



TOWN OF WATERTOWN
Zoning Board of Appeals
Administration Building
149 Main Street
WATERTOWN, MASSACHUSETTS 02472

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David Ferris, Clerk
Christopher H. Heep, Member
John G. Gannon, Member
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MINUTES

On Wednesday evening, August 28, 2019, at 7:00 p.m. in the Town Council Chamber of the Administration Building, the Zoning Board of Appeals held a public hearing. In attendance: Melissa SantucciRozzi, Chair; David Ferris, Clerk; Christopher Heep, Member; Kelly Donato, Member; John Gannon, Member; Michael Brangwynne, Alternate Member. Also Present: Mike Mena, Zoning Enforcement Officer; Gideon Schreiber, Senior Planner; Louise Civetti, Zoning.

Chair SantucciRozzi opened the meeting, introduced the staff and members; provided the changes to the agenda: 19 Loomis Ave and 18-20 Clyde Road are continued to the September 25, 2019 agenda; she announced the order of the agenda: 1st – 15 Fuller Rd., 2nd -6 Hovey St., 3rd- 72 Townly Rd., 4th-22 Priest Rd., 5th – 36-38 Hillcrest Cir. (where Member will recuse himself and Member Brangwynne will be voting), 6th – 410 Belmont St. (where Member Donato will recuse herself) and the last case will be 101-103 Morse St. (where Member Donato and herself will both recuse themselves). She added that 15 Fuller will have Member Donato and Member Ferris not participating and will have a four member board voting. She offered for anyone on the later part of the agenda to take a break and come back. She swore in the audience.

Chair announced the first case, **15 Fuller** and noted that as a continued case, the legal notice does is not required to be read into the record.

Attorney Ken Leitner stated the Petitioners plans showed a lesser number on the lot coverage pre-construction than after. He has spoken to the surveyor who confirmed the lot coverage at 31.7%, which is what it was stated earlier and will decrease to 31.3% due to the pavers being removed and affecting the impervious coverage. He detailed the project, explaining that this is a second story deck with an addition perpendicular to the house with the below open, adding about 80 square feet with new hip roofs, adding to FAR and lot coverage. This also maintains the setbacks with the garage at 6'. He added that the criteria for a special permit is met and the increase is 2%.

No one spoke from the audience.

The members did not have any further questions. Chair SantucciRozzi stated the petitioner was here in June and the matter has been continued to have revisions made to the lot coverage and open space.

These minutes were approved by the ZBA on October 23, 2019.

She stated the Planning Board and Staff recommended approval with the standard conditions and a condition stating the porches may become screened in but not enclosed or functional as living space.

Member Heep motioned to approve the Special Permit and Special Permit Finding. Member Gannon seconded. Members Heep, Gannon, SantucciRozzi and Brangwynne voted in the affirmative, 4-0. The petition passed. Members Ferris and Donato did not vote as they were absent at the first hearing.

Member Ferris read the legal notice for the next case: **6 Hovey Street:**

“Sharon Seltzer/Ron Gilboa, 4 Hovey Street, Watertown, MA 02472 request the Zoning Board of Appeals grant a Special Permit Finding, in accordance with Watertown Zoning Ordinance, §4.06(a), Alterations to Non-Conforming Structures, Rear Yard Setback, to construct third floor dormers and deck, maintaining existing non-conforming Rear Yard setback. Located in the T (Two-Family) Zoning District. ZBA-2019-17”

Sharon Seltzer stated that Ron Gilboa is out of the country. She and Ron purchased 6 Hovey Street and wish to expand the third floor with dormers for living space. She is aware that the setback is 5’8”, which abuts her neighbor’s driveway. She reviewed each of the drawings in order that they were in the packets, noting the on the front elevation they are adding a small dormer to accommodate the stairway going up to the third floor and another dormer setback into the roof to accommodate the washer and dryer; the deck coming off of the master bedroom, above the existing sunroom and the rear dormer, nestled in 18” from the existing roofline; the front entryway will have two separate entrances for each unit. She then reviewed the interior floor plans for the second and third floors. She said they included the habitable space calculations 7’ and greater.

No one spoke from the audience.

Member Donato appreciates the re-design to tuck the dormer into the roof and keeping the design in line with the neighborhood.

Member Ferris asked about the windows that are being removed on floor 2 and how will they match the siding. Ms. Seltzer said they will match the aluminum siding.

Member Ferris asked about the ceiling height on the third floor. The area identified is 7’ and over and he questioned whether habitable space is 7’6” or not but they can work that through with the building department. He asked if she is aware of how low the ceilings will be – 5’ in the shower. Ms. Seltzer said they will flip the toilet and shower to address the height. Member Ferris said that whatever code issues will be found in the design may affect the existing ridgeline and this will affect their approval. Mr. Schreiber said that when you remove a roof, everything above 4’ is considered living space and you would not be able to replicate this roofline anymore – it is currently used as a storage attic with stairs. Mr. Mena said that with a sloped roof, the required building area have a ceiling height of 5’ or greater – the analysis is reflecting that. Typically, they do not review building code compliance at this stage and the Building Inspector is busy reviewing applications for building permits and does not have time to review Zoning Board applications for building code. The building code does not require sloped roofs with 7’6” ceiling heights. Member Ferris wanted him to explain that if what was going to be built is

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different than what they are reviewing, then they'd have to confirm what steps they want to take and he wanted to be certain the petitioner knew the limited ceiling heights they were getting.

Chair SantucciRozzi said there is a lot going on the third floor and it is going to be extremely tight. The front side dormer does not fit in and takes away from the roofline. She is not supportive on the second dormer. She would be supportive of the middle dormer being larger. She asked about the venting protruding through the roof as they are not shown on the elevations but are on the floor plans.

Member Ferris said if there is not a dormer on the right side, they will not be able to walk around. Chair said she is aware of that and she is not in support of the right dormer. She told the petitioner that she can go forward tonight or continue her hearing and make changes to the plans. She reiterated that the petitioner could revise her plans to address the comments this evening or go forward. Mr. Schreiber said during the discussions, they located the bathroom where it is due to the bathroom below in regards to the venting. Chair said the venting is not shown on the roof. Mr. Schreiber said they do not get into the details of the plumbing. Mr. Ferris said the vent stack is related to the bath on the second floor and is in the front of the house and not the washer/dryer on the third floor. It would be coming out in front of the dormer. The ventilation could be moved to come out on the side and not in front of the dormer. He added they could condition the vent stack to not come in front of the dormer, should the dormer be there.

