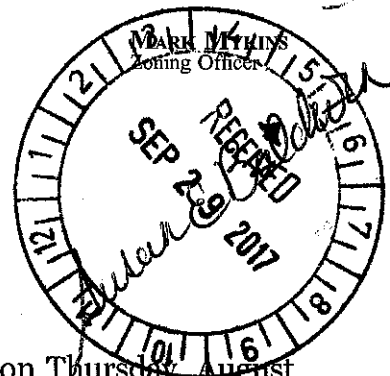




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JOSEPH O'BRIEN
Zoning Board Chairman

LISA MULLER
Zoning Clerk



WILTON ZONING BOARD OF APPEALS
THURSDAY August 24, 2017

A meeting of the Wilton Zoning Board of Appeals was held on Thursday, August 24, 2017 at the Wilton Town Hall, 22 Traver Road, Wilton, New York and was called to order by Vice Chairman Ramsdill at 7:00 p.m.

PLEDGE OF ALLEGIANCE

PRESENT: Christopher Ramsdill, Robert Barrett, James Deloria, Dean Kolligian, Scott Kingsley and Joseph Sabanos. Also present were Justin Grassi, Town of Wilton Zoning Board of Appeals Attorney and Mark Mykins, Zoning Officer.

ABSENT: Chairman O'Brien, Charles Foehser, and Gerard Zabala

MINUTES: The minutes of the last meeting, held on July 27, 2017 were approved, as submitted, on a motion made by Mr. Sabanos seconded by Mr. Deloria. All board members were in favor.

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

RENEWALS:

APPEAL NO. 93-18 Diane Esposito, 61 Davidson Drive, Saratoga Springs, New York 12866. Request for the renewal for a Special Permit for the temporary placement of a mobile home, to resolve a personal hardship. Special Permit originally granted August 23, 1993, and has been renewed every two years; property located at 61 Davidson Drive, Tax Map No. 140.14-1-34, zoned R-1 in the Town of Wilton.

John Esposito addressed the Board and said Diane Esposito, his mother, was unable to attend the meeting due to an illness. Ms. Diane Esposito asked Mr. John Esposito to speak on her behalf and request another two years on her Special Permit. Vice Chairman Ramsdill asked Mr. Mykins if there have been any issues regarding this Special Permit. Mr. Mykins answered that there were no issues. Mr. Deloria asked Mr. Mykins, "If the Special Permit was for a temporary placement of a mobile home, why has it been there

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since 1993?" Mr. Mykins answered that Ms. Esposito got sick in 1993. Mr. Mykins asked Mr. John Esposito whether he or his sister lived there. Mr. Esposito said that he lived there currently to help his mother out with health care and that he does the maintenance on the house, the trailer and the property. Mr. Ramsdill asked if anyone from the Board would like to make a motion.

Mr. Kolligian made a motion to approve Appeal No. 93-18 for Diane Esposito, 61 Davidson Drive, the request for the renewal for a Special Permit for the temporary placement of a mobile home, to resolve a personal hardship. Special Permit originally granted August 23, 1993, and has been renewed every two years; in consideration of all finding of Section 129-175 (D), for an additional period of two years. The property located at 61 Davidson Drive, Saratoga Springs, New York 12866, Tax Map No. 140.14-1-34, zoned R-1 in the Town of Wilton.

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

APPEAL NO. 09-15 Debra Pechette, 22 Amy Lane, Saratoga Springs, New York 12866. Request for the renewal of a Special Permit, pursuant to Schedule B and Section 129-176 (C) of the Zoning Ordinance, for a home occupation for a floral business. Special Permit originally granted on August 27, 2009 and has been renewed every two years; property located at 22 Amy Lane, Tax Map No. 141.15-1-50, zoned R-2, in the Town of Wilton.

Mr. Ramsdill read the correspondence Mrs. Pechette emailed to the Zoning Board of Appeals: "Regarding Appeal No. 09-15: My floral business located in my home is permanently closed. I will no longer require a permit to run the business from my home. Thank you for your attention in this matter. Regards, Debra Pechette."

Mr. Ramsdill asked Mr. Grassi if the Board just lets this time out. Mr. Grassi agreed.

