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WILTON ZONING BOARD OF APPEALS
THURSDAY June 22, 2017

A meeting of the Wilton Zoning Board of Appeals was held on Thursday, June 22, 2017 at the Wilton Town Hall, 22 Traver Road, Wilton, New York and was called to order by Chairman O'Brien at 7:00 p.m.

PLEDGE OF ALLEGIANCE

PRESENT: Chairman O'Brien, James Deloria, Gerard Zabala, Dean Kolligian, Scott Kingsley, Charles Foehser, and Joseph Sabanos. Also present were Mark Schachner, Town of Wilton Zoning Board of Appeals Attorney and Mark Mykins, Zoning Officer.

ABSENT: Chris Ramsdill and Robert Barrett

MINUTES: The minutes of the last meeting, held on May 25, 2017 were approved, as submitted, on a motion made by Mr. Kolligian seconded by Mr. Sabanos. All board members were in favor.

CORRESPONDENCE: None other than those relating to current applications before the board.

RENEWALS:

APPEAL No. 13-21 Thomas & Joanne Klepetar, 101 Parkhurst Road, Gansevoort, NY 12831. Request for the renewal of a Special Permit pursuant to §129- Attachment 8 Schedule B R-2 Residential District, §129-176 V for Agriculture with Animals, and §129-175D with a limit of six chickens; at above said address. Tax Map No. 114.-1-32.2, zoned R-2 in the Town of Wilton.

Chairman O'Brien read correspondence from the Klepetars concerning their Special Permit, "We no longer want to renew our Special Permit for having chickens. I believe we are on this month's agenda. Thank you, Joanne Klepetar." Chairman O'Brien asked Attorney Schachner if the Board can just let the Special Permit die. Attorney Schachner said that was correct and to consider it withdrawn.

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APPEAL No. 13-28 Justin Bergin, 110 Ruggles Road, Saratoga Springs, NY 12866. Request for the renewal of a Special Permit pursuant to §129 Attachment 8 Schedule B, R-2 Residential District, §129-176V for agriculture with animals, and §129-175 D with a limit of 12 chickens; at above said address. Tax Map No. 154.-2-41, zoned R-2 in the Town of Wilton.

Mrs. Bergin was present and approached the Board to request a renewal of her Special Permit. Chairman O'Brien asked if Mrs. Bergin would like to continue with her Special Permit. Mrs. Bergin stated yes we would like to continue. Chairman O'Brien asked Mr. Mykins if he had any problems or questions; Mr. Mykins said that there weren't any issues at all. Chairman O'Brien asked if anyone else had any questions. There were none.

Mr. Kolligian made a motion to approve Appeal No. 13-28 for Justin Bergin, 110 Ruggles Road, Saratoga Springs, NY 12866 for the renewal of a Special Permit for a period of two year; pursuant to §129 Attachment 8 Schedule B, R-2 Residential District, §129-176V for agriculture with animals, and §129-175 D with a limit of 12 chickens; property located at 110 Ruggles Road, Tax Map No. 154.-2-41, zoned R-2 in the Town of Wilton.

Mr. Foehser seconded the motion. All Board members were in favor. The motion passed.

NEW BUSINESS:

APPEAL NO. 2017-14 Christine Beattie, 87 Old Gick Road, Saratoga Springs, NY 12866. Request for an Area Variance, pursuant to §129-157B of the Zoning Ordinance; to replace an existing single wide manufactured home with a new double wide manufactured home on the property located on 87 Old Gick Road, Saratoga Springs, New York 12866, Tax Map No. 153.-3-21, zoned C-2 in the Town of Wilton.

Chairman O'Brien states that there are some letters to read in regards to this appeal.