Member Gannon clarified that the vent stacks shown on the plan are for the bath on the second floor. He asked if the dryer vent would come through the side or the roof. Member Ferris said it could be conditioned that the venting be placed on the rear side of the roof and not in the front. Mr. Schreiber added the words, 'if feasible'. He added that they focused on the rear dormer as that is the area within the setbacks and not on the front dormer as they could potentially do the front dormer by right. He added that there are other projects in Watertown that have used the ridge dormer with the transom windows – this is not within the setbacks and they have been amenable to the design of the front dormer for the viewing from the Orchard Street side. Chair SantucciRozzi stated that the rear yard setback requirement is 20' and they have 5.8' in the back and the back section is 12.7 so, technically the front dormer is within the rear setback. She reiterated to the petitioner that all three dormers are subject to approval by this board and none are by right. Ms. Seltzer confirmed that the Chair would like to see the dormer in the front removed and stated to move forward. Member Ferris wants the petitioner to be aware of what happens if the application is denied. Mr. Mena explained that if a petition is denied, the board cannot review a new proposal within two years, unless it is substantially different. His understanding is the transom dormer and the stacks are not in front of the dormer. Ms. Seltzer wishes to continue.

Member Heep motioned to continue the matter to the September 25, 2019 meeting. Member Donato seconded. Members Heep, Donato, SantucciRozzi, Ferris and Gannon voted to continue, 5-0.

Member Ferris read the legal notice for **72 Townly Road**:

Jason St. Clair, 72 Townly Road, Watertown, MA 02472 requests the Zoning Board of Appeals grant a Special Permit Finding, in accordance with Watertown Zoning Ordinance §4.06(a), Alterations to Non-

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conforming Buildings, Side Yard Setback, to raze existing roof to construct a second floor, maintaining non-conforming Side Yard setback. Located in the S-6 (Single Family Zoning District. ZBA-2019-20”

Jason St. Clair said he and his wife and two children live there; they purchased the house 9 years ago; now they want to make it bigger.

Matthew O’Connell, Architect, reviewed the design and changes to the building, stating they are building a second floor directly above the primary first floor and not the garage. The right side is non-conforming of about 5’. The rest of the house is conforming except the frontage of the lot and lot size. The second floor, drawing A6.1, is clear spanning the first floor with trusses as the structure cannot support a second floor, which adds 18” of height. The original proposal was reduced due to working with staff. The floor plans are the same but the elevations have changed/ revised 7/30/19. The building height is 26.8’ at grade from the front of the property. The civil set has 34.8’ for height by average grade. They reduced the pitch to a 6/12.

Member Gannon asked if the siding will match. Mr. O’Connell explained there is brick veneer that will remain and they will have new siding on the entire house.

Member Ferris confirmed that the siding will be redone and the windows in-style on the second floor look like the same size.

Member Donato commented that the Planning Board noted reducing the projects’ number of bedrooms. Mr. Schreiber said Staff did not count the number of bedrooms and typically, one is labeled a den but it is shown as a bedroom on the drawings and if there is 5 bedrooms, you need another parking space and since there isn’t a way to add another parking space, a condition would be added to have a maximum of 4 bedrooms to comply with parking. Mr. O’Connell said they would comply with that. Chair asked which bedroom would be removed. Mr. St. Clair said the bedroom on the first floor in the rear. She asked if they would reconfigure anything proposed. Mr. St. Clair said they would make the kitchen bigger but right now they do not have the funds to support that.

No comments were received from the audience.

Chair read from the Planning Board, which recommended conditional approval without addressing the bedrooms in the conditions, but this board will add condition #6 for all new siding and a condition for a maximum of 4 bedrooms to comply with the parking.

Member Ferris motioned to approve 72 Townly Road Special Permit Finding with the conditions discussed. Member Donato seconded. Members Ferris, Donato, SantucciRozzi, Heep and Gannon voted in the affirmative, 5-0. The petition is approved.

Member Ferris read the legal notice for **22 Priest Road**:

“Keith Nardone, Nardone Corp., 419 Lincoln Street, Marlboro, MA 01752, requests the Zoning Board of Appeals grant a Special Permit in accordance with Watertown Zoning Ordinance §5.05 (r), FAR to

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construct a new ½-story/3rd floor,, increasing FAR up to .625, and requests a Special Permit Finding to construct a deck within the existing non-conforming Side and Rear Yard setbacks. Located in the T (Two-Family) Zoning District. ZBA-2019-19”

The petitioner handed out updated site development plans to the board members and staff.

Peter Bemis, Engineering and Design spoke on the existing two family dwelling. He started with the original drawing, describing the house as it exists today with the dimensional setbacks and history. He then stated they are not changing the footprint and are razing the roof, adding a dormer and reducing the driveway to add a flowerbed. They are adding a second means of egress from the second level from the outside. Since they are reducing the parking, they are moving the walkway and adding a trash containment area with a gate. He mentioned that a Planning Board member commented on saving the tree and he has designed the trash storage so the tree is preserved. The architectural plans are the same but the average grade is different. They worked with staff to minimize the streetscape and stepped it in from the side yard; the third floor is 590 square feet; FAR will be .62; this will continue to be a two-family home (he reviewed the Special Permit criteria stating they meet all of the requirements).

Dennis Duff, 33 Spruce Street, commended them for saving the tree. He asked why they are having dumpsters.

Chair stated comments were received from Michael Cady and Walter Cady III, which were in opposition. Mr. Bemis said he believes they were misreading the plans and they will not be encroaching into the rear yard setback. He added that as a Civil Engineer, he used the word ‘dumpster’ when he meant ‘trash toter’.

Member Donato thanked them for saving the tree and had the same question regarding the dumpster.

Member Ferris believes the plans are a bit aggressive and plan A00 is identified as a basement plan and asked if this area is included in the compliance calculations as it is it fully above grade. Mr. Bemis said there is mechanical space and the bathroom is already in existence – they are just reconfiguring the space. Mike Mena said that a basement is a basement if more than 50% of it is below grade. They look at it around the entire house. The civil plan shows 3.9’ and the portion above is 3.7’ therefore, more than 50% is below grade and not calculated in FAR.

Member Ferris asked about the second means of egress being moved to the outside. Mr. Mena said there are many homes that move the second floor stairs to the outside to gain more area in the interior. The code does allow egress stairs to encroach into the setbacks and do not count towards FAR as long as it is a required egress and the landing is not more than 3x3. Member Ferris reiterated that a person could move the stairs outside, gain interior space and get a bonus for not requiring setbacks or FAR (free space) for the exterior stairs. He then asked about the third floor wall and asked about the headroom at the stairs. Mr. Bemis said it was important to staff to have that stepped in. Mr. Ferris said that if the architect drew a section-through, they would see that the left side of the stairway does not have enough headroom. He suggests they look at it and consider moving. Mr. Schreiber said their architect said they

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would have clear height and the dormer having an inset would have less of an impact. Mr. Ferris said a building official would walk through and state there isn't enough room. He added that on the front elevation, the three new windows show one directly into the shower and another is over the toilet – he thinks it should be reworked as it is unusual to have a window into the shower at the front of the house – the look is fine but it needs to be re-planned. He said that they should build what plans this board approves. He said there is a way to disguise the dormer by adding an overhang to the roof. He asked what the intent is for the siding. Mr. Bemis said it will be updated to a type of lap siding. Mr. Ferris said the rear elevation is flush with the roof and there isn't any siding or trim added. He explained when it transitions from a vertical wall to a flat roof; it looks like the deck is on the flat roof and not on sleepers. There isn't enough detail – no trim around the windows, etc.

