

**Town of Hamilton
Zoning Board of Appeals Meeting
PUBLIC HEARING**

Tuesday, October 26, 2021 at 7:00pm
Town of Hamilton Community Room

Present: Harvey Kliman, Jeff Schindler, Lydia Slater, John Pumilio, Deputy Clerk Elisa Robertson, Code Enforcement Officer Mark Miller.

Audience: Kessa Schaeffer, Jordan Ashcraft, William Stull, A number of others who did not sign in (6 in total)

The Chairman calls the meeting to order at 7:00 pm

Chairman Hoff takes a moment to recognize Bill Nolan, a former member of the ZBA who passed away this past year. Mr. Nolan served on both the Planning Board for many years and more recently the Zoning Board of Appeals. He served the Town in a very positive and helpful fashion. The Board and the Town thanks him.

Resolution 2021-1: Motion to Approve the Minutes from June 30 and July 21, 2020.

Motion: Jeff Schindler

Second: Harvey Kliman

Vote: Aye – 5 Nay – 0

ADOPTED

Tonight's meeting is unusual for a few reasons. We have two applicants who are on the same street with the same neighbor behind them. We also have two properties where the structure in question has already been built because the Code Enforcement Officer made an error. The Board will try to move on tonight as if the structure doesn't exist. It is the Board's role to decide if a variance should be granted. AS with every variance there are some contentious issues that may come up.

The 2089 property had a different owner in 2010 (Mr. Audi). This property was granted a variance for a different structure by this Board. Both Chairman Hoff and Board Member Jeff Schindler were members of the Board at the time. That variance was granted. However, Mr. Audi never built any structure at all, so that variance no longer stands. That may or may not be useful information for both of these applications.

The Board decides to start with the application for 2077 Spring Street. The site plan is the first document that they wish to review.

Ashcraft/Levitt, Area variance, rear and side yard, 2077 Spring Street, Tax Map # 169.5-2-17

The applicant has built a deck that impinges on the rear and side yard setbacks for the property. The Codes Enforcement Officer erroneously believed that the rear setbacks for this neighborhood were the same as the Hamlet which are 20 Feet for both the rear and side yards. The actual setbacks for the Residential District, where this property is located, is 50 feet rear and 25 feet side yard.

This permit was issued during COVID when the staff at the Town Office were working from home. The 50' rear setback goes from the property line to the back wall of the house. The rear deck measures 16' X 24' and the side deck measures 12' X 8'. The rear deck already exists but the side deck is proposed.

Two variances are needed side and rear. The rear deck impinges into the setback by 16'. And the side impinges by 8'. Elizabeth Levitt and David Rice are the occupants of the property, and they will allow their contractor to speak to the application. Jordan Ashcraft is the builder for both applicants.

The two parties met came up with a design and size of the deck. They then contacted Code Enforcement and had the series of inspections done. The contractor and the homeowners wanted to see about having a way to access their deck easily from the outside; it was not until then that they realized that they would need a variance for the side deck and that there was a problem with the back deck. It was then that they knew they had to make an application to the ZBA. He comments that 50-foot rear setbacks on some of those homes on Spring Street takes you right to the back door of the residence.

The Board is going to limit people's comments to 3 minutes unless someone has questions. The goal is not to stifle people; but to keep the information and the hearing moving forward. Mr. Rice states that they were unaware of any problems until they started thinking about the side deck. He continues to say that if you look down the row of houses that most have decks that extend out into the 50-foot setback; therefore, they are within the character of the neighborhood. Most properties have 15-16 foot decks off the back of their properties. Their neighbors are either at the meeting or have sent letters to show their support. Mr. Ashcraft states that he has received a letter from the Colgate University golf course stating that they have no issue with either one of these applications. The Deputy Clerk asks Mr. Ashcraft to forward that email to her for the file and the minutes.

Board member Kliman has a few questions.

- Is there ground level access to that deck as of now? No, the only access is from in the house.
- Is there a slope along side of the house that would allow easy access from the outside? Yes.

- Would there be a set of stairs leading from ground level to the deck? Not very many steps at all because of the hill. The steps will be on the east side.
- The eight feet is the width of the deck to the side? And the steps will be included in that? Yes. They are hoping to put in as few steps as possible.
- Board member Schindler asks if there is access from the house out to the side deck, there is not.

The Board is always looking for the minimum encroachment or minimum variance required. If this is an access, it doesn't need to be eight feet wide, it could be four or six.

Chairman Hoff asks the Board if they have any other questions before they move on to look at the standards. There have been 2 letters of support from the neighbors. Chairman Hoff asks if anyone in the audience has any other questions or comments.

The Board has a sheet that gives them the standards for a variance so that they can follow along and discuss the standards.

