

**TOWN OF SKANEATELES  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF**

December 12, 2017

Present:

Denise Rhoads, Chair  
Jim Condon, Vice Chair  
Sherill Ketchum, Member  
David Palen, Member  
Mark Tucker, Member  
Michelle Jackson, Secretary  
Scott Molnar, Attorney  
Karen Barkdull, P&Z Clerk

Chair Rhoads opened the Special meeting at 7:00 p.m. at Town Hall. The next Zoning Board of Appeals meeting will be held on January 2, 2018. Chair Rhoads introduces the board and reviews the Agenda.

Applicant: Jane Richards  
2310 Thornton Grove  
Skaneateles, NY 13152  
Regarding:  
2308 Thornton Grove  
Skaneateles, NY 13152  
Tax Map ID# 056.-03-04.0

At this time Chair Rhoads asked Attorney Molnar if there had been a settlement.

Attorney Molnar explains that since the last meeting there have been correspondence and discussion regarding a settlement that would benefit all parties involved. Attorney Molnar proposed several conditions to the ZBA and both parties. At this time the parties could not agree on the conditions.

Deb Williams speaking on behalf of the applicant would like to ask the board to remove the faces and the emotions and focus on the facts. She is concerned about one member being absent from last meeting. Ms. Williams would like an interpretation of the code as she requested.

Attorney Molnar explains that if there is an agreement then the expectation is that the application would be withdrawn. The conditions proposed are similar conditions that are provided from the Zoning Board.

Ms. Williams is asking the board to give an interpretation.

Attorney Molnar explains that the Board is without the authority to render an advisory position for particular circumstances. The ZBA cannot issue an advisory position; the applicant can

complete the review of the appeal and render a findings and facts. In the absence of a consensus or settlement, the ZBA will have to move forward.

Ms. Williams explains that she informed Ms. Richards that the property owner was unwilling to reduce their ISC and she is concerned about grading and drainage.

Ms. Williams is not in agreement to a settlement at this point in time. The applicant would like to have more of a reduction in the ISC prior to moving forward. Ms. Williams is of the opinion that she does not see that much of an effort given by the property owner.

Attorney Davis explains that he is not quite sure who is driving the appeal and is concerned that it is being driven by Ms. Williams not Ms. Richards. The fact that shrub removal has now become part of the negotiations and the settlement is questionable. The Salzhauer family has followed the procedures required of them; the reuse of as many components as possible from the beginning of the project, and how during the building process some of the materials were discovered to not be salvageable. At this time the issue may be with the definitions in the code and the board should look at the facts and the determination made by the Codes Office. The Codes Officer has been at the site and has determined there have been no significant modifications to the plans. The Salzhauers ask that the board deny the application and that the decision by the Codes Office remain.

Bob Eggleston, Architect would like to speak in regards to the drawings and the pre-meeting. There were discussions prior to the issuance of the building permit that the Codes office and the Zoning Clerk reviewed with the Salzhauers and that the plans included comments.

Attorney Brody Smith representing the Codes Office, would like to express that as a preliminary matter that the Codes Office had ample opportunity to discuss the plans with the Salzhauers and the Architect. The Codes officer understood and was not surprised by the manner in which the building being completed was in compliance with what was expected. The CEO has visited the project on multiple occasions and is comfortable with the process as it is. The Codes office applied Section 148-12(c)(3) to this project when issuing the building permit.

Attorney Smith expressed that the point of the law is not to allow the nonconformity to expand, as well as that most towns have percentages according to value and that the hope of the town is to have homeowners improve their property and not be discouraged to maintain the properties. This property is on the same footprint and not an expansion. It is also stated that in similar circumstances there was no variance required. Attorney Smith is of the opinion that the Board should deny the appeal.

Chair Rhoads thanks the presenters and asks Member Ketchum if she has had a chance to listen to the last meeting tape.

Member Ketchum expressed that she did go to the site, has reviewed all of the documents; however she did not listen to the digital recording of the Public Hearing. At this point she feels as though she should abstain.

Attorney Scott Molnar, expresses that it is very important that all members deliberating on the issue to be familiarized with the Public Hearing. It is important and he recommends that the Zoning Board proceed with a four member determination with Member Ketchum abstaining.

