

**Zoning Board of Appeals Public Hearing and  
Regular Meeting Minutes 13, 2019**

Held in the Aurora Firehouse Meeting Room at 7:00 PM

**Present:** Chair Karen Hindenlang, Ann Tobey, Jeri Vargo, Alexis Boyce and Laura Holland

**Others Present:** Deputy Clerk Deborah M. Brooks, Code Enforcement Officer Patrick Doyle, by phone, G. Alan Clugston, PB Member Patricia Foser, Mayor Bonnie Bennett, C.J. Koepp, Jay O’Hearn and Megan Ehrhart, *The Citizen*.

**Call to Order:** Ms. Hindenlang called the meeting to order at 7:02 PM. The Chair noted that there was a quorum plus one with four (4) members present.

**Changes to the Agenda:** No changes.

**Approval of Minutes:** Ms. Hindenlang asked for comment on the February 13, 2019 Minutes. Ms. Toby noted that on page two (2); paragraph #2 under New Business, last sentence should read “those” criteria and to remove the word “that”.

On motion by Vargo, seconded by Tobey, the ZBA voted to approve the minutes of February 13, 2019 with noted change.

AYES: Hindenlang, Boyce, Holland, Tobey and Vargo

NAYS: None

Motion carried.

**Announcements:** none

**Old Business:** Ms. Hindenlang noted that the Village Board has reviewed ZBA recommendations for updating the Zoning Board Appeals form. The Village Board okayed the new form and added that the ZBA could “tweak” the wording if needed.

Ms. Hindenlang thanked her Board for individually submitted comments on how to refine the wording. She asked them to consider revising “Permit Number” to “Permit Application Number” on page one. Under item #1, Ms. Tobey asked that the word “in” be added to “licensed in NYS”. Item #3, the board made “date” and “determination” plural. Item #5, the Board decided to change the word “reasonable” to “associated” expenses. They also felt the need to change the print to **Bold**, so the applicant would notice their financial obligation prior to applying for an Appeal. Item #6, The word “section” should be capitalized.

On motion by Tobey, seconded by Vargo, the ZBA voted to approve the Zoning Appeals Form with noted changes.

AYES: Hindenlang, Boyce, Holland, Tobey and Vargo

NAYS: None

Motion carried.

**Public Hearing:** On motion by Boyce, seconded by Vargo, the ZBA called to order the Public Hearing at 7:15 PM for Application #18-38 from Cynthia Koepp & John Place for an Area Variance for dock stairs at 327 Main Street. (Tax Map # 181.16-1-26)

AYES: Hindenlang, Boyce, Holland, Tobey and Vargo

NAYS: None

Motion carried.

Ms. Brooks was asked to contact Code Officer Doyle by phone. Ms. Holland asked to make a statement (see Attached) as a Member of the ZBA. She noted that the Village's Code of Ethics prohibits a board member from hearing and determining an application if they have made public comment prior to the meeting. Because she had made comments in a public hearing in the summer of 2017, she recused herself from her involvement in this application. (Ms. Holland then moved to where the public was seated.)

The Chair outlined how in the early 1980's the Lehigh Valley Railroad Company offered the railroad bed along the lake shore for sale to adjoining property owners. Wells College wouldn't purchase the land abutting their parcels, and the land could not be sold with any parcel becoming land locked. So, when the Hollands bought the railroad land behind their own property they had to buy the land behind the Wells properties to the north and south of their home. This resulted in an unusual "T" shape lot.

Around 2005, Wells sold the properties north of Hollands to Zwigard and Koepp/Place without the railroad land. To gain access to the lake across the 40' wide North-South railway strip owned by Hollands, Zwigard and Koepp/Place initiated a law suit c. 2007.

A Judge granted them three (3) East-West easements to access the lake based on old livestock water rights of way. The Judge also gave Zwigard and Koepp/Place ownership of "land" west of the seawall "if any," which acknowledged that such land could be under water much of the year. This created a new lot line between property owners, which also created the need for a ten-foot (10') setback of structures built nearby.

