

**ZONING BOARD OF APPEALS  
TOWN OF CANADICE**

Canadice Town Hall

September 14, 2022

Present: Diane Horning, Vice Chairperson  
Ed Bott  
Jesse Hallett  
Kris Singer

Guest: Kristy Wright  
Kris Singer  
Tony Castronova  
Diane Castronova  
Don Cheney, Law  
Jackie Paterson  
Sarah Ackerson  
James Keller  
Marilyn Keller

Linda Moorhouse Absent

Ed Bott called the meeting to order at 7:30 p.m.

S. Smith presented a variance request from Jacquelyn Paterson for the board to review. The request was for a Tiny House to be set in the same footprint as the previous mobile home with all utilities available.

After some discussion, the board voted unanimously that there was no need for the variance request and that the application fee of \$75.00 be returned to Jacquelyn Paterson.

**Public Hearing - Castronova/Wright**

E. Bott - We are going to review the information we have here and the facts we have to gather. We have drawings and all sorts of stuff and we have pictures.

D. Horning - More pictures than what we have?

E. Bott - No.

J. Hallett - If I may ask, I was absent at the last meeting for this particular variance. So, now this is a public and not a preliminary? I'm confused.

K. Singer - I can straighten that out when I get up there, because I have something to say about it.

E. Bott - So, just to bring you up to speed Jesse, this started back in March.

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K. Singer - February, March.

E. Bott - February, March time frame. I was in Florida when they had the initial review. A woman asked for an interpretation and there were some abnormalities about how the whole thing was handled. Last month we had the Preliminary to try to get all the information from everybody and what was going on here. So, this is a continuation of that, the Public Hearing. We won't be making any final determinations tonight. We are going to issue a written response. The first thing is, we have to go through all the different steps of what the criteria was, because the first appeal has to do with five different sections and I want to get to that one first. We will have to take them down one at a time. What I am proposing the two sides, we will take this point by point just to try to keep it a little more organized. We will go over the first point that they brought up, then you will have a chance to discuss your side of that point as we go. Then we will do the second one. Instead of you guys waiting until the end, I think it will be less confusing for everybody.

T. Castronova - I'm good with that.

E. Bott - #1 Kristy Wright, dated July 30th. There are separate sections here, she says I believe several sections of the code were not properly applied to this construction. The first one is 120-21C-6, the square footage of the structure exceeds 800 sq.ft., main floor and second floor would require a site plan review. We are going to take a look at the information on that to start with. The first thing we have with that information is the original application for the permit. Now, Mr. Castronova, I do have one question on this permit. On the bottom of this permit.

T. Castronova - The application?

E. Bott - Yes. There is an overwrite on the date.

T. Castronova - I didn't do that.

E. Bott - I just want to know who did it, that is why I was asking, because on legal documents, there shouldn't be overwrites, you draw a line through.

T. Castronova - That would be my question.

K. Singer - Ed, if you look at the part at the bottom where Eileen, so his original application probably came in on that August date, do you see where Eileen signed, she didn't take payment until November and can't issue a permit until afterwards.

T. Castronova - That's not true. I paid when I applied for the permit.

K. Singer - Eileen's date is 11/3 I believe.

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S. Smith - It is.

E. Bott - Regardless, you can't, if Mr. Castronova put the date after his signature, no one else can change that.

K. Singer - I'm not denying that, I'm just saying that Eileen didn't log in money until 11/3 according to that.

E. Bott - That's why I want to get the date, when you filled out this information.

T. Castronova - It was August 31st and somebody changed the date. I gave them my check then too. You are trying to tell me that it took them two months to cash my check?

E. Bott - I don't know anything about that part yet Tony, I'm just trying to...

T. Castronova - I can show you the canceled check. I will look into that, ok?

E. Bott - Ok. I just wanted to find out about the date change. Ok? I'm just trying to put this all together here.

D. Cheney - If I could point out as well, the permit application I had, that Tony filled out didn't have the plans in there either, where it says plans and it says Seneca PD, that was added after he submitted it as well.

T. Castronova - That wasn't on there, I didn't write that.

D. Cheney - That wasn't on my original copy that I submitted.

E. Bott - This statement, right here?

D. Cheney - Correct. I asked for all the documents from the town, so I could have them. So, when I got that permit, the permit that I have, that Tony gave me doesn't have those plans filled in. So, someone filled that in.

E. Bott - For the record, the original date on the application said 8/31/21?

T. Castronova - Yes.

D. Horning - You can see it underneath there.

E. Bott - I spent 40 years with the FDA, you draw one line through it and initial it. Nobody should

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be changing something without doing that. I just want to get the original date on record. In this accessory structure application, it states that it is a 22X24X10ft. post frame garage, 528 sq.ft. So, now there is a hand drawn picture of the building and there is a second one, more like an engineer drawing of the roof, ok? So, my first question on this, this doesn't have a date or who drew it on there.

T. Castronova - It was the builder. The drawing and the truss diagram.

E. Bott - So, the builder drew that, ok. This one is a hand drawing and the other one was more detailed. So, the hand drawing, now did you have this when you had the application?

