

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, May 16, 2005
6:30 p.m.
-

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 = Dept of Environmental Conservation

Present: Tony DePace, Kam Hoopes, Meredith McComb, Tom McGurl, Michael Murray, Bill Pfau, Zoning Administrator Pam Kenyon, Town Counsel Michael Muller

Absent: Chairman Greg Smith

Acting Chairman B. Pfau opened the meeting at 6:35 pm by asking for corrections to the April 18, 2005 ZBA minutes. M. McComb said (1) on page 15, #5 should read, "The alleged difficulty is *not* self-created..." (2) on page 19, it should be noted in the minutes that there was a brief discussion by the ZBA Members on this agenda item and they were all in favor of this project and (3) item #4 in resolutions should read, "The request will have no adverse, physical and environmental effects..." K. Hoopes said (1) on page 25, the second to last paragraph, sentence number four should read, "...the reduction in *impermeable* surface is great..." and (2) on page 28, second paragraph, first sentence should read, "K. Hoopes said the ZBA does not deal with the issue of septic..."

Motion by M. McComb to approve the April 18, 2005 minutes as amended. Seconded by M. Murray. All in favor. Motion carried.

1) V05-12 TEKMITCHOV, VASILIKI. To alter existing structure, specifically to create a second story deck over existing restaurant/bar area to accommodate additional seating, seeks area variance for deficient 1) front yard setback: 30' is required, 25' is proposed from Route 9N; 2) front yard setback: 30' is required, 1' is proposed from Congers Point North; and 3) 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 Lilly'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 tabled last month pending a recommendation by the PB. The PB unanimously recommended denial.

This item was tabled per the applicant's request.

2) 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. Subject to WCPB and APA review. This item was tabled last month pending a recommendation by the PB. The PB recommended approval 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.

Hugh Roberts, representing Delczeg & Donohue Builders, Inc. gave an overview of the project and said they believe (1) the variance requests were not substantial, (2) the neighborhood impact is positive, (3) the impact will be positive for the lake, (4) the changes will be an aesthetic improvement to the site, (5) at the April ZBA meeting concerns were expressed about the cinderblock structure and they were referred to the PB, (6) they addressed the concern and introduced a proposal to the PB for a small lakeside cottage instead of a larger structure in the footprint as a compromise, (7) the PB liked their proposal and unanimously endorsed it, and (8) several PB members expressed concerns regarding trees and the size of houses.

B. Pfau asked (1) if the small lakeside cottage proposed for Lot #3 as discussed with the PB is the small home measuring 24' x 32', (2) if there is still enough room within the footprint to build the small house and (3) what the discussion with the PB was about the setbacks from Lake George. Hugh Roberts answered, (1) yes, (2) yes and (3) their proposal was that the front wall of the cottage be located at the present front wall of the lower structure, which puts the small cottage back about 20' from the lake at the farthest point. M. McComb said (1) she was standing on the end of the deck looking down, and when you look straight down from the deck, you see water, (2) the deck on the upper level is about 6-8' wide, so the building isn't 20' back from the water at that point. Hugh Roberts said the lower section is 20' back from the water. K. Hoopes said the footprints are measured from the drip line, therefore there is a 0' setback, to which Hugh Roberts responded, (1) that is correct, and (2) in response to M. McComb's question as to the frontline of the proposed cottage structure, it would be located where the lower level front wall is located, which would be about 20' back from the water. K. Hoopes said (1) he has serious problems with this, (2) the cottage on the north lot (Lot #1) has 0' setback, (3) the building on Lot #3 also has a 0' setback, (3) he was under the impression the cottage on Lot #1 was going to be removed, but now he sees it is just the kitchen of the cottage that will be removed, (4) he has no problem with inheriting the original house if it is a 0' setback, (5) he has a real problem with the cottage and with the cinderblock building, (6) he feels the ZBA is being asked to horse-trade on substandard frontage numbers, (7) he has a real problem with grand-fathering the 0' setbacks, and (8) this project should be a clean slate in as much as possible, (9) the cinderblock building is the ugliest building on Lake George. B. Pfau said he didn't recall the ZBA discussing the cottage on Lot #1 very much at the last meeting and he asked if the applicant had any discussion with the PB, to which Hugh Roberts answered by saying, he did not remember any concern expressed by the PB. M. McComb said regarding Lot #1 (1) she doesn't remember knowing the cottage was on the property line as it is now shown, (2) this is a

much better map than the ZBA was working with at the last meeting, since it is showing the locations, (3) there seem to be really gorgeous views, which are the currency of Lake George waterfront, (4) there are currently the cottage, the original house and the cinderblock building right on the property lines at each edge of the property, (5) she does not see how the ZBA can be convinced the cinderblock building will remain a 24' x 32' one-story house, (6) it is certainly not the trend to build expensive small houses, (7) in the applicants' discussion with the PB on this matter, it says the applicant wants to preserve the right to use, repair, rebuild, the deck/patio area at the waterfront, (8) she does not know how the ZBA can guarantee it will not turn into a large house on property line, and (9) she is also troubled that the ZBA is bending over backwards to preserve one cabin colony, then creating new substandard waterfront lots to get rid of another one. M. McComb asked (1) for the applicant to show where the 75' setback is and (2) how long the cinderblock building is and Hugh Roberts answered by saying (1) the structure is 72' and (2) the frontline at that point would be 3' in front of the building. M. McComb said (1) if the ZBA divides this up into 3 lots and a house is built parallel to the waterfront on the middle lot, the logical place for that would be where the swing-set and the sable mercury are currently located, and then the applicant builds 30' of boathouse on that lot, visually it is going to look like one solid line of houses, (3) she wonders if there isn't a way of making the developers happy with a larger footprint close to the water on the cinderblock site somehow. Hugh Roberts said he would like to (1) make his presentation, (2) show the ZBA some pictures and drawings, (3) let the ZBA know what their thoughts are and where they are coming from, which will answer a lot of the ZBA's questions. K. Hoopes said (1) with all due respect to the PB, when the ZBA sends these things to the PB, the ZBA is interested in how its decisions might affect the PB's site plan reviews, (2) he is afraid the PB occasionally let themselves get slipped into pretending they are the ZBA, (3) the PB has traded away saying that they would go with the 10' setback from the shore lot line, but still allow the 0' setback of the building that is there in roughly the same size, then at the same time they say that the consideration has to be one-story, (4) if the ZBA went with one-story, that just opens it up for coming back to the ZBA again when the applicant wants to put the second-story on, because it is a 24' x 32' footprint and the ZBA looks somewhat favorably on applicants staying within their footprints, (5) at this point, he would like to see those two buildings (the cottage on Lot #1 and the cinderblock building on Lot #3) removed and (6) since no money has changed hands yet, the project should start with a clean slate and the ZBA should say those buildings (the cottage on Lot #1 and the cinderblock building on Lot #3) have to go. K. Hoopes asked if the log cabin, where it currently sits, is well within the setbacks, to which Hugh Roberts answered, the log cabin is about 100' back and said (2) as it pertains to the ZBA granting them an alternate option in the tearing down of the southerly building, the garage/motel, the terms the applicant is prepared to agree to, they can deed restrict to that extent, so that structure or location cannot be altered in any way different than the parameters they specify. K. Hoopes said (1) one of the five items that the ZBA has to establish when granting an area variance is whether or not the alleged difficulty is self-created and (2) this, to him, seems to be 100% self-created. T. McGurl said (1) as he drove in there, it seems like a beautiful two-lot subdivision with plenty of space and room for building some good-sized homes with boathouses and docks and (2) it seems that in a three-lot subdivision, which is self-created, the ZBA is trying to figure out how to fit

everything in there and not lose anything in the same process. Hugh Roberts handed out photographs and said (1) the two purposes of showing the photographs are; (A) as it has to do with the structure at the ground by the waterfront and the structural role some of this plays and (B) to show the ZBA how the building itself is in comparison to its neighbors down in a hole that is below it, and anything that goes in there that is substantially smaller will disappear into that hillside, (2) Picture #3 shows the stonework built up on the adjacent parcel to the south, the plantings, the retaining wall and the retaining wall on the applicants' property, (3) the applicant believes if all of that is removed, it will probably result in an unstable slope to the property to the south of them, and (4) they believe the concrete footer needs to stay to preserve the slope and soil stability in that location. B. Pfau asked if the point is that the applicant cannot remove the whole thing, to which Hugh Roberts said, partly, there is a justifiable reason for keeping some of the infrastructure that exists there. M. McComb said (1) she also finds some justification in the fact that the trees are gone there now and (2) if the applicant cuts another home site, those nice woods will go with them. Hugh Roberts said (1) Picture #1 is a reproduction of the photograph of the existing structure, and (2) Picture #2 is a scale rendering of the proposed 24' x 32' guesthouse, not a primary residence, but a guesthouse, a cottage.

B. Pfau asked if the main building will remain along with the log cabin on Lot #3, to which Hugh Roberts answered, (1) he does not think so, (2) he thinks the log cabin will probably come down, because it is not winterized, and (3) it is not the applicants' decision to make, it is the buyer's decision to make and someone may do a couple of things; they may want to (A) modify and winterize the log cabin or (B) take it down and make a newer house because it is not modifiable. Hugh Roberts said (1) Sheet #3 shows the outline of the proposed cottage in relationship to what exists there right now, which is substantially smaller, (2) Sheet #4 is the plan view that shows the top down of the proposed cottage. B. Pfau asked what the setbacks are for the proposal, to which Hugh Roberts answered by saying, the setbacks for this proposal are 10' off the south line and no closer to the water than the existing concrete block wall. M. McComb said she would feel much more comfortable with numbers. Hugh Roberts said they have a specific proposal for the ZBA tonight that defines it exactly, including the building height, a roofline no higher than 17', which is reflected in the previous drawing. M. McComb asked about the setback from the water and Hugh Roberts referred to one of his drawings and said this is the existing front wall to the lower level of the structure. B. Pfau asked for Hugh Roberts to draw the setback in on another drawing that was submitted, and Hugh Roberts approached the ZBA at their posts and the item and drawings were discussed further out of view of those in attendance.

K. Hoopes read the item presented verbatim from the agenda and said the applicant is asking for further variances which are not in the agenda, to which Counsel agreed. Hugh Roberts said (1) they didn't come to the ZBA with the plan to address variances for the Lot #3 structure at the waterfront and (2) they assumed originally that might be addressed at the PB when they came for site plan approval of the individual lots, but they are here with it, because it is an issue the ZBA raised. K. Hoopes said (1) it is a ZBA issue, (2) it is bordering on an incomplete application, because the applicant had these plans in mind

and (3) the cinderblock building on Lot #3 and the log cabin on Lot #1 being proposed to be kept, both require very serious zoning variances. Hugh Roberts said the cabin on the north line is in existing condition and not being modified at all, other than the kitchen being removed and it is up against a rock hillside and close to the property line, but it does not impact any way whatsoever to the north, because of a rocky wall there. K. Hoopes said (1) this is an interesting situation, because the applicant is right, it is pre-existing, (2) if the applicant were the owner of that property, he would give him (Hugh Roberts) the cabin on the north line against the rock hillside as a pre-existing non-conforming issue, (3) the ZBA is here to decide whether or not to allow the applicant to take two lots and turn them into three lots, (4) he finds it compelling that the applicant has plenty of land, but they are forced into a narrower arrangement than they need, so the applicant needs reasonable relief from the required lakefront width, which is all reasonable, (5) he is having a real problem with the two buildings, because the applicant is not the customer and is talking essentially spec. houses, (6) the applicant doesn't know who the customer is going to be and (7) the applicant is trying to maintain these parameters for an imaginary future buyer. B. Pfau said (1) the applicant does not need a variance for that particular structure on Lot #1, as it is pre-existing and (2) he honestly does not remember that much discussion took place on that particular building and (3) doesn't see it mentioned in the PB minutes either. M. McComb asked if it takes it off the table if the ZBA doesn't see something the first time, to which B. Pfau answered, no. M. McComb said (1) there are a lot of buildings down there and a lot of things to look at and (2) the fact that she missed it the last time doesn't mean she doesn't want to look at it this time. K. Hoopes said the key issue is going to be the building down by the water, which is not even the primary dwelling.

