

**TOWN OF WASHINGTON
ZONING BOARD OF APPEALS**

August 21, 2007

A meeting and public hearing of the Zoning Board of Appeals was held on August 21, 2007 at 7:30 P.M., the Town Hall, 10 Reservoir Drive, Millbrook, New York to consider the applications of 1) Salvador J. and E. Christina Lang Assael for area variance from the Town Zoning Code Section 330-B(5), Accessory Residential Housing, to allow construction of an accessory apartment and guest house at 4449 Route 44. The property is zoned RR 10. 2) Joan LaCasse for a area variance from the Town Zoning Code Appendix B, Schedule of Area and Bulk Regulations, to allow construction of a deck off of the kitchen and rear bedroom at 38 Route 343, west of the monument. The property is zoned RH 1.

The members present were: Chairman, Brad Roeller, Peter Audia, Jerry Baker, Donald Marshall, and John Parisi. Attorney for the Town, John Gifford is in attendance regarding the Assael application. Attorney Richard I. Cantor, Esq. representative for the Assaels is also present.

The meeting was called to order by Chairman Roeller who stated that the Assael application is a continued public hearing from the Zoning Board of Appeals meeting held on July 17, 2007, the LaCasse application is a public hearing.

A motion to approve the July 17, 2007 meeting minutes as written was made by board member Marshall, and seconded by board member Baker. All ayes.

Chairman Roeller updated board members on some details that have transpired since the last meeting. Chairman Roeller expressed that it should be noted that in some of the correspondence in this file, the Planning Board which is undergoing a simultaneous review, adopted a Negative Declaration Notice of Determination of Non Significance regarding their SEQRA Review with the findings that the scale of the proposed development is appropriate for the neighborhood, at their August 7, 2007 meeting. Also, since the last meeting, Chairman Roeller has had conversations with consultant Neil Wilson, attorney John Gifford, and Rebecca Valk, who is associated with Van DeWater and Van DeWater, LLP concerning this application with the request that they draft a Statement of Findings and a Draft Resolution for ZBA consideration at tonight's meeting. Board member Baker has had an opportunity to review this and has also had some discussions on his own with these persons. Chairman Roeller stated that there is a copy of the Statement of Findings and Draft Resolution for board members which will be referred to as the meeting proceeds with the review. Several things have prompted this Findings and Resolution; discussions with the aforementioned, the fact that Dutchess Land Conservancy in their July 16, 2007 letter to Chairman Roeller, supports granting both the area variance and the special permit application, also, the absence of adjoining neighbors at the last public hearing.

Chairman Roeller next read the Record of Findings: "The matter having come to be heard before

a duly convened meeting of the Zoning Board of Appeals, and the facts, matters and evidence produced by the applicant and interested parties have been duly heard, received and considered and due deliberation having been had, the following is the record of findings.”

“The Assaels have submitted an application to the Town of Washington Planning Board for special use permit and site plan approval, per Town of Washington Zoning Code Section 330-B.”

“The application was presented by Richard I Cantor of the law firm of Teahan & Constantino; Mark Graminski, P.E., L.S., and Armand DiBiase, AIA, Di Biase, Filkoff Architects. The applicants are seeking a variance from Town of Washington Zoning Code Section 330-B(5) which states that only one (1) accessory residential housing unit per lot is permitted. The applicants seek the area variance so that they may construct two (2) additional residential accessory housing units. This will result in a total of three (3) residential accessory housing units where only one (1) is permitted as of right. The proposed residential accessory housing units will be as follows:

1. A caretaker’s cottage of approximately 1000 square feet. The applicant has designated this accessory housing unit as the permitted accessory housing unit allowed under Town of Washington Zoning Code 330-B(5), subject to special use permit and site plan approval by the Planning Board. Therefore, this unit does not require a variance;
2. An accessory apartment of approximately 1,360 square feet, to be located on the second floor of a newly constructed, four-car, 1,440 square foot garage; and
3. A guest house of approximately 1,375 square feet.

This application is a direct appeal to the ZBA in connection with the aforementioned application submitted to the Planning Board. Therefore, this Board has jurisdiction over this variance application pursuant to Town Law Section 274-b(5).

The following documents were considered by the ZBA in reviewing this application:

1. Application to the Board of Appeals dated June 22, 2007, along with the attached Supplemental Statement and Exhibits A-G.
2. Agricultural Data Statement submitted to the Town of Washington Planning Board.
3. June 26, 2007 letter of Richard I. Cantor, Esq. to the Town of Washington Zoning Board of Appeals.
4. July 16, 2007 letter from Dutchess Land Conservancy to Brad Roeller, Chairman, Town of Washington Zoning Board of Appeals.
5. July 19, 2007 letter of Richard I. Cantor, Esq. to the Town of Washington Zoning Board of Appeals.
6. July 19, 2007 letter of Richard I. Cantor, Esq. to the Town of Washington Zoning Board of Appeals (2nd submission).
7. August 8, 2007 letter of Richard I. Cantor, Esq. to the Town of Washington Zoning Board of Appeals.