APPEAL NO. 13-34 Kimberly VanHeste, 27 Suffolk Ln., Gansevoort, NY 12831. Request for the renewal of a Special Permit for a Home Occupation pursuant to Section 129-175 D. (1) – (5) and 129-176 C. (1), (2) and (3). Special Permit originally granted on August 22, 2013, is due for review and renewal; property located at 27 Suffolk Ln., Gansevoort, NY 12831, Tax Map No. 115.3-3-16, in the Town of Wilton.

Mrs. VanHeste approached the Board and requested another two year renewal to her Special Permit. Mr. Kolligian asked Mr. Mykins if there have been any issues with this permit. Mr. Mykins stated there have been no issues. Mr. Ramsdill asked Mrs. VanHeste what occupation she is currently doing from her home. Mrs. Van Heste said that it was a jelly business. Mr. Ramsdill asked if there were any more comments or questions from the board. There were none. Mr. Ramsdill asked if anyone would like to make a motion.

Mr. Sabanos made a motion to renew Appeal No. 13-34 for Kimberly VanHeste, 27 Suffolk Ln., Gansevoort, NY 12831, for the renewal of a Special Permit for a Home Occupation pursuant to Section 129-175 D. (1) – (5) and 129-176 C. (1), (2) and (3) for an

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additional two years; property located at 27 Suffolk Ln., Gansevoort, NY 12831, Tax Map No. 115.3-3-16, zoned R-1 in the Town of Wilton.

Mr. Kingsley 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.

Mr. Ramsdill asked if Ms. Beattie was present. Mr. Mykins said he did not see the applicant. Mr. Ramsdill asked Mr. Grassi if the Board should table this appeal to the end of the meeting and move on. Mr. Grassi said that it was the Board's decision.

Attorney Mike Toohey, from Saratoga Springs, approached the Board and stated that he was at the meeting in opposition to this appeal and to represent the applicant's surrounding neighbors. Mr. Toohey said that he was told that this appeal was on for tonight. Mr. Ramsdill said the applicants are not here and asked if the Board wanted to move on to the other appeals. Mr. Grassi said it was up to the Board and that they could move on to the next appeal and see if the applicant appears at the meeting later. Mr. Grassi stated that the public hearing is open and that it would be appropriate for Attorney Toohey to speak to the application even if no one shows up. Mr. Mykins stated that the Zoning Department has not heard anything from the applicant stating that they'd like the appeal be tabled this month.

Mr. Kingsley made a motion to table this appeal to the last item on the agenda. He explained that way the Board can take care of the last item and then afterward the Board can hear from Attorney Toohey. Mr. Kingsley said the Board can adjudicate the appeal, if it so wishes. Mr. Ramsdill stated that they are moving this appeal to the end of the meeting. Mr. Barrett seconded the motion. All Board members were in favor.

APPEAL NO. 2017-20 Deborah and Larry Casey, 4 Preston Court, Gansevoort, New York 12831. Request for an Area Variance, pursuant to Section 129-157 B., (2), (a) to place an in-ground swimming pool, property located at 4 Preston Court, Gansevoort, New York 12831, Tax Map No. 114.20-3-5, zoned R-1 in the Town of Wilton.

Mr. Ramsdill asked if Mr. Casey could come forward and state to the Board what he would like to do. Mr. Casey stated that he is requesting a 13.5 foot area variance on his property line for a swimming pool. He said that the reason he is asking for this is when he received his pool proposal, he went out on his deck and he loved the way it was laid out. He went on to say the pumps and the station are directly across from where they were originally

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going to set up the pool. He found out that the pool had to be moved from the property line so the pool company had to come back out and reset the location. He said the pool company reset the location with orange paint. He stated he should have brought pictures to show the Board. He said the pool company placed the location right in front of the deck and the "v" of the deck. He stated it was very close to his deck. He said that Mr. Mykins could go out and check because he knows the area.

Mr. Ramsdill asked if Mr. Casey owns 2 Preston Court as well as 4 Preston Court. Mr. Casey stated that was correct. Mr. Casey said that he understands that the Board has to look long-term. He said that he and his wife are in a transitional phase. His wife is still in Alaska working and he is retired so he is back here. He bought 2 Preston Court, the adjoining property, so that they wouldn't have neighbors. He stated that he loves it there, and the black bear tipping over his feeder. He said it was just like being home.