T. Castronova - Yes.

E. Bott - Ok. So, the first question I have on these is, and we discussed this a little bit and I don't want to put words in your mouth and you are certainly going to have a chance to talk about this again. You provided us, the last time, with a contract, because you said you used your contractor's wording when you filled out the application.

T. Castronova - Yes.

E. Bott - This is really tough to read, because it is a copy. I think the original is yellow.

T. Castronova - Do you want it?

E. Bott - No, keep that. We are just referring to these for the different things. The beginning of the proposal for the contract states a 22X24X10 post frame garage. Did you give this to the code officers.

T. Castronova - I don't think so, no.

E. Bott - I wouldn't expect you would. I'm just trying to find out who had what. Now, did they get this when you filed the application?

T. Castronova - Yes.

E. Bott - Ok, so my first question on the application is you filled it out using their verbiage on this part, but there's a drawing that you had that shows two 10ft. sections.

T. Castronova - Right. I filled out the application to the best of my knowledge with what information I had. I didn't even think about it, I just wrote what he wrote. That's how he described it and that's how I explained it. They had two months to look at it and if it wasn't right,

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then they should have caught that and said this doesn't jive with the pictures.

E. Bott - By the same token, you knew you were putting in a two story barn.

T. Castronova - Yes.

E. Bott - I hope the guy that built this was a better contractor than the way he wrote the contract.

T. Castronova - It clearly shows that it is a two story building, they knew what it was and how high it was going to be. It was an honest mistake. I didn't intentionally, I would be an idiot to intentionally write something false and then build. Come on, you know, it's a technicality.

E. Bott - It's kind of a big technicality. You knew about the fact that it was two stories. You explained how you wrote it out and why you did it. And that's the way the contract was. And in the contract there is just one little...

T. Castronova - It does say, pre engineered trusses, it's right after where it says.

E. Bott - No, I was talking about where it says two stories, second floor about the fourth line down. Something about flooring, that's the only reference on this that there are two floors. So, the Code Enforcement Officers, according to your thing, they had the drawings showing it had two and this is the more detailed drawing of the truss. But, you knew you had a two story building going in at the time?

T. Castronova - Yes, of course.

E. Bott - The problem with this part of it, with the square footage is this makes it look like it is only 528 sq.ft. Now, there are two square footage situations, one the 528 has to do with the percent of structures on the property, the other part is the storage area, that's where the two floors become important.

T. Castronova - I don't know how you determine that, because it is unfinished attic space. There's no ceiling, there's no finished walls.

E. Bott - It's still storage space.

T. Castronova - Basically, that's the only reason I designed it that way. I need the storage space, period.

E. Bott - The way this is written, that is misleading given the information that is here. I just wanted to find out who did the drawings and who did what when. So, at this point, does anybody

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have either from the complainants side or your side Mr. Castronova the square footage of the second floor?

T. Castronova - I don't even know how to determine that, it's just an open attic.

E. Bott - Well, there's a floor.

T. Castronova - There's a floor, yes.

J. Hallett - They are not attic trusses, they are free span gambrel trusses. So, where it says attic intek flooring, I believe it would be a safe assumption within one or two square feet from the side.

E. Bott - Do you have a stairway going up there?

T. Castronova - Yes.

E. Bott - It would be smaller than that by the opening of the stairway. We are going to have to get an accurate size of the second floor. These are some of the things I've come across when I was looking at the information here and what we were missing. If it's a standard size stairwell, you're only talking about maybe 30 sq.ft. or so, so it's not going to change that below 800ft., so the same issue is still there. We are going to have to find out what that really is. As the zoning members, we have the right to personally review the property.

D. Cheney - Ok.

E. Bott - There are a couple things that we are going to come across in here where there is some discussion and disagreements on sizes and stuff. Just making you aware of the information. That's why we are going over this part by part, so you can answer what you have in here.

T. Castronova - Yes.

E. Bott - We will have to go down there and determine what the second floor coverage is.

T. Castronova - Is that determined by the size of the floor? What does that mean?

E. Bott - Basically, yes. Like I said, we have the right to go down to the property and to take a look at that. The simple way to put it is, you deduct the opening from the total square footage. Whatever that is for the stairwell. A typical stairwell is 3-4 ft. wide. You wouldn't be counting the stairs twice, otherwise, the way you were describing it, you would be double counting that. That's not right and wouldn't be fair to you, because it is not actual usable space. But, we don't know what it is. Like I said, we will have a written decision, once we get all the information and there

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are some things missing here.

T. Castronova - Ok.

E. Bott - So, 120-21-E5-A2, set back from private roads. So, the information we have on that is on the plot drawing. This shows that you have 176ft. long lot by 50ft. wide. Is that correct?

T. Castronova - Yes, to the best of my knowledge.

E. Bott - So, on this drawing, do you own on the other side of the road on the right of way? Do you own both sides of that?

T. Castronova - Are you talking about the property?

E. Bott - Yes.

T. Castronova - That's Kristy's house. Do you mean the other side of the road?

E. Bott - Do you own the area that the right of way runs through?

D. Cheney - To the centerline of the road.

T. Castronova - I don't know what that means.

E. Bott - So, where is your property line? Do you want to come up here, so I can show you on the map and your attorney, if you want to?