Member Heep asked if they are adding a new entrance into the basement from the driveway. Mr. Bemis said there is an existing entrance there. He added that it is used as a bedroom and is marked as a bedroom. Member Heep said it looks like it could be used as a third unit as it is isolated from the unit above it. Mr. Bemis said they could restrict that as there is no intent to do that. They are adding a glass slider. Member Heep said again that it appears too easily segregated (the first floor and this basement area) as they could block the door to the Unit 1 area and create a third area. Mr. Bemis said they are creating a living space and that has not entered anyone's mind. He said he would hate to eliminate the egress because of that. Member Heep stated they may add a condition.

Member Gannon stated that the basement bedroom has to have its own means of egress. He asked if the entrance down the hallway is sufficient. Mr. Schreiber said the windows appear to be egress windows and the building official would have to answer the question if they were egress windows. Mr. Schreiber asked if there is a step down. Mr. Bemis said there is no step – it is directly from the driveway.

Chair SantucciRozzi asked if they are willing to remove the set of doors between the first floor area and the hallway into the bedroom. Mr. Bemis said the architect drew it and he doesn't have a problem with the restrictions they want to add.

Chair SantucciRozzi said the existing and proposed open space are the same. Mr. Bemis said they have created a planting bed by eliminating some of the driveway and adding the walkways. They made sure they balanced.

Chair asked staff how the height was determined as it appears to have been the average grade around the structure and not at the street level. She added they are different than the previous applicant discussed. Mr. Mena said that when there is a grade change of more than 10', start from the front lot line, go back 35' and take a measurement, go back 30' into the property, draw a line at 35'. If there is less than 10' grade change, it is taken from the front lot line average grade. Chair said it is less than 10' and one corner is 22' and the other corner is 27' and they have measured 27' around the structure so they will need to go back and re-measure at the average from the front. She believes this will be over the height limit. The average is about 25' and they are at 27.7'.

Mr. Bemis said he will continue to the next meeting to come into conformance. He then asked Member Ferris if there is an alternate if the wall would not work at the 3rd floor stair and should they have an

These minutes were approved by the ZBA on October 23, 2019.

overhang. Member Ferris said if they are coming back, the drawings could use enhancement – there are no overhangs shown; corner boards, trim around the windows and the stair must be in the right spot.

Chair said they need them to recalculate the height, remove the basement door separating the hallway from the secondary hallway interior; address the comments regarding the dormer. Member Ferris asked for more clarity on the siding and further coordination on the front elevation windows and the function behind those windows.

Member Heep motioned to continue to next month. Member Donato seconded. Voted 5-0 to continue.

Chair stated that Member Ferris is recusing himself from the next case and Member Donato will be acting clerk in his absence. Member Donato read the legal notice:

“Kaveh Abdi, 36 Hillcrest Circle, Watertown, MA 02472 requests the Zoning Board of Appeals grant a Variance in accordance with Watertown Zoning Ordinance §6.02 (j), Location, Size and Setback requirements, to allow front and side yard parking without the required size or buffer. Located in the T (Two-Family) Zoning District. ZBA-2019-16”

Mr. Abdi stated that he is the co-owner of this two family and it has been 3 years since he has been trying to work out the parking situation. He showed a photo of where everyone parked when he purchased the property in 1996 (Exhibit 1). He stated that everyone parked straight into their property from the street – there were not any sidewalks or curbing along the street. He explained that the town added sidewalks and curbing 3 years ago and his neighbors were able to keep their parking in front of their houses but he kept his “green” (lawn) in front of his house. He then showed a photo of his neighbor’s house where they continue to park straight in. He wants to be able to park in front of his house straight in, like his neighbors do. He cannot use the so-called driveway along the side of his house as it is narrow at the top and too steep to get in and out of. He said the Planning Board recommended they build up the driveway to make it level. He hired two engineer who confirmed that is not a good idea as this is a man-made hill and his house was the first built on that hill in 1928. The other houses were built in 1938 and 1953. He said the house is moving due to the landfill and there is a lot of settling. They do not know what the cause is and they would have to hire a geo-physicist. He said if they back-fill, it would cause issues. This is a two family with four cars. If he could have used the driveway, he would have. He asked Mr. Magoon and Mr. Mena if he could park on the right side. He can use the neighbor’s driveway to access parking but when they parked in their driveway, they could not get in. He said this request meets the criteria – it is unique – the house, the land and the way it is situated. The Zoning codes are to protect the neighborhood. This is a dead-end street and there are not pedestrians. He asks the board to approve his request for three cars without the planters in front of his house as it is enough room to park his cars. His neighbor has the same parking.

Dennis Duff, 33 Spruce Street said this is a touchy subject as his brother had a similar situation where he had 6 spaces and lost 4. The community and the council has spoken about preserving green space and eliminate the sea of pavement. This board should uphold the buffer law. Once the board allows one

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property to do this, it will continue. He gave an example of a property on Orchard Street and another on Aldrich Road. He can feel for this gentleman's situation but hopes the board upholds the law.

Member Brangwynne asked if 32-34 built a driveway recently right next to his. Mr. Abdi said they built it but they cannot use it. It was closed by the prior owner and the new owner opened it and put heat in it and now cannot use it. It is very steep so they park in the front of their house. His driveway has the same situation. He cannot use it. This has happened since 2016 when they put the curbs in. His mistake was to keep the green in front of his house and not pave it like his neighbors did. He meets the criteria for the topography for a variance.

Member Brangwynne stated that this board must prove there is substantial hardship. The letters that are submitted suggest that the problem could be solved with a retaining wall. Mr. Abdi said he would first have to hire a geo-physicist to determine why the property is moving. Chair SantucciRozzi asked Mr. Abdi where in the letters does it state that. Mr. Abdi said he spoke to him about it and gave him their opinion. This would be a financial hardship and he has spent a lot of money already. Member Brangwynne asked again if the neighbors with the heated driveway use that driveway. Mr. Abdi confirmed that they park in front of their house and do not use the driveway.

Member Gannon asked why the neighbors do not use the driveway and suggested it is easier to park in the front. Mr. Abdi agreed. Member Gannon said then it is convenience more than practicality. Mr. Abdi said there is a garage at the bottom of the hill that they do not use, they park in front. He added that you cannot use the driveway or you will get stuck.

