BOARD MEMBERS PRESENT: Tom Sullivan – Acting Chairman, Mike Ravalli, Jeffrey Blau, Robert Lebar, and Kieran Murray.

BOARD MEMBERS ABSENT: Ron Mogren – Chairman.

OTHERS PRESENT: Debonnay Meyers – Planning & Zoning Clerk, Dan Barusch – Director of Planning & Zoning, Joe Mondella, Mark French, Gregory Teresi, and Sean Quirk.

Tom Sullivan opened the meeting at 5:00 PM.

He informed all that he would be Acting Chairman for this meeting because Ron Mogren was absent.

Tom Sullivan started the Public Hearing at 5:00 PM.

TAX MAP:	251.18-3-57
OWNER/APPLICANT:	THE LAGOON
ADDRESS:	204 CANADA STREET
ZONE:	COMMERCIAL RESORT
VARIANCE APPLICATION:	AV#18-2023

Applicant is proposing a total of one (1) area variance. The variance is for relief of the two-week maximum for tents under 220-27, for a 20' by 40' tent for outdoor seating at The Lagoon restaurant, proposed to start at the beginning of December and stay out until the end of April.

• <u>Relief of 220-27(B)(1)(e)</u>: Tent permits are valid for a maximum of seven days from the first date of use. [1] Two tent permits per property and/or business are permitted during any calendar year.

Tom Sullivan informed everyone that the agenda order would be switched to allow The Lagoon to go first. Tom Sullivan asked who would be representing this variance and for them to conduct their opening statement regarding the variance request.

Gregory Teresi, an attorney at Bartlett, Pontiff, Stewart, & Rhodes, P.C, introduced himself as The Lagoon's representative, as well as a representative for Mark French and Joe Mondella. He introduced both Mark French and Joe Mondella as the owners for The Lagoon and started to explain the history behind The Lagoon. Gregory Teresi, also known as Greg Teresi, informed the Board that both Mark and Joe worked hard to establish The Lagoon. He went on to explain that before The Lagoon was created at the Village Mall, it was several vacant spaces. After a couple years, The Lagoon had succeeded and had expanded to the 1st floor of the mall.

Greg Teresi then switched the subject to discuss their request from start to finish. He explained that per §220-27 of the Village Code, tent permits are valid for a maximum of two weeks during the calendar year. Tom Sullivan quickly interjected to indicate that technically the code allows a

maximum of one week and could be replicated. Greg Teresi did note the correction and continued forth with his opening statement. He indicated that a lot of the restaurants in the Village had closed during the winter months. As there has been excitement of new winter events online, Mark French and Joe Mondella were trying to make The Lagoon a year-round restaurant. Unfortunately, there were conflicts that prohibit them from reaching their highest potential. Greg Teresi started to explain the layout of The Lagoon. During the summertime, The Lagoon would utilize all indoor and outdoor space they own in the Village Mall. In the wintertime, all their outdoor space, minus the upstairs deck and the downstairs patio, would be closed due to the cold weather. With all the outdoor space being removed, The Lagoon's at a loss of 22 tables that could be filled with customers.

After explaining the layout, Greg Teresi started to explain why they're present in front of the Zoning Board. He indicated that the direction they're striving for was to obtain approval for them to extend their outdoor area, that measures 15' by 40', by having one 10' by 20' tent on the outdoor second floor deck. He added that per the application, it did state they were requesting a 20' x 40' but they were amending the application for them to request the 10' by 20' tent instead. Greg Teresi concluded his opening statement by taking time to explain their alternate options and why they wouldn't work. He said that pergolas and awnings were cost-prohibitive, and it wouldn't work for the summertime due to the layout of the restaurant. He quickly added that the tent would only be up for a span of five months. He explained that originally the request would be from November to March, but because it's December, he altered the request to cover the winter month starting from December all the way to April.

