

**Town of Bolton  
PLANNING BOARD  
MINUTES  
Thursday, April 28, 2005**

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SEQR = State Environmental Quality Review  
PB = (Town of Bolton) Planning Board  
WCPB = Warren County Planning Board  
APA = Adirondack Park Agency  
LGPC = Lake George Park Commission  
DEC = Department of Environmental Conservation

**Present:** Chairman Herb Koster, Sandi Aldrich, Henry Caldwell, John Gaddy, Chauncey Mason, Susan Wilson, Zoning Administrator Pam Kenyon, Town Counsel Michael Muller

**Absent:** Don Roessler

**Public Hearing**

H. Koster opened the public hearing at 6:07 pm.

1) SD04-27 VALLEY WOODS SUBDIVISION. VAJ, Inc., LLC. Represented by Joe Pfau. Seeds to divide those parcels designated as Section 140.00, Block 1, Lots 1&3 into 15 lots. Zones RL3 & LC25. Property Location: Valley Woods Road and County Route 11. Preliminary Plat. Major Subdivision. Subject to SEQR. This item was tabled last month pending a public hearing and additional information.

Joe Pfau gave an overview of the proposed project and said (1) the parcel is just under 100 acres, (2) they are proposing a 15 lot subdivision, (3) the entrance to eight of the lots will be on Valley Woods Road, and (4) one lot will be accessed by County Route 11.

From the public, Steven Maryniak, Valley Woods Road resident, asked if adding 15 homes in the proposed project would enable current Valley Woods Road residents the ability to receive cable television, by cable being run. H. Koster said the residents would have to call the cable company to find out and Joe Pfau said he is looking into cable television possibilities for the 15 proposed lots.

There were no comments from the Board. **Motion by J. Gaddy** to close the public hearing. Seconded by S. Aldrich. **All in favor. Motion carried.**

**Regular Meeting**

H. Koster opened the regular meeting at 6:12 pm by asking for corrections to the Thursday, March 24, 2005 minutes. S. Aldrich asked that on page 11, paragraph 3, the sentence reading "Joe Pfau said no, all power would be underground coming in at each end of the property." be changed to "Joe Pfau said no, all power would be underground coming in at Valley Woods Road."

**Motion by J. Gaddy** to approve the March 24, 2005 minutes as amended. Seconded by H.Caldwell. **Four in favor. Two recused (C. Mason and S. Wilson). Motion carried.**

**1) SD04-27 VALLEY WOODS SUBDIVISION.** VAJ Inc., LLC. Represented by Joe Pfau. Seeks to divide those parcels designated as Section 140.00, Block 1, Lots 1 & 3 into 15 lots. Zones RL3 & LC25. Property Location: Valley Woods Road and County Route 11. Preliminary Plat. Major Subdivision. Subject to SEQR. This item was tabled last month pending a public hearing and additional information.

Joe Pfau said (1) the plans were revised as previously requested by the PB and (2) he received a letter dated April 25, 2005 from Town Engineer Tom Nace stating that all of his concerns have been addressed.

J. Gaddy asked about the discussed recreation fee, to which Joe Pfau said there is nothing planned at this time for a recreation area on the property, but possibly something in the future on lot 3.

J. Gaddy said the lights need to be shielded and downward facing to minimize any visual impact from glare. Joe Pfau asked if he could place the suggested lighting requirements on the mylar, to which Counsel said the lighting specifications can be put as a covenant or added to the deed by the applicant.

H. Caldwell asked what the construction schedule is for White Birch Drive, to which Joe Pfau answered by saying, hopefully within the next couple of months.

P. Kenyon asked if the PB can approve a subdivision prior to stormwater approvals being granted, to which Counsel answered that if the PB is ready to go all the way with the approval of the subdivision, then subdivision approval can be granted conditional upon the stormwater management permit being granted.

The PB found no concerns with Section 200-31A-D of the zoning ordinance and C1-C7 on the SEQR form.

**Motion by J. Gaddy** to accept the application as complete, approve the preliminary plat, convert it to final plat, and approve the final plat as presented with the following conditions: 1) the lighting is to be downward-facing and shielded; 2) the carriage path is to be 20' wide with no clearing on the sides for the shoulders; 3) power (utilities) is to be underground; 4) the mylar is not to be filed until the site plan review application for stormwater (SPR04-35) is approved; and 5) prior to the issuance of an initial certificate of compliance with respect to any subdivided lot shown heron in accordance with the subdivision regulations of the Town of Bolton (Supplemental Regulations) a recreation fee of Four Hundred Dollars (\$400) shall be paid to the Town of Bolton. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. Seconded by H. Caldwell. **All in favor. Motion carried.**

**2) SD04-31 KINCAID, DANIEL & VERONICA.** Represented by Matt Steves of VanDusen & Steves. Seek to amend a previously approved plat (SD95-04) approved by the Planning Board on March 23, 1995. Specifically to divide into 4 lots that parcel designated as Section 186.00, Block 1, Lot 40.1. Zone RL3. Property Location: Brookside Parkway off of Trout Lake Road. Minor Subdivision. Sketch Plan Review. Subject to SEQR. This item was tabled last month pending additional information.

Barry Kincaid, representing Daniel and Veronica Kincaid, said the Map S-2 has been amended to show (1) a road width of 20' going a distance of 100' from the "T" intersection in all directions and (2) the radius on the southwest and southeast corners of the intersection has been increased to 25'.