Chair Rhoads agrees and the Board proceeded with the discussion.

Member Tucker expressed that he is of the opinion that some of the old flooring remains and that although most were new there were some old pieces as well.

Vice Chair Condon expressed that although there were new flooring he agrees about 20 -30 pieces of the floor joists were reused. There was also some old plywood covered in plastic in place however there was a majority of new as well.

Attorney Scott Molnar, expressed that if there are no more observations or comments from the board member, in the absence of an agreement among parties, the Board is charged with its role to provide an interpretation and to answer the appeal of Ms. Richards. Essentially this needs to be taken into three pieces:

The first is to determine from the record the facts of this application, it being framed as a quote renovation or alteration. For purposes of the Code Enforcement Office reviewing the application, he recommends that the board hone in on the facts as they are important to them as it pertains to the reconstruction project.

Second is to hone in on the request by the applicant for an interpretation and in particular to which section better applies in light of the facts that you are considering and finding. In so doing you would take into consideration the distinction that our Code defines in section 142-C alteration but does not define restoration. Section 148-12-C is the section which both the applicant and the homeowner focus on, and it provides requirements. So we have restoration which is undefined in the codes. Furthermore as the applicant is suggesting the Codes Section 148-12-C(2) are applicable and the ZBA should determine if that section applies and speaks to the nonconforming lot section.

The applicant has suggested that 148-12-C(5) has application to this project, so that section including the phrase demolish has application to the determination. The Code does not define demolish. So we have two phrases which are framing in nature in which the Statutes to apply which have words and the common meaning of which have to be determined by the board.

We have restoration on the first hand and demolition on the other these two phrases are for the board to interpret and define. It is up to the Board to finally make a decision as to which code section is more applicable based on the facts that are presented and the facts that were provided. Section 148-12-C(3) and C(5) using the requirements that the board is familiar with. These are the standards for review that we have reviewed in the past; any ambiguity must be in favor of the

property owner. The determination by the ZBA if it is rational and reasonable in terms of interpretation, this is the frame work in which Attorney Molnar continues the determination.

Member David Palen begins with his comments by praising the lawyers on both sides of the issue at hand for their complete and thoughtful arguments. Many valid points are raised about the decision making process for determining whether or not a proposed building project is subject to greater or lesser oversight and investigation prior to approval and the issuance of a building permit.

In this particular case we have an existing nonconforming structure on a nonconforming lot in an RF District located on the shoreline less than 100' but not within 50' of the lake line. The lot is approximately 50' wide and 256' long with an ISC established at 26.3%. The existing nonconforming structure on the property was a single story cottage set on concrete block piers to allow for a crawl space and utility access, with approximately 2000sf of floor space and a peaked roof.

The initial proposed changes to the structure, according to the application, consisted of "remodel existing cottage"; "increase height"; and "reduce to three bedrooms". Detailed plans submitted by the architect display a nicely designed two-story cottage with a full second floor, a fully enclosed cement block crawl space approximately 5' in height with a concrete floor, all contained within the existing footprint of the original structure. Total floor space for the revised structure is established at 2,200 sf.

The project clearly falls within the scope of 148-12 of the Town zoning code. A primary question, as I see it, becomes, does 148-12(c)(3) apply in this case or is 148-12-(c)(5) the more applicable code. In case of (c)(3), expansion would be allowable without a variance or special permit provided that the applicant was not increasing the nonconformity of the structure or expanding its nonconforming use. Expansion could be characterized in this case as the renovation or repair of the structure within the existing footprint. (c)(5), on the other hand, refer to the demolition of a nonconforming structure and the construction of a wholly new structure on a nonconforming lot with an ISC that is above the maximum. Invoking (c)(5), because the ISC is above the maximum, would require that the application be subjected to submission to the planning board, possibly the ZBA, and would further require a reduction in the ISC prior to granting of a permit.