Please see the attached standards and decision sheet (Levitt/Ashcraft).

The first question is whether there will be an undesirable change produced in the character of the neighborhood or a detriment to nearby properties will be created by granting this variance. The applicant states that no one has an objection, but there have been letters of support. Board member Schindler points out that many of the properties along this row of homes have rear decks. The safety issue of being along the golf course is the same, deck or not. There are no fences in the neighborhood, maybe further up but not in the direct area.

The second standard is whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue, other than an area of variance. Board member Kliman feels that the applicant could reduce the side deck by two feet and still achieve what they want on the side deck. It would reduce the impact on the side yard. Six feet would still be a comfortable distance from the house, and it is away from the main activities on the back deck. The applicant wishes to use it as a sitting area because it is sheltered and on the east side of the residence. The Board discusses the two feet reduction a bit more.

The third standard is if the variance is substantial. Eight feet into 25 feet is substantial. Chairman Hoff reminds the audience that Spring Street is one of the most densely populated areas of the Town and that their decisions now can have an impact on the future applications, so two feet may or may not be a significant amount. This may be in keeping with the neighborhood. All the houses in this neighborhood are close together and this variance would not change that.

The fourth standard is if the variance would have an adverse impact on the physical or environmental conditions in the neighborhood. No drainage areas seem to be affected or wells or septic systems. There seems to be no effect at all. The deck on the side will be a step or two down from the back deck. The farther east they go the less steps they will have. Mrs. Levitt would like to put two chairs and a table out there to sit, there is more sun there and less wind. There is discussion about the location of the trees on the property. They would also like it for a

little more privacy. And for it to have fewer steps. Mr. Ashcraft asserts that if it were to be made more narrow, like 6 feet wide it starts to feel very closed in when you get railings installed. And if two people are to walk past each other it would be tight. The Board now understands the rationale for the 8-foot width.

Chairman Hoff reminds everyone that when the Board grants a variance, it needs to be the minimum variance necessary to grant relief. While also preserving and protecting the character of the Community, and everyone's health, safety, and welfare. So, there is a balance there. The final standard states that the Board can impose conditions. The Chairman gives some examples.

Ms. Levitt states that her only hesitation is for the precedent that her approval would set, it might not be desired to have two houses next to each other that both have 8-footwide decks. The principal access would be from the back deck but there would also be outside access along the slope. There is some discussion of percentages and how they relate to the property lines.

Standard five is whether the difficulty is self-created. Yes, they created it, but they just want a deck. There doesn't seem to be a problem, lots of people in the neighborhood have decks. Chairman Hoff asks if there is any more discussion.

An audience member would like to come back to the neighbors. He uses the GIS maps frequently and they are sometimes inaccurate. This is agreed upon by everyone. Theoretically there should be 50 feet between each of the houses on Spring Street. It is unlikely that that is the case. In this case the house is believed to be 25 feet from the property line. They did not measure from a survey line but from where the applicant and the neighbor both believe the line to be.

The Board revisits the 8-foot width again. Board member Schindler speaks to that by stating that 8 feet is a nice number, especially, if there will be a table and chairs. If they were to make it 6 feet wide, the space becomes far less usable. That 2-foot difference does not seem to change the character of the community. However, if in 20 years under a new owner it were to have a roof put on it, or have in enclosed, that would change the character. There can be a condition put on it that it is to remain an open deck. That doesn't mean it cannot be done, they would just have to apply for a variance. Structures such as decks and porches tend to be temporary in nature, they can be added or taken away easily depending on the desire of the property owner. A building permit would be needed to enclose this anyway.

The Board turns its attention to the back deck. They discuss different dimensions. However, based on the houses in the neighborhood from an aerial view, this does not stand out. They built the deck in those dimensions to fit right over a patio that has been there for 60 years. It does not interfere with drainage. It is a substantial variance, but it is in keeping with the neighborhood. The Board also must consider the future. If this property backed up to a cornfield that may someday be sold for housing, they would have to consider that, but since it is the golf course and that probably will not change. This deck will not change the physical or environmental conditions in the neighborhood.

Chairman Hoff states "With that in mind, or whether it's just to be clear for everybody, if an applicant came here. We can't grant the variance if somebody has an existing violation, this is not an existing violation, I want it to be on the record this is a mistake of the Code Enforcement Officer. They still need a variance by the fact that there was a mistake, we can grant it or not, but they are, they don't have an existing violation."

Resolution 2021-2: Motion to approve the Levitt Application for a side yard variance for a deck measuring no more than 12 ft. X 8 ft. that is to remain open (no roof or enclosed) with a minimal number of steps as necessary.

