

VILLAGE OF WARWICK  
ZONING BOARD OF APPEALS  
JANUARY 18, 2022

The monthly meeting of the Village of Warwick Zoning Board of Appeals was held on Tuesday, October 19, 2021. Present were: John Graney, John Prego, Jonathan Burley, Scot Brown, Dylan Geiber and Zoning Board attorney, Robert Fink. Others present were: Stephen Gross, Elizabeth Cassidy, Patrick Moynihan, Stephen Kitar, Jim Patterson, Eileen Patterson, Mark & Sandra Zeepvat, Christopher Smith, Mr. and Mrs. Howard, Mr. and Mrs. Rossitto and others.

The meeting was held in Village Hall.

A MOTION was made by John Prego, seconded by Scott Brown and carried to accept the October 19, 2021, Zoning Board minutes. (4 Ayes) {1 Abstention-John Graney}

62 COLONIAL AVE.

INTERPRETATION

STEPHEN GROSS

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Mr. Gross – I have been accused of being a nimby because I live across the street, and I can assure you that is far from the truth. I met with the new owners, and I offered to help with anything. I am a planner, that is what I do for a living, I have a Bachelor’s degree in Environmental Planning from Rutgers, I work for two Municipal Planning Depts., I work for two different consultant firms, one in Westchester and one in Putnam for many years and for the last 25 years I have had my own consulting business that I run out of my home. I represent developers. I am representing one developer in Putnam for a 24-house clustered subdivision on 210 acres. I have other clients right now that build houses, so I know how things are done. I also served for 5 years on the Village Planning Board. What I am concerned about is how things were done here as a resident, taxpayer, as someone who has been involved in the planning process right here in this Village. If I see something that is not right, I can’t sit and not say something. This property, when the applicant came into the Building Dept. seeking guidance for what he needed to do, he should have been told at that time that yes, there is subdivision approval on this and at the time there was site plan approval to a certain level at least, they had to locate the driveways for the Army Corp. permit that was needed for filling in wetlands. As a matter of fact,

it was originally a 12-lot proposal that was reduced to 10 lot because of the inability to get enough driveway crossings across the wetlands. The applicant should have told he was building a 7,500 sq. ft. house which is much, much larger than what was shown on the original subdivision application and requiring far more earth movement than was shown on the original application. The original application indicated a smaller house with just minor regrading around the house and driveway. This application that has been in the process of construction across the street required a higher property to be excavated and leveled and there are currently huge piles of excavated soil that is still sitting there. The bottom is that this site plan that was approved in 2000 is very, very different than what is occurring out there and under any interpretation required a new site plan. It should have been referred to the Planning Board for site plan approval. The applicant also told me himself that he had gone into the building dept. and asked if he could remove trees and also in addition to the Zoning Code there is a Tree Code in the Village, and it allows tree removal under certain circumstances and wholesale clear cutting is not allowed under that tree code. If he had gone for site plan approval and made the case that he had to do all of this excavation and that because of that some trees had to come down, then that would have been something that could have been approved under site plan approval but that was not done. The tree removal that occurred started I believe, on a Thursday and my wife said to me aren't they taking down too many trees and I said no there are trees being left and the next they were gone and then it kept moving further and further back and that is when I called the Building Inspector and ask if he gave a permit for clearing this lot and he said are you telling me a man can't clear his lot and I said I am asking you whether you gave a permit and he said no someone else gave the permit for that and I said what are you talking about you are the only that can give a permit that is part and parcel to a Building Permit and according to the code at the time a Building application is put in there also has to be a tree removal plan, so that was not done. The information that the applicant was given from the Building Dept. was that it was okay to go ahead and take all of the trees down and at the time I saw the Building Inspector out there he thought someone else gave the tree removal permit and by that time everything was gone and that included the trees within 25 ft. of the easterly boundary on lot 1 which the site plan says no trees on the property within 25ft. of the easterly boundary on lot 1 and that is on the subdivision approval, so if he would have gone to the Planning Board for site plan approval they would have had to give him relief from that but one thing is for sure, the Building Inspector issuing a Building Permit could not he doesn't have the authority. There is a regulated wetland in the front of the property. The new property owner was out there for several days with the plans trying to mark the boundary of the wetland and he said he was doing that so he could tell his contractor to avoid the wetland. There are two problems there 1) he was putting the flags as they were in 2000 prior to the two driveways being put in, the wetland boundary had changed. With the two driveways water ponded up behind each of the driveways like a dam so he really need to have the wetland re-delineated 2) he was doing it himself and he really should have had a professional locate those flags. When the tree removal company came in they completely ignored the stakes that he had put up they went back and forth over and over again with equipment completely destroying the wetland. As they chipped the trees they blew it toward the wetland filling it in.

Mr. Graney – When you say destroyed, do you mean disturbed? Destroyed mean destroyed.

Mr. Gross – I am a wetlands consultant...

Mr. Graney – So when you say destroyed, it is never coming back, is what you are saying?

Mr. Gross – It can be restored.

Mr. Graney – Then it is not destroyed. It was disturbed.

Mr. Gross – All the vegetation was destroyed, all killed, at least what was above ground. Some things did regenerate but all of the trees and bushes that were there are destroyed, they are gone and the other part of the destruction. I don't know why but then filled in adjacent to that driveway. They added enough fill for a large road not a driveway. The wetland that was filled in was completely destroyed, it's filled in.

Mr. Graney – Filled in with stone or woodchips?

