

TOWN OF CENTER HARBOR  
ZONING BOARD OF ADJUSTMENT

Meeting

Monday November 5, 2018

7:00 p.m.

Chair Bernie Volz called the meeting to order at 7 p.m. Present were members George Lamprey, Anthony Avrutine, Alternate members Karen Ponton, Susan Patz, Stephany Marchut Lavallee, Gregory Hime and Clerk Aimee Manfredi-Sanschagrinn. In the audience Attorney Laura Spector-Morgan, Attorney Johnathan Springer, Code Enforcement Officer Ken Ballance, Surveyor David Dolan, John and Mark Stephens, Ben Bare, Mehmet Duymazlar and Carol Sullivan.

**Voting Members: Bernie Volz, George Lamprey, Anthony Avrutine, Karen Ponton and Susan Patz.**

**I. MINUTES**

Karen Ponton motions to accept the October 15, 2018 minutes as corrected. Seconded by Anthony Avrutine. All were in favor minutes pass.

**II. PUBLIC HEARING – VARIANCE MARK SUDBEY 103-015. 24 DEW POINT LANE CONTINUED.**

Chair provides rules of protocol to all of those in attendance, stating if there is dialogue with the Board it is to go through the Chair.

Member Jean Meloney was not in attendance for this hearing (in attendance the previous meeting for this case) therefore, the next senior alternate Susan Patz would be voting if required

New documentation supplied to the Board was the report by Nicol Rosebury of Ames Associates. Clerk received Nicol's report on November 1<sup>st</sup> via email. Clerk distributed the report to the Board on the day it was received. Other documentation received by the Clerk was a Supplement to Variance Application submitted by Attorney Springer. The supplement was received via email on November 5<sup>th</sup> and distributed to the board via email on the day it was received. Board members took a few moments to read the Supplement to Variance Application. Both the report and Supplement to Variance application were entered in their entirety into the record.

Attorney Springer representing Mark Sudbey announces his name for the record. Attorney Springer refers to the report submitted by Nicol Rosebury stating the report is entirely in her words her opinions not anyone else's. Attorney Springer refers to number 4 on the report and reads the 3<sup>rd</sup> and 4<sup>th</sup> paragraph. Attorney Springer speaks to the runoff from the driveway and states there is currently an infiltration trench but based on the proposed they are looking to improve the water runoff. Attorney Springer continues stating they believe that the Rosebury report shows the proposed conditions are in fact better than lawn only. Attorney Springer to the Board, "you are going to be put in a position if you deny the variance and its lawn only, you're not providing as good an opportunity for filtration as what we are proposing to do. That is the bottom line".

Attorney Springer continues with items in the supplement in regards to the maintenance of the lawn, it is an organic non phosphorous treatment addressing one of the concerns a Board member had raised at a previous meeting. The other item is the definition of patio. In our view point, the definition talks about changing natural conditions to impervious surface. I believe the Code Enforcements position before was that any change over 150 sf will require a variance. If you have someone putting in sod, they have to come in for a variance. This is outlined in the supplement in more detail. You're also creating non-conforming uses if someone has already put down a lawn if it's over 150 sf. If you replace the naturally occurring conditions with brick, stone, rock or other comparable material like dirt or grass they have to come in for a variance. I don't think that's a fair reading of the ordinance and we don't think that is what the ordinance intended. We stand by our original submission in the variance application and feel we meet the criteria for the variance. We did apply for and receive permission from the State, it was just an oversight to get the variance from the Town at the time the State permit was approved. If the Board denies the variance I think there will be less protection to the water and the lake than if the Board grants

the variance and that is what I believe is the whole intent of what the ordinance is. If you have any questions I would be happy to answer them.