Chairman O'Brien read the first letter from Michael Dobis, Chairman of the Planning Board, dated June 21, 2017. He read, "Please be advised that the Wilton Planning Board reviewed the above-referenced proposal to place a new double-wide manufactured home, thus expanding the present use which is a preexisting non-conforming use within the C-2 District. This expansion will require Planning Board approval with a public hearing. After discussion by the Planning Board, the following action was taken at its meeting held on June 21, 2017: David Gabay moved for a positive recommendation to the ZBA for the relief requested for front, rear and east side yard setbacks. William Rice seconded the motion which passed with all board members in favor. "

Chairman O'Brien read a second letter from Michael Dobis, Planning Board Chairman, dated June 21, 2017. He read, "Due to the fact the Zoning Board will not have an opportunity to read the minutes from last night's Planning Board meeting due to the way the fourth Thursday fell this month, I am summarizing our discussion on this matter. Although the Planning Board passed on a positive recommendation to the ZBA there was

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significant discussion between the board members. Three Board members thought because the Planning Board was not privy to any comments by neighbors and the fact the Applicants had not talked to any of them since applying for the variances, those members thought passing on a "no recommendation" with comments as described above would be a more appropriate recommendation. If you have any questions, please contact me. M. Dobis, Chairman, Planning Board"

Chairman O'Brien read a third letter addressed to the Zoning Board from an adjacent landowner, "We are writing regarding Appeal Number: 2017-14 for Christine Beattie at 87 Old Gick Road, Saratoga Springs, NY 12866. We are the owners of the property adjacent to the above property on East and North boundaries since 2012. During this time we have made major improvements to our property in keeping with the trend in the entire surrounding neighborhoods. There is currently an issue with their fence, which is not on their lot. There is documentation by a survey done by Thompson and Fleming Land Surveyors, November 9, 2011. Their lot is much smaller than it appears visually. We would not want a larger structure any closer to our property than the existing residence. We hope that you consider the aesthetics of the entire neighborhood and the upward trend of improvements underway as part of your decision. However, if this variance is granted, we would like to request a stipulation that their fence not within the proper lot boundaries to be compliant. Respectfully submitted, Gordon H. Jevons."

Chairman O'Brien asked the applicants if they would like to address the Board. Ms. Beattie said they would and on June 22, they (Ms. Beattie and Mr. Johnson) spoke with their neighbors, the Oakhaven Acres Apartment owner's son and also Pyramid Pines, and the owners said they had no problems with the applicants putting something newer in and improving their lot. Ms. Beattie said secondly, they were told before this meeting they had to move a fence. Mr. Mykins said the applicants had to remove the fence that was in the right of way because it was a violation. Ms. Beattie agreed and said they did remove the fence. Mr. Douglas said that he had the septic inspected and that he would have those papers on June 23, he couldn't get them because of the time. Mr. Mykins said that is more of a building code issue. Mr. Douglas said that was part of what was asked of him. Ms. Beattie said that she spoke with the neighbors.

Chairman O'Brien asked if the applicants have any statements or written evidence that the neighbors are not concerned. Ms. Beattie said that the lady at Pyramid Pines said that she didn't show up because she didn't have a problem with them making this change. Chairman O'Brien asked if there was any documentation. Mr. Douglas said the adjacent homeowners received documentation about tonight's meeting. Ms. Beattie said she gave them green cards. Mr. Douglas said if they had any problems with the proposal they would have showed up. Chairman O'Brien stated that those cards were to notify them of the meeting and that isn't saying that the neighbors are in favor or not in favor. Ms. Beattie said Tammy at Pyramid Pines said that she didn't have a problem with the change and that is why she didn't show up at the meeting. Mr. Douglas said that he thought that was why you send the notification letters to notify the adjacent landowners so they can come to the meeting. Chairman O'Brien said they are welcome to come and express their views if they want to. Mr. Douglas agreed. Ms. Beattie pointed out that no one is here. Chairman O'Brien said that doesn't indicate whether they are in favor or not in favor. Ms. Beattie stated Tammy from Pyramid Pines said that she wanted the applicants to better their

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property and that she didn't have a problem with this change. Ms. Beattie said that she could go back and get a note stating what Tammy said, if the Board wants that.