Mr. Gross – Filled in with stone and dirt, they made it a driveway and currently is there about a 45' wide crossing of that wetland when only about 20' was allowed in the permit. That got the attention of the Building Inspector and he was a little upset by that but he still went on days later and issued a permit after all the vegetation was removed. The Building Permit was issued prior to the wetland being filled but he issued a Building Permit and I asked him if he put in any conditions for the restoration of the wetland or re-planting of trees that were required by the subdivision approval to remain and he said no but don't worry I make sure I require them before I issue a CO. I asked him how are you going to require them to do something that you did not require as a condition of the permit, you have no enforcement to be able to do that, so there are no conditions on the Building Permit. All of this could have been avoided if the applicant had been properly guided and told that he needed site plan approval and go before the Planning Board. There probably would have been more of an emphasis on the 25ft. buffer and the wetland. They would have decided whether the re-grading that was proposed was reasonable and whether all of these trees needed to be taken down but there was no review by the Village Professionals, no review by the Planning Board, not open to the public for review. The process was not followed and instead was short-cut by the Building Inspector issuing a Building Permit. Basically, I have 3 goals, 1) I want to establish definitively that a project of this nature are correctly referred to the Planning Board. 2) A requirement that is now absent from the Building Permit for the wetland to be restored including the removal of excess fill. If he wants to have his driveway in a different location than where it was, fine, but limit it to the amount of fill that was allowed under the Army Corp. permit and remove the rest. 3) I would like to see the 25' ft. buffer trees back. Those are the 3 things I am looking for, to affirm that projects like this need to be referred to the Planning Board, the wetlands be restored and that the trees be restored where they were required to be.

Mr. Fink – It seems in your application you wanted the Building Permit to be revoked, are you also looking for that? Or are you just looking for the affirmative relief that you just mentioned?

Mr. Gross – Unless you tell me that there is another remedy. The remedy that I was aware of would be for it to be revoked and referred to the Planning Board. I personally don't have any problem with some remedy that would allow the construction of the house to continue, I may think the house to too big but that is not my business, as long as the house was allowed under the code the guy can knock himself out and build this huge house but I am most disturbed by the fact that it did not receive the proper referral to the Planning Board and then everything else stems from that. If it had been reviewed by the Village professionals and the Planning Board and open to public review, I think we could have avoided the excess tree removal and the disturbance to the wetland and the excess fill into the wetland.

Mr. Fink – You referred to the size of the house, is there anything on the subdivision plan that refers to the size of the house other than just a drawing?

Mr. Gross – What is implied though...

Mr. Prego – It just shows elevation.

Mr. Gross – The other thing that implies the size of the house is grading. It was determined how much land that needs to be graded around the driveway and around the house for the size house that was depicted.

Mr. Fink – So you are saying it was implied but there is nothing on the subdivision plan that delineated the upper or lower limit to the house other than zoning.

Mr. Gross – There is a deed restriction.

Mr. Fink – This Board nor the Planning Board can enforce deed restriction.

Mr. Gross – My point was going to be the deed restriction actually says that the house has to be a minimum of 3,600 sq. ft. and I don't even know if what is depicted on here is actually 3,600 sq. ft.

Mr. Fink – My only question was, and I think you have answered it, there was nothing on the site plan that stated what the size of the house had to be, is that correct? I just want to get it clear in my mind.

Mr. Gross – By actually putting the numbers on and saying this house is x numbers of sq. ft.?

Mr. Fink – I think that is what it says, I think it refers to elevation.

Mr. Gross – You have got elevations and grading around it, you have a measurable box...

Mr. Fink – I think you are referring then that the house had to be a certain size but there is nothing in the subdivision plan that says anything about the size of the house, is that correct?

Mr. Gross – I am not going to agree to that phrasing.

Mr. Fink – If it not correct then correct me, please.

Mr. Gross – This is what I am saying, the Building Inspector said they already have an approved site plan...

Mr. Fink – Please forgot all about the extraneous matters. Am I correct that the subdivision plan doesn't delineate the size of the house, I think that is a yes or no question.

Mr. Gross – I am going to say no, because what is shown on here that can be measured with a scale with the grading shown around it. If someone wanted to come in and build exactly what was on here, I think...

Mr. Fink – You have answered my question. As far as the taking down of trees, you mentioned the 25ft. you couldn't take down trees along the easterly boundary, as you have shown, did that in fact happen, trees were taken?

Mr. Gross – Yes, I have photos of that.

Mr. Fink – Again, I am not sure that photos show 25' from the boundary. Are you sure that the trees were taken down within 25' of the boundary?

Mr. Gross – Here is an example, that fence in on the boundary. Here is a before picture with all of the trees and here is an after picture with all the trees gone. That fence is the boundary.

Mr. Fink – The property is on the other side of the fence...

Mr. Gross – See how they hang over the fence, now they are gone.

Mr. Prego – Before when you said you had a conversation with your wife that you turned your back and the trees were all gone, so, how did you have the foresight to go take a before pictures.

Mr. Gross – I didn't.

Mr. Prego – Who did?

Mr. Gross – The property owner's that are affected. They provided the pictures to me, they are from 6 Benedict Dr. and this is 4 Benedict and you can see the trees are gone.

Mr. Prego – Yes but there are no dimensions showing that they are within the 25ft. boundary, there is no survey showing where the trees were. Where is there a survey showing those trees are within 25'?

Mr. Gross – Here is the same fence.

Mr. Prego – Yes but property line doesn't mean anything, show me on a survey where those trees are in relation to the property line. I was a surveyor, that fence could be 10' off the property line, who knows where that fence is, show me on a survey that those trees are within 25' boundary.

Mr. Gross – So you are doubting whether or not that fence is on the property line?

Mr. Prego – Do you know that it is?

Mr. Gross – Yes.

Mr. Prego – You are a surveyor?

Mr. Gross – I am not a surveyor but when I went out there, I saw the stakes?

Mr. Prego – Okay, show me on a survey that the fence is on the property line.

Mr. Gross – But there were stakes.

Mr. Prego – I understand but that doesn't mean anything unless you see it on a physical plan and if those trees are on a plan within 25' they need to be restored, no question, but this is hearsay, it is not a fact.

Mr. Gross – Here is a picture of one of the stakes, a property boundary stake...

Mr. Prego – That is not a stake, that is a flag that shows a proximity to a stake and that could be an offset stake. That stake could be within 10' of a property line and says 10' off property line, that doesn't mean anything.

Mr. Gross – I will say this, that no matter how far off that fence might be it is not 25' off.

Mr. Prego – I could be 10', it is your word against a survey, a survey is fact.

Mr. Gross – Well then order a survey?