Tom Sullivan asked Greg Teresi if there was a tent up now. Greg Teresi said yes. Tom Sullivan wanted to know the current tent dimensions. Mark French responded with 10' by 20'. Tom Sullivan asked if the tent that's being used now was the one that they're requesting to leave up. Mark French said yes and explained that the tent was used every year on that deck. He indicated he wasn't aware that he needed to appear in front of the Zoning Board otherwise he would've appeared sooner. Tom Sullivan asked how long the tent had been up for. Mark French indicated he received approval from the Village Board to have the tent up until the next Zoning Board meeting. Greg Teresi quickly added that what Mark French meant was that he filled out the tent application and got the stamp of approval to have that tent for two weeks. The two-week period allowed him to have the tent up until this meeting.

Tom Sullivan wanted to inform everyone of the reason why he switched the agenda order. He explained that because Dan Barusch was leaving the meeting early, he wanted him to be present for the conversation. Tom Sullivan then switched the topic to cover what Greg Teresi said during his opening statement. He explained that a lot of local municipalities, examples include New York City and Lake George, had an impression of impermanence for tents and hence why they have tent rules in their local codes. However, when the pandemic hit in 2020, the laws were revised to allow a temporary period for local businesses to have tents. Unfortunately, due to the local municipalities allowing extended tent use, they now have a difficult time removing the extended use. Tom Sullivan informed everyone that he investigated and had a conclusion on his research. He explained that per the past couple meetings, he saw the conclusion that approved

the tent variances to have a two-to-three-month period. Tom Sullivan suggested that the Board should offer a four-month period instead of the five-month period.

Mike Ravalli expressed that approving the application would leave a precedent to where the other businesses would want what The Lagoon has, which would result in a bunch of applications asking for the same thing. Michael Ravalli indicated that he would not approve this application for that reason. Greg Teresi indicated that the businesses that were asking for the tents in the summer were looking for expansion meanwhile The Lagoon's request was strictly for preservation of their seating.

Michael Ravalli asked if they had thought about building a permanent structure. Greg Teresi explained that a permanent structure could be possible but unfortunately, that would have to be looked at in the future. He repeated that adding an awning or a pergola would be cost-prohibitive, and they have no other options than asking for the tent. Greg Teresi also added that the business had only been leasing the space for a couple of years and it would be a huge undertaking for them to build a permanent structure. Michael Ravalli indicated that using a tent would bypass the cost of building a permanent structure and that would cause an uproar with their competitors. Greg Teresi asked the Zoning Board to allow Mark French to have the tent for the season, just to allow them to test the success of Winter Realms and Winter's Dream.

Michael Ravalli stated to the Board that there were tents popping up without their approval. Greg Teresi informed the Board that they're here to follow the protocol and that they're not looking to pop a tent up without their authorization. Michael Ravalli informed the Board that four months was way too long for a tent, and he repeated that approving the application would set a precedent. Tom Sullivan agreed with Michael Ravalli to a certain extent. Tom Sullivan explained that the tent being up would not bother him, but what bothered him was how long the tent would be up for. Dan Barusch asked the Board if they would allow three months. Jeff Blau asked if that would be till the end of February. Dan Barusch confirmed and said that it would get them through till the end of Winter Carnival. Tom Sullivan agreed with Dan Barusch's suggestion and asked the Board if they agreed.

Mark French chimed in and expressed that he could get through March without the tent. He started to explain the hardships that he's experienced this year so far. The most current example used was him only making \$78.00 in sales that night. Mark French also said that he always had a tent in that spot for years and never had an issue until this year. Joe Mondella wanted to mention that they would maintain the tent and would keep it heated. Mark French advised having the tent would aid them, and their sales would rise to where they'd be able to make it. He provided an example of busy holidays, such as Saint Patrick's Day and how having that extra seating to seat 20 more customers would help.

Robert Lebar wanted clarification on how many tables would be available under the tent. Mark French responded with 5 tables, leading to 20 more customers which would approximately be \$87.00 per seat. Robert Lebar indicated that he noticed one difference between the other applicants and them. He explained that the other tents were hidden and at grade level, this tent

wouldn't be hidden. He added that the look of the tent wasn't pleasant to the eye. Mark French said that the tent wouldn't be ugly as it would be interiorly decorated with lights. He also added that his neighbor's property was more of an eyesore than the sight of his tent.