Member Gannon asked staff if the people parking in the front of their houses are doing so legally. Mr. Mena stated that those properties that are parking in front, were parking in front when the road project had begun. He added that the parking area in the front of the houses were there since the 50's so they grandfathered those parking areas – he said the cars actually fit into those spaces. This property is only 14' and they would be parked over the sidewalk. Member Gannon reiterated that this property does not have enough space in the front of his house to park the cars straight in. Mr. Mena said that Mr. Abdi approached him and Mr. Magoon when the road project had begun and he was granted a parking space to the right of the property to be accessed through the neighbor's driveway and the neighbor could cease the use at any time. Member Gannon asked if the three cars were parked in front of this house, how much of the public way would be covered. Mr. Mena said 2-3' of car over. Mr. Gannon confirmed with Mr. Mena that that would push people in wheelchairs and baby carriages into the street.

Member Heep commented that Exhibit 1 shows 3 cars parked in two different houses and 2 cars in front of another house. Mr. Mena said all of those cars were parking over the sidewalk prior to the road project. Two of the houses in the photo shown now have curbing where they used to park in front of the house. He added that the houses that have front yard parking needed to prove that the parking was there and grandfathered in or they could request a variance or something other. The house with the front yard parking was the only property that proved they had front yard parking and was grandfathered in. The other house has side yard parking with pinch-points in front of the house due to the angle.

These minutes were approved by the ZBA on October 23, 2019.

Member Donato reiterated that he purchased the house in 1996 and there was never any issue with parking from that time until the road project in 2016. She added that the engineering report states it is possible and Mr. Abdi will have to address the foundation issues anyway. She is concerned with cars backing over the curbing; parking over the sidewalk; not having a buffer on either side; the spots proposed do not have any maneuverability and she is not comfortable with this request.

Chair SantucciRozzi stated that he is here claiming hardship and showing a report on soils and asked why he didn't put the topography on his site plan. She said exhibit is a calculation of slope, which is useless. She added that the area he would park is wider than the top. Mr. Mena stated that the survey does show at the top it is 97 and the bottom is 90, so there is a 7' drop. Chair said they could put something on the side of the house and park in the back.

Chair SantucciRozzi asked why he did not take care of the foundation and settling issues when they gutted the entire house. Mr. Abdi explained that the settling is the hill that he would have to hire other experts to determine why the house is moving. The house was built in 1928. The settling is not dramatic, it is subtle. Chair said there that he is claiming the driveway is narrow but there is green space to the left and the pavement could be expanded and a wall built and he is proposing parking spaces in the front at the same width. Mr. Abdi tried to explain that it is difficult to get through the narrow area when you are coming up from a steep slope. He said it is only during the winter that they have to park off of the street. Chair stated that she believes he has options to improve the driveway and it will cost him some money but there have been people that have removed basements and put in a driveway and parking. They could even consider having two spaces tandem on the right side but the four spaces across the front doesn't even look good on paper. It is tight at 7'x 14' – space number one is existing and could stay and they could put two tandem on the other side and that could be considered with grass Crete but the three other across the front would not be recommended. She added that her first recommendation would be to get the work done on the foundation and have the four spaces along the left side of the house. Mr. Abdi said it is too costly and he cannot afford it – the driveway is too narrow. They continued to discuss the width of the current space between the fence and the house and whether or not the top of the driveway is narrow or not. Chair said the number of variances – not having the 4' buffer; not having the proper size; the front setback; having brick (it's okay to be a patio); the pinch point on the right is narrower. Chair asked if the board is in support of Mr. Abdi trying to lay out a plan for the right side. Member Gannon said he is amenable to something on the left but the right looks even narrower. Chair said the plan in front of them is not supportable with 3 of the 4 spaces being substandard. The driveway could be improved with about \$30,000 and the right side could be improved with two tandem spaces with portions in the front yard and end up with three parking spaces on the property. She stated that he should consider the investment instead of the substandard parking. Mr. Abdi said it is a financial hardship to consider that kind of money and someone or the wall could be hit trying to back out of that driveway. He is open to their suggestions – he got the survey. Chair added that he laid the spaces out incorrectly and there is too much relief requested. Member Heep said he would be amenable to a solution on the right side of the property, if possible and consider a better use of the existing driveway. He is continuing to ask for four parking spaces when he could have three. They suggested withdrawing this application and coming back with something else that has been thought

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through with expert consultants. Mr. Abdi said he has spent the last three years trying to come up with a solution. Member Brangwynne asked if he can put something on the right side or is it steep. He agrees that the best way is to look at the left side and the foundation issues. He would consider the right side if it could be pushed back. Chair said the left side pavement would be removed if the solution was on the right side. Chair asked staff if he can amend his plan and come back or will he have to withdraw and come back. Chair confirmed that this can be continued to September as she and Member Gannon will be absent in October. She said to go back to his consultants and seek their suggestions but the front parking has to go.

Member Heep motioned to continue this case to September. Member Gannon seconded. Members Heep, Gannon, SantucciRozzi, Donato and Brangwynne voted 5-0 to continue.

The board took a break for 5 minutes.

Member Ferris read the notice: Oakley Country Club, Appeal the Determination of the Zoning Enforcement Officer for an accessory structure (retaining wall) does not require a Special Permit.

William York, Attorney for Oakley Country Club stated they are here on an Appeal of the Zoning Enforcement Officers determination of April 5, 2019. The addenda that the board has, are the plans for April 4th, a copy of the determination, and practice range policies. He then introduced Jack Bartley, President of Oakley Country Club; David Klebenoff, his law partner who will provide the presentation; and Brad McKenzie, McKenzie Engineering.

Jack Bartley, President, Oakley Country Club since March 2019, said nothing is more important to their leadership and membership than strong relationships with this community. They are concerned with the impact of their construction activity to the neighbors on Oakley and Arden roads. He stated in the past year they have been undergoing an ambitious building renovation project as well as addressing drainage issues. There was a breakdown in protocol, which he acknowledges. Oakley should have implemented community outreach to their neighbors at the beginning of this process. He was advised by their then engineer to not file building permits for their retaining wall after they received approval on their storm water plan from DPW. Their lack of communication created animosity with their neighbors and he hopes to repair that relationship. He believes Oakley's reputation has come 'under fire' as they are judged by their intention and not their action. He said they have donated green's fees and lunch for over 65 years to the Watertown Police and Fire golf tournament (known as Joseph Toscano Golf Tournament). For 42 years, they have donated the golf course and banquet space to the Watertown Boys and Girls club. Every Tuesday in the summer, they have donated the golf course to Special Olympics in Watertown and Belmont. They have also donated the course to the Watertown High School golf team for practice and tournament play and they have had scholarship awardees of \$30,000. Letters from abutters have been submitted to show their positive and cooperative relationship. The 80+

These minutes were approved by the ZBA on October 23, 2019.

Watertown family members who call Oakley their second home are not strangers and many are life-long residents, like himself.