Mr. Prego – You order a survey, it is not my property. You come here and you are arbitrarily saying that this is within 25', show me that it is within 25'.

Mr. Gross – Are you kidding me, I am serious, it is obvious.

Mr. Prego – If it is in fact within 25' that it needs to be restored, no question. We need a survey showing us where they are located.

Mr. Gross – I can not do it, I don't have legal access to the property. I did have legal access to the neighboring property so I could lean over and take a picture.

Mr. Prego – So request a survey and if wetlands were disturbed, they need to be restored as well. I don't disagree with you but to state that it is fact when in fact you don't know if it is or isn't because we don't know what it is, there is no survey depicting exactly what it is so let's see what a survey states.

Mr. Gross – I did not get a reproduceable copy of the current plan for the house but that plan for the house certainly has dimensions and the distance from the edge of the house to the property boundary and I think it could be easily demonstrated without anyone having to go out there...

Mr. Prego – I agree that anything with the 25’ should be restored and any wetlands that were disrupted should be restored but that needs to be surveyed, delineated, brought in front of the Building Dept. and taken care of, the end. I agree.

Mr. Gross – Okay, but now we are back to should this have gone to the Planning Board for site plan review? I am not one that believes that it is easier to ask for forgiveness than permission and I am fed up with people who say just go ahead and take it down, once it is down they can’t do anything to you, so that is why I am saying that whatever the remedy is, if there is some way to allow the building to be continued, which I don’t see how but if there is a way I am fine with that but I want it established that once and for all that a project like this does not get a Building Permit before going to the Planning Board and I don’t see anyway of establishing that without revoking the Building Permit.

Mr. Prego – I don’t know the Code inside and out but this has already been before the Planning Board so is there anything in the Code that states it needs to go before the Planning Board again  
Secretary – There was something established in 2015 about Expiration of Site Plan but I don’t believe that applies here and none of the houses on this plan went before the Planning Board.

Mr. Prego – So the other houses set precedent?

Secretary – Yes.

Mr. Brown – It seems to me that you have 2 different questions going on, 1) whether or not the actions of the site development and the building with tree removal were within the rights of the homeowner and I don’t know if this is a Board that can do anything about that, I don’t think this is the right body.

Mr. Prego – Correct.

Mr. Brown – The other question that you raised is whether the Building Permit was properly issued is certainly a question we can take. In reading of the materials it really comes down to whether or not Mr. Rudzinski’s written statement from Sept. that the project didn’t need a new site plan approval because the development plan is valid. I think that is the only thing we can really deliberate and act on.

Mr. Gross – I will agree with you on that because I think the other things would come out if it was referred properly to the Planning Board or if it was something the ZBA said okay, if we can keep it before us and have site plan review, you could conduct site plan review, either way, but if it got site plan review and then at that point the conditions of the site plan approval then you could require restoration, tree planting, during the process of site plan review and approval. But you are right, the crux is was it allowable to issue a Building Permit for this lot. Was it proper to issue a Building Permit? I say it was not and it required site plan approval from the Planning Board.

Mr. Prego – It already had site plan approval.

Mr. Gross – It had site plan approval for what was depicted, that is not what was built.

Mr. Prego – But there is no size to the house that is in that initial site plan.

Mr. Gross – The grading count, the grading that occurred is very different that what was depicted on here. Site plan approval includes grading and that grading is shown here and if someone had kept what was shown on here then maybe there is an argument for that but that is not what happened. What happened here is that this site was completely excavated and every tree was taken down because of it. If someone was going to follow this plan and they kept right to it, I

would have went home and I would not have bothered plunking down all of the money I put down for this appeal. I do believe that the regulations in this Village are there for a reason, they need to be followed, it protects all of us and that site plan was not followed.

Mr. Prego – I disagree. In construction somethings are left to the Building Inspector's discretion and somethings just change, so that in my mind is a little questionable. As far as the buffer and the wetlands, I am in total agreement.

Mr. Gross – When I am before Planning Board's representing clients the grading that is shown is critical. This is why I wasn't agreeing because one of the things we are looking at is the environmental impact which is critical. The environmental impact of completely excavating that entire site is a much, much different story, it is a much greater level. If someone said I want to build this...

Mr. Prego – The way I agree with this is the whole site can be excavated and you just have to grade it per this grading plan. It specifically states that there is a 25' buffer and you have to stay away from it and stay away from the wetlands. The way I interpret it is the whole site can be excavated as long as you restore the grade which is shown here or approximate, get it to a very close depiction of what is shown here, this whole site can be excavated except for where it specifically states no trees within 25' so my interpretation is every other tree on that lot can be taken down. That is my interpretation.

Mr. Gross – You also just stated that if it was restored to those contours.

Mr. Prego – I have excavated entire lots and then we had to bring the contours in place for the final.

Mr. Gross – The existing contours now are probably 10 to 15' below.

Mr. Prego – How do you know, did you survey it? Did you take the elevations?

Mr. Gross – I said probably.

Mr. Prego – Okay, so it is hearsay. It is up to the Building Inspector to make sure it is to this plan. That is what the stockpiles of dirt are for.

Mr. Graney – It is a work in progress.

Mr. Prego – Right.

Mr. Gross – It is very easily seen.

Mr. Prego – Again, you did not physically take elevations.

Mr. Gross – Then have that required.

Mr. Prego – It already is.

Mr. Gross – What it comes down to is that this house being built is a very different story than what was approved in 2000.

Mr. Prego – Again, there is no size shown in 2000, none.

Mr. Gross – But the grading is shown.

Mr. Prego – It doesn't matter, the grading can be put into place. It specifically states 25' buffer, it specifically states wetlands, everything else is up for grabs which is my interpretation, again.

Mr. Gross – I go back to 145-90...

Mr. Prego – You can go back but we are not going to argue. I am just telling you my interpretation.

Mr. Gross – 145-90 – Site Plan approval shall be required. It is not a suggestion.

Mr. Prego – It was in 2000.

Mr. Gross – That is not what was built.

Mr. Prego – It doesn't matter.