Jeff Blau indicated that the overall goal for everyone would be to make the Village a year-round tourist destination. He expressed that the Board should want to help the locals, not build a barrier to prevent them from succeeding. He indicated that in the summertime, there shouldn't be that many tents but this situation, they should make the motion to approve the tent. Dan Barusch wanted to add that the Village Board had been looking and discussing the possibility of altering the tent ordinance to allow a longer time period for the off-season this year. Dan Barusch also wanted to explain why The Lagoon was requesting the variance in his own words. He reiterated what was explained earlier by Greg Teresi but explained it in a way that was clearer for the Board to see that The Lagoon's goal was to preserve seating, not expand the maximum seating capacity.

Dan Barusch said that the Board may see one or two variances in the winter, depending on how Winter's Dream and Winter Realms work out this year. He did reassure the Board that The Lagoon most likely would not come back as by this time next year, the tent law would be changed. Kieran Murray informed the Board that he reviewed all the previous tent applications and explained each one to show the difference between this application and all the other ones. Once Kieran Murray explained his point of view for each application and portrayed his reasoning why the application should be approved, Greg Teresi jumped into the conversation and reiterated his point on how this would help local businesses and help tourists find a place to eat. Jeff Blau asked Mark French what would happen to the tent after the allotted time frame passed. Mark French said he would take it down and place it in storage. The Board had a side discussion on what Village restaurants would be open for Saint Patrick's Day. The Board figured out that Duffy's Tavern would be open, and they also utilized a tent for Saint Patrick's Day festivities.

Greg Teresi and Mark French expressed that they would want to keep the tent up till after Saint Patrick's Day. Greg Teresi pointed out that the weather in upstate New York has been unpredictable the past couple years and because of that, having the tent up for that long would help aid the business. Tom Sullivan understood Greg Teresi's point but he did remind him that the further you move away from the verbatim of statute, the less meaningful it would be. Tom Sullivan concluded his statement informing everyone that allowing four months was excessive. Joe Mondella offered a compromise that would allow The Lagoon to have the tent on Saint Patrick's Day and suggested having the tent removed the day after Saint Patrick's Day. Kieran Murray and Jeff Blau both expressed that they would be okay with allowing them to have the tent until Saint Patrick's Day.

Dan Barusch reminded the Board that after the Planning Board meeting, if they obtain approval, it would be three months from that date. So, technically speaking, The Lagoon would have till March 21st if the Zoning Board decided to go with the three-month option. Tom Sullivan inquired why The Lagoon had to appear in front of the Planning Board. Dan Barusch responded by stating it would be considered as a long-term tent. Tom Sullivan asked what would define it

as a long-term tent. Dan Barusch said if the tent goes over the two-week allowance. Dan Barusch and Debonnay Meyers reminded the Board what the Planning Board reviews, and it's subject to lighting, signs, appearance, seating count, landscaping, etc.

Tom Sullivan asked Robert Lebar to share his thoughts. Robert Lebar asked Mark French how many customers had been in the tent so far. Mark French said a lot. He explained that last weekend, they hosted a comedy show and it brought a lot of traffic to his establishment. He also shared his plans for his establishment hosting future events such as a New Years Eve party and a second comedy show. Joe Mondella chimed in and said the weekends would be when the tent would be used the most as the foot traffic would increase. Tom Sullivan asked what day Saint Patrick's Day lands on. Jeff Blau checked and said Sunday. Robert Lebar said based on the answers and when Saint Patrick's Day was, he expressed his approval of allowing The Lagoon to have their tent till March 18th, 2024. Tom Sullivan asked Jeff Blau for his final determination. Jeff Blau said he would allow it.