It is my opinion that both valid arguments and equally comparative examples have been presented by the applicant and the respondent, in this case. Following a site visit, I am somewhat persuaded that (c)(5) would be a more appropriate code designation as the project is currently rendered. There is little left of the original structure other than a few floor joists and flooring and the crawl space is not remotely comparable to what previously existed. Whether it is done with a backhoe or a sawzall, the tear down of a structure, whether it is piecemeal or in total is still a tear down and mostly resembles what could be described as a demolition.

That being said, I am equally persuaded that the original decision made by Ms. Barkdull and the Codes Officer Coville to apply (c)(3) to this application was wholly appropriate given the information that they were provided at the time by the architect. It is their role in the process to review the application, apply it to the code, and make the best judgment as to what portions of the code are applicable and what further steps must be taken in order to secure a building permit. It is also the role of the Codes Officer to insure that the actual construction process follows the appropriate construction sequence and meets all necessary codes. It would appear from evidence presented and testimony provided that Ms. Barkdull and the Codes Officer have been diligent in their roles. The lack of a construction sequence listing in the original application as presented into evidence is troubling, however, given the extent of the changes to the original structure. Is the structure as it is currently configured aligned with the original construction sequence or is it the result of decisions made as the structure was disassembled? This, I believe would help to answer the question as to the appropriateness of which portion of the code would have been applicable at the start of the process and as the construction proceeded.

In conclusion, I am not persuaded that the applicant's request for a stop work order and a resubmission to the planning board and/or the Zoning Board of Appeals is an appropriate remedy in this specific case. The project is too far along and the respondents have committed far too much resource to halt construction at this point without significant consequence. Therefore, I believe that a more appropriate remedy would be to further clarify, in the code, the differences between (c)(3) and (c)(5) in order to enhance decision making at the project entry level and for the Code Officer to appropriately pose more questions to applicants for projects located in sensitive areas with significant nonconformance issues.

Ms. Deb Williams asked if she was able to ask questions at this point.

Attorney Molnar responds with a negative.

Attorney Molnar recommends that the Board be polled and determine if they agree with Member Palen's findings and facts as presented by Member Palen be utilized in the findings and facts. All members after being polled agree. He then asked if they would be comfortable in using them for findings and facts in using them for the decision and the determination. Being polled all members are in the affirmative and agree.

Vice Chair Condon would like to include his comments as well. He expressed his determination and how he came to his findings. He proceeds to review the timeline of the application for the Building Permit.

The Onondaga County Health Department letter of septic approval, the plumbing code does not recognize seasonal dwellings. The City of Syracuse has sent an approval letter which reads: "remodel of existing cottage, increase height and decrease to three bedrooms." The-permit phase two, nature of work, the following was checked; demolition/ removal and alteration & repair, both are happening on this project, not just one as clearly stated on the permit. Under Zoning

information, all is checked appropriately and on the Building information, all is checked appropriately. The site plan, all the numbers match-all reviewed by the Zoning office prior to issuing the permit. Working drawings (new construction only): we were not provided with demolition plans of the project. Notes read: existing floor piers to remain-field verify condition. It was on the drawings that repair existing masonry piers remain-- field verify. The note reads repair existing floor and replacement as needed. The Architect and the Building Inspector have made many site visits to review the condition of the floor. The determination at the point of the drawings have "field inspect and verify if the materials are usable." The interpretation of intent following the notes on the drawing, although during the site visit a majority of the materials are new, the intent was to follow the notes on the plans. It appears that when the footers were dug out that there was deterioration.

Drawing two again new construction drawings has a new foundation built on existing piers. The building code now calls for 42 "below grade with the dimensions placed on the drawing for the new building section A. The foundation was installed on a sloped lot and this is the reason for the lake side to be higher off the ground -- in order to meet the foundation requirements of a 42" cover to pitch it down, as we saw during the site visit. New crawl space maximum height is 6'4"; this is not an extended use since there was a crawl space prior. The structure being built has to be up to energy code and the plumbing needs to be in a heated envelope of the structure. The height of the crawl space has increased from the original.

It is my opinion that the building permit was properly issued with the description of the plans and used in conjunction with the building permit. There could have been more but if used in conjunction with one another then the descriptions are provided. The Architect and Field inspector verified the condition multiple times-- the materials that could and could not be used by the builder.