J. Gaddy said the letter from the APA states that as long as everything was submitted according to what they have read regarding lots 1, 2 and 3, there will no APA permit required. Barry Kincaid agreed and said (1) he wrote the APA a letter in response stating that when lot 4 is to be conveyed, he will obtain the required permit, and (2) he has not received any further correspondence from the APA regarding lot 4.

S. Aldrich said on Map S-1, the brook is named differently in two places.

The PB found no concerns with Section 200-31A-D of the zoning ordinance and C1-C7 on the SEQR form.

**Motion by H. Caldwell** to accept the sketch plan as complete, convert it to final plat, waive a public hearing, and grant final approval with the condition that Covenant #10 noted in the "Declaration of Protective Covenants & Restrictions for Brookside Park Subdivision" is changed to read: *All exterior lighting is to be downward-facing and shielded.* This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. Seconded by S. Wilson. **All in favor. Motion carried.**

**3) SPR05-12 KINCAID, DANIEL & VERONICA.** As a condition of sketch plan approval for a 4-lot subdivision (SD04-31) set forth by the Planning Board on 12/16/04, seek Type II Site Plan Review for a major stormwater plan. Specifically, the condition reads as follows: A major stormwater design for the cul-de-sac and the retention basin are to be provided. Section 186.00, Block 1, Lot 40.1, Zone RL3. Property Location: Brookside Parkway off of Trout Lake Road. No action was taken by the WCPB. Subject to SEQR. This application is to be heard in conjunction with SD04-31. This item was tabled last month pending additional information.

Barry Kincaid, representing Daniel and Veronica Kincaid, said per PB request, they made the following changes; (1) recalculated all the stormwater and (2) changed the roadway to meet PB specifications.

H. Koster recommended to Barry Kincaid that he change the title of the "Private Road Maintenance Agreement" to read "Private Road and Stormwater Maintenance Agreement" in order to cover both items. Counsel asked when the lots are all sold out, who would be responsible for the maintenance, to which Barry Kincaid said everybody. Barry Kincaid said in the Declaration of Protective Covenants & Restrictions, he deleted the original number two and replaced it with the original number three.

No action was taken by the WCPB.

The PB found no concerns with Section 200-31A-D of the zoning ordinance and C1-C7 on the SEQR form.

**Motion by J. Gaddy** to accept the application as complete, waive a public hearing, and grant final approval as presented with the condition that the document entitled "Brookside Park Subdivision Private Road Maintenance Agreement" is revised to read "Brookside Park Subdivision Private Road and Stormwater Maintenance Agreement". This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. Seconded by S. Aldrich. **All in favor. Motion carried.**

**4) SPR05-14 VANdeVEERDONK, TOM.** Represented by Dennis Dickinson. As part of subdivision (SD03-01) and stormwater (SPR03-31) approvals granted for the Wright's Farm Subdivision (Rolf Ronning) on February 26, 2004, seeks Type II Site Plan Review for a major stormwater project on Lot 8. Section 140.00, Block 3, Lot 1, Zone RL3. Property Location: West side of Federal Hill Road. No action was taken by the WCPB. Subject to SEQR.

Dennis Dickinson, representing Tom VandeVeerdonk, said the stormwater proposal was submitted to Town Engineer Tom Nace and they received a reply letter that Tom Nace is satisfied with the stormwater proposal. P. Kenyon said the Zoning Office does not have a copy of the letter, to which Dennis Dickinson said he would provide the Zoning Office with a copy.

J. Gaddy said neighbor to the property, Tony Hall, said after everything melted, he has water in his basement, which has never happened prior to this development taking place. Dennis Dickinson said their stormwater (1) goes down the opposite side of the road from Mr. Hall's house, (2) it goes down past Mr. Hall's house before it comes to a county culvert and crosses below Mr. Hall's house, (3) there are wetlands and high ground water in the area, and (4) he is not sure if their stormwater issues are contributing to the high ground water in the area, but if they are, it would not be much.

Counsel said (1) he agrees with Dennis Dickinson that the area is very complex, and (2) if it is as important to the PB as it is to Mr. Hall, then the PB will have to request the applicant address the issue to show if their stormwater is or is not a contributing factor.

H. Koster asked if this is a civil matter, to which Counsel answered, (1) the PB does have jurisdiction on this matter and (2) the PB needs to decide whether to delve into the matter or leave it as a civil matter.

H. Caldwell asked if the septic system could be moved closer to the house to reduce the amount of land clearing, to which Dennis Dickinson answered, yes, he will move the septic tile field and the septic tank closer to the house.

H. Caldwell asked if there are any clearing limits on Federal Hill Road since it is in the Scenic Corridor, to which P. Kenyon answered, no, the limits on Federal Hill Road are not for clearing, but for setback requirements.

No action was taken by the WCPB.

The PB found no concerns with Section 200-31A-D of the zoning ordinance and C1-C7 on the SEQR form.

**Motion by J. Gaddy** to accept the application as complete, waive a public hearing, and grant final approval as presented with the following conditions: 1) that the amount of clearing allowed is minimized; 2) the applicant is allowed to relocate the wastewater disposal system to maintain a 100' separation between the well and leachfield; 3) the septic tank is to be located 10' from the foundation; 4) the leachfield is to be located 20' from the foundation; and 5) the stormwater plan is reviewed and approved by Town Engineer Tom Nace. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. Seconded by S. Wilson. **All in favor. Motion carried.**

**5) SPR05-19 MENARD, KIRK.** Represented by Dennis Dickinson. As part of subdivision (SD03-01) and stormwater (SPR03-31) approvals granted for the Wright's Farm Subdivision (Rolf Ronning) on February 26, 2004, seeks Type II Site Plan Review for a major stormwater project on Lot 10. Section 140.00, Block 3, Lot 4, Zone RL3. Property location: West side of Federal Hill Road. Subject to SEQR. The WCPB determined no County impact.