Hugh Roberts said some positives for the proposal they are making to rebuild on the large footprint with a small waterfront cottage are; (1) it allows for an opportunity for someone to build not as large a house up on the hill behind it, (2) when they have a cottage down by the waterfront, which will probably be seasonally used, they won't need to build as big a house up above, (3) it will be visually attractive and provide some diversity to the shorefront, (4) the creation of this little structure will allow something interesting. He added that they (1) want to make the project successful and attractive to the buyer of each of those lots, (2) they want to create the project in a way that it is interesting and appealing to consumers, and (3) the small cottage down on the waterfront will allow them, probably, to deal with a buyer who will not need as big a house on the hill above it. M. McComb said it could happen or somebody who has the money for a really fabulous cottage may do something else. B. Pfau asked if the applicant is considering deed restrictions on the main house on this property and Hugh Roberts answered by saying (1) they are considering moving the sideline setbacks in to limit the size of the house, (2) the sideline setbacks are 20' and as a trade-off to be able to do this, they will move the northerly sideline setback from 20' to maybe 25'-30' and shrink the potential building size that would go there. Regarding the applicant's comments that the log cabin likely will be replaced because it is not year round, M. McComb asked (1) if that means that there would be a garage on this property as well, (2) if the middle lot is carved out of there, you wind up with, visually from the lake, wall-to-wall construction, (3) it seems to be people don't build their garages behind their house, they build them so they also have

a second-floor view of Lake George, if possible, which is another concern, (4) the shoreline is really diverse the way it is now from this incredibly unattractive cinderblock thing, but also an unusually densely wooded parcel and (5) there has been feedback from the public and the PB on how the trees can be kept. Hugh Roberts said (1) they have had all of the trees larger than 6" in diameter, within 100' from the lake, identified on the survey, (2) they have hired Dick Cipperly forester, to come in and evaluate the trees, (3) it is their objective to nurture, maintain and manage those trees that heavily forest the front of that property and (4) they are prepared to deal with it in a legal way with restrictions to the property as it pertains to the cutting of those trees. K. Hoopes said these two lots will be sprouting boathouses and docks also. M. McComb said in the PB minutes, it contemplates the 30' boathouse for Lot #2. K. Hoopes said (1) regarding M. McComb's first impression of the shoreline, it is not going to be construction straight across, there would be screening, that's derigueur these days and (2) the first thing that will be seen from the lake is the boathouse and the dock. M. McComb said (1) she disagrees that it is derigueur to keep a screened waterfront, (2) looking at the property to the south of this one, there is precious little screening left on that one, and (3) you can't help but think someone else will come in and say their neighbor has no trees in his view. K. Hoopes said (1) when that lot to the south began, there was very little screening down by the water and (2) what was above was of a less than heroic nature. B. Pfau said (1) in any event, the applicant said he would be willing to deal with the trees over 6" in deeded restrictions, (2) in looking at this property from the shoreline, these are going to be expensive lots, so they are not going to be small houses on them, (3) he thinks the idea of a small cabin near the water on Lot #3 is not a bad idea, because you are not going to be looking at the block building anymore, (4) it would be an improvement, (5) the biggest difference is that there will be an additional house in the middle of the acreage on Lot #2 and (6) the cottage on Lot #1 is on the property line, but it is not an offensive building and it is tucked in the corner. M. McComb said (1) she agrees that the small cabin is a lovely improvement on Lot #1, (2) the notion of deed restrictions to keep the cabin that size is useful, but realistically, the ZBA has to figure that there is going to be a good-sized house added to it, and a garage, and probably a boathouse, where the docks are, (3) she has a hard time carving it up into three lots, (4) it seems like when you count up the number of buildings, that it is a big improvement in terms of density and (4) if you have a cottage of substantial and beautiful nature, and a house, and a garage on all three lots and they are all clustered down by the water, most of what is there now is going to be removed is more than 300' from the water. Hugh Roberts said (1) most of what is being removed is more than 300' from the water, (2) on Lot #3, the lot to the south with the proposed cottage on it, the current log cabin is about 100' back or so, and the terrain is a natural spot for building, (3) he honestly believes if they can't put a cottage there, then someone is going to want to build a house and move it closer to the water, rather than in the natural spot for it to be and (4) he personally believes that by utilizing this little cottage by the waterfront, it is going to give them an opportunity to have and to set that house farther back from the water. T. DePace asked if there would be deed restrictions regarding modifications made to the guest house on Lot #1, to which Hugh Roberts answered by saying, (1) yes, that is correct, they will deed restrict this property against any modifications to that waterfront cottage that is any different than what he is going to give to the ZBA in black and white, which defines its setbacks, its position and its

maximum height. T. DePace said, so this is just going to be a guest cottage with no kitchen and Hugh Roberts said (1) yes and (2) it takes away the need for the person who builds that large house to be right on top of the water, they can be up in the trees, because they've got their injection of water down at the cottage, (3) it creates a bookend at the south side of the property and in the middle, (4) they don't want to create an open scene with a lot of huge houses and (5) they want to create a very nice, very private, very special place. M. McComb said she'd go with the bookends, it is just the extra one in the middle that complicates things, and (2) this guesthouse can have a sink, microwave, dishwasher, and other items, just not a stove, which would constitute a kitchen.

K. Hoopes asked how legally binding deed restrictions are and Counsel answered by saying deed restrictions are probably superior to the zoning limitations and asked if there is a proposal by the ZBA that in relation to whatever it might grant, the ZBA would want to see specific deed restrictions. M. McComb said (1) Hugh Roberts has offered to put deed restrictions on the cottage that it may not be expanded in height or size. K. Hoopes asked if deed restrictions can be altered and M. McComb asked if an applicant can come apply for a variance from deed restrictions. Counsel answered by saying (1) no, you cannot apply for a variance from a deed restriction and (2) it is legally possible that if all of the parties that were similarly restricted, ex. Lots #1, #2 and #3, agreed amongst themselves on a future date to change something, that is entirely possible, unless within the deed restrictions it also said that any amendment to these deed restrictions must first also be reviewed and obtain the approval of the ZBA or the PB. B. Pfau asked what if the ZBA had a condition with the proposal that deed restrictions must be in place. M. McComb said Counsel is saying that the deed restrictions would be a matter of covenant between the three lot owners and the three lot owners could get together and change the deed restrictions on their lands and asked Counsel if this was accurate. Counsel said (1) it is possible and (2) if there is a set of deed restrictions then the ZBA is a party to any application to amend those deed restrictions, then the ZBA would be heard as a party. B. Pfau asked if the ZBA could do both; set deed restrictions and at the same time make it conditional that these particular deed restrictions be in effect and stay in effect. M. McComb said (1) part of the condition should be that the ZBA must be a party to any proposal to change the deed restrictions in the future, then it will be reviewed and (2) if the ZBA does not add this, then the parties on the lots could get together and change their own deed restrictions. T. McGurl asked if it is correct that if the ZBA is one of the four parties, they are only one voice and Counsel answered, yes. T. McGurl asked if it is the three homeowners living there that decide they are all equal voices, just because the fourth voice is the ZBA doesn't make a difference and Counsel answered by saying, being the ZBA makes a difference, but he would admit that if the matter had to go before a court of law, consideration would be different due to the fact that three lot owners seem to be in agreement, the judge would ask, "ZBA, what's your problem?"

K. Hoopes asked if the applicant is planning on building this as a spec. home, to which Hugh Roberts answered, no. K. Hoopes said (1) what the ZBA is doing is granting a variance to a future owner that the ZBA does not know, haven't met, haven't talked to, on the theory of all of the things the applicant has talked about, (2) the applicant's drawings are very nice, but the ZBA does not know if the future owner's drawings will

be as nice and (3) the variance will run with the land and that is the problem he has. Hugh Roberts said (1) that is a practical problem that runs with construction of anything, (2) once the site is in conformity, the owner designs it as long as it doesn't violate setbacks, it is in accordance with stormwater and meets the building codes, (3) that footprint doesn't allow for much other than what you are looking at, (4) there are not a lot of alternatives as a manner of designing that particular structure than what it is, with a simple roof and (5) he doesn't think the ZBA is dealing with colors and materials. K. Hoopes said (1) the ZBA is also dealing with architectural choices, lighting and other items and (2) it is the one-step-removed thing he has a problem with. M. McComb said (1) she can see the catch 22 of how do you sell it until you can ensure the buyer of what they're going to be able to do on it, (2) the ZBA usually grants variances for specific houses, (3) it is hard not to say that's a great place for a little cottage down there and (4) if this was a proposal for a two-lot subdivision to replace that and to put that cottage down there on the water, she would not have nearly the issue with it that she feels with the three-lot subdivision. B. Pfau said the three-lot subdivision is a big part of the applicant's proposal and it is either going to be yes or no to that and asked if the applicant wants to put the guest cottage in the footprint in order to not have to cut any trees. Brian Donohue said (1) the neighbors have done a very good job in screening the building, but in doing so, they have also created a retaining wall that is 6' tall and on top of that they have some evergreens that are 16'-18' tall above that, (2) if the applicant takes the building out of there, there is a question of what is going to hold those rocks up, (3) their proposal is that cottage and the footers on the south wall would remain and maybe be built off of for screening, (4) the footer needs to stay there to help hold the neighbors' rock wall up there and their trees and to enable the applicants to build the required attractive screen wall, (5) if the applicant is able to dovetail that cottage into the bank, there will be a retaining wall built into that cottage, which also will act as a collection basin for crushed stone and stormwater, (6) they have been working real hard in the last two months in developing this plan. B. Pfau asked if this is the reason the applicant wanted it within 10' of the property line, to which Brian Donohue answered, no, they want the footprint on the lake and there are reasons they have done what they've done.

T. DePace asked the applicant if it was correct (1) that they aren't ready to build the cottage, (2) that they are just seeking permission to build the cottage, (3) if the applicant sells the lot, they don't know if the owner of the lot is going to continue to build the cottage first or build the house first then go back to the cottage or no cottage at all, to which Brian Donohue answered yes to all questions. Hugh Roberts said (1) they had not intended on building the cottage, (2) they expect that the buyer of that property is going to want to build that cottage, and (3) they believe that will be the first property of the three to sell, (4) they are very concerned with the way it is done and the way it looks, because it will impact on the rest of the project and (5) they are going to want to see a buyer who comes in that does that. T. DePace asked if there would be a stipulation that this cottage has to be built first before the main house, because most people would want the main house done first before building the cottage, to which Hugh responded by saying (1) the buyer may stay in that log cabin for a period of time as an interim, (2) the first thing the buyer will do is build that little cottage and any of the work and construction that's going to be down in that part of the lot and (3) they will build their

way up the hill. M. Murray said (1) he still thinks it would be better off to not put any building at that point, (2) the ZBA should not give any variance at this point, (3) the applicant should not put any building there at this point, (4) the applicant should let the owner pick a spot later and if there is a variance needed, the owner could come back, (5) it would solve a lot of problems and (6) if the applicant wants to keep the footer and the short wall to keep from erosion, that is fine and (7) in his opinion, it would be better off not to put the building there, not to build in the footprint at all, just take the lot. T. DePace said he agreed with B. Pfau's earlier comments and said (1) that is a good place for a cottage, as long as it stays a cottage and as long as the new owner does not find a way to attach a new building to that cottage in order to get closer to the lake, (2) it can be done and the cottage should be done first and (3) it should be ensured somehow that the cottage is done first. Hugh Roberts asked if it would make a difference to the ZBA if they went ahead and built the cottage, to which T. DePace said, it would to him. B. Pfau said it is more important to him that the old one come down. M. McComb said it makes more sense to take down and rebuild simultaneously than to say take it down then leave it all open, with erosion, etc. Hugh Roberts said it is going to be a mess when it comes down.

