

Village of Skaneateles

Planning Board Meeting

August 4, 2011

In the matter of the application submitted by Duane Wiedor pursuant to Section 225-20E (5) temporary dock for work being done within 50ft of Skaneateles Lake to repair the dock, retaining walls and steps on the property addressed as 2 Clift Lane in the Village of Skaneateles

Present: Douglas Sutherland, Acting Chairman
Toby Millman, Member
Megan Keady, Member
William Eberhardt, Member
Elaine DuBois, Clerk to the Planning Board
Riccardo Galbato, Attorney for the Planning Board

Bob Eggleston – Architect for the applicant

Andy Ramsgard – Architect representing the Mezzalingua’s

Joseph and Susan Spaulding – neighbors to the south of the Wiedor’s

Absent: Bruce Kenan, Chairman

The meeting was opened at 8:29 by acting Chairman Doug Sutherland.

Mr. Ramsgard said “Point of order Chairman. The Point of Order is the application was misfiled. This is a new application and was not filed the prerequisite ten days before the meeting. These drawing are dated August 1, 2011. Today is the fourth. This is a completely new application and is completely dimensionally and factually different from last application. So I respectfully request that this matter be tabled for proper submission.”

Mr. Eggleston said “The comment to that is this is a public meeting, not a public hearing, there is no public notification requirement. I think we have been in dialogue with Mr. Mezzalingua and Andy

Ramsgard so they are well aware of what the drawings are, right down to the compromise temporary dock location which I was going to give you today. We can wait a month, that's no problem on our end relative to um, well, I'm not sure if this will be injurious to the Wiedors at all. They do have a current DEC permit that dictates they continue their operation putting in the seawalls. They cannot stop at this point. Mr. Wiedor, unfortunately, was scheduled to be out of town. He wrote a letter, unfortunately I left it at the office I was going to have it brought down to hand it out to you before we finished. In his letter he obviously apologized for not being able to be here but, so if it was held over for a month we could have him here. On the other hand we seem to have a number of facts we can start to review. And again it is not a public hearing."

Mr. Galbato gave some procedural history on the application. He said "Mr. Wiedor I think contacted by letter our former code enforcement officer on an interpretation regarding a temporary dock. Since that time we have had a change in our code enforcement office. I issued my reading of the pertinent provisions regarding 225-20 the 50 foot setback zone regarding temporary docks. The code enforcement officer at that time contacted Mr. Wiedor, I actually spoke with Mr. Wiedor, and when he was advised that he would likely need a variance for the temporary dock I think he promptly contacted Mr. Eggleston who's represented Mr. Wiedor in the past before this Board and the ZBA on his house and actually the subdivision was before this Board. During that time we also received issues raised by neighbors to the north, Mr. Mezzalingua as well as Mr. Mezzalingua's representative Andy Ramsgard. Our CEO brought that to the attention of Bob. They had a meeting which I attended briefly, on Friday morning and Bob agreed to, as soon as he could, promptly provide revised drawings from the site plan approval that was approved by this Board in the spring of this year. So I think it's fair to say that the village has acted promptly with the interpretation request on the temporary dock and also wanted to act promptly, and has acted promptly I think, on the issues raised by Mr. Ramsgard as well as Mr. Mezzalingua, who he represents. Myself and Chairman Kenen did not want to have the applicant loose a month by having this pushed over to next month meeting because he didn't meet the 10 day rule, if you want to call it a rule, of when items can be placed on the agenda. As Bob said, this is not a public hearing. I think there will be issues raised tonight that the Board may have to absorb, and also our code enforcement officer may have to look at some calculations and make some determination after Bob's presentation tonight, if the Board chooses to go forward with it."

Acting Chairman Sutherland said "Your recommendation would be for Bob to make the presentation, learn more about the issues and decide from there what to do next?" Mr. Galbato agreed and said "the code enforcement officer has some questions as well and this may help her in her analysis going forward in the upcoming days and weeks as it hopefully will come back to this Board for actual action." Mr. Sutherland then said, "So you are recommending we start the process and well, shall we start the process. Bob."

Mr. Eggleston introduced himself as Architect for Duane Wiedor and stated, "Again, as I will get in to my presentation there is an alternative plan for the temporary dock." Mr. Galbato stated, "For the record Bob has presented us with page 3 of 3, one page labeled page 3 of 3 and its dated 4 August 2011, temporary dock plan." Mr. Eggleston continued, "In the e-mail I sent to all the Board members, as I gave this to you in advance, I gave you the Reader's Digest condensed version of what we are looking at and

I'll enhance that for you today and we'll walk you through it. The whole idea we've been trying to scramble and put together the facts and try to get as much information in front of you as accurate as we can. Again, Duane apologizes for not being here, he did write a letter and if I have a chance I'll distribute that before we finish if it arrives. He laid out a bit of the history he's been a part of this. His property, which is his home, is now an acre in size has a single family dwelling in the East end. Then there is this 30 ft. strip which he recently acquired from the Chaple family. The Chaple's originally owned all the property. They did a subdivision. They had actually 3 lots, there is a vacant lot, the Aberi lot, there's the Wiedor lot, which had shared lake access in a 30ft. by 10 ft. area down by the lake. He acquired that property, added it to his, took it off the Chaple lot. They then wrote into it, wrote out of it, the vacant lot no longer has lake access. So now it's reduced from 3 people that have lake access to 2 people that have shared lake access."