Tom Sullivan made a motion for approval for the erection of the proposed tent for three and a half months until March 18th, 2024, on the following bases:

- 1. An undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties by the granting of the variance because the applicant has maintained the same or similar structures in the same location on the property for several years and there have been no complaints from nearby property owners or others.
- 2. The benefit sought by the applicant cannot be achieved by some feasible method other than this variance because he wishes to maintain the structure only on a temporary basis and is not in a position to commit to a permanent structure instead.
- 3. The requested variance is not substantial because it will be in place for only a few weeks in 2023-2024.
- 4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood for the principal reason that it is temporary and will be taken down early in the new year.
- 5. The alleged difficulty was self-created, but such consideration is deemed insubstantial by the Board.

MOTION 2ND: Jeff Blau

Tom Sullivan	Mike Ravalli	Jeffrey Blau	Robert Lebar	Kieran Murray
Aye	Aye	Aye	Aye	Aye

Ayes = 5 Nays = 0 Absent = 1 Motion carried.

Dan Barusch left the meeting at 5:25 PM

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	TAX MAP:	251.18-3-57			

OWNER/APPLICANT :	LG BOAT RENTALS LLC
ADDRESS:	204 CANADA STREET
ZONE:	COMMERCIAL RESORT
VARIANCE APPLICATION:	AV#17-2023

Applicant is proposing a total of one (1) area variance. The variance is for relief to expand a nonconforming structure in the shoreline setback. If approved, the applicant will be able to replace the existing kiosk near the walkway with the proposed kiosk that will measure larger than the existing. The proposed kiosk will measure 10' by 20' and is expanded in the shoreline setback, which requires relief of §220-78 "Nonconforming buildings, structures and lots". The location of the proposed kiosk would not be any closer to the lake than the existing kiosk.

- <u>Relief of §220-78 (B): Expansion.</u> Nothing in this chapter shall prevent the strengthening or alteration to a safe condition of all or part of a building or structure that is nonconforming, provided that the repair or alteration will not increase the height, size or volume of the building or structure or otherwise increase the nonconformity.
- <u>Relief of §220-78 (C) Additions, alterations, maintenance, and repairs. (1):</u> A nonconforming building, structure or lot shall not be added to or enlarged or altered in any manner, in a way which increases its nonconformity.

Sean Quirk was present to represent LG Boat Rentals, LLC. Tom Sullivan asked him to conduct his opening statement regarding the variance request. Sean Quirk informed the Board that outside the Village Mall, he had two kiosks. His plan would entail removing both kiosks to make room for one larger kiosk that would be equivalent in square footage of the two kiosks. He explained that the kiosk would technically be one Garden Time shed but would have two walk-up service windows to where tickets could be sold.

Tom Sullivan asked Sean Quirk what the total square footage of both kiosks put together would be. Sean Quirk said the first booth was 8' by 8' but if the roof had to be included in the measurements, it would be 12' by 12'. Tom Sullivan asked if the overhang would be part of the proposed new kiosk. Sean Quirk said no. Tom Sullivan asked for the measurements of the second booth. Sean Quirk said 8 ¹/₂' by 6 ¹/₂'. Tom Sullivan asked for the total number of square footages with both those measurements together. Sean Quirk estimated the number to be 196. Mike Ravalli had a question about the dimensions of the kiosks. Sean Quirk provided the answers to both; starting with the new kiosk, it would measure 10 feet high, 10 feet wide and 20 feet long with the pitch being greater than the original kiosk. The old kiosk measures nine feet high. Robert Lebar expressed that the shed would have to follow some kind of architectural guidelines under §220-42. Sean Quirk said that it would basically be a shed that's not for yearround use. The shed would include 2 by 4 construction and would have store bought trusses on it. Robert Lebar asked the Board if the Code requires a two-foot overhang. Tom Sullivan couldn't recall the specifics of the code. Sean Quirk asked why he had to follow the two-foot overhang rule. Robert Lebar said he recalled seeing it in the Code but then had questions if that would pertain to the shed as technically the shed could be seen as a new building.