T. Castronova came up to the table so E. Bott could show him what he was asking him.

E. Bott - So, this shows, this is the lake side.

T. Castronova - Right.

E. Bott - This shows your property line ending before the Pickerel Point right of way.

T. Castronova - I don't know, there was a square and I just put it on there, I don't know.

E. Bott - Ok. It's a considerable difference if your line is on the other side of that right of way, or includes that right of way.

T. Castronova - Right. I don't know the answer to that. I don't know what to tell you.

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D. Cheney - I can pull your deed.

E. Bott - We need to know where that 176ft. goes.

T. Castronova - Just to the middle of the road, you mean?

E. Bott - It may be to the other side, depends on how the deed is.

T. Castronova - I was told that it had to be so many feet from the road. That's what it said on the paper.

E. Bott - That's true. But, there is more than the setback issue here.

T. Castronova - What's the other issue?

E. Bott - The other issue is, if your property line incorporates that right of way.

T. Castronova - Ok.

E. Bott - The distance from the right of way, or the area of the right of way has to be deducted from that total amount to determine the 30% threshold.

T. Castronova - Oh, that's a whole different issue.

E. Bott - Well there are two issues, one we are looking at the set back and this one says the set back is 24ft. And what is the minimum set back for the roads?

S. Smith - 20

E. Bott - According to this drawing, the set back is fine.

T. Castronova - Right.

E. Bott - Ok. You can have a seat now, Tony. Your attorney is going to try to find out about the deed on that. We are going to end up leaving this meeting open for a period of time, so we can get additional information, because we came across some stuff that doesn't necessarily match up or does match up, we are not sure. Width of the right of way was one of the things that came up. Kristy, do you have any information on the width of the right of way, or the property lines?

K. Wright - No.

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E. Bott - So, this is why we need to get that from an official source and the deed should have that. Kristy, you stated that you felt the set back from the private road was not correct?

K. Wright - I was just eyeing it.

E. Bott - And the side set backs, it's 10ft. on either side and you have 12 and 16.

S. Smith - Yes.

J. Hallett - OnCore shows that lot 5905 stops short of Pickerel Point and lot 5904 owns across Pickerel Point. It's different than both of its neighbors, 5907 and 5911, which are parallel stacked up to 5905 own across Pickerel Point and for whatever reason 5904 on the other side of the road owns across it. So, Castronovas do not own across Pickerel Point. According to this.

K. Wright - When I purchased my home, the property stakes were on my side, it wasn't on the other side of the road.

E. Bott - We will see what the actual deed has.

S. Smith - Kristy should have a survey, since she bought the property. That would be a recent survey.

E. Bott - That would be just recent. If you can get a copy of your survey, we can compare the two of them and find out what is going on with that. Who owns that section of the road? If you have a survey and a deed, it would show that, where that 176 comes too. Because, if it comes to the edge of the road, that's different than if it goes across the road. We need to know that. The setbacks meet that part of it. The maximum building height. We got into a discussion about this the last time, a little bit back and forth. The drawing shows two 10ft. sections. We are going to need to know what the actual height is from the original ground level. I know there was some discussion back and forth last time about that, because you had to build up the one side, the back side of it.

T. Castronova - Right. I took pictures, with a tape measure, so it's 3 1/2ft. from the center of the lot, which is where the garage sits. I have them on my phone, if you would like to see them.

S. Smith - These are the two 10ft. sections, you are talking about?

E. Bott - Yes.

S. Smith - I did not receive this until after the permit was issued, just to let you know.

T. Castronova - Shows E. Bott the pictures on his phone. That's the back side of the lot, if you turn

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now, you will see a closeup measurement.

E. Bott - 43"? Do you know roughly how tall the building is?

T. Castronova - Yes, 22ft. and 5", I think.

E. Bott - So, it's that plus the 43"?

T. Castronova - Yes.

E. Bott - We can check that when we go down there.

T. Castronova - Actually, I talked to the builder and he gave me exact dimensions. There's the 16" floor joist, 10ft. here and actually I think this is a little over ten, the trusses. I added it up, it was a little bit over 22ft. and 5".

E. Bott - Plus the 43. So, that comes out 25, 26ft.

S. Smith - That's what I measured when I was down there, 26 and change.

E. Bott - Ok, and what is the maximum height?

S. Smith - 35ft.

E. Bott - Ok, now we get into the maximum lot coverage. And again, we have to know where that stands with the right of way and the actual 176ft., where that goes to and from. If you have 176ft. prior to the right of way and your line ends at the right of way, then we don't deduct the right of way from it, but if your line goes across it or midway, we have to know where that is. That has to be included in the calculations. That part gets deducted out by town law. We need to know where your property goes. The last part is 120-21G 1 and 2, proposed structure shall minimize impacts on views from neighboring properties and require site plan review over 800 sq. ft. So, that section is determined by the Planning Board and their review. There was never one triggered, so there will be no ruling on that from us. We will include all this in the written review. Because, that is done by the Planning Board. So, as it stands now, we need to know the square footage of the second floor and the actual lot lines with the right of way. To find out if the 176ft. includes the right of way or not. As far as the second floor goes, as I stated, we have a right to go down to the property. If you don't mind, we would like to go down there and take a look at that. And then we can talk over what the actual number is.