There is no change in use of the property, 148-12G has been met so no special permit or variance is required per zoning section 148-12(c) and 148-12(G)(2) (c). There was no change in the footprint so this did not trigger redevelopment. During the process this was defined as NOT a minor renovation they also complied with the NYS Energy Code.

The definition of alteration as provided to structure, or change to or rearrangement of the structure parts and or any expansion thereof, including the extension of any side or by any increase in height or the moving of such structure ~~to~~ from one location to another.

I agree with Member Palen and going forward there should be more information on the permit and perhaps the pre-meeting minutes should be taken and added to the permit. The Town as a whole should relook at the code and redefine the definitions. Going forward implement the changes as the applications go through the Boards.

Attorney Molnar has a few questions: As a result does the board agree that the definition of Alteration so as to bring in the applicability of 148-12(c)(3) is a rational interpretation for this application and does the board being polled agree with Vice Chair Condon's findings as well?

Chair Denise Rhoads is of the opinion that it is more of a demolition rather than an alteration. She agrees with some of the comments provided by Vice Chair Condon but is more in agreement with Member Palen's analysis.

Vice Chair Condon comments that the intent when the building permit was obtained ~~the intent~~ was an alteration, however, after the building started there was a more in depth repair involved because of the disrepair of the materials, he is not aware of how the homeowner is guilty of anything. The code is a gray area, the homeowners believed they were doing the right thing and at some point it was determined that this was more than an alteration. There is no percentage in the codes as to what defines an alteration. Since there is not a definition he leans towards alteration because he is of the belief that the intent was an alteration.

Attorney Molnar asks if the balance of the Board Members agree with the comments made by Vice Chair Condon. Member Palen agrees, but as the building proceeded it at some point became more applicable that (c)(5) would apply.

Chair Rhoads asked for clarification of Attorney Molnar as to what he is asking the Board to agree on

Attorney Molnar stated that in determining the findings and facts, he is also asking for clarity ~~on~~ by the balance of the board, agreeing or disagreeing, for the characteristics, once the motion is presented, will it include the agreed facts and interpretations and findings previously discussed so that it is on the table when deliberation occurs. The transcript will be utilized to complete the motion.

Member Tucker is of the opinion that Member Condon covered most of it and that due to the lack of definitions for restoration and demolition there is a concern. The intent was for an alteration and as the project went further it became a demolition, and there is no percentage identifying when it becomes a demolition. It would have been helpful to have more information included on the application.

Member Palen is of the same opinion that a more detailed sequence of the job would have been helpful.

Attorney Molnar asked if perhaps a Construction Narrative would have been helpful.

Member Palen agrees, more information would have been helpful.

Chair Rhoads asked what the next step is.

Attorney Molnar recommends that a motion be made by one of the members to A: make a determination and finding of all of the facts put forth with all of the agreed upon sections. B: that it also include a determination that code section 148-12(c)(3) is the appropriate section given that the application began with an alteration. He recommends that the Board make a decision on those and either reject or accept those findings.

Motion made by David Palen that first the findings and facts put forth are agreed upon, and that 148-12(c) (3) is the applicable code Section seconded by Vice Chair Condon. All members being polled the results are:

<u>RECORD OF VOTE</u>			
Chair	Denise Rhoads	Present	[Yes] [No ]
Vice Chair	Jim Condon	Present	[Yes] [Yes]
Member	David Palen	Present	[Yes] [Yes]
Member	Mark Tucker	Present	[Yes] [Yes]
Member	Sherill Ketchum	Present	[Abstain]

Ms. Deb Williams again requested an interpretation of 148-12G(c)(3)

Attorney Molnar explained that the board just voted that 148-12(c)(3) applies to this application.