Mr. Gross – Any builder that comes into the Planning Board and says I am going to build this...

Mr. Prego – My house was not built per the site plan either, none of the houses in my neighborhood were built per the original site plan. We sit within the building envelope, my whole lot was cleared, we maintained what needed to be maintained and it was graded to the final plan. As a matter of fact, none of the trees were put in per the plan and 5 years later, neighbors complained and my builder came back, even when he didn't have to, the project was done, the road dedicated but it came back and planted all the trees. Every development that I have been a part of had minor tweaks here and there, some complete changes that the Building Inspector approved because stuff happens and from what I see everything within these lines can be changed and put back with a close depiction of what is here.

Mr. Gross – That is impossible to do that with what has been built there.

Mr. Burley – So is the question, what is being built? Or it is the buffer and the wetlands? Or are we talking about the entire project.

Mr. Gross – The entire project is a different animal than what was approved in 2000. My clients know that you can't go in there and get approval for this size house with this amount of grading around it and that after they get the approval and not watching anymore, go in there and build something 3 times the size or whatever and excavate the entire property.

Mr. Prego – That is not true.

Mr. Gross – It is true in the towns that I deal in.

Mr. Prego – They really should have not touched any of the vegetation within the 25', they should have put silt fence around and the same with the wetlands.

Mr. Gross – The current plan calls for a fence to be built adjacent to this fence on the property line backed by Arborvitae and then lawn so that 25' is going to be replaced by a fence and lawn and further down below where the fence is going is he replacing the 25' with a single line of White Spruce and when I mentioned it to an arborist that I deal with he said they were all going to die, he said that White Spruce can't tolerate the clay soil in that part of Town.

Mr. Prego – Unfortunately we are not experts enough in vegetation.

Mr. Gross – But the better thing to do is leave it alone, leave the 25'.

Mr. Fink – The DEC and the Army Corp, did the DEC issue a permit?

Mr. Gross – No DEC permit was required because it is an Army Corp. wetland.

Mr. Fink – Was the DEC even out there?

Mr. Gross – No.

Mr. Fink – Has the Army Corp issued a permit?

Mr. Gross – Yes, they were out there in the year 2000.

A MOTION was made by John Prego, seconded by John Burley and carried to open the meeting to the public. (5 Ayes)

Mr. Patterson, Planning Board Chairman – I do believe that this application should have come before the Planning Board and I say that based on what I see in this report. I hope that our engineer and our attorney could have seen this coming and resolved all of this. With that said I believe that all we need to figure out and I believe Mr. Gross made a good argument for this is where we go from here? How do we remedy this? I believe that is what we are putting before

you guys tonight. There has been some disturbance and we have to try and figure out how to go back and I believe the question is does that involve revoking the building permit and going before the Planning Board? Does it involve some types of restrictions, that I can't answer but I can tell you that I believe that it should have come before the Planning Board and I hope that we would have resolve a lot of these things prior to it, but that is what we are looking for, we are looking for remediation.

Mr. Fink – Technically speaking why do you think it should have gone back to the Board?

Mr. Patterson – I believe that, and although I agree that there are no sizes on that survey, the house, I believe that the representation that is on that survey of the house is indeed different. That was the first thing that struck me, the size of the house. As far as the problems that the Building Inspector faced in September he should have realized that at that point that maybe he should have someone else look at it as well as opposed to taking it all on himself.

Mr. Fink – Look at what?

Mr. Patterson – Whether or not the Building Permit should have been issued by him or whether or not he should have referred to the Planning Board.

Mr. Fink – There are certain rules that require it to go back to the Planning Board and off the top of your head can you think of any rules? It was cited at length to what required it to go back to the Planning Board.

Mr. Patterson – Why I believe is because of the size of the house. I agree that there are no sizes on the survey but I believe based on the size of the house now, I believe that should have triggered it in itself to come before the Board.

Mr. Fink – When a house is put on a subdivision map, it is my understanding that it can not be moved, it depends upon the municipality, but it can't be moved more than x number of feet, I believe it 40 or 50ft.

Mr. Patterson – If you were to use that as an example and you use that 25' buffer as the scale than yes you could determine the size of the house.

Mr. Fink – I know you can but when a house is plunked on a subdivision map is that the size of the house that is supposed to go on that lot?

Mr. Patterson – I can't answer that question. I agree that there are no dimensions on that original map.

Ms. Cassidy – I am an attorney representing Elaine and Manfred Alstadt, the owners of the property in question. I prepared a letter for you outlining a response and I would like to go over the points but before I address the legal issues...

Mr. Fink – The only thing before this Board is the application and what has been testified...

Ms. Cassidy – I understand but I think for the Board it is important to know...

Mr. Prego – We all saw what was on social media.

Ms. Cassidy – The Alstadts throughout this have acted in good faith, they brought the application to the ARB, it was approved by ARB. They submitted a Building Permit, at all times they have consulted and their contractors. Mr. Walker, their contractor and Mr. Collins, their architect are here should you have any questions. This was not a case of we will do this and ask permission later. They came through at every step of the way and provided what was asked for. The home does comply with the Bulk standards, it meets FAR and all the separation requirements. As part of the Building Permit application, there is a landscaping plan, that plan shows the planting of

approximately 200 trees and shrubs on the property once construction is completed. That plan was not only reviewed by your Building Inspector, but that plan was referred out to a consultant on behalf of the Village, David Griggs of ERS reviewed the plans and made some comments and the plan in the building package will be changed slightly to reflect those comments. Also, as part of that consultation which also involved your Village engineer, Dave Getz, to address the wetlands, they had multiply sight meetings out there and Mr. Griggs provided recommendations for remediation of the wetlands.

Mr. Prego – Did they encroach on the 25’?

Ms. Cassidy – The contractor did go...

Mr. Prego – None of that vegetation should have been disturbed. Did they encroach on the wetlands?

Ms. Cassidy – They did...

Mr. Prego – So, he has a point.

Ms. Cassidy – Yes, he does.

Mr. Prego – Regardless of the 200 trees, he has a point.