Mr. Sutherland asked "Is the Mezzalingua property on the other side?" Mr. Eggleston replied, "Yes, correct. The Mezzalingua property was originally a house built by Paul Capacilli. It then went through a couple owners. Mezzalingua's bought it. He then bought, between Mezzalingua's and Wiedor's was a 30 ft. strip that was owned by Mike Ciccone. Mike Ciccone sold to Caldwell who sold to Palmer. I'm not sure if that's the exact history but Palmer then sold to Mezzalingua's who then merged the lots, tore down the house, acquired the land, and the Shere's who are up on the road, had lake access across that property, and he bought out their lake access. The Shere's no longer have lake access. So now Mezzalingua's, as a result of those several actions, has become the northern neighbor of this strip."

Mr. Sutherland asked, "His access is from the other side?" "Yes, his access is the next lane over, Bobbitt"

Mr. Eggleston continued, "The property to the south is another shared lake access with a small little cabana, which I believe the Spaulding's own." Mr. Spaulding said "Susan owns it." Mr. Eggleston continued, "and she reminds Joe of that all the time. There's eight people, is it, on the shared?" Mrs. Spaulding replied, "There are eight or nine, but I still own title to the shared lot." Mr. Eggleston continued, "Right, so you have a single..." The clerk asked for the Spauldings to identify themselves. Mr. Ramsgard then said "Point of Order. This is not a public hearing" Mr. Eggleston then responded, that was Sue Spaulding, she is the owner of the property to the south and Andy Ramsgard that spoke up."

Mr. Ramsgard said "So, Andy Ramsgard for the Mezzalingua's property to the north. There are factual inaccuracies with these drawings. These are not the drawing you saw last month, these are drawings done by Bob Eggleston. The ones you saw last month were done by Rick Estlinbaum. The calculations are completely different. The calculations in these drawings don't represent accurately even the calculations that are on these drawings."

Mr. Eggleston continued, "Also, what I failed to bring with me, which was sitting on the sideboard, Duane Wiedor did talk to all the neighbors who use his shared access and most of the people who use the shared access next door who have expressed support for his application. We can provide that at a later time for you. Going through my narrative, I've covered the first paragraph; Duane Wiedor owns the home. He added on the 30 ft. strip which has the shared lake access. There is a boat house

structure, which the Wiedor's typically, it's the Wiedor's that will use that when they are down at the lakefront enjoying their property there. There is a 10 ft. by 30 ft. area that the 2 families have the right to use. This area right here. Within the lakeshore setback zone, one of the things we did different on the first application, we took it from the actual lake line which comes around and back like this. Those pointed out by Andy, were manmade objects and we really shouldn't take it from manmade objects that extend into the water we should really take it from the natural. We went down to the site using this retaining wall as a datum, we measured off the retaining wall to come up with what we felt was the more accurate natural lake line. I do have a photograph from 1984, which shows the natural lake line coming in at an angle. This is the dock that Mr. Chaple had. This is the Spaulding's boathouse structure that is down by the lake. I'm sorry; this is the Wiedor's. There's some old cribbing, that is here and then there is the adjacent property that was the shared lakefront access there. This was where Paul Capacilli built his house later. This is when the Wiedor's house was actually under construction. But it gives you the makeup of the shore and the shore was coming in at an angle. The site plan review application to replace the existing shoreline structures was approved earlier this year. This was the existing shoreline structure. As Andy had mentioned, I relied on Rick Estlinbaum, who had already done some drawings and sketches and took it to the DEC. When he found out he had to come for site plan approval he asked us to pull it together for you guys. Because questions were raised we took a little closer look at it. Again, I sat down with Elaine and Ric to kind of go over this, and we felt it was best to bring this back just so we get something that's a little more accurate, more on the record for site plan review. As Ric had mentioned, Duane had written a letter back in the middle of July asking about the temporary docks. That resulted in a couple of questions about variances and interpretation. So again, as I pointed out, the biggest difference is we used the natural lake line for the calculations. What we have done, in Duane putting this together, he has worked at trying to keep any of the repairs of the existing structures in the lakeshore setback zone, the same as what they were before with very diminimus differences. One of the changes, the stairs were 6 ½ ft. off the north side. This was something that came up at the meeting during the approval, because what we had proposed before was centering them and making them larger. The question was should that require a variance because we were altering a non-conforming structure. Jorge's opinion at that point was "No, it didn't require a variance." Since then what we've done is kept them exactly the same size but we put them on the north side, 6 ½ ft. off. So they actually came on the 10ft by 30 ft. lake access area. So the lake access people can come down the stairs onto their lake access area instead of having to jump over a wall or having to come over to Duane's side then back. So that's really the only substantive change of what we've done in this area."