**PLEASE TAKE NOTICE** that the following resolution was adopted at the Zoning Board of Appeals (“ZBA”) Special Meeting held on December 12, 2017:

**WHEREAS**, application was made Jane Richards, 2310 Thornton Grove, Skaneateles, New York 13052 (the “Applicant”) for property located at 2308 Thornton Grove in the Town of Skaneateles, New York (“Property” or “Project”) owned by Elan and Anne Salzhauer (“Owners”) requesting: (1) an interpretation of Town Code Section 148-12G(2)(c) and its applicability to the Project; and (2) modification of the Building Permit dated September 29, 2017 (“Building Permit”) issued by the Town of Skaneateles Code Enforcement Officer (“CEO”) for the Project, by issuance of a stop work order with the ZBA directing the Owner to obtain an area variance from the ZBA and a special permit from the Town of Skaneateles Planning Board (“PB”) before work on the Project can be continued (collectively the “Application”) and;

**WHEREAS**, in Applicant’s brief in support of the Application, Applicant argues that the Project is more accurately classified as a demolition project, instead of a renovation project, not otherwise permitted by Code Section 148-12G(2)(c), which does not permit demolition when it states:

(2) Notwithstanding the foregoing provisions, no variance shall be required for the following:

(c) Any renovation or ordinary repairs to an existing building or structure which is not intended to and does not provide for a new or extended use or size of the

building, structure or premises, provided that such alteration or repair does not increase the nonconformity of the building or structure.

**WHEREAS**, Applicant further argues that the Project required a variance from the ZBA and a special permit from the PB because the Project exceeds the 10% Impermeable Surface Coverage (“ISC”) requirements of the Code, and is not otherwise independently permitted by Code Section 148-12C(5), which states:

(5) A nonconforming structure may be demolished and a new structure built to the same or lesser height and floor space and on the same or lesser footprint without a variance or special permit, provided that the structure and the lot on which it is situated comply with applicable maximum impermeable surface requirements. Increases in height, footprint, floor space, or interior volume are permitted in compliance with all of the limits in Subsection C(2), (3), and (4) above. Any change in location of the footprint shall require a special permit unless the structure in the new location complies with all of the dimensional requirements of this Zoning Law, including impermeable surface coverage requirements. If the structure and/or the lot on which it is situated do not comply with applicable maximum impermeable surface coverage requirements, the Planning Board shall require the applicant to reduce impermeable surface coverage on the property to the maximum extent feasible as a condition of the special permit. The Planning Board may also require mitigation as provided in § 148-12G(6). In no event may the special permit allow an applicant to increase the nonconforming impermeable surface coverage.

**WHEREAS**, the Owner appeared at the November 14, 2017, December 5, 2017 and December 12, 2017 ZBA meetings, and concluded that the CEO issued a valid Building Permit on that basis that: (1) Town Code Section 148-12G(2)(c) allows issuance of the Building Permit for any renovation or ordinary repairs to an existing building provided that such alteration or repair does not increase the nonconformity of the building or structure, and in this case the Permit Application (defined below) demonstrated alterations and renovations to the structure without an increase to any nonconformity; and (2) Town Code Section 148-12C(3) applies and allows issuance of the Building Permit without variance or special permit for alteration and restoration of the nonconforming structure on the nonconforming lot, because of the reuse of components of the existing structure, without increasing nonconformity of a structure, and because Section 148-12C(3) provides:

(3) Notwithstanding the provisions of § 148-12G(1)(a)[7], a nonconforming structure or use may be expanded by up to a total of 500 square feet of floor space and 5,000 cubic feet of interior volume without a variance or special permit, provided that such expansion does not increase the nonconformity of the structure or expand the nonconforming use. The 500 square feet of permitted expansion shall be cumulative and shall include all prior expansions since January 1, 1996. For purposes of this Subsection C(3), the floor space and interior volume of a garage and the floor space of decks and patios shall be counted toward the total floor space and interior volume. The increased floor space or volume may result in an increase in the height of the structure consistent with the height limits of this chapter, provided that no part of the structure is located within 50 feet of the lake line.