Mr. Casey stated they remarked the pool. He would like to get the area variance because he does own the other property. He said that he plans to incorporate this additional property, but they just got the mortgage and they don't have the house sold in Alaska. He said he doesn't know how this works with his mortgage and the finance company to incorporate it. He stated that he is 65 years old and paid full retail from Swift Builders for the property. He said he is not a flipper. He has property in the Adirondacks that he has owned since the '70s and he hasn't done anything on that property.

Mr. Casey would like the 13.5 foot variance so that he can move the pool back from right in front of his deck. He said the other reason was, when the pool company came, he was told that he would have to put an alarm on his sliding door for the patio. Mr. Casey had a fence quote of \$4,000 but the fencing would have to be changed to incorporate the way it is currently marked because the fence would have to go around the deck which would increase the fencing. He would appreciate the variance and he stated that he does own the adjoining property. He stated there are wetlands on his property.

Mr. Casey received two of the return receipt requested cards and as far as he knows there has been no opposition from his neighbors. He would appreciate the Board's consideration. Mr. Ramsdill stated there are two missing green returned notification receipts from adjoining neighbors - Conch Shell Properties and Pine Housing Development.

Mr. Ramsdill asked if there were any questions from the Board. Mr. Deloria said that on the plan it is marked that the area is sloped and is all hill. Mr. Casey said the area is uneven. He said where the proposed location is right now and marked, it is the most severe slope that he has on the property. He said the property goes down into woodlands behind him. Mr. Ramsdill asked if only about half of Mr. Casey's property is flat. Mr. Casey said yes it is and the other part is uneven. Mr. Casey said he thought Mr. Mykins went to look at his property and to see that everything is correct. He added that area where the pool company marked is the most severe slope on his property; the whole portion slopes uneven and downward. He would like to be able to show the Board. He would like the pool right where it was originally set. He would appreciate the variance just to move it

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over. Mr. Barrett said he was a little confused with this. He asked if Mr. Casey owns the property on 2 Preston Court. Mr. Casey said that was correct.

Mr. Barrett said what we are talking about is the setback to the property line of 2 Preston Court which is Mr. Casey's property also. Mr. Casey said that was correct. Mr. Ramsdill said the neighbor on the right has not complained. Mr. Kolligian added because Mr. Casey is the neighbor on the right.

Attorney Grassi stated, as the Board is aware, the variances run with the land, so obviously the pool, if the Board were to approve the pool, the pool would remain. If the applicant chose, he could sell the property next door. He said there could be an impact. Attorney Grassi stated, to eliminate the need for the variance, the applicant could merge those parcels if that is what he intended to do. He said Mr. Casey could avoid the need for the variance, if he wanted to do so, but he hasn't and the Board has to take it as is. Mr. Barrett said that is what he wanted to clarify. Mr. Casey said he isn't ready for that step. Mr. Deloria asked if Mr. Casey could do a lot line adjust. Mr. Mykins said that is the same thing and that Mr. Casey said he wasn't ready to do that.

Mr. Ramsdill asked if 2 Preston Court was a buildable lot. Mr. Casey said it is and that he bought that from Richard Swift, the builder that built his house. Mr. Deloria asked how big the lot is. Mr. Casey said that he thought it was about .6 acres and that he has over an acre total. Mr. Kingsley stated that currently most of that lot is wooded. Mr. Casey said yes, it is all woods. Mr. Deloria asked if most of it is buildable area with no wetlands. Mr. Mykins said that is correct, no wetlands. Mr. Ramsdill asked if it pitches down in the rear. Mr. Mykins said that they all pitch down in the rear because the Little Snook is back there and cuts through the backyard. Mr. Casey said there is a creek down in back. Mr. Mykins said yes, it is on the adjacent property.

Mr. Ramsdill asked if there was any public comment. Mr. Barrett asked if the effected neighbor is complaining. Mr. Ramsdill said "not tonight" and asked if there were any other questions.