Mr. Ramsgard stated "There is additional patio put into that area"

Mr. Eggleston continued, "What we done, using some photographs, there was a tree located here, so we are showing that planter. And also the flagstone didn't come all the way over; it was irregular on this side. What we've done in the new calculations is clean this up with a straight line that will not be the concrete patio; it will be a pea gravel area and planter in this area. So we've cleaned that line up, made it a straight line instead of an irregular line. Again, we have gone through and carefully checked our calculations. Just jumping ahead slightly, to make sure we understand what we are talking about, on the second page section 225 – 4 , definition of lakeshore set back zone is : The area of any lot located

between the side lot lines, the lake line, and a line 50 ft. onshore from the lake line. So, the lake line is here, it comes up the property lines; we've offset a line 50 ft. from this line back here. This is the lakeshore line setback zone. We have 17,058sq.ft in that area. We then added up what the structures were. The concrete that is just within that area, not the part that is projecting into the lake; the dock, the steps, retaining walls, the retaining walls coming down across and around the steps and coming back up, and the flagstone that was in this area. There is a brick paver patio up here that is in that area. So we added that up and came up with 593sq.ft. or 66.3% coverage for open space. We then came over here, and because we are not putting back flagstone, we are just extending concrete over. We have the concrete area, we have the retaining walls. We are taking out this retaining wall and steps. We came up with the areas, in fact we includes one sq.ft. of the boat house structure that crosses over. I've checked the figures twice. They all add up. That's 566sq. ft. or 67.8 % so actually we have reduced the structures, increased the open space within the lakeshore setback zone.

Mr. Ramsgard stated "That assumes the areas are correct, and they are not."

Mr. Eggleston continued, "The new seawall, it's the system we told you about before. It's a composite piling that is put in. Typically, the detail is you put it a couple inches in front of the existing crib wall so you're not actually tearing out and disrupting that. You put it in front of that and fill it with concrete behind that and put a concrete cap on top. It actually comes out 10 inches. The pilings is 8 inches, there's 2 inches of space between the two that it's connected back to. The only place we will deviate from that, and this was a site change, is where the existing crib wall. The crib wall did a jog here. So we are pulling the new seawall in front of that. But because it comes in 18 inch increments, it's about an 8 or 10 inch space there to make an even 12 ft. You just can't cut it any place you have to cut it at the 18 inch marks. Again, this is an approved method of repairing seawalls by the DEC. Most of this new seawall is in the lake, not in the shoreline setback zone so any increases as a result of that aren't reflected in the shoreline setback zone area. There are a couple steps so that one can walk into the lake that will be incorporated into the Wiedor private side. Then because Duane wanted to provide, originally the crib dock came out to this point here, then there was a permanent dock that you see in the winter in the photos in steel posts that were set into the lake bottom. A permanent dock that was set here. We have actually reduced that from 10 feet in front of the crib wall. The previous application was going to be 7 ft. in front. This one is going to be 3 ft. plus the fact that this is out about 4 ft. with the cantilever dock on top of that. The purpose of that is to provide the 10 ft. by 30 ft. area from this existing retaining wall forward for these people. Otherwise they would have this awkward transition back onto the retaining wall. As far any of the site plan review issues everything is the same as before. The method of putting in the floating curtain wall and all that good stuff to make sure any turbidity created when we are putting pilings in to make sure the water has cleared before you remove it. The wood retaining wall here will be replaced with modular masonry units to just clean that area up, make them safer steps. And again really there is no material difference in the application as far as the City of Syracuse and the NY State DEC approvals."

Mr. Ramsgard said, "The DEC was not informed they are filling the lake underneath, in areas that were water before. And Joanne Marsh is not aware of that. That application was completely different and the DEC will have issue with this as well as the SEQR was improperly filed."

Mr. Eggleston continued, "Joanne Marsh (March?) is now retired from the DEC. Rick Estlinbaum has talked to Elizabeth Tracy, who is the person who issued the permit, advising her of these minor changes. Which basically is this detail here, that shows the distance that that is off the original crib wall and how far that cantilevers out. As far as the question of enlargement and nonconforming that's at the top of the second page here. The new seawall will be a composite pile driven into the lake bottom with concrete behind it approximately 10 inches from the remaining timber cribbing. Which is an acceptable detail to the NY State DEC. Most of the enlargement is outside the lakeshore setback zone and has not changed the percent of open space within the lakeshore set back zone as in the earlier application. So the question was: Is there a variance required for expansion or extension of a nonconforming structure. This is a nonconforming structure because we don't meet the 90% open space, 10% coverage. The shift of the steps is a minimal, and does not require an area variance from 225-69d. The open area within the lakeshore setback zone is actually increased by 66.3% to 67.8% with the removal of the north retaining wall. And again, this has been reviewed, sat down with Elaine and Ric and that was their feeling and I'm not sure they have changed their mind at this point. This does not require a variance. We are repairing this and it's not an extension or expansion of an existing nonconforming structure. That is pretty much what we have done relative to cleaning up the record, relative to the site plan review which was required for doing this work within the lakeshore setback zone. Do you have any questions on that part before I go into the variance interpretation for the temporary dock?"