J. Hallett - There is an actual survey on OnCore, it's not loading right now, it might though.

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E. Bott - Ok. So, the next question is, when are you available?

T. Castronova - To see the barn, you mean?

E. Bott - Yes.

T. Castronova - What's today?

E. Bott - Today is Wednesday, September 14th.

There was discussion of when everyone would be available to see the barn and measure the square footage of the second floor. It was decided that Sunday, September 18th at 10:00 a.m. would work for all parties.

E. Bott - Ok, Kristy and Kris, I have some questions for you. When did you notice that you thought you had an issue with the building going up on the property?

K. Wright - The 3rd, February 3rd.

K. Singer - We knew there was going to be a garage going up. We knew that all along. Seeing the backfill going in and the garage going up. We did not know until February 3rd, when they put the big trusses up, how tall it was going to be. And that was when we both got home from work.

E. Bott - Ok.

K. Singer - Kristy called me extremely upset.

E. Bott - So, the next thing that you did, when did you contact the Code Enforcement Officer?

K. Singer - When Kristy called, I told her to get a complaint form online. She filled it out, she dropped it off up here on Saturday, but no one was here until Tuesday. It didn't get addressed until the following Tuesday and by that time, they had it closed in and roofed.

E. Bott - So this is the Town of Canadice complaint of violation dated 2/6/2020 and there is also a note that this didn't get filed as an official record in the Town of Canadice until June 28th received. I'm trying to get the timeline on this. So, you filed a complaint and there's phone messages, Wednesday, February 9th. I disagree with it, still. On 2/8 the Code Enforcement Officer responded by saying there was no violations on the permit and it was issued correctly. You said you disagree with it still and would like an interpretation of the code from the Zoning Board. So, what made you decide you wanted an appeal? I wasn't here then.

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K. Singer - We wanted an interpretation.

E. Bott - Why did you request an interpretation rather than an appeal?

K. Singer - Well, basically because Steve said there was no violation and when we looked at the code we thought there were. So, we come to the ZBA to get instruction as to which is correct. It wasn't really done as an appeal at that point in time. It was just an interpretation and then from that Steve issued a Stop Work Order.

E. Bott - There was more than that issued. Ok, this is March 9th, Board of Appeals. This is when I wasn't here. So, this is from the Board of Appeals. Property owner circumvented zoning districts' maximum building height required under zoning code 120-21 E6. This is from the attorney to the board members, Jonathan Tantillo. Do you have a copy of that?

D. Cheney - I do, yes. Just to note, that letter clearly says it's an appeal, not an interpretation.

E. Bott - That's why I am bringing up the whole thing.

K. Singer - That was our understanding, when we submitted that directly here. That wasn't what my conversation was for what we were doing and what we were requesting at that time.

E. Bott - We already discussed the side setbacks and the private road setbacks. So, at the time of that meeting, my understanding is, there were two orders issued from the Appeals Board. One order from the Appeals Board and one from the Code Enforcement Officer. The Appeals Board requested an Order to Remedy.

D. Cheney - That's the subject of our appeal.

E. Bott - Right. An order to remedy the gambrel roof for a 3 0 pitched roof. Were the Castronovas' and their attorney notified that there was going to be a hearing that night?

K. Singer - It wasn't a hearing.

S. Seeley - It wasn't a hearing, that was the meeting for the interpretation. Otherwise, yes they would have been notified.

K. Singer - It was not requested to be a hearing, it was a request for an interpretation of the code.

T. Castronova - Well, then there shouldn't have been a determination that night.

K. Singer - I wasn't on the board then. We just approached the board and asked them.

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E. Bott - Mr. Castronova, hang on a second. I am actually going to get to that point. Without a Public Hearing and offering the other side a chance to address their side of the issue, that seems to be out of order.

K. Singer - We asked for an interpretation of the code. That is what we were advised to do.

E. Bott - I am just trying to get these things all down in order. Separately from that, you issued a Stop Work Order because they found the miss-information from the application?

S. Smith - Right.

E. Bott - I think I have the timeline straightened out. And then we are back picking up again, as we did last month. So, at this point do you guys (speaking to the board members) have any more questions, or information to ask either side of the parties on these issues?

D. Horning - No, I think you have done a very well in covering everything.

J. Hallett - I don't know how this would work with what we have already done. It doesn't sit very well with me that we are going off of a brief project description where they attached two drawings to the original permit. The engineer truss drawing is a hand sketch and it's just a hand sketch. It does show 20ft. They were both submitted with the permit application?

S. Smith - Wrong.

J. Hallett - They weren't?

E. Bott - They said they were.

S. Smith - I didn't receive that plan and the truss plan until after the permit was issued.

T. Castronova - Not true.

S. Smith - After the permit was issued.

T. Castronova - That's absolutely not true.

E. Bott - That's a point of contention.

D. Castronova - I went on the website to see what was needed. It says that it will not even consider reviewing your application for a building permit without the drawings.

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E. Bott - That's Ontario County, that's not Canadice.

D. Cheney - Somebody actually wrote on the permit application that the plans represented a pole barn.

E. Bott - That statement doesn't have a date with it. I have a problem with the fact...

D. Cheney - Somebody wrote it on and it wasn't my client. Somebody must have had it and assumed the plans came with it.

E. Bott - So, that came on 11/3, there shouldn't be comments written down without a date and who did them.

J. Hallett - I guess I would like to know what was submitted when the permit was considered final. Before the barn was built, what documents were with the building permit? What did the town have, when the building permit was approved?