Dennis Dickinson, representing Kirk Menard, said (1) the stormwater is a little more complex on this property, and (2) the stormwater comes down by the driveway, into a culvert, under the driveway and into a basin.

H. Caldwell asked if the septic system could be moved closer to the house to reduce the amount of land clearing, to which Dennis Dickinson answered, yes, he will move the septic tile field and the septic tank closer to the house.

H. Caldwell asked when the main road will be completed, to which Dennis Dickinson answered, he has no idea.

S. Aldrich asked if all of the stormwater by the driveway is coming down the east side, to which Dennis Dickinson answered, no, the west side. J. Gaddy asked if a swale will be included between the wetlands and the driveway, to which Dennis Dickinson answered by saying, yes, the drive cross section is intended to keep the water it collects from the driveway and carry it down where it is supposed to go.

P. Kenyon said she sent a letter to Town Engineer Tom Nace regarding the project and she has not received a response to date.

The WCPB determined no County impact.

The PB found no concerns with Section 200-31A-D of the zoning ordinance and C1-C7 on the SEQR form.

**Motion by J. Gaddy** to accept the application as complete, waive a public hearing, and grant final approval as presented with the following conditions: 1) that the amount of clearing allowed is minimized; 2) the applicant is allowed to relocate the wastewater disposal system to maintain a 100' separation between the well and leachfield; 3) the septic tank is to be located 10' from the foundation; 4) the leachfield is to be located 20' from the foundation; and 5) the stormwater plan is reviewed and approved by Town Engineer Tom Nace. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented.

Seconded by H. Caldwell. **All in favor. Motion carried.**

**6) V05-12 TEKMITCHOV, VASILIKI.** To alter existing structure, specifically to create a second story deck over existing bar area to accommodate additional seating, seeks area variance for deficient setbacks: 1) front yard: 30' is required, 25' is proposed from Route 9N; 2) 1' is proposed from Congers Point North; and 3) deficient parking: 46 spaces total required for entire property, including 10 spaces for new deck area, 0 spaces exist, 0 proposed. In accordance with Section 200-56A, seeks area variance to alter a non-conforming structure. Section 171.15, Block 3, Lot 74, Zone GB5000. Property location: 4960 Lakeshore Drive, known as Lily's. The WCPB recommended no County impact with the stipulation that the Town investigate the issues concerning compliance with handicapped access under ADA. This application was unanimously referred to the PB by the ZBA for a recommendation.

Dave Mazzeo, representing the Tekmitchov family, gave an overview of the proposed project and said (1) they are looking to change the restaurant/bar establishment's hours of operation to include more daytime use as opposed to late night use, (2) due to the onset of the NYS Regulations for Non-smoking in the establishment, they are looking to create an area that would allow them to have smoking outside of the building, but not spill out onto the public access in front or around the building, (3) the current site plan allows no room to go backwards or outwards from the property line, (4) they are seeking to go up on the second story of the structure on the existing deck to provide seating for food service and a smoking area for patrons, (5) they plan on constructing a wall outside on the deck as a

sufficient means of controlling noise and lighting levels, (6) ingress and egress is from inside the building with a staircase inside and out, (7) they concluded handicap accessibility can be from the back side of the existing structure for access to the inside of the downstairs area, (8) regarding the ZBA's concern with the fire egress off the upstairs deck area, there is presently a deck that would mesh into the proposed deck on the northeasterly corner of the deck area and other areas in the back that would be accessible if there were an emergency, and (9) they concluded there would be full-time employment on the deck for supervision.

H. Koster asked if the existing deck with staircases that currently provides access to the apartments would be utilized for the apartments and the restaurant, to which Dave Mazzeo answered, not necessarily, because (1) the existing deck would be an emergency access off that area and (2) the primary ingress and egress to the proposed deck would be from inside the establishment.

P. Kenyon said the Zoning Office was informed by the building inspector that the proposed project might require an engineer to check that the structure is solid and safe. H. Koster asked if the PB should table the item until they receive a report from the engineer. Counsel said (1) the PB's job is conceptual in that they would accept the proposal, and (2) based on discussions with the ZBA, is this something the PB wants to see in the Town of Bolton.

J. Gaddy said a second story deck is a tricky situation and asked if the establishment has been serving food. Vasiliki Tekmitchov responded by saying (1) limited food is being served, (2) the establishment was originally Alex's Restaurant and Lounge, she changed the original dining room area into her hair salon in 1967 and she kept the original lounge, (3) when the lounge area was leased out and out of her control, it was run primarily as a bar instead of a food business, (4) last summer there were many problems with patrons who didn't want to put their drinks down in order to go outside to have a cigarette and the patrons were ticketed, (5) she would like to have an establishment where people can sit outside at 11:00 am, (6) they are not sure what food would be served and are welcoming what people would like, (7) she would like to change the atmosphere of Lily's to being primarily a restaurant, as opposed to a bar as it has been run in the past, by opening earlier in the day.

