

APPROVED

**LAKE GEORGE VILLAGE
26 OLD POST ROAD
APRIL 18, 2012
PLANNING BOARD MINUTES**

Board members present: Robert Mastrantoni - Chairperson, Patricia Dow, Chuck Luke, Dan Wolfeld

Absent: Patty Kirkpatrick

Others present: Monica Proctor, Robert Proctor, Glenda Howland, Dean Howland, David Haversat, Clare Decker, Sam Sultana, Tom Hutchins, Alan Miller, Jim Zalewski, Melissa Vito, Kathy Bozony, Ellen Breslin, Attorney John Wright, Carol Miele, Kathy Sinnott, Craig Nicholson, Dave Kenny, Tom Nace

Robert opened the meeting at 7:30 PM.

Before reviewing the 1st item on the agenda, Robert mentioned to the Board that he is related to the family that is renting the space to David. Robert polled the Board members on whether or not they feel he should abstain from this review. The Board members unanimously agreed they did not feel that Robert needed to abstain from this review.

TAX MAP: 251.14-3-1

APPLICANT: DAVID HAVERSAT

ADDRESS: 253 CANADA ST. – 2ND FLOOR

ZONE: COMMERCIAL MIXED USE

SITE PLAN APPLICATION #1216

SIGN APPLICATION #1215

Applicant is opening a new museum/gift shop above Gino and Tony's Restaurant. The name of the establishment is Zanadu's Museum of Curiosities & Gift Shop. Site Plan review is required because the building has been vacant for 3 or 4 years. The last business located at this location was Alien Encounter.

- David indicated he planned to open a museum - a walk through attraction - and a gift shop. There will be a variety of different artifacts.
- David submitted his floor plan to the Board members. The space is approximately, 5,000 square feet.
- The location on the second floor presents some challenges. Hopefully, keeping the attraction sensibly priced and because it is unique there will be a draw of families.
- The displays are against the walls, similar to an art exhibit and some in the center.
- David addressed the signage. He provided the board with a sample picture of the gooseneck lighting which will be in an antique nickel finish. 2 lights will be used.
- The sign will be made of wood with scroll work around the edges. The colors are as depicted in the sample provided. The sign will be placed over the door. The dimensions are 2' x 3'. No raised lettering.
- There will be an "open" sign in the windows facing Canada St. and Montcalm St.
- There is a working elevator. There is a sprinkler system throughout the building.
- Hours of operation 10 AM to 10 PM.

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MOTION: Patricia Dow made a motion to approve the business at 253 Canada St. on the 2nd floor for Xanadu's Museum of Curiosity and Gift Shop to approve the space as indicated in the design presented with only an open sign in the front window or a small display to be visible from the street.

2ND MOTION: Dan Wolfield.

Robert Mastrantoni	Patricia Dow	Patty Kirkpatrick	Chuck Luke	Dan Wolfield
Aye	Aye	Absent	Aye	Aye

MOTION: Chuck Luke made a motion to approve the sign for Xanadu's Museum of Curiosity and Gift Shop at 253 Canada St. A wood sign with two nickel plated gooseneck lights

2ND MOTION: Patricia Dow.

Robert Mastrantoni	Patricia Dow	Patty Kirkpatrick	Chuck Luke	Dan Wolfield
Aye	Aye	Absent	Aye	Aye

TAX MAP #251.18-2-64

OWNER/APPLICANT: DEAN AND GLENDA HOWLAND

ADDRESS: 103 MONTCALM ST

ZONE: SINGLE FAMILY RESIDENTIAL

SITE PLAN APPLICATION #1218

Applicant is lowering an existing deck, adding a 6 ft x 12 ft deck addition to the existing deck and installing a roof system over the entire deck. New patio blocks will be installed in the area shown on the Site Plan rendition.