**George Lamprey:** Your final statement that you think that is the whole intent of our ordinance (George pauses) I appreciate having a moment to review this supplemental because it goes to what I see as one of the core issues here. Is the intent of the ordinance specifically performance based in terms of the water quality or is it, in addition to that prospective, about the natural characteristics or natural landscape and seeking to protect that. I went to the library and looked up in the land use sections of the last three versions of the Master Plan and having done that I am not sure I agree about how you are viewing the patio as outlined in your supplement. I think if the zoning ordinance is an outgrowth of the Master Plan the communities response was to maintain the natural landscaped to an extent that I think exceeds water quality. I would like to hear a little more discussion around the table about that because I think its core to what we are facing.

**Chairman:** I also went back to some of the minutes from the Planning Board and it was as Ken stated, he came up with that proposal just to give people a small area to put something down. The definitions states stone and that just happens to be one of the materials and it doesn't say pervious or impervious in that definition of patio either. So I think the intent of the ordinance was not really performance based.

**George Lamprey:** Well not completely or solely which were the words we heard. I think and this is not a slap on other communities but I think if you drive around Governors Island in Gilford, Center Harbor's intent was not to be like Governor's Island in Gilford. Those areas going down to the lake maybe protective of water quality the way they were developed but it is not what the vision was, in my opinion, for the direction Center Harbor wanted to go.

**Attorney Springer:** Can I play devil's advocate?

**George Lamprey:** I would be disappointed if you didn't.

**Attorney Springer:** So if someone puts down grass seed, do they have to come to this Board?

**George Lamprey:** That's a good question.

**Attorney Springer:** Well that is the question you have to ask because if what I'm hearing is correct, you can't do anything over 150 square feet. Is that the way this town has done it in the past and is that really the way the town is going to do it in the future.

**Attorney Spector-Morgan:** I'm not sure that's a fair analogy because the definition of patio does use certain words including stone and this is stone. There is a real difference between grass seed and stone but that's up to the Board to ultimately decide.

**Chairman:** That is an interesting question.

**Attorney Spector-Morgan:** But I'm not sure you have to resolve it.

**Chairman:** Correct

**Attorney Springer:** Well I don't know if you have to resolve it but it says replacing natural surface with brick, pavement, gravel, stone or any comparable material. If that doesn't include grass seed, then that in my opinion, creates my argument. That doesn't include impervious surface. If you're saying it does include grass seed you have a situation where you have someone that wants to add a little more lawn they have to come to the Board for a variance.

**Ken Ballance:** Ken Ballance Code Enforcement, yes they do. By our ordinance they do, it says natural surfaces. Anything you do to change the natural surface other than 6' wide pathway from the setback to the 25'-50' line if you change the natural surface and don't meet the allowed patio requirement you have to come for a variance. It says change in natural surface so if lawn is there than lawn is allowed but if it's not there it's not allowed.

**Attorney Springer:** Ok, I would be willing to bet money you never had anyone apply for a variance to put down a little grass seed.

**Susan Patz:** But grass seed as opposed to Sod.

**Attorney Springer:** What would be the difference?

**Susan Patz:** I think the density.

**Gregory Hime:** I think we are splitting hairs on the grass seed vs. sod. I looked throughout the ordinance to try and get the feel of what the citizens of Center Harbor are looking for in the community and I have to agree with Mr. Lamprey that they want to preserve that natural state of the waterfront of the lakes of our community. I look at this as counter to the spirit not only in the section we are dealing with but other sections of the ordinance as

well. It may appear to be a hardship but I don't think a simple thing like going before the Board is a hardship for anybody to do anything. It certainly is time consuming but for the citizens of our town and trying to uphold the spirit things should be done right.

**Attorney Springer:** Every lawn down there then is a non-conforming use it is not?

**Chairman:** Would depend on when it was put in and how it was put in.

**Ken Ballance:** I'm 68 years old and I remember probably from 63 years ago that area has always been grass which means it's not non-conforming because our ordinance says if it's already existing it's the natural state.

**Chairman:** If it was grass and you want to replace the grass you can do that, it would be replacement in kind.

**Attorney Springer:** Ok why is that the case because it's pervious or impervious?

**Chairman:** It has nothing to do with that. I think it has to do with the natural character of the environment, to keep it the way it was within that protective buffer.