The subject parcel is located on Route 44 in the Town of Washington, consists of approximately 80 acres of land, and is known as tax grid #6966-00-515955. Currently, the parcel is improved with a 2 ½ story single family residence. The applicants also are the owners of an adjacent parcel consistently of approximately 40 acres, and that parcel is known as tax grid #6967-00-485115. The 40 acre parcel is not the subject of this application.

The subject parcel is located in the RR 10 Zoning District and is also mapped as being located in the Agricultural Protection Overlay Zone.

The subject parcel is encumbered by a Conservation Easement which was granted by the prior owners, Jorge G. Mora and Maria Ines Rivero, to the Dutchess Land Conservancy by Conservation Easement Deed dated December 23, 2002, (Exhibit "B" to the Application). The Conservation Easement provides, *inter alia*, that the principal residence may not be expanded beyond the existing size and height, as of the date of the Conservation Easement. The Dutchess Land Conservancy Inc. ("DLC"), grantee of the above referenced easement, has advised the Zoning Board of Appeals that the conservation easement is quite unique in this respect because most conservation easements to which the DLC is party to, do not place restrictions on the expansion of or renovations to the principal residence.

In making its determination on an area variance application, this Board must take into consideration the benefit to the applicant(s) if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In doing so, this Board must weigh the following statutory criteria: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting an area variance; (2) whether the benefit sought by the applicant(s) can be achieved by some method, feasible for the applicant(s) to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board, but shall not necessarily preclude the granting of the area variance.

Character of the Neighborhood and Detriment to Nearby Properties

The existing neighborhood is a rural neighborhood consisting of lots which are quite large in size. There are only a small number of parcels in the surrounding neighborhood that do not conform to the current 10 acre minimum for the RR-10 zoning district. In fact, many of the surrounding lots exceed 20 acres in size.

The uses within the neighborhood are primarily residential and agricultural.

This lot is approximately 80 acres in size. The proposed residential uses of an accessory apartment for staff and a guest house will be in conformity with the surrounding residential and agricultural uses. The combined effect of the principal structure and the accessory residential

housing units will result in a center of residential uses connected to a shared system of

residential infrastructure. All units will be reached by a single point of ingress and egress. All units will share connections to the private septic system and private water supply.

However, if the proposed accessory apartment and guest house were to be rented or leased to individuals who are not connected to the owner, the parcel could effectively be converted into multi-family housing, which is not a permitted use within this zoning district.

The use of the accessory apartment must be limited to individuals who have either a family or employment relationship with the property owners, regardless of who the owners may be at any given point in time. Furthermore, it is intended that the guest house will be used for occasional residential use.

No evidence has been presented that the proposed variance, if granted, would result in a detriment to nearby properties, other than the concern about the additional units being converted to multi-family housing, as discussed in the immediately preceding paragraph.

Alternative Methods of Achieving Benefit Sought by Applicant

At the Public Hearing held on July 17, 2007, the members of the Zoning Board of Appeals inquired as to whether other proposals had been considered to achieve the applicants' goals. For example, the Board inquired as to whether two or more of the proposed accessory residential units could be combined. Additionally, the Board questioned whether the principal residence could be expanded to accommodate some of the uses proposed to be contained within the accessory residential units. Such inquires were warranted and necessary to determine whether alternative methods for achieving the benefit sought by the applicant existed.

As stated above, the terms of the Conservation Easement provide that the principal residence may not be expanded beyond the existing size and height, as of the date of the Conservation Easement. Therefore, the applicants' are unable to expand the principal residence to accommodate the uses that will be located within the accessory residential units.

The ultimate question is whether there is an alternative by which the applicant can achieve the benefit sought without the need for an area variance. While combining the proposed accessory residential units may alleviate the need for an area variance, it would not achieve the benefit to be sought. The applicants' seek to have a total of three (3) accessory residential housing units which will house three (3) distinctly different uses. The distinction among these uses cannot be maintained if the residential units were to be combined into one (1) structure.

Substantiality of Variance Requested

While at first blush the requested variance appears significant - the applicants' are requesting permission to increase the permitted amount of accessory residential housing by three times that permitted as of right - it has been determined that the amount of deviation from the as of right

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amount cannot be considered in the void. Rather, the overall effect of the variance is what is to be considered.