- Dean indicated he is adding an addition to the existing deck and adding a roof for a screened porch.
- Dean indicated which of the plans he submitted are a street view and which plans show the view from the backyard.
- The roof will be guttered to the rear.
- The patio pavers will be installed for the ground patio.
- Patricia asked how much of the lot will be pavers. Dean indicated they removed 120 square feet and they will be adding a 380 square feet addition of pavers. Patricia asked about the percentage of lot coverage. The lot is a large lot and this new patio and addition do not impact lot coverage.

MOTION: Dan Wolfield made a motion to approve the new covered deck and addition at 103 Montcalm St. for Dean and Glenda Howland as presented with matching siding, with construction as shown. Also approved is the under 500 square feet of patio space that will be added to the backyard and constructed using patio pavers.

2ND MOTION: Patricia Dow.

Robert Mastrantoni	Patricia Dow	Patty Kirkpatrick	Chuck Luke	Dan Wolfield
Aye	Aye	Absent	Aye	Aye

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TAX MAP #251.14-2-11

OWNER/APPLICANT: KENNY & DITTRICH, LLC

ADDRESS: 50 AMHERST ST AND PARKING AREA BEHIND 365 CANADA ST (GIUSEPPE'S)

ZONE: COMMERCIAL MIXED USE

SITE PLAN APPLICATION #1208

SPECIAL USE APPLICATION #1208SP

The Special Use Application for the 50 Amherst commercial parking lot and Site Plan for 50 Amherst St. and the parking lot behind Giuseppe's were approved on March 21, 2012. Minutes from that meeting are attached. The Applicant is before the Board this evening because he is changing the Site Plan construction. Instead of permeable pavement the applicant will be install dry wells and will be using non-permeable pavement.

- Dave indicated after looking into using a permeable surface he feels drywells will work better in this area. Dave mentioned the upkeep of permeable pavement can be a challenge. Permeable pavement cannot be resealed. When impermeable pavement is sealed it looks like new. Dave presented the Board with pictures of a permeable surface lot and an impermeable lot. Dave is also concerned about oil spills.
- 5 drywells (one in the Amherst lot and 4 in the lot behind Giuseppe's) will be installed and along the Northern edge a french drain will be installed. The dry wells are 10 feet on the bottom and they go out to 25 feet on the top. This will provide a big collection area. All the drywells (behind Giuseppe's) are tied together with piping. Tom indicated the calculations show these will accommodate a 100 year storm without any run-off.
- The pitch to the drywells and the northern edge drain will run into the rain gardens.
- Dave indicated he has been working with the Lake George Waterkeeper with regard to plantings. They are also redesigning the rain garden. There will be wider openings in the curbs to allow water to runoff into the green space.
- Dave pointed out there is a stockade around the entire pool area at the neighboring property – there was a question at the last meeting.
- Patricia asked about the recoating. Dave explained he usually reseals and restripes a parking lot every couple of years.
- Dan asked if there is a need for an infiltration trench at the Amherst parking lot. Tom indicated the dry well was enough to handle this area.
- Patricia asked if the technology improved in the future would Dave consider permeable pavement at that time. Dave mentioned that permeable pavement is a different design and Tom added it's not just the pavement but the drainage course underneath.

MOTION: Chuck Luke made a motion to revise the Site Plan for the Kenny & Dittrich parking lot from permeable pavement to impermeable pavement. 5 drywells will be added, 4 will be connected. They have changed the rain gardens and shrubs to the Waterkeeper's recommendations.

2ND MOTION: Dan Wolfeld

Robert Mastrantoni	Patricia Dow	Patty Kirkpatrick	Chuck Luke	Dan Wolfeld
Aye	Aye	Absent	Aye	Aye

Kathy Bozony (Office of the Lake George Waterkeeper)

Robert allowed Kathy Bozony to make a public comment about the parking lot at this point. Kathy indicated the rain garden has one foot of top soil and 3 feet of #2 stone underneath it. The under drain is not necessary, 3 feet of soil on top of the base soil which is good impervious soil right now is all that

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is needed. Natural soils work better than stone. With stone the water goes through and there is no water to feed the plants.

