

# Zoning Board of Appeals October 10, 2019 Draft Minutes

Members of the Zoning Board of Appeals in attendance by roll call were:

Chairperson Douglas Purcell — here  
Kenneth Coirin — absent  
Frank Malagisi — here  
Kathleen Ellerby — here  
John Byrnes — here

Members of the public in attendance: Matthew Hermance, Dorothea Loomis, John Allen.

Chair Douglas Purcell opened the public hearing at 7:00pm.

Chair Douglas Purcell asked if there were any corrections or additions to the minutes of the August 22, 2019 meeting. There were none. He then asked if there was motion to waive the reading and accept the minutes as published.

Frank Malagisi moved to waive the reading and accept the minutes of August 22, 2019 as published. Kathleen Ellerby seconded the motion. All were in favor.

Application Number #Z2019-04

Owner Dorothea Loomis, 119 Old State Road, Caroga Lake, NY 12032, of the property located at 119 Old State Road, Town of Caroga and identified as parcel [SBL#52.11-4-22](#), zoning district **LF-2.5** — Lakefront 2.5 acres, for a variance to the Town of Caroga [Zoning Ordinance](#).

The property owner proposes to build a retaining wall behind the existing boathouse that would be within the 75 feet waterfront setback at 50 feet from the waterfront.

[Article 4, Section III: Use Table](#) of the Zoning Ordinance lists the uses permitted by right, the uses permitted by site plan review. [Article 4, Section IV: Dimensional Standards](#) lists the dimensional requirements for LF-2.5 zoning district of: setbacks of 25 feet for the front and 20 feet from the rear and side lines of the property, 75 feet from the waterfront, and 10% lot coverage. The wall would be 18 feet by 16 inches by 2 feet tall. A variance for the waterfront setback would be required prior to review of any building plans. If the variance is granted by the Zoning Board of Appeals and not subsequently reversed by the Adirondack Park Agency (APA), building plans would then be reviewed and a determination would be made about whether to issue a building permit.

Doug Purcell explained the process for ZBA meetings and asked Dorothea Loomis to speak.

Dorothea Loomis said the reason for the wall is to prevent any further erosion and also to protect the foundation of the building. The sills of the building were rotted out. The piers shifted. If we can stop that from happening again, that would be very advantageous.

There were no comments from the attendees.

The Secretary said there was no correspondence.

Doug Purcell closed at 7:03 PM.

Frank Malagisi ask what material is being used for the retaining wall.

Dorothea Loomis said it was concrete. She has a garden wall that was recently finished in that same material. The builders have done work all over: NYC, New Jersey.

Frank Malagisi asked how deep the builders were going.

Dorothea Loomis said they dug down quite a way and filled in with some material that won't move. Then, they build a wall on that. The builders have received awards for their work because it is so high quality.

Kathy Ellerby asked when the sills were being replaced, was it pressure treated.

Dorothea Loomis said yes.

Kathy Ellerby asked if it was feasible to put in wire mesh with rocks to hold the soil back.

Dorothea Loomis said yes.

Kathy Ellerby said that would be less visible than a cement wall.

John Byrnes said he'd looked at the site. The wall were it is going to be is not going to be visible on all sides: not from the road, the lake, or the neighbors. Only the applicant would be able to see it from her house.

Doug Purcell said he had no concerns with regards to the building of this wall. In fact, when the application was first presented to him, his response was, "why are we hearing this?" In our own Zoning Ordinance, under shoreline regulations, there is a statement to the effect that structures greater than 100 square feet, except docks and boathouses, shall be set back from the mean high water mark of all lakes, ponds, and navigable waters. Under point 4, it says that retaining walls greater than 100 square feet in size are subject to the shoreline regulations. This is less than 100 square feet. He talked to Code Enforcement Officer John Duesler about why this is not applicable. The Code Enforcement Officer's concern was that there was already more than 100 square feet of structure within the shoreline setback. Doug Purcell estimates that 24 percent of the area within the shoreline setback is covered already. He said the current code also references the Adirondack Park Agency's code and this section of Town of Caroga Zoning Ordinance is lifted from the Adirondack Park Agency Act. Doug Purcell called the APA. He asked the APA what if any impact or consideration is given to existing structures within the 75 foot setback, if the applicant is proposing to add a structure less than 100 square foot. The APA then asked Doug Purcell if the structure was attached in any way to an existing structure, because if it was, it would be considered part of that structure. He told the APA it was not. The APA asked if the proposed structure being added to support any existing structure. He told the APA no, it is being built to hold back the dirt. He said he inferred from the APA questions that the APA's interpretation is the same as his.