But for the existence of the Conservation Easement, and assuming that no significant environmental constraints exist on the site, this lot could be subdivided into perhaps as many as seven (7) residential lots, 1. (The property is located within the RR-10 residential district, which requires a minimum lot size of 10 acres. While this parcel, applying solely the minimum lot size regulation, could be subdivided into eight (8) lots, it is likely that after a review of all regulations, less than a total of eight (8) buildable lots would result. Therefore for purposes of this resolution, we have adopted seven (7) lots as a realistic number.) on which each property owner would be entitled to one (1) accessory residential housing unit. In other words, on the same amount of land as comprises this lot, a subdivision would permit the construction of as many as seven (7) principal residences and seven (7) accessory residential housing units. The applicants seek to have two (2) additional accessory residential housing units. The distinction is that they will be located within one building envelope, as opposed to being spread among many different lots. The effect of this variance will be small when compared to the potential permitted under the Town's Zoning Code.

Effect of Impact on Physical or Environmental Conditions in the Neighborhood

The Town of Washington Planning Board, as lead agency, on August 7, 2007, adopted a Negative Declaration, determining that the proposed project will not have a significant environmental impact and a Draft Environmental Impact Statement will not be prepared.

While the adoption of a Negative Declaration by the Planning Board does not change or in any way supersede this Board's jurisdiction to consider applications for area variances, it is a factor that must be considered when analyzing whether the requested variance will have an effect or impact on physical or environmental conditions in the neighborhood.

At the public hearing, the applicants' representatives presented a viewshed analysis, which evidenced that the proposed structures would be sufficiently screened from the general view.

No evidence has been presented that there would be a negative effect on the physical or environmental condition in the neighborhood.

Self-Creation of Difficulty

Arguably, the need for an area variance is self-created. The conservation easement encumbering this property has placed significant constraints on the applicants' ability to achieve their goals without the need for an area variance. While the conservation easement was placed on the property by a previous property owner, the applicants' purchased the land with full knowledge of the existence of the conservation easement and the restrictions imposed by the same.

However, the statutory scheme provides that while the self-creation of the hardship is relevant, a self-created difficulty will not necessarily preclude the granting of a variance. The Board does not find the self-creation of this hardship to be significant enough to warrant a denial.

SEQRA

As mentioned above, the Town of Washington Planning Board, as lead agency, on August 7, 2007, adopted a Negative Declaration determining that the proposed project will not have a significant environmental impact and a Draft Environmental Impact Statement will not be prepared.

Chairman Roeller said that he requested that this Record of Findings be drafted in consultation with attorney Gifford and Rebecca Valk, to craft this to emphasize the uniqueness of this application, to hopefully head off future applications of similar natures, that the board can point to this and defend, in this case, granting of this area variance.

Chairman Roeller expressed that there is also a Resolution that the board can act upon this evening. The Resolution states the nature of the Application and Conditions that Chairman Roeller requested to be considered for approving this variance: 1) That the accessory apartment for staff may only be occupied by individuals with either a family or direct employment relationship with the property owners; and 2) That the use of the guest house shall be limited to occasional and temporary residential use by friends and family of the property owners for which no rental or other charge is made or received, either directly or indirectly, in cash or in kind of services. For purposes of this variance the word "occasional" is defined as occurring at infrequent intervals or as incidental or as casual; that is, as distinguished from events of a similar nature recurring with some degree of regularity. Failure to comply with the above stated conditions is subject to enforcement pursuant to terms of New York Town Law, Section 268.

Chairman Roeller opened the meeting to the board for discussion and to the public for questions and/or comments. Chairman Roeller next addressed persons in attendance and questioned if there is anyone interested in giving comment or ask questions for the Assael Application. **There were no persons from the public in attendance who wished to comment or ask questions for the Assael Application. A motion to close the public hearing was made by board member Parisi, and seconded by board member Audia. All ayes.**

Chairman Roeller referred to the Draft Resolution that he distributed to board members some time ago as being a slightly revised draft but is basically the same draft.

Board member Parisi expressed that he is still not convinced that there isn't another way of achieving what the owners' objectives are. The hardship is self-created, and is not unique.

The property was purchased with the knowledge of a conservation easement and the Town Zoning Code. When it is said that the applicants' have eighty acres (80 acres), in board member Parisi's mind, they do not have eighty acres (80 acres), they only have what is left from the

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conservation easement because they gave them away; this is what the Board should be considering, not eighty acres, something less substantial less than eighty acres. In terms of the quantity, the applicants' are asking for three (3) buildings, two of which definitely can be residential in nature, that, to board member Parisi is 200 % of what the applicants' have, so it

is very substantial. Returning to the question of why the applicants' put a limit on the amount of space in the primary residence; this is one way of getting around the conservation easement. If DLC wanted a limit for the amount of living space, then they must have placed the amount of residential space in it, otherwise, why would they put it on and why wouldn't they have left it open to another application. Board member Baker expressed that it is not the DLC that put it on, it was at the request of the owners, Mora. DLC has told board member Baker that basically, this is very unusual. Board member Parisi asserted, then you have the option of going back to the DLC, to get that easement lifted. The DLC should have considered the options; it doesn't appear to board member Parisi that the owners have approached this in those terms. Board member Parisi expressed that he is not convinced that the board should grant the variance.

