

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, June 14, 2016
6:00 p.m.**

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

Present: Jason Saris, John Whitney, Joy Barcome, Holly Dansbury, Tom McGurl, Jeff Anthony, Lorraine Lefevre, Zoning Administrator Pamela Kenyon, and Counsel Michael Muller

Absent:

The meeting was called to order at 6:00 pm.

Jason Saris asked if there were any corrections or changes to the May 17, 2016 minutes.

RESOLUTION:

Motion by John Whitney to approve the May 17, 2016 minutes as presented. **Seconded by, Joy Barcome. All in Favor. Motion Carried.**

- 1. V16-22 O'ROURKE, WILLIAM.** Represented by VanDusen & Steves. For a proposed lot line adjustment between those parcels designated as Section 123.00, Block 2, Lots 27 & 28, seeks area variance for deficient lot width. 250' is required, 100' is proposed for Lot 28. Zones **RR5** & RR10. Property Location: Alder Brook Road.

William O'Rourke presented the following;

- This variance is to get access to the property in the back.
- He originally utilized the road, as the only access to property for a driveway when he built the house for his mother.
- He would like to access the property other than going through his daughter's yard every time he would like to access the rest of the property.

Jason Saris asked if it was 250' now. Mr. O'Rourke stated it was probably a little more, but in order to put an access to the back of the property, there is a very steep hill with ledge in the middle, so he would not be able to put a road in without going around.

He had, at one time, thought of subdividing the house off, but the lower driveway is an easement for the other house.

Jason Saris asked Mr. O'Rourke to walk the Board through this so they could see that it was the minimum amount needed to accomplish what they wanted. Mr. O'Rourke detailed it on the plans for the Board. He stated there was a lot of ledge and he needed to go around the hill to accomplish what he was looking for.

Jason Saris asked if it would basically be 100' at the road. Mr. O'Rourke stated that was correct, from the Cleveland property to the other end. Jason Saris asked how wide the property was inside. Mr. O'Rourke replied 500' to 600'.

John Whitney asked why he would grant himself an easement, rather than adjust the lots if he owned both properties. Mr. O'Rourke stated he had not, it was a deeded easement when he acquired the property. He detailed what he wanted on the site plan. John Whitney asked if he would be going through lands that are currently his. Mr. O'Rourke replied yes.

RESOLUTION

The Zoning Board of Appeals received an application from William O'Rourke, (V16-22) for an area variance as described above.

And, due to notice of the Public Hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Staff;

And, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application; this Board makes the following findings of fact:

The application of the applicant is as described in Item#1 of the agenda.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: This is a reasonable accommodation.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. This is one more entry off the road that is not that frequent.
- 3) The request is not substantial; it does result in a deficient frontage, but as discussed the lot widens out quickly and future development of that property will be feasible without any more encroachments.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- 5) The alleged difficulty is not self-created; it is related to the topography and it is steep and rocky along the front that can't be breached.

The benefit to the applicant is not outweighed by the potential detriment to health, safety and welfare of the community.

Now, upon motion duly made by John Whitney and seconded by Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion Carried.**

2. **V16-23 HIPPELE, RAYMOND.** To alter single family dwelling, specifically to add a kitchen addition, seeks area variance for **1)** a deficient shoreline setback. 75' is required, 52' is proposed; and **2)** to alter non-conforming structure in accordance with Section 200-57B1b. Section 185.19, Block 1, Lot 57.2, Zone RCL3. Property Location: 50 Acorn Drive. Subject to WCPS and APA review.

Raymond Hippele presented the following:

- This is basically a kitchen addition on their existing house.
- They will be tearing down an existing addition consisting of a mudroom, bathroom and covered deck and replacing it with a kitchen.
- There will be a net gain of 359 sq. ft.

Jason Saris asked if it would be in the same footprint of the one they were tearing down. Mr. Hippele stated basically yes, but it will come out an additional 10' or so.

Jason Saris asked if it would further encroach the lakefront setback. Mr. Hippele replied no.

Jason Saris asked how visible it would be from the lake. Mr. Hippele stated it would not be seen directly from the lake, you would see it from the side.

Jason Saris asked if it would be finished in a manner that blends in with the existing house. Mr. Hippele replied yes, and detailed the photo.

Holly Dansbury asked how close to the boulders on the driveway the addition would be. Mr. Hippele stated it would be maybe 10' closer than what is existing now.

Tom McGurl asked about the floor plan and what was being torn down. Mr. Hippele detailed it to the Board, stating it consisted of a mud room, bathroom and covered porch. Tom McGurl stated that it was a bit more than a kitchen addition, they were adding a pantry, mud room, bathroom and a porch. Mr. Hippele stated they already had the bathroom, mud room and the porch, so really they are creating a new kitchen. The existing kitchen will be a dining room.