Ms. Cassidy – I understand that, but the applicant is in the process of correcting that.

Mr. Prego – How is he going to present that? Who is he going to present it to? How can we enforce that? That is what we are here for.

Ms. Cassidy – The easiest way is that Mr. Griggs has prepared a memo with comments, you make those comments condition of the Building Permit and the client is happy to comply with those comments.

Mr. Prego – Okay.

Ms. Cassidy – With respect to the trees and whether or not they were within the 25’ buffer, lots of stuff was diseased and dying but with that said the landscaping plan will more than satisfy that buffer. I am not going to belabor the standard of review that is before you, several of the arguments are there. There are a couple of things that I do want to point out. The application before you identify two other households as joining the application and when I reviewed it I did not see a written acknowledgement or anything to that nature that they were signing on to the application and all I will say is that if this goes further they become necessary parties and in fairness to those parties they should either sign on or they should be not considered the applicant for the record. I note that the Alstadts are not listed parties on the notice

Secretary – That was my mistake I believe I thought they were party to the application, so no notification was necessary, I apologize.

Ms. Cassidy – A lot of the petition relies on some hearsay characterizations and conversations, between Mr. Gross and the Building Inspector, Mr. Gross and the owner, the contractor, the engineer and all of these people are available to speak to you and I would ask that you rely on their firsthand accounts of that. Mr. Walker, the contractor and Mr. Collins, the architect are here should you have any questions that they are directly involved in.

Mr. Fink – In so far as what Mr. Gross has said, the architect and/or the builder has anything contrary to say and doesn’t agree with what Mr. Gross said we would certainly like to hear from them.

Ms. Cassidy – Mr. Walker is here but one thing I would like to say is we keep saying clear cut, this lot is huge, it is over 4 acres in the Village which for Village standards is enormous. The entirety of the lot was not cleared. Yes, it looks like a lot but to say that the entire lot was cleared cut is not an accurate statement.

Ms. Cassidy introduced Mr. Walker and Mr. Collins.

Mr. Walker – I did hear the discussion about the 25' buffer. In that buffer there was a dead tree that we did take down, subsequent to that the when we advised the Building Inspector that we did that he said that we can't take any trees down in that buffer and there was another dead tree that was further up and what he did was bring out the Village Shade Tree Commissioner and get a letter saying it is okay to take down that additional tree. We got the letter saying it is okay to take down the additional tree and we did that in the buffer.

Mr. Prego – So you did get approval?

Mr. Walker – Yes, for the second tree. The first one was dead, but we did not have approval for that but subsequent to that yes.

Mr. Prego – Was anything other than those 2 trees disturbed?

Mr. Walker – To my knowledge no but I did hear the conversations about where the property line is versus the fence line and this week I can go out and do the measurements...

Mr. Prego – survey and delineate it...

Mr. Walker – Yes.

Mr. Prego – Did you have it before?

Mr. Walker – No

Mr. Prego – As the project manager I would delineate the wetlands and anything that shouldn't be touched, that should have been done.

Mr. Walker – The property lines were staked out.

Mr. Prego – Any buffers, wetlands, that should have all been delineated and flagged. So you will do that now.

Mr. Walker – Yes.

Mr. Brown – Ms. Cassidy do you have a reaction to the idea that to get additional recourse on some of these issues in addition to just the Building Inspectors power issuing a Certificate of Occupancy whether the Alstadts are willing to take the collection of plans to the Planning Board if the Building Permit were to be revoked?

Ms. Cassidy – The Alstadts, they have only wanted to do what was required of them and they want to build a nice home here in Warwick. The concern is now that we are in the middle of the process if that building permit is revoked, we are talking about several hundred thousand dollars in the ground which was put in, in good faith. Certainly, we have already exercised good faith, we have met with David Griggs, we have adopted his comments and we will continue to do so and we have worked with the engineer, I have had several conversations with Dave Getz and they have had several meetings with Dave Getz to make sure that happens and if there is something that needs to be done we will do that. Again, the concern is that we are in the middle of the process, 1) according to Mr. Collins, we have an unstabilized site right now, to revoke the permit actually hurts the site because we are not able to stabilize the site due to remediation because it just takes longer. Ultimately will it get done? Absolutely but it will take longer to do that. Again, there was an existing subdivision/site plan when we came in. We are happy to work with the

Village and we have already been showing that we have been doing that to a great extent and we will continue to do that.

Mr. Fink – If this Board were to refer to the Planning Board as Mr. Gross says should be done, how long will it take?

Secretary – 3 to 4 months.

Mr. Fink – What would the delay of 3 to 4 months do to you?

Ms. Cassidy – I think the concern is, we don't have a roof on it.

Mr. Collins – The building is not weathered, in other words if we get more significant weather like we currently had, it would end up being an eyesore and a gateway property that is in the Village of Warwick and it being an eyesore is not something that anybody wants to see.

Mr. Fink – Does the Board think it would make sense, whatever else this Board might decide, to stop construction at this point?

The Board agreed it would not make sense.

Mr. Gross – I will agree.

Mr. Prego – What I think we should do is that there needs to be a plan presented to restore what was damaged and approved so that we can move forward.

Ms. Cassidy – We can certainly update what is labeled the landscaping/restoration plan. Like you were describing earlier, some of that grading is going to occur post construction when everything is in.

Mr. Prego – There is not a house in that subdivision that meets the sized depicted on these drawings, not a single house.

Ms. Cassidy – I pulled all of the property cards and the average house is 4,000ish sq. ft. and the Declaration has a minimum house as opposed to the housing shall be this and that was designed at the time to mirror the Historic District across the street. The estate house is almost a 7,000 sq. ft. house on it's own.

Mr. Gross – Which house?

Ms. Cassidy – Mr. Mandelbaum's old house. It is a huge house but that district has big houses.

Mr. Prego – What is the square footage of the house with the gates?

Mr. Gross – My house in the Historic District is 3,250 sq. ft. and you could fit 2 of my houses and...

Mr. Prego – That doesn't matter.

Mr. Gross – Well, I am responding to her point.