Mr. Millman said "I just I guess I have a question. It is under construction now. Can you tell us: What is under construction right now?"

Mr. Eggleston answered, "At the time this all came to a head, the concrete and the flagstones had been removed. A little bit of the retaining wall still remains. And Rick Estlinbaum was putting in the seawall along this area here. We made the adjustments to the 12 ft. here and coming around. So what they are doing, they are putting in the pilings and then they need to pour the concrete behind the piling to stabilize it before they can stop doing what they are doing. In other words, right now it's open heart surgery we are open and you just can't stop."

Mr. Millman asked, "So which site plan are they building to?"

Mr. Eggleston stated, "They are building to this site plan"

Mr. Millman asked, "Was the applicant planning on coming back with a revised site plan?"

Mr. Eggleston responded, "When these issues were brought to our attention, I was told last Thursday or Friday there was a problem, and could we come and put things together so we acted immediately on it."

Mr. Millman said, "I guess I'm still not clear. So at some point the site plan changed from what we approved." Mr. Eggleston said, "What it is, the only thing that changed was because the neighbor to the north started questioning what was drawn. It was drawn by Rick Estlinbaum. It was a little on the less professional level and that's when they started looking at it with a fine tooth comb and raised some questions, so as a results we had some discussions. I met with Andy on site. I've talked with him on the phone. I've emailed him and that's when we decided instead of using the lake line as this and having a

different lakeshore line setback zone, we used the natural and used this and redid the calculations based on that definition.

Mr. Millman asked, "Do you have the site plan that we approved?" "Sure" was Mr. Eggleston's answer and he provided the original to the Board dated March 17, 2011. Mr. Eggleston explained "we had a line in here that was inaccurate and then it was based on that."

Mr. Galbato clarified, "Toby there was a motion made to approve the site plan on April 7, 2011 by this Board based on drawings dated March 17, 2011. Three drawings."

Mr. Millman then said, "That's what we are looking at. What's getting built today is different in some ways than what was approved? Or, just tell me what is different because I'm just trying to get a handle on it."

Mr. Eggleston replied, "The only thing different is that when they took off this dock they found the crib wall was closer back here. So this is coming back several feet from where we originally..., originally he thought it was going to be 16.6 ft and it's going to be 12 ft. that's the only difference."

Mr. Sutherland said, "So it's smaller than what was originally proposed?" Mr. Eggleston replied, "Correct. What he did was put a 3 ft. cantilever on that to accomplish it."

Mr. Sutherland said, "So the cantilever takes you back out to roughly the same?"

Mr. Eggleston replied, "Half the distance. We dropped a couple feet."

Mr. Ramsgard stated, as he showed photos "This is way bigger than what was originally here. This shows the temporary dock that got nailed on to the cantilever which is over the crib wall that is there. What they said in the original application all this is permanent dock. It's a seasonal dock that got added to and a crib wall that got added to with the cantilever, that got added to with a seasonal dock and they told you it was all permanent dock. And they told the DEC this was all solid and that's what they were building. And that is not correct. That's not what the DEC knows. And currently they don't know this because it's changed since what they approved to. Which is basically inaccurate. This is the planter and green space that goes back on the right hand side, which in the original application was called as all patio existing and still is majority of which is called existing patio, which it is not. It's green space. The staircase is bigger. There're additional structures. If you want to approve the site plan, great, I've got all kinds of clients who will come in and tack on temporary docks onto their permanent docks, or whatever, and declare them a year later they are permanent. But that's not the way they were approved in the past. There are a lot of inconsistencies with this. I've checked every single number for square footage and they are all different. There is one that is correct and that's the one sq. ft. of porch Bob talked about. Every single one of the areas are incorrect. The coverage is incorrect. There is an increase of 5% coverage of shoreline structures, even if you buy what he is saying which is that the stuff out here doesn't count. So the original site plan was improperly approved. And this needs multitudes of variances. Currently there is work going on, which shouldn't be going on, all work should stop. At least until all the related agencies have a chance to review this. Thank you."

Mr. Eggleston said, "Temporary docks are defined as being no more than 8 months in the water. This, I'm not sure which end of the 8 months. This has been here. I'm sure the Spauldings because they are down there, I don't go down there all the time, could attest to how long this has been here. Obviously, Duane Wiedor, it's been there the entire time that Duane Wiedor has owned the property. It's not something that got tacked up the day before we made an application and tried to pull one over on people, OK. It's there in the winter. Does it look like Roger Scott's permanent dock with a huge concrete pier out there? No. But it was there. It was not a temporary thing that sat on the lake, it was something that was driven in and it was held in. And that's where it was. For the record, this is Duane's letter that he wanted you to have." Mr. Eggleston presented the Board with a 2 page letter addressed to the Planning Board, dated Aug. 1, 2011 and signed by Mr. Wiedor.