Jeff Anthony asked if he would be willing to add minor stormwater improvements to accommodate the new impervious area. Mr. Hippele stated he would prefer not to, but he would. Jeff Anthony inquired why. Mr. Hippele stated it was a very minimal 359 net sq. ft. addition. Jeff Anthony stated the stormwater needs to be very minimal. Mr. Hippele stated he was considering a gutter system into a drywell. Jeff Anthony stated that would be a possible solution. The solution is his choice. Mr. Hippele stated he would consider it. Jeff Anthony stated it would only need to be reviewed by the Zoning Administrator.

Jason Saris asked how old the home was. Mr. Hippele stated about 1939. Jason Saris stated this predates the Ordinance and this is a pre-existing, non-compliant structure.

Jason Saris asked if they considered any other area that this addition could be placed. Mr. Hippele stated there were no other practical area that they could do this. The interior floor plan is not conducive to moving the kitchen to another area. The septic system is in the back of the house so they could not put an addition back there.

RESOLUTION

The Zoning Board of Appeals received an application from Raymond Hippele, (V16-23) for an area variance as described above.

And, due to notice of the Public Hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Staff;

And, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application; this Board makes the following findings of fact:

The application of the applicant is as described in Item#2 of the agenda.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: As discussed, this is the best location due to the interior floor plan and the septic. It is also further away from the lake.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. It is in keeping with the existing neighborhood environment.
- 3) The request is not substantial; It is a small 359 sq. ft. addition.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- 5) The alleged difficulty is self-created; This is a pre-existing, non-conforming structure. The benefit to the applicant is not outweighed by the potential detriment to health, safety and welfare of the community.

Now, upon motion duly made by Holly Dansbury and seconded by Lorraine Lefevé, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition; 1) A minor stormwater plan is to be implemented for the project. **All in favor. Motion Carried.**

3. **V16-24 DeMAIO, ELEANOR.** Represented by Brian Donohue. To alter single family dwelling, specifically to add a bathroom, den & storage, seeks area variance for **1)** a deficient front yard setback. 30' is required, 17' is proposed; and **2)** to alter non-conforming structure in accordance with Section 200-57B1b. Section 186.14, Block 1, Lot 70, Zone RCH5000. Property Location: 60 Beckers Drive. Subject to WCPS review. See V15-23 for previous approvals.

Brian Donohue presented the following:

- They are capitalizing on a variance they acquired last year at this time for a mud porch, that they deemed not feasible due to a fireplace needing repairs.
- They would like an addition for more storage, a bathroom and entry on the western side that would not impact the neighbors' views.
- The setbacks are pre-existing of the 1978 subdivision and as you look south the setback only encroaches by 7'.
- They have considered other locations for this addition that would not need a variance but it would have created problems with the neighbors' view zones.

Lorraine Lefevé asked about the fireplace. Mr. Donohue stated the fireplace would be coming down and not replaced.

John Whitney asked if the setback would be the same. Mr. Donohue replied it would be 2' more than they received last year. He detailed the square footage of the new mudroom against the one that was approved last year.

Lorraine Lefevre inquired about the large stream running down the north side of the property and if the addition was near this. Mr. Donohue detailed where it would be on the plan, stating it was the south side.

Holly Dansbury asked if this was on community septic. Mr. Donohue replied it was not.

Holly Dansbury asked if they were adding a den and a bath. Mr. Donohue replied this was correct.

Holly Dansbury asked if this location was near the septic. Mr. Donohue replied they had not found the septic, but where they are putting the addition is not near the septic, this area is all ledge.

Tom McGurl inquired if they knew anything about the septic. Mr. Donohue stated that there is nothing in the town records about the septic. Tom McGurl said he would believe that the new bath would increase the load to the septic.

Holly Dansbury stated she has concerns about the addition of a bathroom without knowing where the septic is. Zoning Administrator, Pamela Kenyon explained that when the applicant starts to excavate, if they find part of a leach field they will stop work immediately. Jeff Anthony stated the sewage load is calculated by bedroom count, not bathroom count, so the Board's hands are tied.

John Whitney asked why the first application was reviewed by the A.P.A. and this one was not. Zoning Administrator, Pamela Kenyon stated this project was within the hamlet, so it was never reviewed by the A.P.A.

Jeff Anthony inquired if the applicant would consider adding minor stormwater to the project. Mr. Donohue replied they had no problem with this.

RESOLUTION

The Zoning Board of Appeals received an application from Eleanor DeMaio, (V16-24) for an area variance as described above.

And, due to notice of the Public Hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Staff;

And, whereas the Warren County Planning Staff determined that there was no County impact;

And, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application; this Board makes the following findings of fact:

The application of the applicant is as described in Item#3 of the agenda.

1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: The only way to grant this request is to grant an area variance to place this addition on the site. The addition is being placed in a direction that does not impact the stream, water body or views.