Chairman Roeller remarked that he and board member Baker have attended some of the Planning Board workshops, and have had discussions. Board member Audia referred to conservation easements and said the Board is just starting to see some of the impact on the properties being sold. Board member Audia said that he doesn't think that this is going to set a precedent because of the nature of the envelope of the property. Board member Audia feels that the only issue is, why the owners expected to be able to do this, have the variance granted, but feels that in this community the board has to bend a little to accommodate what is making this town somewhat unusual. This type of development is better for the community; but have these types of applications reviewed. Board member Audia said that he has had some outside input on this variance application, and feels the board needs to begin looking at these a little differently. Definitely, there is not a hardship; the board cannot consider this a hardship. The board needs to review these types of variance applications as being along the lines of the welfare of the community, whatever the property owners needs are regarding their outside help, etc. and have the restriction limited to that. Some of the older, grandfathered, type of properties go along with that thinking.

Board member Marshall expressed that he has mixed feelings about granting the variance; agrees with board member Parisi to a point, that the owners knew about the conservation easement when they purchased the property. Board member Marshall said that persons who purchase property in this town, who apparently have money, or they wouldn't be developing their land to this extent, send their representatives to the board to explain what the application is about. Board member Marshall said that he wants the owners to appear before the board from this point on. The applicants themselves should appear before the board, because questions are asked that the representatives cannot answer. Chairman Roeller remarked that he doesn't think that this can be addressed; the current laws authorize an agent to represent them at proceedings, etc. Board member Baker was in agreement with board member Marshall, said not that it makes a legal difference, but, the board found in a number of cases where having the applicant before the board, at least for one of the meetings, and can have a dialogue, sometimes helps the board come up with a solution that is difficult to do with a representative, or agent.

Chairman Roeller expressed that Dutchess Land Conservancy needs to familiarize themselves with the Town of Washington Zoning Laws because they certainly could have patterned an easement that could have perhaps satisfied the owners' wishes and not needed a variance.

DLC's point of view is, the property is protected, we have a confined development in a zone, and have taken every precaution to safeguard both human and environmental impacts. Then an application comes before the zoning board who has to deal with it. Some things are shared standards such as environmental impacts on the district. Chairman Roeller said that if the board had a better, closer, working relationship with DLC when they have some property that is undergoing an easement, a few simple telephone calls to Chairman Beaumont, himself, or consultant Neil Wilson could potentially head off some future requests for variances.

Another unusual element that is a first in chairman Roeller's career in zoning and planning, is that this application is a simultaneous review which is a little unusual because the board is hamstrung to a degree. The planning board made a negative determination of significance, obviously to chairman Roeller that is most of the one important factors in weighing environmental impacts on the district, neighborhood, in general. If the Board were to have a negative vote on this application using this as a standard; it flies right in the face of the Board and findings of the planning board. Chairman Roeller said that he plans to have this addressed in some way.

Chairman Roeller stated that in weighing the wishes of the applicants', the standards for approval, the input from DLC, the ongoing input of the planning board, a carefully crafted statement of findings, and a pretty straight forward and clear resolution, he is inclined to approve the area variance application.

Chairman Roeller questioned attorney Cantor if he has any questions, comments. Attorney Cantor thanked chairman Roeller for his and the boards' thorough discussion. Chairman Roeller next addressed attorney Gifford to ask if there are any additional board procedures. Attorney Gifford recommended that the Board proceed to vote.

Board member Baker expressed that environmentally it has been declared that there is no problem, the Boards' major concern was to some extent, precedent for future applicants. What the board tried to do with the findings and resolution was narrow that and declare in these documents the uniqueness of the application. It is interesting that in the easement, the square footage of the existing building, and the height of the 39.8 foot tower is actually talked about. The physical building is restricted to that extent. When board member Baker talked to DLC, they said this is the only one in the Town of Washington. Most of the time there are constraints on the building envelope, various things, but to have this kind of specificity about what can be done with the main building is unusual. Why the former owners wanted to do this is not known.

Board member Parisi remarked about persons purchasing property, having the previous owner put restrictions in that will be validated by the board. Chairman Roeller said that the board needs to open a dialogue with DLC. Board member Baker expressed that from what DLC has said, the

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important thing is that they not be that specific.

Board member Parisi said that he has a different point of view; he feels that if one is looking for

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a variance, one should wait five to seven years before you can request a variance on your property on the theory that you knew what you were buying when you purchased the property.

Chairman Roeller stated **that he read the conditions of the Assael resolution and will make the motion that the board approve the area variance, and questioned if there is a second to his motion? The motion was seconded by board member Baker.**

The foregoing resolution was duly put to a vote which resulted as follows:

Bradley Roeller, chairman - aye
Peter Audia - aye
Jeremy Baker- aye
Donald Marshall - aye
John Parisi - nay

The area variance request for the Assael application is granted by the board.