Attorney York provided an overview – In October 2018, their then engineer received a storm water management and erosion control permit from DPW, for grading work, grounds improvement, soil removal and included a retaining wall, netting and poles. They believed they did not require any further permits and Oakley takes responsibility for that. Due to the frozen ground of winter and an unusually wet spring, they could not address the drainage issues. In March 2019, Oakley was informed by the town that they were required to have a permit for the wall and netting. Oakley filed for a building permit on March 12th. Around March 28th, he had a meeting with Oakley and DPW concerning erosion and sediment control. Oakley heard from neighbors in opposition regarding the netting and the building permit was revised to eliminate the netting and poles. The revised plans, dated April 4th were submitted to the town. On April 5th, the ZEO issued a determination that he could not sign off on the building permit for unlawful regrading and landscaping as relief is required by the ZBA for expansion or alteration of use only permitted by Special Permit. That determination is the subject for this appeal as they believe it requires a building permit. On May 10th, MacKenzie Engineering was retained to handle and direct the erosion control, storm water management and stabilization of the regrading. The Practice Range limits for 2018 and 2019 have been long-standing – it limits shots to 165 yards, historically. The Practice Range is not being expanded and the nets have been removed.

David Klebanoff, Attorney, stated that they are appealing the refusal of the building permit. The permit sought to construct a block wall but the rejection was for a block wall, grading and landscaping. Grading and landscaping do not require a building permit. Grading is under the jurisdiction of the DPW and landscaping is unknown, if anyone but not zoning. The wall did require a permit. They were rejected as a retaining wall somehow excludes non-conforming use protection and the theory appears as though they have changed or extended the non-conforming use as a country club and that determination is in error. A wall is not a use. A retaining wall is a structure that has to comply with the building code and zoning code but is not a use. The WZO defines a use as the purpose for which land or building is arranged or designed. The purpose they applied for was to hold back earth – not to expand the use of golf. A retaining wall is a structure; a combination of materials and are listed in the town's bylaw as such. Landscaping and draining are not listed as a use. The protection of non-conforming use has been misapplied. The wall needed to meet setback and height requirements and meet structural requirements of building code but is not extending the use of Oakley.

Attorney Klebanoff continued to state that the town addressed this by providing it with a purpose based on something he doesn't know and the town insists it is an unpermitted expansion of an existing driving range and claims the wall is used to implement the expansion of the non-conforming use. He said the limits on the practice range have not changed. The yardage has not changed and the area where the balls land has not changed. The elevation has risen a bit but keeps the balls from rolling down the hill. He adds that holding back soil used to raise a grade does not extend a use. When the work is done and the planting completed, the area will be the same – perhaps a few less trees with a more formal barrier but unchanged. He'll accept that the town believes that what was done by holding up the soil was some kind of expansion. There may be another 10,000 feet of open area where there used to be a tree

These minutes were approved by the ZBA on October 23, 2019.

and now there is grass but for the club to lose its non-conforming status, there has to be a change to the non-conforming use or substantial extension of the use. No one is claiming there was substantial expansion and that area is still a practice range. He asks if this is a substantial expansion. The town's memorandum points to this as an expansion or extension but never states 'substantial'. Not every creeping of a foot of land forfeits a non-conforming use. He used an example of 'substantial' change of a property that changed from 5,000 s.f. to 15,000 s.f. and added that land that used to be a tree is 1/1000 of a percent of the 90 acres of Oakley. He added that the Power's test asks 'has the nature or purpose of the property's use changed' – no, it is still a country club. The second test asks, 'is there difference in the quality or character as well as the degree of use' - there is no change in the nature or purpose of this use; hours; rules; season; activity; number of users. He continues that case law requires that change be extraordinary or change the fundamental nature of what is happening there. The third test challenges if the change renders the use different in kind and affect on the neighborhood – there is not more traffic or noise different hours of use – no impacts to the fact that a retaining wall was used to hold back soil from the drainage work. He said he has read the neighbors comments and the town's reply and although they are disappointed, none of the impacts are from the use of the property as golf – they are topographical impacts about things washing over and mud coming into the yard and although legitimate concerns, they have nothing to do with extending the practice range. If the wall wasn't put in, there would not be a single change to the way this land is used. He concluded that although the Oakley needs to have better communication with the neighbors and more thorough town involvement in their projects, should not be a reason to punish a landowner because they can and he happens to be here or to step in and regulate things within the jurisdiction of the DPW is not what they are here for. They are here to decide zoning questions and this is a discrete zoning question with no discretionary elements – its fact finding; a building permit issued for a retaining wall or is a special permit needed because that wall substantially extends the use of this property. He added that whatever sympathy they may have for the neighbors, they cannot find that a retaining wall, accessory or golf course use, substantially extends the non-conforming use of that property.

Brad MacKenzie, MacKenzie Engineers, stated they were not the original engineer on the project and came on in May 2019 to address erosion control issues that had occurred over the winter and during the spring in connection with the DPW permit that was issued for the practice range portion of the property. There were frozen ground in the winter, which was not optimal construction conditions and record rain in the spring on an unstablized area that resulted in an impervious condition that had the spring rains washing the sediment to the down-gradient properties. They discussed their plan with DPW for diversion channels to channel water from the practice range to an existing leaching catch basin; shored up down-gradient areas around the retaining walls and abutting 65 Oakley and 1 Arden Roads – where he recommended to re-grade the right of way at Oakley Road to an existing catch basin with sediment control measures and they corrected an interim construction procedure where they raised an existing leaching structure on the Oakley property and an existing standpipe which they recommended be removed, and worked with precast concrete companies to advise Oakley on how to check the structure integrity and raise it to a finished grade. They worked with DPW on the earth-removal project for positive draining to direct the water to the leaching basin on the top of the upper wall area. His company inspected weekly from mid-May on. There has not been any flooding or erosion except on an

These minutes were approved by the ZBA on October 23, 2019.

extreme rain event on August 7, 2019. This was the day after Oakley loamed and re-seeded the practice range. The loam was washed into the swale area and then over the wall as the swale was not there to accept the runoff. They met with the property owner of 1 Arden Road as they experienced erosion on their property and Oakley cleaned up their property as well as the right of way on Oakley Road. Prior to the construction, the neighbor at 65 Oakley made the hardship issue that occasional flooding happened to their property – the difference now is that then it was not sediment laden. The inspection he has done as of last week showed the erosional control was in place, the area loamed and seeded and the seed has started to take root. Oakley has been responsive to his recommendations. He is confident that the design that is implement and once the area is stabilized will result in a reduced rate of runoff.

Attorney York stated they have finished their presentation and are looking to get to a determination to move this forward.