Doug Purcell said he would go through the area variance discussion and go through the points the Board needs to consider. He will also propose that the interpretation that was given by the Code Enforcement Officer is going to be overruled and give that to the APA as well.

Doug Purcell said the ZBA, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment

to nearby properties will be created by the granting of the area variance.

The Board said no.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

The Board said no.

3. Whether the requested area variance is substantial.

Doug said the increase in percent coverage within the shoreline setback goes from 24% to 24.4% and he does not consider that a significant change. The rest of the Board agreed, no.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Doug Purcell said it should improve them, and so he said, no. The Board agreed.

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.

The Board said no.

Doug Purcell moved to grant Z2019-04 as a reversal of the interpretation of the Code Enforcement Officer as regard to the enforcement of the current code, to the effect that under the existing code, Section II of Article 5, Subsection C, paragraph 4, "Retaining walls greater than 100 square feet in size are subject to the shoreline structure setbacks." As this structure is less than 100 square feet, the application for the building of such wall could have been granted by the Code Enforcer at the time of the application in that said structure is not attached to any existing structure, nor is it being used to support any existing structure. However, should the Adirondack Park Agency, in their review of this decision, disagree with the Zoning Board of Appeals's interpretation, even though the interpretation has been reviewed by phone with the Adirondack Park Agency, Doug Purcell would further propose that this application be granted on the merits itself: that it is not a significant change, that it is better for the environment, and for the structures on site.

Kathy Ellerby seconded the motion.

Doug Purcell said a yes will grant the variance; A no vote will deny the variance.

Roll call vote:

Frank Malagisi: yes.

Kathy Ellerby: yes.

Doug Purcell: yes.

John Byrnes: yes.

Doug Purcell said it will be submitted to the Adirondack Park Agency for their review. Based on their review, they could reverse the Board's decision. They have thirty days from the time they received all the required documentation.

Application Number #Z2019-05

Owner Joanne S. Korz, 10211 Hillcrest Road, Cupertino, CA 95014, of the property located at 226 Fulton Road, Town of Caroga and identified as parcel [SBL#52.20-1-16](#), zoning district **LF-2.5** — Lakefront 2.5

acres, for a variance to the Town of Caroga [Zoning Ordinance](#).

As per [Article 9, Section V, Paragraph F](#), the property owner was allowed to build in the same footprint as previous structure. The property owner proposes to build a covered entryway on the single family dwelling that is under construction.

[Article 4, Section III: Use Table](#) of the Zoning Ordinance lists the uses permitted by right and the uses permitted by site plan review. [Article 4, Section IV: Dimensional Standards](#) lists the dimensional requirements for LF-2.5 zoning district of: setbacks of 25 feet for the front and 20 feet from the rear and side lines of the property, 75 feet from the waterfront, and 10% lot coverage. The proposed covered entryway would be 8 feet wide by 4 feet deep. It would be 12.5 feet from the maintained edge of the road on one corner and 14 feet from the maintained edge of the road on the opposite corner. The allowed setback is 16.5 feet, as per [Article 9, Subsection VI, Paragraph A](#). It would also increase the lot coverage by 12 square feet. The preexisting ramp was 20 square feet. A variance for the road setback and lot coverage would be required prior to review of any building plans. If the variance is granted by the Zoning Board of Appeals and not subsequently reversed by the Adirondack Park Agency (APA), building plans for the entryway would then be reviewed and a determination would be made about whether to issue a building permit.

Doug Purcell asked John Allen, who represents the applicant, to speak.

