

**ZONING BOARD OF APPEALS  
TOWN OF CANADICE**

Canadice Town Hall

January 11, 2023

Present: Linda Moorhouse, Chairperson  
Diane Horning  
Ed Bott  
Kris Singer

Guest: Merry K. Seablom  
Charles Bennett  
Walter Matyjas  
Mary Ann Matyjas  
Joel Smith  
Ben Gleason  
Peter Grant

Jesse Hallett Absent

Chairperson, Linda Moorhouse called the meeting to order at 7:30 p.m.

There was discussion of how the ZBA meetings will be conducted in the future. There will no longer be a Preliminary Hearing. Each meeting will be a Public Hearing and a legal notice will be published in the local newspaper at least five days prior to the meeting.

L. Moorhouse - Invited Mr. Grant to come and sit before the board. You have remodeled your house?

P. Grant - I have, but that is not why I am here for an interpretation.

L. Moorhouse - Ok.

K. Singer - This is his neighbor. His neighbor has put an addition on his house.

P. Grant - I appealed the decision of the previous CEO.

L. Moorhouse - Ok, so according to what I have here, your complaint, the CEO addressed it and he said there was no action taken. The new foundation has a less non-conforming set back of 36" from the north property line. Ok, tell me what your complaint is.

P. Grant - My complaint is, it's sort of black and white in what the previous CEO wrote, saying it's less non-conforming than it was non-conforming before, so it's non-conforming. Now to me, in my view even though I don't have a view outside my windows anymore, it's more non-conforming than it was before in that the entire structure, the 60ft. structure was moved west 14ft. and between 16-27" closer to the lot line, making it 36". I can not see, I can see out my

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windows, but it has darkened the south side of my house. The snow, we haven't had much snow luckily this winter, but off the metal roof from my neighbors, it's hitting the side of our house. When Diversified dug the property, sewer lines were ruptured, the fence came down. Yes, the sewer lines were repaired and the fence will go back up. But, to me it is more non-conforming than it was before.

L. Moorhouse - Ok, you are saying it is non-conforming. Was this originally put up before our laws went into effect?

P. Grant - The 2017 laws?

L. Moorhouse - Ok, this place was put up in 2017?

P. Grant - No, no the original structure was put up well before 2017.

L. Moorhouse - Ok.

There were several conversations going on at the same time with the board members and the audience.

P. Grant explained where the house was located originally and where it was moved on the lot.

E. Bott - No variance was issued? I don't remember this.

P. Grant - No, no variance was issued. Steve's initial explanation to me was it didn't need a variance because it was a lift and set.

E. Bott - It doesn't matter, he changed the footprint.

P. Grant - Initially a move and relocate permit was not issued either. I am not positive, but speaking with Joel there might have been something with the septic lines, so they couldn't dig deep enough to put the foundation in.

E. Bott - Like I said, when you change the footprint in a non-conforming situation, it becomes a different non-conforming situation and it has to go for a variance.

There was discussion of the drawings from where the structure was and where it was moved on the lot.

E. Bott - If the footprint had stayed the same and they had rebuilt the structure in the same footprint, then you don't need to get a variance because it is an already existing condition. Any

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time you change the footprint, even if you improve parts of it, that is still under 10ft. on the one side. So, that has to go for review. I may have jumped the gun on the discussion here.

P. Grant - 11/30 I initially started this. I didn't want them to get too far into the project.

K. Singer - They moved it back farther from the lake towards the back road. They gave more open space.

E. Bott - The reviews are more than facts and figures, it's the impact of everything around you.

L. Moorhouse - So, in essence we should have had a variance request, before anything started?

E. Bott - Yes. Hands down.

P. Grant - The project description says jacking, leveling and new foundation.

D. Horning - It doesn't say anything about moving it.

P. Grant - Correct.

J. Smith - Do you have the revised permit for that location?

J. Miller - It wasn't necessarily revised. It's in the notes, and relocate.

J. Smith - When I came in to go over it with Steve, he changed the permit and handed it back to me and said "you are ready to go".

J. Miller - Correct, and we did call Williamson Law to try to find a date on when that happened. Williamson Law had no way to record the date of when that was changed or added in.

J. Smith - I sent an email the day I was in showing the change and the new location.

J. Miller - There were some scratch outs on the dates and I thought I found an August date in there somewhere.

J. Smith - After I met with Steve, I sent him an email with the drawing attached, so he would have it for his records. I sent him an email so everything was all set to go.

J. Miller - Ok, great.

E. Bott - So, has the work been done yet?

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J. Smith - Yes.

P. Grant - The floor was poured yesterday.

L. Moorhouse - How far along is it?

J. Miller - It's done. I can't speak for the contractor.

J. Smith - We have to put the doors in the basement. But, we are done.

J. Miller - When I was down there last week putting the signs up, they looked done.

P. Grant - I requested a Stop Work Order over a month and a half ago, to deaf ears.

J. Miller - Not necessarily. To our demise there are some loop holes.

P. Grant - I know, it had to go through NYS before this meeting today.

J. Miller - No, it just goes through the town.

K. Singer - When he stated there were no violations, there was no foundation to issue a Stop Work Order. The way the code is written right now, if there is a question about something, there is nothing in there to allow a Stop Work Order, at that point in time, just because someone has filed a complaint.