Mr. Zabala asked if Pyramid Pines is across the street. Ms. Beattie said that it is across the street. Mr. Zabala stated there were also other property owners that about the applicants' property. Mr. Douglas said that is who they talked to, Connie that afternoon. Mr. Zabala said that he doesn't know who the other property owners are. He asked if they are to the right of the property. Mr. Douglas agreed and said the people to the right own the property all the way around him. Mr. Zabala asked if that is all one property owner. Mr. Douglas stated the only one to the left of him is Morris' Storage units. Mr. Zabala said he understood. Mr. Deloria asked about the lady from Pyramid Pines and wanted to know what her capacity is, whether she is a member or owner. Mr. Douglas states that she is a member and that she runs the park. Mr. Mykins stated that she runs the office. Mr. Deloria stated that she is the office manager. Ms. Beattie agreed. Mr. Deloria asked if the Pyramid Pines office manager made a statement on behalf of the owner. Ms. Beattie said she didn't tell the office manager who she was, only that she owns property down the street; the office manager got the letter and said the reason they weren't at the meeting is because they didn't have a problem. Ms. Beattie said the park manager knew about the meeting and that the park owner's address is out of town, not in Saratoga. Mr. Mykins said the notification goes to the property owner.

Mr. Deloria asked about the fence which is on Oakhaven Acres Apartment property. Mr. Douglas stated the fence was put there in 1974 by Ralph Sianos' uncle when Ralph bought the property. The fence came from Montgomery Ward years ago. Mr. Douglas said they maintained the property and mowed it. Mr. Douglas had mowed it for eight years and prior to that Ralph Sianos took care of the property. Mr. Zabala asked if Mr. Sianos was the individual that originally sited the mobile home in this location. Mr. Douglas agreed and said that Mr. Sianos' aunt or uncle called in for a fence and the company came out and did the fence in 1974. Mr. Zabala added that about 42 years ago it was installed and it was a lot different character back then prior to the result we see. Mr. Deloria asked if Oakhaven Acres Apartments had contacted the applicants about moving the fence or that it was encroaching or had they mentioned anything about this. Mr. Douglas said no and they were having problems with their septic and that if the Oakhaven owners ever have a problem, the applicants might have to do something with the fence eventually. Mr. Douglas said that he had a big problem with this as he has taken care of that property. He went on to say that he was sure there is some kind of law that says if you take care of property within the fence line is and there must be some kind of stipulation there. Mr. Zabala stated the Board is not a court that would adjudicate the ownership issue but they decide what can occur on this property in accordance with town code. Mr. Douglas said that he went to talk to his lawyer today but he was busy. Mr. Zabala said that he understood and this may be an issue but not to the purview of this board.

Mr. Deloria directed a question to Chairman O'Brien and asked what the Planning Board means in their correspondence. Attorney Schachner said that he was at the Planning Board meeting and one of the correspondence is 100% accurate and the other is largely accurate but could be deemed confusing and he could see how it could be hard to understand. The Planning Board reviewed the recommendation or reviewed its role of

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making a recommendation to the Zoning Board on the proposal. The Planning Board adopted a motion unanimously making a positive recommendation to grant the relief requested which is the document that starts as "Please be advised". The other document is Chairman Dobis' personal reflection on the Board meeting which he wanted to provide the Zoning Board with because he knew the ZBA wouldn't have the minutes of the meeting which was last night. Attorney Schachner characterized this memo as largely accurate and said there was significant discussion among the Planning Board members about possibly not making a recommendation but ultimately the part that is a little confusing or misleading is when Chairman Dobis said three members thought whatever it says they thought. Attorney Schachner continued on that the point is the Planning Board voted unanimously, including those three members, for the positive recommendation to grant the relief requested.

Mr. Kolligian asked if the Planning Board had a public hearing on June 21st. Attorney Schachner said that they would not have a public hearing yet and that the Zoning Board would have the public hearing on variances. If the ZBA approved, then it will go back to the Planning Board and they will have a public hearing because this is expansion of a preexisting nonconforming use. Mr. Deloria stated that the Planning Board voted. Attorney Schachner agrees and states that they voted "unanimously". Mr. Deloria asked if the Planning Board felt as though they had to give further explanation. Attorney Schachner said that he didn't think they felt inclined to give further explanation but that the Chairman took it upon himself to provide some additional thoughts. Mr. Deloria asked if this is unusual since they usually vote yes or no. Attorney Schachner said he agreed and that Mr. Dobis didn't do this on Attorney Schachner's suggestion. Attorney Schachner thought yes this is unusual and he thought Mr. Dobis did it because he seemed troubled by the notion that this board would not have the benefits of the meeting minutes. Attorney Schachner said Mr. Dobis was shocked and appalled that this board's meeting was tonight. Attorney Schachner said that he had to explain to Mr. Dobis that since this particular month started on a Thursday, last night was the third Wednesday but tonight is the fourth Thursday. Attorney Schachner said that Mr. Dobis was just shocked by this. Attorney Schachner said Mr. Dobis said this can't ever have happened before but it actually would happen once every 11 months he thought.