**Attorney Springer:** But the CEO just said for you to do anything you have to come for a variance that means replacing grass with grass.

**Attorney Spector-Morgan:** No I think what he said is that if you have grass and you replace it with grass you are fine. If you don't have grass and you want to put grass down you have to come in. Again, that is the CEO's interpretation but that is not the issue before this Board which is whether or not you're entitled to a variance for what you're proposing.

**Chairman:** Asks if anyone would like to speak in favor, hearing none Chair asks if anyone would like to speak in opposition of the proposal.

**Ben Bare:** Ben Bare 249 Whittier Highway. If you take 5 sf of area and put pavers down and in between put some filler material you say that area will be permeable so it's not logical it's hypothetical that will work. This is like fake science if you compare that another 5 sf area that has only grass in it obviously the grass will be better than the patio. Then the report goes on to say if you fill the patio with the permeable material around the pavers it's going to just as good or better if it's maintained and kept clean annually. Over the years it will be filled in with debris, dirt, grass clippings, leaves things of that nature, it will become impermeable again so you are back to where you are right now. My second issue, many of the people that were at the site visit commented that when they were walking around on the grass it was all squishy because there was water being held there. Did you see water on the patio area no. It's just common sense that a paved area is not going to hold the water as much as grass will. My last comment is the ordinance is the ordinance. I believe the aesthetics of the community of Center Harbor is paramount here and that is what the ordinance was intended for so I don't believe the variance should be approved.

**Chairman:** Does anyone have any further questions?

**John Stephens:** It's not just the joint material that is making this permeable, there is a base structure of stone that will collect in a lot of that water that will infiltrate below the patio as well. We use this base structure for all of patios and have been doing that for several years the only real change is to remove the polymeric sand and use a pea stone to create a full permeable system.

**Karen Ponton:** Did you do anything in this area (pointing to grass area near kitchen/grill), if the water goes through here and there is clay under the ground or ledge here that water is not going to make it to the lake it's just going to sit here underneath the patio I would think.

**John Stephens:** It will eventually make it to the water table. The only thing we can really control is the surface water run off without getting into extreme water systems below ground. Our major focus is storm water runoff management.

**Stephany Marchut Lavallee:** What is the yearly maintenance you would do to keep this area clean?

**John Stephens:** Maintenance crews would blow off any debris that would fall into the joints and it doesn't have to be every year it all depends on tree cover.

**Stephany Marchut Lavallee:** I'm reading the report says yearly.

**John Stephens:** Once a year you can pull out the joints clean and put them back in.

**Stephany Marchut Lavallee:** So is that what you would be doing if this is granted?

**John Stephens:** Yes that is standard practice for permeable patios.

**Ken Ballance:** Just a few things I wanted to bring up. Regarding Nicol's report if you read it an important nuance was glazed over in section 4. It appears in many other places that talks about it may be better run off, it never specifically says the patio, but it always has to do with plantings. Which we all know that plantings on the lake front are a primary part of the shoreline protections act because we all know that they help. What I have an issue with a synopsis of section 4 is about a word and that word is "likely". It doesn't say "will" it says "will likely" that is not an absolute of anything. Likely is "it may, it could" likely is not a definitive. She's not saying at any point that patio itself will help without plantings and buffers.

Gregory Hime asks for John Stephen's qualifications. John responds he has 3 years of horticultural school, NH certification landscaping course, soak up the rain NH, courses through the State working with water management and has run a successful business for the last 10 years. John Stephens admits he may have been so involved in getting the permitting required by the state that he overlooked the town ordinances.

Ben Bare asked one additional question about the yearly maintenance that's in the report and does not know how they would be obligated with the current or next owner how to maintain that. Questioning how the Board would enforce that. If granted, it would be a condition of any approval and it would go with the land not the owner.