J. Miller - And there also is under question the timeline that you have to file a complaint.

K. Singer - Correct.

J. Miller - It's not under question, it's actually written that there is a certain time limit.

K. Singer - 60 days.

E. Bott - There is also case law that once you see something happening, because people don't know exactly what things are so if there is a problem, they report it. That is basically what case law says, that's your time. From the time that the permit is issued.

J. Miller - Because of instances like this, where someone is so deeply involved in the project.

L. Moorhouse - Ok, what do we do about it?

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E. Bott - No variance was issued. It should have had a variance. The CEO screwed up.

L. Moorhouse - With the variance request, we would have known his view...

E. Bott - His view, the change in the neighborhood. Any impact on the neighbors. That's why we have those setbacks, to prevent the structures from being too close together, in case there is a fire.

K. Singer - They've got two parts of that structure to begin with that were even closer than that. Although a big gap in the middle. The front and the back were actually closer than they are now.

E. Bott - Like I said, if it changes the footprint, then it has to go for review.

L. Moorhouse - For a variance?

E. Bott - Yes, for a variance.

D. Horning - Same foundation.

K. Singer - But, there wasn't a foundation. It was on pilings.

E. Bott - Doesn't matter, same footprint. If you keep the footprint the same, then it stands. But, if you change that footprint, it becomes a brand new entity. It should never have happened. Are you the owner's of the property?

W. Matyjas - Yes.

E. Bott - What you did was in good faith.

W. Matyjas - I would like you to give me the opportunity to speak.

L. Moorhouse - Oh, we will. We just want to take care of this gentleman first.

J. Smith - His house is still 4-5ft. from the property line.

E. Bott - But, that is way inside the set back limits.

J. Smith - It's a 5ft. side set back.

K. Singer - It's a 5ft. side set back.

J. Smith - The other one was 6" from the property line. We are still a ways away. We also slid it

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back 14ft., which created and increased the Grant's view to the south. We were over the sewer line. They put the sewer underneath the thing. The main sewer, the main right of way and the electric line to power the substation goes up the side of their house, which is why we had to move it over. If we tried to slide it back over the sewer system right of way, we would hit the electric line.

L. Moorhouse - When was that house built?

W. Matyjas - 1960.

L. Moorhouse - I don't know about the rest of the members, but, I am not sure what we should do.

D. Horning - I don't either.

L. Moorhouse - I think we should get in contact with our attorney. I don't like to drag it out.

P. Grant - Neither do I and I don't want the Matyjas to be dragged out. I was trying to talk with them before the meeting and if they are willing to talk with me, there are a couple concessions I would like and then we can move forward. But, at this point they are not willing to talk with me. If we could maybe have a week and if at some point they are willing to talk, then maybe there are a couple changes we can make between two neighbors.

L. Moorhouse - Now, are you living there?

P. Grant - I am.

E. Bott - If you have a situation where you are having damage to your property. This is the same thing we have to deal with when put up places and change the grade and we have run off. We have been through this before down there. Because people are so close together, they try new things and next thing you know all the water is running to the neighbors place.

P. Grant - They are going to have gutters on the house and probably run the gutters to the original run-offs, right?

J. Smith - We have an under drain.

E. Bott - That's why we have these review meetings, so you know all that stuff ahead of time before any construction takes place. Because, now you have incurred cost and expense. You got some bad advice. It clearly changes the footprint and has to go through the variance review process.

K. Singer - Mr. Grant, what do you think would be, I know you said talking with them, but I guess what are the concessions that we have to know, because we are trying to figure out what we can and cannot do. What do you think would be a helpful resolve?

P. Grant - I would like the one window that is directly across from my bathroom window be relocated and ice dammers put on the roof, so the snow doesn't fly onto the side of my new siding.

L. Moorhouse - Ok, you did mention the fact that there was a window, I can appreciate that.

J. Smith - You are saying any building on a lot that is being relocated has to go before the board?

E. Bott - If the new footprint is located inside a nonconforming area, then yes it would.

J. Smith - What if it is relocated on the lot and it is not nonconforming?

K. Singer - The thing is, once you make changes to it, it has to meet current codes. That's the problem, once you make a change.

J. Smith - The only reason I am asking is, we were over at Peter's house and we moved the place next to him and connected it to his place and Steve never asked us to go through any zoning. He just said here is a moving permit.

E. Bott - Did it change the set backs?

J. Smith - Yes and Steve didn't say anything. And I go to Matyjas, same project and came back up to see Steve and he said "don't bother applying for a new permit, I will just amend this permit".

E. Bott - If your footprint is the same, it's a preexisting condition, then that is before we passed the laws in the late 90's and any additional ones, then it is grandfathered. They put these things in place because so many situations down there on the lake and it wasn't just the lake. I own property on County Rd. 37 where three places were together and they had three cabins and the lot lines went through the cabins. Because it went through the woods and everybody says, well it's about here. When they had it surveyed, they found out that the line went through someone else's property, one of the cabins. What they did, the three people got together and bought the land together and then they changed everything. We had a place on the lake a couple years ago where they wanted to change the lot lines and they bought the property and then they could move around and only had to address the set backs. So, there are ways around some of them. Some of them, there just isn't. If you change that footprint, then you have to go through the review process. If it is still or creates a situation that is nonconforming. So this is, in some ways, less nonconforming, it's still nonconforming. You talk about stuff like this, where are the sewer lines, electric lines, what are you doing for water? What effect does it have on the neighbor's property? These are the things

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we discuss, when we have our meetings. When you have a Public Hearing where the neighbors are affected, anybody can come in and talk about it. It's generally the people that have the most say in the thing like next door neighbors. Once we grant a variance, it's for the property, it's not for that owner. So, it's with that property forever. That is one thing that we have to explain to people.