LOCHLEA SUBDIVISION

The Planning Board had a discussion with the Zoning Office regarding the pending discussion regarding the Lochlea 50 foot stream buffer/setback. At this point the board was waiting for Attorney Mark Schachner (Village Planning Board Attorney) to join the board; Mark was delayed at another meeting. After polling the Board Members, Robert agreed to delay the meeting until Mark could join the meeting. Robert advised the public that the board has agreed to wait for Mark Schachner.

At this point Robert advised the public that the meeting was not a public hearing and that he would allow one person from Lochlea to speak for a short period.

The Board agreed at this point to review the March minutes.

MINUTES

March 21, 2012 (RM, PK,CL, DW)

Patricia - page 14 - perimeter of the house is (instead of in). Page 17 - built (instead of build). Page 18 – as the ground does its job.

Dan made a comment – page 17 – was confirming with Patricia that what she saw was the buffer zone.

MOTION: Chuck Luke made a motion to approve the March minutes as corrected.

2ND MOTION: Patricia Dow.

Robert Mastrantoni	Patricia Dow	Patty Kirkpatrick	Chuck Luke	Dan Wolfeld
Aye	Aye	Absent	Aye	Aye

At this point Robert asked the Board to disperse while waiting for Mark.

Mark joined the Board at 8:50 PM. Robert called the meeting to order.

LOCHLEA SUBDIVISION

Robert asked Doug to advise the Board and Mark the issue that needs to be addressed tonight with regard to Lochlea subdivision.

Doug Frost

Doug advised that the issue is in regard to the 50 foot stream setback. Doug mentioned he had spoken to Mark McGliore (DEC) regarding the 50 foot line that was on the map when the plans came to the Board initially. Doug advised that Mark McGliore indicated they had reviewed the subdivision and that the 50 foot line was not a DEC line and that the DEC had signed off on the project which then sends the project to the Planning Board to look at the setback requirements. The subdivision did come back to the Planning Board in March 2009. At that point what was presented to the Planning Board for the subdivision showed that 50 foot line. That 50 foot line was discussed at that meeting and Margy Mannix confirmed with the Lochlea representative that the 50 foot setback was going to be adhered to.

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Doug advised the Board that at this point in time, the Zoning Office believes the 50 foot setback is in place.

Mark Schachner

Mark advised the Board and the public that he is the attorney for the Village Planning Board. He mentioned that he has worked for Lochlea approximately 20 years ago in reference to a matter involving docks on a neighboring property. Currently he does not work for Lochlea and he has not worked for Lochlea with regard to the subdivision or pending the applications. Mark also advised that his law firm (Miller, Mannix, Schachner & Hafner, LLC) also represents the Town of Lake George; Mark does not represent the Town but he has colleagues who represent the Town and they are currently representing the Town on similar matters. Mark added any objections to any of this should be made at this point.

Planning Board

The Planning Board agreed unanimously that they did not have any objections.

Public

There was no public comment with regard to Mark's comment.

John Wright (Bartlett, Pontiff, Stewart & Rhodes, P.C. Attorney for Lochlea Partners)

John provided the Board with some handouts. The subdivision was completed in 2009 and the handouts are of the subdivision map that was submitted and approved by the Planning Board. John pointed out that on the first page he has circled and numbered two of the notes that were on the map. The note numbered one, is blown up – this pertains to building footprints. At the last meeting the Planning Board discussed the issue of building footprints. Those are preliminary in nature; the Waterkeeper has raised some issues about the building footprints. John pointed out the the footnote which indicates the building footprints are preliminary and added that the applicants may come in with something different.

John, making reference to the third page of his handout, pointed out a note that is on the subdivision map. Referring to the note John mentioned that English Brook has been classified by the DEC as a class AA special level stream. The DEC regulates within 50 feet of the brook. John added that the last sentence on the third page states, the owner shall coordinate with DEC and Corps of Engineers prior to commencing any work within 50 feet of the high water mark of the stream. John pointed out the intent of these statements is if development was to go into the buffer – it's not a setback, it's a buffer – DEC and the Corps of Engineers would be consulted to make sure that there would be no adverse impact on the brook. John added, that whatever was discussed at the February and March 2009 meetings, where setbacks and buffers were discussed, he doesn't think there was a definitive decision by the Planning Board that said a condition of this subdivision approval is that this 50 foot buffer will be converted to a setback. John added he is not aware of anything in any of the minutes from 2009 or after that time where the 50 foot buffer was converted to a setback to prevent any development in it. John mentioned he believes the note on the filed and approved map puts this matter to rest – it's a buffer and the applicants are to consult with DEC if they are going to develop within that buffer area.