Mike Mena, Zoning Enforcement Officer, began by stating they do not make determinations to punish; they treat everyone fairly and determinations are based on solid professional review and coordination. He said the attorney mentioned the fact that the memo does not state the change was substantial. It is not his role to determine what is substantial; it is his role to determine there was a change to a non-conforming use or structure. This board determines ‘substantial’ and that is why they recommend that this board review this in the form of a special permit or a special permit finding. They based it on the number of changes to the site – the project resulted in the significant removal of vegetation and trees, which previously screened the golf course from the abutting residential properties. Zoning regulates landscaping and screening for the approvals by this board. The construction of two 5’ retaining walls to the rear of the residential properties and the grade changed from 145 – 155 at about 10-15’ at the rear of those properties. It continues to alter the grade for about 200’ – from the lowest to the highest point, it raises the grade about 20’ to a grade of 165. Due to the removal of the screening on the golf course, the significant change and the close proximity to the residential properties in the back, there is a substantial increase in grade of 20’ over the course of 200’ - the department determined that there was a change, alteration to a non-conforming use and therefore required a discretionary permit by this board. The town’s attorney reviewed the applicants’ statement and the staff report and felt they were on good standing.

Chair opened the meeting to the audience:

Anthony Donato, 42 Arden Road, stated that property owners have the right to do what they want with their properties provided it is within the zoning requirements. He supported his neighbor, the Dawson’s, when they removed an existing deck to construct another deck and this board had to determine if such change was substantially more detrimental than the existing non-conforming use, structure or building than the existing - even though the deck was being built in the same area with the same non-conformity. Oakley constructed a retaining wall that was approximately a combined 10’ in height and 200’ in length without obtaining a building permit or relief from this board. He stated the communication from Oakley was not poor, it was non-existent. There was no communication to the neighborhood about the trees being taken down and a 10’x200’ retaining wall would be built. He said Oakley claims the retaining wall is a structure - accessory to the main use just like the deck that required

These minutes were approved by the ZBA on October 23, 2019.

the Dawson's to appear here and that it is accessory to the main use as a country club and does not change the non-conforming principal use. The case law Oakley used, which states to look at it as a structure and not a use, is case law for use and nothing to do with structures. Mr. Donato continued, Oakley did not apply for a building permit or zoning relief and they believe they should be the entity that determines what is accessory, as opposed to town staff or the ZBA. He asks, if this is upheld, what would prevent Oakley from constructing other accessory structures over time but taken as a whole, can result in a substantial extension of the non-conforming use of the land as a country club. He states that Oakley claims there is no difference in the quality, character or degree to the principal use and the use is not different in kind or its effect to the neighborhood – an improvement does not become a change or substantial extension simply because the neighborhood complained. Oakley claims that this project was for drainage and the ultimate benefit of the neighbors. Mr. Donato argues that this use is very different in kind and its effect on the neighborhood. Several dozen trees and vegetation were removed to make way for a large, monochromatic structure. What was once a passive, unimproved area will now become an activated area of the country club. He credits the engineers' approach to correct drainage issues but August 7th was recent and the wall was constructed in December – his neighbors have had issues for almost 9 months. Oakley received a violation to the Storm Water and Erosion Control Permit and they needed to replace their engineer. He added that Attorney York states to refer to the plans that are now in front of the board and not the previous plans because the previous plans show a 40' tall fence (or protective netting, per Oakley). In the 121 years the country club has been open, there has never been a structure similar to this 40' proposed fence between the club and the abutting neighbors. The only reason we are not discussing the fence is due to the Department of Community Development and Planning issuing a Stop Work Order as there was no permit for the work being done or they would have built the fence. The fence has since been removed from their plans. He argues that the only reason you would need a fence that you haven't required in 121 years, is if you were going to increase the activity on the golf course. He states that it is disingenuous for the Oakley Country Club to claim that all of this work was only for drainage. He added that as a small community, members of Oakley have spoken about the extension of the driving range to neighbors on the street and although there is driving range restrictions in place and will remain in place, it bears the question as to why the fence was necessary. He asked again, if the Dawson's were required to come before this board for a set of stairs, why wouldn't Oakley be required to come before the board for the totality of the size of the retaining wall, the drainage issues, and the once proposed 40' tall fence for a substantial extension of the non-conforming use. He urges the board to find that this project is something that is required to be reviewed by this board.

Chair asked Oakley why this was done in the first place and why call it a drainage project when very little drainage improvements were attained.

Attorney York stated the reason why is that Oakley had soil they were removing from their water supply source and that soil could be used for better purposes on the site. There was a drainage issue in that area and there were 12 healthy trees and others that were not healthy removed. The area was wet. They built one wall at 4' and the other 5, which was the purpose. Landscaping will replace the vegetation that was removed in that general area, along the wall and in front of the wall at the end of

These minutes were approved by the ZBA on October 23, 2019.

Oakley Road. The netting was on a plan and the netting would slide up and down poles for protective purposes while the construction was going on and in the future if it was ever needed, not to extend the range. He would condition the range limits as they are today and will remain. Oakley is willing to add a condition that if they require netting in the future, they will be required to have a community review process and come before the board.

Chair asked who the contractor was to construct the wall and do the drainage work. Attorney York said Buonanno was the wall contractor and grading work was done by the Oakley grounds crew and supervised by the then engineer and now directed by Mr. MacKenzie.

Chair asked about the material put into the drainage area – was that soil inspected by a licensed soil evaluator to be sure it appropriate for proper drainage. Attorney York said the soil came from the Oakley site.

Member Heep asked what the drainage issue was – it was a little wet but the grade was raised about 20'. Mr. MacKenzie said there are two walls and the grade is raised from zero to 5-8' across each wall but not 20' across the entire wall. Mr. Mena noted the topography listed on the plan shows the change from 145 to 155 across the two walls, in varying spots.

Member Heep asked why this was done in the first place as 'it was wet' does not seem to be an adequate explanation for the degree of work that was done. Attorney York stated that they wanted to cure that issue and improve the grounds as it was runoff at a high point, historically – many reasons – drainage, ground improvement and the netting was not the reason as it was eliminated on the plan and will give a covenant for any future netting. He added that they need to build a relationship with the neighborhood and the letters received by the board state their good relationship. There was a point in the process where the neighborhood did not have any faith in Oakley and that was their concern. It is an embarrassment to the club as it was not intended. They went forward with the wall based on advice (from the prior engineer) that they did not need a permit.

Chair SantucciRozzi stated that she does not know anyone who would not know they need a building permit for a retaining wall over 4' - engineers, contractors, etc. She added that she hopes they have a guarantee on the wall. She asked if the footing or anything inspected on the wall. Attorney York said the plans were looked at. They have had contact with DPW. The grading permit was issued by DPW. He added that there was mention of a neighbor having to receive relief for a structure, but they (Oakley) are talking about a use. The wall is not non-conforming – it is conforming and doesn't change the use.

Jenn Green, 65 Oakley Road, stated that she is the owner of the property closest to this issue being discussed. She said they failed to apply for a permit; failed to have open communication with the neighbors; and negative impact to herself and her neighborhood. She showed a photo of piles of dirt and stated that the conversation started with DPW over erosion control. The (top of Oakley Road) was an access road, which she thought was for emergency vehicles to get onto the golf course. She does not understand why a 10' retaining wall was needed. She showed a photo of the (gigantic) wall outside of her window. The original intent was for a 40' structure on top of the 10' structure on top of a hill that is on top of Oakley Road. It is about scale as every property owner on Oakley Road is below this. Oakley

These minutes were approved by the ZBA on October 23, 2019.