J. Smith - This is the fourth or fifth place that we have moved in the Town of Canadice in conforming, mostly nonconforming and never came before, who was the building inspector before?

L. Moorhouse - Bob Best.

J. Smith - Bob Best issued three permits. Steve has issued two. So, somehow the town.

P. Grant - Mine was conforming Joel.

J. Smith - I am just saying.

E. Bott - If it is conforming, then you don't have to go through the variance review.

J. Smith - Something is missing then, because Bob Best went the same direction as Steve. He had three of them and Steve had two. Whether Peters was nonconforming or not.

P. Grant - Mine was conforming.

E. Bott - Well, if it's conforming, then it doesn't have to have a variance.

J. Smith - I did other ones that were nonconforming and it was never an issue. I've never been asked to go before the board.

E. Bott - Then that mistake has been occurring on a regular basis. In our training, they talk about the footprint, it's all based on the footprint. We just can't go back in time and fix something in the past. But, if the footprint doesn't change, then people are allowed to tear a building down and rebuild in the same footprint. But, if you move it, whether you make it less conforming or not, you still have to go for a variance. We have granted variances to people who still have a nonconforming situation, but they have made it less nonconforming. Again, part of the whole process isn't just the numbers, it's what does it do to the neighborhood, what effect does it have on other people, the view especially on the lake is a big one.

K. Singer - Utilities.



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E. Bott - Utilities is huge. Especially with the changes they have had around the lake with the septic systems and sewer systems. We have had people try to build over existing wells.

J. Smith - For the 15-20 years that I have worked up through here, I have never. So, something got missed in the communication with the town and the building inspector.

D. Horning - They misinterpreted what the codes are.

J. Smith - Pickerel Point, we weren't even close to conforming. Never went for anything. I didn't have any idea.

J. Miller - Just for clarity, was the original plan just to lift the house up and set it down and you ran into the sewer? So, your original plan when you came in was to lift it up, put a foundation in and set it back down in the same footprint?

J. Smith - Yes.

J. Miller - At what point did it change?

J. Smith - When we got the survey it showed that it was out into the sewer right of way.

J. Miller - That's where the miscommunication was. Steve should have told you immediately, then and there. You hadn't started digging until that point, right?

J. Smith - Right.

J. Miller - That's when it should have gone for a variance.

J. Smith - That is what I am saying, something got missed.

K. Singer - I think you still used pretty much the same footprint, you just picked that house up and you spun it and put it back down?

J. Smith - Pickerel Point, we relocated it on the lot.

K. Singer - Not by much.

J. Smith - It was nonconforming though.

K. Singer - But, moving it back, moving it farther from the thing, like this week we are talking about side set back lines. Moving it back from the lake, that usually...

E. Bott - That wouldn't have been a variance.

W. Matyjas - With moving it and we removed a large ash tree that was dying, that has opened up the view tremendously.

K. Singer - There will be gutters or something put on there, so the snow isn't coming off the roof?

W. Matyjas - That will be later.

J. Smith - The realistic thing is, if Peter just wants a window changed and the snow guards put on, I think that is a reasonable request. I think we should just do it and table the whole thing, because get lawyers and everyone else involved.

E. Bott - Well, you are not going to be able to table it. We are still going to have to go through what we are doing right now. The notice has been given, it's nonconforming. So, we will have to get all that in writing in a Public Hearing. Just last week or so, they changed the rules for us on these meetings. Traditionally, we would have a preliminary meeting and the preliminary meeting is pretty much what we are doing now. Get all the information together, get everybody on the same page. Because when people come in here, they don't know all the information we need. They are not familiar with all the laws and we have this discussion and it is a very open discussion just like what we are doing right now. You need to get this, you need to get that, what are the issues? Then, they come in and we have a Public Hearing. Well, they just notified us, this year that we are no longer allowed to do that, we have to go straight to a Public Hearing. I told the Town Attorney, the problem is that no one knows everything they have to have. We do this to help people along. There have been many times where we have come up with a reasonable conclusion to these, just like this conversation right here. If we don't get to have that, then when we have the Public Hearing, we are going to have to table the Public Hearing and carry it to next month anyway. Accept for a couple cases, where someone has come in with everything they need. But, it is rare. We've been doing this now for 30 years. There is only a couple of times that people come in with all the information they need. Out of all those cases in all those years. Now, because of this ruling we have gotten, there is going to be a Public Hearing and we are going to do just like what we are doing here and have to table it until next month to finish it.

K. Singer - If everything is not there and we have questions that we need answered. Chances are it is going to be a two month process. The only difference I see, and I am relatively new on this board, with it being publicized as a Public Hearing even with if you want to call it a preliminary review, you might get other people that have something to say, that you may have to get answers to the questions instead of waiting and having it delayed.