Robert polled the Board for questions.

Robert Mastrantoni

Robert asked if DEC is saying they (DEC) do not look at the line?

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Doug Frost

Doug responded to Robert's question stating the DEC told him they (DEC) signed off on the subdivision and Doug added, Mark McGliore said he did not understand why the applicants were coming back to him and why they were requesting anything from them (DEC). Doug stated Mark told him the 50 foot buffer or setback is not something the DEC required. Mark McGliore said the Planning Board should look at this based on what is presented to the Board and what the Board feels. Doug said he was told the DEC has signed off on this, no one needs to come back to DEC, it is not necessary to file an Article 15 - they looked at this area of the stream and have decided there is nothing they need to do.

Robert Mastrantoni

Robert asked if the Board has discretion.

Doug Frost

Doug responded to Robert's question stating, the setback was discussed at the prior meeting and it was confirmed by Chazen or whoever the representative was at that time confirmed the 50 foot setback. Doug stated the Zoning Office believes the 50 foot setback is in effect at this point in time.

Chuck Luke

Chuck asked for confirmation that the Village setback is 20 feet and Doug confirmed it is. Doug also added, the Planning Board does have the discretion to set a higher standard than what is required in the Village code.

Chuck was not a member of the Planning Board when the Lochlea subdivision was reviewed and approved. Chuck asked if the Planning Board, at the time of the approval, said they were setting a higher standard higher than 20 feet.

Doug Frost

Doug responded to Chuck's question stating he believes the Board's decision was based on the line that was shown on the map. Margy saw the 50 foot setback, asked the question to the representative and it was confirmed.

Dan Wolfield

Dan commented the approval was based on the information that was presented - the information presented was based on the questions asked and answers presented that night and one of those is that properties would be located beyond the 50 foot buffer zone. Dan commented that what was approved was based on the plan, the image and impression the night the subdivision was reviewed and the impression was there would not be buildings in the 50 foot buffer/setback.

Doug Frost

Commenting on Dan's statement, Doug indicated that is what the Zoning Office believes.

Chuck Luke

Chuck asked if there is a 20 foot setback, did the Board say they were going to change the setback rules or is the Board relying on the statement in the minutes?

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Doug and Robert both responded that the Board did not indicate they were changing the setback. Doug added the representation had already been made. Patricia agreed.

Mark Schachner

Mark commented that although he was not present at the meeting being discussed, based on his understanding of what transpired at that meeting – it would not have been rational for the Planning Board to say they were going to create a new setback requirement for this project. The applicant's representative (based on the meeting minutes) made a representation that was codified on a map. Mark asked is the line is labeled setback?

Patricia responded to Mark's question indicating the map indicates 50 foot offset line from English Brook. Dan pointing to the map indicated there was labeling of "sb" in two spots.

Dan, pointed out the 50 foot line to Mark. Patricia provided a larger map that she had saved from the original presentation – the map is dated 1/20/2009. After looking at the larger map, Mark confirmed that the label is – 50 foot offset line from English Brook. Mark's opinion is that the label is ambiguous.

Responding again to Chuck, Mark stated he thought Doug's point to be, given the context of the conversation in 2009, the Planning Board did not say they were establishing a new setback requirement as a condition of the subdivision approval. This issue presents some ambiguity and confusion.