**Board decides to take a few minutes to speak with their Attorney in closed session. Board resumes public hearing 7:46**

**Board discusses the 5 criteria.**

#### **Criteria 1 and 2**

Chairman feels it would not be in the spirit and would be contrary to public interest because it's a lot of surface area compared to what the ordinance allows. George Lamprey shares in that statement and it also runs contrary to the public interest as reflected in the ordinance.

**George Lamprey:** There is one area that was not discussed and we should do that as finalizing thoughts and I don't want to overstate it or under state it to call it a grill in my opinion understates it. To call it a kitchen, in my opinion over states it but it is somewhere in between and it's within 50' of the shorefront.

**Chairman:** yes it's within the 50'.

**George Lamprey:** So I think that's an additional element in addition to the size of what we are talking about.

#### **Criteria 3**

George Lamprey asks that the starting point is that nothing is there this is a new proposal not a mitigation that is there correct? Attorney Spector-Morgan respond yes because this is an after the fact variance so you look at it as if it came in before any improvements were done. George Lamprey states if nothing is there then I don't think substantial justice comes out of granting the variance.

#### **Criteria 4**

Board discusses whether or not it would impact the surround property values. It's not visible from the street but it is visible from the water. Board finds it would not diminish the surrounding property values.

#### **Criteria 5**

Board does not see any hardship with the lot either by shape or slope of the parcel in question.

**Motion: Anthony Avrutine motions that granting the variance would be contrary to public interest and the spirit of the ordinance because the improvements, both cumulatively on this property and cumulatively around the lake, if they were approved, unduly and in a marked degree violate the basic zoning objective of maintaining the natural condition of the land around the lake.**

**Also, the Board finds there are no special conditions unique to the property that warrants a variance of this magnitude because the slope is both gentle and shared by neighboring properties and the shape does not make the ordinance affect the property differently.**

**Finally, the Board notes that the requested improvements could have been constructed in compliance with the ordinance on other portions of the property.**

**Seconded by George Lamprey.**

**Discussion: George Lamprey asks in thinking about the wording of the motion, if he wishes to deny the variance he would vote affirmatively on the motion correct? Board says yes.**

**Chairman, all those in favor of the motion to deny as read say I. All were in favor of denying the variance.**

**III. PUBLIC HEARING – APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS SLAVA GAUFBERG 215-023; 542 DANE ROAD CASE 2018-1105A**

**Voting Members: Bernie Volz, George Lamprey, Anthony Avrutine, Karen Ponton and Susan Patz.**

Chair provides rules of protocol to all of those in attendance stating if there is dialogue with the Board it is through the Chair. People directing questions must state their name and address for the record. Chair asks the Clerk when the application was received and how notice was given. Clerk responds application was hand delivered on October 18, 2018. Notice was sent to all the abutters, public notice was posted at the Post Office, Town Office and on the Town's website. Notification was also published in the Laconia Daily Sun.

Chair asks Mr. Dolan if he would like to present the case to the Board.

David Dolan of Dolan Associates representing Slava Gaufberg. The property in question has approximately 4 acres with both 300' of frontage on Squam Lake and on Dane Road. There is a structure on the lot already from 1970's it's over 43' from the shore. Dolan Associates was hired to put together an application for a Variance for Mr. Gaufberg to add a deck. Upon doing the research for that application it was determined the original survey which was done for a shore land permit of the addition to the dwelling, on that plan that was submitted in 2016 the shoreline was mapped and depicted based on the water level at that time. (David Dolan shows the Board the area as shown on his plan in yellow). By measuring back from the yellow line on the shoreline 75' the building as depicted on this plan, the addition would have been constructed in compliance with that set back line. When we did our field work in September, we took elevation of the lake and we found it to be different as indicated on our map by the darker black line. We measure back 75' and that brings us to the red line on the plan which brings the addition inside the setback which I believe was a mistake. Based on our measurements we are confident in the location of the shoreline which requires an application for an Equitable Waiver to correct the error from the previous survey. We are asking for an Equitable Waiver on 42 sf.