E. Bott - In rare occasions, it will be quicker. From our end, you get everything posted, everything posted in the newspaper. We decide the dates to go do that, which would be done at the preliminary

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meeting. But, now that has to be done before our very first meeting. Otherwise the meeting is basically illegal. We can't have it. It's not helping us any, but that is what we are dealing with. We have to change some of the stuff we are doing for more legal aspects of the whole process.

K. Singer - We have to go through the same legal process of posting it for the meeting next month, based on his appeal for the complaint. If you guys can work something out and submit something to us and you both agree, then it will be done and over with.

W. Matyjas - If it is amended, do we have to do it here with witnesses in a public forum?

E. Bott - No, we have to...

W. Matyjas - If we have to appeal a complaint.

K. Singer - If he pulls the appeal and you guys settle it. I think if he contacts us and pulls the complaint, I think it's over with.

E. Bott - We have to have the Public Hearing. Because we didn't have the notices, there's no notices, right?

K. Singer - If he rescinds his appeal, his request for an appeal.

E. Bott - We still have to have the hearing. Because there is still a variance.

J. Miller - It has to go on record in our town.

E. Bott - We still have to have the variance hearing. Even if he agrees to it.

K. Singer - Ok.

E. Bott - Because this is getting into the numbers. The set back is still less than what is required. So, we still have to have that hearing officially.

K. Singer - Ok.

E. Bott - Because, as it is now and this isn't your fault. You tried to do it right. You have to have a variance before that can be finalized.

J. Miller - They would have to apply for a variance and go through the process. And that's if you guys come to an agreement.

E. Bott - Whether they come to an agreement or not. This still has to happen.

W. Matyjas - Based on precedents, all the other four mentioned projects, are you doing that with all those as well?

E. Bott - No, there is no precedent.

W. Matyjas - I thought I heard that if it was nonconforming.

E. Bott - There is, but you are using a different legal term. There is no precedent setting on these. We have individual reviews of individual cases. And that has been held up in the Appellate divisions. Ok? Just because something got missed once, doesn't set a precedent for everything else to get missed forever.

W. Matyjas - I wasn't saying that. I am asking if you are requiring us after the fact to get the variance and all the other known cases, are you doing the same thing? Are you going to have a hearing with all the other properties? That have come to light, that need a variance, that never happened.

J. Miller - Not necessarily. Because there is not a complaint.

W. Matyjas - So, we would have to file a complaint and drag everybody in?

E. Bott - Think of the legal procedure, ok? You're going 70 miles an hour down the road, nobody catches you, nobody says anything, you got away with it. Cop pulls you over, rights up a ticket, now there is a legal complaint. Then you could be charged with speeding. But, the rest of the time you are not. That is the same kind of thing. You have to have some place for the legal process to start. In this case, it was reported, there was an adverse effect, in his opinion, it falls under the law because the set back is still underneath the 5ft. Whether it is a little bit better situation or not is irrelevant because the footprint changed. So, then we have to have a variance issued. The outcome of us having a variance and review, that's why we have this meeting. So, a complaint has been filed and we will decide on that whole thing next month when we have the Public Hearing. In the meantime, if you guys can do things to alleviate the problems, then that certainly increases the probability of the variance being granted. We take a look at everything involved, what the current situation was, the distances before. We have had cases before where people come in and say there was only 8" before, now it's going to be 1 1/2ft. We have to look at everything that is going on. Sometimes, there is no place to put things and if it is not interfering with your neighbor. There are five main criteria and the least impactful most of the time is whether it is self created. Because generally somebody is trying to do something to improve their property. That happens all the time. But improvement to you, might not be improvement to the neighbors. That's why we have to go through that process. We are trying to take some steps to make some changes to our

procedures here to try to help the CEO's on a checklist on things. Now that we have gotten a directive on the meetings, we going to have to work on a better checklist on what people have to have in order to get a review done in the one meeting. That is going to be tough, because there is a whole bunch of information you really need. We used to talk about it at the preliminary meeting to make sure everyone has it documented and that we won't be able to do.

L. Moorhouse - Evidently, they thought this was a way to expedite things instead of dragging it on for two months.

E. Bott - Unless someone has all their surveys, all their distances, every tree shrub, all the utilities, we won't be able to rule on it. We don't want to have somebody come in here and go through the process, they may have a good situation, but if we don't have the information, then we would have to rule against them. I don't think that is the way you want to do things. I really don't think that is helping anybody, so we are going to have to work through that. One shot deal if possible. Most of these we will have to adjourn to the following month to get the rest of the information and do it all over again. Just based on 30+ years of experience with this. People just don't know all these rules and regulations, they just don't. Joe is pretty much on the ball here, so we are hoping to stop a lot of this before it gets here. There has been a series of things that have happened over the last few years that have not been fruitful for anybody.

K. Singer - February 8th would be our next meeting. Wednesday, February 8th would be the Public Hearing.

P. Grant - Can I get out of the hot seat?

L. Moorhouse - Yes, you can sir.

E. Bott - Your complaint is valid.

L. Moorhouse - It is.

D. Horning - The CEO issues the permits and we know nothing about it.

K. Singer - Unless it comes here.

E. Bott - Yes.

L. Moorhouse - So, if you folks want to discuss it.

E. Bott - This was not an official Public Hearing, because we didn't know about the rule changes. If you want to come up and present any information, you are certainly free to do that. We will

want you to do that at the Public Hearing. Just so it is on the record. If you can work with your neighbors and come up with something that improves your situation, that is certainly things we take into consideration. We are going to have to take everything into consideration, the distances and all that kind of stuff. Anything that you can do now, increases the chance of having a final ruling one way or another.