2) There will be no undesirable change in the neighborhood character or to nearby properties. This is a very well maintained property and the addition will only add to the character of the neighborhood.

3) The request is not substantial; this is a minor encroachment on the front yard setback.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant has agreed to implement minor stormwater mitigation measures for the added square footage of impervious area.

5) The alleged difficulty is self-created;

The benefit to the applicant is not outweighed by the potential detriment to health, safety and welfare of the community.

Now, upon motion duly made by Jeff Anthony and seconded by, Holly Dansbury it is resolved that the ZBA does hereby approve the variance request as presented with the following condition; 1) A minor stormwater plan is to be implemented for the project. **All in favor.**

Motion Carried.

- 4. V16-25 KLYKKEN-URTZ, SONJA.** Seeks area variance for commercial boat storage greater than 2,500 square feet. 20,000 square feet is proposed. Section 199.08, Block 1, Lot 11.2, Zone RL3. Property Location: 634 Coolidge Hill Road. Subject to WCPS review. See SPR16-14 associated with this project.

Jason Saris recused himself from this item.

Sonja Klykken-Urtz presented the following;

- She received A.P.A. review
- She detailed on the plans where the storage would be located.

Joy Barcome asked if there would be any clearing. Ms. Klykken-Urtz stated there would be no additional clearing. Joy Barcome asked about possible wetlands. Ms. Klykken-Urtz stated there was considered wetlands in this area prior to the house being built. She had contacted the A.P.A. because of this. She stated there would be no structures added nor would they be doing any work on the boats. This was dry storage only and the boats would be dropped off in the fall and removed in the spring. She detailed the storage area on the plan stating it was wide open and had previously been used for a kick ball field.

Joy Barcome asked if this would be seen from Coolidge Hill. Ms. Klykken-Urtz stated that you could not see the area from Coolidge Hill.

Tom McGurl stated he had concerns about the view of the neighbors behind them in the winter/fall of the year and the potential boat traffic. Ms. Klykken-Urtz stated that there are up

to 4 different boat storage areas within 4 to 5 miles of her house. She stated she has proposed 30 boats, but she has no idea how many she would actually have, so she can't really speak to how much traffic it would create. She does have a letter from her father-in-law in support of the storage area, and he will be the one that is most effected. She detailed on the plans the Deer Creek area and stated that there were both deciduous and conifer trees in this area. She explained that there is not a full view from the property from the cul de sac of that subdivision. She stated she could not see their homes from this area of her property.

Lorraine Lefevé asked if the applicant would be moving the boats. Ms. Klykken-Urtz stated she would not be moving them; she would like to contract with a marina that would store their boats there and they would do all of the trucking of boats. She stated this is not a back and forth. It was a drop off once a year and a pickup once a year.

Jeff Anthony asked if any activity such as winterizing would be done on the property. Ms. Klykken-Urtz stated they would not.

Holly Dansbury asked about the colors of the shrink wrap and the visibility of it. Ms. Klykken-Urtz stated she was told that the majority is white like snow colors. Lorraine Lefevé stated that it would blend in with the snow.

Joy Barcome asked if this was for storage only. Ms. Klykken-Urtz replied this was correct. Joy Barcome asked if there would be any winterizing or servicing of the boats. Ms. Klykken-Urtz stated that there would not be. Joy Barcome asked if she was proposing 30 boats. Ms. Klykken-Urtz said she was.

Lorraine Lefevé asked about the amount of boats. Ms. Klykken-Urtz said she was told to figure high, so she was not in trouble if she got 5 extra boats. Zoning Administrator, Pamela Kenyon stated that was correct, the Planning Board would want to know the exact amount of boats.

Jeff Anthony asked if there would be any improvements to the property such as gravel and grading. Ms. Klykken-Urtz stated that there was already a driveway that went back to that area. The overall area where the boats would be parked will stay the same.

Lorraine Lefevé stated this was basically a boat parking lot. Ms. Klykken-Urtz stated this was correct.

Ms. Klykken-Urtz stated the reason she had asked for the boat storage was that this area was a spot on the property that would not need any work done to it. It is a flat area and has good coverage from Coolidge Hill. She stated the other reason she is doing this is for financial reasons. She stated she had spoken with a person that deals with boats for a living, and they told her the 2,500 sq. ft. that is allowed would only allow for 8 to 9 boats. She stated she has never done this before and she detailed what she was told would be the cost vs. profit to the Board. Ms. Klykken-Urtz explained that this was not merely a profit seeking project, it was also so they could maintain their house.

Lorraine Lefevre stated that boat storage up to 2,500 sq. ft. was allowed in her area, she asked this variance was to allow more area for storage. Atty. Muller explained that they are not asking permission for boat storage, they are asking for a variance to allow the extra area.

Ms. Klykken-Urtz detailed the setbacks on the plans to the Board. She stated the setback from Deer Creek is 85' from her property line which is more than double the requirement. She explained that it is over 100' from Coolidge Hill which is also more than double the requirement.