Chair asks Ken for input. Ken states when they first came in for the addition with a permit he denied it. When the shore land permit came in with a plan it clearly showed where the 75' set back was so with a licensed survey, everything new was being built behind that line. In this case, the survey appeared to be correct so the construction permit was approved. Ken states that if Mr. Gaufberg didn't want to add the deck we would not have known about this issue but the deck would require a variance which is how David Dolan found the error in preparation of that application.

Greg Himes asks what the standard practice is for measurement on the lake. Ken Ballance and David Dolan states mean high water mark that the State sets. Greg Hime asks if the 75' set back is measured from the mean high water mark. Mr. Dolan responds it's measured from 562.5 elevation this is based on the State has determined where to measure the setbacks other than looking for what appears to be the high water mark. David Dolan states to comply with what he has determined to be the 75' set back line the property owner would have to remove part of the new addition. Mr. Gauferberg had no intention to deceive, he followed the process to make sure this was being done in compliance with zoning. He hired a surveyor applied for shore land and but for the mistake by the original surveyor David Dolan would not be coming before the Board regarding the equitable waiver for the construction of the addition.

Karen Ponton states she finds the request for Equitable Waiver meets the criteria under the application. It was an understandable mistake there was no intent to deceive. I would speak in granting the Equitable Waiver. Board agrees this was an error on the original survey and makes a motion.

Chair asks if there is anyone that wants to speak in opposition of the request. Hearing none the Chair makes a motion.

**Motion: Chairman motions to grant the Equitable Waiver. Seconded by Anthony Avrutine. All were in favor of granting the Equitable Waiver.**

#### **IV. PUBLIC HEARING – APPLICATION FOR VARIANCE SLAVA GAUFBERG 215-023; 542 DANE ROAD CASE 2018-1105B**

**Voting Members: Bernie Volz, George Lamprey, Anthony Avrutine, Karen Ponton and Susan Patz.**

David M. Dolan of David M. Dolan Associates will be representing Slava Gauferberg on the second application which is an application for variance. The variance requests construction of an attached deck located 48' from the shoreline. 75' is the required set back of the Town.

David Dolan states the existing structure is about 43' from the lake, the new addition is approximately 48.2' from the lake. The encroachment of the deck is 545 sf of the proposed deck. Ken states the deck would not extent beyond the face of the existing structure. Chair states but the deck is within the 50' and 75' set back from the lake, Ken responds yes because the house itself is within that zone. David Dolan states the deck is approximately 600 sf in total.

David Dolan goes over the application for variance. States the vegetative buffer maintains between the house and the shorefront. The slope is steep from the house to the lake. With the topography the way it is this will allow them to have some outdoor living space on the lake side. The abutting properties have decks on the lakeside of the house this property does not.

**Karen Ponton:** The idea is to add some outdoor entertainment space, did the property owners consider putting a patio there which would be allowed with the existing ordinance? I reviewed the photos and thought that slope could be stabilized with some stone.

**David Dolan:** It would be more of an impact, it's very steep.

**Ken Ballance:** It was discussed but it's too steep which would cause far more impact to the land than what they are proposing. With a deck it comes off the house and stays in line with front of the existing structure, with a patio there would be far more ground work to build that up to lay stone.

**Gregory Hime:** But to set footings for a deck?

**Ken Ballance:** Precast piers is all it would take.

**Karen Ponton:** But 150 sf patio is all that would be allowed, what is being proposed for this deck is 545 sf. It's hard for me to envision why that wouldn't work.

**David Dolan:** For a patio that size we would need a variance as well.

**Karen Ponton:** Yes but a smaller patio seems like it would fit with some plantings and some steps going down.

**Chair:** The question for us is that it is a very large area for the 50' to 75' buffer.

**Gregory Hime:** I see in the application that the size isn't brought up or mentioned at all.

**Chair:** Yes, which is why I asked that question.

**Chair:** What is the dimension of the new addition?

**Ken Ballance:** It's about 22' by 30'

**David Dolan:** Scaling off the plan it's about 22' by 34', and the grade takes a couple steps down.

**Ken Ballance:** The reason the decision was made for a deck and not a patio is because they can't get machines down to bring in the dirt that would be needed to level off the patio. To dig holes for sono tubes and such won't require machinery.