W. Matyjas - If it pleases the board, I would like to just touch on the timeline and the events. As far as statements, I would prefer to do that at the Public Hearing. If I can approach?

L. Moorhouse - Yes, come up.

W. Matyjas - A couple of things we have already covered. The building is pre existing, nonconforming, 1960's vintage. We are all well aware the codes were different. We purchased the property and have been living there since 2008. We hired a reputable contractor and ironically the recommendation and referral came from the complainants. That was a year ago, last January we hired the contractor. The contractor secured the necessary permits including the amended permit and the excavation began in September 2022. On October 14th, the residence was moved and the reason I know it was October 14th, I was actually out of town, out of state. The complainant said she took the video and sent us a video, which was a nice thing to do, to say oh look it moved. So, just to set that time frame. I then received the letter of the complaint in the mail, it was on December 12th. It was two months later. I remember, because actually that time of year we were getting greeting cards, that wasn't a greeting card. And here we are today. I did want to make it clear for my reputation, we went through a reputable contractor, we secured the permits. It's not like we went in the middle of the night and moved it.

J. Miller - Like Ed said, you did everything you were supposed to do.

E. Bott - You were in good faith.

W. Matyjas - I definitely want that on the public record. Other things that are noted in the complaint we will deal with at the Public Hearing.

E. Bott - I do have one question about the whole process. So, you went to put a foundation under the house, because it was on pilings, correct?

W. Matyjas - Yes, it was on pilings, on the south side, we were seeing structural issues. The pilings were buried, we had a flood about 10 yrs. ago. I am really happy to hear you talk about folks changing grades. There has been a lot of change of grade to our north and up hill to the west. So as a coincidence, when we had a couple of those bad floods, if you remember about 9-10 yrs. ago. A lot of folks changed grades, they had a lot of catch basins, swales, road gutters and hundreds and hundreds of cubic feet of fill and pads. That all diverted water. Here I am 9-10 yrs.

later, because that water was hitting the south side of the house. We did have an issue, so to save the structure, we actually talked about putting it back on piers, but at that point it was like let's do it right. I was convinced of that. I didn't want to give up any addition, the square footage of the addition. You don't give up your first floor, right? Any real estate agent will tell you your primary floor is your more expensive square footage? We gave that up, the porch, the doorway, it was our laundry room, our utility room, and storage room. We gave that up, with the understanding that it was making it more conforming. We sacrificed some square footage in order to make that a nice clean line on the north line.

E. Bott - So, what my question is, someone mentioned something about the sewer right of way?

W. Matyjas - The sewer runs directly parallel to the easterly wall. You can see it right on the survey. So, we are boxed in on the east side.

They discussed the survey map.

E. Bott - So, where the building was before, is the solid line. According to this, the building, existing structure prior to it being moved, because the sewer set back wasn't there before your building.

W. Matyjas - Right, this was before the sewer, correct.

E. Bott - Somebody ran the sewer set back through your building? That shouldn't have been allowed.

J. Miller - That would have been under, because he was on pillars.

W. Matyjas - I work for a utility. That's not normal to go under structures. The reason I want to bring that up.

E. Bott - My point is, you didn't create that situation.

W. Matyjas - No.

E. Bott - I just don't see how they can give you a right of way underneath your building.

J. Smith - Then they ran the power to the substation up under the other part of his building.

W. Matyjas - That would be the south side.

J. Smith - On the south side, we found that when we started opening it up. They ran the conduit

under the corner of the house, up to the nearest pole. We couldn't even put the foundation under it, where it sat.

E. Bott - This was the point I was getting too. You wanted to put a foundation in, but the right of way is there. So, you had to move away from the right of way.

W. Matyjas - That's right, we were encroached by the sewer and the electric line to the sewer. So, that boxes out the east side and the south side.

E. Bott - I see that. So, you couldn't have put it down where it was before, no matter what.

J. Smith - No.

W. Matyjas - It delayed the whole project.

J. Smith - That's what we found out, that's why we had to go the other route. We went to Ontario County and they said no, we don't care what it is now, you can't do anything with it.

E. Bott - And they are not wrong, but they should have never been granted that underneath your building.

J. Smith - And then, they ran the electric under to get to the pole.

E. Bott - And that is on the other side?

J. Smith - That is on the south side. That couldn't relocate part of it, because it actually went under it. It was just ridiculous, I am sure it was just subcontracted out. Then, we had to scope the whole thing to find out where the sewer was and where it ran, because their maps weren't right. Matyjas's lateral hooks over in front of Grant's house. The 4" lateral runs north into Grant's property.

E. Bott - The only thing, you could have moved it less, but you had to move it.

W. Matyjas - The other encumbrance was the deck. The deck was actually right on the roadway. There were reflectors on the posts, so the snow plow didn't hit it. So, when we moved it back, it actually made more room to put the deck on the south side. Open air obviously, not with a foundation. We moved it from the south side to the east side, which then makes it safer and clearer for the roadway as well. We are boxed in by the road to the west, the sewer, the road to the south.

E. Bott - That is why I brought this up, because one of the criteria is whether it was self created? It sounds like the thing was underneath you and shouldn't have been there in the first place, in my



opinion. It should have never been granted. Someone just drew a line.