Tom McGurl asked about the amount of boats that would fit in a 2,500 sq. ft. area. Ms. Klykken-Urtz stated 8 to 9 boats.

Tom McGurl asked if they were allowed 30 boats, figuring on the high side, they could potentially make about \$15,000. Ms. Klykken-Urtz stated this was correct. She explained that due to her illness she has not been able to work the jobs or amount of hours that she has always worked and she is just trying to do something to accommodate her loss of income.

Tom McGurl stated this is a very large variance they would like to achieve and it is only necessary to have 10,000 sq. ft. to fit this amount of boats she was looking for in. Ms. Klykken-Urtz agreed and stated she was told that she may be able to accommodate more boats in this area but she is only looking for 30 to accommodate her loss of wages. Tom McGurl stated he was not trying to fault her for that, but this is a very large variance and he wanted to know if she would be amiable to seeing if there was a way to reduce the size of the variance and get her the amount of boats she is looking for. Ms. Klykken-Urtz replied absolutely. She stated the whole reason it is 20,000 sq. ft. is this was the area on her property that is flat and would not need any work to accommodate this endeavor. She is willing to work with anyone on this.

Joy Barcome asked if this would require a use variance. Zoning Administrator, Pamela Kenyon stated it was an area variance. Atty. Muller stated it was only an area variance. He stated the Town of Bolton interpretation is it is only an area variance, it has to do with bulk, size and dimension.

Atty. Muller read letters of concern from the following

- Mark and Peggy Turner
- Richard & Joan Cleary
- E-mail from Robin Smith of F.R. Smith Marina
- John Caffry of Caffry & Flower representing the Deer Creek Association

Atty. Muller read letters in favor of the project from the following:

- Jeremy Coon
- John Urtz

Claudia Braymer of Caffry & Flower stated the following

- They were not clear if they are seeking not 29,000 sq. ft. or if it had been reduced to 20,000 sq. ft.; either way it is still substantial.
- They sympathize with Ms. Klykken-Urtz, but they ask that this application be denied.
- This will be a large commercial use by definition of the Zoning Code.
- This is a big parking lot.
- It will be visible from the Deer Creek Road and the uphill properties in this subdivision.
- The applicant has not shown any grounds of unique features and in accordance with the law, finances are not a consideration for a variance.
- 20,000 sq. ft. is still a substantial amount.
- There will be impacts to the neighborhood such as visual, traffic, possible wetlands and on-sight surface water.
- This is clearly a self-created difficulty.
- They respectively disagree with the Town Attorney and believe that this is use variance.
- They would like the Board to deny the application.

Tom Clements of the Clements Firm stated the following;

- The Clements Firm representing Dr. Shirley Ann Jackson
- They are sympathetic to the applicant's personal situation, but they think this is a dangerous precedent for the Town to set if they make exceptions to the Zoning Ordinance in order to provide temporary relief to certain individuals.
- The application should not be approved because it is incomplete and inconsistent.
- The applicant has not demonstrated that the project will not have a significant visual impact on the neighborhood, as required by the Ordinance.
- The application does not define exactly where boats would be stored.
- There are no elevations supplied with the application.
- The color of the boat covers to be used are not disclosed.
- The applicant does not set forth her specific financial goals, so how is the Board to know what the minimum variance required is.
- It does not appear that the benefit to the Applicant would out-weigh the detriment to the health, safety and welfare of the community or neighborhood around the Applicant's property if the variance were granted.
- The presence of unsightly stored boats, in sight of public rights of way and neighboring homes will be a detriment to nearby properties.
- There is a feasible alternative to this variance: she should buy or lease land in an appropriate commercial zone.
- The Applicant is seeking an area variance that would increase the boat storage area by 800%.
- The proposed project will have an aesthetic impact of the neighborhood.
- Spring and fall stored boats will block sunlight, leading to the potential for soil erosion and sediment run-off into neighboring streams.
- The Applicant should have acquired different property that was appropriately zoned if her desire was to carry on a large-scale commercial boat storage business.
- This is clearly a self-created hardship.

- In this case, there is no “practical difficulty” in the Applicant continuing to use her property for residential purposes. The only “practical difficulty” comes from the Applicant trying to use her residential property for commercial purposes.
- They believe that the application proposes the wrong project on the wrong property for all the wrong reasons, and respectfully ask that the Board deny the application.

John Whitney inquired why they did not make a use variance argument. Atty. Clements stated it was a very sophisticated argument, that Mr. Caffry supports with a decision from our local Supreme Court, which he detailed. He explained that he had not read the case to know if he agreed with it or not. He encouraged the Board to read it.

