Mr. Bruno noted that Zoning Board's interpretations reverse that of the Code Enforcement Officer's decisions. Ms. deMello referred to her findings of fact. Further discussion ensued regarding the approved building sites, the case in general and future proceedings similar to this case.

NEW BUSINESS

2479 - Max Hobelsberger/Melanie Dalton - 166 Lakeshore Drive - 21.10-1-15.000 - RL-1 - Retaining Wall / Shoreline Stabilization – Variance from shoreline setback requirements (Section 3.62)

Mr. Bruno asked where the property was located. Mr. Sowizdrzal noted that it is in Buena Vista, near the Wick property. Mr. Bruno asked what material would be utilized. Mr. Fowler noted that rip rap would be used. He noted that the company – Branon Construction is representing the applicant.

Mr. Sowizdrzal noted that at the last month's meeting they were wondering what size the stone would be. Mr. Fowler noted that it would be 1 ft. to 2 ft. size boulders. Ms. deMello referred to the submission from Mr. Fowler regarding dimensions. Mr. Bruno asked for a more specific map with the measurements indicated on it. The board asked for height estimates as the APA will require that indication. Mr. Sowizdrzal noted that the applicant has indicated that the southernmost hole will be 30 feet high. Mr. Fowler noted that the middle would be approximately 18 feet. The board asked for the length of shoreline dimensions for each spot that will be filled.

Mr. Sowizdrzal motioned to move the case to public hearing. Ms. deMello seconded. All voted in favor and the motion carried.

CONCERNS/INFORMATION

Training – Ms. Blanchard made note of the upcoming APA & Lake Placid trainings, referencing that the Zoning Board Members are required to complete 4 hours of training each year. She requested that if members plan to attend the APA Local Government Days that they submit their registration by the April 1st deadline so as to avoid the rate increase.

ADJOURNMENT

The meeting adjourned at 9:36 PM.

Respectfully Submitted,

Ashley Ryan Blanchard, Secretary - Zoning Board of Appeals