Attorney Cantor thanked the board for their time and attention and understands the struggles that revolved around the board's sincere understanding what is best for the Town and appreciates this. Attorney Cantor again thanked the board for their time and courtesy.

Previously submitted to the board for the LaCasse application was a completed Application to Board of Appeals, attached explanation letter that strict application of the Ordinance would produce undue hardship, Short Environmental Assessment Form, color photos of view from kitchen rear yard, boundary fence, door addition, kitchen door, and a full scale survey map dated 3/17/04.

Chairman Roeller analyzed that by visiting the site and reviewing the survey map, the board is dealing with a RH 1 zone, and stated that this application is a Type II Action; paragraphs C7, 12, and 13, address this as area variances for individual setbacks that do not require following the SEQRA process in making a determination of significance, and is not reviewable under the SEQRA Law.

Chairman Roeller next invited the public to view the survey map and ask questions of either the board or applicant. Catherine M. Culkin, 36 Route 343, is the only adjoining neighbor who is in attendance to learn more about this application.

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Chairman Roeller requested Ms. LaCasse to explain/describe the proposal. Ms. LaCasse said that she wants to put a 20'x16' rear deck off of the kitchen and rear bedroom that does not meet the setbacks. Relief of the setback from the Stroup property line is not needed since her house is 85 ft. from the property line. The deck would be built from the rear entry of her mother's room to the rear kitchen door, both entry ways have four (4) stairs going down to the backyard.

Ms. LaCasse said that her mother is 87 years old and has recently moved in with her. Her mother has been recuperating from two surgeries this past year. Her room has a rear entry, which is adjacent to the rear kitchen door, both entry ways have four stairs going down to the backyard.

By adding a rear deck level with both doorways it would allow her mother the ease of going outside without maneuvering stairs. Ms. LaCasse is often concerned about her mother going outside when she is not at home; this simple addition would greatly reduce the risk of a fall when she goes out for some sun or fresh air. The deck would be added in a simple way, designed to conform to the country charm of her home as well as her immediate neighbors.

Chairman Roeller questioned Ms. LaCasse if the deck/porch will be enclosed or heated? Ms. LaCasse responded in the negative, said it will be a deck similar to what anyone may have in their yard. Ms. Culkin questioned the height of the deck/porch? Ms. LaCasse said the deck is going from door to door. Chairman Roeller questioned if the deck/porch will be at the same elevation as first floor, if opening the door would bring one onto the deck instead of stepping down on steps? Ms. LaCasse responded affirmatively and said there would be steps going down onto the grassy backyard.

Ms. Culkin, adjoining neighbor, pointed out the location of her house, backyard, patio, garden, on the survey map, and said that the LaCasse backyard is visible to her. Chairman Roeller pointed out the property line that separates the Michael Kane property from the Culkin property. Ms. LaCasse said Ms. Culkin has a large stockade fence that obliterates most of her yard from the Culkin yard and doesn't see how her backyard would be visible from the Culkin yard. Ms. Culkin said that when the LaCasse children are playing in their yard and she is in her yard she can see them in their yard. Ms. Culkin asserted, when one is standing on a deck that will be approximately this high, Ms. LaCasse is five feet tall, she is then almost eight feet in the air, there are visible changes from eight feet opposed to "just being in the yard." Ms. Culkin said she doesn't object to Ms. Culkin enjoying her backyard, but she wants to enjoy hers too, and she likes her privacy. Ms. Culkin questioned if there is any provision for a privacy fence such as evergreen trees that would provide screening. Ms. Culkin reiterated that she can see through to the LaCasse backyard. Ms. Culkin said that she has a stockade fence, about six feet, standard size, and pointed out the fence, her garden, a tree, a big walnut tree that is high; if she is on her patio she can see into the LaCasse backyard. Ms. LaCasse interjected that a house owned by Dr. Paul Schwartz and at least three or four residences have direct views into Ms. Culkin's yard, nothing is obliterated. Board member Audia questioned if one is standing in the location that he pointed out on the map, is the line of sight going into Ms. Culkin's back porch at that angle? Ms. Culkin responded affirmatively. Ms. LaCasse asserted that there are five other residences that do now. Ms. Culkin said that the Stroup's have a fence, there is a hedgerow, other neighbors that were pointed out on the map, have fencing around their house.

Board member Marshall questioned how many houses are on the LaCasse side? Ms. LaCasse said there are two houses Meta and Michael Kane who live in the corner building, that have a little alley of property, have been very nice in offering access to the rear of her property if it was ever needed for this type of project. Next to the Kane property is Dr. Paul Schwartz who owns

the house that abuts Ms. Culkin's garden.