Chris Navitsky, Lake George Waterkeeper expressed the following concerns:

- Concerns with permitted/unpermitted clearing and disturbance on the property and the negative impacts this has on the resources of the Town.
- The proposed variance request proposes a significant increase in intensity of commercial use, especially in an area that has designated A.P.A. jurisdictional wetlands according to the County mapping.
- The proposed density and coverage variance will result in an undesirable change in the character of the neighborhood.
- The requested variance is extremely substantial.
- The proposed project will have an adverse impact on environmental conditions in the neighborhood and water resources from stormwater runoff and disturbance.
- He recommends that the ZBA deny the requested variance application due to the intensity of the proposed commercial use and the lack of environmental and neighborhood protection measures.

Peter Tomasi, 43 Deer Creek Road:

- They moved up here for a little slice of heaven.
- It is disheartening to think they will be looking at a parking lot full of boats.

Ms. Klykken-Urtz stated that when she spoke to the A.P.A. they stated that she should mark exactly where the boats may be placed. She detailed it on the plan and handed out photos to the Board. She stated she could not see her Deer Creek neighbors’ homes from this area, she would have to walk through the woods to the edge of her property line to see them. She said to address the comment that she should have leased or bought commercial property if she wanted to go into the boat storage business; she did not grow up thinking she wanted to store boats. She was put on the deed to this property after she and her husband were married.

Jeff Anthony inquired about the Warren County Planning Department recommendations. Zoning Administrator, Pamela Kenyon replied that they had not heard from them.

Zoning Administrator, Pamela Kenyon inquired how many square feet the Applicant was proposing. Ms. Klykken-Urtz stated she was proposing to place 30 boats, and after the setbacks it would be about 19,458 ft. She explained that the other side of the property which would be

used for personal storage like her canoe is approximately 8,000 or 9,000 square feet. This is not part of the request.

Jeff Anthony inquired if no response from Warren County constituted a default approval. Atty. Muller stated it was neutral. It was not a recommendation and it certainly was not negative. It could not be construed as negative. Zoning Administrator, Pamela Kenyon stated that they have not received correspondence from the Warren County Planning Department for several months until after the Board meetings.

Holly Dansbury asked if this variance was granted would it run with the land. Atty. Muller stated that any grant of a variance runs with the land because it is the land that deserves the variance, not the applicant.

Jeff Anthony stated they had to make their decision based on what the land may handle not what the applicant may desire. Atty. Muller agreed stating the Board needed to stay on task with the balancing questions.

John Whitney stated he was very persuaded by the use variance arguments presented tonight, and he is wondering if they should get some sort of external input on this. He does believe that there is a substantial difference between a 2,500 sq. ft. and a 20,000 or 30,000 sq. ft. facility. Atty. Muller stated that the Board can interpret this Code. This was an interpretation by the Zoning Administrator with Council's recommendation to her. He stated this was not actually specific to this application. John Whitney stated this is why he believes an external input would be relevant. He stated this is really a substantial issue as to whether this is a use or area variance. Atty. Muller explained that they may not need to reach this issue if they determine an area variance has not been established.

Jeff Anthony stated that the applicant had an option to choose if she would like to table the application to provide more information.

Tom McGurl stated that he would like to see the applicant try to look for a smaller variance. At this time she is going for the maximum.

Jeff Anthony stated there were comments made this evening on the visibility from Coolidge Hill Road and soil stability and erosion, wetlands and she has an option to table this application to address these issues. Ms. Klykken-Urtz said she has a 2005 letter from the A.P.A. that the property is in compliance with the terms of the settlement agreement and it was a closed case in terms of clearing and wetlands. She stated she would like to table the application to address all the questions.

Mr. Tomasi inquired if they would be allowed to speak again at the next meeting and could they show pictures of what it looked like in the fall. Atty. Muller replied that they would. Jeff Anthony stated they would not be holding up the application until the fall, the applicant may bring it back next month if she chooses to. Atty. Muller agreed. Mr. Tomasi asked if the Board could make a value judgement without seeing the foliage. Jeff Anthony stated that if the Board felt it was that important to see an off leaf situation it was up to them to make that

determination; he believes that is asking a lot of the applicant. Mr. Tomasi said it would make sense to him if they could see where the boats are for a full year. Atty. Muller stated they should not delay the application to have a 4 season aspect. He does not believe it is fair to hold up the applicant until November.