CC has been around for 120 years and understands the regulations – they're doing a new clubhouse project now. She talked about Jack Bartley's profession and dealing with construction and government. She talked about William York's notoriety for zoning in this area. Buonanno construction has done extensive work in Watertown. Her point is that they are saying the engineer did not tell them they needed a permit but they should have known better. Communication from Oakley was poor and non-existent. After they started chopping trees, she attempted to contact them but no one returned her calls. When they started building the wall around Christmas, she did not get a returned call. She spoke with one of the contractors who screamed at her. On January 24th she called Oakley again due to the intense flooding. A representative of Oakley came to her home as told her they didn't think it would be this bad and would be back after lunch to 'hook up the drainage'. They came back but left immediately and did not return. They knew she wanted to know what was going on but no one came. The first official communication was from Jack Bartley who showed up on her doorstep unannounced. He asked her what her favorite colors were so they could incorporate her ideas with the landscaper but she wanted to know about the future of the wall. Oakley has scheduled an informational meeting on April 7th. They cancelled that meeting to 'reflect' as Oakley had been denied the retroactive permit. On April 12th, they violated the stop work order. On June 27th, they cancelled their appearance with the Zoning Board as they desired to have community outreach. They never scheduled neighborhood outreach. There was one contact made between Jack Bartley and Anthony Donato to have the landscaper make a presentation on what the landscape would look like but it was not intended as a dialog about the future of the wall or how to fix it. The impact was to her view – a modest home with an expansive view but that is gone. The extensive flooding and not a soggy yard. The previous property owner was going to change the footprint and create a house twice its size – that's why he stated the property flooded. She said the back yard gets soggy. The front yard was not soggy. On January 24th, water was pouring down, across her stairs, down the street. This persisted for two months after. She has images of water coming over the wall in April; coming out of her garage; and running down. She did not have these problems before the wall was built. This did not require a 10' barrier at the top of the street. She now has standing water in her front yard. They have had equipment going before 7am over the spring and summer – she has lost the use of her outdoors as it is a construction site. She does not know if her house is compromised and she is concerned financially. Their intent was a 10' wall with a 40' fence on top of it. Now, 8 months later, they are still pulling sediment out of the drain and cleaning up the street from wash coming over the wall. They chose to build an unsanctioned wall and they should have known what these processes were. She showed a video of January where a waterfall was streaming towards her house – she put in a barrier herself to rebound the water off of her foundation. She showed a second video where the water came over the wall and the mud and water came through her property into the street. She concluded that their notion that they do not have to ask for things in advance because they have been grandfathered in – there is a reason these procedures are in place and a reason why they need strong protections on residents like herself.

Chair SantucciRozzi announced that Alternate Member Michael Brangwynne is leaving the meeting as his wife is in labor. She wished him luck. She asked Attorney York if they would like to proceed or continue. Attorney York stated to proceed.

These minutes were approved by the ZBA on October 23, 2019.

Doreen Dawson, 36 Arden Road, said her husband is a landscape architect and he could not be here. She said Oakley filed for a storm water permit for Alden Road not Arden Road or Oakley Road. She stated there were mistakes on this project from the beginning. For the project on her property, she had to put notice in the newspaper and notify the abutters and something like this occurred without any communication. She believes they were going to put up a driving range otherwise why the 5' and 4' wall, when it is on a hill and looks like a 20' wall. They have lived there for 16 years and never had a problem with drainage. She loves Oakley Country Club and they are not coming against Oakley as an institution. They were allowed to use the access road to walk their dog on the course. There is no other reason to put this wall up other than to increase the driving range.

Mark Leonard, 29 Arden Road, gave kudos to Ms. Green for her presentation and stated he is proud of the residents on his street for all showing up to the meeting; his house abuts Oakley and the dimensions are not emphasized – the wall is 10' tall (you can see 5' and 5') the base of the first wall is 12' above the grade of the street; then the net was proposed on top of that. This was not a drainage problem and it now. When Oakley speaks of what they have done to remediate the issues, they never stated they had spoken with the neighbors. The only communication is when the neighbors questioned Oakley on constructing a wall when it was snowing the week of December 22nd. Conversations were had where members of Oakley stated they wondered why the neighborhood was not concerned with the new driving range being installed. Oakley has been a good neighbor and a notion that they just forgot to mention the construction of a 175' wall and putting a 275'x40' net/fence on top of it is outrageous.

Chair took the time during this hearing to announce 101-103 Morse Street case will not be moving forward tonight. She apologized to the attendees waiting for this project to be heard but one of the members of the board had to leave to be with his family. The board will hear the case on September 25th.

Member Gannon asked who determined the height of the wall and if anyone told the neighbors why the wall was 10' tall and not 8' or 6'. Mr. Leonard said no one told the neighbors why – initially the erosion control permit had a plan attached to it where there was an improvement to the grade, a retaining wall, then the net. The natural correlation between the retaining wall needing to be at a particular grade to support the net to extend the driving range. If they put a 40' net at the bottom of the grade, it would not provide protection and they wouldn't need protection if they had left the vegetation as it was. There was no conversation about the height of the wall – there was no conversation. The permit was issued in October. No work was done in October or November. The first week in December, trees were removed. The week before Christmas, the wall was erected. The wall was finished between Christmas and New Year's when it was snowing. It was quick. There are already gaps in the wall. The wall needs to go. It should be done right; go through the process like everyone else. Rules apply to everyone.

Chair asked if anyone else would like to speak and no one else spoke from the audience. She said she is still missing the 'why'. She is looking at the plan and trying to understand if it is a drainage project as there are not many drainage improvements included in the project. She is having a hard time trying to understand the end game. The video with the water is concerning. She stated there are times during

These minutes were approved by the ZBA on October 23, 2019.

construction where there are situations where it gets bad before it improves and she wants to know if this is a reoccurring problem.

Ms. Green said Teddy across the street is still experiencing problems but he could not be here tonight. She knows Oakley has had to go to his property recently and clean up flow that has come from 'up'. She was away the week that he (was flooded). There are still problems. She was not home during the last flood but at 7am on August 8th, they are clearing out dirt on the road that had been pushed into the street even with the protections in place. Yes, there are still problems. They were supposed to put loam and seed down in March – it was done only recently as they were busy with the irrigation installation at the top of the property. She is trying to figure out issues that are arising on her property and whether or not they are related to the drainage issues – like a tree that was thriving is now dying in her front yard. She has an arborist looking at it and trying to determine if it was overwatered due to the erosion or unrelated. She is trying to figure out all of the impacts (to her property). Trees are a natural drainage solution and the trees that they removed were protecting her house. They were soaking up the water as it ran down the hill. Why would they remove vegetation that would help.