Motion: Harvey Kliman

Second: Lydia Slater

Vote: Aye – 5 Nay – 0

ADOPTED

Resolution 2021-3: Motion to Approve the Levitt application allowing for a rear deck measuring no larger than 16 ft. X 24 ft. infringing on the rear yard.

Motion: Jeff Schindler

Second: John Pumilio

Vote: Aye – 5 Nay – 0

ADOPTED

Kessa Schaeffer, Area variance, rear yard, 2089 Spring Street, Tax Map # 169.5-2-15

This property is two doors to the north of the last on Spring Street. The applicant wishes to add a deck onto the back of her house. Mr. Ashcraft is also the builder for this project. It was also erroneously approved by the Codes Enforcement Officer. This project is already completed as well. Mr. William Stull is set right between the two properties.

There was a deck on this property in the past. The new deck that was built is larger than the previous one. They would not have needed a variance if the deck was rebuilt in the same footprint. However, it has been rebuilt significantly larger.

A variance was granted on this property in 2010. I was not for a deck but an enclosed space on the first floor. The previous owner's intent at the time was to take down the deck and create an enclosed space. Though that never happened.

Tonight, there is some confusion about the plot plan that came with this application and how many feet is between the rear yard and the existing deck and the building.

Mr. Stull's Attorney provided a packet of information for the Board to look at. There is some contention over this property because in the past, it has been used as "airBNB". The applicant has an application in with the Town Planning Board for a Special Use Permit. This Board is not concerned with the short-term rental question. The Town Board and The Planning Board are the bodies that have to deal with those issues, not this Board.

The plot plan that came with this application is straight forward, but it is probably wrong. Chairman Hoff: "Let's see on the plot plan; you have, let's add some facts, the triangular area below the number 48 it comes out another 11 feet two inches from that line. So, the total distance from the building to the farthest point west is 23 feet two inches."

Mr. Ashcraft confirms that measurement.

The building itself is not 50 feet from the rear lot line. It is only 44.7 feet from the boundary, rounded would be 25 feet. That is according to the architect back in 2010. The Board is pulling information from several different sources to get a full picture. They also consult the Bradenberg Survey to look for some clarification. It gives the Board slightly more information. The Board feels that the architectural drawing and the survey drawing are filling in a more complete picture of the measurements.

It is established that the house itself already encroaches on the 50 Foot set back. The previous deck came out about 12 feet that is offered by an audience member. Mr. Ashcraft confirms that it was 12 feet but that it also came out to a point. It is established that the current deck is 33 feet from the line. The width of the deck before was about half the length of the house to where it is now the full length of the house.

Mr. Ashcraft speaks to why the deck was elongated like that outside the scope of the original project was to maximize as much of the golf course view as possible. The hope was to also improve the look of the home from the golf course. He even spoke to an employee of the golf course. That is the reason they put glass doors on the deck of the home and one of the bedrooms, it provided another point of egress.

When they applied for the building permit the CEO erroneously thought that the setback was 25 feet, as it is in the Hamlet. Originally the permit was for the deck to be 48 feet long and it was to be 16 feet to the furthest point, shown in the original drawing included with the building permit application. What was built was 48' X 23' at the point. Mr. Ashcraft states that they did not know until today, and even the previous owners did not know that the house itself encroaches on the setback. Chairman Hoff reminds him that it is the responsibility to know these things. Mr. Ashcraft explained that he was trying to keep it in the 25' mark.

Board member Kliman does state that 48' with the maximum of 16' was what was applied for. He asks how it expanded. Mr. Ashcraft explains that they did have the piers inspected and that adjustments needed to be made due to the septic system. Mr. Hoff asks if they expanded with the knowledge of the CEO. Mr. Ashcraft states that they had the regular inspections.

Board member Slater asks if the difference in size was approved by the Codes Officer. CEO Miller states that he only did one inspection very late in the building process. He explains that the first time he saw the project was when Mr. Stull's complaint came in. He was never informed of the increase in size.

Mr. Stull's attorney Mr. Zamelis claims, "this is highly irregular; to issue a building permit for a 12'X48' deck and between issuance of the permit and construction; all of a sudden, it mushrooms to a different shape and size. That should be setting off alarm bells here; and it's not, and that concerns me."

Board member Kliman wants to confirm that the building permit was for 48'X 12'. It is in the original application as such. CEO Miller draws attention to the drawing that has the 16' extension. However, 12'X48' is what is posted on the window on the actual Permit. Then it became 48'X23'. Mr. Kliman finds this concerning on a bunch of levels. "This started with a building permit and the builder should have adhered to that; and then made a change order of some sort that brought it from 12 X 16 and then continued on to make it 12X23."