B. Pfau said some of the ZBA Members are concerned with the location of the primary home to be built eventually and asked if the applicant would be willing to agree to a proposal that would restrict the main house from being any closer to the lake than it is right now, to which Hugh Roberts answered by saying (1) he believes they would be agreeable to a proposal that would move the setback for the main house from the 75' back up to the approximate location, in the range of 100' as a minimum, no closer than it is now, essentially and (2) they would also be agreeable to tighten the building widths at the building line of the setbacks and add a little bit more to the north side of Lot #3 and (3) they would add 10' on, it has a 20' setback, so they would make it 30'. Brian Donohue said (1) everything is skewed on the south lot and (2) everything is built to the south of their boundary lines. M. McComb said it has some merit to it.

Hugh Roberts handed out more maps/pictures to the ZBA Members and said (1) the heavy black line on this map is the approximate location of the 75' setback and (2) in the picture the location of the 75' setback is down from the corner of the proposed cottage, looking up the hill, and they want to preserve those trees too. M. McComb asked if there can be a maximum width in relation to the lake on the proposed houses on Lots #1 and #2 and said (1) from the lake, starting on Lot #1, going from the north, you see a cottage, then there's a dock and a boathouse and the existing house, and that's 20' to the lot line, if you go 20'-30' over from that, you have a boathouse, a house and a garage, and that house could be 75'-80' wide and (2) she is suggesting they cut that down a bit. B. Pfau said what M. McComb just proposed would cut down on the size of the house. M. McComb said she is interested in the face of the house to the lake, that if it is built out to the sidelines. Hugh Roberts said (1) they all have a mutual interest, (2) they all don't want to see big, wide houses and (3) the houses will be tucked back in the trees, and their forester told them that the people will be able to see the lake from the houses, but the houses will not be seen from the lake. M. McComb said (1) that is a possibility if it goes that way, (2) she knows of one house on Lake George that has been rebuilt recently

where that has been the case, (3) there have been a lot of houses where that hasn't been the case and (4) she is talking about maybe limiting how wide the house is going to be within more than the 75'. B. Pfau said it is a legitimate request considering that the lot doesn't meet the required lot size width anyway. M. McComb said it should not be addressed in terms of side line setbacks, but in face of the house to the lake.

From the public, Rich Schermerhorn, southerly neighbor, said (1) he was at the last PB meeting, (2) he thinks it is terrific what the applicant is trying to do with three building lots, (3) neither he nor his neighbor, Tom Farone, who are both developers, have no problem with the three lots, but their biggest concern is the setbacks, (4) it is great the block building is going to come down, (5) when they bought the Stony Ledge Motel, they did a lot of work there, there were 9 cottages, 5 houses, 1 year-round house, and 3 cottages right directly on the water, 2 of which they renovated because they were using them partially the first couple of years they had the motel, (5) when they wanted to come in to build single-family homes, they removed 18 docks and limited it to one boathouse per building lot, the building lots were an acre a piece, (7) it was requested they take the cottages down that were beautiful and right on the water, which they did, because they respected the Board's decision, (8) the only variance he believes they needed for their parcel of land was the lot frontage, they had 125' and the requirement is 150', (9) they made all these sacrifices and conditions, and they are very pleased with the outcome and how they were conditioned to do things, (10) his concern is that the applicant has two tax map parcels that exist now, and they are asking for three lots, but he doesn't see where the hardship is by granting trying to keep all these non-conforming setbacks, (11) this is an opportunity for the ZBA to set some restrictions, (12) the log cabin has no foundation under it, he can't imagine anyone will keep that structure, (13) there is plenty of room on that property to build garages and guesthouses and be conforming with setbacks and (14) the cottage next to the block building will be moved over 10', but no further back than the existing wall, but no definitive measurement was given. M. McComb said the applicant is suggesting it is approximately 20' and she agrees that a definite measurement needs to be nailed down here.

From the public, Atty. Ben Pratt, representing the Schermerhorns, said (1) he is not sure that Hugh Roberts and Brian Donohue were on the same page with respect to the southern wall of that non-conforming block building on the water and he believes Brian Donohue said that he didn't want to have any setback with respect to that wall, but to keep both the footers and the wall. Rich Schermerhorn said (1) the retaining wall that Tom Farone built was to stop the erosion that was created by the lot with the block building, (2) he and Tom Farone both agreed that if and when that block building comes down, if there is any way, shape or form that that retaining wall is going to be a safety issue or there is going to be a problem with it, they will more than gladly secure it or do whatever they have to, to take appropriate measures for that wall, (3) that wall is not going anywhere, (4) they have no problem with three building lots, (5) the applicants will be back for boathouses on the three lots, and probably won't be able to meet the side setbacks for the boathouses and (6) it seems like a tremendous amount of variances for something that doesn't seem to be a hardship.

From the public, Atty. Ben Pratt said (1) K. Hoopes commented earlier that sometimes the PB had a tendency to act like a ZBA and tonight, to a certain extent, the ZBA is acting like a PB, in that the ZBA is discussing a lot of site plan issues, (2) the idea is to minimize the non-conformity on the lake, which he feels is the position Bolton has taken, Lake George has taken and Queensbury is trying to take and (3) if the ZBA is going to allow the variance to create three lots here, which the neighbors have no difficulty with, then it does not seem to him to be a disadvantage to the applicant to have all the structures on the lot conform to the existing ordinance, including the houses, boathouses and the cinderblock building. B. Pfau asked if Mr. Pratt's client would be better served if the property remained as a two-lot subdivision and a new home was built on top of the blocks and said he wanted to address the fact that this is a compromising situation. Rich Schermerhorn said, (1) if this was to remain two lots and someone said they were going to fix up the cinderblock building, with the kind of money that Lake George is generating, no one is going to try to renovate the cinderblock building, it is going to come down, (2) regarding the trees, he said it is very open in there and the applicants have trees that can be easily kept and (3) the applicants can build some very nice houses on that land and not devastate the land.

From the public, Atty. Ben Pratt said (1) with respect to the offer of deed restrictions, if any, he feels Counsel was absolutely correct, in that if the ZBA considers that, they need to look at specific conditions, so they know what they are talking about, (2) the other issue with respect to deed restrictions is that the ZBA, as a party to the deed restrictions could end up having to sit down with the neighbors and going to court to try to enforce the deed restrictions if the ZBA had to, (3) the ZBA is not generally in the position of doing that, of behaving like someone who has deed restrictions to enforce and having to judicially enforce them, (4) traditionally, the only standing the ZBA has to enforce deed restrictions in court is if the ZBA is one of the people for whom the deed restrictions were created, (5) if the deed restrictions did not name the ZBA, then the ZBA would not even be able to go to court to enforce them and (6) the ZBA needs to be a little careful and deed restrictions are a little tricky here for the ZBA to get involved in.

Brian Donohue responded to public comments by saying, (1) Hugh Roberts and he were on the same page in keeping the wall, (2) he feels the lower wall will help hold out the retainage and (3) the retaining wall that was built on the lot line was shortening up on any erosion, as it dips into the lake, which is what they are trying to arrest by keeping the wall, (4) if they remove the retaining wall, then more trees will be gone, because they will not have footprints that are existing to handcuff them.

From the public, Kieran Nigro, representing Mr. and Mrs. Farone, homeowners to the south, said (1) historically the ZBA has had the spirit of compromise, (2) the proposal is to create three lots out of two, (3) he hasn't heard anyone say this project fails if the non-conforming uses come down, (4) it is an opportunity to get rid of the non-conforming uses, (5) the applicant can have a very doable project and bring it into conforming uses with the setbacks, (6) it seems to him there is a lot of energy being

spent on speculating what a new owner might want at the expense of existing property owners and (7) the cinderblock building is an aesthetic crime that the ZBA has an opportunity to do something about and he fears if it is not done now, the opportunity will be lost. M. McComb asked if Kieran Nigro felt the same about the pre-existing house on Lot #1 to the north, to which Kieran Nigro answered, (1) quite frankly, his concern is how the cinderblock building affects his clients, so his bigger concern is the cinderblock building on the south side, (2) he would like to see it all conforming, but his biggest concern is that building, because it affects his clients view and the look of the entire parcel, which the ZBA has an opportunity to do something about, (3) he has not heard anything that removing the cinderblock building and forcing the applicant to conform with setbacks when they build something is going to impact this project or make it not doable, (4) the applicant will have three beautiful, very marketable, building lots and he feels that to compromise and to require at a minimum that the cinderblock building come down period, is a small and worthwhile compromise.

Brian Donohue presented a drawing to scale of what exists and said that the trees are accurately portrayed and the neighbor would see nothing of the cottage that replaced the block building. M. McComb said she would agree from the drawings that Hugh Roberts has shown that it shows where the deck line of the existing cinderblock building is and the proposed cottage footprint is below that deck line. B. Pfau said the neighbors' property is much higher than what it is on these drawings. K. Hoopes said just because the new building is going to be less visible and more attractive doesn't make it conforming. M. McComb responded by saying, it's true, she goes both ways on if it is better to put a small building there or cut down more trees for a new building lot further back. Brian Donohue said regarding feasibility, there are economics involved in trying to keep that footprint. K. Hoopes said (1) this is where things are different with this, because the ZBA is here to offer reasonable relief from the owner of the property having his feet held to the fire on zoning regulations, (2) the applicant is not the owner of the property and is speculating for future owners of the property, (3) this definitely falls under the category of what he calls "nice try", (4) the applicant definitely has the future owner's best interest in mind by having them that close to the water, but on the other hand, the ZBA is supposed to be representing everybody else. B. Pfau said the applicant's point is that it is possible that this could end up much worse and out of the ZBA's hands, if the lots stay as they are and someone rebuilds on top of the cinderblock building. M. McComb said they can't take it down and rebuild it without applying for a variance and Counsel said, that is correct, you cannot alter a non-conforming structure without applying for a variance. T. DePace said (1) this whole project needs a third lot to be a break even point and a money maker, (2) taking down the cinderblock building and putting up the cottage would look nice, (3) on the other hand, he does not see how this whole project would depend on this cottage and (4) if the applicants got permission to have a three-lot subdivision, especially since they are not owning the lots, but selling the lots, it seems like there is a lot of time and money spent on putting a cottage on a lot that is for sale. Hugh Roberts responded by saying (1) they are trying to do this the right way, (2) they think this is the right way to do it, they think it will make the project a different project and better than the standard situation, (3) they think it provides them an opportunity, economically and otherwise, to take a different tact in the approach in this

place to protect the trees and to have narrower building widths for houses that don't have massive fronts on the lake. M. McComb asked what sort of maximum house front on the lake the applicant is talking about and Hugh Roberts answered by saying, (1) on Lot #3, the building is 120' wide, so increase the setback by 10' on the north side, which would narrow it to a 70' building width and (2) on Lot #2, they will add 20' to the north side and narrow the building width to 60'.