Ms. LaCasse said that she is not adverse to putting up a fence. Chairman Roeller expressed that a six foot fence is permitted as of right, anything higher would require a variance. Ms. Culkin reiterated that if one is standing on a deck you have raised that line of sight. Board member Baker expressed that if this were a patio it would not be a problem. Chairman Roeller expressed that this does not satisfy the hardship of having Ms. LaCasse's mother being unable to easily go outside without maneuvering stairs with the risk of a fall. Ms. LaCasse expressed that she wants to be a good neighbor, she doesn't want to infringe on Ms. Culkin's privacy, this was not her goal at all. Board member Audia questioned if there are steps going to the deck from the backyard? Ms. LaCasse said there are four steps from the end of the deck to the backyard, there are no ramps. Board member Audia referred to the existing steps. Ms. LaCasse said that they are cement steps; the deck would be above these, would be a finished first floor elevation. Board member Audia remarked that when Ms. Culkin walks out her door, she has the same view as she has now, and questioned if there is a landing on the existing steps? Ms. LaCasse said there is a landing of about 5'x5'.

Ms. LaCasse pointed out the little shed that is on her property when questioned by board member Marshall who remarked that this would block the view. Ms. LaCasse said the shed is rather low, is only eight feet high, would only block a little of the view.

Ms. Culkin said that she had no prior knowledge of this proposal until she received the public notice that was mailed to her and said that she has not seen any of the neighbors walking around the property and looking at it. Board member Marshall stated that all of the adjoining neighbors were sent a copy of the public notice. Ms. Culkin reiterated that if she sits on her patio she can see through to the LaCasse yard. Ms. LaCasse expressed that she doesn't feel that this is a problem for her. This argument is difficult for her to grasp being that her yard is much more private to Ms. Culkin even if she would be at eight feet higher, than the three or four persons who rent, that are not long term members of the community and directly have access to look inside Ms. Culkin's house from their yards. Ms. LaCasse said that she doesn't have that line of sight even if she is standing in a tree.

Board member Audia confirmed the location of her house with Ms. LaCasse who said it is the house with the garden and flowers, there is a stockade fence between the Stroup property and her house. Chairman Roeller and board member Audia expressed that they walked down that alleyway/aisle, looked around for about five seconds and walked back. Board member Audia said that he did not walk to the right side to the corner of the house, but the distance from there to the back of the LaCasse house is approximately seventy-five to one hundred feet. Board member Audia expressed that all of the neighbors homes are in very close proximity and assumes that the privacy line of sight is a concern but basically is not like having no one.

Ms. LaCasse referred to having photos of her property when she first purchased the property, there was nothing growing anywhere, it was an abandoned house for a year that was in tremendous disrepair, she made it into a beautiful yard, planted plants along the picket fence, that borders Ms. Caulkin's driveway in order to afford her some privacy.

Ms. Culkin suggested that there be some type of privacy and feels that some kind of plantings are more of her idea for privacy.

Board member Marshall remarked that from each door there will be no steps and will all be the same level. Ms. LaCasse responded affirmatively. Board member Baker said that it appears there is one more step at the bedroom door than there is at the kitchen door. Ms. LaCasse said that this is possible because the steps are newer wooden steps than the steps at the kitchen door.

Board member Audia questioned the height of the fence between the posts? Ms. LaCasse said that this was never measured, but may be the standard six feet; if she stands next to the fence she is unable to look over it. Board member Audia felt that the fence was higher but is unsure. Chairman Roeller questioned Ms. LaCasse how much of an area, linear distance, would need to be planted with some suitable evergreen screening along that boundary? Ms. LaCasse said that her property is along that fence line, the property beyond that does not belong to her or Ms. Culkin, it belongs to the Kanes. Ms. Culkin interjected that she is not asking for the screening to be there. Ms. LaCasse said she doesn't know if she can fit anything in that space on her side of the property, there are three big trees there.

Ms. LaCasse said that she disagrees about the privacy issue; she can sit at her bedroom window if she wanted and look into the second story of the Culkin house. The Victorian house on the corner with five or six renters have direct access looking into Ms. Culkin's front yard and the other side of the yard. Ms. Culkin mentioned that the length of her driveway is one hundred feet.

Board member Baker questioned if any special outside lighting is planned? Ms. LaCasse responded negatively and said she has one existing light outside the kitchen door.

Board member Audia questioned Ms. Culkin if she believes that Ms. LaCasse is the only neighbor that has any possibility of invading her privacy with this issue. or are there other homes around that have a similar view? Ms. Culkin said the former Green home that now belongs to Dr. Paul Schwartz, but those people are never around so she doesn't see them outside. Board member Audia expressed that he has a problem with the angle of the line of sight, that one can see around the shed on the LaCasse property. Ms. LaCasse said she would not object if the meeting were adjourned, have board members visit the site to see the situation. Board member Audia questioned Ms. LaCasse if she has a table and chairs in her backyard? Ms. LaCasse responded affirmatively and said her backyard is a functional fun backyard with a picnic table, shed to store her mother's items, garden, and a trampoline for her teenage daughter. There is a white picket fence around most of the yard, the stockade fence that Ms. Culkin has and the Stroup fence. Ms. LaCasse said that at some point she is open to continuing the stockade fence along the border.