Board member Schindler asks the CEO if this was the drawing at the time of submittal, and did he make the note from the side measurement that it would be 12X16. He can see why it is on the permit like that. However, coming up to 23', that would be a secondary. "So, where do we want to start."

Mr. Zamelis interjects and asks about the public participation part of the hearing. Chairman Hoff assures him that there will be, that they want to make sure that the Board is comfortable with the facts and dimensions of the case. Now, it is up to the applicant to give some explanations as they pertain to the standards for granting a variance. This Board does not care about golfers, they care about the standards for granting a variance and the character of the community.

Jordan Ashcraft states that they dug the holes on March 10, 2020. There were a series of inspections that took place, there was a framing inspection. During the time of inspections there were suggestions, as the builder, and that was to install more hardware and secure this framework to current codes that are almost taking over, California codes; hurricane clips and all that. Then there was an addition that was added to the railing. These improvement suggestions were made by the Town, so they moved on with the project.

Mr. Ashcraft also had personal contact with the superintendent of the golf course and he asked if they would like to have the trees removed for a better view of the course. The trees are on the line and have been marked. The Official from the golf course said they would be removed and ground down for the better view of the golf course and the home.

Mr. Zamelis asks who was speaking on behalf of the University? And do they have authority to do so? Mr. Ashcraft states that the PGA professional directed him to the Superintendent, who oversees all the grounds. He is the one Mr. Ashcraft had contact with and met in person with. He stated that he has received zero complaints about this property regarding the golf course. As long as there is no vandalism to the golf course, he has zero issues whatsoever with it.

Chairman Hoff asks who at Colgate University got the Town's letter of notification? The answer is that it goes to the main administration office. It is their job to forward it to the correct

department. The Superintendent did not approach Mr. Ashcraft because of the notification. They both happened to be working on their respective properties and ran into each other.

Board member Schindler asks how the deck went from 16 feet to 23 feet. Mr. Ashcraft states that they had to make some structural changes; “we had to cut some concrete, create certain spans and we did actually tweek the lines, we had string lines setup that were marked out where our piers would go, running into some bedrock. Running into...we have a sewer line off to the right-hand side, we did tweek that out. We adjusted the line of the angle that more back facing the green.”

When asked if he went back to Mark (CEO) to change the building permit the answer was no. Mr. Ashcraft says that they made those tweaks to make sure that the depth is structurally sound and not sitting on a foot and a half of stone. CEO Miller says that it is not unusual for contractors to have to make adjustments on the fly. Mr. Ashcraft made sure that the deck was very structurally sound and even a bit overbuilt to make it as sound as possible. The point that the deck comes to is for design purposes. The point cantilevers over about 9 feet. It is mainly for the view and design.

The irregular design made the dimensions for the permit to be difficult; the CEO just put 12X48 on the permit. However, since it then grew from 16 feet at the point to 23 feet that is what is troubling to the Board. Chairman Hoff gives other examples of how applicants come to the ZBA with their variance requests, and that once they are granted, the CEO does not go to the site put a pin in the ground that they cannot pass. There is discussion about the seven-foot difference in size.

Chairman Hoff raises the question, “Do those seven feet change the character of the neighborhood?”

Mr. Ashcraft explains how the beams and floorboards support the point on the deck. Chairman Hoff states that it seems like the focus is on the view. Mr. Ashcraft confirms this by describing the back of the house with all of the windows and glass doors facing the golf course. There is more discussion about the framing and construction of the deck. There is no access to this deck from the ground.

The question is asked if the CEO felt like the contractor was hiding anything from him? The CEO's reply is no; that sometimes decisions need to be made in the field. Mr. Ashcraft states that they like to maintain a good relationship with all the Codes Officers in the area. He maintains that they do not cut corners because their name is on their work, but sometimes decisions need to be made in the field so that they aren't paying people to stand around and look at a hole in the ground.

Chairman Hoff states that he and Mr. Ashcraft have done business together in the past and probably will do business together again in the future. He is sure that there is no conflict of interest. He is sure that they will do business together in the future which ever way this decision goes.

Board member Kliman states that he does not feel that these seven feet are inconsequential. When we talked about precedent earlier, this is a bad one, because it was not done completely above board. If this were going to be the 16 feet as appeared on the permit, he would not have a problem really. It makes it very hard to follow a paper trail when changes are made and there is no documentation. There is great concern over the precedent for the future that would allow these kinds of activities. Board member Slater asks if the 7 feet is significant, was it actually necessary to go that far out. Mr. Ashcraft after much explanation of how the holes were dug with a skid steer and an auger, states that yes it was.