From the public, Chris Navitsky, Lake George Water Keeper, said (1) he appreciates the conversation the ZBA has been having with the applicant, (2) taking a look at the site as the applicant has proposed, prior to any numbers discussed this evening, within 200' of the lake, which is the important area for infiltration and a buffer, the applicant is actually proposing to increase impervious coverage by 13%, keeping what they had on the proposed plan, which would include keeping the cinderblock building, (3) he feels a way to bring non-conforming buildings into conformance, would be to possibly hold a percentage in the buffer 200' area, because you know there is going to be a larger home on Lot #2, which shows quite a large footprint, (4) many times when projects go through planning boards, the existing buildings wind up being exempt from stormwater, so the Town gets no improvements on those, (5) he supports the thoughts of K. Hoopes and M. Murray in removing the cottage and the cinderblock building, as it would reduce the impervious surface adjacent on the lake and might be a compromise to allow the larger structure that will eventually be on Lot #2, (6) in keeping with the spirit of the comprehensive plan, ideas about preservation through balance, preserve natural environment, establish scenic overlay district should be addressed in the matters of improving non-conforming structure and improving water quality run-off in working with the applicant.

Hugh Roberts said allowing the 600-650 square foot cottage by the waterfront may result in 1000-2000 square feet less of roof surface up on the hill above it, so he doesn't think this proposal they are making is going to result in more impervious surface, in fact it may end up with less impervious surface. M. McComb said (1) it certainly is conceivable that someone may come and say they have a fabulous guesthouse, so they don't need a big house, but this sort of comparable, beautiful small guesthouse and having a big house is not incompatible with having a big cottage on the waterfront and (2) she is coming around to agreeing with K. Hoopes and M. Murray in that the ZBA should take the opportunity to clean up the 75' setback at least on Lot #1 as a trade-off, if the ZBA is going to go with a three-lot subdivision.

Hugh Roberts said (1) one rule does not fit every circumstance, (2) every circumstance obviously has to be judged on its own merits and that is the reason why there is a ZBA to evaluate the positives and negatives of each application, (3) they think the positives of their proposal to modify this site outweigh the negatives in a variety of ways. M. McComb asked what is supposed to be said to the neighbor who says he came in to develop his property and took down all his right on the water buildings to get the right to subdivide and develop his land, to which B. Pfau said he thought it was part of the applicants proposal that they didn't want to save any of their waterfront buildings. Hugh Roberts said he could speculate by saying the neighbors in question required more

variances to develop their site than the applicant requires to develop their site. M. McComb said, no they didn't, to which Hugh Roberts responded, they did, they had minimum lot density in addition to sideline setbacks in addition to shorefront. M. Murray said Hugh Roberts is right. K. Hoopes says the ZBA does not compare projects. T. McGurl said (1) his concern is the block building, as he can't see anybody spending the money for one of these lots and keeping the block building, (2) regarding the log cabin on Lot #3, he does not see anyone wanting to keep that either, (3) Lot #2 and Lot #3 are very wooded, so he doesn't think there is any way to avoid the removal of trees if those lots get built on, especially where the footprint is and the area around the footprint as well, (4) he started the meeting thinking this would be a great two-lot subdivision and three lots seems to be crunching it, and he feels this way because if all the buildings stay that are proposed to stay as existing structures to keep the footprint as it is, things are crowded and (5) if the applicant is going to have three lots, they would be more sellable if some of the stuff would be cleaned up and gotten out of the way. Hugh Roberts said they think the cottage would be very appealing to the marketplace. B. Pfau said (1) he bought into the applicant's argument that having a small cottage on the lake will definitely break up the succession of large homes in that area and (2) he thinks the tree removal is a big deal too.

Counsel said (1) the cinderblock building it is not before the ZBA tonight, (2) if the applicant would like to take it all down but leave part of the retaining wall, he is altering a non-conforming structure and would have to come back for a variance, (3) if the applicant wanted to keep some of the wall or remove some of the wall, and put a cottage there instead of the cinderblock building, that too would require a variance, (4) the ZBA needs to decide if the three-lot subdivision is worthy of approval or not, (5) the PB will review the project for the three-lot subdivision in addition to tree cutting restrictions, deed restrictions, etc., which the ZBA can put in any motion, (6) the ZBA motion, could hypothetically say "a three-lot subdivision is okay, the applicant proved the five points of the test for the area variance and that the cinderblock building has to come into compliance, or not as of right, but as by application for setback relief, this applicant comes with a fresh new idea, which is probably that cottage, and can prove it..." then so be it, but that is on a later day, on notice, another hearing, (7) the ZBA cannot grant, to this applicant, what they seek in that corner, tonight.

M. McComb said (1) it is a Catch 22 for the applicant and (2) there was a proposal sought before the ZBA years ago to try to do something with that. Counsel said in a sense, the applicant didn't start this, it was at the PB level that it really got started in terms of what the applicant was planning to do with the cinderblock building, to which M. McComb responded by saying, the ZBA asked that too. B. Pfau said, perhaps if the ZBA is going to approve this, they should approve it with the condition that the building come down, to which K. Hoopes said, no, no conditions. Counsel said the ZBA could add to its motion in order to gain compliance, the applicant needs to take the cinderblock building down, and come back to the ZBA with the ideal plan as to what goes in that corner and why. B. Pfau said, but in the meantime the applicant would get their three-lot subdivision, to which Counsel agreed and said the applicant could and then they have their variances to go to the PB and get the three-lot subdivision. B. Pfau asked for the applicants' thoughts

and Hugh Roberts said (1) that's what they thought, originally that's the way it was going to go, (2) they originally were of the belief they would be before the ZBA for the variances they had requested and (3) the issue of what to do with cinderblock building on Lot #3 became part of the process, and they never expected it to become part of the process. B. Pfau said (1) yes, the issue of what to do with the cinderblock building became part of the process and (2) then he has been confused this whole time, because if the ZBA can grant this variance under the condition that the cinderblock building comes down, then the applicant will go to site plan review and possibly return with another variance request from the ZBA. K. Hoopes asked if the ZBA was even supposed to consider the cinderblock building in its motion, to which Counsel answered by saying yes, the ZBA can, as it is a reasonable condition to say, "take the block building down," which allows to this applicant, still, the opportunity to present a variance application on a later date in a separate application, to build that cottage that they say is a good plan for that corner. B. Pfau said the applicant just lost a bargaining chip basically, but he has gained a three-lot subdivision. Counsel said the applicant would get his three-lot subdivision, but would need to come back to the ZBA regarding the retaining wall and the guest cottage, which it may or may not approve. K. Hoopes said (1) he is in favor of voting on the subdivision separately and (2) if the ZBA tells the applicant to tear the building down, he loses footprint. M. McComb said the ZBA also might find before it, a complete plan for the lot saying "I want to build a house and a cottage," and not be dealing with if they let them build a cottage on this footprint then the house behind it will be smaller. K. Hoopes said (1) he is still all in favor of having the applicant tear down the cinderblock building, (2) he likes Hugh Roberts' plan, which has a lot of good, speculative ideas and (3) his only problem is that the ZBA cannot deal in "what ifs," the ZBA needs to deal with real life and what is in front of them.

Counsel read the following correspondence into the record:

- Letter from John Ryder – opposed
- Letter from Melissa Loving Vito – opposed

M. McComb said (1) what the applicant is contemplating is creating two substandard lots, (2) the ZBA should consider the following conditions; (A) stormwater regulations be applied to buildings whether or not required by the ordinance, (B) that there be no net increase in impermeable surfaces within 200' from the lake, (C) increased sideline setbacks on Lots #2 and Lot #3, (3) she is really hard-pressed on granting the three-lot subdivision, (4) she not ready to make the motion for the ZBA to grant the subdivision and (5) she finds creating substandard waterfront lots a bad idea. B. Pfau said total shoreline footage is here for this project. Hugh Roberts said they are only asking for the same variances that 70% of the rest of the homeowners along that shoreline have.

From the public, Atty. Ben Pratt said (1) the legal point is that one of the issues the ZBA has when it does its SEQR review, is that the ZBA has issues of segmentation, (2) when this project involves all three lots, plus the cottage, and the ZBA segment it by looking at the three-lot subdivision without looking at the cottage, the ZBA may create a problem, (3) he thinks it would make sense, under these circumstances, for the ZBA to

have the whole project before it, rather than just sections of it, when the ZBA knows the chances are the applicant will be back with a proposal to create a cottage, that would also need a variance.

M. McComb said we come back to developers and you would stop all development if the ZBA says it needs to know all the plans for all the lots in a subdivision. B. Pfau said (1) that is not necessary, because the builders can propose building on these three lots meeting setbacks and not requiring any more variances, (2) he feels the ZBA should require the applicants get rid of the cinderblock building, and give the applicants the relief they request on the lot sizes.

M. McComb asked about the two non-conforming buildings, the cottage and the house on Lot #1, to which B. Pfau answered by saying, it does not require a variance according to Pam Kenyon. M. McComb asked what K. Hoopes thought and he said he thinks the main house on Lot #1 is pre-existing non-conforming. M. McComb asked for K. Hoopes thoughts on removing the cottage on the hill and he said he does not think it is worth saving and (2) he would like to see the cottage on Lot #1 and the cinderblock building on Lot #3 removed.

T. DePace asked if the applicant would be willing to have the ZBA make a decision on the three-lot subdivision with conditions on building removal or if he would rather come back with the whole plan. Hugh Roberts answered by saying the cabin on the north is a valuable asset to this project, it is innocuous, doesn't bother anybody, and they would like to keep it. B. Pfau and T. DePace said they don't see any problem with that. M. Murray said (1) he would like to see it taken down, (2) if they are going to create three lots, there is a chance for the ZBA to get rid of two buildings that really don't belong or fit in and (3) if the customers want to build summer cottages, they can build them in conformance somewhere else, because there is lots of room. K. Hoopes said he does not see the little cabin on the north lot as a deal breaker. Hugh Roberts said (1) if they tear down the little red cabin on Lot #1, they will be tearing trees and other things down with it and disrupting a currently established ecological condition. K. Hoopes said (1) he wouldn't be opposed in letting that building stay, (2) the applicant may be right in that disturbing the area could be dangerous, and (3) a future owner would have to come back to the ZBA for a variance to do anything with that cabin. M. McComb said (1) a future owner would be dealing with the burden of having their main house being so non-conforming and (2) it is a nice little cabin tucked away up there.

Pam Kenyon said the WCPB recommended approval with conditions and she did not have last month's WCPB impact. Hugh Roberts said the WCPB had no problems with them.

Pam Kenyon said the item is subject to APA review.

B. Pfau asked for a proposal from the ZBA that at the very least includes that the cinderblock building and most southern dock by the say of the PB should be removed. M. McComb asked about increasing the sideline setbacks. B. Pfau asked if this would be

an appropriate time for the ZBA to discuss this, to which Counsel answered, he would like to suggest to allow the PB to do that, but for the ZBA to give the PB its recommendation. Hugh Roberts said (1) increasing the sideline setbacks had to do with the existence of the cottage and (2) without the cottage they are not offering the increase in sideline setbacks.

RESOLUTION

The Zoning Board of Appeals received an application from Delczeg & Donohue Builders, Inc. (V05-17) for area variances as described above.

And, due 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 Board;

and, whereas the Warren County Planning Board 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 #2 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than area variances;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, as the applicant proposes to retain the tree screening on the lots;
- 3) The requested variance is not substantial, given that the entire parcel being subdivided does have adequate waterfront for three lots;
- 4) The request will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, but it will be mitigated by site plan review and it is recommended by this Board that the Planning Board require stormwater controls on all buildings regardless of if the ordinance might permit not doing that because of pre-existing structures; there will also be a positive impact because many cottages and the cinderblock building are being removed, the septic will be upgraded and impervious surfaces will be reduced by the project;

- 5) The alleged difficulty is self-created, however, the whole scope of the project and what is existing as compared to what is proposed is likely to overall outweigh that and be a benefit to the community.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by M. McComb and seconded by T. DePace, it is resolved that the ZBA does hereby grant approval for said project as presented with the following conditions: 1) the cinder block structure located on the southern most lot (Lot 3) be removed; 2) the most southern leg of the U-shaped dock on the southern most lot (Lot 3) be removed. Additionally, the ZBA recommends to the Planning Board that the stormwater regulations be applied to all proposed renovations to existing buildings otherwise not required by the stormwater regulations. **All in favor. Motion carried.**

3) V05-22 JULIANA MOTEL. For the construction of a proposed 10' x 20' deck on Unit 25, seeks area variance for 1) a deficient side yard setback: 15' is required, 13' is proposed; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 213.17, Block 1, Lot 33, Zone RCM1.3. Property location: 3842 Lakeshore Drive. Subject to WCPB review.