Mr. Prego – I know but it doesn't matter.

Mr. Gross – Then her point doesn't matter because saying that a 7,000 sq. ft. house...

Mr. Prego – We have already acknowledged that the size of the house doesn't matter.

Ms. Cassidy – The FAR requirement is 25% and it is 4%.

Mr. Prego – Correct. It is the wetlands and the buffer that is the real issue.

Ms. Cassidy – We have already received the comments of Dave Griggs and actually Dave Griggs was the person who original did the delineations in 2000. We have already accepted his comments and you would like to make that a condition we will incorporate those into the plan.

He made a couple of tweaks to the landscaping plan, and we can make those changes very easily.

Mr. Fink – How long would it take you to do that? By the next scheduled meeting?

Mr. Collins – You are asking to incorporate Mr. Griggs comments into the plan that exists?

Ms. Cassidy – What I am thinking is to take this plan and make his notes into the plan.

Mr. Collins – Yes, we can do that.

Secretary – The next scheduled meeting is March 15, 2022.

Mr. Prego – I don't think we should pull the permit, I think we should continue with the house, but they will not get their Certificate of Occupancy until they meet the conditions of restoring the wetlands and the buffer.

Mr. Brown – Is there anything this body can do to support this? It seems to me all we can do is act on the appeal of the decision of the Building Inspector to issue a permit in the first place.

Mr. Prego – Right.

Ms. Cassidy – I would suggest that if there is a decision rendered that it be a condition of your decision. But I will leave that to Mr. Fink.

Mr. Moynihan – 76 Kings Hwy – There is a culvert in front of that property and if someone walked by and fell in they would be in the hospital. There was a 10' Christmas tree down there and you couldn't even see it and there is drainage running over 2 pieces of property. I get access to the ditch, he doesn't, why not? Steve gets it.

Mr. Gross – Get's what?

Mr. Moynihan – Access to the water. There is a ditch running down the middle of Kings Hwy and all of the water from your property goes where?

Mr. Gross – It goes into the ditch and then the culvert.

Mr. Moyihan – Thank god they cut that tree down because it would have grown into the concrete. Now the pile of dirt, that was the dirt used to make the culvert and for the last years deer have been trying to get past this big pile of dirt. If you leave this house open you will ruin all of the plywood, all of the wood...

Mr. Fink – This Board is not going to stop construction.

Mr. Moyihan – Okay. Maybe they cut a lot of trees but of that stuff in the back was all weeds.

Mr. Gross – Didn't you say that you would like to see that wetland filled in?

Mr. Moyihan – Yes, show me what is growing in there.

Mr. Fink – Let me assure you that the Board is in favor of certainly at this time is 1) not revoking the permit 2) allowing the house to move forward and 3) having the homeowner addressing the issues that have been raised. Having said that what are the issues that the homeowner is supposed to address so that this can go back to the Building Inspector and if the Building Inspector accepts...

Mr. Prego – I don't know if the neighbors are going to be happy with the Building Inspector's judgement on whatever plan they put...

Mr. Gross – Absolutely not.

Ms. Cassidy – I would refer it to Mr. Griggs and Mr. Getz

Secretary – And Mr. Scheuermann, the Shade Tree Commissioner.

Mr. Prego – Correct.

Ms. Cassidy – We are happy to refer that, and we have been copying them.

Ms. Zeevat, 56 Colonial Ave. – We live 2 lots over from our new neighbors who are very excited to move. We moved here from Mass. in 1996 and we were particularly drawn to Colonial Ave. and it's Historic nature. The only point I want to make is that there seems to be a feeling among the residents on Colonial Ave. that the Board's here in Warwick are going down a

slippery slope. That exceptions are being made, mistakes are being made and that the feeling of the original vision of Mr. Kennedy is being devastated.

Secretary – It was not Mr. Kennedy’s vision; it was the Architectural Review Board’s vision.

Ms. Zeepvat – But he subdivided the lots and the original feeling of the 10-lot subdivision was to have Georgian Colonials of a certain look, historical looking and there have been exceptions.

Secretary – Every house has been before the Architectural and Historic Review Board.

Ms. Zeepvat – There is a house on the lot when you drive by you do a double take on how did that house get built on this property. I am not here to argue that but I am saying that exceptions have been made, slippery slopes are happening and every lot has now been sold and we are hearing that exceptions have been made on the first lot in terms of the size of the house, there are wetlands on the property next to us and that lot has been sold and a house is going to be built there, what is going to happen to those wetlands. We had rules we had to abide by, we had to obey and get approval for the color of our front door, and it was a very intense process when we went through it and we just want that feeling to be maintained.

Mr. Gross – What is before this Board is, was it proper for the Building Inspector to undermine the Planning Board...

Mr. Burley – We are sticking to what is before this Board today.

Mr. Gross – That is why it is important, that is why I did this, why I have gone through all of this trouble. The question is was the project so different from what was approved in the site plan approval in the year 2000 that it required referral to the Planning Board. That is the question before this Board.

Mr. Prego – Again, if it specified the size allowed on that lot. My house had to be shrunk because of the shape of my lot, it fits within the building envelope, and I maxed out my lot. Just like all of the houses in my neighborhood max out the lot, built right to the building envelope. They are well within the restrictions of that lot. Percentage wise they are well below what is required.

Mr. Fink – Mr. Gross, is it your position that this Board should send the applicant back to the Planning Board for site plan approval?

Mr. Gross – Absolutely. I don’t to see the work that they have put into this house harmed, I am not here for that. If there is some way of allowing them to continue building the house but send it back to the Planning Board for the surrounding site plan approval. He has a fence shown on the property line and I think it should be moved in to respect the 25’ buffer. I want there to be conditions for restoring the wetlands, for re-planting trees. If there is a way of separating it out allowing them to continue, because it would be tragic to see all of the money that has been spent harmed by the weather. I would like to see the site plan go back to the Planning Board so conditions can be put.

Mr. Fink – As I understand it, Ms. Cassidy said that the plans for what you are objecting to were going to be submitted and reviewed in addition to the Building Inspector, Mr. Griggs, Mr. Getz and Mr. Scheuermann

Mr. Gross – Mr. Griggs is not an official of the Village of Warwick.