Ms. Dawson said they appreciate the work Oakley did but if this was a drainage solution, why did it take so much correction and not instituted in the beginning, if this wall was erected for drainage issues. Chair SantucciRozzi said that is why she asked if there are still issues as during construction, if the proper temporary drainage isn't put into place, there can be problems. Ms. Dawson added that if this were truly built to correct drainage issues, there wouldn't be drainage issues. Ms. Green said on January 24th, when she spoke to the club, they reacted as if they were one step away from clearing this up – they were coming back to 'hook this up'. In April, the water gushed through and over the wall. They were not nearly finished – there was no communication with her.

Mr. MacKenzie said since early May when his company came on board, there have been no drainage issues with the exception of the August 7th event where 3" of rain fell and where loam and hydro-seed had been placed the day before. The swale filled with sediment. He spoke to the owners of 1 Arden Road and they agreed that although there have been several rain events, this is the first time they have had an issue.

Chair asked if the catch basin within the swale had to be brought up. Mr. MacKenzie said when he was involved, the grading effort was still underway - they did not shut off the drainage, it was still accessible and had silt sacks in it and there were still holes where the directed the temporary diversion swales to prevent the water from going off-site, hence no drainage issues during construction after May. There is an overflow pipe from the leaching structure to the catch basin on Oakley Road – that was not changed. They worked with pre-cast companies and DPW and a H2O slab was placed over the existing slab – pre-cast structures in the fill. He further explained that the basin is 20' off of the wall and DPW encourages infiltration but allowed an overflow connection and back to mid-2000, a lot of runoff came to the Oakley Road right of way. The course has always been higher than Oakley Road.

Member Ferris states that this is a change of the use of the land as the plateau has been extended to create a flatter area and the fencing would have been 5' above that – he does not believe that the

These minutes were approved by the ZBA on October 23, 2019.

retaining wall would be an element that would work effectively for the runoff scenario. He asked if the steeper incline that now exists, increased the runoff or the speed of the runoff to create the cascade over the wall. Mr. MacKenzie said no, they have not experienced that.

Member Ferris said if the intent was primarily to manage drainage and runoff, his inclination would not be to build something that was longer, flatter and taller, which would enable a different type of use, which he thinks was the objective, but without the wall, drainage could be handled adeptly without the wall as with the wall. Ultimately, you're trying to get the water to a low point to be better managed and whether the low point is at the top of the wall or the wall was never there, you would still have an as-effective drain. The wall is not helping drainage. Mr. MacKenzie said the grading plan, which was revised from the April permit, is helping the drainage as there was a depression that was created which is now channeling the water into the catch basin. Member Ferris said he can read that on the plan but if the club had come to him with a drainage problem, his solution would not have been to build a retaining wall, raise the grade and create something, his response would have been to manage the contours with the grades that are there and create a more effective drainage system. Mr. MacKenzie said he was not on board then and there are 100 ways to skin a cat. Member Ferris said skinning the cat would not have required building a retaining wall. He is not in agreement that the wall is assisting in improvement to the drainage. They could have created a linear grade. Mr. MacKenzie said it is a steep slope and is still a grading project.

Chair SantucciRozzi asked if the plans were created by the previous engineer. Mr. MacKenzie said they were but they lowered the rim elevation to create a positive slope to the rim (a depression).

Member Heep asked what the difference is in the use of the driving range before this project and the use of the driving range with the retaining wall and a 40' fence on top of it or they have a limit to the driving range of 165 yards, with the grade change, the retaining wall and the 40' high fence, what does this do for the use of the driving range. Attorney York said it has no purpose whatsoever. It is called a practice range as it is a short-distance range. It is 165 yards and will remain at 165 yards. There will be plantings where the trees were taken down, in a more aesthetic fashion and around the wall. The driving range used to be very wet and this drainage plan helps with that. Part of it is drainage and part of it is grounds improvement but the restriction to 165 yards does not change. Member Heep asked why there is a 165-yard limit. Attorney York said the balls would land in the trees and it would be impossible to retrieve them. There were 12 healthy trees taken down and others were dead trees and some were taken down where the wall is and perimeter trees were retained. Member Heep said if the 40' fence went up on top of the retaining wall, you could hit the ball further than 165 yards. Attorney York said that some would argue that that was the intent – it has not been the intent since he has been involved and it remains at 165-yard limit. They put it up and the neighbors complained so they took it down and have no intention of putting it up again in the future. The net has nothing to do with the plan in front of them. Member Heep said he does not know if he agrees. Attorney York said they clearly did not have communication with the neighborhood but in the future they will provide a telephone number to call.

These minutes were approved by the ZBA on October 23, 2019.

Chair said she has so many questions – about the dredged material – why is the contractor not here stating why he did what he did. Attorney York said Oakley just did what they were told to do. Chair questioned why they didn't consider what was going on – and why they worked when they had stop work orders. Attorney York said the stop work order related to any construction in that area – the wall was constructed already.

Member Gannon asked if there is anyone can speak to the purpose of this plan. Attorney York said the purpose was for drainage, grounds improvement, making that area more beautiful. He does not know the answer to why this design.

Chair SantucciRozzi announced that they have a couple of things they can do – find there is no issue and agree with Oakley Country Club or hold up the staff's position and find that the changes are an alteration of the preexisting nonconforming use. Does the board want to think about this or do something tonight; continue or hear more. It is easier to understand when they are presented with a situation and have professional people say how they will fix it – she was hopeful that the issues were just during construction but when Mr. MacKenzie had to weigh in and make revisions; when the contractor building the wall didn't know he needed a permit; the dredged material used – are all concerning to a point that they are altering the nonconforming use or concerning that they need to have the wall inspected. Attorney York stated that this was not dredged material – this was material around the water supply or the perimeter to increase the size – it was dry material. The soil removal permit and the grading permit were issued by DPW. What should have happened, is they should have gone to the Building Department for the wall and the netting but the netting has been removed. Chair asked if their contractor had been denied a permit for the wall, would they have come to the board or appealed it. Attorney York believes it would be a building permit. They want to bring this to a conclusion and litigation never helps.

Chair asked what the board wants to do. Member Heep said there is no further missing information to continue to the next month and he would vote to uphold the determination of the ZEO and require relief from this board in the form of a Special Permit Finding. Chair asked for a motion.

Member Heep moved that the Zoning Board of Appeals uphold the determination of the Zoning Enforcement Officer that this improvement installed by Oakley Country Club constitutes an expansion of a nonconforming use requiring relief from the Zoning Board of Appeals. Member Ferris seconded. Members Heep, Ferris, SantucciRozzi and Gannon voted in the affirmative, 4-0 to uphold the ZEO's determination (the request is **denied**). Member Donato recused; Alternate Member Brangwynne absent at voting.

Member Heep motioned to adjourn. Member Ferris seconded. Voted 4-0. The meeting ended at 11:20pm.

These minutes were approved by the ZBA on October 23, 2019.