Mr. Sabanos asked if the purpose of putting the pool there is because of the slope and esthetics. He said that it isn't impossible to move it over. Mr. Casey said the esthetics is his main concern. He said he didn't do a cost analysis but he has a quote for the fence and the way that the pool would be place would require more fencing. He said if he didn't get the variance, he would have to put fence around his deck which besides esthetically, it would be more costly because of the fencing. He said this is his logic and he is sure this is what would happen with requirement to adding an alarm on his patio door. He said it makes no sense to him and every time he opened his patio door, the alarm from the pool would go off. He said this is why he is requesting the area variance, so he can get the fence around the pool and away from his deck. Mr. Ramsdill asked if anyone would care to make a motion.

Mr. Kolligian made a motion to approve Appeal No. 2017-20, for Deborah and Larry Casey, 4 Preston Court, Gansevoort, NY 12831. Request for an Area Variance pursuant to Section 129-157 B., (2), (a) to place an in-ground swimming pool for a side yard setback

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relief of 13.50 feet on the property located at 4 Preston Court, Gansevoort, New York 12831, Tax Map No. 114.20-3-5, zoned R-1 in the Town of Wilton, was 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, as the applicant recommends, 13.5 feet for the variance stays within his property limits and the applicant is the current property owner of the adjoining parcel at 2 Preston Court and there is no immediate impact to any neighbors currently. 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, as the applicant explained, the back half of the property is quite sloped, currently the applicant owns the adjoining property and the applicants' deck prevents them from moving the swimming pool any closer to the home. 3. The applicant has demonstrated that the requested Area Variance is not substantial because it is a 13.5 foot variance on a half-acre parcel of ownership and the applicant owns the adjoining parcel of land that would be effected. 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 as the applicant stated there is no visual impact, the back half of the property is wooded and has wetlands as well. 5. The applicant has demonstrated that the alleged difficulty is self-created.

Mr. Barrett seconded the motion. Mr. Kingsley, Mr. Barrett, Mr. Kolligian, Mr. Deloria, and Mr. Ramsdill were in favor. Mr. Sabanos was opposed. The motion passed.

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.

Mr. Ramsdill asked Mr. Grassi if the Board had to move on this appeal with the applicant not present. Mr. Grassi said the Board does not have to move on this. He said that it was his understanding that this application has been before the Board for a couple of times. He said he believed the last time the applicant wasn't here either, the applicant requested the appeal be tabled and there was opposition. He said that if the Board has any questions or comments that they'd like the applicant to speak to, it would be suggested that it would be very appropriate to table the action and defer the decision until next meeting. This would give the applicant the opportunity to speak to those questions. Mr. Barrett said the applicant asked last time to have the appeal tabled. Mr. Mykins said that this time we called and the applicant said they would be here. Mr. Grassi said the Board can close the public hearing and make a decision, if the applicant continues to fail to appear. Mr. Kolligian said the Board should let Attorney Toohey speak on behalf of the adjoining property owners, to add this to the record.

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Attorney Toohey introduced himself and said that he was representing the property owners that surround the parcel and the one directly across the street. He said this matter has been on before this Board for the third month. As far as he knows the applicant has not come forth and made any kind of presentation to the Board to justify the request being made. He said that alone in his mind is enough to offer a denial. He said let's get into the context of this appeal. He stated this property is in the Town's C-2 Business light industry zone.

Attorney Toohey said, "As the Board knows it is a substandard lot, there are 32 different uses that could be made within this particular zone in the city. The average size for a lot within those 32 uses is a 66,875 square feet. The smallest lot within this zone is 40,000 square feet. This lot is 15,625 square feet. That is 39% smaller than the smallest possible lot within the zone. Under the Town of Wilton code, section 129-158, says that lots that are substandard, that were substandard prior to implementation of the zoning code, can be used so long as provided the yard dimensions of the lot shall conform to the regulations for the district in which the lot is located. In other words, they can be used, but you have to meet the setback requirements for that particular lot. This lot has never done that and it certainly does not under the model that is being proposed here right now. According to Mr. Mykins' determination, this lot was a non-conforming lot, non-conforming use, meaning that in 1971 that is what it was. Non-conformance allows the existing use to be continued, it does not allow the existing use to be expanded and that is precisely what is being proposed here. There is nothing that says they could not have repaired the trailer that is on the property and continue to reside within that trailer but they have chosen to either let that trailer fall into disrepair or to not repair the trailer and as a result they are now asking you for an extraordinary relief, that he doesn't believe they should be getting.