E. Bott - And right now, that is a point of contention.

D. Cheney - Aren't things time stamped, when they come in? A lot of places time stamp.

S. Smith - No, this wasn't. I didn't change any dates on any applications or permits.

E. Bott - We will have to ask the Town Clerk about that. What this is about.

D. Cheney - Do you have cameras?

J. Hallett - There are no cameras in the building.

E. Bott - To your point, I think that is what our attorney brought up and had things actually stamped. Some of these things were not stamped as to when they actually went into the file. That's why I am trying to recreate the timeline as best we could. There's a couple points of contention, they may or may not have any real bearing on the final decision. I don't know yet until we unscramble this whole mess. There is information that is misleading. There is information that may be exact, but we don't know. You need to get the survey, or the deed. The deed will actually show that. If we could get the survey, that would be good too. Kristy, you are going to get us your survey, so we can make the determination of where that right of way is and who owns the right of way in that area?

K. Wright - Yes.

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E. Bott - Ok.

D. Cheney - Can I just ask a few questions?

E. Bott - Yes. I just want to the board members questions and then we open it up and you guys certainly have a say in this.

D. Cheney - Since Steve is the one who issued...there was a complaint made to him and he issued that the permits were issued correctly. So, I just want to ask him, what did you go out and measure?

S. Smith - I measured the height of the building.

D. Cheney - Ok. Because the actual complaint itself, says doesn't meet 20ft. from the road or 10ft. from the side, exceeds maximum lot coverage and obstruction of lake view. Those are the only things complained of, but it appears that the application has a height question and it has a question about site plan review and floor area. But, that wasn't complained of to the Code Enforcement Officer.

E. Bott - Actually, I think the square footage was.

D. Cheney - I have the complaint here, I don't see anything in there. So, anything that wasn't complained of to the Code Enforcement Officer can't be brought before this board. I am assuming Steve only reviewed what was in the complaint. He didn't go out and review a bunch of other things that someone might be complaining about. The jurisdiction...

E. Bott - So, you are talking about the first complaint?

D. Cheney - I see there is one complaint received June 28th.

E. Bott - On this appeal here, that we got from July 3rd, there are five items listed.

D. Cheney - In order to appeal those, you have to appeal Steve's decision. If you don't complain to him, his decision has nothing to do with some of these items. They can only appeal from what he decides, if he doesn't decide it, or if they don't ask him to decide it, they can't.

S. Smith - If the square footage was over 800 square feet on the application, I would have sent him directly to the Planning Board. Because any building over 800 square feet on Honeoye Lakeshore District goes to the Planning Board. If that was on the application, this would have went to the Planning Board directly, before it even came to the Zoning Board.

D. Cheney - So, if that was an item that was complained of...

E. Bott - I know they did complain about that because...

D. Cheney - The process has to be complained to the Code Enforcement Officer. And when you complain, he then denies or approves, or says yes you're right about this or no, you're not right about this. Then, they can appeal from that determination, they can't appeal for things that weren't actually asked. So, there is a jurisdictional problem with some of the issues that they are asking this board to appeal.

S. Smith - The applicant is also supposed to inform me of any significant change. I was never informed of a significant change.

D. Cheney - We would disagree on that.

E. Bott - You are on the record for disagreeing. This is the problem with this whole thing. Not the July 30th one, the one that is the complaint that she filed.

D. Cheney - I only have one complaint.

E. Bott - Yes, I know. There was the one that was brought before on July 30th.

D. Cheney - There was a 2/8/22 complaint issued to the Code Enforcement Officer.

E. Bott - You're talking about the Town of Canadice complaint of violation. I believe the barn structure is in violation of the code and does not meet the 20ft. from the private road, the size exceeds lot coverage and is not similar to other properties.

D. Cheney - So, the Code Enforcement Officer said that there were no violations of those items, they can appeal that. But, they can't appeal things that weren't asked of the Code Enforcement Officer. There is no jurisdiction to ask the Zoning Board for something that he hasn't denied. I just want to get that on the record.

E. Bott - Yes.

D. Cheney - Just to make sure the board understands that. I did print out a letter this afternoon. So, I'm just going to give the board copies of this. Essentially, my contention here is that the board really shouldn't even hear this appeal. They had 60 days to appeal from when the permit was issued, you failed to stick to that timeline. You don't have any rights anymore. So, that timeline ran January 20th. And the reason why that is, is that people who are building structures have to have some certainty when they are building, that their structure can't be torn down. So, there is an

appeal period for it. The applicants have said they knew there was a garage going up. They didn't know what the garage was. It was unfortunate, but they knew about it. The burden is on them to come in here and find out what it is and look at the permit and see if it offends. We can't have an open ended process where appeals come flying in after that 60 day period, because property owners are at a whim of having their buildings adjusted, torn down. They are asking for permits to be revoked, they are asking them to go to the Planning Board, they are asking for a variance release. This building, my clients subject to this building being torn down, when all this was granted. The reason why that timeline sits there is to prevent this sort of random appeals flying in after that date. I don't think the board needs to hear it, I think you should dismiss it out right. You can talk to your attorney about that. To the extent of doing the appeal, I am just putting my opinion in there as to where my client is and how we should deal with it.