**Chair:** I can certainly understand the proposal of a deck over a patio but it's the size that I'm having a problem with. If the proposal was 150 sf deck as opposed to what they are requesting my personal opinion is that I would be comfortable with that.

**Anthony Avrutine:** If you look at the design the flow of the deck from the new addition to the existing structure would blend in nicely so I can see why they have proposed this design.

**Stephany Marchut Lavallee-** I think the size is to conform to the existing structure.

**David Dolan:** There are two sliders on the first floor under the balconies so it gives them an egress.

**Gregory Hime:** I can see what you're saying but you can still have a 150 sf design and still have a nice view and seating area.

**George Lamprey:** It looks like it goes west of the building a little bit.

**David Dolan:** There are a couple steps coming off the side of the building.

**Ken Ballance:** Yes but that is in the conforming zone.

**Chair:** Where I am coming from is that even though our zoning ordinance requires a variance for any size deck in the setback of the shorefront, 150 sf would be more reasonable in my opinion. It falls in line with what we allow for a patio and because of the topography of the property the deck I believe would be the best option. Again, my opinion I don't speak for the Board.

**Chair:** Is there anyone that would like to speak for or against the proposal?

**Carol Sullivan:** 541 Dane Road. I just wanted to know if you have an idea of when construction would begin.

**David Dolan:** Well I believe, if approved there is a 30 day appeal so soon after that.

**Carol Sullivan:** Is there any possibility they would enclose that deck?

**Ken Balance:** They cannot without ZBA approval.

**Ben Bare:** 249 Whittier Highway. This proposal has not been constructed?

**David Dolan:** no it has not.

**Ben Bare:** I'm not familiar with that property, can you show me where the lake is on that diagram? (Ben is showed where the lake front is on the plan) And the ordinance allows 150 sf?

**Ken Ballance:** The ordinance allows 150 sf of patio as identified in the definition. This is a deck there is no allowance for any square footage in the set back from the lake without a variance.

**Ben Bare:** What is the square footage they are proposing?

**David Dolan:** In the setback I come up with 545 sf.

**Ben Bare:** My comment is the ordinance applies to the deck as well as a patio and I would not be in favor of allowing a deck of that size in the setback.

**David Dolan:** We are not asking for a detached deck or patio, we are asking for 545 sf that is attached to an existing structure.

**Carol Sullivan:** I will not be able to see anything because it's thickly wooded but I can tell you this past year has been extremely noisy with construction. Plus I have contractors and sub contractor's parking in my driveway so those are really my only real complaints.

Clerk asks if the application is to be entered into the record in its entirety. Chair states it shall be entered into the record. Chair asks if anyone would like to make a motion to accept the application.

**Motion: Anthony Avrutine motions to accept the application, Seconded by Susan Patz. All were in favor of accepting the application.**

Board discusses the 5 criteria of the variance application.

Ken Ballance provides a plan that was submitted with the original building permit.

David Dolan adds that one of the balconies has been constructed already. The other balcony is also in the variance request because that is encroaching in the setback. The balconies are already in place but 70 sf is encroaching, I just want to make that clear that the balcony is in the application so we make sure it's covered. Ken states some of the calculations on the permit are not right because that was based on the original 75' set back line which based on David Dolan's survey that line was inaccurate.

### **Criteria 1 and 2**

Chair, personally I think it's somewhat related to the earlier case in that the property may not be visible but the issue we need to look at is the size. Greg Hime but this runs on its own merits. Chair states the balcony and deck would be on top of each other so that I feel somewhat mitigates that issue that's at least my input. Ken adds but just remember those were constructed based on the old plan the new line now makes one of them non-conforming.

### **Criteria 3**

Chair, I don't see a big impact. No other input regarding this criteria from the board.