J. Gaddy said (1) this application seems similar to a particular one in the past, (2) he does not look favorably at an outside bar, and (3) in addition to Lily's, there have been other establishments in the Town of Bolton that have had to deal with the same issues of patrons congregating outdoors to smoke and getting ticketed. Vasiliki Tekmitchov said (1) she has no place to go other than up and (2) she will not jeopardize the hair salon, which she has put a lifetime into building into a reputable business, by having an obnoxious or low-class establishment next to it.

H. Caldwell said (1) the PB is not questioning her hair salon business at all, but is questioning the establishment which has had a reputation of being a late night bar, and (2) the Town cannot have people up on the second story deck at 4:00 am. He asked what

hours of operation were being proposed, to which Vasiliki Tekmitchov answered, (1) if they have a wedding, like they did last summer, and the patrons wanted to stay to midnight, she cannot tell the PB that she is going to tell them no, (2) the difference is that they are going to change the food profile and they will not be there until 4:00 am, (3) once she has employees on payroll at 11:00-11:30 am, they will have approximately two shifts, within reason, without overextending hours and exhausting people, (4) if she is forced to have only a certain amount of business and her patrons will be ticketed, it is like she is being put out of business, (5) she simply wants to have a chance to change the profile, improve and simply do upstairs, what everyone else did outside, because they had the space, and (6) she can promise the moon, but the PB can only judge her on her track record.

J. Gaddy said (1) his knowledge of the business is that it has always been a bar and (2) at this point in time he doesn't see where the Town would want to have an outside bar. Vasiliki Tekmitchov said (1) the application should say "restaurant and bar," not just as a "bar," (2) her year-round liquor license lists food on it, (3) if she wanted to strictly put a bar on the second story deck, she would have to go back to the NYS Liquor Authority for licensing, and (3) basically, Lily's is going to be serving food. Dave Mazzeo said (1) there wouldn't be any machinery, bars or portable bars on the second story deck, (2) the second story deck would be utilized strictly as the plan shows with seating only, and (3) the second story deck would be supervised by an employee working at that station for food.

S. Wilson asked if bringing a drink upstairs in your hand, not being served by a waiter/waitress upstairs, is considered an extension of the bar, to which Vasiliki Tekmitchov answered, no, the patrons need a place to smoke. H. Koster said (1) if they are serving food on the second story deck, New York State only allows a very small percentage to be a smoking area even though it is out in the open and (2) for people to go up to the second story deck to smoke, they would need to be limited to a certain area, even though it is an open deck. S. Wilson asked what the smoking area limits are, to which Counsel responded, 25% of the area can be set aside as a smoking section and the separation between the smoking section and food is 3'. H. Koster said (1) the main concern the PB has is that there are no second story decks in the Town of Bolton with food or drink and (2) he is not sure he would like to see an open deck with eating and drinking on the second story. Vasiliki Tekmitchov said (1) she does not have a place to go and she needs to do what seven existing establishments with decks are currently doing within a three block radius in the Town of Bolton, (2) the reason is that people like to sit outside when it is early in the day, and (3) people like to smoke a cigarette without jeopardizing a business's license or the possibility of getting a \$150.00 ticket. H. Koster said if the patrons didn't bring their drinks outside, they wouldn't get a ticket, to which Vasiliki Tekmitchov said (1) patrons are afraid to leave their drinks unattended anywhere, (2) if they are sitting and eating, no one has to hold a drink to go anywhere, and (3) they could make a designated smoking section on the deck, that she cannot do inside an entirely enclosed establishment. Dave Mazzeo said he feels that simply changing the hours of operation along with adding the proposed second story deck would go a long way in changing the profile of the existing business. H. Koster said the space is

already fully utilized and now the applicant is asking the Town of Bolton to give additional utilization that is in violation of the setbacks. Vasiliki Tekmitchov said (1) the space is utilized, but then people have to spill outside to smoke and they get ticketed, which is what she would like to change, (2) she would like the sidewalk to be free of cigarette butts, people smoking, and the Police stopping and giving tickets, and (3) she has no other place to go except the second story.

The following correspondence was received, copies of which were provided to the PB Members and were read by Counsel into the record. See letters on file for specifics.

- Letter from Philip Lamb – concerns with garbage, lighting, parking, noise, etc.
- Letter from Michele Perosi Froehlich – opposed
- Letter from Skip Lower, owner of The Indian Teepee Gift Shop – concerns
- Letter from Daniel Carnese – opposed
- E-mail from Harold and Carol McCleery, Bolton summer residents - concerns
- Letter from Kathleen Spahn – opposed
- E-mail from Robert Mossieur – opposed

Bart Tekmitchov responded to the correspondence by saying; (1) by restricting the hours of operation of the deck, that would logically restrict the clientele primarily to tourists, as opposed to the hard-drinking partying type the Town is concerned would cause a disturbance, and (2) Lily's has not received a single complaint or served minors, whereas prior businesses (Mad Hatty's and the Player's Club) in that location and other bars in Town have received several complaints.