Mr. Kingsley addressed Chairman O'Brien and said due to the fact the way the code is structured, the Planning Board has a significant role in this whole process. He would like to read the minutes of the deliberation of the Planning Board meeting from last night. Mr. Kingsley made a motion to table the appeal until the next meeting.

Mr. Kolligian stated the he thought the Board had a few more things to clarify. He didn't disagree with the fact that it would be beneficial for the Board to be able to review the minutes and find out what the discussions were last night. He thought there were a couple of other things that they have to talk about. He said the Board and applicants had already talked about the fence, and talked about the neighbors. The other thing he thought they needed to talk about is the fact the property is now zoned differently. The property is now a commercial use zone and the residential piece of this is on the other side of the road which was already identified as Pyramid Pines. He said the challenge for the Board is there is significant relief that the applicants are requesting to put another residential unit

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back on what is now currently a commercial zone. He didn't know if that lends itself to discussion for this evening or Mr. Kingsley still felt more comfortable requesting review of the minutes. Mr. Kolligian thought that what the zone is used for now is a significant factor for the Board to weigh in on. Mr. Kingsley stated that before the Board makes any deliberations, he thought the Board should know the entirety of the record. He said that should include what the deliberations of the Planning Board were, when they made a positive recommendation.

Mr. Deloria stated that the function of the Board is a land use function. He said that the Planning Board voted and sent their recommendation. Mr. Deloria said it is incumbent on the Board to do their job and to see whether or not the application fits.

Chairman O'Brien stated the Zoning Board is not bound by the Planning Board's recommendation. Mr. Kingsley stated that he understood, but how he might vote on the application would be determined by what the Planning Board had to say and their opinion. There is a reason why they give a recommendation. He would like to be able to know their rationale for their recommendation. Chairman O'Brien said that since Mr. Kingsley made a motion and if someone seconded it, the Board can vote on the motion.

Mr. Kolligian addressed the applicants and asked if they have something more to say. Mr. Douglas said that if you go down Old Gick Road, there is not one piece of property that meets the variances. He said he had a friend that lives down the road and went through this before. He stated if you go down Old Gick, there is not one house that meets the zoning recommendations.

Chairman O'Brien stated that what Mr. Douglas is doing is taking one unit out and putting another one in and asking for relief. Ms. Beattie said but it's for their family. Mr. Douglas added it was to upgrade and said it was like anyone else does to live the American dream. He said he works all week to try to do those things.

Mr. Zabala said the issue is that there is more than one roadblock to getting what the applicants want: one is it doesn't meet the setbacks which you are forcing and secondly, it's a non-conforming use. He said when it was put there zoning did not exist, zoning was put in and the grandfather clauses in there to say people were here before the law was in place. Mr. Zabala said the law, since it allowed an exception, doesn't allow it to change from that exception, so by the applicants proposing to put a new, larger structure there, that is changing the existing grandfathered exemption in addition to setting it back from the boundary lines. Mr. Zabala said there are two issues, non-conforming use of land for that one reason and the setback, too.

Mr. Deloria said it could apply to all the people that the applicant was talking about on Old Gick Road. He said if somebody bought their lot and they wanted to build a bigger house, then they'd be here under the same scenario. Mr. Douglas said that he understood. Mr. Deloria said it not like anyone is picking on the applicants. Mr. Mykins said not all of Old Gick Road is in the C-2 zone. The C-2 zone only goes to Perry Road. It goes Old Gick Road, the west side, to Perry Road and then stops. Mr. Deloria said that is going north. Mr. Mykins agreed. Chairman O'Brien asked Mr. Kingsley if he want to

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make that motion. Chairman O'Brien continued to say if someone wanted to second it, the Board would vote on it. Mr. Kingsley said that he had made that motion but apparently no one was going to second it. Chairman O'Brien said then the motion dies and the Board can proceed from there.