More discussion followed relative to the location of the stockade fence along Ms. Culkin and Stroup property line. Ms. Culkin pointed out the fence location and said that the fence is not set exactly on the property line, it is at an angle. Board member Audia remarked that the fence goes a little to the left, so the view is straight on. Ms. Culkin said the fence was bought when she purchased the house and doesn't follow the property line, it just made a little L around the shed

that is existing. Board member Audia questioned if a fence makes more sense on Ms. Culkins property or Ms. LaCasse property and pointed out the location on the map. Ms. Culkin said that is not her property so that wouldn't block the view. Board member Parisi questioned if it is possible to move the playhouse over since it blocks the view? Ms. LaCasse said that there are three big trees there, it is the dark part of her corner, she is not able to grow anything in that location.

Board member Baker remarked that if the house was centered on the property and had the thirty feet setback, it would still be as much of a problem, only a building permit would be required because the deck would be as of right, certainly far enough from the rear line. Chairman Roeller expressed that board member Baker's point is that if for some reason the property line on the east side was over a little, and did not require a variance, you would more than likely still have the impact. Ms. Culkin expressed that she does not want to stop construction of the deck and reiterated that she would like to ensure the privacy of both of the backyards. Chairman Roeller expressed that in his opinion, in this case, there might be something of a hardship to impose conditions in-so-far as screening or fencing, because of the circumstances that it is in. This is a case for neighbors mutually working it out amongst themselves because this is not a big variance, this is a grandfathered lot, the hardships are not self created, there are difficulties with Ms. LaCasse's mother accessing the outside; it is a traditional type of use for an outdoor patio or deck so there is nothing out of the ordinary. The fact that Ms. Culkins view is looking through another persons property onto Ms. LaCasse's property seems to be the problem; those persons are not in attendance to object. If there were more neighbors present to say it is so tight there, so confining, there is not enough fencing, not enough vegetation, is there anything that can be done for buffering, then Chairman Roeller said he would be more inclined to say that the board should look to impose some conditions, but he has a hard time justifying placing any conditions. Board member Baker expressed that there are not many options for change, not like building a deck for the sake of building a deck, where it could be argued, could it be somewhere else on the property.

It is a connecting bridge that is needed between those two rooms. Chairman Roeller expressed that it is not feasible on another side of the building from a practicality standpoint.

A motion to close the public hearing was made by board member Marshall, and seconded by board member Baker. All ayes.

Chairman Roeller expressed that it would be prudent to ensure that this proposal remains a deck, conditions would be, no enclosing of the deck, no roof, no running utilities out onto the deck. The deck is to be a deck for traditional outdoor recreational uses.

A motion that the plus or minus 20 ft. relief from the 30 ft standard setback for the RH 1 zone be granted for the construction of a deck, which is not to be enclosed or have utilities associated with the deck, and used for outdoor recreational purposes only was made by Chairman Roeller and seconded by board member Parisi. All ayes.

Chairman Roeller presented Ms. LaCasse an application for Planning Board site plan approval.

Fee Status: \$150.00 application fee paid

Chairman Roeller announced that he received a telephone call from Chris Lynch to ask if he could address the board for discussion/feed back on a pre-application discussion. Mr. Lynch is in the process of determining whether to purchase a piece of property on Hammond Hill Road with the idea of building on it. It is a non-conforming lot. Chairman Roeller expressed that Mr. Lynch will need relief from area and bulk regulations. Mr. Lynch wants to know from the board what is appropriate to help him have a better understanding on how to proceed with an application.

Mr. Lynch addressed that board and made a correction to the determination of purchasing the lot and said that he and his wife have already purchased the lot. Mr. Lynch expressed that he applied for a building permit, not realizing there was more than applying to the Department of Health. Mr. Lynch presented plans for the house that he wants to build and said that it is a standard four bedroom, two car garage, colonial structure.

Mr. Lynch said the property is in a ten acre zone, he has 1.73 acres. In reviewing the map presented, board member Baker remarked that the property is steep, sees a lot of contour lines. Mr. Lynch pointed out the location of the proposed house. Board member Baker expressed that the property climbs quickly behind the proposed house. Mr. Lynch said he wouldn't call it steep, but its definitely not flat.

Board member Marshall questioned what type of variance is being requested? Chairman Roeller said that one or more area variances from side yard setback requirements will be needed; also, findings of lot width, and other non conformities.

Review of the map presented to the board followed. Chairman Roeller remarked about the footprint of the building and questioned the minimum distances to the different property corners? Chairman Roeller expressed that the board wants to know just how much of a relief from the setback requirements are needed; the side yard setback requirement is 100 feet. Board member Baker expressed that one of the problems with non conforming lots is that persons build a house, then return to the board one year later, attempting to configure how to build a garage. The board would like to review the house and garage as one project.