Mark went on to explain there is case law where issues such as this are usually decided on whether or not there was a material representation made on behalf of an applicant as part of an application. Providing an example, Mark explained in a neighboring community an applicant on a fairly large scale project made a specific representation in the context of the application as to the maximum height of a structure. The Planning Board did not then impose, as a condition of approval, the maximum height of the structure. The Planning Board fully intended the maximum height would not exceed what the applicant represented but it was not codified in any condition. The applicant's successor came to build the project and wanted to build the project at a taller height. The successor took the position that since there was no express condition of approval limiting the height of the structure a taller structure could be built. The Planning Board's position was that even though they did not impose a height condition upon approval the structure could not exceed the height that was represented by the applicant. In this case it was ruled that the statements made by the applicant about the height of the structure was a material representation and the applicant is bound by it.

Mark pointed out that there are cases where ambiguous terms have been used. Terms such as, approximately, best guess, prediction – when these terms are used there is not a material representation.

Mark counseled the Board as a matter of law - if an applicant or an applicant's representative makes a material representation, a board is allowed to rely on that as part of the application. If this Board feels that at the time of the application approval there was a material representation made by an authorized representative on behalf of the applicant that the line was a 50 foot setback line and that was a material element of the Board's approval then Mark agrees with the Zoning Officer that it is part of the approval. Mark added, if it was not a material representation and not relied upon by the Planning Board when issuing its approval then it's not a material representation to which the sub-divider can be held.

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Ellen Breslin (Lochlea Partners)

Ellen asked Robert if she would be allowed to speak as she has a historical perspective. Robert agreed to a couple of minutes. Ellen mentioned she was at the meeting and at that time there was a movement by the Lake George Park Commission and the DEC to change that buffer to 100 feet so Ellen thinks the person making the motion was saying this is a 50 foot buffer it is not a 100 foot buffer.

Mark Schachner

Mark counseled the Board that the Board's determination should be based on whether or not there was a material representation and was it a significant material representation or not and to what extent was it relied upon by the Board in issuing the approval.

Doug Frost

Doug advised the Board that even though the Zoning Office has made the determination regarding the 50 feet, the Planning Board at this point can entertain the request of Lochlea Partners. Mark Schachner agreed.

Patricia Dow

Patricia added to this discussion stating that she was present at the meeting in 2009. She commented that Margy mentioned it and it is typical for the Planning Board to use the terminology "as presented"; the Board makes that statement as a matter of course – "the plans as presented". Pointing to the map, Patricia stated this was presented, she (Margy) commented on it and Patricia remembers talking about the size of the buildings being similar to the rest of the buildings. The line is shown and it was presented to the Board that the buildings are drawn behind it. In Patricia's opinion "as presented" covered everything and the Board did not outline every single thing that was presented.

Mark Schachner

Mark counseled the Board about minimizing the Board's exposure. He mentioned his concern about considering this a material representation if there was only one of two factors indicating it – meaning either the map without the minutes or the minutes without the map. Mark added, since both items exist he doesn't believe the Board is suffering from legal exposure.

John Wright

John pointed out, the map, as presented, has a line that is not defined as a setback and there is a note which states that anything within the 50 feet will go to DEC and the applicant will seek DEC input or approval. He added that whatever was said at the meeting by the subdividers agent would have been subject to the note on the map. There is anticipation that the development will be outside the 50 foot buffer but Lochlea Partners did not know at that time what specific applicants would do just like they wouldn't know the building footprint. He depicted both situations as the same, his client couldn't predict in 2009 what the applicant would do or want to do in 2012. John doesn't believe there is a material misrepresentation (representation?) because there are two different portions of the map which indicate this is not considered a setback. John pointed out that a setback is from a property line and would not be from English Brook. To refer to it as a setback is a misnomer and in error. John asked the Board to look at this through his client's eyes - as to what they could have known in 2009 and as to what would happen in 2012 as to the 50 foot buffer and what specific projects would come forth 3 years later.