From the public, Jeffrey Queen, neighbor to the south, said (1) he and Eric Fahlborg came to an agreement and (2) he would like to thank the ZBA members who communicated with them, made site visits and helped them come to this agreement, (3) they would like to have the details of the agreement read into the minutes if acceptable, (4) he is not contesting the variance and they have an agreement that allowing him not to contest the variance.

Eric Fahlborg, co-owner of The Juliana, said (1) he met with the Queens and their lawyer and came up with a document for him to sign and (2) all parties came to an agreement resulting in Queens agreeing to the proposed project.

B. Pfau asked if this is the southernmost deck, closest to the lake, on ground level and if the applicant needs 2' relief, to which Eric Fahlborg responded, yes, that is the location, but the deck is smaller.

From the public, Atty. Bob McNally, representing the Queens, who are the beneficiaries of the Harry N. Wolkin Trust that own the property to the south of Eric Fahlborg, said (1) his clients have no objection to the construction of the 10' x 20' deck that requires 2' of relief, (2) the parties have entered into an agreement for screening and amelioration of some of the negative consequences that might arise with the motel's construction of that deck, all at his clients' expense in large part, (3) the agreement was hammered out literally minutes just prior to and into this meeting, so the trustee of the Harry N. Wolkin Trust and Mrs. Fahlborg are not here to sign the agreement, (4) they

would like, as a combined request, for the conditions to be incorporated into any approval, if that is what the ZBA decides to do. At this point, Atty. Bob McNally read the conditions of the aforementioned agreement into the record, of which a copy, once signed by all parties, will be submitted to the Zoning Office by Atty. McNally.

K. Hoopes said (1) he thinks it is wonderful and (2) he loves it when neighbors get along and asked if the ZBA has to fold into their motion all those conditions since they will be legally binding each other to them. B. Pfau asked if what if they are not concerned with some of these conditions. Counsel responded to both by saying (1) he thinks it would be best if the ZBA can accept it to incorporate it by reference and (2) Atty. Bob McNally will make a copy available once it has all the signatures are on it and (3) if in the future there is a problem in terms of enforcement or some application, the Town will have record of it, and (5) he asks the ZBA to accept it by reference and not specifically go over it item by item or choose the ones the ZBA likes and leave out the ones it doesn't. K. Hoopes asked if the ZBA can reference it as "the agreement," and Counsel answered, yes.

Atty. Bob McNally said (1) he agrees in referencing the agreement, which is important, because they literally just hammered it out, so it is not until signed, an effective contract and (2) they don't want to tie up the deck and put it over another month, so if the agreement would be incorporated by reference, they would be protected and the parties would then go ahead and get this thing taken care of.

M. McComb said (1) she knows the applicant doesn't think this deck is a big deal, yet the neighbors do and last month, they did not get a majority of the ZBA to disagree with that position and (2) if they have hammered this out, she doesn't see why the ZBA should unhammer it. K. Hoopes said (1) that's true, but keep in mind that was another oversight on the ZBA's part, as it didn't have a full board and they ended up with a tie vote, for which they probably should have discussed making another motion. M. McComb said (1) the ZBA could have done so and (2) if somebody comes in and says, "Here's a solution, I think this seems like a good one" and it's not going to affect the lake, and it's worth it to the neighbors to have the screening from this deck it should be approved. K. Hoopes said (1) it is a great idea that the neighbors get along, (2) if it is legally hammered out, that's wonderful too, and (3) he doesn't see why the ZBA has to get involved with the details. B. Pfau said (1) that's the way he feels too, unless any of the items are of concern for any ZBA members and (2) it seems like a lot for 2' of relief and (3) the applicant can move the deck back 2' and do what he wants to do with a building permit. M. McComb said (1) the applicant still needs a variance, because it is a pre-existing, non-conforming that's being altered, (2) the neighbors' problem is not with the size of the deck, but because the deck is visible and adjoining their property, (3) if they have come up with a way to not be upset about it, the ZBA should go with it, (4) she can understand B. Pfau's not liking the notion of the neighbor coming in with their approval, as it is not the neighbors' call whether or not the ZBA approves it, (5) if the neighbors have agreed and in this particular case, it just seems they are extending the berm that was put in to screen it earlier, why bother not approving it. K. Hoopes asked what M. McComb's point is and M. McComb answered by saying, B. Pfau seems to have a problem with

saying the ZBA approves this with reference to “the agreement.” K. Hoopes said the ZBA should make reference to the agreement, but not make it a condition. B. Pfau said (1) he voted for this last month, (2) he thinks Eric Fahlborg has been put through a lot and (3) he thinks if they have hammered it out, the ZBA should just vote on it, he is fine with it.

There was no correspondence other than “the agreement.”

Pam Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from The Juliana Motel (V05-22) for an area variance as described above.

And, due 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 Board;

and, whereas the Warren County Planning Board 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.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant could be achieved by other means feasible for the applicant to pursue other than an area variance, but this seems to be a good solution;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, because of the screening that is to be put in place;
- 3) The requested variance is not substantial;
- 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, but the benefit to the applicant outweighs that as presented and with “the agreement” in place.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon motion duly made by M. McComb and seconded by T. DePace, it is resolved that the ZBA does hereby grant approval for the variances requested to construct the project as presented. The variances sought are granted upon the requirement that all conditions of agreement specified in a signed memorandum of agreement dated May 16, 2005 between Fahlborg and Harry N. Wolkin Trust are incorporated into this approval by reference and construction of the deck shall be in conformity therewith. This agreement shall be dated May 16, 2005. All in favor. Motion carried.

4) V05-24 ENGLISH, EDWARD. Represented by Eugene Baker. To alter existing garage, seeks area variance for 1) a deficient shoreline setback: 75’ is required from the mean high water mark of the stream, 55’ is proposed; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 171.08, Block 1, Lot 12, Zone RCM1.3. Property location: 12 Braley Point. Subject to WCPB & APA review.

T. DePace recused himself from this item, as the applicant is his neighbor.

Eugene Baker, representing Edward English, said (1) they are proposing to put two dormers on an existing garage in order to break up the 24’ roofline to match the rest of the homes the applicant owns there and (2) the guest cottage and the house has dormers, so the applicant wants to incorporate dormers into the garage to tie the whole property together.

B. Pfau asked if the project is for aesthetic reasons and Eugene Baker responded by saying (1) it is purely aesthetic and (2) there are no windows or storage. B. Pfau asked if it is going to stay below the roofline, to which Eugene Baker replied, yes.

No public in attendance.

There was no correspondence.

Pam Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from Edward English (V05-24) for an area variance as described above.

And, due 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 Board;

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #4 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, and there will barely be a change to the building itself;
- 3) The requested variance is not substantial, a few dormers for aesthetic effect;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, changing a roofline does not establish either of those;
- 5) The alleged difficulty is not self-created.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by K. Hoopes and seconded by M. Murray, it is resolved that the ZBA does hereby grant approval for said project as presented. **All in favor. Motion carried.**

5) V05-25 KINGSLEY, DONALD & CLAIRE. To replace existing garage with an 18' 2" x 26' 4" proposed garage in a different location, seek area variance for a deficient side yard setback: 20' is required, 10' is proposed on the north side. Section 140.00, Block 1, Lot 65, Zone RL3. Property location: 217 North Bolton Road. Subject to WCPB review.

Don Kinglsey said (1) the garage they currently have in this location is in disrepair and unsafe, (2) they have removed one portion of the existing garage and tried to re-vamp what was remaining, but it is falling down, (3) they had a contractor design a new garage, (4) they will be moving the new garage about 10' further back onto their property, so they meet the 75' setback from the county road, (5) they meet the required 50' easement to the south, (6) they have plenty of room to the west, so the setback is not an issue there, (6) the 10' they are asking for from the northbound line is where the present garage is now, so they would like to keep that same line and (7) part of the reason they cannot move that garage to the south is because there is a line of trees there planted by his father-in-law about 30 years ago, so they don't want to remove those trees if they can help it.

B. Pfau said to anyone familiar with this site, it is obvious that is where the garage belongs and asked if any other ZBA members had comments on this item, to which the answer was no.

From the public, Frank Bergman, said (1) he was present to ask the ZBA to deny the variance request, (2) he is the father of the man that owns the property to the north, (3) when his family first acquired the property which runs along North Bolton Road for approximately 600', the exit from Kingsley's house was right on the property line, in addition to that, there was an open cesspool, which was very dangerous, (4) they proposed to give the Kingsleys a 15' x 55' section adjacent to this which would put this fully on their property, which would take care of the problem with the cesspool that was uncovered there, that was at no cost to the Kingsleys except for the lawyer's fee to rewrite the deed, (5) they have already take steps to satisfy the Kingsleys, (6) his property (approx. 600' on North Bolton Road), is kept very well manicured, (7) his understanding is that the trees were not the only problem, but that there would have been a problem with the septic system interfering with the new garage, if it was to be built without the variance, which he disputes, (8) you would be using the exact same driveway coming in to the present garage as you would going to the new garage and (9) the septic system that is in there now is between the house and the driveway.

M. McComb asked for (1) Frank Bergman to put a map up of the property so he could talk about it in terms of parcels and (2) where his property is. Frank Bergman pointed out on the map (1) the location of his son's property, (2) the location of the 15'X55' piece of land they gave the Kingsleys, (3) the location of the open sesspool. Frank Bergman asked if the reason for the variance request is for the septic system being a problem, and M. McComb said (1) no, it seems to the ZBA that it is a logical location for a garage and (2) the Kingsleys have a garage falling down and they are going to rebuild it.

B. Pfau asked if the past garage posed some sort of problem, and Frank Bergman responded by saying (1) the reason is that he says they don't need the variance, (2) they don't need that 10', because they have plenty of room to put the new garage further back and (3) the trees do not present a problem, there are some low branches that could be removed, there would be no problem entering or exiting their property.

M. McComb said when the ZBA looks at it, the proposed garage is narrower than what is there now in relation to Frank Bergman's property. Frank Bergman said the proposed garage is wider than what is there now, to which M. McComb responded by saying, (1) no, it's not and (2) you can't get much narrower than an 18' 2" wide garage. Frank Bergman said (1) it is fine for them to have a garage, but he doesn't think they need a variance with the other room they have available and (2) the proposed garage won't even be on the same footprint as the existing garage.

K. Hoopes said (1) the proposed garage is moving away from the setback to the road, (2) the setback from the neighbors property line is not increasing or decreasing, (3) if the extra few feet of moving backwards are an issue of some material input, he would like to hear about it, (4) it just seems the garage is staying in the same spot, but moving back a few feet. Frank Bergman said the map shows the present garage is within 10' from his property, which is incorrect, it is actually 7.5'. K. Hoopes said if the measurements are wrong, the ZBA should talk about tabling this item until the ZBA gets the correct measurements. Don Kingsley said he has a certified survey to show the measurement is 10'. K. Hoopes said if it can be proved that the measurement is not 10', then any variance the ZBA gives tonight is not worth anything. M. McComb said she has no objection to moving it 10 more feet off the property line, if there isn't any problem with that. Don Kingsley said if they move the garage 10' to the west, they would be within the 75' setback from the county road, so they would have to seek relief from the county and that also puts them back where if they back out of the garage, they back into the trees.

Frank Bergman asked that if the measurement winds up being less than the 10' as shown, if the variance the ZBA may grant will be null and void and B. Pfau answered by saying, the ZBA will grant the applicant a variance to be 10' away from his property line, so that is what it will have to be if that is what is granted. Frank Bergman said he would accept that.