RESOLUTION

Now, upon motion duly made by John Whitney and seconded by, Lorraine Lefevé it is resolved that the ZBA does hereby table the variance request at the applicant's request. Jason Saris recused himself. **All others in favor. Motion Carried.**

- 5. V15-45 FOY, EDWARD.** Represented by Joseph Haines. For a proposed 3-unit townhouse project on individual lots, seeks area variances for the following. **1) Townhouse units. Density:** 20,000 square feet is required for each parcel. 3,652 square feet is proposed for Lot 1, 2,728 square feet is proposed for Lot 2. 4,830 square feet is proposed for Lot 3. **Lot Width:** 50' is required. 33'11" is proposed for Lot 1, 27' is proposed for Lots 2 and 45'8" is proposed for Lot 3. **Lot Depth:** 100' is required: 98'5" is proposed for Lot 1 and 91'2" is proposed for Lot 3. **Front Yard Setbacks:** 30' is required. 22' is proposed from Lake Shore Drive for Lot 1, 20 is proposed from Lake Shore Drive for Lot 2 and 22' is proposed from Lake Shore Drive and 13'1" is proposed from Norowal Road for Lot 3. **Side Setbacks:** A total of 20' is required for each lot. 8'2" is proposed from the exterior lot line on Lot 1, 0' is proposed for all interior lot lines. **Lot coverage:** 40% is allowed: 42.3% is proposed for Lot 2 and 41.9% is proposed for Lot 3. **2) Retaining Wall: Side Setbacks.** A total of 20' is required, 2'5" is proposed on Lot 1 and 0' is proposed for exterior lots lines of Lots 1 & 2. **Rear Setback:** 15' is required, 6" is proposed for Lots 1 & 2. Section 171.15, Block 3, Lot 28, Zone GB5000. Property Location: 4992 Lake Shore Drive. Subject to WCPS review. NOTE: See SPR16-16 and SD16-05 associated with this project.

Joseph Haines presented the following;

- They have decided to reduce the project to a 3-unit townhouse project.
- This reduces the footprint of the building and the scale of the principle structure.
- He detailed the setbacks on the plans to the Board.
- Front & side yard variances are the same.
- They pulled the unit itself away from the private road.
- The majority of the side yard variances are due to 0 lot lines that goes along with having townhouses.
- They are subdividing this one building into 3 properties.
- They are proposing 3 parking spaces for each unit.
- There are rec rooms in the bottom of the building.
- He detailed the rendering and plans to the Board.
- There are 3 bedrooms in each unit, one is on the first floor and the other 2 are upstairs.
- They have reduced the scale on the front elevation a little bit.

Tom McGurl inquired about the previous front elevation. Mr. Haines detailed it on the rendering and explained the stairs were pulled up making a higher line.

- They have addressed and submitted a stormwater plan addressing all the comments brought up at the previous meeting. This plan meets the current regulations

Jason Saris asked about the lot depth on lot 2. Zoning Administrator, Pamela Kenyon stated that lot 2 met the requirements.

Holly Dansbury asked if the stormwater plan had been signed off by Nace Engineering. Zoning Administrator, Pamela Kenyon stated it had been.

Holly Dansbury inquired about the legal issues for the side road access. Mr. Haines stated that they were in negotiations right now at the attorney level. Edward Foy stated they have been talking to Norowal about this issue and they have been using and accessing this road since the 1920's. He stated that it is being worked on. Jason Saris stated that the property is not land locked.

Edward Foy stated they have switched to pervious pavement.

Joy Barcome asked if there was an alternate entrance if this access was not obtained. Mr. Haines stated not with this present design. He stated that parking in the back was much nicer aesthetically and better for safety reasons. Jason Saris stated this was a more attractive street scape.

Joy Barcome asked if the Board could approve this with a condition. Jason Saris stated that if they can't obtain the access they would have to redo their plans. Atty. Muller stated that it was not a question of Mr. Foy's access, there is no dispute that he has acquired it by use, what he would discover though, is that when he sold the first unit, the bank would pick up that there was not a deeded access and the loan would not be achieved. Jason Saris said that if he receives the deeded access it will end at the property line and not extend through the Norowal parking lot. Atty. Muller agreed.

Lorraine Lefevre inquired if they would be changing the sidewalks in the front. Atty. Muller stated that the sidewalks were owned by the State of New York.

Atty. Muller read correspondence with concerns about property line setbacks from Alexander Gabriels III.

Atty. Muller addressed this concern and stated this has been done before in other subdivisions where there are 0 line setbacks with common walls. He said that it is correct that the Zoning Ordinance as it currently is written does not deal with the issue correctly. It is also a matter of law that the Planning Board cannot give a variance. If the Board feels uncomfortable about the point raised by Mr. Gabriels, they would refer this item to the Planning Board to let them take a broad look at the application before they ever advance upon granting the variances. This is generally done when they feel that they do not want to box in the Planning Board. This would allow them some design aspect to this application and some say as a referral back with an

advisory opinion and then the Zoning Board could take action. Jason Saris asked if the property line issue was on the Planning Board agenda. Atty. Muller stated it was not.