Tom Sullivan said that Robert Lebar did mutually agree that the shed would be considered a new building. Tom Sullivan opened the floor for the Boards comments to see if they all agree if this would be seen as an expansion or considered a new building all together. Robert Lebar said he recalled that Zoning couldn't deny the application based on the code specifically, they had to have to meet the certain requirements for a denial. Tom Sullivan said that this would beat the purpose of the statute and provided examples to explain his reasoning. The Board were in mutual agreement that technically, the variance would not require approval for changes to a non-conforming structure as it's being removed. Approving this specific application would allow the structure to be replaced with something that is not permitted to be built under the codes. Mike Ravalli chimed in and said there's nothing in the code saying that you could replace it.

Robert Lebar expressed that he had another minor issue that pertained to space. He said when he went down to examine the area, the proposed area where the kiosk would go would cut off a lot of space for emergency and fire access. Sean Quirk said it wouldn't be much of a hindrance as he believed there would be 25 feet all around. Tom Sullivan asked why it was considered a non-conforming structure in the first place. Sean Quirk said he didn't know and asked the Zoning Board to explain to him. Robert Lebar suggested that it was because the kiosk would be within 15 feet of the lake. The Board came to a mutual understanding that the kiosk would not meet the 50 feet setback requirement and hence why it was brought to the Zoning Board.

Kieran Murray said that the two kiosks Sean Quirk had been considered non-conforming. With approving the application, it would remove one of the non-conforming kiosks, but that new kiosk would be equivalent to the square footage of those two old kiosks put together. Jeff Blau added that the new kiosk would look better. Tom Sullivan said there's no argument that the new kiosk would look better, but it stands with it perpetuating the statute. Kieran Murray wanted to provide an example to see what the Zoning Board would say. He described a local business owner having a kiosk that got burnt to a certain degree to where it couldn't be replaced, so he appeared in front of the Zoning Board saying the fire wasn't his fault. He asked what they would do. Tom Sullivan said he wouldn't allow it to be replaced.

Mike Ravalli asked Sean Quirk why he wanted the kiosk to be bigger than the two he has. Sean Quirk said it would provide more elbow room for his employees. The new kiosk would measure 200 square feet, the old one measured 196 square feet. Mike Ravalli expressed that it didn't seem like a space problem as four-square feet wouldn't be much of a difference from what he has now. Sean Quirk asked the Board why his shed couldn't be considered a permanent structure. Tom Sullivan responded by saying the shed wouldn't follow the codes so therefore, it wouldn't be classified as that.

Tom Sullivan told the Board that couldn't find a way to rationalize this. Robert Lebar said the only alternative he could think of would be to repair the existing building. Unfortunately, that alternative wouldn't give him the extra square footage, but he could be creative in making more space inside the existing kiosks by shifting things around. Kieran Murray asked Sean Quirk who owns the bottom floor on the left side of the building that's facing the lake. Sean Quirk said he does and that's his office where he runs nine businesses out of. Tom Sullivan asked if he

received any complaints about the locations of the kiosks or even the kiosks themselves. Sean Quirk said no. He also added that the bricks on the lake walk had been laid out a certain way for his kiosk. Tom Sullivan asked for clarification if the bricks were designated for what kiosk. Sean Quirk said old kiosk.

Tom Sullivan told Sean Quirk that he could move forward with a motion, but he wouldn't be sure how the others would vote. Mike Ravalli said he would stick with the code and not allow it. Tom Sullivan asked Robert Lebar for his final thoughts. Robert Lebar said he's in the same dilemma, to where these issues have hindered him from making his decision. Tom Sullivan asked Kieran Murray for his final thoughts. Kieran Murray asked Sean Quirk if there was a way to shift the kiosk towards the front of his office to get it within 50 feet. Sean Quirk said no. Kieran Murray looked at the map and informed everyone that per the map enclosed, it shows that if it was shifted, it would be within 50 feet.

Sean Quirk had an older version of the map and went in front of the Zoning Board with it. He said that there would be a step in that area so with that, it would limit how far back he could go. Kieran Murray reviewed the map and asked him if he could turn it the other way. Sean Quirk looked at what Kieran Murray was suggesting and said it could be possible. Sean Quirk expressed that he didn't think of that. Kieran Murray said he'd be able to have his booths face the water, be able to have his new booth, and he'd follow the 50-foot setback requirement. In addition, Sean Quirk wouldn't have to appear in front of the Zoning Board as he would be complying. Mike Ravalli asked for clarification on what Kieran Murray was suggesting. Kieran Murray showed Mike Ravalli while Robert Lebar asked Sean Quirk if the brick patio was his. Sean Quirk said yes.