Counsel read the following correspondence into the record:

- Letter from Tom and Kathy Conerty – favorable

Pam Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from Donald and Claire Kingsley (V05-25) for an area variance as described above.

And, due 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 Board;

and, whereas the Warren County Planning Board 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 #5 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, and there will barely be a change to the building itself, the garage is being moved laterally along its non-conforming lot line;
- 3) The requested variance is not substantial, in fact, the applicant will actually gain some setback from the county highway;
- 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, that garage was there before the applicant's bought the place, this will be an improvement.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by K. Hoopes and seconded by T. McGurl, it is resolved that the ZBA does hereby grant approval for said project as presented. **All in favor. Motion carried.**

6) V05-26 KUDLACK, RICHARD. To demolish existing storage Building And replace with a 2,043 sq ft storage building (Building A) in a different location, seeks area variance for a deficient shoreline setback: 75' is required from the mean high water mark of the stream, 16' is proposed. Section 141.00, Block 1, Lot 3.1, Zones RL3 & LC25. Property location: 5879 Lakeshore Drive, 2.3 miles north of County Route 11, being the farm once occupied by Frank Dagles. NOTE: Site Plan Review is also required for an accessory structure greater than 1,500 sq ft of floor space, but has not yet been applied for. Subject to WCPB & APA review.

B. Pfau asked why the ZBA cannot handle Agenda Items #6 and #7 on the same application, and Counsel answered by saying, the ZBA may, if the applicant consents to it, but it would be two separate resolutions. Counsel asked if the applicant consents to both items being discussed at the same time and Richard Kudlack replied, most definitely. Pam Kenyon said it is two totally different structures, which requires two separate applications, to which Counsel replied, that is correct, but if the applicant consents to one presentation with two resolutions at the end, it is fine. Richard Kudlack said (1) what he was planning on doing was giving the ZBA all the background information, which is all the same, then doing Building A and Building B, to which B. Pfau said, that's great.

Richard Kudlack said (1) the property was Frank Dagles old farm, (2) he is beginning to clean up the property by taking some buildings down, (3) he is proposing to take down 6 of the buildings, of which some are sheds, and the two large structures, then, instead of replacing them in the same exact footprint they were in, he will modify the shape of it to make it more suitable to park vehicles in, (4) there is a structure that has a 0' setback in the stream, so he will be pulling it out 8' and rebuilding it in the same footprint, (5) there is a building with a current 8' setback, which will increase to a 16' setback and (6) he gave more detail on the proposal by referencing the map.

B. Pfau said the most obvious question he has is that although the applicant is moving the setbacks, Building B seems to be squeezed for space and asked why Building A couldn't be moved farther away from the stream. Richard Kudlack answered by referencing the map and showed areas such as the road, stream, Building A (on the south side of the brook), Building B (to the south side of the brook), and the garden areas and he said (1) there really isn't movement for anything, (2) he tried to get the buildings away from the stream as far as he could without getting out of the stone driving areas and gardening areas. K. Hoopes said (1) trying to drive on decade old farm tilled soil in springtime would probably not be what the applicant would want to do and (2) this sounds like a good route to go. Richard Kudlack said Building A and Building B will not have any kind of plumbing and no toilets. Atty. Ben Pratt, representing Richard Kudlack, said (1) overall, it is reducing the non-conformity both with respect to the stream and the square footage and (2) the structures that are going to go in will be larger, but if you add up the total of all the structures, it will be smaller.

M. Murray asked if the applicant is getting rid of 4 structures total and Richard Kudlack said, yes, and two will be moved. M. McComb said the Building A on the map is the existing building and the ZBA hasn't been given a location of the proposed building. B. Pfau asked if the applicant is going to run a farm on the property and Richard Kudlack said yes, he likes to be busy in his retirement.

M. McComb asked if B. Pfau was satisfied on the Building A not being able to be moved farther from the stream, and B. Pfau answered by saying yes.

No public in attendance.

There was no correspondence.

Pam Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from Richard Kudlack (V05-26) for an area variance as described above.

And, due 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 Board;

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #6 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance, the current situation has happened not just by the stream and by pre-existing conditions regarding the use of the land as garden and topography;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, in fact this will be an improvement and the new buildings will be in the character of the old barn and the old buildings;
- 3) The requested variance is not substantial, and in its entirety will result in a decrease in non-conformity;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it moves further from the stream than what is currently there and there will not be plumbing or septic issues involved in these new buildings because they are storage buildings;

- 5) The alleged difficulty is not self-created, because of the topography of the land, the location of the stream and the farming use that is intended to be continued.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by M. McComb and seconded by M. Murray, it is resolved that the ZBA does hereby grant approval for said project as presented. **All in favor. Motion carried.**

7) V05-29 KUDLACK, RICHARD. To demolish existing structure and replace with a 1,944 sq ft workshop, gardening shed, greenhouse (Building B), seeks area variance for a deficient shoreline setback from the mean high water mark of the stream: 75' is required, 8' is proposed. Section 141.00, Block 1, Lot 3.1, Zones RL3 & LC25. Property location: 5879 Lakeshore Drive, 2.3 miles north of County Route 11, being the farm once occupied by Frank Dagles. NOTE: Site Plan Review is also required for an accessory structure greater than 1,500 sq ft of floor space, but has not yet been applied for. Subject to WCPB & APA review.

This item was discussed in conjunction with Agenda Item #6.

No public in attendance.

There was no correspondence.

Pam Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from Richard Kudlack (V05-29) for an area variance as described above.

And, due 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 Board;

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #7 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance, the building is located between the stream and the road and there is limited room to move it;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, there will be an improvement in the neighborhood character by the improvement of this building as well as an increase in the existing setback from the stream;
- 3) The requested variance is not substantial, in that it involves an even worse situation with a pre-existing non-conforming structure;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and will, in fact, be an improvement over what exists;
- 5) The alleged difficulty is not self-created, it is a modification of a pre-existing non-conforming situation.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by M. McComb and seconded by M. Murray, it is resolved that the ZBA does hereby grant approval for said project as presented. **All in favor. Motion carried.**

8) V05-27 SCOTT, HERBERT & BEVERLY. To alter a commercial structure approved by the ZBA on October 18, 2004 under V04-32, specifically to construct a proposed handicap ramp/deck and stairs, seek area variance for deficient 1) front yard setback: 30' is required, 2.5' is proposed from the edge of the right-of-way for Route 9N (the sidewalk) and 2) front yard setback: 1.4' is proposed from the edge of the right-of-way for Goodman Avenue; 3) rear yard setback: 15' is required, 5.8' is proposed on the west side; 3) 40% of parcel is allowed to be occupied, 65% is proposed; and 4) parking: 6 additional spaces required for a total of 32 spaces. 3 spaces were approved in October. Section 171.19, Block 1, Lot 84, Zone GB5000. Property location: 4941 Lakeshore Drive. Subject to WCPB review.

Herbert Scott said (1) he was at WCPB on May 11, 2005 and they had no objection at and there was no county impact, (2) he didn't realize from the back of the building to the front of the building that there is an approximate 22"-24" decline, (3) he was planning on

having a handicap ramp in the front to become handicap accessible, but found out later he only had 14' in the front, so it wouldn't have worked out anyway, (4) he wanted the foundation 8"-12" above ground, so it wouldn't rot out like the old building did, (5) somewhere there was a mix-up, so they wound up being about 18' above where they were supposed to be.

B. Pfau asked if as originally planned, the applicant wasn't going to need a ramp or a step, and Herbert Scott answered by saying (1) he thought he'd need one, (2) he thought he could bring it up the front from the north end on the bank, which would have given him enough access, and (3) he found out later that wouldn't have worked either, because the requirement is 1"-12" and he would have been up approximately 22"-24" and he only had 14', so he couldn't have made a legal handicap ramp with that deck.

K. Hoopes said he doesn't know what the ZBA can do with this, because it is handicap access. T. McGurl said the applicant could use outside electric lifts and put the corner in the front of the house instead of running a ramp down the whole side.

M. McComb said she thinks this is very serious, because she remembers when this application was presented, the applicant was going to keep all the trees on the side of the building and now those are all going to go down for this. Herbert Scott said, no, there is plenty of room inside there to build that 3' ramp. B. Pfau said it appears to be room there. M. McComb said (1) there isn't plenty of room on that lot, (2) there are parking spaces in the back and she does not see how three cars are going to be able to park behind that building and (3) the map presented shows it is 5'8" between the building and the split rail fence. Herbert Scott said (1) it is tight for parking, (2) according to the other map, there is 14' on one side and 10' on the other side, as it is angled in there, (3) he thought he was here tonight to apply for an application for the ramp and (4) the parking situation has gone by and is done and over with.

M. McComb asked for thoughts about the idea of a ramp with construction by the front door. K. Hoopes asked if it is correct (1) that the applicant is only asking for the extra relief for the 3' ramp, (2) no parking spaces will be lost, as they have already been set aside to save the trees and (3) the ramp would not get in the way of sidewalks or anything else, to which Herbert Scott answered, yes, to all of the questions and specified that he would only be invading the 3' on the Goodman Avenue side. B. Pfau asked if the applicant entertained any other possible locations for the ramp and Herbert Scott said (1) it is so tight, (2) this is what the architects drew up and thought was the best way to do it and (3) the drawing on the front makes the building look nicer than it could. M. McComb asked if 3' is wide enough for a wheel chair and Herbert Scott responded, yes.

M. McComb said (1) she doesn't see the trees on the map, when she sees something where shrubs are drawn in, she figures the trees are coming out and the shrubs are replacing them, to which Herbert Scott answered by saying (1) no, the trees are not coming out and (2) he went through great expense to prune and cut them the best he could to save them. B. Pfau asked why this proposed project requires additional parking spaces and Pam Kenyon responded by saying, (1) so they can fill the footprint of the

structure and (2) she can go either way on if it does or does not need additional parking. B. Pfau asked if the ZBA could drop the part of the request for additional parking and Pam Kenyon answered, yes, the ZBA can drop the parking part of the request.

B. Pfau said (1) the options are limited here, (2) there's not room for a lot of possibilities, (3) he thinks the stairs and the deck will improve the looks of the front and (4) he doesn't know what to do with the ramp, but the applicant needs a ramp. K. Hoopes agreed and said (1) the options are limited and (2) by law, the applicant needs a ramp.

Sue Scott Parker said (1) she will have one of the stores in there, (2) the motorized ramp would aesthetically be a more pleasing option to the Town of Bolton, as opposed to a motorized lift in the front of the building, (2) they are keeping the vision fully there, with the parking structures, etc., (3) this approval allows them to finish their landscaping, then make it aesthetically beautiful and (4) regarding handicap access, many places, because of the ADA compliance, which is something she is firmly in belief of, restrict handicap access, (5) this project affords handicap people all access to the retail venues and to the deck, (6) they will be one of the few stores in town that will encourage people to bring strollers in, as opposed to many stores in town that do not allow strollers, which are not even wheelchair width and (7) they believe in this new construction venue, that they have addressed the issue not only aesthetically for the Town of Bolton, but also in pleasingly in compliance with ADA.