John Whitney asked if they had an approved subdivision. Atty. Muller stated they did not. He said they would never get an unfinished application to the Planning Board for approvals until you get the ZBA to line it up with variances so that it is available for the Planning Board to give consideration too. The Planning Board cannot make any approval on something that does not fit perfectly in the Code. John Whitney asked if the Planning Board could approve a subdivision with 3 lots which they then could come back to the Zoning Board and ask for 0' setbacks. Atty. Muller stated they could if it met the Code. Jason Saris stated that it would not meet the Code without a variance. He said if they granted the variance and it went to the Planning Board for subdivision review they would not be bound to approve it. There might be some value in asking the Planning Board to review this prior to the Zoning Board taking action on it, in case they want to tweak it. Atty. Muller agreed, stating that they have done this before. Jason Saris stated they had done this with this applicant's last application, but the applicant had tabled the application and revised the plan, so they never ended up going to the Planning Board.

Atty. Muller stated that they could send it to the Planning Board for some input and feedback.

Jeff Anthony stated that this is exactly what happened for the town houses down the street. He said they had a slew of setback issues and the only way to solve it was to grant a variance. This is done all over the state. Atty. Muller stated that was correct.

Jason Saris stated he did not have a concern about 0' setbacks, but on the other hand, as far as this type of design, he values the Planning Board's input for the Site Plan Review part of it. Jeff Anthony stated the Planning Board has review of the technical issues. They have a letter from the Town Engineer saying he approves the stormwater with a couple of exceptions. He stated his personal opinion was he does not see why they should hold the applicant up.

Holly Dansbury stated she agreed, they basically had a lot of concern over the stormwater design and it has been addressed.

Tom McGurl stated he would like to hear what the Planning Board thinks. Mr. Haines stated if you took another type of use for this property, you could have a larger footprint. John Whitney stated that the GB district is favorable to general business uses, not to residential subdivisions. As a residential subdivision, the General Business conditions do not apply. Mr. Haines stated he understands, but they could build a bigger building if they did it as a commercial building. This project is being held back due to its type of use.

Jason Saris stated that he does not believe that town homes were a consideration when the Ordinance was written. He understands what they are saying, but the conversation about what should be considered as a zone, should be held with the Town Board because they control the Ordinance. This Board has to go by the Ordinance in place. His concern is not so much the lot coverage, but the density, when you look at the balancing criteria for whether the variances are substantial, are the hurdles that need to be supported. Mr. Haines stated that he does not

believe this would not have a dramatic impact to the neighborhood at this location, a large commercial building would have more of an impact. Other properties in the down town area have multiple family houses. He does not believe they are over-developing the property, they listened to the Board and have reduced the number of units they were requesting. All of the landscaping and changes they have made will enhance the neighborhood.

Jason Saris said that the applicant is saying that the area variance requested is not substantial, he does know how that they can say it is not. Holly Dansbury stated it could be substantial, but weighing it against what the use is. Jason Saris stated the density requirement is at best is for one, this is three. Being substantial does not necessarily mean you have to say no. Mr. Haines stated it was substantial to the Town's Zoning Ordinance, but the impact was not substantial.

John Whitney stated they could argue that the impact was not substantial, but the variance request itself is substantial. Jason Saris stated that he agreed, he did not think the impact was substantial, but it would be a substantial amount relief from the Ordinance. Holly Dansbury stated this was the area of the Town where they would like it to be denser. She believes it is a good use. She stated we have commercial buildings now that can't be filled. Jason Saris stated again, whether stuff could be sold or not, is not the Boards' consideration. Holly Dansbury stated she is talking about balancing what is good for the environment and they have met the environmental issues. Jason Saris stated he does not have a problem with 1 and 2, he does have an issue with 3; it is substantial. He does not believe there will be any problem with number 4, but he does believe that the answer to number 5 is that it is self-created. He stated that does not necessarily make it that you would have to deny it.

John Whitney stated that this is where it goes back to sending it to the Planning Board last time for input. It did not happen the last time for whatever reason, as they have amended the application. There is this whole "townhouseification" of the town. It is contrary to the Code, and the question is where the Planning Board sees this going. There is nothing special to this property, but it gets close to a precedence setting position. The second question is, do they even want a subdivision there, which is another substantial Planning Board concern, that they have not had a chance to weigh in on. He is not certain that it is reasonable for this Board to assume what the Planning Board wants. Lorraine Lefevre asked if there was a point where the Town could say what their thoughts were about town houses to help the Zoning Board understand what they were looking for. Jason Saris said that was up to the Town Board, right now one could only assume that the Town Board is aware of the Ordinance as it stands; what the Ordinance allows and what it doesn't and supports it, if they wanted it understood differently they would change it. This is what the Zoning Board must go by. Lorraine Lefevre stated she would like them to be more specific. John Whitney stated it was always a balance. Jason Saris stated he would be way more comfortable had the Ordinance been recently reviewed. Atty. Muller stated it was permitted to have residential development in the GB5000. This applicant does not have the required 20,000 sq. ft. of area to meet the requirement without acquiring a variance.