### **Criteria 4**

Chair, I don't see much impact to surrounding values. Anthony Avrutine adds that the other properties have decks so I don't see this as diminishing the values either. Chair adds, the area they want to cover is also already disturbed. Karen Ponton asks if we know the distance from the water the other houses with decks are. Ken Ballance responds that some of them are outside the 75' set back. Board asks where the septic is, Ken says the septic is on the back side of the house closer to the road.

### **Criteria 5**

David Dolan just adds the surrounding properties have similar use and had this house when originally constructed been built behind the 75' set back he could have a 600 sf of deck with no issues. We can't take the house down and rebuild it and we are not making a temporary access road to bring machinery in to construct the deck or retaining walls. We just want the deck to work with the topography of the land.

Chair states they have somewhat of a deck there now which is the overhang of the house on the front side. The plans don't show a way to get from the proposed deck to the existing covered porch correct? David Dolan, I don't have any information that shows that. Again, the size is what gets me.

Anthony Avrutine states he's not sure a smaller deck would work that it seems it would need to go from the corner of the house across. Susan Patz agreed with that statement.

Gregory Hime states he would like to see a design for a deck that is more conforming with the ordinance. It's still a substantial deck. I would like the size to be reduced to more conforming. Anthony Avrutine again adds he is not sure they could put a smaller deck there it would look odd. Greg Hime states aesthetics is not a hardship. Board reviews the plan by just cutting the angle off the front and bring it straight across along the foundation wall but that is not what they proposed. Ken states if you give them stairs off the structure you have to include that as part of the deck. Greg Hime, they are asking for what is proposed and we can approve it or not and if we deny it they can reapply with a plan that is more conforming. Ken states based on the Board's discussion of a different design they would be giving the property owner approximately 250 sf if you cut it off on the first drop and leaving the angle on. Chair, again I'm perfectly fine with saying they can build a deck but not that size. George asks what happens to the balcony in the denial. Chair believes they would remain in that gray area because they

are there and were on the other permit. David Dolan, not the one on the right is not on the previous building permit was it? Ken, I believe the balconies were constructed on the permit for the addition, at that time we presumed it was outside the 75' because that is what the surveyed plan showed. David Dolan, I believe one of the balconies at least was not shown on the original plans so would not be subject to the equitable waiver unless I did not have all the information. Chair states from the plan it appears that one of the balconies was always non-conforming. The yellow line on the plan is the incorrect delineation the red line is the corrected delineation. Greg Hime if the balconies were part of the original plan then they would be covered under the equitable waiver. Board agrees. George Lamprey's concern would be to have the board deny the variance based on the size of the deck and have influence on the balconies. Chair, well we could always draft a motion that the balconies would stay but we don't allow the other. George Lamprey states as a practical matter we took care of the balconies with the approval of the equitable waiver. Ken Balance, looking at the permit yes the balconies were behind the set back so they would have been covered. George Lamprey I just want to make sure that it's articulated in the minutes that the balconies we covered under the approval of the equitable waiver.

Board discusses if there should be a site visit, based on the photos and the different views of the lot they had a pretty good idea of the topography of the land and opted not to have a site visit.

Chair the question is should we think about it and continue for another day. Susan Patz, is it the size that is an issue and why it can't be another size? Chair, remember the ordinance allows 150 sf patio it does not allow a deck and it makes sense but the question becomes what is the size of the deck that's reasonable. Chair continues and they would not need a variance if it was a patio and it was 150 sf. Susan Patz, so the reason for the variance is because they want it bigger than the 150 sf. Karen Ponton states no, I believe the reason for the variance is because it's a deck and decks are not allowed in the set back at all. Susan Patz, but are we giving the deck an allowance because they cannot put a patio there? David Dolan, maybe we can continue so I can get some input from the property owner based on the discussion here.

**Motion: Anthony Avrutine motions to continue the hearing to December 10<sup>th</sup> at 7 p.m. Seconded by Karen Ponton.**

## **V ADJOURNMENT**

Meeting adjourned at 9:20 p.m. respectfully submitted by Aimee Manfredi-Sanschagrin.