E. Bott - That's why we hear from both sides.

D. Cheney - So, that's my contention.

E. Bott - Ok. Anybody else?

J. Hallett - I have a question for everybody. Were any of the permit documents ever emailed? Were any of the additional permit documents or drawings ever emailed? I'm still trying to figure out what was sent.

T. Castronova - I dropped them off at the office. And, I don't even know where Steve was, this whole time I dealt with Rich.

J. Hallett - Ok.

D. Cheney - Can we get Rich here?

E. Bott - I actually thought he was going to be here tonight.

T. Castronova - He is the one I gave the information to. He's the one I dealt with.

E. Bott - The last meeting I thought we talked about that.

S. Smith - I don't remember that.

D. Horning - I don't think his name was even brought up.

D. Cheney - He could submit an affidavit for the record. I would like to know.

J. Hallett - My next question, and this is just my misunderstanding. What's the process to move forward to come to an end on this, either way?

E. Bott - We are going to meet with our attorney. We had to gather all the facts and we are not done gathering facts yet. We have to get the actual footage of the second floor. It looks like everyone is in somewhat of an agreement on the height of the building, close enough to where it is plus or minus a foot. It didn't trigger a site plan review, which it should have. I have a whole list of things that we have to fill in the blanks on, what the criteria and what the facts find. Once we get that filled in, then we will meet with our attorney and review everything there. Did you send a copy of that to her, by any chance?

T. Castronova - I was just going to ask you that. Did a copy of that letter go to their attorney?

D. Cheney - No, I can send it. I am going to send it to the Town Clerk and Code Enforcement Officer to make it part of the record. I can send it to Sheila too.

S. Smith - The letter you just handed out?

D. Cheney - Yes.

S. Smith - I believe we have that.

D. Cheney - I emailed it this afternoon.

S. Smith - Everybody got a copy.

E. Bott - Ok.

J. Hallett - The site coverage point, on the permit it says 528 square feet. The second story doesn't matter for the site coverage point? Because it's just a birds eye building perimeter.

E. Bott - Right. There's two different parts.

J. Hallett - There's the site coverage percentage, if that was a problem, shouldn't the town have seen that on the application. Didn't we just miss that? Isn't that on us?

E. Bott - It depends on what they come out with...

D. Horning - The total square footage for everything that is on the property.

E. Bott - That's what the plot drawing is for. That's where we had the question about where the

line was, versus where the lot line was showing in the drawing. So, if this is correct and it's before Pickerel Point and those distances are right, then we go by these numbers. If that is not correct, and Pickerel Point right of way is included in the 176ft., that changes the math. This shows it before that. I don't know where it is.

D. Horning - So, we also have to figure out the square footage between the house and all the buildings and make sure it's under the 30%.

J. Hallett - My point was, the size of the new building is 528 square feet, right.

D. Horning - That's only the first floor.

J. Hallett - How can that be a point of contention after the permit is issued?

E. Bott - That isn't as far as the footprint.

J. Hallett - Ok.

E. Bott - What is unknown, is where that lot line is versus the right of way. I will just take it to you real quick on the map.

J. Hallett - I got that. If it's over 30%, every building together.

E. Bott - And, you have to deduct the right of way if it's inside the lot. That is 1250 square feet.

S. Smith - The second floor is basically double the first floor, which puts it over 1000 square feet.

D. Horning - You would take out probably 28 square feet, so they have approximately 500 square feet for the second floor.

S. Smith - Exactly.

E. Bott - We will find out exactly what that is for the record, just so it is accurate. That's where the problem of determining what the 30% is. So, if this incorrect and the property line is actually past that, this is also incorrect.

J. Hallett - Was that submitted with the original permit application?

E. Bott - I believe this has to be.

J. Hallett - So, if that was incorrect and that was signed and a permit was issued on it, can we go

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back on it?

E. Bott - We have to talk to our attorney about that.

S. Smith - That drawing there did come with the permit application. The other plan that you see there with the gambrel roof on it, came in after.

T. Castronova - No.

E. Bott - They don't agree, ok? We have you on record. The two major things are, what's the real square footage and they are trying to say that we don't have the authority to rule on that even though their attorney wrote back in that there was an appeal. Then they kind of did an appeal, but not really. Again, that's one of the things that the attorney brought up to me, that she has to take care of that and show us what we can and cannot do on those things. We have to get all the facts. That's what we are trying to do right now.

K. Singer - Ed, I want to clarify something from the last meeting. Mr. Cheney objected in the letter that he sent today of me participating and me being a ZBA member. When I arrived at the August meeting, my intent was to be right where I am today, sitting back here. I had all my stuff back here. Linda said that she had been on the phone with Sheila about three times that day and said I could be sitting up there. I could be here and I could participate, I just could not vote. I went up there at her insistence, because I kept insisting that I wanted to be here. I just want to clarify that, because I am being blamed for this appeal. This appeal came about because when I came home on Thursday, February 3rd, Kristy called me and she was in tears.