The Judge not only ruled to give access to the water, but gave the additional right for Koepp/Place to build a dock within a ten-foot (10') wide easement. The dock could not hover over the lake "land" owned by Koepp/Place. It needed to be attached within the easement to the shore property owned by the Hollands. Ms. Hindenlang asked Mr. Doyle if a dock was not a structure under the rules of the Village's Zoning Law. Mr. Doyle responded that was correct – a dock is not a structure.

The Village Planning Board approved the construction of Koepp/Place dock in July 2017 and it was built in the spring of 2018.

Ms. Koepp wishes to build south-facing stairs from the dock to the lake bottom, perpendicular to the west-facing dock, outside the easement, and about two feet (2') from the property line. The Code Officer determined these stairs are a structure and not part of the dock. They would require a setback area variance of eight (8') feet as the code requires a ten-foot (10') setback.

The Chair noted that the applicant had submitted her own responses to the 5 questions which the ZBA must answer. It was noted that all the Board had reviewed the application prior to the meeting. Ms. Hindenlang reminded the Board that they might not be rendering a decision this evening.

Ms. Koepp was asked if she had anything to add at this time. Ms. Koepp said that the stairs down to the lake had been approved by CPP, DEC and Army Corp, but she had removed them from the plan due to the neighbor's opposition, intending to bring them back later, and did so when she added unattached stairs to the dock. She emailed the Code Officer explaining the situation but did not hear back from him for months. (see Attached)

Ms. Hindenlang asked for comment from Mr. Doyle, who said he found it hard to hear Ms. Koepp. He was asked if he would like to present the Code Enforcement Officer's side of the case. He said he did not have file materials with him, but said his denial letter spoke for itself; the Chair read it into the record. (see Attached.)

In response to questions from the Chair, Mr. Doyle confirmed that the south-facing stairs were part of an application brought before the Planning Board in July of 2017. The PB could not approve the plan because the stairs did not comply with code and required an area variance from the ZBA. The stairs were withdrawn from the plan, which was then approved by the PB. The dock was built in 2018 without the stairs. Then the stairs were built and installed in May of 2018 without a variance. At that time, Ms. Koepp emailed the Code Officer explaining the situation; he responded in November 2018, informing Ms. Koepp that the steps were not in compliance and needed a variance. (see Attached) Ms. Hindenlang asked if an "Order to Remedy" was issued. Mr. Doyle said there was no order, just an informal notice given 6 months after the steps had appeared without a variance. He added that Ms. Koepp removed the steps and in December 2018 submitted an application to (re)install them, which he denied due to the proposed location not meeting the setback regulations of the Village's Zoning Law. Ms. Koepp's appeal for a variance was then filed in January 2019.

Ms. Koepp explained she felt the stairs were temporary and did not need a variance. Mr. Doyle explained that they were a structure and so subject to setback; our code does not differentiate between something just resting on the ground and something attached. Ms. Hindenlang asked if "temporary" meant they could become something else? Ms. Koepp explained they were portable, to be removed in winter. Ms. Hindenlang asked Mr. Doyle if he had concerns about awarding a variance for portable, moveable stairs? Mr. Doyle responded that if a variance were granted, it would be his responsibility to verify that the same size stairs were installed in the same location each year to ensure compliance. Ms. Koepp added that permanent stairs had been applied for with CPP & PB, but were removed from application; she could now propose attaching them, if that were better.

Ms. Hindenlang thanked Ms. Koepp for providing the items requested at the ZBA's February 13, 2019 meeting: 1] identification of the neighboring property owners, 2] Mr. Doyle's verification that the dock design of 2013 was followed in 2018 the construction, 3] a copy of the Property Deed referenced in the appeal, 4] a survey which Ms. Hindenlang noted may be inadequate for the ZBA as it is dated 2008 and does not show the easements awarded by judge, and 5] the entire seven page Supplemental Order of February 5, 2015 from Judge Mordue, of which a paragraph was quoted in the appeal.