The previous deck only took up half of the building. That deck was 35 years old, didn't have railings, no safety features. When they removed it, parts of the wood were rotting. So, it was not going to be sound. They removed that and made repairs to the house. There is a google arial picture that shows the previous deck. There is an actual survey with the old deck on it, it is about half the length of the house and does come to a point however it is not symmetrical. There is discussion among the Board about the construction and the placement of the holes for the piers.

A member of the audience mentions a few of the issues surrounding this property and that another neighbor has been very opposed to the changes proposed for this property. She asks what his main concern is. He notes that the character of the neighborhood; there are very small lots, quite small backyards that all run together, and they also run out to the golf course. The golf course does give these small lots a much more spacious feel. It ensures some privacy and quiet. All the houses have windows facing the golf course. "We are all in favor of decks but there is the issue of equity." The houses are all in a parallel line. His deck comes out 10 feet from the house that was approved earlier in the meeting comes out a similar distance. At 2089 (the applicant's property) the footprint has been enormously increased. The new deck is 3X the square footage of the old deck. It does come out in such a way that it has a view along his deck and house. He has lost some privacy there. He states that by having such an enormous deck throws things out of balance. Again, he feels that his privacy has been diminished and his own enjoyment of his own deck has been diminished. He feels that 23 is a big exception, numbers have to be of the essence at some point. A large deck makes it possible to have larger, noisier gatherings. And it has. He feels that it is very important to look at the other properties on the street they are connected and not islands to themselves. The question is not whether the deck looks nice or whether it is well-built; it is does it fit in with the neighborhood.

Ms. Schaeffer provides some photographs to the Board showing her deck and Mr. Stull's. She feels that her deck is in keeping with the character of the neighborhood. She doesn't see any significant differences between the two decks. The entire Board consults the photos as well as the Attorney representing Mr. Stull.

Chairman Hoff: "One thing I think to make clear is; if we grant this variance then are we comfortable granting similar variances to everybody else down the line." One of the other things he is considering is in terms of the privacy issue. If anyone should build a patio, it would

not be an issue because it is on the ground. However, once you raise it up 12 feet then you have much more of a view, it is more of an invasion of privacy. Someone could build a patio any size they want, with a fire pit, and the edge could look right into the neighbor's back yard and they then need to put up a curtain. So, there is a balance there. (NOTE: after consultation with the Zoning Law of Hamilton, a patio would fit in the same criteria of accessory structure and would be subject to setbacks.)

The Board revisits the issue of the size at completion not being the size that was applied for, and that the situation is fortunate that the neighbor is the golf course as opposed to another neighbor, such as another house.

Board member Kliman is still concerned about the size and that would be the case if the deck were built already or not. Board member Slater counters that it grew to that size for structural integrity, it had to be done for safety. There is discussion about building on bedrock and the feasibility of doing so safely. The builder was not going to use anything from the old deck because he could not be sure of the previous builder's work, and the codes have changed.

Some neighbors are concerned that a larger deck means larger gatherings which would lead to a lot of noise, which would affect the character of the community. Board member John Pumilio discusses the character of the neighborhood. He understands how it happened and came to be but does not want to see an entire neighborhood with very large decks. He hopes that there would be a mechanism for applicants to return to the Codes Officer if something needs a substantial change. He would not want to see every deck this size; it is a special circumstance. He is asked what makes it special? Board member Pumilio explains that there are a few things. One is that the house is already encroaching on the rear setback. The set back was thought to be 25 feet, it is not. The permit was granted for 48X12, but then it went to 16 and then 23 feet because of structural issues. Board member Schindler interjects that the original drawing was for 12x48 with the 16-foot point. He feels that the design controlled the size.

Board member Kliman comments that perhaps instead of the deck getting bigger by seven feet it could have gotten smaller by two feet. It always went the way of increasing the encroachment, that might have been a simple solution that may have brought it back a small amount. Mr. Ashcraft states that he felt that he was making judgement calls, looking out for the best interest of his client, keeping to the design and the structural integrity of the project.

Mr. Stull's attorney, Mr. Zamelis, asks the Codes Officer if he has a cell phone and then states that the contractor could have called and explained what was happening. Mr. Zamelis has some prepared remarks. He explains that he is a zoning lawyer, he does not do traffic tickets or closings, only zoning. He has been practicing for 30 years.

Mr. Zamelis: "I just do zoning, and you've had an insurrection on your zoning law and I'm a little shocked that we're all sitting here going Oh well, if it was 16...oh well..."

Oh well, I think what responsible people do, is a little due diligence before they apply for a permit, so that they know what they can build. This explanation about 'we didn't have bedrock' and then all it was 'oh we had a..."