Kieran Murray said he didn't have a ruler to be able to generate the exact measurement, but depending on if the kiosk could fit there, with a little wiggle room to get into the office; it could lead to Sean Quirk possibly coming back to obtain one variance for the setback. Kieran Murray also provided good points as to why moving the kiosk would be better. He said it would provide room for lines, and it wouldn't disrupt pedestrian traffic along the sidewalk. The Board all liked Kieran Murray's suggestion. Tom Sullivan said the Zoning Board would disapprove the application and would re-review the application once another suggestion is provided.

Tom Sullivan made a motion for denial for replacement of non-conforming kiosks on the property of LG Boat Rentals with one kiosk will perform the functions of both.

- 1. An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance because the expansion, whether by replacement or otherwise, of a non-conforming building is specifically prohibited by section 220-78 (B) and (C) of the zoning code.
- 2. The benefit sought by the applicant can be achieved by the repair and refurbishment of the existing structures without replacing them in their entirety.

- 3. The requested variance is substantial because although only 200 square feet is substantially larger than the footprint of the existing structure.
- 4. The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because it will increase the non-conforming nature of the existing building(s) in direct violation of the applicable law.
- 5. The alleged difficulty was self-created in that the applicant sustained the non-conforming structures for as long as they have been in place knowing that the applicable law provided that they could only be maintained and not enlarged in any manner.

MOTION 2ND: Kieran Murray

Tom Sullivan	Mike Ravalli	Jeffrey Blau	Robert Lebar	Kieran Murray
Aye	Aye	Aye	Aye	Aye

Ayes = 5 Nays = 0 Absent = 1 Motion carried.

MINUTES:

APRIL 5, 2023 (RM, TS, MR, JB, RL)

Tom Sullivan asked the Board if they had any comments about the minutes. Debonnay Meyers informed everyone that Kieran Murray could not vote as he wasn't part of the Zoning Board at the time. Starting June 7th, Kieran Murray could vote if he was present at the meeting.

Tom Sullivan made the motion to approve the April 5th, 2023, meeting minutes.

MOTION 2ND: Jeff Blau

Tom Sullivan	Mike Ravalli	Jeffrey Blau	Robert Lebar	Kieran Murray
Aye	Aye	Aye	Aye	Recused

Ayes = 4 Nays = 0 Absent = 1 Recused = 1 Motion carried.

JUNE 7, 2023 (RM, MR, KM)

Tom Sullivan made the motion to approve the June 7th, 2023, meeting minutes.

MOTION 2ND: Jeff Blau

Tom Sullivan	Mike Ravalli	Jeffrey Blau	Robert Lebar	Kieran Murray
Aye	Aye	Aye	Aye	Aye

Ayes = 5 Nays = 0 Absent = 1 Recused = 0 Motion carried.

Debonnay Meyers informed the Board that they could not make a motion to approve the meeting minutes. She explained that only Ron Mogren, Michael Ravalli, and Kieran Murray could vote

on it as everyone else was absent. She suggested Tom Sullivan to revoke or amend the motion as it would be an invalid motion.

Tom Sullivan amended the motion to revoke the motion as not all members that attended the June 7th, 2023, meeting were present for tonight's meeting and this decision would have to be made at a later date.

MOTION 2ND: Jeff Blau

Tom Sullivan	Mike Ravalli	Jeffrey Blau	Robert Lebar	Kieran Murray
Aye	Aye	Aye	Aye	Aye

Ayes = 5 Nays = 0 Absent = 1 Recused = 0 Motion carried.

Tom Sullivan made a motion to adjourn the meeting at 5:44 PM, seconded by Jeffrey Blau, and unanimously carried.

Respectfully submitted,

Debonnay Meyers December 6, 2023