Public Comment was requested by the Chair:

Ms. Holland who resides at 323 Main Street read a statement (see Attached), saying the alleged difficulty in this situation is self-created. Her family had the former Railroad property professionally appraised years ago and offered to sell it to the applicants for the appraised value. If they had accepted the offer the applicant would have been able to build their stairs without any need to acquire a variance.

She noted that the applicant was well aware the proposed stairs to their dock would be a code issue. The applicant could have designed for the situation they had, but they built an eight-foot wide dock within their ten-foot wide easement and did not leave room to attach stairs to the land within the easement. They could have built a narrower dock.

Ms. Holland said there was no particular reason the stairs need to be within the set-back area, and said the plans are unclear just how close the proposed steps are to the property line. The steps could be placed further west, beyond the setback area, or ladders could be attached to their dock. The applicant can also access the shore via stone steps that exist within a second easement awarded by the judge, a few feet to the south. These stone steps have been in regular use by the applicant for about 5 years. They were used to construct and access a patio built on the waterfront without permits; these stairs were also used to remove the patio after an "Order to Remedy" was issued.

There were no further comments from those present.

Ms. Hindenlang returned to the 2008 survey Ms. Koepp provided, which shows no easements. In searching past files for a more adequate, current survey, Ms. Hindenlang said she found a letter from Mr. Doyle to Ms. Koepp dated June 23, 2016; she read part of it into the record (see attached). He cited application #16-23 for Boat Dock/Deck and Stairs as being incomplete and requested an up-to-date survey which clearly delineates all property lines and easements and the location of the proposed dock/deck & stairs shown to scale. He wrote that the map provided appeared to be an exhibit from a previous court case, and some property lines were not clear. Mr. Doyle acknowledged sending this letter requesting a survey.

Ms. Hindenlang asked Mr. Doyle if his June 2016 request for a current survey was met. Mr. Doyle responded that Planning Board must have felt the maps submitted were sufficient. She asked Ms. Koepp if she had a survey of her land. Ms. Koepp spoke of the Exhibit A map as being a survey. She also said the court might have the survey.

Ms. Hindenlang inquired further about this Exhibit A Map, marked as page 7 of the Judge's Supplemental Order, received by the Village on February 14, 2019. Mr. Doyle thought, to the best of his knowledge, the map in this form without additions or alterations, had not been previously submitted to the village. He had not seen it before last month. Ms. Hindenlang noted that it was quite different from maps used by the PB and CPP in their reviews and approvals.

Ms. Boyce asked who drew the Exhibit A map? Ms. Koepp answered that Todd Zwigard drew the easements on the map. He was identified as an architect, not a surveyor, and as the neighbor who joined Ms. Koepp in bringing suit against the Hollands.

Copies of the Exhibit A map for case 5:08-cv-01369-NAM-ATB filed on 02/05/2015 were given to the Board, as were copies of two maps provided to the Planning Board on May

22, 2017. They ZBA members noted that the court map depicts a six-foot (6') wide west facing dock with four (4') wide "future steps" running alongside the dock on the north and attached to Holland land within Easement #1. Ms. Koepp confirmed that the Judges relied on this map in his Order. The ZBA members then noted that the maps submitted to the Planning Board had been altered by hand from the court's map to show an eight-foot (8') wide dock with the "future steps" relocated to face south from the dock, not attached to land within the easement. Mr. Doyle noted that the Judge rendered a *pro forma* decision which still has to meet the Village's Zoning Law, and that a variance would be required if any stairs touch down on the lake floor within the 10-foot setback.

Ms. Boyce and Ms. Hindenlang visited the site on Monday 3/4/19 with Mr. Doyle. The dock was measured at eight-feet (8') wide. The north side has 1.5' area of the ten-foot easement remaining. Ms. Koepp stated that the easement ended at the Holland's western property line. Ms. Hindenlang clarified that the stairs shown on the Exhibit A map would start within the easement, being attached to the neighbor's land, east of the shore property line.