E. Bott - And you weren't in an official capacity.

K. Singer - I wasn't then.

E. Bott - No, not then you weren't.

K. Singer - I was not anything at that point. And when she called me and said what do I do? This is extremely upsetting and what do I do? As the Supervisor for 22 years I didn't get involved in the Appeals Board. You are not supposed to get involved with the Planning Board or the Appeals Board. I did some research and worked with her on that. I did not institute this, I did not start it, although it does impact me. I see it from my deck, from my house. It is an impact and if it goes to site plan review, I'm an adjacent property that it does impact. I just wanted to clarify that I had no intention of sitting up there as a board member, when I came in last August. I had no intention of sitting up there, because I knew it was going to be a bone of contention. And, I didn't want to, but Linda insisted that I participate up there, I just couldn't vote. And, I want that clarified. Because, it has kind of pissed me off to say the least. And then a back was turned to me purposely because I

was sitting over on the side. I just wanted to stay on this side of the fence all along.

E. Bott - Ok.

K. Singer - I wasn't even appointed to the board until April or May. Thinking, this was basically over with. We came for the interpretation, he put the stop work order, we thought it was all in the Towns hands at that point in time. There was no indication that it was going to go on any farther. We thought it was all in the Towns ballpark and we weren't involved in it anymore. And because of procedural things and after Sheila looked at it and not filing with the Town Clerk, it just continues to snowball. But, at the point in time when I was appointed to the board, I thought this thing was already a done deal and was between the town.

E. Bott - But, you weren't directly involved with any of this here as far as you passing as a Zoning Board Member. I agree that it is certainly more appropriate than not be sitting up there. You weren't acting in an official capacity at all and we weren't going to let you. Your appointment came well after that and that wasn't a part of it at all. So, is there anything else on the issues brought forth from Kristy? Ok, then we have a separate thing, which is your position on, I believe the two notices that were issued.

D. Cheney - Yes, my client got an order to remedy. We are appealing, we believe it's incorrect. I submitted a letter on that. The bone of contention there is whether the plans were there or not. My client says they were, the enforcement says they weren't. It's hard to believe we would get a permit without some sort of plan. They were certainly out there inspecting footers and whatever else they inspect. Somebody saw it somewhere and didn't issue a stop work order, didn't complain until something happened at the Zoning Board of Appeals and we got an order to remedy. I find it difficult to believe. A lot of things happened, I don't know. My client says he submitted the plans, I would have to think the plans got here somehow, somewhere.

E. Bott - It's clear from the minutes, from what I have seen that there was no hearing per say.

D. Cheney - Yes, so I don't know how the ZBA took action. I mean the Code Enforcement can take any action he wants. That's why we appealed his determination. I don't know that the ZBA can do anything without a public hearing and a hearing and give my client an opportunity to show up. The only thing we are worried about is the order to remedy. That's the only thing that binds us, at this point in time.

E. Bott - Well, the stop work order, if that's still in place and it's just stop work. There's two different things.

D. Cheney - That was issued by the Code Enforcement Officer.

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E. Bott - Yes.

D. Cheney - We can appeal that, which we did. And, I guess it is up to the board to find the facts. My client was honest about, you saw exactly what he put on the permit is what his builder wrote on the proposal. I don't think that is dispositive, it's a pole barn. I'm an attorney, but I know what a pole barn looks like and I know they aren't 10ft. high.

E. Bott - You want to be careful there. They are all different sizes.

D. Cheney - They could be. A 22 by 24 by 10 would look kind of funny as a pole barn.

J. Hallett - The inspection by RJ on 5/18/2022.

D. Horning - That would be Rich?

S. Smith - My Deputy, I believe.

J. Hallett - Rich Joki, ok. The Building Department was there on 5/18/22 and from looking at this, the structure of the building must have been more or less complete because there are criticisms about almost every part of the shape of the building.

S. Smith - That was in May, right?

J. Hallett - Yes. But, we knew the shape of the building at that point.

S. Smith - The gambrel trusses were up in February?

K. Singer - February 3rd, they went up. That's what started the whole thing.

E. Bott - So, the two points that you have are the order to remedy, right? That was ordered without an actual hearing. And then, the stop work order. I believe you brought both of those up?

D. Cheney - Yes, to me they are one thing. The Code Enforcement Officer issues the stop work order or an order to remedy, whatever it is.

E. Bott - They are actually two things. Did you have anything other than that, or anything else. We are going to sit down, we still have to collect some of the data. Technically, we are leaving this meeting open until we can get the information from you and we can put it into the records. We will review that with you before we put it in there. If you are going to give a deed or a survey and they are going to get a survey, we will make sure everybody sees the size of it. If you see something and you don't agree with it, please let us know and we will basically continue this into

our next meeting. If you need to respond to that kind of a thing. Deeds and surveys are pretty straight forward, but we've seen some that weren't. Some of the places on the lake have overlapped. These are fairly new, so they shouldn't have those issues, but I'm not going to count anything out until I actually see it.

D. Cheney - All right.

S. Smith - I have a question. We are leaving the meeting open, does she have to put a notice in the paper?

E. Bott - So, we are going to go on Sunday and get some more information about what the actual footage is on the second floor. I think that was the only thing that was in contention that we were dealing with at that point. We have the other documentation. Tony is going to supply us with a deed, I don't know what that timeline would take. We are going to have to leave it open for at least a week, without knowing how these surveys come out.