Now, section 129-105 of your zoning code says that a pre-existing use as opposed to a lot used can be continued to be in existence provided that they do not extend the area or volume of space occupied by the nonconforming use. So both for the lot and for the use, you basically have the exact same wording. The Board is not intended to allow these things to be expanded. You are being asked to allow that to be expanded. Now why is that in fact true because in virtually every zoning code, the idea of nonconformance is allowed because things happened a long time ago, but in virtually every zoning code the theory is they want nonconformance to come into conformance. They don't want it to get bigger; they want it to get smaller to the point where at some point it converts over to an allowed use. That is not what the situation is here.

The way that this is being handled by Mr. Mykins' determination is that we are going to look at this as an area variance. I truly believe that this should be a use variance. The idea of the use is fine, a residential use only at the size by which it existed in 1971. Not at the size that they want it expanded, as if they want to put a whole new kind of house on this lot when a house is not a permitted use within this zone or within this lot.

Now, let's get into just the standards for an area variance because that's the direction."

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Mr. Mykins stated that the Town of Wilton code also states that the nonconforming use can be expanded up to 100%. Mr. Mykins said the code is stated right under the nonconforming use.

Attorney Toohey said, "I know exactly where it is. It gives you the authority to do that, but that authority is not directly tied back into a mandate that it can't happen. It does say right above that both for the lot and for the use, that you are not supposed to allow it to be expanded. It says, if you read that section, it says at the end of it, that it can be expanded to 100% so long as the setbacks are met and that is not what is going on here. You can on a larger lot, for example, allow that expansion. The lot does not allow that to happen within in the context of the rules that were just sighted, it is the bottom part of that rule."

Mr. Kingsley said that is expressly why the applicant is here; the applicant submitted the application to get the area variances necessary, in order to go before Planning and get the expansion.

Attorney Toohey said, "But then again, the direction here within the code, your code not mine, is that we are supposed to dissuade that, in three different locations right in the areas where you are talking about. It says that you can do that, if you can expand it, so long as you can meet those criterion. Yes, you have the right to grant a variance at some level that would allow that to happen, but what I would suggest, even under the area variance standard, I don't think it meets the standard that you have. The requested standard is set out in the Town law very, very specifically.

What it suggests is that there is a five tier test that you have to pass to have these things go by. The second part of that test is whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance. I can think of two right off the top of his head. Number one would be to have maintained the structure that exists on that property in a proper fashion so that it can be continued to be used. It's not the Town's fault or anybody else's fault that that has not happened. Or secondly, seeing as there is enough money apparently to buy a new double-wide, you can replace the exact same trailer with the exact same trailer. You can put a trailer in there that is exactly the same size. I would imagine that the Town would say that that is just a continuation of this use; we are not expanding anything, that it is pre-existing.

The applicant of this case has made a two-level choice not to comply with what has to have happened. The property was bought by them in 2009 and they are charged with knowing or they actually did know, the lot they were acquiring was a pre-existing, nonconforming lot, too small. As a result, they had to know or charged with knowing, the criterion for which any expansion would take place. That criterion in three different spots within your code says the Board is supposed to frown upon that type of expansion in this kind of you use. The next test is whether the request is substantial. In the application that I saw, there was data that was presented to you with regard to that expansion. I have kind of expanded on the expansion."

Attorney Toohey asked Mr. Ramsdill if he could approach to hand out a chart. Mr. Ramsdill said of course he could.

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Mr. Toohey said, "That's such a substantiality that can be looked at in two different ways. There are a series of variances that are being sought here; not having to do with the size of the lot, having to do with the location that the applicant is choosing to put the double wide on the lot. What it does and what this chart does is look at the nature of the variances that are being requested.