Ms. Hindenlang informed the Board that the Village's Attorney confirmed that they could explore alternatives to help the applicant to resolve the situation. Several were discussed with Ms. Koepp:

- 1] Stairs could be attached securely and permanently to the north side of the shore platform/dock attached to Holland property, using the 1.5' remaining of the 10' wide easement shown in the Exhibit A map. Mr. Doyle pointed out such stairs would still require a variance depending on where they set down on Koepp's property west of the sea wall property line. Ms. Hindenlang wondered if this solution might be more in keeping with the spirit and/or letter of the judge's ruling. (Bennett & Foser left 8:15 P.M.)
- 2] Ms. Koepp could add straight ladders to the dock, and no variance would be required. Ms. Koepp said that they needed stairs in order to launch their Kayaks. Ms. Boyce said this was important to the discussion. Ms. Hindenlang noted that a ladder was not a structure since it did not set on the ground, and Mr. Doyle agreed.
- 3] Ms. Boyce asked if Ms. Koepp was unaware of the need for a variance to allow the stairs she wanted? Ms. Koepp said that since the stairs would only be temporary so she didn't think they needed a variance.
- 4] Ms. Hindenlang asked Mr. Doyle how far west into the lake the dock's south-facing deck platform was located? Mr. Doyle wasn't sure. She wondered if the deck was 10' from the property line, as seemed indicated on the plan approved by the PB. If so, it would block placement of south-facing steps without a variance at the 10' mark.
- 5] The Board asked if the applicant would look into the possibility of purchasing the former railroad land in Ms. Koepp's back yard; then she could install stairs anywhere she might wish. Ms. Koepp responded that she had no memory of being approached by the Hollands with an offer to sell the property, but she would have been interested had she known the price. Ms. Vargo reminded the board that in public comment, Ms. Holland spoke of an approach to sell to the neighbors. Ms. Holland clarified that her

family made several attempts to sell this strip of land to Ms. Koepp, making the approach through their attorneys, but the offers were denied.

6] Ms. Boyce asked Ms. Koepp if she felt they could not use the stone steps in the southern easement? Ms. Koepp said she didn't feel the stone steps were safe and they are located near the culvert. Ms. Koepp confirmed that she owned the steps and did use them. Ms. Hindenlang questioned if they might be refined or stabilized for safe use.

The Chair asked those present if they had anything further to add. Having no further comment, Ms. Hindenlang noted that the Public Hearing would remain open for comment as the applicant needs to supply the Board with an up-to-date verified survey by a licensed surveyor detailing all property and easement lines (not an architect's map). This would be required to consider any variance. Ms. Boyce specified that the survey should show only current structures and not any future or unfulfilled plans.

On motion by Ms. Tobey, seconded by Ms. Boyce, the ZBA voted to adjourn the Public Hearing until they meet again on Wednesday, April 10, 2019 at 7:00 PM.

AYES: Hindenlang, Boyce, Tobey and Vargo

NAYS: None

Recused: Holland

Motion carried.

The Chair reconvened the regular meeting and Ms. Holland rejoined the Board. Ms. Hindenlang shared that she had reviewed minutes of past ZBA rulings regarding set back variances to get a sense of the maximums granted (generally 50%) and encouraged other members to do likewise. She explained that past precedents are of interest, and decisions we make will create precedent for future determinations.

Ms. Boyce suggested that in future the Chair could give the public a brief explanation of how a Public Hearing is run and what is expected of the applicants. Ms. Brooks suggested that the packet which is given should contain such information; then the Chair would only have to do a reminder at the hearing. The Board felt this was a good way to convey information and will work on a list for a future meeting.

**Adjournment:** On motion by Ms. Holland, seconded by Ms. Vargo, the ZBA voted to adjourn the meeting at 8:40pm.

AYES: Hindenlang, Boyce, Holland, Tobey, and Vargo

NAYS: None

Motion carried unanimously.

Respectfully submitted,

Deborah M. Brooks  
Deputy Village Clerk