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Board member Baker expressed he doesn't know Hammond Hill Road that well and questioned if there is any problem with the driveway which is another issue. Mr. Lynch said that he tried to put in a driveway. Board member Audia questioned the amount of distance from Route 343? Chairman Roeller remarked that the distance is not far off Hammond Hill Road from Route 343 and expressed that he is not sure if Hammond Hill Road is a county or town road. Board member Baker remarked that the curve in the road is a problem. Board member Audia

questioned if there was ever any type of access? Mr. Lynch responded negatively, just where testing was done for the well years ago. Board members questioned if there are a lot of trees, is the area wooded? Mr. Lynch said it is fairly wooded.

Chairman Roeller expressed that there are three hurdles; one is behind him; Mr. Lynch he has a Department of Health Permit application filed, the proposed well has been located, perk tests done based upon the house in an envelope that is based upon this map. The second hurdle is to get a curb cut permit from whom ever has jurisdiction, the Town of Washington Highway Department, or County Highway Department. Board member Baker questioned if there is a yellow line down the middle of the road? Response was negative. Board member Baker remarked that it is probably a Town Road. Board member Baker suggested contacting Town of Washington Highway Superintendent, James Brownell. Chairman Roeller referred to Town requirements of site distances, turning radius, which may or may not affect access to the house. If the Town Highway Superintendent says the proposed driveway location is in a good location and doesn't impact the Board of Health zone for their percolation and is one hundred feet distance, then the board can begin their work. Mr. Lynch is permitted to build on this property in-so-far as putting in a septic system, constructing a driveway. The board then looks at their standards for the amount of relief requested from the setback requirement yards, or if there are alternatives. There may not be any alternatives in this case due to the slopes, septic, well, being on such a small lot with narrow configurations.

Chairman Roeller questioned the square footage of the proposed house. Mr. Lynch quoted 2,200 sq. ft. Chairman Roeller said that board looks at placing a large house on a small lot. Mr. Lynch questioned if the town would want any special finishes to compensate. Chairman Roeller remarked that if Mr. Lynch clears the driveway hurdle, the variance hurdle, the next hurdle is site plan approval from the Planning Board. Chairman Roeller expressed that Mr. Lynch has the information necessary, has a well done site plan, with topography, abutting neighbors, however, there are a number of other things like architectural rendering, elevations, finishes, there will be many site plan questions.

Board member Baker questioned how close the slope is to the property line? Mr. Lynch quoted 20 feet. Board member Baker remarked that he doesn't know if this is an issue. Chairman Roeller expressed that the Board of Health doesn't look at property lines, they look at placement of wells and septic. Board member Baker expressed there is also the concern if the truck required to drill a well can get up in there. Mr. Lynch may want to consider this when checking with the Department of Health. Board member Audia recommended that Mr. Lynch drill his well before building his house. Mr. Lynch remarked that he first needs to be sure that he can construct a driveway. Board member Baker suggested contacting the fire department about the accessibility for emergency equipment.

Chairman Roeller said, personally speaking, the board has encountered this many times before, this is not an unreasonable request; this will warrant a site visit to see where the neighbors are located, and get a feel for the slopes, etc.

Mr. Lynch expressed that he will complete an application right away. Chairman Roeller suggested to first contact the Town Highway Superintendent, then telephone secretary Caul for

information on submitting an application. Mr. Lynch questioned if he needs a variance from this board before applying to the Planning Board. Chairman Roeller responded affirmatively. Town Board Councilman, Michael Murphy, who is in attendance remarked that the Town Highway Superintendent is also a member of the fire department; Mr. Lynch can question him about the fire department requirements for the driveway. Chairman Roeller expressed that this will be one of the first questions asked by the planning board, has he accommodated for emergency vehicles, delivery trucks, etc.

Chairman Roeller suggested that Mr. Lynch introduce himself to the neighbors which is a good policy. Explain to the neighbors about his proposal. Mr. Lynch was in agreement. Board member Baker suggested taking plans of the proposed house to the neighbors.

Chairman Roeller questioned if the previous owner obtained a curb cut permit from the Town when this lot was purchased? Michael Murphy suggested that Mr. Lynch check with Jim Tyger, building inspector. Chairman Roeller remarked that Jim Tyger can tell Mr. Lynch what is on file for that parcel number and expressed that the Town Highway Superintendent powers supercede local zoning, etc. If the Town Highway Superintendent adamantly says, no, this is unsafe, this is going to cause accidents, liability issues, he could say that this is not a build able lot. Board member Baker spoke to the driveway meeting specifications for backing up, turning around, entering the driveway head first; this board can state that the plans need to show this information.

A motion to adjourn the meeting was made by board member Parisi, and seconded by board member Baker. All ayes.

Respectfully submitted,

Nikki Caul, secretary