The front yard code says it should be 45 feet. Now the town has already given the applicant the greatest benefit that he can have within this C-2 zone because as opposed to looking at the average setbacks or the greatest setback; they have looked at the minimum setback, which I'm not arguing with, but the Town has already granted a break to this applicant with regard to what he is attempting to do. There are variances that would be required within this C-2 zone which are significantly greater than this. The proposed (front yard setback) is 24 feet. The deviation from the proposed is 21 feet that is a 46.66% deviation from the code requirements that are set up and the zoning code of the Town of Wilton. The side setback is supposed to be 30 feet; they are only offering 8 feet which is 22 feet deviation or 73.33%. That is almost three quarters of setback requirement for this home is being eliminated. Rear - 50 feet, they are offering 32.2 feet; that is 17.8 feet or 35.6% deviation. So the substantiality test, which is one of the key tests in every area variance, is not even close to being met by the applicant. Said in another way, both by feet and by percentages, every one of these areas is just plain blown away. It is not even close to what it should be and again there is another solution they could have gone to without having to come to the town and increase the variance that they particularly need.

'Whether the difficulty is self-created.' I know, and you know, that the code says that is not necessarily controlling but the code also says that it is relevant. In this case I think it is relevant, I think you should consider it. The request for the variance was known or should have been known by this applicant in 2009 when they decided to move on to this property. They knew at that point - 2009, eight years ago, that if they ever wanted to expand their property they had a problem and they had code requirements that said not only is the use not permitted, but the movement of this house within in this substandard lot would not be approved.

The reason for the variance is not because there is a house on the lot, it's because of the present status of the structure. The structure apparently can no longer be lived in. That is self-created. There was a reason why this structure was allowed to fall in disrepair. That's not the town's fault, it's not the neighbors' fault. It is a choice that the applicant made or appears to have made with regard to the structure that they have on this particular property and as a result both of those things are self-created events that took place.

The other part of this is the more generic kind of concept. The other parts of the self-created test or the area variance test has to do with the effect in the neighborhood in the district. Those are the words that are used within the code. I'm not necessarily sure the district or the town wants to have a precedent in which a pre-existing known nonconforming lot and building can blow away the area variances by means of expansion by the percentages and number of feet that we have here. The idea that a pre-existing use can ignore one of the setbacks by 36%, one of the setbacks by 46%, and another one of the

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setbacks all in one fell swoop by 73.33%, I believe is a dangerous precedent to set. It is something that will affect the use and utilization of land not only in this zone but through other zones within the town.

I don't think there is a mechanism whereby this property can meet the five tier test for an area variance. I think the applicants' willingness not to be here at any one of three meetings before you with regard to this speaks for itself. I have no idea what their motivations are but they have been told, we heard they were called and told to come and they have chosen not to come. I don't think they have the basis for this area variance and I would ask you to deny the application."

Mr. Ramsdill thanked Mr. Toohey. Mr. Ramsdill stated that he had a couple of quick questions. He said that the Board does always reserve the right, if they feel a variance is appropriate, to make that determination based on what they feel are the facts before them. He also said he doesn't believe the Town has a use variance issue on the table before them. He just wanted to say that the Board is not going to be addressing that particular issue tonight.

Attorney Grassi said to that point it is perfectly appropriate to rely on the code enforcement officer's determination of the area variance they'll need or the requested variances. Mr. Ramsdill asked whether this is the third meeting that the applicant has been on the agenda. Mr. Mykins said this is the third meeting that the applicant has been on the agenda and the second meeting that they have missed. Mr. Ramsdill asked if the Board has a clock of 60 days once it has been brought before the Board. Attorney Grassi said the Board has a clock of 62 days at close of public hearing. He said public hearing has remained open at the request of the applicant the last time, they were able to notify that they were not going to be here but the Board does not have a clock. Attorney Grassi explained that if the Board chose to close the public hearing, then the Board would have a clock of 62 days.

Mr. Deloria stated, just for clarification, the applicant was here the first time and that they explained the reason for the variance was not for disrepair but that they needed a larger dwelling to live in. Mr. Mykins said that the applicant did state that there was disrepair also. Mr. Kingsley said that the applicant had to get a short lease on an apartment.

Mr. Deloria said the Board asked the applicant why they wouldn't put something the same size on there and the applicant said they needed more space. Mr. Deloria said the other thing he would like to know for the record is who Attorney Toohey is representing. Attorney Toohey said that he representing Mr. Morris, he is representing the owner for the Pyramid Pines, and the owner of the apartments that are surrounding this property. Mr. Ramsdill said thank you again for your time.