Mr. Kolligian said there was plenty of discussion about what their intention was and what the current zone was. He stated these issues come up whether it is apartments or the mobile home park across the street. He thought some attention should be paid to the attachment that the Board had regarding Section 129-43 Mobile Homes Located Outside of Mobile Home Parks. He said there is a laundry list of regulations and with Mr. Mykins and Attorney Schachner's assistance, the Board should probably highlight a couple of the points listed. Mr. Kolligian thought the Board might hit some roadblocks addressing items on this list. Mr. Kolligian asked Mr. Mykins if the lot size was appropriate for what they are looking to put on here. Mr. Mykins stated that is where the issue comes in again; it's a non-conforming lot. Mr. Kolligian said that he was struggling to give the applicants a benefit of the doubt with the checklist in front of the Board and none of it fits. He said, as Mr. Deloria had mentioned before, there are laws that the Board has to abide by and there is this whole section about mobile homes outside of a mobile home park. Mr. Kolligian said it is going to be tough because so much is not conforming to any of this list. Ms. Beattie asked if the applicants will we ever be able to put anything on their lot.

Mr. Kolligian said what is there now is allowed to be there because it was pre-existing. Ms. Beattie asked if the applicants could have the same exact size 14' x 72' trailer since it was grandfathered in. Mr. Kolligian said the applicants would still have to come back in because they still need variances. Mr. Mykins added that it is a preexisting, non-conforming use. Attorney Schachner said that the same footprint would not require because it has been grandfathered in. Mr. Kolligian agreed. Mr. Douglas said that the new trailer is wider 28' and the other is 14' but it is shorter 62' instead of 73'. Mr. Douglas said they are pushing the front back which will give them more room than the variance they were looking for and the only thing that is closer is the property line on the side. He said he'd have to figure out, by law, what rights he has. He stated that the owners of his property have taken care of the property for 40 years. Mr. Kolligian asked if that was the property to the side. Attorney Schachner said Mr. Douglas is talking about where the fence is. Mr. Douglas asked what the stipulations are on that. He said he'd have to look in the law book or have his lawyer look in the law book because maybe his property is bigger. Attorney Schachner said that might be an exercise that the applicant might want to undertake because that might alleviate the difficulty the Zoning Board is facing. Attorney Schachner stated, as Mr. Zabala pointed out, that is not something for this board to try to sort through. He said the Board can't advise the applicants how to proceed but what the applicant just described might be a worthwhile exercise because it might put the applicants in a better situation in terms of their application for this board.

Mr. Kolligian reiterated the Board is not advising the applicant and if the applicants elected to do what they mentioned, it would be most beneficial for them to withdraw their application at this current time without letting it be voted on. Attorney Schachner

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said it can be withdrawn or the applicant can ask that it be tabled and not voted on and not further processed while he undertook that exercise. Attorney Schachner said the Board can't tell them to do that but Mr. Douglas mentioned it. Attorney Schachner continued that it would likely enhance the opportunity for this Board to have a favorable review of the application.

Mr. Zabala asked Mr. Mykins, if hypothetically the property boundaries were along the fence line, what space would that give the applicants. Mr. Mykins said he couldn't tell from the drawing. Mr. Douglas said from the left side rear, he will gain 35 feet and four or five feet on the other side of that fence, the corner would go over 10 feet to the right and the front another 12'8". Mr. Deloria stated that Mr. Douglas would have to have ownership of that property. Mr. Mykins said you don't own it by right. Mr. Douglas agreed.

Attorney Schachner said the applicant didn't own it by deed. He said the Board is not in a position to say what the applicant owns or doesn't own by right or by law. He stated there are principles of law that may in fact show that the applicant does own the property. He said the Board can say based on the deeds, on our Town of Wilton property records, this is not currently part of the ownership.

Mr. Zabala said again, that he wanted to stress hypothetically if a property owner in a similar situation to the applicant was awarded or was somehow legally determined to be deeded owner of that property that might put them in a more favorable position but does not guarantee it. He stated it is just a possibility that it could make the application less onerous when the applicants present it to the Zoning Board. He said that the applicants are not requesting a large amount of relief, they are requesting a smaller amount of relief but that is a determination the applicants and legal counsel would have to make themselves.