Mr. Eggleston then asked the Board if they would like him to proceed with the discussion of the temporary dock. He was directed to do so.

He stated, "In July Duane had put together a sketch of what he was proposing for the temporary dock. Actually it's more what like what's been put out there every year. These are some areas of the zoning law that we just don't get into very often. They were passed in 2004 or something like that. Duane has been placing a dock off the permanent dock every year since he has owned the property and also since he has been using for lake access, which is probably about 10 years or so. It's similar to what was done before 1984 as you saw. He had requested clarification from Jorge Battle last month. It was pointed out to him that an area variance is required in that the dock will be 50 ft. long. Five 10ft. sections it has a double section on the end and a side section where he puts his jet ski. As we reposition it on the new plan, it will be 5 ft. off the water line because of the cantilever and the angle of the dock. The section 225-20e(5) allows for 40 ft. off the water's edge. So you could put a 40 ft. deck off the water's edge or you could go as far as 100 ft. if you are off a permanent dock, or permanent structure and a temporary dock. But no more than 40 ft. Obviously, on a year like this when there is a lot of exposed shoreline one has to extend the temporary dock out."

Ms. Keady asked, "The dock that is in the winter picture, is it visible on that 1984 photo by any chance?" Mr. Eggleston replied, "No, I don't think it was there in 1984."

Mr. Eggleston continued, "We had some area (aerial) photographs. We were trying to get a better photograph of it. I'm not sure; this came off of Bing, as of when it was. I know Duane has additional information he can tell you on that. And I'm sure the Spauldings have some recollection in that they have been there for quite a few years. The fact that we are more than 40 ft. off the water's edge as proposed in this location in that he does have part of the section still setting up, it was put up early summer. They then took off the section when they were in there with a barge doing the work so part of that is still there. In July when he drew that the lake was down less than a foot from high water. We are 62 inches deep at the end of that. He needs, and most boats when you drop a propeller; you need about 60 inches of water to be able to maneuver your boat. The proposed end is at 62 inches as an average summer water level. It also provides a safe depth for swimmers jumping into the lake. The temporary docks of most of the neighbors are longer than 40 ft., as much as 64ft. including the dock over to the north. This is a similar configuration that's been used since the mid 1980's. We are asking

for the variance, because we asked and it was pointed out. I don't know how you police this because...,Elaine needs a boat now so she can check things out.

Mr. Ramsgard stated, "You can police it by Pictometry, which is a better source. It's an engineering aerial photograph service. These are several images with the dates on them. They range from 2001, 2006, 2005. You can see the additions to the property. You can also see in several of the photographs the planter area. You can see, in this one when the water was very low, the best one, what they are calling the permanent dock, is just a temporary dock on stilts that was left in. Same construction as all the other temporary docks, they just left it there and call it a permanent dock now. The other things you'll notice, that in, after 2006, the patio shows up here, which was not on the original application and now shows up on the drawings. It wasn't there in 2006." Mr. Eggleston said "He must have put that up last month." Mr. Ramsgard responded, "Well it happened between 2006 and now. Here's all the information. You can see all the gravel is still there in this photograph which is from last year, and the grass hasn't grown in. So, yeah, it probably was put up last year."

Mr. Eggleston said, "The question of interpretation because Elaine and Ric were not able to answer this is how you measure the side yard setback and what the required distance is. Section 225-20 E (3)(b) gives a description and a vague guideline that was not easily determined by Elaine or Ric. Depending on the outcome of the interpretation, we may need a variance for that. I put in here the zoning verbatim of that section: All off shore structures shall be constructed in a manner consistent with the governing side yard setback requirements. The location of the side lot line within the lake will be determined by extending the property line into the lake, that's what we've done here, on the same axis as it runs onshore, or at a right angle to the lake line, whichever results in the greater setback. We have a waterline that is doing this, with the permanent seawall, or do you take the natural lake line. In which case if you come to where to property line hits the natural lake line then you come perpendicular off like this, or do you come perpendicular off like this? We talked about this and didn't know what the deal was. If you have a structure here, you have a greater setback. We didn't know what the answer was, so I guess that's why we are going to the ZBA to figure out what the answer is. Obviously we have a practical difficulty here, with the natural lake line at such a sever angle and the fact that this is only a 30 ft. wide area. Duane has mentioned in his letter that he actually did a survey going around all the lake properties, putting down what is the lake width. If you needed a 25 ft. side yard setback, because most of these properties are in the A-1 district, you need at least 50 ft. in order to have no structure. So you have to have more than 50 ft. He found, that out of 72 properties 26 were less than or equal to 50 ft. So that means that 36% of lakefront properties around the lake can't have any structures in the lake if you have to have a 25ft. side yard setback. Looking at the first issue, why can't they say it's X or it's Y, but they say consistent with the governing side yard setback requirement. In the residential A-1 zoning district, primary structures are required to be 25 ft. side yards, both side yards are required to be 55ft. So other clues as to what governing setbacks should be 225-14 C (5)(a) – accessory uses enclosed in a building, residential , such as a one or 2 car garage, they are allowed to have a 3 ft. wide setback. This really isn't a building so you can't do that although 3 ft. for an accessory building is a consistent setback , so should 3ft. be the setback? It goes on to 225-14 C (5)(d) – in a residential A district – accessory uses not enclosed in a building including swimming pools and tennis courts may not be located in front yards