"Folks you had an insurrection on your zoning law and you're the last bastion, even if they had applied for a 16-foot depth, it was still an extension into a setback it's already a non-conforming property and I beg your pardon. With all due respect, we knew the house extends already by 5 feet into the setback. Okay, we know that the side of the yard, even a 12 by 16 is a major intrusion. I'm sorry 48 by 16 is a major intrusion into your, into your zoning law, and I'm just a little concerned that this is what's happening in our country is: "Oh, this was really bad. Well, no, maybe it wasn't so bad. Let's see we can find an explanation of why it wasn't so bad. This was bad. You've all noticed, and you've all remarked that, 'Gee, this isn't how it...' this was really sloppy, and I don't mean to offend anybody. But this is not how the zoning is administered in most towns across New York state of your size, population and wealth."

"Yes, the contractor community and the enforcement community and even sometimes board members work together and are cozy. That makes it even more important that it be documented. Here, none of this was documented, and with all due respect to Jordan (Ashcraft), I don't buy any of that. Mr. member you're exactly correct, if you had a problem, you can decrease the size of the deck but no, they increased the size of the deck. They never bothered to tell the Officer and they never bothered to come and tell you. I'm sorry your zoning law is on the Internet. I can pull it up on my phone right now, a sixth grader can see that a setback is 50 feet, a sixth grader can see that, and we all have tape measures. I mean, this shouldn't happen."

"And now they're here before you, asking for you to sanction it after the fact, and what I'm hearing is you're about to do that, and that really concerns me on behalf of my client. Because that's not how zoning is supposed to work. You have an awesome power to vary the zoning law that the Town Board adopted. Don't do that lightly, you have a weighing standard, and you went through it on the first one, and I'd like to provide just a couple of comments about that if we could. But I'm a little shocked."

Chairman Hoff thanks Mr. Zamelis for the comments and states that they are going to go through the standards. He asks Mr. Zamelis if he would like to address them before the Board discusses them. Mr. Zamelis asks what the point is if he does it after. The public will have a chance to comment as they go along.

Mr. Zamelis comments that this is not how a public hearing is supposed to work. "You asked in the first public hearing does anyone have any comments, that's how a public hearing works I don't want to be limited to just one because that's not appropriate."

Board member Kliman states that the Board should hear what he has to say. Chairman Hoff agrees and tells Mr. Zamelis to go ahead.

"One thing we do want to mention about the short-term rentals. Is that they don't have a permit for short term rentals right now. And we mention it, because the deck is so prominently featured in the listing, and we've provided that as exhibit B. It doesn't look like anyone had the opportunity to look at our submission, which is..." The Board all state that they have seen the materials. The Deputy Clerk emailed the Board with all the materials as soon as it was received.

Mr. Zamelis: "I appreciate that, and we showed you the building permit application and the building permit, and instead of requesting clarification of the size and the shape when the application was first submitted, the building permit was issued, that same day. That's pretty good service. If you can get a building permit the same day you will apply for one, you ought to be able to text the Code Enforcement Officer and say we need a change order. And when this was called out the Code Enforcement Officer appropriately noted his error and revoked the zoning permit. So, Mr. Chairman, this property is in violation. There's a structure, which is unpermitted and it's in violation of your zoning law, so I respectfully disagree. And now this limited liability company. And again, limited liability companies are generally formed for two reasons, liability avoidance and revenue treatment, and taxes. It's not generally how we hold residential properties. Until tonight, you didn't know, we didn't know, the Code Enforcement Officer didn't know how far that deck even extended from the house, we had to figure it out here, tonight. And they're asking you for a variance to allow the deck to remain and in its existing dimensions and they hadn't even told you what those dimensions are, that's untenable."

"And they provided a plot plan and again of all of the important measurements, they could have provided you, the most important one, was the distance and actually extended from the house. He didn't provide that to you and it's not unreasonable for you to look at that plot plan and look at all the all the measurements on here and the one measurement that you really wanted to see; they didn't give you. Why is that? And it's not unreasonable for you to ask."

"Now, Mr. Chairman, you did appropriately recognize the fact that this structure is already built gets them nothing you must actually look at this application as if it's not built. And also the applicant bears the burden of proof. It's their job to show they're entitled to a variance it's not our job to prove that they don't. Now, you hear in variance applications all the time, you just heard one, and you dial it's the benefit to the applicant if the variance were granted, against the detriment to the health, safety, and welfare of the Community, we think the benefit here is slight. They say to an application that it's really just to avoid the cost of dismantling.

"Mr. Chairman, I think you hit on it. It's a view, they want a big deck so they have a good view, so that's the benefit to spring. And, and they could build a patio, and have essentially that same view and not need a variance at all, avoiding the remedial cost of one's own unlawful behavior isn't a benefit. You shouldn't consider it a benefit and, again, we believe the real benefit is an oversized deck that that the "third hole golf club" can advertise and make it more attractive for seasonal rentals."