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Mark Schachner

Mark counseled the Board regarding John's comments. Mark agrees with John's comments made earlier in the meeting – referring to the map and the map only. Mark advised the Board again, if the Board only had the map, he would not feel comfortable if the Board took the position that the setback was in place. Mark advised he does not agree with John with regard to John's statement about having the same issue with buffer/setback issue as with the building footprint issue. The map includes a note about the building footprint issue that says, "building footprints depicted are preliminary in nature and subject to modification by project sponsor." Mark advised the Board he believes, as a matter of law, that the building footprint issue and the buffer/setback issue are not the same. If there was similar language on the map about the 50 foot line, this discussion would not be taking place. Mark commented that he doesn't believe the term setback only applies to a property line, legally; he can think of other examples where it setback applies to structure and other borders and boundaries.

Robert Proctor (owner of Lochlea Lot 2)

Referring to the Village Code, Robert pointed out that setback is defined in the Village Code.

Mark responded by stating he was referring to law in general.

Bob asked if the Village Code applies to this and Mark responded by stating the Village Code does apply and it would relate to the property line setback. Mark added he was making reference to Lochlea's counsel's generic statement that the term setback can only apply to property lines. Mark added that if that is what Lochlea' counsel was saying he (Mark) does not agree however, either could be right or wrong.

Mark Schachner

Referring to an earlier statement made by John Wright about the previous minutes not being verbatim, Mark indicated it is not required that minutes be transcribed verbatim.

Chuck Luke

Check mentioned that the setback from the stream meanders and is not the same line as the property line. He believes this is confusing because the property line does not go up to the stream; the property line ends before the stream.

Patricia adding to Chuck's comment pointed out the minutes state – confirmed that the setback from the stream will be 50 feet. Patricia points out that Margy went ahead to make the motion for the Site Plan review.

John Wright

John mentions that the Minutes are not verbatim and emphasis placed on the specific wording has to be taken with a grain of salt. No one knows exactly what was said.

Patricia Dow

Patricia added that in the manner the Board proceeds, then and now, the Board often says "as presented". The buffer/setback was questioned and confirmed.

Chuck Luke

Chuck thinks there would have been more discussion about the fact that normally there is a 20 foot setback and what changes it to 50.

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Doug Frost.

The Zoning Office has made the determination that the 50 feet is in effect. The Board should move forward if they want to entertain something different than that.

Mark Schachner

Advised the Planning Board that if the Zoning Office has made this determination about the 50 feet then under New York law, the Board does not have the legal right to change the determination or overrule the determination. Mark points out the proper procedure would be for the aggrieved party to appeal the determination with the Zoning Board of Appeals. At this point in time the aggrieved parties are the applicants for Site Plan review and possibly the subdivider; they can legally appeal the determination to the Zoning Board of Appeals.

The Planning Board shouldn't be considering modifying the determination unless an applicant makes a request for a modification of the Board's previous approval. The appropriate process would be for the subdivider, Lochlea, to seek that modification from the Planning Board, without having to go before the Zoning Board of Appeals.

Patricia Dow

Summarizing, Patricia mentions that now 3 years later the determination is in question now, the Zoning Office says the 50 foot line is in place.

Carol adds – based on the information the Zoning Office has – the minutes and the map.

Patricia continuing, states that the 50 foot line is in place and in order to proceed forward with the Planning Board, Lochlea should come forth and seek a modification.

John Wright

Asked Doug for a date when the determination was made. Doug replied he believed the determination was made "last Friday" after receipt of the letters from the Waterkeeper that brought to light the minutes that were approved. The Zoning Office then looked at the minutes and the map and made the determination that the 50 foot setback was in effect.

John commented that this zoning determination is not from a zoning interpretation of the Zoning Code. John believes the Zoning Officer is imposing a condition on the subdivision approval that wasn't imposed by the Planning Board in 2009. John believes if the Planning Board was going to more than double the setback they would have made that a condition of the approval. Now 3 years later, the Zoning Officer not through interpretation of the code but in "gleaning the Planning Board's intent" is imposing a condition that isn't there. The statement in the minutes is ambiguous, it is not verbatim. John believes the Planning Board should clarify what they approved in 2009; there is nowhere in the minutes or the resolution that makes it clear that a larger setback is imposed than what is provided in the Village Code.