Secretary – Mr. Griggs is who the Building Dept. chose to review the site.

Mr. Gross – When Ms. Cassidy spoke, I got the sense that Mr. Griggs was involved from the beginning and I had a conversation with Mr. Griggs myself, that he was brought in to look at the damage that was done to the wetlands and to come up with a restoration plan, he was not involved in this particular site plan...

Ms. Cassidy – The subdivision notes his name as the person who delineated the wetlands back in 1999.

Mr. Gross – But he was not originally contracted when the Alstadts started.

Ms. Cassidy – He has been retained by the Village.

Mr. Gross – Now after the fact.

Ms. Cassidy – What difference does that make?

Mr. Gross – The landscape plan that I saw showed either Arborvitae or White Spruce, there is no beautiful landscape plan.

Ms. Cassidy – We were advised that the plan was acceptable.

Mr. Brown – The two issues, the buffer and the wetland issue are specified on the approved subdivision plan so sending the plan back to the Planning Board, that has already been approved. The question is whether or not the current project has respected those requirements of that plan.

Mr. Gross – They don't.

Mr. Brown – That has no bearing on whether or not the Building Inspector should or should not have issued the Building Permit in September and that is the only thing this Board can decide, is whether or not the Building Inspector, and I believe you said he had no right to issue a Building Permit.

Mr. Gross – I am absolutely saying that.

Mr. Brown – I believe that is a stretch because the Building Inspector's job is to issue Building Permits. Our contention here is that the Building Permit was issued as a valid Building Permit. The complaints I think, and I have heard very little argument from the property owner that the issues you raised about the 25' buffer and the wetlands are valid considerations, not body is arguing that.

Mr. Gross – The current site plan that was approved by the Building Inspector, that he gave a permit for includes a fence that goes all the way to the property line...

Secretary – Do you mean the building plan? Aren't you allowed to put a fence along your property line regardless if there is a buffer as long as you don't mess with the buffer?

Mr. Prego – It says trees...

Mr. Gross- I don't see how put a fence without disturbing trees.

Mr. Prego – I have done plenty.

Mr. Gross – The same plan shows not only the fence but a row of arborvitae being planted there and you can't plant them without removing trees.

Ms. Cassidy – Chairman, if the issue is the location of a fence line, we will move it 25', I am not going to argue over 25' of fence.

Mr. Prego – That is not an issue.

Ms. Cassidy – The fence is a required pool fence.

Mr. Prego – The issue I have is that you took down some trees and you affected some wetlands and some extra fill on a driveway, and we all agree that it is going to be restored.

Ms. Cassidy – Correct.

Mr. Gross – The number one most important determination for me is that the determination that his required Planning Board review. That before a Building Permit was issued, it required Planning Board review for a site plan approval.

Mr. Prego – Which they already have.

Mr. Brown – That does not seem to be supported.

Mr. Prego – What would you accomplish by going back to the Planning Board. We have already acknowledged that the construction is going to continue. What do you hope to accomplish by this going before the Planning Board?

Mr. Gross – You have no enforcement of any of this unless it is part of the site plan.

Mr. Prego – We are going to make it a condition of...

Mr. Gross – The permit after the fact. The permit has already been issued so you want to make it an after the fact condition of the building permit.

Mr. Graney – No one is saying that it wasn't going to be done anyway.

Mr. Gross – Are you going to tell me if I hadn't done what I did it was going to be done?

Mr. Graney – If someone is building a 7,000 sq. ft. house, I don't think they are going to choke on landscaping.

Mr. Prego – Listen, a mistake was made. They encroached on the 25' buffer, mistakes happen. My guys make mistakes all day long and I put out fires all day long. Stuff happens, and it was unfortunate but we are going to correct that so what are we going to accomplish by this going before the Planning Board when they are going to continue building.

Mr. Gross – What would be accomplished is it would be reviewed by other professionals and open to the public.

Mr. Fink – Just so I understand, all of these remedial measures really don't matter. The only thing that matters is that the permit was improperly or illegally issued because it should have gone back to the Planning Board for site plan review for some of these conditions?

Mr. Gross – No, you have misstated my position.

Mr. Fink – I am asking you.

Mr. Gross – I am saying that to me is the most important thing because there is another lot a couple of lots over...

Mr. Fink – All I want to know is what your position. I know you would like to see these remedial measures taken but when if your position is as you stated that the Building Permit was illegally issued and the only way to make it legal is for this Board to determine it was illegal and that it should go to the Planning Board as required by statute. Is that your position?

Mr. Gross – My position is yes, I would like this Board to find that the Building Permit was improperly issued in advance in it getting proper site plan approval by the Planning Board. I don't want this to go forward and set a precedent...

Mr. Fink – You want this Board to determine that the Building Permit was either illegally or improperly issued so it would have to go to the Planning Board and start all over again, that is your position, if I understand it correctly.

Mr. Prego – Percentage wise can you tell me how much bigger the existing houses are to this drawing, you can't.

Mr. Gross – What I can say that none of those houses required that extensive grading and excavation that this one did.

Mr. Fink – Mr. Gross, I have to issue a legal opinion to this Board and in order to do that I have to know what your position is and I have asked it a couple of times and would you please tell me, is it your position that this Building Permit was illegally or improperly issued and that this property owner has to go and make an application to the Planning Board or in the alternative that the Building Inspector deny the permit and send it to the Planning Board. Is that your position?

Mr. Gross – My position is that it needs to be referred to the Planning Board.

Mr. Fink – I think it could only be referred if this Board determines that it was illegally or improperly issued.

Mr. Gross – That is the argument that I have made.

Mr. Fink – So that is your position.

Mr. Gross – It is my position. I consulted with a Land Use attorney to make sure I was correct in my reading of the code. I am so sure about my position, and I have already talked to her about if I needed to file an Article 78 that I would.

Mr. Graney – That is your choice.

Mr. Gross – But I am hoping that I don't have to do that.