**WHEREAS**, the Owner’s brief and materials in support of the Owner’s position further argue that the Project falls within 148-12C(3) because the Project does not increase floor space by greater than 500 square feet, or interior volume by greater than 5000 cubic feet, and the Project is entitled to raise the roof within Code requirements because no part of the structure is located within 50 feet of the lake line (collectively “Owner Position”); and

**WHEREAS**, the CEO appeared at the December 5, 2017 and December 12, 2017 ZBA meetings, advising the ZBA that the Building Permit was issued by the CEO with input from the Planning and Zoning Clerk after a thorough review of the Owner’s Application for a Zoning and Building Permit, dated September 27, 2017, together with plans and exhibits (collectively the “Permit Application”), upon the basis that Town Code Sections 148-12G(2)(c) and 148-12C(3) authorize issuance of the Building Permit, given that the Permit Application reflected that that the Project would be alteration and renovation of an existing single family cottage, including the re-use of materials from the existing structure, with increase in height, a reduction to three bedrooms, on the same footprint of the existing structure located beyond 50 feet of the lake line, without the disturbance of 200SF or greater, and being an “Alteration” as defined in the Code (collectively “CEO Position”) under Code Section 148-56, which states:

ALTERATION — As applied to a structure, a change to or rearrangement of the structural parts, or any expansion thereof, including the extension of any side or by any increase in height, or the moving of such structure from one location to another.

**WHEREAS**, the CEO also pointed out that the Code does not include definitions for “restoration” or “renovation”, though both terms appear and are utilized in Sections 148-12G(2)(c) and 148-12C; and

**WHEREAS**, the Applicant made submissions to the ZBA for consideration at the November 14, 2017 meeting, a public hearing was held by the ZBA on December 5, 2017 before which the Applicant made additional submissions via counsel; and the Application was continued for review at the December 12, 2017 special ZBA meeting; and

**WHEREAS**, the ZBA has made site visits to the Property, has reviewed and considered all of the material contained in the Board's file, has heard and considered submission made on behalf of the Applicant, has heard and considered public comment, has heard and considered the Owner Position, and has heard and considered the CEO Position; and

**WHEREAS**, in consideration of the Application, the Owner Position, the CEO Position, and the record created at the Public Hearing, the ZBA determined the following findings of fact (“Findings of Fact”) for proceeding with a determination of the Application:

1. The Property consists of an existing nonconforming structure on a nonconforming lot in the RF District, located on the shoreline less than 100’ but not within 50’ of the lake line.
2. The Property is approximately 50’ wide and 256’ long with an ISC established at 26.3%.
3. The existing nonconforming structure is a single story cottage set on concrete block piers to allow for a crawl space and utility access, with approximately 2,000SF of floor space and a peaked roof.

4. The Permit Application reflects: “remodel existing cottage;” “increase height;” “reduce to three bedrooms;” via detailed plans submitted by the architect which display a nicely designed two-story cottage with a full second story over a fully enclosed cement block crawl space approximately 5Ft in height with a concrete floor, contained within the existing footprint of the original structure, reusing existing masonry ~~peirs~~, piers, reusing existing flooring and joists--to be “replaced as needed,” with a total floor space of the revised structure established at 2,200SF.
5. There will be no change of use of the Property; and
6. After Site Visit by the ZBA, there is little left of the original structure other than a few floor joists and flooring, and the crawl space is not comparable to what previously existed.

**WHEREAS**, the Zoning Board of Appeals declared this application a Type II single family residential action pursuant to 6 NYCRR617.5(c)(9) and not subject to further review under SEQR;

**NOW, THEREFORE, BE IT RESOLVED**, upon a motion made Member Palen and seconded by Vice Chair Condon, and after an affirmative vote of all Members present as recorded below, with Member Ketchum Abstaining, the Town of Skaneateles Zoning Board of Appeals has determined:

The foregoing Findings of Fact are adopted by the ZBA in connection with the Property and a determination on the Application;

The ZBA determines that the Project clearly falls within the scope of 148-12 of the Town zoning code. Furthermore, in the case of 148-12(C)(3), expansion would be allowable without a variance or special permit provided that the Owner was not increasing the nonconformity of the structure or expanding its nonconforming use, and is the applicable Code section for the Project.

The Owner, along with their architect, had met with the Planning and Zoning Clerk and the CEO, presented evidence and testimony for their Permit Application, and the CEO and Planning and Zoning Clerk being diligent in their roles determined that the Permit Application fell within Section 148-12(C)(3).

Expansion could be characterized in this case as the renovation or repair of the structure within the existing footprint. The intent of the Permit Application was to utilize as much as the original material as possible, but due to the decomposed nature of the material a majority was required to be replaced.