Vasiliki Tekmitchov responded to the correspondence by saying; (1) it is in the Warren County records that in 1978 she was in Supreme Court and awarded the right-of-way at Congress Point to be able to keep that line open for fire trucks, ambulances and everything that is needed in a normal community to have care when care is needed, (2) Mr. Carnese had a problem, because she had a small waste management garbage can for weekly waste removal, which he would move into the center of Route 9, (3) Mr. Carnese has a right to be concerned about late hours and a bar, which is why she is asking the PB to give her the opportunity to change Lily's profile from a late hour bar to a restaurant, (4) late evening hours, people smoking in the front of the establishment and noise are what she wants to change, (5) she would love to have an open area deck with secure fencing, but she went to P. Kenyon for recommendation on what type of enclosure for the proposed deck would be acceptable and was told it should be at least 6', (6) she will not have noise, she is trying to be a "restaurant/bar" – not a "bar/restaurant," (7) the existing structure is totally structurally sound and the proposed second story deck will be engineered and built to stand on its own, independently standing on its own without relying on the existing structure for support, (8) the bar area of the existing building had a brand new floor three years ago, all the plumbing and electric has been refurbished, which is why the external painting has been saved to last and she welcomes any inspector to check the building, (9) Mr. Lamb's daughter, Kathy Conover, is in support of the project, (10) she wants to be a good neighbor, which is why she is here tonight, (11) she has seen an enormous amount of garbage behind several businesses throughout the

summer, which is part of their businesses, and (12) to the best of her ability, she is looking to do a quality eating establishment, keeping the noise limited, addressing all safety issues according to the code of the State of NY, and to change the profile everyone is referring to as “the late night bar.”

H. Koster asked, irregardless of the possibility of engineering problems, the ZBA is still looking for a recommendation from the PB, to which Counsel answered, yes, (1) engineering problems don't hold the PB up, (2) the ZBA would have to deal with the issues of engineering problems and compliance with the American's Disability Act, and (3) the ZBA was reaching out to the PB for a concept of what the PB would or would not want to see in the downtown area.

H. Caldwell asked if restricting the hours of operation is enforceable, to which Counsel answered, it is difficult, but not impossible, and gave an example of where it was extremely difficult to do that in the past, where it went into a tailspin.

From the public, Kathy Spahn said (1) she feel strongly that this is the first of many requests and is concerned with the precedent that approving this project will set for future requests, and (2) the regulation says 25% can be used for smoking, so for this particular application, that would equate to 2.5 tables for smokers. Vasiliki Tekmitchov said (1) she does not understand why people think the purpose of the proposed deck is to solely accommodate bar patrons who are smokers, (2) she wants to change the late hour bar profile to a daytime, normal hour, eating establishment profile, (3) she feels Congress Point residents knew when they bought their homes that a restaurant and lounge existed at the location since 1948, (4) she simply wants to do what seven other restaurants already do on Main Street, which is to have an outdoor eating facility, (5) she is looking to change the profile of Lily's.

J. Gaddy said (1) he admires the fact that Vasiliki Tekmitchov has kept a year-round business in the Town of Bolton, (2) at this point in time, with an application for a restaurant, he would prefer for her to work the restaurant within the confines of the existing building, as opposed to going for a deck at this point, (3) he is concerned in keeping the Main Street in a position where you can still see the mountains, (4) he believes very strongly that any time the Town makes a new use of space, it has subsequent applications that come to the PB asking for the same relief, which would lead to a series of second story restaurants that he wouldn't want to have happen. Vasiliki Tekmitchov said (1) the proposed deck is going to be far shorter in height than the existing deck to the apartment and it would not extend past the lines of the apartment, and (2) there should be some guideline as to why someone would want to come to the PB for a second story deck if they already have a first story open deck or the room to add a first story open deck. J. Gaddy said (1) everyone looks at what their neighbor is doing and wants to do the same, and (2) he cannot see opening the door to having Main Street becoming two story restaurants.

**J. Gaddy** moved to recommend denial of the application as presented. Seconded by S. Wilson. **All in favor. Motion carried.**

**7) V05-17 DELCZEG & DONOHUE BUILDERS, Inc.** To merge 2 parcels and then create a proposed 3-lot subdivision, seek area variance for deficient: 1) lot width: 125' is required, 120.35' is proposed for Lots 2 & 3; and 2) shore frontage: 150' is required, 124' is proposed for Lot 2 and 135' is proposed for Lot 3. Section 213.05, Block 1, Lots 6 & 7, Zone RM1.3. Property location: 4124 Lakeshore Drive, known as Wide Waters Motel. The WCPB determined no County impact. This application was unanimously referred to the PB by the ZBA for a recommendation.

Hugh Roberts, representing Delczeg & Donohue Builders, Inc., said (1) the variance request is not substantial, (2) the neighborhood impact will be positive, (3) the proposed project is beneficial to Lake George, (4) it would be an aesthetic improvement, (5) the proposed subdivision and variances requested are quite consistent with the neighborhood, as they conducted a study that concluded 25 of 35 (71%) of residential properties had non-conforming lake frontage and 22 of 35 (63%) seemed to be of non-conforming width.

Carl Schoder, of Schoder Rivers Associates, engineer for the project, gave technical details on the project by saying: (1) they are proposing to remove the following existing structures; the six cabins by the north driveway, a garage by the lake, and the main building on proposed lot 1, and a cottage on proposed lot 3, (2) they are proposing to maintain or modify the following existing structures; the building on the south corner and a log building behind that on lot 3, a small cottage on the northern lot, and the large house and a boathouse on lot 1, (3) there are currently eight non-compliant septic systems on site that will be abandoned and replaced with 3 new systems designed in accordance with current standards and current requirements located closer to Route 9N, (4) there will be a net loss of pavement, (5) a new house and 30' wide boathouse is proposed for the middle lot, and (6) the impermeable area currently on the site would be reduced by 18-20%, which would benefit stormwater management.

H. Caldwell asked if it would be a major stormwater plan, to which Carl Schoder answered, yes, probably, but they have proposed procedures in place to address stormwater issues.