John Allen said the original plans which were approved just showed a ramp, 4 foot by 5 by five foot, 20 square feet. The applicant spent a considerable amount of money on the entry door. The architect came up with a 4 foot by 8 foot structure. John Allen recommended to the applicant that the steps be put on the left or the right. Because of the money spent on the door, it probably ought to be protected somewhat. As it says in the Denial Notice, it is an additional 12 square feet. John Allen is working on site as the project manager for the contractor.

Doug Purcell asked if there were any comments from the audience. There were none.

Doug Purcell asked the Secretary if there was any correspondence.

The Secretary said there was a phone call shortly before the meeting and there was supposed to be an email, but it did not arrive before the meeting. [It arrived during the meeting, but the Secretary was out of email contact and the the correspondence dealt with an issue not being addressed in the Code Enforcement rejection of the permit nor the ZBA application for an area variance.]

Doug Purcell closed the public session at 7:17 PM.

Frank Malagisi asked what would be the difference if the steps came off toward the road.

John Allen presented to the Board a photograph of the original structure and the ramp that was there. The steps on the road end up being close to the road and he thought it was better if they were on the side.

Frank Malagisi asked if that was acceptable to the applicant.

John Allen said the road was probably 18 inches higher than the finished floor in the building. It seemed to be a better situation with snow in the winter to have steps on the side. It will become a 6 or 7 month out of the year residence.

Kathy Ellerby asked if this ramp [pictured] comes out five foot.

John Allen confirmed.

Kathy Ellerby continued, saying the applicant would be shortening it to four foot, not counting the stairs.

John Allen agreed.

Kathy Ellerby saying that putting the steps to the side makes it a foot farther from the road. The applicant is just asking for something wider.

John Allen agreed.

John Byrnes had no questions.

Doug Purcell asked, since John Allen had steps, would there be more than one.

John Allen said he's thinking just one step, twelve inch tread, with an eight inch rise. Most of the finished grade is going to be 14 or 15 inches. You'll come out the door and step down seven inches.

Doug Purcell said that was his question: whether there were steps at all, because he had not included them in any of the calculations of the coverage. What was approved has coverage at 18.7%. The additional 12 square feet takes it to 18.9% coverage. The step would not take it past 19% based on what John Allen said.

Doug Purcell said the ZBA, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

The Board said no.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Doug Purcell said the only caveat is that if they stuck with the original footprint and left the ramp, they would not have needed an area variance. Doug Purcell asked the Code Enforcement Officer whether or not the door that was described was in the original plans and if so, why wasn't the porch included in the plans. The Code Enforcement Officer saw those plans and explained to the applicant that he could grant the building application in the existing footprint and that the applicant could proceed with the ZBA application for the porch.

The Board said no.

3. Whether the requested area variance is substantial.

Doug said he's already indicated it is only an additional 0.2% or 0.3% coverage.

The rest of the Board agreed, no.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The Board said no.

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.

Doug Purcell said they put that door in there: it was somewhat self-created. That's not necessarily a reason to reject an application.

Doug Purcell said he would entertain a motion.

Frank Malagisi moved to grant the application. John Byrnes seconded the motion.

Doug Purcell said a yes vote will grant the application; a no vote will deny it.

Roll call vote:

Frank Malagisi: yes.

Kathy Ellerby: yes.

Doug Purcell: yes, on the basis of the fact that even though we're almost 20 percent coverage, the increase is minimal and the fact that they're gaining a foot of setback from the road is a benefit.

John Byrnes: yes.

Doug Purcell said the motion carries.

Doug Purcell said it will be submitted to the Adirondack Park Agency for their review. Based on their review, they could reverse the Board's decision. They have thirty days from the time they received all the required documentation.

Doug Purcell notified the board that the application, Z2019-06, for which materials are being distributed, was incomplete in that there is a need for applicant-provided electronic files of drawings that are larger than 8.5 inch by 11 inch. All documents are uploaded to the TownOfCaroga.com website and are transmitted electronically to the Adirondack Park Agency.

The Board set a tentative meeting of October 24, 7pm.

Frank Malagisi moved to adjourn. John Byrnes seconded the motion.

Adjourn at 7:28 PM

Respectfully submitted  
James McMartin Long  
Town of Caroga Deputy Supervisor,  
acting as Zoning Board of Appeals Clerk  
and Zoning Board of Appeals Secretary