"On the other side of the scale we submit that the detriment to the health, safety, and welfare of the Community is significant and outweighs any benefit here to the applicant. As we know, there's no deck this big anywhere in the neighborhood. It's a raised party deck."

"Which presents, as DR. Stull noted, peace and privacy concerns for his and other adjacent properties. It also cuts off the views across the backyards which the Chair noted this neighborhood has a very open and flowing feel. A deck that large cuts off the view across the backyards."

"Now, the detriment to the community beyond just this neighborhood is that precedent; that you can build first and ask permission later in the Town of Hamilton. News gets around fast in the community, as you said, you see each other at the Planning Board, at the grocery store. 'Hey, they built out a big deck and they got away with it'. Well, let's see what happens with that. So, denying this variance would send a strong signal to the contractor and community and the building community that that kind of conduct is not going to be tolerated in the Town of Hamilton. You should not tolerate that kind of conduct. And in the past as you noted Mr. Chairman, you have granted variances up to 10 to 15% of the standard. Until tonight we don't even know what percentage, they were looking for because we didn't have the dimensions."

"But we know it would be by the dimensions, they gave us more than 34% which is more than twice your past precedent and upsetting that precedent, especially under the dubious circumstances that some members have noticed, would be a significant detriment to the entire Community. Everyone here, every resident in the Town of Hamilton has a right to expect that your zoning law is going to be enforced uniformly and evenly; uniformly and evenly, and it's not and, as you heard from Dr. Stull, this deck, and as a (Board) Member noted this deck; and the size and the amount of people that it can accommodate will generate noise and density and activity that will result in decreased privacy for the adjacent properties."

"Last, that the hardship here is clearly self-created and it's 100% self-created, there's no argument that it's anything other than self-created hardship. So, we submit that when the application before you the benefit to the applicant is slight; the detriment to the welfare of the neighborhood and the community is great, and it far outweighs the minimal benefit they may get by having this oversized deck. And we would suggest that doing so would essentially be rewriting your zoning law. If you are going to grant variances like this, all up and down the street that's what you'd be doing. You'd be amending the zoning law, which is the Town Board's job, not the Planning Boards or the ZBA's."

"So, the applicant has not established the benefit to it outweighs the detriment to the welfare of the community and we're going to respectfully request that you consider all these things and deny the variance application as submitted, which is to allow a deck that that extends...That that leaves only 21 feet setbacks, where a 50 foot setback is required that's more than 50% of the standard, so we think a record here and all five of the criteria tip against granting this variance. So, thank you, Mr. Chairman, I appreciate you indulging me."

Chairman Hoff thanks Mr. Zamelis and asks if anyone has any questions or comments. Mr. Hoff asks if the detriment to the community is so great, as Mr. Stull states; why is there no one else here to complain? Mr. Zamelis states that maybe they didn't see the notice. There have been two letters in support for the previous application which is in the same neighborhood. The notices were sent to everyone within 500-feet of the property, and this has been well publicized. There have been no letters of support for this application thus far. This has been the only complaint. The person on the other side of this property has passed away.

Board member Kliman states that the Board did not even know how large this deck was until tonight. Chairman Hoff counters with the fact that many people in this neighborhood know about this structure because many of them walk on the golf course. There is nothing secret going on, it is not hidden. Board member Kliman continues, "You're saying that if people walk by and they don't know it shouldn't be there, then of course they cannot complain."

Chairman Hoff: "Right but they if they felt it was out of character, we would hear about it."

The applicant, Kessa Schaeffer speaks to this situation: "Frankly, I was surprised to find myself in this whole situation, I went to the people that I know that live on Spring Street, the man who works at the bookstore and I think you know. I asked; what do you think, and I asked him, and he said, you know, I think your deck is great, I think the problem is people don't really want to be involved in a neighborhood dispute, frankly. And I'm not someone that really wants to push the buttons. I asked Greg who owns the inn across the street, and he said honestly, it's grown. So, you know I'm not really the person to want people to live here in this small community for me to take sides, and something that I think is not about my deck. This is not about what my deck looks like at all, and that whole other issue will be addressed by another board at another time." She just did not feel right asking people who she does not know very well to get involved in a dispute. She was not oblivious; she did go around and try to find out how people feel.

Mr. Kliman States that this is not about whether this is a good-looking deck or whether the neighbors are ok with it, it is about a zoning violation. "Zoning code, that's what we're here to enforce and we are empowered to allow variances to the zoning code, based on the standardized criteria. Which we try as honestly as possible to apply, unfortunately, this is a case that has been tainted by error. It's been tainted by changes that were not recorded, and this is making it difficult for us to understand and come to a decision."