H. Koster asked if the existing building on the south property line is going to be removed and the existing footprint utilized, to which Hugh Roberts answered, (1) the building is an eyesore in many different ways and (2) it has to go. Brian Donohue said they propose to, in concept, the following; (1) demolish the existing structure, (2) reduce the existing footprint from 37' X 72' to a 24' X 32' footprint which would include the roof overhangs, (3) the building would be located with a 10' setback from the south line adjoining the neighbors to the south, (4) the wall closest to the lake would be used as their setback to the lake, (5) limit the structure to a one story building with the appropriate roof structure, (6) preserve the right to use, repair, rebuild the deck/patio area at the waterfront, (7) the ability to have the right to erect a small fence on the south line,

because the property is lower than the property next store, so it would give some privacy, and (8) preserve the right to construct patios and decks on the remainder of the footprint.

H. Koster asked if the existing cottage on lot 3 will remain and the kitchen be removed, to which Carl Schoder answered, no, the existing cottage on lot 3 will remain as a structure on the site in some form, but the project is still evolving. Hugh Roberts said the purchaser of the lots would be making the final determinations of what they want to do with existing structures. H. Koster asked what would be done with the u-shaped dock, which is currently non-compliant, to which Hugh Roberts answered by saying, they want to modify it to an appropriate finish from what it is now.

H. Koster said there are many mature trees on the property at this time and asked what the cutting plans are, to which Hugh Roberts said, (1) on the waterfront of lots 1 and 3, there are large, mature trees, and they are more dense on lot 2 in the middle, and (2) they would like to retain as many trees as possible, as it is beneficial for privacy.

H. Caldwell asked what the applicant is planning on doing for demolition, to which Hugh Roberts answered, that they will remove (1) the structures to be removed that have already been referenced and (2) the eight existing septic systems. Hugh Roberts said the purchasers of the lots will ultimately choose what will be done with the lots, but the applicants want preplan and give the purchasers some guidance and advice as to how the lots are developed.

H. Koster said it is difficult for the PB to give a general recommendation to the ZBA without having a commitment from the applicant of what is actually going to be done. Counsel said he would encourage the applicant to read Section 200-56 of the Zoning Code, because it is not a sure thing. Hugh Roberts said (1) they are familiar with that section of the code, (2) they realize that this is strictly a concept to go forward with and (3) that they understand the ultimate site plan review of the individual lot when someone has a proposal and it will be addressed reasonably at that time, and they are aware there are no guarantees. S. Wilson asked if what the PB is voting on tonight is the concept of the subdivision, to which Counsel answered, yes, the concept of the subdivision that would then allow this applicant to proceed with the recommendation that seems to be supported of the variances that will be needed and then it will return to the PB.

Counsel asked if there is some reason for the applicant's reluctance to just say they are going to take the building down as opposed to the concept that they will be taking the building down, to which Hugh Roberts responded by saying, (1) past history of the re-utilization of footprints of structures that are within the setback of the lake, (2) they would like to go forward with the possibility of using part of that footprint, because it has been done in the past and (3) they would like the opportunity for a reasonable proposal to be considered in the future. J. Gaddy said (1) he agrees with utilizing the southern lot, (2) the question of aesthetic improvement is arguable, (3) each of the proposed houses are benefiting by the fact that they look across to the other side of the lake where it is essentially a wooded look, (4) each time a lot is chopped up, the Town loses a tremendous amount of vegetation, in spite of what applicants have told the PB, so he

would like to see a deed restriction in keeping vegetation in some sort of fashion, and (5) he would like to see areas developed and still keep screened views of the lake. Hugh Roberts said the stone walls, walkways and trees along the lake front are part of the charm of the property and they would not want to see it change. J. Gaddy said (1) he understands, but the next owner may not feel the same way and (2) he suggested an enforceable restriction to keep a certain degree of vegetation there that the Town has not been able to keep in several areas in Town. H. Koster said the project will be coming back to the PB for subdivision and the trees can be dealt with at that time. C. Mason said (1) one incentive for him would be on lot 2, which is a non-conforming lot, which shows a monstrosity of a house (84') on it, (2) part of the negotiations could be for larger setbacks so an 84' house cannot be put in there, (3) he doesn't see the point of taking away a large building and adding another large building in its place. Brian Donohue said (1) the whole stand of trees on the northern side of lot 1 will remain unencumbered, (2) part of using the existing buildings on the lake, helps them to keep the trees intact, (3) some trees will need to come out by the road to improve the septic situation, (4) in taking out the hotel unit, some trees will need to be taken out, and (5) there is a mature tree by the main house that will need to be taken out. J. Gaddy said his concern is the shoreline. Brian Donohue said on another project, the APA enacted view zones, which may be utilized on this project. Carl Schoder said (1) the next step for the applicant will be the subdivision review, where he will put notes on drawings to the effect of site plan review being required as well as any other stipulations the PB may have relative to requesting a view zone analysis as a part of the site plan review for each one of those lots, and (2) he thinks this would be a reasonable enforcement option that would allow for a detailed development of that lot based on what a buyer would actually want to build but still reserve the PB's right that will be written in a document that must be complied with for them to actually satisfactorily obtain the permit to develop that lot. S. Aldrich asked if there would be any blasting for the house on lot 2, to which Brian Donohue said (1) he can't foresee blasting will or won't happen, and (2) if it was blasted, nothing would be gained and it would have to be built up.