M. McComb said (1) the plan seems to have grown and changed and (2) the windows on the upper level weren't on the original plan, to which Herbert Scott said, the windows on the upper level were on the original plan. Herbert Scott said they changed the window on the north side to comply with the Town's requirements. K. Hoopes asked if that would be a bay window on the corner, facing the bank and Herbert Scott answered by saying (1) yes, it was and (2) he took the bay window out and made it flat, because it was in violation, as it was 9" or 10" over the overhang and over the variance. K. Hoopes said that is a shame they had to remove the bay window and B. Pfau said he agreed. K. Hoopes said (1) his way of looking at this is that not every project can anticipate every little twitch and turn, (2) this is a handicap ramp, you have to have it, (3) the lay of the land gave the applicant constraints in putting in the foundation that grew in unexpected ways and (4) to motorize the lift is interesting, but he was hesitant about it. B. Pfau said (1) he agrees with K. Hoopes and (2) unless anyone has a better idea of how to comply with the ADA, he feels the ZBA should let the applicant finish the proposed project. M. McComb said she agrees with B. Pfau, but would like this to be the last time the ZBA is surprised that there is an Americans with Disabilities Act and the last time somebody builds a new project and doesn't provide handicap accessibility. B. Pfau said the applicant has already explained that the original plan was for ground level. K. Hoopes said the applicant had handicap access planned.

No public in attendance.

There was no correspondence.

Pam Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from Herbert and Beverly Scott (V05-27) for an area variance as described above.

And, due 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 Board;

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #8 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, this is a GB5000 business area and these are the things you have to do to do business;
- 3) The requested variance is not substantial, especially to the people wanting to use the handicap ramp;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, there is nothing about this facet of a project that has anything of that nature;
- 5) The alleged difficulty is not self-created, these are rules and regulations that all businessmen have to abide by.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by K. Hoopes and seconded by T. DePace, it is resolved that the ZBA does hereby grant approval for said project as presented. **4 in favor. 2 (T. McGurl & M. McComb) opposed. Motion carried.**

9) V05-28 BURKE, SUSAN & CORNELIUS. To establish a 400 sq ft retail area, seek area variance for deficient parking: 4 additional spaces required for a total of 57 spaces for the entire parcel. Variances were granted for 16 spaces under V03-26 on 07/14/03 and V03-41 on 10/20/03. Section 186.14, Block 1, Lot 5, Zone RCH5000. Property location: 4587 Lakeshore Drive. Subject to WCPB review. NOTE: Site Plan Review shall also be required for a retail store involving less than 2,500 sq ft, but has not yet been applied for.

Cornelius Burke, representing Baer Necessities, said (1) they would like to try to do something new and interesting to their property, (2) they want to add the addition of having the ability to sell flowers and give a farm-to-market type appearance in the front portion of their property and (3) this poses a parking problem as it may push them over the relief of the parking spaces required.

M. McComb asked the applicant to reference the project on the map. Cornelius Burke showed the ZBA where the current parking area, which consists of bluestone and blacktop, is for their property and said (1) they are looking to put a place where they can sell flowers, perennials and annuals, (2) they are not requiring a specific structure or something permanent at the moment, as they are looking to do something seasonal and (3) this is a retail type outlet, so this is why they would need to require more parking spaces, which is what they don't have.

K. Hoopes said (1) this parking lot/retail space is a non-permanent structure and (2) the variance runs with the land and asked Counsel and Pam Kenyon if the ZBA gives it a variance, if it could be a permanent structure. Counsel answered by saying it would be a fourth retail space. K. Hoopes asked if by adding this outdoor retail space, the applicant is increasing his need for parking, while he is decreasing it by putting it in a parking lot, to which Counsel and Pam Kenyon both answered by saying, yes. Counsel said that four new parking spots would be required. Cornelius Burke said (1) it is an increase/decrease, (2) they would be losing two spaces, by how it sounds, but they don't know yet, because they haven't gone through that part of it yet.

K. Hoopes said (1) it has been his experience in driving by the property, for the last couple of years, that mostly what is put in that corner is tech equipment, (2) he hasn't seen any over-parking in that lot and tripping over each other, even during Americade and (3) it seems to be a fairly imaginative utilization of that area. Cornelius Burke said he doesn't think it would hurt to see flowers instead of equipment there.

M. Murray asked (1) how sales and cash flow would be handled and (2) if the money would be handled on the spot or by going back and forth from the store and Cornelius Burke answered by saying that (1) they would have somebody there who is in that

industry to represent the whole farm-to-market type scenario and (2) there would be a set little place, like a 100' area where everything that is set up would be taken down at night, so there wouldn't be anything permanent there. B. Pfau asked if they would lease it out and Cornelius Burke responded by saying that they would think about the opportunity of doing that, however, that is not something they have crossed just yet. B. Pfau said he noticed Mark Perry's name on the application and Cornelius Burke responded by saying, he is the one who is interested in doing this with us.

B. Pfau said the applicant supplied a drawing of some type of canvas tent with his application and asked if there was going to be a tent in the parking lot and what the tent would look like and Cornelius Burke responded by saying (1) that was something required to give the ZBA insight as to what they are going to do to take in monies and where they will be set up, (2) there will be a tent something along the lines of the one on the drawing, so if it does rain, business can still be conducted.

M. Murray asked what if this needs more space next year, and Cornelius Burke answered by saying that is something they don't know about yet and maybe the ZBA can give them some light on that. K. Hoopes said in answering if the business gets bigger, the ZBA would have to see the applicants again. B. Pfau said he is assuming the business will not be confined to underneath the tent and that to the retailer, the tent will be bigger than 20' x 20'. Cornelius Burke said (1) the flowers aren't going to be exhausted to rain, as it is something they need to survive anyway, so they are not going to have structures over all the plants and (2) they will be putting in a non-permanent structure that is 20' x 20'. T. DePace asked if there is going to be a roof 20' x 20', to which Cornelius Burke responded by saying, yes, that is what they are looking to do.

M. McComb said she remembered when Mark Perry came to the ZBA with his landscaping business and there were concerns about having people coming to that site to buy things and asked if this project is to ameliorate that and get out of having him having to get a place to sell, to which Cornelius Burke said (1) maybe, that could be part of it, because Mark Perry's property was not a commercial space and (2) they have a commercial space, they have always wanted to do something more and it seems like a good match and a good fit, however, they have a problem with parking. M. McComb said (1) the applicant is the closest to compliant parking-wise in Bolton Landing, (2) it seems like it would benefit more than one local business to permit this and (3) if all the ZBA is approving is a non-permanent structure, then she doesn't see a downside to this.

T. DePace asked if the applicant was planning on taking down the tent at the end of each day, and Cornelius Burke answered (1) no, the 20' x 20' structure would not be removed daily, it's not realistic and (2) all the plants would be broken down daily.

B. Pfau said (1) the applicants have done a great job down there and the building looks wonderful, (2) he has been approached by a couple of people with the concern of the Town offering relief for the applicant to basically open a flower stand which is going to cut into the bottom line of permanent businesses in Bolton Landing. Cornelius Burke said he would consider himself a permanent business in Bolton Landing and B. Pfau said

(1) he would also consider the applicant a permanent business in Bolton Landing, and (2) if the business was inside the building, the applicant could do whatever he wanted retail wise, but needing relief from the Town, he is weighing the benefit of the applicant against the detriment, if any, that it would be to the community, which would be to other retailers in the community. M. McComb said (1) she had a bucket shop and sold flowers on the street, (2) there were concerns at that time that her selling peonies for a quarter was undercutting the florist who has the overhead, (3) she asked if it was going to be cut flowers, as she concluded when she saw Mark Perry on the application, that it would be perennials and more of landscaping plants and (4) she said it might compete with the Bolton Garden Center, but she does not know that it is the ZBA's job here. Cornelius Burke said (1) competition is what makes the world go round and (2) if somebody told him he couldn't build a house here, the next guy couldn't build one. K. Hoopes said (1) no, it is not the ZBA's job here and (2) competition is competition and the ZBA cannot get away from that, anymore than it can stop them from putting in another liquor store. B. Pfau said it is a temporary type of a thing that the applicant is putting in his parking lot. M. McComb said (1) there will be different economics on these plants and flowers than on somebody that has to do overhead on a building, (2) she can see in some cases this being a bad idea, but this property has a lot of parking relative to the use that it gets and (3) something like that would seem to be an attractive gateway business and (4) the only drawing that is proposed of what it is going to look like is an end view of a canvas structure with no indication of what will anchor it.

Counsel said (1) the ZBA's job tonight is to see if it is appropriate to grant an additional relief on the parking requirement and (2) this applicant does have to go to the PB to get answers to those questions the ZBA is asking. M. McComb asked if it is fair for the ZBA to say they might like to grant parking relief if it looks like one thing and not be disposed to grant it if it looks like something else, to which Counsel responded by saying the question is how the tent will be anchored and the applicant is here for parking. M. McComb said if there are going to be ropes, posts and 5-gallon buckets of sand and look like a tacky thing, then it's not going to be great and Counsel said that will be dealt with at the site plan review and B. Pfau agreed by saying, the PB will take care of that. K. Hoopes said the ZBA only deals with numbers and strictly with the mathematics. M. McComb asked how she could decide about whether to grant the relief for parking without knowing what it is going to look like, and Pam Kenyon said (1) the applicant is not here for the structure and (2) it is a tent, that's all it is. M. McComb said the ZBA had a case where it granted relief, because the PB was going to oversee the details of the matter, and she does not want to tie the PB's hands and she asked if the ZBA grants the applicant the variance to conduct this business, if the PB has to do it, and Pam Kenyon said that would be a totally different application with totally different guidelines. Counsel said (1) Pam Kenyon is correct and (2) their hours of operations, the height of the tent, where the flowers are going to go, etc. are all part of the site plan review. M. McComb asked what the difference was between this project and the variance for the bridge across Indian Brook that the ZBA granted to Rolf Ronning, where Rolf Ronning went to the PB and said "it is not a question of if, but how." Counsel said (1) the ZBA is considering granting an area variance to re-configure the allotment of parking spaces that will allow the addition of this retail business, of less than what was previously permitted

and (2) the permission of actually doing the retail operation there, is really, of right, something for site plan review.

From the public, Rolf Ronning, neighbor to the north, said he approves of the project whole-heartedly and it would be a lovely addition to see fresh flowers over there.

There was no correspondence.

Pam Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from Cornelius and Susan Burke (V05-28) for an area variance as described above.

And, due 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 Board;

and, whereas the Warren County Planning Board 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 #9 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance, for adding retail space and correcting parking spaces;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, this is a retail establishment and they are just expanding in the south end of their lot;
- 3) The requested variance is not substantial, it is a 20' x 20' tent and two cars they are speaking of;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, especially with the new drainage the applicant has down there now;

5) The alleged difficulty is not self-created, in any material way.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by K. Hoopes and seconded by T. McGurl, it is resolved that the ZBA does hereby grant approval for said project as presented. **5 in favor. 1 (M. Murray) opposed. Motion carried.**

10) V05-30 SHERMAN, HAZEL. For the construction of a proposed 10' x 12' gazebo, seeks area variance for a deficient shoreline setback: 75' is required from the mean high water mark, 42' is proposed. Section 171.07, Block 1, Lot 28, Zone RM1.3. Property location: 27 Federal Hill Road. Subject to WCPB & APA review.

Richard Morris, representing Hazel Sherman, said (1) they picked the most suitable location for the gazebo and (2) it is an accessory structure that is not a permanent foundation, (3) it has no facilities hooked to it.

M. McComb said, talk about self-created difficulty, if the applicant hadn't made the pond, she would have the waterfront setback. B. Pfau said (1) he thinks the gazebo will look nice next to the pond, (2) this is a very well-kept property and he is sure this will add to it.

No public in attendance.

There was no correspondence.

Pam Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from Hazel Sherman (V05-30) for an area variance as described above.

And, due 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 Board;

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #10 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, it is a pretty little gazebo;
- 3) The requested variance is not substantial;
- 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, since it is a man-made pond, but that does not outweigh the detriment to the ordinance or the benefit to the applicant.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by M. McComb and seconded by T. DePace, it is resolved that the ZBA does hereby grant approval for said project as presented. **All in favor. Motion carried.**

11) V05-23 FRANK, EDWARD. To alter existing structure by adding a 13'4" x 33' 10' awning, seeks area variance for 1) deficient front yard setbacks. 30' is required; 28'5" is proposed from Lake Shore Drive and 12'5" is proposed from the edge of the right-of-way along the Dula parking lot; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 171.19, Block 1, Lot 64, Zone GB5000. Property Location: 4933 Lake Shore Drive. Subject to WCPB review.