Mr. Deloria said that his comment is they are a no show tonight and they didn't come last month but they did notify us. He said he doesn't know how much longer the Board has to keep this open. Mr. Deloria said that if they table it maybe they will show up next month, maybe they won't. Mr. Deloria said they didn't notify us. Mr. Deloria said that his inclination is to close the public hearing; he said the Board has received public comment

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now for two months and there is nobody else in the room. He said this was his suggestion; he'd like to close the public hearing. Attorney Grassi said that it is the third meeting and the public hearing was noticed and posted, the Board could take action even without the applicant here, if they so choose. He said you don't have to, you can provide the opportunity for the applicant to come in and address some of the things that came up. Perhaps, the applicants had an emergency tonight but the Board doesn't know. He said to the second point, closing the public hearing – there are two reasons why you might not want to close the public hearing – one is it does start the clock which is not necessarily a big issue it's likely that within 62 days you would be making a decision. He stated the other reason the Board may not want to close the public hearing, is if the applicant does appear at the next meeting in which the Board wants to make a decision and the Board provides the applicant an opportunity to respond to some of the comments made and there is new information out there, it would also be appropriate to allow the neighbors to address that new information that would come out, if that were the case. Attorney Grassi explained if the Board wants to specifically ask the applicants, specific questions that they being the applicant and so that no new information is likely to come out and nothing new that the public is likely to comment on, that would be perfectly appropriate.

Mr. Deloria said the real decision before the Board is whether or not they want to make a decision without the applicant here tonight. Attorney Grassi agreed. Mr. Barrett said that he would be inclined to give the applicant one more chance. He asked if the Board can table this appeal with the stipulation that if they don't show next month, the Board will deny it. Mr. Barrett added give them one more shot at it and then make our decision next month. Mr. Kolligian said that only thing he would interject is that we have seen this in front of us three times. We have seen them once, we've seen the neighbors, and we've seen the attorney for the neighbors. He asked, "What else does the Board need to hear?" Mr. Barrett said that he understood that point, too, but he is just trying to give these guys some kind of a break. Mr. Kolligian said the most irritating thing for him is that the applicant didn't make any communication to the Town in something that is so dire and urgent for their needs. He said they aren't communicating to the Town to be in a seat tonight to fight for something that they apparently need.

Mr. Kingsley said they communicated for the last meeting that they couldn't make it. He said we don't know why they aren't here. He would hate to close the public hearing and find out that they totaled their vehicle on the way here. He said we just don't know. He said if they don't show up for the next meeting then you have a pattern. He said just not knowing why they aren't here is a tough one. Mr. Kolligian said, "Let me ask you this, so take away the fact they are not here, I know it's hard because they are not. Does that effect the decision that you're going to make? You don't have to say what your decision is; but does it affect your decision whether or not they are sitting here? Do you say yes or no because they are or are not sitting here?"

Mr. Kolligian said that he knows what his decision is and he doesn't need the applicants to be here to make it. Mr. Barrett said he would like to ask the applicants why they can't just put a single wide on the same footprint. Mr. Kolligian said that doesn't matter, if the Board says no, they can still put a single wide on that footprint. Mr. Deloria said that we asked them that question. Mr. Barrett said he didn't hear that as he wasn't at the first

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meeting. Mr. Kolligian said yes they did. He said the applicant's response was that between the family and the dogs, there wasn't enough room. Mr. Barrett said he wasn't present for that meeting.

Mr. Deloria said that if the applicant had new information or a new plan, they've had 60 days to bring it to the Town's attention. Mr. Deloria said maybe they got into a car accident – Mr. Kingsley injected that was unlikely. Mr. Deloria said that for the last 59 days, if they had anything new that they were coming up with, they haven't let Mark know about it.

Mr. Ramsdill asked Mr. Mykins if he has heard anything else from the applicant. Mr. Mykins said no, he has not, and the Zoning Department has had to contact the applicants several times to try to get an answer as to whether they were even going to be at the meeting or not, each meeting. Mr. Deloria said, in his opinion, it is vastly different than the applicant calling and saying they couldn't attend and they wanted the application to be tabled. Mr. Kolligian said to expand upon that, there doesn't have to be a reason; the applicant could have said we can't make to the meeting, that's it. Mr. Mykins said that we don't ask why. Mr. Kolligian stated that they don't have to give a reason. Mr. Deloria said that he thinks the bottom line is, the Board has all the facts, they have all the information unless the applicants have something new. Mr. Deloria stated that the Board has everything; they've heard from everybody and the neighbors' attorney and they've heard from the applicant. He said the Board has the proposed design in front of them. He said, "Unless there is something new or a compelling difference; what else is there?" Mr. Deloria said he didn't know why the Board is waiting.