and such uses shall be a distance not less than 20 ft. from any side yard or rear yard of such district. So we are back to 25ft? Of course they are talking about pools and tennis courts as their basis there. Then lets go look at the definition of side yard in that it only applies to buildings and not other structures. So the definition: Yard, side: a yard situated between the building and the side line of the lot extending from the front yard rear line to the rear front yard line. Gee, maybe side yards don't apply to structures, they only apply to buildings so zero is the right answer. I don't know. As Duane Wiedor has pointed out in his research, 36% of the lots in the village lake lots, would not be able to meet a 25ft. side yard setback for a temporary dock on the lake. So I think when all of a sudden you start applying it, and I not sure how many building permits have been issued for temporary docks lately. Duane asked and he wants to do the right thing. So we have this question and dilemma. We did come up, after Duane has been trying to discussing this and come to some mutually agreeable solution with Mr. Mezzalingua, and so we changed this so the dock now comes off the south point of the 10ft. by 30 ft. easement area. The lake right access people have the ability to come out onto this. Also this is the further projecting permanent structure that gives you the best area to come off from. We are 6ft. off the property line projected into the lake at the closest point. We are approximately 18ft. as shown here. Instead of having the boat on the south side we put the boat on the north side so we tilted enough that this boat can come in and out. Basically it's on a lift that projects out. At the end of the boat once it's off the carriage is the point that we are concerned about the 60inches of depth. We pushed the double dock to the south side so that puts where people might gather out here obviously that's a privacy issue that Mr. Mezzalingua thinks is of concern to him. People might congregate here, it just pushes them further away from Mr. Mezzaingua and also we just keep the "Sea-doo" lift area up here because this is the tighter area. It does say in the regulations that off shore structures shall be constructed or placed in a manner that will not interfere with normal navigation or access to adjacent lands or docks. And again, Mr. Mezzalingua has an extensive lakefront over here and we've got it so the boat can come in and out without crossing that line. We do have the Spauldings on the south side and they have also relatively narrow area. We only have a small "Sea-doo" that we have to maneuver in to get over there."

Mr. Sutherland asked, "Are you describing something now that is different than what was presented, what was planned before?"

Mr. Eggleston said, "Correct. This was a compromise that Mr. Mezzalingua and Mr. Wierdor had come up. Mr. Wiedor asked me to change the plan to do this."

Mr. Sutherland said "This is more recent?" Mr. Eggleston: "Yes, this is of today"

Mr. Ramsgard said. "The original application didn't deal with this at all. So the Mezzalingua's are basically satisfied with the temporary dock. The bigger issue is what, had they been informed to the extent of the variances required for all the permanent work, they would have objected and the application was not all of the extent of the permanent work is really what the problem is. They are pretty much OK with the dock and they think they have a nice compromise for the seasonal dock. It's all the permanent structures that are now underway that are at issue. "

Mr. Sutherland said, "Counselor, it seems like we could probably go on for a long time. It seems like there is a technical matter to review of what was presented, what's here now. When you interpret our ordinance did we get things properly done, based proper stuff before or is there something we need to review in some way? I'm not sure we can understand that tonight based on the information coming in. What's the best way to sort out what we need to know and from there determine if there is an additional review or action that's necessary."

Mr. Millman said, "Can I follow on to that? I guess in my mind there are 2 fundamental questions. One is did we approve a site plan based on erroneous information as it has been asserted. I think that is important for us to know. Was the original site plan approved inappropriately. The 2nd one for me is the construction that is going on right now, inconsistent with the original site plan. Whether or not that site plan was approved appropriately or not. I think those are the 2 basic questions. I think we need to get our heads around. It forms more detail."

Mr. Galbato replied, "I think on the first point: a lot has been presented tonight by the applicant's representative and Andy Ramsgard has different calculations than what's been presented. If he has a copy of his marked up chart." Mr. Ramsgard stated he would be happy to share.

Mr. Galbato continued "I think our code enforcement officer should have a change to go through the application. She received it on Tuesday. We wanted to keep things moving, like we try to do in the Village. So give a chance to go through Bob's presentation, Bob's revised site plan that was submitted on Tuesday and discussed tonight. Go through Andy's rebuttal, if you will, and his differences. I think this Board needs to hear from our code enforcement office in light of the discussion tonight of what....to answer your first question, the site plan, the revised site plan, what was changed."

Mr. Millman said "I sort of like, I almost ignoring the current, revised August 4th site plan. I think there are some basic questions that need to be answered about what is happening there today and whether or not there needs to be a stop work order. There is so much, I don't have the capability right now to understand who's, there's obviously differing opinions on this. If we can come to a quick conclusion on whether the work that is happening out there today is not consistent with the approved site plan. And if the original site plan was approved, then you have a double kind of a whammy situation."