Robert Mastrantoni

Robert commented that he was on the Board in 2009 and although he does not remember the exact words, the Board has the map and the minutes. He believes that if Margy Mannix had made the motion to approve the subdivision then there was a reason she asked about the 50 foot setback. He also believes they have to work with what they have.

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Doug added, based on the minutes and the map the Zoning Office believes the 50 foot setback is in effect. The Zoning Office has made the determination that the 50 feet is in effect. The Board should move forward if they want to entertain something different than that.

Dan Wolfield commented that if the line wasn't drawn no one would have asked the question about the 50 foot setback; so the conversation would not have happened. The conversation did happen because the line was drawn on the map. More information was requested and it was confirmed that there is a 50 foot setback for the housing. Dan agrees there is a 50 foot setback based on the information.

Chuck mentioned he feels that if the setback was going to change there would have been more discussion.

Patricia commented that the line on the map was presented to the Board. It was questioned and clarification was provided. She commented that this information impacted her decision to vote yes on the subdivision. Patricia added that even last month she mentioned this is what was presented to the Board and she still feels the same; it was the basis of her decision and she was at the Board meeting in 2009.

Robert commented that he feels the same – the line was there and he believes it was one of the key areas for the Board's vote.

Mark Schachner

Mark suggested that based on what he has heard tonight, 3 of the 4 Board members have made comments indicating that there was a material representation. Mark advised the Board that it would be appropriate to entertain a motion to the affect that the Board deems the line drawn on the map was a material representation of a setback from the stream; the motion should be called a motion of clarification of the Planning Board's previous decision.

MOTION: Patricia Dow made a motion of clarification that the line drawn on the map was a setback of 50 feet from the stream, English Brook, and was a material representation that there would be no construction within 50 feet.

2ND MOTION: Dan Wolfield.

Robert Mastrantoni	Patricia Dow	Patty Kirkpatrick	Chuck Luke	Dan Wolfield
Aye	Aye	Absent	Aye	Aye

4 – ayes. Motion carried.

At this point Lochlea entered into a private consultation with their Attorney, John Wright.

Robert temporarily adjourned this Planning Board meeting.

Lochlea Partners returned to the meeting room and Robert reconvened the meeting.

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John Wright

Speaking on behalf of Lochlea Partners John commented that given what has come to light, particularly Doug's conversation with DEC where DEC has pushed the issue back to the Planning Board for the Planning Board's approval, Lochlea Partners is asking for a modification of the subdivision approval; remove the 50 foot setback and make everything subject to the Board's Site Plan review in terms of the development within 50 feet of English Brook. Development anywhere on the site would be subject to Planning Board review. This action would be fair to the subdivider and the Planning Board retains the power and discretion to review the projects and ensure that English Brook would not be adversely impacted by any development.

Dan commented that he is open to modification pending different subjects that the Board needs to discuss.

Chuck indicated he is open to modification.

At this point Patricia requested an Attorney conference with Mark.

Mark Schachner

Mark clarified that Patricia's request is for a conference not in the open public meeting. He commented that his advice can be sought as the Board's lawyer as long as the discussion is limited to the Board seeking legal advice and he is only providing legal advice. This is not subject to the Open Meetings law.

At this point the Board took a recess to confer with Mark, Planning Board counsel, in an Attorney Client Privilege discussion which will be limited to seeking and gaining legal advice and therefore, the discussion is not subject to the Open Meetings law.

Robert reconvened the meeting and Mark asked that the record reflect that the Planning Board adjourned to confer with Mark as the Board's legal counsel; the Board did seek guidance on legal issues. The only discussion held outside of the Board meeting was a discussion of legal issues relating New York State Quality Review Act (SEQRA).

At this point Mark provided a summary of what has transpired. The subdivider has asked the Planning Board to modify the approval decision that was clarified earlier this evening. The subdivider has asked for the elimination of the line on the map as an actual 50 foot setback. When any decision is made the potential environmental impact has to be taken into consideration. On the Lochlea subdivision the Village Planning Board did not serve as the SEQRA Lead Agency; review of the potential environmental impact was conducted by the Town of Lake George Planning Board. The Town's Planning Board served as the SEQRA Lead Agency.