From the public, Rich Schermerhorn, representing himself and Tom Farone, neighbor to lot 3, said (1) they are not opposed to a three lot subdivision, (2) it is great for the area with new septs and taking down some of the older cottages, (3) the PB has the opportunity at this time to set some conditions, such as; (A) lot 1 has an existing cottage, right on the property line, the applicant has enough room to build another cottage on the 1.51 acres it is an opportunity to take another non-conforming structure, so it is one less variance, (B) lot 2 meets all setbacks, so he sees no problem with this lot, (C) for lot 3, there is an opportunity to eliminate asking for another variance by eliminating the structure altogether and not allowing a smaller footprint to go up on the lakefront, (D) the existing dock is nothing but a steel pier, there's no crib and no legs that support it in the water, (E) the log cabin that exists meets all the setbacks, so this variance would be fine, and (4) he thinks everyone is in agreement that the block building should come down, but he doesn't feel allowing a smaller footprint and allowing it to be 20-30' off the water is a good idea, (5) this is an opportunity for the PB to get the 75' setbacks and to keep the side setbacks.

From the public, Attorney John Lapper, representing the Schermerhorns, said (1) what is wrong with this application is that he applicant is seeking relief and a variance for the non-conforming shoreline width, but the applicant is trying to maintain all of the structures by the lake that are non-conforming, which is not right, and (2) it's not enough to say that there are good intentions, so they are seeking as a condition of the PB's recommendation of approval, that the concrete building be removed.

From the public, Melissa Vito, property owner three parcels to the north, said (1) she is opposed to the project, (2) the future parcels should have more shoreline and property width to control the density, (3) there should be certain measures that have to be taken to keep heavy machinery off the roots of the trees and so forth, and (4) she is asking the PB recommend the denial of the three parcel variance.

Hugh Roberts said the dock on the south property line would be eliminated. S. Aldrich asked if just the one dock would be eliminated, to which Hugh Roberts answered, yes, the other dock conforms to the setbacks.

Counsel said (1) in Section 200-56 of the Zoning Code says "...a non-conforming structure may be continued and maintained in reasonable repair, but may not be altered," (2) the applicant will have to come back to the ZBA with their best plan and decide the give and take then, (3) the PB needs to make a recommendation on lot width and shore frontage, (4) if the PB is in favor of the project, it is ok for the PB to say, hypothetically, that (A) the project does meet with PB approval, and (B) there are tremendous incentives there and PB would like the ZBA to approve this and give further consideration when applied for, giving this applicant due consideration to where they presently have a very ugly building and they are going to replace it and start to do other things with the footprint, while understanding that there is this possibility that the area variance can be denied, but that the PB is encouraging the ZBA to give favorable consideration to that at the proper time, and (5) the rest of the items (trees, structure removal, etc.) will come to the PB again.

H. Koster said (1) he would definitely recommend that the cinder block building come down as part of the variance for getting the undersized lakefront lots and (2) the PB only makes a recommendation to the ZBA.

The WCPB determined no County impact.

**Motion by H. Caldwell** to recommend approval of the 3-lot subdivision with the following conditions: 1) the structure located on the most southern property line of Lot 3 be removed; 2) upon removal, the Planning Board would recommend to the ZBA that a variance be granted for the placement of a 24' x 32' 1-story structure 10' from the property line with the condition that screening be in place between said structure and the property line; and 3) the most southern leg of the U-shaped dock on Lot 3 be removed. Seconded by S. Wilson. **All in favor. Motion carried.**

**8) SD05-03 MAMMOLA, JOSEPH & MARILYN.** Seek to amend a previously approved plat (Woodland Ridge) last revised 03/27/97 (SD97-02), specifically to create a lot line adjustment between those parcels designated as Section 171.11, Block 1, Lots 33 & 40, Zones RL3 & RM1.3. Property location: 59 Woodland Ridge. Sketch Plan Review. Subject to SEQR.

Joe Mammola said (1) he renovated an existing deck on their property two years ago, and by mistake, the deck was built without a building permit, (2) a part of the deck is over his existing property line, (3) he has a resolution from Woodland Ridge Homeowner's Association stating they will deed him any common area land he needs to be in compliance, (4) Dennis Dickinson did a new survey of the property and the survey indicates a small sliver of the deck, approximately 4.5' is over the property line, (5) he said M. Nittmann said he needs a property line adjustment to incorporate the 4.5' and that he also needs a 20' setback to conform to zoning codes, and (6) he is seeking approval of the property line adjustment for his property and that of the Woodland Ridge Homeowner's Association.

S. Wilson asked the size of the common area, to which Joe Mammola answered, 30 acres. H. Koster asked if the Woodland Ridge Homeowner's Association is giving up the property, to which Joe Mammola said the Woodland Ridge Homeowner's Association will deed him the 20' of land needed from the common area.

Joe Mammola said the area will remain forever wild. S. Aldrich said in the last two years, there has been significant clearing and the houses can easily be seen from the lake. J. Gaddy said he would like to have Joe Mammola keep his deck, but would like a condition be imposed that trees would be planted on the front of the deck to provide a filtered view.

The PB found no concerns with Section 200-31A-D of the zoning ordinance and C1-C7 on the SEQR form.