Mr. Galbato replied, "Not necessarily, but Bob did you want to answer and comment on the work that is going on now?"

Mr. Eggleston said, "In simple terms, the only thing different in what's getting built now as to what was presented and represented before is that this northern dock area, instead of bringing the sheet piling out all the way to the end and making it totally solid, we followed where the existing cribs were located. Keeping it within the 18 inch dimension, so we might be bringing this out 8-10 inches further than the detail, which is typical where this is 2 inches away and this is 10 inches away based on where this crib was. When you take everything out, that is the only thing different. We are bringing the piling along here, along here, here, here; here it's all consistent with the original application. This has just come back, we made this a cantilevered area to compensate that we are not bringing the solid piling over that's the only difference."

Mr. Millman said, "I understand, what about the steps? They are in a different location coming down from the yard."

Mr. Eggleston said, "There were steps in this area. Originally they were here we were extending them, making them bigger, but we decided instead to keep them exactly the same size but put them over on this side so the lake access people can have direct access."

Mr. Millman said, "That's another, that's different than..." (unclear, multiple voices)

Mr. Galbato asked if the steps were being constructed now.

Mr. Eggleston stated, "No, we don't have any time critical element on that right now. So that can be done any time. It's this work here that is the time sensitive issue."

Mr. Millman said, "So those are the differences between the current site plan and what was approved. I think we still need to understand what was approved if that was working off of accurate information."

Mr. Ramsgard said, "The Mezzalingua's would like to put out there that they understand that there is a hardship in this property and they want to work to resolve it. Although the permit stuff that is currently being put in place will cause more damage if it has to be ripped out because of inaccuracies and it not being filed properly with the DEC and Army Corps of Engineers come in and make them rip it out after it's already been put in there its more disruption of the lake. It is a very time sensitive issue. And hopefully can get resolved fairly quickly. What's currently being built is not what was there."

Mr. Eggleston said, "It's ten inches in front of what was there."

Mr. Ramsgard replied, "It's seven feet in front of what was there."

Mr. Millman said, "So, if the Mezzalingua's, it sounds like they've come to some accommodation on the dock. They recognize that the work being torn out would be damaging to the lakeshore, the lake and possible to them, what is their goal?"

Mr. Ramsgard responded, "They are not going to support any permanent structures that are closer to them and any expansion of a preexisting, nonconforming structures. In the most conservative aspects of when you look at the calculations, and I'd be happy to provide the area calculations to Elaine tomorrow, you can take one approach and it's conservatively 198 sq ft. of expansion. If you fully look at all the compromising data it could be called 500 sq. ft. of expansion. It all depends on how you interpret what the lake line is. It is clear that there is expansion within the side yard without any doubt in any question when you look at what is proposed and what is actually there as the existing. They would support the variance requested to move the permanent dock into the middle of the property if possible. They would support them to repair the existing. They want them to have reasonable use of their property. "

Mr. Millman said, "the work on the permit is underway." Mr. Ramsgard said, "It's an expansion of what was there." Mr. Millman said, "I just want to understand, that's in conflict with their understanding that removing existing work would be potentially damaging."

Mr. Eggleston said, "You're suggesting Andy, that they would find moving this dock that sticks out in the area that the lake access people have, move it to the middle of the property instead of the side of the property?"

Mr. Ramsgard said, "Duane Wiedor has told John Mezzalingua they are not proposing to add any more additional space."

Mr. Galbato said, "There is the potential for two docks on this property because people that don't live on the lake, at least two people I think, have access to a 10ft. by 30 ft. Strip to go down there. Plus Duane owns it. The 10 most northerly feet are subject to a lake rights easement for two property owners."

Mr. Eggleston said, "One of the things that Duane has accomplished in the 10 years he's been there as an access owner and then as the property owner is that there used to be 3 different docks down there. Then reduced to 2 docks, then to 1 dock. What they have is an agreement that everyone is going to share the same dock. Duane owns it and everyone shares in the maintenance and putting it in and taking it out. So I think Duane has helped to clean up and minimize these structures so that people are using common docks instead of using 3 different docks. Duane knows the history much better than I do, but his whole idea is to minimize the impact of the use and they came to an agreement with the easement owners of what they can and can't do on this. It was always vague before. They can only have one table, and 4 chairs. Each easement owner can't have their own table and chairs, you know. There is only one dock storage area for life jackets and things like that. I can only be 4 ft. by 2 ft. by 30 inches. It's pushed into that corner. They can have moorings, but that's it, they can have their own boat hoist there and stuff like this. He is trying to define it, because it was vague when Chaple's put it together. So he's tried to clean it up so everyone can share the space without duplication of items."

Mr. Ramsgard stated, "I think from Mezzalingua's standpoint there is a compromise as to the placement of the permanent structure but there is no compromise relative to increase in permanent structures and that's where Bob and I disagree as to the existing conditions and the calculations of the proposed conditions."

Mr. Millman said, "The permanent structures, the expansion, the area that the Mezzalingua's believe is being expanded, is that under construction?"