W. Matyjas - We inherited a mess here of things that should not have happened in the 60's and 70's.

E. Bott - That's why they made the nonconforming and they had too. Again in this case, you had to fix your structure. You couldn't just put it in the same place it was. It's just a matter of how far could you move it? So, you picked the whole building up?

J. Smith - We took the addition off on the north side. I came in and went over everything with Steve and we discussed it a few different times about how we could approach it. That is when we decided to take the additions off. Because every time we came up with a location, there was an issue. Well the electric line is there, the sewer line is there.

E. Bott - The only thing I can see here from what you did, versus what you attempted to do, or what you had before was that maybe you could not have moved the full 14ft. down. It could have been more up this way, but other than that, it doesn't look like you had a lot of options on anything. Because of the restrictions.

J. Smith - We are right, tight to the south as far as we could, because that is where the electric line goes up through that feeds the substation. We would find something and I would come and see Steve, we would find something else and I would come and see Steve. And I had three surveys done, to try and get it plotted before we got it moved there.

W. Matyjas - When I heard the word footprint, in my world the dimension of the structure after we took off the porch, after we took out the addition, that hasn't changed. It moved, but the size of it hasn't changed. The size of the footprint hasn't changed, the location of the footprint has changed. I just wanted to make that clear, we lost square footage, we didn't gain any.

E. Bott - As I said, there are a list of things we have to consider when we go for the variance. Worst case scenario for you is the variance gets denied. Just telling you up front. Best case is you and your neighbors come to an agreement. Everything is considered safe and sound and you continue with whatever changes you agreed to.

P. Grant - If I drop the complaint, do we still have to have the variance?

E. Bott - Yes. That's irrelevant, because this should have happened in the first place. And it is still nonconforming, so we have to have that on record. Otherwise, 10yrs. from now if there is a problem, where is the record of this being allowed.

L. Moorhouse - With what we are finding now with the sewer and the electric, it would have been

brought up when applying for a variance.

E. Bott - You had to fix your structure, I don't think there is any argument about that part of it. It is just how far you move it. That is the only option you get into. That is the only kind of discussion we would get into in these kind of things.

W. Matyjas - Our original plan was to do it just where it was. Taking some of that off, then leaving it right there. It wasn't physically feasible.

L. Moorhouse - And putting a good foundation under it.

E. Bott - The only thing I see that is discretionary is the amount of footage you moved it from where it was. You say you moved it 14ft.?

J. Smith - 12 or 14ft.

J. Miller - Are you going to measure it from where the original structure, where the deck was or are you going to measure where the structure is now?

E. Bott - Again, this is why we have a preliminary meeting. For example, we would need to know the distance between where the edge of the building is going to end up, versus the right of way, the sewer. So, we would want to know that distance. That and the sides are the only things that are critical as far as distances go. And to make sure you aren't around any electrical stuff, but you already dealt with that. That is the kind of thing we would come up with ahead of time. Or, if you got part way into this construction and had to have a change in the variance because you discovered that somebody ran conduit right underneath the house. Those are the kinds of discussions we would have, normally. In a normal situation. When we have a Public Hearing and a notice of hearing, so that people that are around can come in and listen to it and find out what is going on. Just to give you an overview of what is going to happen.

W. Matyjas - Before we get to that Public Hearing, I think it was noted, we are basically complete. We are talking a huge investment. We followed all the rules and regulations, the agents we used in the town issued the permit, we did it to the permit. Then we find ourselves here today. There is an extensive liability there.

E. Bott - Yes, and the town does have insurance because of that.

L. Moorhouse - Do you plan on making this your permanent residence, or is this going to be a summer cottage? It doesn't matter, it's my own curiosity.

W. Matyjas - God willing and hoping to retire. Yes, we are looking to sell our main house. A lot

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of folks have done that in the area. This would be our primary home in NY. The kids are grown up and moved out. This was kind of our dream.

E. Bott - Technically, you can't occupy this until this get finished.

L. Moorhouse - You haven't been issued a certificate of occupancy yet?

W. Matyjas - No, we are not finished with the plumbing, etc.

J. Smith - We are only doing the foundation and the grade stuff.

W. Matyjas - Still getting the water and sewer bill though.

L. Moorhouse - Ok, so do you have any more questions, sir?

W. Matyjas - No, I will wait until the Public Hearing. And the only thing the board needs are a couple of dimensions?

E. Bott - Yes, that is the kind of information we need. How far away from the right of ways, you already have the side distance on the short side. That is the only thing I have. You have already dealt with the power lines.

W. Matyjas - Thank you for your time.

Meeting with P. Grant and W. Matyjas concluded at 8:35 p.m.

Second meeting to review a variance request from Merry Seablom

L. Moorhouse invited Merry Seablom and Ben Gleason, (her agent) to come and sit before the board.

L. Moorhouse - You are Merry Seablom?

M. Seablom - Yes.

L. Moorhouse - And you are?

B. Gleason - I am Ben Gleason and I am representing Mrs. Seablom and I am happy to answer any questions you may have.

E. Bott - You want to put on a porch?

M. Seablom - I have a deck. You talk, speaking to Ben.

B. Gleason - Mrs. Seablom bought the property about 25 yrs. ago and when you look at the survey map, you can see she has a concrete driveway on the side. There is a new survey map that I have provided. We just had that done last week. The reason I bring that up, is her house sits on a hill and it is tucked back in the bank. About as far back in the bank as you could put it. She has very little back yard.