Mark commented that the Village Planning Board has expressed concern about the potential environmental impact before making their decision; a decision could be challenged for failure not to comply with SEQRA.

Since the Town served as SEQRA Lead Agency this Planning Board is seeking input from the Town's Planning Board on whether the proposed modification would have any impact or change on the Town's Planning Board's issuance of the SEQRA negative declaration.

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Mark asked the Planning Board if there were other issues which were unclear in the SEQRA review.

Patricia Dow

Responding to Mark's question, Patricia indicated she felt the size of the footprint of the house that's listed in the SEQRA is an issue – the balance between the footprint and the setback.

Mark Schachner

Mark asked if the environmental assessment form that the Town reviewed contained a statement about the footprint. Patricia and Robert indicated there is a statement and Robert added there is an indication that the footprint would be 30' x 40 '.

Mark suggested that the Planning Board refer back to the Town as SEQRA Lead Agency the question of whether building footprints larger than 1200 square feet and modification to eliminate the 50 foot stream setback would have any different result in the Town's Planning Board's SEQRA review. This approach would be in compliance with the New York State Quality Review Act and limit the legal exposure of the Village Planning Board.

Patricia and Dan indicated they are in favor of this approach.

Mark to clarify the question regarding the footprint, commented that if larger footprints are reviewed and applicants are not held to the 50 foot setback does this change the Town's Planning Board's SEQRA determination.

MOTION: Patricia Dow made a motion to ask the Town Planning Board to reconsider the SEQRA to determine if the original negative declaration would change if due to the fact that the Planning Board is being asked to consider modification of the 50 foot setback from English Brook and if they could also include the balance between the 50 foot setback and the footprint size on the environmental issues surrounding English Brook. Would the declaration change?

2ND MOTION: Dan Wolfied.

Robert Mastrantoni	Patricia Dow	Patty Kirkpatrick	Chuck Luke	Dan Wolfied
Aye	Aye	Absent	Aye	Aye

4 – ayes. Motion carried

Mark Schachner

Mark commented when the Town Planning Board responds, this board will be able to act on the subdivider's request for modification of the earlier clarification.

Robert Proctor

Bob asked if there is a negative SEQRA determination and permits have been issued against that SEQRA and construction has started can the SEQRA be reversed.

Mark commented that as the Village Planning Board Attorney it would be inappropriate for him to respond.

At this point Robert indicated the Planning Board would not be reviewing any Lochlea Site Plan applications and the meeting was adjourned.

APPROVED

**LAKE GEORGE VILLAGE
26 OLD POST ROAD
APRIL 18, 2012
PLANNING BOARD MINUTES**

MOTION: Robert Mastrantoni made a motion to adjourn.

2ND MOTION: Patricia Dow.

Robert Mastrantoni	Patricia Dow	Patty Kirkpatrick	Chuck Luke	Dan Wolfeld
Aye	Aye	Absent	Aye	Aye

4 – ayes. Motion carried

Secretary's note: The following applications were not reviewed this evening.

TAX MAP: 251.11-2-1.3

OWNER/APPLICANT: BOB & MONICA PROCTOR

ADDRESS: LOT 2 - LOCHLEA

ZONE: SINGLE FAMILY RESIDENTIAL

SITE PLAN APPLICATION #1210

Applicant is building a single family residence in the recent subdivision of Lochlea. SKETCH Plan review took place March 21, 2012. Applicant has now submitted final, engineered (stamped) plans. Applicant has confirmed – no changes have been made since Sketch Plan review.

TAX MAP: 251.11-2-1.4

OWNER/APPLICANT: SAM SALTANA

ADDRESS: LOT 3 - LOCHLEA

ZONE: SINGLE FAMILY RESIDENTIAL

SITE PLAN APPLICATION #1217

Applicant is building a single family residence in the recent subdivision of Lochlea.

Respectfully submitted,

Carol Sullivan

April 30, 2012