The Board also determines that the Permit Application met the requirements of Section 148-12G(2)(c), in that there was no change in footprint or increase to nonconformity of the building or structure.

Code Section 148-12C(3) applies in this case, instead of 148-12C(5), which refers to the demolition of a nonconforming structure and the construction of a wholly new structure on a

nonconforming lot with ISC that is above the maximum, which would require a reduction of the ISC prior to granting of a permit.

Upon review of the timeline and Permit Application materials, the ZBA notes: the Onondaga County Health Department letter of septic approval; the plumbing code does not recognize seasonal dwellings; the City of Syracuse has sent an approval letter with approval note that reads “remodel of existing cottage, increase height and decrease to three bedrooms”; the permit phase two, nature of work, the following was checked: demolition/ removal and alteration & repair and both are happening on this Project, not just one as clearly stated on the Permit Application; under Zoning information, all is checked appropriately and on the Building information all is checked appropriately; on the site plan all the numbers match and all were reviewed by the CEO prior to issuing the Permit; working drawings (new construction only) were not provided for demolition of the Project; notes read “existing floor piers to remain-field verify condition” and “repair existing masonry piers remain- field verify”; a note on the plan also reads ”repair existing floor and replacement as needed.”

The Board also observed that the Owner’s Architect and the CEO made many site visits to review the condition of the floor. The interpretation of intent follows the notes on the drawing, although during the site visit a majority of the materials are new, the intent was to follow the notes on the plans. It also appears that when the footers were dug, that there was deterioration found.

The Board also observed that Drawing #2 reflects a new foundation built on existing piers, and that the building code now calls for foundations 42“ below grade, with the dimensions placed on the drawing for the new building section A. The foundation was installed on a sloped lot and this is the reason for the lake side is higher off the ground, in order to meet the foundation requirements of a 42” cover to pitch it down, as observed during the site visit. A new crawl space maximum height is 6’4”, which is not an extended use since there was a crawl space prior. The structure being built now has to be up to energy code, with the plumbing to be in a heated envelope, so the height of the crawl space has increased from the original.

The Board then expressed that it in its opinion the Building Permit was properly issued with the description of the plans used in conjunction with the Building Permit, despite that there could have been more provided. The Architect and field inspector verified the condition multiple times as to which materials could and could not be used by the builder, and that there is no change in use of the property, concluding that 148-12G has been met and no special permit or variance is required per zoning section 148-12(c)(3) and 148-12(G)(2)(c), with no change in the footprint to trigger redevelopment.

In addition, the Board notes during the Permit Application this was defined as “not a minor renovation” and provided for the NYS Energy Code.

The Board also finds that the definition of Alteration applies to the Project, as provided to structure, or change to or rearrangement of the structure parts, and or any expansion thereof, including the extension of any side, or by any increase in height, or of the moving of such

structure from one location to another, and brings the applicability of 148-12C(3) rationally to the Project.

Lastly, the ZBA also observes that the Project is too far along and the Owners have committed far too much resource to halt construction at this point without significant consequence. Therefore, it is the belief of the ZBA that a more appropriate remedy would be to further clarify, in the Code, the differences between (C)(3) and (C)(5) in order to enhance decision making at the project entry level and for the CEO to appropriately pose more questions to applicants for projects located in sensitive areas with significant nonconformance issues. In addition, the ZBA observes that the Code could be clarified to define a percentage for alteration, and at what point changes to a project become demolition, and also that the Code could also be clarified to define restoration and renovation, and could include a construction narrative in the project application materials, to provide more information.

**RECORD OF VOTE**

Chair	Denise Rhoads	Present [Yes] [No]
Vice Chair	Jim Condon	Present [Yes] [Yes]
Member	David Palen	Present [Yes] [Yes]
Member	Mark Tucker	Present [Yes] [Yes]
Member	Sherill Ketchum	Present[Abstain]

There being no further business, a motion was made by Vice Chair Condon and seconded by Member Palen to adjourn the meeting. The Zoning Board of Appeals meeting adjourned at 8:25 p.m.

Respectfully Submitted,  
Michelle Jackson