Mr. Brown – There is nothing in the code that a plan has to be reviewed or rescinded based on the size or excavation.

Mr. Gross – This is a different site plan.

Mr. Prego – All of those houses are.

Mr. Gross – Yes, but they are different within reason.

Mr. Prego – Define reason, that is your interpretation.

Mr. Gross – It is my interpretation, but I think it is the correct interpretation.

Mr. Smith – 73 Colonial Ave. – I look right across to the property. I came in not really know what it is going on here and listening to all of the different arguments going back and forth, it clearly this is a different opinion going back and forth. But what is getting me is at the end of the day if there is an issue with the setback of the 25' or with the wetlands, they have agreed to fix that and at this point that is the issue here. I am wondering how it is that the Appeal Board is the one who is supposed to dictate to the Planning Board about what is coming in. As this Board has said there is precedent set already. Those are the two issues. The attorney has come back and say they are going to fix it and I am happy with it and by the way I am the guy looking at it and I don't have an issue with it.

Mr. Arato, 1475 Rt. 17A – My point is that I think the decision is being formulated, the question before the Board is will you make sure it is remediated and will you take action if it is not properly done.

Ms. Cassidy – Mr. Chairman, my I make one suggestion, pursuant to your Code as well as NYS law, this Board has the authority as part of its review authority to modify a Decision issued by a Village Official. I would respectfully suggest in light of the discussions that we have had and the applicant has not even indicated that he doesn't object to the continuation of the construction is that we modify and those issues that we discussed would become conditions and we would not be entitled to a CO until they were addressed to the Village's satisfaction. I would respectfully suggest that this would be an appropriate use of that authority.

Mr. Prego – Is there anyone else out there or upstairs that would like to speak?

Secretary – I asked and no one else wanted to speak.

Mr. Fink – We can not close the meeting because there is going to be additional submissions...

Mr. Prego – But we are going to allow them to continue with construction.

Mr. Fink – Yes and you could look at it another way, you are not taking any action tonight.

Ms. Hoti, 36 Highland Ave. – I am asking a question and I do not expect an answer. There has obviously been some happening here, maybe something slipped through the cracks where there has been a lot of vehement defense of the slipping through the cracks but how vehement would your defense be if this was a plan for affordable housing in the Village of Warwick? That is my question, and I don't expect an answer.

Mr. Geiber – I see that the trees were taken down before the Permit was issued

Secretary – The application was in the Building Inspector's office, the plans were in the Building Inspector's office, I don't believe the permit was issued before they started clearing the land.

Mr. Brown – I believe there is a letter from Mr. Rudzinski that says that site prep can proceed prior to the Building Permit.

Mr. Geiber – That was my question.

Mr. Gross – How can he say he can go ahead and do site prep before a Building Permit is issued. What is the legal authority there?

Mr. Prego – I have been told to proceed with demo before a permit was issued. It is up to the discretion of the Building Inspector in some instances because the permit is forth coming. It happens, so, what is the solution.

Mr. Gross – I have suggested the solution. I would prefer the solution where he is allowed to continue with the construction of the building but the overall site plan, surrounding the building, I would like to see that referred to the Planning Board and let the Planning Board decide. You have heard from the Planning Board chairman himself, that he felt it should have come before the Board.

Mr. Prego – But he also said that there were no restrictions on size. He could not come up with anything that stated it should go to the Planning Board.

Mr. Gross – It is in my letter.

Mr. Prego – I got it.

Ms. Eileen Patterson – Just for point of record, I believe Mr. Gross was asking for the attorney's opinion on whether or not building can begin on any kind of lot...

Mr. Prego – That is what we are going to go through now.

Ms. Patterson – I know but you answered it, are you the ZBA attorney? I am interested in you answering the Mr. Gross' question.

Mr. Fink – What is the question?

Ms. Patterson – The question is can site prep happen before a Building Permit is issued?

Mr. Fink – I am not going to give my opinion. I will give my opinion to the Board.

Ms. Patterson - So it will be in the minutes?

Mr. Fink – Anything I give to the Board is public record.

Ms. Patterson – So it will be in the minutes. I think it is just important that we acknowledge mistakes were made and anything that goes forward is making up for those mistakes. I think this lady's point is really valid and that we are going down a slippery slope here and that there are rules to follow, and Mr. Kennedy had those rules in place when he set the Deed Restrictions on all of those properties and then figure out what to do next. Let's not ice over that.

Mr. Gross – The other lots, the way they were developed, did not require the amount of site work that this...

Mr. Prego – Did they require more than what the plan depicted?

Mr. Gross – Not for excavation, not for the grading.

Mr. Prego – Are the houses bigger than what is depicted?

Mr. Gross – Maybe.

Mr. Prego – So, then they required more excavation. There is no maximum size depicted here and just about every house had more excavation, more site work than what is depicted on this drawing.

Mr. Gross – Let's put it this way, the amount of excavation that was done on that site falls within the requirement for a mining permit.

Mr. Graney – Please. You better know that to be 100% factual if you start throwing that around. We are a Board that goes by percentages and numbers so if you want to come and bring that argument forward show me the numbers otherwise enough.

Mr. Gross – I am not making that as a legal argument...

Mr. Prego – We are all volunteers here, we volunteered because we want to preserve the character of the Village as well, I work full-time 10 to 12hrs. a day, I drive 90 miles to the office, I drive all over the State of New Jersey and basically all over the country. I take my own personal time, dedicate it to this Board so that I can make sure that the Village is, I moved here. So we have just as much interest in this Village as you do. I saw your Social Media responses back and forth and you are depicting the Board as some group that doesn't care about the Village and money going into our pockets.

Mr. Gross – I did not...

Mr. Graney – This is enough. Can we move forward to a...

Mr. Fink – There is additional remediation plans to be reviewed. I will be giving the Board a short memorandum, the remediation plans and you will make your decision.

A MOTION was made by John Prego, seconded by Scott Brown and carried to continue the public hearing until March 15, 2022. (5 Ayes)

Respectfully submitted,

Maureen J. Evans,  
ZBA secretary