Edward Frank said (1) he would like to put an awning over the existing eating area of the pizzeria, which would take up the exact dimensions of the existing concrete slab, (2) it is a detachable, removable awning, which will be taken in at the end of the season, (3) his primary concern is that they have zero business when it rains, so the awning would be primarily for shelter, (4) the colors of the building are white and burgundy and to keep that color scheme, he wants to alternate the white and burgundy on the awning's scalloped valance for fringe and (5) the awning manufacturer has informed him that the color burgundy he is going to use for this valance deteriorates and fades very quickly in

the sun, so it has been suggested that the green is compatible with the burgundy for the top and wouldn't be very visible to the public.

M. McComb asked if the valance would be alternating 5' white then 5' burgundy and Edward Frank responded by saying, (1) no, to give the pizzeria an Italian feel, for the valance, he wants to put a sequence of 5' burgundy, 5' white, 5' green in the center, 5' white, 5' burgundy and the remaining space will be the end burgundy pieces extended and (2) the top of the awning will be solid green. B. Pfau said (1) the ZBA has approved similar awning color schemes for other Town business, like Cate's and Ben & Jerry's, (2) his only concern was that the awning might be yellow, (3) the color scheme looks good here and the proposal sounds good. K. Hoopes said the proposed awning is definitely a plus.

Edward Frank said (1) the construction would be permanent 1" galvanized pipe with 1" pipe rafters, (2) the awning will come down in the winter, but he thinks the pipes and pipe rafters will stay. B. Pfau said the pipes stay on all the awnings and K. Hoopes said it is a downside, but the Town has to deal with it. Edward Frank said rain or no rain, the awning will enhance the view of that whole side of the building by covering up the concrete slab that exists anyway and more or less completing what one would think should have been there to start. B. Pfau said he thinks they look nice also and K. Hoopes said (1) when the awning is in place, it will be an improvement and (2) in the winter the Town just has to put up with it, as it cannot ask the applicant to keep the awning out there all winter, because the applicant would be replacing it every year, (3) he has a good feeling about this, (4) it is an improvement to the business, (5) 75% of the time, it is going to be an improvement to look at the building and (6) it doesn't invade the parking lot next to it in any way, so it is not invasive. B. Pfau said (1) he agrees that it would be a nice improvement and (2) the building looks nice now with nice paint. M. McComb said (1) there has been turnover in that location, (2) it is nice if something can help a business do well on Main Street and (3) the building looks nice and (4) you see people out there eating pizza on the park benches and when it rains, they don't.

Edward Frank said regarding the turnover M. McComb referenced, (1) he has owned the building for going on 9 years, (2) there was a three-year span where he had to lease the location out, due to being critically injured and his inability to operate it, (3) when he leased the location, there was a different business there and it was considerably run-down, (4) he has been back going on his third season and (5) each year he tries to do something to improve it. M. McComb said she thinks it is a good plan.

No public in attendance.

There was no correspondence.

Pam Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from Edward Frank (V05-31) for an area variance as described above.

And, due 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 Board;

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #11 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance, because of the setback and the parking lot;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, it is in the business district;
- 3) The requested variance is not substantial, it is covering the existing concrete pad, which comprises the outdoor seating;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, since it is an impermeable layer on top of an impermeable layer;
- 5) The alleged difficulty is not self-created, because that building has been there for quite some time and it is an improvement to the business.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by K. Hoopes and seconded by T. DePace, it is resolved that the ZBA does hereby grant approval for said project as presented. **All in favor. Motion carried.**

OTHER BUSINESS:

Pam Kenyon (1) referenced Section 200-67 of the Zoning Ordinance and (2) said she and Counsel have a disagreement on the meaning and asked if to demolish a portion of that structure that is non-conforming requires the applicant to get a variance. K. Hoopes asked if Pam Kenyon means to “remove it” and she responded by saying, (1) yes, to remove it and (2) said the particular situation she is talking about is a falling down structure where the person wants to take down the wood portion on the back of the structure and she wants to know if the person needs a variance to take down that wood portion. M. McComb (1) said according to the ordinance, yes, the person needs a variance and (2) asked Pam Kenyon what her call is. Pam Kenyon said she thinks that to demolish a portion of a non-conforming structure should not require a variance. T. McGurl said he doesn’t see that the person would need a variance for that, but if the person wants to rebuild it in any way, a variance would be needed.

Counsel said Section 200-67 says, “...a non-conforming structure may be continued and maintained in reasonable repair without being altered,” and (2) what they had with McCauley’s is that, what it really was, is it was a non-conforming use of a non-conforming structure, (3) the ZBA should not worry about the non-conformity of use, because this person proposes to let it revert into a single-family dwelling, so they are just going to talk about the structure, (4) it is a non-conforming structure and what this person wishes to do is alter it, (5) the structure may not be altered, in fact, no non-conforming structure may be altered, unless the ZBA has reviewed it for that purpose, (6) an example would be the cinderblock building from Agenda Item #2, where that is an alteration, the ZBA can see what the applicant wants to do and the ZBA wants to have control over that, (7) tonight’s agenda is very full of circumstances like this, for example, in Agenda Item #3, The Juliana, had a non-conforming structure, which is right in the litany of things that talks about “altering,” “enlarging” or “extending”, (8) regarding McCauleys, he thinks that even if McCauleys is not going to enlarge it, even if McCauleys is not going to be extended, it is going to be altered.

K. Hoopes said (1) he thought that was the point he made with Pam this afternoon, that it is tough, but he would like for her to have a certain level of discretion on this, so the ZBA does not get a bunch of stupid stuff and (2) he does want the ZBA to have the possibility of review on something if Pam thinks there is something funky about it, like the McCauleys Ranch House, he would like the possibility of reviewing it. Counsel said then he would make the argument with other zoning codes he has worked under where if you take a non-conforming and make it less non-conforming, that is you reduce it, then it certainly doesn’t come down to the zoning ordinance, it seems to be going and getting smaller.

M. Murray said the context given here, with the exception of one word, is to the increasing of size or use, so there is only one word that does not point that way, so the context seems to be keeping them from making it more non-conforming. K. Hoopes said in some cases, the thing he is worried about, as with the cinderblock building, for example, say they were altering it in some way that wasn’t increasing it, but making it more hideous, which is conceivable. M. McComb said another example is they are

altering it by making it half the size, but it still seems to the ZBA to be an issue because of its location and asked if Pam Kenyon's ideas are in the case of McCauleys in particular. Pam Kenyon said for example, Kinglseys, who were on the agenda tonight for their garage, she issued a demolition permit approximately two weeks ago for them to demolish the woodshed that was attached to the non-conforming garage. B. Pfau asked if Counsel feels Kinglseys would have needed a variance to do that. T. McGurl said it's not always that they need a variance for that. Pam Kenyon said (1) Kingsleys would have needed a variance to do that and (2) she cannot use her own discretion. K. Hoopes said he doesn't see why Pam Kenyon can't use her own discretion. Counsel said (1) what happens is that some of these really clear and virtuous cases, end up basically digging a hole for the ZBA on the hard ones, (2) for instance, on McCauleys, he doesn't think there's a person in the room that wouldn't want to see that thing spruced up and made better, so the ZBA wants to grease the shoot on that application by saying the ZBA will give full cooperation, however the applicant is altering a non-conforming structure and (3) along comes Mr. Roberts and he perhaps has a new owner for Lot #3 and they also want to alter the non-conforming structure, they are going to hold all the unfavorably courtesy of setbacks and designs and it will be nasty, but the ZBA has set ample precedent for them to be able to do it without further review. K. Hoopes said (1) he never wants to do that, (2) it is exactly the McCauleys Ranch House thing that he wants to look into, because he doesn't see taking that wooden structure down, altering that building so it can be a single-family home of any kind that the ZBA wants in this area and (2) the McCauleys will have to do something to that building. B. Pfau (1) asked if the zoning has evolved to make it more difficult to add non-conforming structures, so now every 10' X 10' structure that someone wants to knock down is going to need a variance and every shoreline fence that gets knocked down is going to need a variance and (2) said Pam Kenyon is right, she can't pick and choose, she has to send them all to the ZBA. M. Murray said (1) there is another way to resolve this too, if it is read it like it is, but if part of the non-conforming is to be removed it doesn't need a variance, that way Pam Kenyon would have a free hand, where if they are actually going to take something away completely, then she wouldn't need a variance. Counsel said (1) he thinks he and K. Hoopes are suspicious of the alterations, (2) said they would like to know and make sure that it is in conformity of what they perceive as some permitted use with going from store to residence and (3) asked what the ZBA expects to see out of that. M. McComb said (1) in the case of the concrete block building, the applicant can argue that, if the ZBA sets this precedent, that you don't need the review as long as you are diminishing the non-compliance, that he is free to contract that building without review and (2) she can sympathize with Pam not wanting to go through the variance process on removing a woodshed from a non-compliant building, but if Counsel thinks it will make sticky wickets for the ZBA, she feels the ZBA should stick with the higher level of review. T. McGurl asked, as an example, if Roberts didn't need a three-lot subdivision, he was just going to keep it two lots and he wanted to keep the block building and reduce it in size, then he wouldn't need a variance for that as of right now, and Counsel answered, no, he would need a variance and he would hold his feet to the fire and tell him that if Mr. Roberts comes in with any alterations to that building, he has to have a plan before the ZBA. K. Hoopes said the ZBA talks a lot in grandfathers, but they don't have any really. Pam Kenyon said she doesn't mean to just change the configuration, as she knows that

would require a variance, definitely, even if you are diminishing it and you are changing something, then there should be a variance, but to just literally take a portion of it away, like the woodshed. M. McComb asked how often this comes up and if it is just this one, to which Pam Kenyon answered by saying, she never paid attention before, until the last few months with McCauley. M. Murray asked what harm it would do if they took down some of the wall, to which Counsel answered by saying that (1) he can't say they will not all agree that there will be no harm, but at least there should be some ZBA review on it and (2) what is happening there with that wall, is that you now have a code that says a retaining wall is a structure and must meet setback requirements, which it never would and it is non-conforming and pre-existing, but when he takes it down or reduces it in size, the applicant is altering it and he would like the ZBA to know a bit more of how that should be approached. K. Hoopes said his point is that the ZBA cannot foresee all of the possibilities down the road, so maybe the ZBA should look at all of them and M. McComb said (1) she agreed and (2) if this causes Pam Kenyon a lot problems, she should come back to the ZBA. Counsel said he and Pam Kenyon didn't argue about it, but they had some pretty good discussions about it and wanted to see what the ZBA felt. M. Murray said it is hard to see how removing something completely, he could see altering it in the sense of doing something different, but to remove something completely how in making it less non-conforming could be a problem. Counsel said that if the removal is scraping something off the ground and it is gone, then it is not an alteration. M. McComb said that does require a variance to remove it. Counsel said he would never have asked anyone for an application to produce a variance if they wanted to take down a wall, just take it down. M. Murray said he agreed and if someone comes in and says they want to take it down, what harm would there be in it and K. Hoopes answered by saying you can take it down, you just can't rebuild it. M. Murray asked why the ordinance can't read that way then and K. Hoopes answered by saying (1) this is only part of it, they aren't taking the whole thing down, so it's altering, (2) for instance, you have an attractive side of the building and a really hideous side and the applicant takes down the attractive side. M. Murray said it is still non-conforming. M. McComb said if the applicant wants to demolish it and take it away, that doesn't need a variance.

Meeting adjourned at 10:24 pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
05/31/05