Mr. Deloria stated the options before the Board are to vote on the application as it exists now or the applicants have the opportunity to withdraw the application and go back to the drawing board. Chairman O'Brien added that the applicants can also ask that it be tabled for a future meeting time. Mr. Douglas says that he is running out of time. It's Saratoga and they have a year lease on another apartment because they can't stay in this property. He said that part of the reason they want to do something is the roof was leaking for a while and he fixed it but they are out growing it. He said they have two little girls and they only have until August to figure something out.

Chairman O'Brien stated that it was up to the applicants if they want the Board to act upon it or not at the present time. Ms. Beattie asked what will happen if the Board votes and doesn't approve them. Mr. Mykins said that if it is denied there has to be a significant change to come back to the Board. Ms. Beattie asked if she would have to do the paperwork over again and resubmit it. Mr. Douglas added if they are denied now, then they would take legal counsel. Attorney Schachner said that if the application is denied then the applicants would have to submit a new application. Ms. Beattie asked what happens if they ask to have it tabled. Attorney Schachner said they would be able to amend the application. Mr. Douglas stated that the Board is looking at numbers on

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little drawings that he penciled in. He asked what might happen if he moves the trailer over a little bit. Chairman O'Brien stated the applicants still have to meet the requirements. Mr. Douglas stated that he doesn't meet those requirements and that is why he is here. Ms. Beattie asked where they can place the trailer so they could meet those requirements. Mr. Douglas stated the Board has the numbers right in front of them and that new trailer is 28' x 62'.

Mr. Zabala stated that since it is a different footprint, it is still a nonconforming use. Mr. Douglas said that no matter what they do it's not going to be on the same footprint because it is wider. Mr. Zabala stated the Board will look at what they are required to consider and they are required to make a determination. Ms. Beattie asked if they need approval to put anything on this property. Attorney Schachner said she has the right to replace on the existing footprint. Attorney Schachner said that they also have the right to seek approval to do something larger which is why they are here. Mr. Douglas said he wants to do exactly what he wants. He said, "Whatever I have to do, I will figure it out afterward. I don't know how you guys go about it, that's what I want. That's my options. I don't have a bank full of money to buy this or that. That is what I have, I own it and you deny me, we will figure out something. Somehow we can get it there. We are grandfathered in the trailer, somehow you have to be able to make it work. We are bettering our lives, we are bettering the property. It will look better."

Chairman O'Brien said that the only thing that is grandfathered in is the footprint where the applicants could replace a new structure on the same footprint. He said any other placement would require variances. Mr. Douglas asked what he can do to make this work; he said he needs this. He asked if he has to keep coming back and coming back. Ms. Beattie said the Board said to go talk to your neighbors, she did and the neighbor was fine with the change. Chairman O'Brien said the neighbors have nothing to do with the relief the applicants have requested, that decision would come from the Board. Mr. Douglas said they are doing whatever they can, whatever they are told to do. Chairman O'Brien said he thought the applicants are better off, if this is the case, the Board is not going to tell the applicants what to do, maybe they want to get an attorney and have the attorney advise them what to do.

Attorney Schachner said it is not really the role of the Zoning Board of Appeals to tell the applicants how to solve the issue. Mr. Douglas asked if Attorney Schachner was telling him that his attorney should come with him to address the Board. Chairman O'Brien said he could do that if he wants. Attorney Schachner said the Board can't tell him what to do but he certainly can do that. Mr. Douglas asked if his only option is to get his attorney to come here and address the Board in order for this to work. Attorney Schachner said I don't think that is a fair characterization. He said there is no guarantee there will be a positive outcome, if Mr. Douglas hires an attorney and brings the attorney. Mr. Deloria said to Mr. Douglas that he is asking the Board for advice and maybe the Mr. Douglas should seek his own legal advice, if he'd like to do this. He said the Board is not saying that Mr. Douglas has to march an attorney in here and get up and say the same thing the applicants are saying. He said the function of the Board is not to be problem solvers, but to apply the zoning law.

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Attorney Schachner said that is all they are allowed to do. Mr. Deloria said we are not qualified to give advice. Mr. Zabala asked Mr. Mykins if there is a financial benefit to withdrawing or tabling the application. He also asked if there will be additional application fees. Mr. Mykins said if they ask for it to be tabled then there is no other application fee, they do not have to reapply. He said the applicants can table it until whenever they decide to. Attorney Schachner agreed.