L. Moorhouse - Is this the photo?

B. Gleason - Yes, that is the photo of the deck. There are a couple photos of the deck from the front.

K. Singer - Do you have the overhead photo?

B. Gleason - There are overhead photos too.

K. Singer - That is very tight down there.

B. Gleason - I tell how the property is situated, because it is on a knoll. As she comes up her driveway, she parks her car there on the south end and she goes up the deck steps.

E. Bott - So, Sweet Pea Lane is actually uphill from the house?

B. Gleason - It goes up the hill along the south side of her house. Everything goes down towards the lake, so when...

K. Singer - The back of her house is County Rd. 36. Sweet Pea comes down right next to her house and across in front of it. She is right on the corner.

B. Gleason - It's a little confusing. She called me because her deck, her deck was built we think in the 80's. It is a very old wooden deck. That deck and gazebo, we have seen old surveys back to 82 or 83, it was a permit rather. The permit was for a wooden deck in the back. And on that permit, it said an old deck. We think that deck was probably built some time in the 80's. Very old material. She has done some repair to fix it, but it is at the point where it needs to be replaced. I am telling you the whole story, because this has been a very long process.

L. Moorhouse - That is quite alright.

B. Gleason - She had the previous CEO out and he didn't think we needed architectural drawings, but at the time he didn't know that we actually wanted to put a roof on this new deck that we are

building. We have had architectural drawings made, they are just about finished. But, then we ran into a snag when I went to get the demolition permit. We were going to take this deck off and I made a comment as to how it is close to the road and had a question about right of way, being out of the right of way and set back and that is when Mr. Miller suggested that it may be in the easement area. At that point we decided it would be best to get a current official survey showing where the easement area is. The current survey shows a 35ft. easement through there.

J. Miller - Can I make a quick correction before you keep going? So, this isn't Honeoye Shore Drive anymore.

M. Seablom - It's Sweet Pea Lane.

J. Miller - Right, it's Sweet Pea Lane, they are referencing an old survey map.

K. Singer - All of them do. Mine does on Pickerel Point. They all say Honeoye Shore Drive.

E. Bott - So, Sweet Pea Lane takes a 90 degree turn or something.

K. Singer - Yes, and she is right on that corner.

B. Gleason - I did a lot of investigating in this, because the county, there was some kind of right of way written before you had owned the house and we couldn't find it so we had to look at the surrounding properties to find some kind of definitive or defined line of where the right of way was. So, we got what we needed from her through the county and then I sent them and their surveyor the older maps with the right of way.

E. Bott - Ok, so according to this, the wood deck and gazebo by this new survey is actually encroaching into that right of way.

B. Gleason - Which that doesn't meet the set backs.

E. Bott - Not when you stick it in the right of way, not at all.

B. Gleason - There was no previous permit for that deck. So, we don't know when the deck was built.

E. Bott - When we get into this new format this will all be part of the Public Hearing. Until we get all this information from both sides, what's going on. This is exactly why we had the information meeting to start with, because this is exactly the kind of conversation we have. What do you got, what's the situation, where are you in the whole process, and where do you have to go? Because, you can't start until we make that decision. You got a survey with all the details, which is great.

We are going to have to change the law in the town so that is required.

B. Gleason - I spent probably 20-30 hours coming here and I am not complaining at all, because they have been terrific helping me in the office, but I have gone back and forth and she has the original pins and I have got string lines and I was trying to get a clearer understanding of where from the customer's perspective of where we should be measuring from so I could bring good information to you.

E. Bott - That is absolutely why we are going through this. It is getting pretty routine with these things and even with the surveys we found years ago and they start resurveying the lake. Depending on which direction they started from, they didn't come out the same place. And some of the deeds are so poorly written. We just had one a few months ago that said approximately 250ft. and it was 262ft.

B. Gleason - Her deed doesn't even have anything written in there about the right of way. But the neighboring properties across the road do have detailed descriptions, because they had to go through the variance process.

E. Bott - So, you want to replace that deck?

B. Gleason - Originally what we wanted to do was and it is hard for me to point at all your papers, but if you look at the overhead picture, you will see the shape of the deck and you will see that this deck has a bay bump out on the easterly side. Because we are not knowledgeable on what is allowable in this easement area and our circumstance right now. We still don't know what our circumstance is. So, at that point where it bumps out, it is 14ft. wide from the house wall to that bay, where it bumps out. Originally, Mrs. Seablom wanted me to create a straight edge along there, keeping the whole deck 14ft., instead of just the bump out. I recommended because we are already in the right of way, that we ask for a compromise and we reduce the size of the deck edge, bringing it back out of the easement area so that her deck, instead of it being 14ft. wide is only 12ft. wide. And that way, we would be outside of the easement area. That is what I was hoping.

E. Bott - It depends on how far you are going to take it.

There was discussion of the drawings and where the placement of the new deck would be.

E. Bott - How many feet is it from the road right of way?

J. Miller - It is dependent on, do you consider that the front because of the lake? Or, do you consider that as the side?

There was more discussion of where the roads were and where Mrs. Seablom parks and enters the

deck.