**Motion by J. Gaddy** to accept the application as complete, waive a public hearing, make a negative declaration, and approve the lot line adjustment as presented with the condition that 3 deciduous trees be planted between the deck and newly created rear property line. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. Seconded by S. Aldrich. **All in favor. Motion carried.**

**9) SPR05-10 WESTWOOD FOREST EAST.** Rolf Ronning. In accordance with Chapter 125.13C1 of the stormwater regulations, seeks Type II Site Plan Review for a major project, specifically to remove more than 15,000 square feet of vegetation. 3.71 acres is proposed. Section 139.00, Block 1, part of Lot 8. Zones RIL3, RR10, and LC25. Property Location: Intersection of County Route 11 and east side of Hendricks Road. No action was taken by the WCPB. Subject to SEQR. This application is in conjunction with SD04-32.

Rolf Ronning said he believes this agenda item needs to be tabled to next month, because to date, he has not received a letter from Town Engineer Tom Nace approving the stormwater plan.

**Motion by S. Wilson** to table the application pending approval of the stormwater plan by Town Engineer Tom Nace. Seconded by J. Gaddy. **All in favor. Motion carried.**

**10) SD04-16 SADDLEBROOK SUBDIVISION.** Rolf Ronning. Seeks to amend previously approved plats (SD03-19 & SD04-05 formerly known as Mowery/High Meadow Farm), specifically to divide into 24 lots that parcel designated as Section 139.00, Block 1, Lot 48, Zone RL3. Access is proposed to be gained through Section 139.00, Block 1, Lot 46.1. Property Location: 83 High Meadow Farm Road. Major Subdivision. Sketch Plan Review. Subject to SEQR. This item was tabled last month pending additional information.

Rolf Ronning said (1) he made all the changes recommended by the PB and dropped off copies of the revised map to the Planning Office approximately two weeks ago, and (2) he noticed they forgot to put the fire pond on the new maps, so today he dropped off copies of a new map with some minor changes to the last map submitted, which he explained in detail, to the Planning Office.

H. Koster said (1) Rolf Ronning took the shoulders off the road on the most recently submitted map, (2) the PB received the copies of the new maps as they sat down here tonight, so there has not been enough time for the PB to compare the new maps to the last ones submitted, and (3) the PB cannot set up a public hearing, because the PB may have recommendations for changes to be made on this new map.

Rolf Ronning said the only changes to the map are (1) the size of lot 12, (2) the pond and (3) the numbering of the lots. Dennis Dickinson said the maps submitted two weeks ago are the same as the maps submitted tonight, with the only differences to this map being (1) they put the pond back on and (2) the turn-off for the fire department was put back on. H. Koster said he cannot act on anything the PB has not seen before tonight. Dennis Dickinson said (1) the new map is basically the same, (2) there might be some minor differences, (3) it is still the same subdivision they've been looking at, and (4) the road is flagged and has been flagged. Rolf Ronning said the only substantial difference is the size of lot 12, because the pond was put back on the map.

H. Koster said (1) Rolf Ronning took the shoulders off the road and that was not a recommendation and (2) the fire department wants specific things, including a 22' road with shoulders on it. Dennis Dickinson said (1) they started with two 9' lanes and two 2' shoulders comprising the 22' road, (2) when the fire department expressed an interest in a wider road, they made the road 22' wide, (3) they appreciate the fire department's concern, (4) they are putting in a road that could very well be a major road in Bolton, but the PB needs to remember that there are only two roads in all of Bolton that are wider

than 22' and they are County Route 11 and Route 9N, (5) he doesn't feel having a road wider than 22' is necessary for the fire department, (6) he was taken aback by the Fire Department's request to widen the cross intersection, but they did increase it, and (7) they have widened the road by the fire pond and put a turn around in for the Fire Department. H. Koster said the PB met with the Bolton Fire Department, this is what they want and the PB is trying to accommodate their request. Dennis Dickinson requested that the PB contact Town Engineer Tom Nace to discuss the PB and Fire Department's concerns and get a recommendation from him as to what he thinks is a proper roadway.

P. Kenyon asked where the project is at with stormwater and review by Tom Nace, to which Dennis Dickinson responded by saying, (1) there was a little misunderstanding with the stormwater, (2) they retained the services of Dave Meyers, who he believed would be doing the complete stormwater plan, but Dave Meyers believed Dennis Dickinson would be doing the mapping for the stormwater plan, so the stormwater plan is done, but what is not done is the map that compliments the stormwater plan and shows where the necessary basins are to be located.

J. Gaddy asked if a non-jurisdictional letter from the APA has been received yet, to which Rolf Ronning responded by saying, no, but they are expecting one any time.

From the public, Meredith McComb, representing the team that pulls zebra mussels from the lake, said (1) the PB should be concerned that the potential for development is 40 lots, (2) this parcel linked by this big road makes it one project and she would encourage the PB Members to follow their instincts and look into that, and (3) she presented pictures of the stream that intersects Indian Brook to show what the site looks like.

**Motion by H. Caldwell** to table the application pending the following information: 1) proposed bedding (rocks) for culverts; 2) construction details for culverts; 3) Town Engineer Tom Nace is to review the plan to ensure that the road width & shoulders are adequate, as a through road is proposed; 4) proposed guardrails; and 5) 2' shoulders with guardrails anywhere there is more than 5' of fill. Seconded by C. Mason. **All in favor. Motion carried.**

On another matter, J. Gaddy asked for clarification on the replanted tree agreement for the development on Potter Hill owned by Jeff Tennant, who says he is under state permit, as the replanted trees are all dead, to which Counsel answered, no, part of the requirement is that Jeff Tennant needs to keep the trees vital and the Code Enforcement Officer needs to be made aware of the situation.

Meeting adjourned at 10:49 pm.

Respectfully submitted by  
Jennifer Torebka  
Recording Secretary  
05/11/05