Mr. Ramsgard replied, "Yes, it is."

Mr. Eggleston said, "There is no basis for that statement."

Mr. Millman said, "I'm not saying it's true or not true. I understand, there was a conflicting statement that they didn't want to cause damage to the lake because the work was underway."

Mr. Ramsgard clarified by saying, "No, no, no, the work at the lake, the damage has already occurred. They don't want more damage to happen when this stuff has to be ripped out and not put back. If the construction is allowed to continue before this gets figured out, the damage escalates upwards and upwards. So the appropriate thing would be to stop for a couple of days. Both Mezzalingua's and the Wiedor's are out of town. Address all the calculations. See which ones you feel are appropriate and agree with and then make your decision on the application. My role here tonight was to point out that A) this is a completely different application from the original that was submitted back in March. Your approval was given based on data that was incorrect and these drawings show that clearly. There are inconsistencies on these drawings based on the numbers proved on the area calculations. I'm happy to share that with the Board."

Mr. Sutherland asked, "Counselor, do you have a bit of advice for us?"

Mr. Galbato stated, "The code enforcement officer already determined a variance is needed for the temporary dock as presented in the application from Tuesday. It's been revised just late today. New York Zoning Law does not like segmenting a project, so I think it all should come back to this Board after our code enforcement officer has a chance to review the revised site plan and the comments tonight, and Andy's representations or allegations of inaccurate areas referenced in the plan. She would then make a recommendation as to the appropriate numbers. And any and all variances needed or other approvals, whether it be a revised site plan and possible any area variances that might be needed on the revised site plan."

Mr. Sutherland said, "With respect to work that is underway now, any advice, does it continue, does it pause for a bit?"

Mr. Galbato, "The work being done now that's different than what was approved on April 7th, by this Board, Bob has indicated what's changed. That portion I think does not require a variance; correct me if I'm wrong. So if this Board, in lieu of the fact that work is being done and the applicant is working under a DEC permit could possibly approve the revised site plan as to that portion only, exclusive of the stairs. Then the code enforcement officer can look at the other issues."

The Clerk asked, "Bob, you had said Rick Estlinbaum had spoken to Elizabeth Tracy. Do you have that communication? Did she give a preliminary modification approval?" Bob stated, "I was talking to Rick today, and he was making contact with her, but I can have that tomorrow. I don't know." She stated, "Well, I think that would be important."

Mr. Eberhardt asked, "Elaine, have you been there?" "I have not been there." He then added, "We could talk all night about this."

Mr. Galbato said, "Definitely a site visit is recommended."

Mr. Sutherland asked, "Is it one of those things that the applicant precedes at their own risk? We just do our research between now and the next meeting?"

Mr. Eggleston said, "I think what's critical is to finish the seawall. I believe there is not significant damage done, as long as we don't get any big storms, as far as not completing the concrete patio portion of that. I do think it's imperative to get the seawall up and done."

Mr. Ramsgard said, "From my observation today, all the sheet piles were already driven. So they can stop now, the shoreline is protected. If some of the pilings have to be pulled out by discovery, then they have to get pulled out. There is no reason it's not protected now. So there is no reason not to stop work (muffled...) the site visit would probably test that out."

Mr. Eggleston asked, "Is there a time when you want to go down for a site visit?" He suggested Saturday. "The Wiedors are out of town this weekend would you like to do it next week sometime?"

Mr. Galbato suggested offering a couple different times to avoid having a full Board. "I don't want to see more than two people with you so we don't have to publish a public meeting."

Mr. Eberhardt said, "I think the code enforcement officer should go tomorrow."

Mr. Galbato said, "This Board will go before our next meeting, separately." He then asked Mr. Ramsgard if he would give the Board his pictures. Mr. Ramsgard stated, "I'll make copies and I'll give them to you tomorrow." Mr. Galbato asked if Mr. Ramsgard could provide him with copies also. Andy stated, "Yes, I can e-mail to you."

Mr. Eggleston made a phone call to Mr. Wiedor then stated that, "Duane will be in town all next week, he gets in Sunday night."

Mr. Sutherland asked "Do we need to make a motion, or just by agreement to get some more facts?"

Mr. Galbato stated, "Make a motion for continuation to next month's meeting."

Mr. Millman asked, "We are not making any recommendation as to the ongoing construction?"

Ms Keady said, "That's the code enforcements job. We are just doing a continuation of the application."

Mr. Eggleston asked, "So, you are not sending it on the ZBA?"

Mr. Millman and Ms. Keady stated, "We need more information."

Mr. Galbato said, "It's important, she needs time to review the revised site plan with Andy's comments. Make her determination and advise the applicant, through Bob, what if any variances or other approvals are needed. We know about the temporary dock, but is there a variance because they are moving the step, that's something she will determine."

Mr. Eberhardt asked, "Megan, do you agree to add that to your recommendation to continue?" "Yes."

Motion seconded by Mr. Eberhardt. The vote was 4-0 in favor of the motion. The motion was declared passed and the meeting closed at 9:45pm.