E. Bott - Just as a rule of thumb, if it's more than 50% to get the variance, it goes against you, if it's less than 50%, then you have a more favorable chance of getting the variance. That is kind of a general rule of thumb, because they go by the percentage of variance. So, if the set back should be 10ft., you really want to get 5ft. If the minimum is 10ft. from here.

J. Miller - From your right of way line.

E. Bott - If you have it 5ft., there is a much higher probability of getting the variance. Because it is 50%. If you move this whole thing down this way, if you can do that, that gives you a greater distance. Because this thing is at an angle.

J. Miller - And, he would be taking off this part of the deck.

E. Bott - We didn't have zoning back then, but we did have building permits and we did have rules that we had to abide by for set backs.

K. Singer - I think the old one was 5ft., wasn't it?

E. Bott - The state wanted 5ft. on both sides, so you had 10ft. minimum. You don't have to worry about the houses, just the road.

J. Miller - She actually has a retaining wall along the front.

B. Gleason - She has a 4ft. retaining wall that goes all the way across there. All across this edge, it's 3ft. here and it's about 4ft. high here. Wood retaining wall.

E. Bott - In the middle of the right of way?

J. Miller - It's in the right of way, yes.

K. Singer - It's in the right of way, but not in the road.

B. Gleason - This edge is about 14ft. to the retaining wall. It's strange that her property lines go all the way across the road. It's the only one down there that does this.

E. Bott - If that had been properly permitted, that would have never been allowed to stick anything in the right of way. They could technically come and take that out.

B. Gleason - There is some distance between this wood wall and there is a hydrant right there.

That is about 17ft. of paved area. That is the narrowest choke point. From here to here is 17ft.

E. Bott - Technically, we have to deal with where the right of way actually is and you want to be away from that a little bit. So, when you are considering your proposals, moving this down, that certainly makes that farther away and just changing the angle. I would try to get as much of that as possible and still have usable space.

B. Gleason - Are you saying I should be 2ft. outside the right of way?

E. Bott - I would like to see 5, but I don't think you are going to be able to get that.

B. Gleason - Perpendicular to the right of way?

E. Bott - I don't think you can get that.

B. Gleason - That would cut off a lot of her deck. Either way, that is why we are here to say, this is what we have and what can we do to keep the deck here?

E. Bott - It is a road right of way, so it's not like you are close to another structure. To me that makes a big difference.

B. Gleason - We do have a drawing of what we proposed to have there. It's on graph paper, I think. There is one that is existing and one that is proposed.

J. Miller - Can you describe the deck now, how is it structurally?

B. Gleason - The deck now, it's not worth rebuilding. The deck boards are rotted. The last thing we want to do is put money into this deck, because it is so old. She would be investing money into something that is not sound.

J. Miller - But, she doesn't want to lose square footage either.

B. Gleason - This is also one of the main access points off the driveway. The house sits up on a hill, she has to go up steps to get on this deck to go into her house. It is also the only place she can sit to look at the lake. It is all sloping hill, there is no level place to sit other than that deck. So, visually she needs it there and functionally she needs it there. So, she doesn't have to go down the driveway and go up through the basement. It is really important that the deck is there. I don't want her to lose half of her deck, that is why we are here.

J. Miller - We also don't want it to be unsafe with you guys making the decision not to do it.



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L. Moorhouse - So, how much do you want to change from what you have there now?

B. Gleason - I believe I gave you the square footage change that was proposed on that sketch.

L. Moorhouse - Ok, 12X31.

B. Gleason - It should give you the square footage.

L. Moorhouse - Then putting a roof over it?

B. Gleason - Yes, the roof would be no higher than her existing roof and no projection forward. The roof would be completely flush with the front of the deck.

L. Moorhouse - Are you going to keep the gazebo?

B. Gleason - It is going to be a new gazebo and be built properly.

There was more discussion about where the deck would be and the steps to the deck.

B. Gleason - You said we could present different proposals to the board?

E. Bott - If you can do that relatively easy, I would certainly try to, just for square footage type things. Like I said, I can't speak for everybody on the board. We can have that discussion and the board can set the distance. We can approve a variance with these conditions.

B. Gleason - And then it is up to me once it is constructed to be within those constraints.

E. Bott - Yes. That's why we do it that way, because once it is finished, he goes down and makes sure you put it where you said you were going to.

B. Gleason - That makes sense. The proposed drawing is basically the overall shape we want to do. Now, it is a matter of staying outside of the boundary you set.

E. Bott - Yes.

L. Moorhouse - And there is no problem with putting a roof on it.

E. Bott - I don't have a problem with a roof.

B. Gleason - As far as the roof, I am going to keep it flush on the front edge of the deck.

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L. Moorhouse - We will see you back here on February 8th for the Public Hearing.

E. Bott - Explained the procedure of the Public Hearing, the two votes, one to accept the application and then to vote on the variance.

Seablom concluded at 9:05 p.m.

L. Moorhouse read a letter of interest for the Alternate Board Member position from Peter Grant.

**OLD BUSINESS**

K. Singer made a motion to accept the minutes from the November 9, 2022 meeting, seconded by D. Horning, all in favor.

D. Horning made a motion to adjourn, seconded by K. Singer all in favor.

The meeting adjourned at 9:30 p.m.

Respectfully,

Stephanie Seeley, Secretary