John Whitney asked if the Code specifies single family or if it just said residential. Atty. Muller stated he believed it said single family. Mr. Haines stated it said residential detached unit 20,000 and an apartment says 7,500. Atty. Muller stated they were working on the Zoning

Ordinance which came from an advisory consultant, but he does not believe that there were any dramatic changes within the GB5000.

Chris Navitsky, Lake George Waterkeeper stated the following:

- Stated that the application has moved in a better direction to minimize the variance.
- They still have problems with the density.
- He really questions the stormwater plan.
- They respect the use of pervious pavement but questions the fact that it will be into groundwater.
- He questions the 8' side setback to the south, and if they have room to put the proposed stormwater trench without grading off to the neighbor's property.
- He really questions the stormwater.

Holly Dansbury asked if they would be creating a HOA. Mr. Haines stated they would be.

Jason Saris inquired if the Board would like to refer this application to the Planning Board.

Tom McGurl stated he would like to refer the application for review.

Jeff Anthony stated that comment #2 in the Tom Nace sign off letter raises some concern. Mr. Haines stated that this comment was on the previous drawings and it had been addressed. Zoning Administrator, Pamela Kenyon stated that there is a letter from Nace Engineering dated May 26, 2016 stating that the comments had been addressed and they no further comments.

RESOLUTION

Now, upon motion duly made by Tom McGurl and seconded by, John Whitney it is resolved that the ZBA does hereby refer this application to the Planning Board for an advisory opinion on stormwater measures, project design and subdivision. Holly Dansbury, Lorraine Lefevre & Joy Barcome opposed. **All others in favor. Motion Carried.**

Jason Saris asked if the Board was aware that the Scheiber variance being overturned by the A.P.A. Jason Saris asked Atty. Muller if he was aware of the specific details of this. Atty. Muller stated he was not aware of the specific details in this letter, but he is aware of the fact that Mr. Scheiber was turned down by the A.P.A. Jason Saris stated he knew that the A.P.A. had sent their concerns and this Board tried to address them. Atty. Muller asked this was the third time the applicant had been turned down. Zoning Administrator, Pamela Kenyon stated it had been denied by the Zoning Board several times and then it was reversed by the A.P.A. at least once or twice. Atty. Muller stated he was suspicious that this was the third shot at the A.P.A. Holly Dansbury stated that they had gone through the criteria thoroughly. Jason Saris asked if the Town had an approved language plan with the A.P.A. and if the Zoning Board was the lead agency in these things. He asked if the A.P.A. had the power of review. Atty. Muller stated the Zoning Board was the lead agency. He explained that the A.P.A. had the veto power on two specific issues where the ZBA grants a variance for density or shore line setback relief

by statute. Jason Saris stated that they had to have a reason for this. Atty. Muller said yes, but they have wide and superior jurisdiction in those two specifically reserved areas. With the Town's approved Land Use Ordinance, they can exert all that they are supposed to do under town law, make an ample record of it and the A.P.A. can veto it. To the extent that they do, the relief that needs to be sought by the applicant would be in a proceeding against the A.P.A. That has yet to be challenged. At one particular point around 5 to 8 years ago they had invited the A.P.A. representatives down to have a discussion about this. He believes it was Brian Grisi, before he retired, acknowledged and admitted that their regulatory criteria of hardship would never really be able to be demonstrated and they should ignore it, but they should deal with the practical difficulty. Atty. Muller stated that his suspicion is that maybe the new staff does not adhere to Brian Grisi's advice and they are looking for both practical difficulty and hardship. He cited a Court of Appeals case that basically has admonished, reprimanded and reversed Zoning Board decisions where the ZBA's departed from the criteria specified in the Town Law where they do all their balancing tests; they were told no, you can't depart from the it, that is the criteria they must follow. When you make that argument to the A.P.A. and say we are following the Town Law and fulfilling all the criteria, this is improved land use ordinance and those are the State criteria, how did you come to the expectation that we need to do something extra? The A.P.A. will answer that if the State Legislature felt it was important to change the A.P.A. criteria, they would have. That is the answer they are left with. It is a controversy that has not been formerly entertained in any court. The applicant in this instance could appeal it, if he takes action within 30 days and basically sues the A.P.A. It is a huge expense and this is why many people don't do it. We have probably been at that juncture procedurally 5 or 6 times in the last decade. I think here, the A.P.A. generally deals with the fact that they don't think the record is not sufficiently and amply explaining the practical difficulty. Atty. Muller read the definition of the A.P.A. term for practical difficulty. He stated the applicant is advised by the A.P.A. to consider the redesign of any project to comply with all shoreline restrictions wherever practical. This is their criteria and it lawful for them to impose it, because we as a Town acknowledge that we have an approved Land Use Ordinance that includes oversight and appellate review by the A.P.A. on any variance for density or shore line setbacks. He would encourage the Board to do the best they can with the applications and the best they can to fulfill all the criteria with an ample record.

The meeting was adjourned at 8:47.

Minutes respectfully submitted by Kate Persons