Chairman O'Brien said for an applicant that comes before the Board, if the Board denies it, it is done, they then can come back to the Board with substantial changes or other information to the Board but they have to reapply. Mr. Mykins said if it has been denied then the applicants have to come with some difference in the application. Attorney Schachner said they can ask for a rehearing but that is a very big burden. He said a rehearing can only be granted with a unanimous vote of all the members present and any different decision would have to be subject to a unanimous vote of all the members present. Chairman O'Brien agreed. Attorney Schachner said otherwise the applicants need a new application.

Chairman O'Brien stated that if the applicants want us to table this, the Board can table it and that the applicants can come back the next meeting. He said that if the applicants want to come back with your attorney, they are more than welcome to. Ms. Beattie asked when the next meeting is. Chairman O'Brien stated the fourth Thursday of the month. Chairman O'Brien also said another option is to vote on this application as it is presented to the Board right now. Mr. Douglas said he knows that it would be denied. Attorney Schachner said the next meeting is July 27th. Ms. Beattie asked if she can table it and then come back July 27. Mr. Kolligian made a motion at the request of the applicant to table the Appeal # 2017-14 for Christine Beattie at 87 Old Gick Road, NY 12866. Mr. Schachner stated that Mr. Kolligian should include in the motion whether the Board will keep this as a public hearing or not and this should be part of the motion. Mr. Kolligian added that the motion will also keep the public hearing. Mr. Deloria seconded the motion. All were in favor.

Chairman O'Brien stated that the applicants should come back to the July meeting, 4th Thursday of July. Mr. Douglas asked what will be the difference if his lawyer is there talking instead of him. Mr. Mykins said the Board is not telling him that he has to have a lawyer. Attorney Schachner said that if a lawyer comes and says the exact same things; it is not going to change the outcome. Mr. Kolligian said the Board has had applicants in before with lawyers that the Board has said no to. He said the Board is certainly not forcing the applicants to go out and spend money on a lawyer. Mr. Douglas asked how he can get the Board to say approve his appeal. Ms. Beattie added maybe by seeing that their property is bigger.

Mr. Deloria said again as the Board's counsel has advised, they cannot recommend that for the applicants but it might be a good next step for the applicants. Attorney Schachner said part of the mandate for this Board is to grant the least amount of relief necessary. He added if the applicant needs less relief because the applicants' property ownership changes, this would be a change in the originally presented application. He added that this might lessen the burdening but there are no guarantees. Ms. Beattie

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asked what else can we change that would lessen the burden. Mr. Douglas asked if he can build something there like a garage or an apartment, if he changes it. Mr. Kingsley said that property is a commercial zone so anything built would have to fit in to the building code. Mr. Mykins said this is the reason the applicants are here because it is a noncompliant property in the commercial zone. He said if it was a residential zone and this was the case, the Board would only be granting variances and not dealing with a nonconforming use. Mr. Douglas said it is residential since it is his residence. Mr. Mykins said no it is not residential. Attorney Schachner said the Board is talking about the zoning of the property. He said the applicants are in a difficult situation because the use of their property is not in compliance with the zoning of the Town of Wilton.

Mr. Deloria stated the applicants could go out and purchase a unit of the same size and put it on that footprint. Ms. Beattie said that defeats the purpose. Mr. Douglas said that size is too small. Ms. Beattie added that their kids are getting bigger. Mr. Douglas asked what they can do to have a bigger home and if the new trailer can be moved over on the lot.

Mr. Kingsley said that every member of this Board could make their own decision based upon the facts and the law that is in front of them. He said giving advice about the lot is not the responsibility of the Board. Attorney Schachner agreed. Mr. Kolligian said it is not the responsibility and it's not fair to the applicants to have to listen to one or two people or even all seven of the Board members. He thought the best advice the Board can give would be for the applicants to just do their best. Ms. Beattie asked if the Board would approve the application, if all the property within fence line belonged to them. Mr. Douglas asked if this would be doable. Mr. Kolligian referred back to what Attorney Schachner said about the Board obligation to grant the least amount of relief requested.