Mr. Sabanos said, "Just to clarify, if they do alter or change their design, they could reapply under a totally different application." Mr. Mykins said that if the Board denies it, his understanding is, and asked Attorney Grassi to correct him if he was wrong, that the Board has to allow it to come back in front of them. He said there has to be a vote to bring it in. Mr. Sabanos asked if the applicant would still have to do that, even if it was a totally different design and a move on the property to rearrange things. Mr. Mykins said that it has to be substantial to even come before the Board. He said the Board can say they don't want to hear it, that they've already made a decision. He said the Board could say they don't want to hear any more of this. He stated the Board doesn't have to; it's not a requirement. Attorney Grassi said that he would have to look at the code in order to confirm that.

Mr. Ramsdill said so either way they have an option if they need to present something different from what the Board currently sees then we would have the ability make a determination if we felt it was reasonable to reconsider. He said then making a determination this evening wouldn't preclude them from coming forward with new information. Mr. Mykins agreed that they would have other options. Mr. Ramsdill said if the applicant offered a different plan, the Board would have the ability, if they needed, to reconsider. Mr. Ramsdill asked if there were any other questions or comments. He asked if anyone would like to make a motion.

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Mr. Kolligian made a motion to deny Appeal No. 2017-14 for Christine Beattie, 87 Old Gick Road, Saratoga Springs, New York 12866, on a request for an Area Variance, pursuant to §129-157B of the Zoning Ordinance.

Mr. Ramsdill stated that the Board members will say approved to mean that they are denying the application. Attorney Grassi said before the Board takes action, it would also be suggested that they still want to go through the criteria and point out why they would be denying the request.

Mr. Kolligian continued on with his motion to deny Appeal No. 2017-14 the 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. The request for an Area Variance was denied because the benefit to the applicant does not outweigh the detriment to the health, safety and welfare of the community, for the following reasons: 1. The applicant has not 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 Variances because we feel it has. 2. The applicant has not demonstrated that the benefit sought cannot be achieved by some method feasible for the applicant to pursue other than by Area Variances because the applicant can replace the existing single wide mobile home within the same footprint. 3. The applicant has not demonstrated that the requested Area Variance is not substantial because it is substantial. 4. The applicant has not demonstrated that the requested Area Variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood district because, as we have heard in last month's meeting and this month's meeting, it does have an adverse effect or impact on the physical or environmental conditions in the neighborhood district and the neighbors. 5. The applicant has demonstrated that the alleged difficulty is self-created.

Mr. Deloria seconded the motion.

Mr. Kingsley stated that he thinks the motion Mr. Kolligian has made has merit but he is going to vote against it because he doesn't believe that the Board should be closing the public hearing tonight.

Attorney Grassi said, "To that point, the Board should make a motion to close the public hearing."

Mr. Deloria made a motion to close the public hearing on Appeal No. 2017-14. Mr. Barrett seconded the motion. Mr. Sabanos, Mr. Barrett, Mr. Kolligian, Mr. Deloria and Mr. Ramsdill were in favor. Mr. Kingsley was opposed. The motion passed.

Mr. Kolligian's motion to deny Appeal No. 2017-14 was seconded by Mr. Deloria. Mr. Ramsdill, Mr. Deloria, Mr. Kolligian, Mr. Barrett and Mr. Sabanos were in favor. Mr. Kingsley was opposed. The motion passed.

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Attorney Grassi stated that just for purposes of the record this was a type 2 action requiring no further SEQRA review.

ADJOURNMENT:

Mr. Kingsley made a motion to adjourn at 7:48pm. Mr. Kolligian seconded the motion. All were in favor. The motion passed.

Dated: Sept. 29, 2017

BOARD OF APPEALS

BY Lisa Muller

Lisa Muller, Zoning Clerk

BY Chris Ramsdill / Sr

Chris Ramsdill, Vice Chairman