This is not about how many people are in attendance and who is involved. Mr. Zamelis states that his client is affected and that is why they are here, other property owners are not as affected as he is.

The Board needs to consider if they do not want to see many of these types of variances granted then they really need to question whether this one should be granted. There is great concern over the precedent and the impact on the neighborhood. They are considering the size of the deck and how many people it can accommodate and if that will affect the character of the neighborhood. Also, the fact that it is already built creates another complication for the Board.

When the square footage of the original drawing of the deck is compared to the final product there is a very large difference. It is an extension beyond what the permit should have allowed, approximately 269 square feet more. Mr. Kliman feels that that large of a deck is out of character in the neighborhood. He understands putting an angle on it adding some design features however he feels that it is egregious.

Board member Slater gives her thoughts. "From the beginning, from the beginning of reading these papers, my concern was that things 'just happened', and there was no documentation. There was no written connection with the zoning, with the zoning law, whether it was through the Code Enforcement Officer, or whether it was through the Zoning Board that was just sort of it happened, and I understand how stuff like that happens. But. I agree with Harvey, that it's a huge change that just sort of got presented as a fait accompli which as Mark said in his letter to us, you know it sort of dump things, in maybe a difficult thing for the Board to decide and to think about. And whether or not the Town's moratorium should have no impact on this whatsoever. But, if something is built and advertised on the Internet, to be used the short-term rental and there's a short-term rental moratorium for a year in the Town of Hamilton, as of October. Does that play into this? I don't know it's a very, very complicated situation." Board member Schindler reminds her that this board is concerned with the deck. She was thinking about what the other board member had to say and the decks potential impact on the community.

Ms. Schaeffer states: "I am aware of the moratorium, the house has not advertised since the moratorium has been put in place. No one has stayed there that I do not know. I have let Mark (the CEO) know any time anyone is going to stay there." It is her understanding that when the Special Use hearing takes place that there will be guidelines put in place of which they will comply. It isn't their goal to thumb their nose at the rules of the Town. However, those two things aren't really relevant. They built a deck that they thought was aesthetically pleasing. They thought we were following the rules, based on the building permit, based on what Jordan (Ashcraft) found. If the Town says that they are limited to the number of people on the deck, then they will comply. They do not want to make enemies in town and not do the right thing.

Limiting the number of people allowed on the deck is not the kind of restrictions this Board usually gives as well as they usually don't get into the structural integrity of builds either, that is not their role.

Board member Schindler states that he would be ok with it if they made it to the specifications of the original drawing. Board member Kliman asked if they considered moving the point to a different location when they were running into problems. Mr. Ashcraft explains some. There is more discussion about the construction of the deck. He was trying to maintain the distances but also give the client what they were looking for. He did meet with the codes officer and thought the setback was 25 feet. Ultimately it is the owners and builders' responsibility to look up the code and make sure they adhere. Mr. Ashcraft states that the Codes Officer can override what the contractor can do even if the client wants something. Since the Code Officer made an

error, which happens they were working on the assumption in both of these cases, that the setback was 25 feet.

There is more discussion about the size of the deck and when it would have had to come to the ZBA. Mr. Kliman states: "We're just going way beyond what is a reasonable variance, given the Community, given the other existing decks other houses that are misplaced on their lots. Then it seems like this is a reasonable solution and I just don't see leaving something, as big as it is on there."

The Board discusses that when something is in a very large space it makes the structure look smaller, not for the neighbor of course. Chairman Hoff asks if the Board has been out there to see things in person. Most Board members have not. He asks if the Board wishes to go through the standards and make a decision tonight or if they wish to go out to the site to see it in person, consult the Town Attorney, and come back and make a measured decision. He senses the Board coming to a consensus but if they want to take more time to get more information that is acceptable. He finds that the deliberations and the discussions are valuable and lead to better decision making. He believes there is merit in the board members seeing the site for themselves.

The Chairman reads the language of the law for the newest Board member, and they discuss how the decisions are made and weighing of the standards.

The Board discusses dates to continue this hearing.

Chairman Hoff asks if there are any other questions or comments. A constituent asks a question about another property in the neighborhood.

Resolution 2021-4: Motion to continue the hearing on the Schaeffer application on November 15, 2021 at 7:00 pm at the Town of Hamilton Community Room.

Motion: Harvey Kliman

Second: Lydia Slater

Vote: Aye – 5 Nay – 0

ADOPTED

Resolution 2021-5: Motion to adjourn.

Motion: Harvey Kliman

Second: Jeff Schindler

Vote: Aye – 5 Nay – 0

ADOPTED

Respectfully submitted by:

Elisa E. Robertson

Deputy Clerk