Mr. Kolligian said if the applicants go and seek through law, or whatever means, to gain ownership of additional property which requires their relief to be less, then it is totally different. Attorney Schachner said the applicants are obviously not comfortable with this and how it is in New York State. He said the Board cannot tell the applicants, if they go do this, this and this, the Board will give you an approval. He said the Board cannot legally do that. He added that it doesn't really matter how many times the applicants ask, the Board cannot do that. Ms. Beattie agreed.

Attorney Schachner added he was not saying the Board shouldn't, he was saying they can't. Attorney Schachner said the Board is obligated to review the application that you put before it. The Board is obligated not to then go and plan a route to success for the applicant. He said it is not appropriate to try to make the Board try to plan the applicants' route to success. Ms. Beattie asked how would they know what the relief is if they had additional property. Attorney Schachner said he is the last person to ever say someone needs a lawyer but this is one of the reasons people do hire counsel. Ms. Beattie said the applicants will be back for July 27th meeting.

APPEAL NO. 2017-15 Richard Mohrmann, 377 North

Wilton Zoning Board of Appeals
Regular Meeting June 22, 2017

ern Pines Road, Gansevoort, NY 12831. Request for an Area Variance, pursuant to §129-157B of the Zoning Ordinance; special assigned setbacks for the McGregor Estates subdivision, to build a porch on the property located on 377 Northern Pines Road, Gansevoort, New York 12831, Tax Map No. 140.11-1-9, zoned R-1 in the Town of Wilton.

Chairman O'Brien states we know that you want to build a porch. Mr. Mohrmann says yes. Chairman O'Brien asks you are looking for twelve and a half feet relief. Mr. Mohrmann agrees and says it is on the side. Mr. Kingsley says that is the property of Ken and Martha Schunk. Mr. Zabala asks the neighbor to that side of your property that you indicated on your application, they don't have any problems with this application. Mr. Mohrmann says that they have had discussions. We are very neighborly. They just put in an inground pool next to me. He was going to come this evening to speak in my favor, but I told him don't worry about it. Chairman O'Brien asks if there are any other questions. Mr. Sabanos asks if there is an existing porch there now. Mr. Mohrmann says there is. All he is doing is extending it out. Mr. Sabanos so you aren't doing any work on that porch except extruding it out. Mr. Mohrmann says it is 11 or 12 feet at this point in length at this point coming off the back of the house. I am just going to extend it another 16 to 18 feet. In fact you won't even see it from the road because you'll see the same structure now coming down Northern Pines there is a two car garage there. The only people that are going to see it are the Schunks on the northern side. Chairman O'Brien asks if there are any more questions and if someone would care to make a motion.

Mr. Zabala made a motion to approve Appeal No. 2017-15, for the application of Richard Mohrmann, 377 Northern Pines Road, Gansevoort, NY 12831 in his request for an Area Variance pursuant to Section 129-157B of the Zoning Ordinance, for a North side yard relief of 12.50 feet to be granted because the benefit to the applicant outweighs the detriment to the health, safety and welfare of the community, for the following reasons; 1. The applicant has demonstrated that an undesirable change will not be produced in the character of the neighborhood and a detriment to nearby properties will not be created by the granting of the Area Variance because the property only borders one side and it is just an extension of the existing porch. The neighbor who will see the property who borders that has given their approval and it's keeping with the existing structure. 2. The applicant has demonstrated that the benefit sought cannot be achieved by some method feasible for the applicant to pursue other than by Area Variance because the project would require substantial renovation and construction to the existing structure. 3. The applicant has demonstrated that the requested Area Variance are not substantial because the setback relief is only 12 feet 6 inches on the side yard. 4. The applicant has demonstrated that the requested Area Variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood district because the variance is minimal and will not interfere with the affected neighbor. The neighbor has a private fence in the area bordering where the requested variance is located. 5. The applicant has demonstrated that the alleged difficulty is self-created.

Mr. Kolligian seconded the motion. All board members were in favor.

Wilton Zoning Board of Appeals
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ADJOURNMENT:

Mr. Sabanos made a motion to adjourn at 7:50pm. Mr. Kolligian seconded the motion. All board members were in favor. The motion passed.

Dated: July 28, 2017

BOARD OF APPEALS

BY Lisa Muller

Lisa Muller, Zoning Clerk

BY Joseph O'Brien Jr

Joseph O'Brien, Chairman