S. Smith - I'm just saying for the next meeting.

E. Bott - Hopefully, we can resolve this before the next meeting. We will have to make sure we have that information. I think that is the only information that I am looking for, if you guys have other information, please speak up, because we have to leave this open for the additional documents to come in.

S. Smith - Right.

E. Bott - There is no way we can make any kind of determination on this stuff without knowing what that really is. Especially the square footage part.

S. Smith - If it comes to three weeks from now, we have to repost it in the newspaper.

E. Bott - I would post it that it is a continuance. I would hope it won't take that long. I don't think we are going to.

S. Smith - The next meeting would be the 12th.

E. Bott - Normally, with something like this, you would leave it open for like a week to wait for the documents to come in, then close it. But, right now, we just don't know what this is going to entail.

S. Smith - If it does continue on, we have to post it in the paper?

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E. Bott - Yes.

S. Smith - And the next meeting, if there is a next meeting, would be the 12th of October.

E. Bott - I hope we have all the information before then. How long do we have to have to post it?

S. Seeley - I try to get it in the week before.

S. Smith - I will leave the review signs down there.

J. Hallett - If we could get Rich here for the next one too.

E. Bott - Is there any information that you want from him? I thought he was going to be in on this thing.

S. Smith - I don't remember seeing it in the minutes.

D. Cheney - My client dealt with him and gave him the plans. It would be important to see what he knows about the plans, does he remember getting the plans? What did he get, what didn't he get?

E. Bott - Sure.

S. Smith - Ed could have a sit down with him and get a statement.

E. Bott - We can have him sign an affidavit.

S. Smith - You can have a sit down with him, I don't think I should because of my involvement in this.

E. Bott - Do we need a quorum for that?

J. Hallett - Just have him come to the next meeting.

E. Bott - I'd like to get this resolved before another month goes by, if at all possible. I don't want to wait another month unless we have to.

D. Cheney - He can sign an affidavit, I will accept that. I just want to know. My client says he gave it to him. He would be the person that would know or wouldn't know.

E. Bott - Yes.

S. Smith - I am thinking either you or Linda, or both of you sit down with Rich.

E. Bott - Linda may or may not be available, she needs surgery. So, I don't know if she would be there. Would you be ok if it was just me talking to him?

D. Cheney - There is only one question. You got a permit application, did you get plans, do you recall? If he doesn't recall, he doesn't recall.

E. Bott - Nope, that's right.

D. Cheney - I don't want to put words in his mouth, just tell us.

E. Bott - Me either, that's why...

S. Smith - That's why I would prefer not to be there.

E. Bott - No, I don't have a problem overseeing that. I just want to make sure that all parties agree to that before I do that. So, when is he around?

S. Smith - Half day Tuesdays, all day Wednesday. Half day Tuesday, from 9-1 and then 9-3.

D. Horning - Tuesday and Wednesday.

E. Bott - Tuesday and Wednesday?

S. Smith - Yes, Tuesday until 1, Wednesday until 3.

E. Bott - And, what is his name, Rich?

S. Smith - Rich Joki.

E. Bott - And he is there until 1 on Tuesday?

D. Horning - And 3 on Wednesday.

E. Bott - What time does he start?

S. Smith - 9

E. Bott - Ok, so I will try to get a statement from him as to what he received the day the application was filed.

T. Castronova - I just want to make one more point. What I keep hearing is one of the arguments is that the building permit was for a one story structure. If you look at the permit, all it says is a pole barn 22 by 24. There is nowhere on there that says it's one story.

E. Bott - It says 10ft.

T. Castronova - It doesn't even say that.

D. Cheney - It doesn't say it on the permit.

E. Bott - Oh, on the permit, on the application it did.

D. Cheney - Yes.

E. Bott - Who filled out the permit?

S. Smith - I believe Rich filled it out and I processed it the next day, I think, but I am not positive.

E. Bott - You should be able to tell by the handwriting on there.

S. Smith - I did sign the permit. But, he probably left it on my desk for me.

E. Bott - Ok.

S. Smith - That's what I am thinking. Like I said, it was a while ago.

E. Bott - So, I am going to ask Rich to make a statement about the contents of the application?

D. Cheney - Yes, what paperwork he received. Does he recall, does he not recall. Did he receive it, did he not receive it?

E. Bott - Ok, I just want to make sure in my notes here that I have everything.

D. Horning - I guess this is as far as we can go tonight.

E. Bott - Yes, ok, Sunday we will meet, just to check out the...

D. Horning - Check out the property line.

J. Hallett - 10:00 Sunday.

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E. Bott - At this point, I would like to close the Public Hearing on the two issues.

D. Horning made a motion to close the Public Hearing, seconded by J. Hallett, all in favor.

The meeting concluded at 8:50 and the guests left the meeting room.

### **OLD BUSINESS**

K. Singer made a motion to accept the minutes from the August 10, 2022 Public Hearing with the noted corrections, seconded by E. Bott, all in favor.

K. Singer made a motion to adjourn, seconded by E. Bott all in favor.

The meeting adjourned at 9:15 p.m.

Respectfully,

Stephanie Seeley, Secretary