

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES –
Monday, November 13, 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

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

Absent: None

Chairman G. Smith opened the meeting at 6:33 pm by asking for corrections to the October 17, 2005 ZBA minutes.

M. McComb said on page 12, the last line of the last paragraph should read, “*M. McComb said she disagrees, because she measured it and the deck is 12’.*”

K. Hoopes said on pages 1 through 3, “Charles Ginkis” is misspelled should be read “Charles *Giknis*” throughout.

T. McGurl Jr. said on page 10, paragraph 6, number (5) should read “...(5) he likes that the applicant is not *pushing* back into the woods, but using the lot and what is already there to speak of.”

Motion by M. McComb to approve the October 17, 2005 minutes as amended. Seconded by M. Murray. All in favor. Motion carried.

1) V05-54 BYERS, STEPHEN. Represented by Eugene Baker. To allow a retaining wall to remain, seeks area variance for deficient setbacks: 1) shoreline: 75’ is required, a) 0’ is proposed from the mean high water mark of Lake George; and b) 30’ is proposed from the Trout Pond as described on the site plan; and 2) side: 15’ is required, 0’ is proposed. Section 171.08, Block 1, Lot 17, Zone RCM1.3. Property location: 12 Braley Point. SUBJECT TO APA REVIEW. The WCPB recommended denial based on the fact that the wall does not appear to be compatible, the wall will have negative impact on Lake George with stormwater, erosion, adjacent neighbors due to stormwater and erosion, as well as zebra mussel habitat. This item was tabled at the September meeting pending additional information.

G. Smith said that this application has been withdrawn.

M. McCombs asked if further ZBA discussion on this matter is warranted even though the applicant withdrew his application, since the applicant is in violation per previous ZBA ruling and Supreme Court ruling. G. Smith said (1) that the ZBA can’t deliberate on what it is or isn’t, (2) the applicant is allowed to withdraw and (3) if nothing happens and the applicant doesn’t apply next month, something will go from there. Counsel said

(1) that in answer to M. McComb's question, of course he has said that in the past, if the application is still pending (PAM – this is verbatim now...please let me know if it is ok or needs any additional clarification) and (2) he spoke with Mark Schachner and he withdrew it so there is nothing pending here.

M. McComb asked if it is correct that the applicant is allowed to simply say it is no longer jurisdictional and the ZBA is not permitted to examine it. Counsel answered by saying (1) that would be a characterization—that is a possibility, (2) he thinks what is happening is that this application for a set-back variance is withdrawn as the applicant is permitted to do and it is true that this is would be the second time this applicant would present this same sort of request, (3) next stop would be that the Zoning Administrator is supposed to go out there and determine if it is a retaining wall that is subject to the jurisdiction of the Zoning Code, (4) what the Zoning Administrator determines is then an interpretation which procedurally someone may wish to take appeal from that interpretation and the ZBA will then tell us if the Zoning Administrator's determination stands or it does not stand and (5) that would be the path that we're headed for, but in this instance, there is no application for a setback variance as of 1:00 pm today.

M. McComb said (1) she is looking at a letter from Mark Schachner saying that substantial material has been removed with substantial changes made and this is the same thing that was litigated and (2) as far as she is concerned, the ZBA has bent over backwards again and again and again on this project, winter is coming, the court ruled that the notion that you can have a crummy retaining wall, an ill-suited retaining wall, an inefficient retaining wall and it is no longer a retaining wall is gibberish.

K. Hoopes asked if M. McComb went to the site to see the present retaining wall and she replied by saying (1) yes, she has, (2) she saw the mulch tumbling down onto the Markis' property and (3) she saw erosion breaks in the level from this big high thing with trees on top of it coming down. B. Pfau said that he doesn't think it is the ZBA's job to sit and debate and determine whether this wall is jurisdictional or not.

G. Smith said that the Zoning Administrator will take care of it and if it needs to be in front of the ZBA it will be. M. McComb said that (1) she thought Zoning Administrator P. Kenyon ruled on this a long time ago and (2) she feels the ZBA should support P. Kenyon in her ruling. Counsel responded by saying that (1) P. Kenyon did rule on it and (2) unfortunately he feels they will be going down a path that he feels they have gone down before, (3) with no application pending and clearly Mr. Byers as an applicant controls his application.

M. McComb said (1) the last application that was pending that the ZBA was allowed to rule on the ZBA did rule on and (2) Mr. Byers sued and appealed that ruling and lost, at which point he comes into violation. G. Smith said that (1) Mr. Byers feels he is not in violation anymore, (2) Zoning Administrator P. Kenyon will make a determination and (3) after the Zoning Administrator makes a determination, Mr. Byers will be back before the ZBA if need be.

2) V05-59 DePACE, ANTHONY & GAIL. To alter pre-existing non-conforming guest cottage/garage and convert the guest cottage into a single-family dwelling, seek area variance for 1) a deficient front yard setback: 50' is required from the edge of the right-of-way from Braley Point Road, 5' is proposed; 2) a deficient shoreline setback: 75' is required from the stream, 13' is proposed; 3) deficient density: 2.6 acres required, 2.43 acres exist and is proposed; and 4) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 171.08, Block 1, Lot 11.2, Zone RCM1.3. Property location: 30 Braley Point Road. SUBJECT TO WCPB & APA REVIEW. Approval was granted on 9/19/05. Clarification is needed as it pertains to the pre-existing non-conforming aspect of this project.

Note: T. DePace recused himself from the ZBA for this item.

Tony DePace said that (1) he is here just to verify the pre-existing portion of the barn/cottage, (2) he handed out several letters to the ZBA members and to Counsel to that effect. K. Hoopes said that he feels this helps and the materials presented can be entered into record as sufficient evidence of a pre-existing condition of this property.

Correspondence: Counsel read the following correspondence into the record.

- Letter from Alexander Keeler—confirmed that in 1998 there was a garage and a rustic sleeping accommodation on the second floor as well as a bathroom facility/toilet on the ground floor.
- Letter from Ruben Ellsworth—stating that in 1998 he excavated the property, Horace Baker Construction was renovating a barn/cottage and he and his employees used the bathroom facilities in the barn/cottage.
- Letter from David Greene—stating that he observed sleeping accommodations provided in the loft of the attached barn when he worked for the Streevers and the barn was located on the northwest corner of the former Streever plot.
- Letter from Edward English—verifying that prior to the DePaces' purchasing the property, when the property was for sale he looked into it and can verify that the barn/cottage had a sleeping area upstairs and a bathroom downstairs.
- Letter from Horace O. Baker—stating that regarding the DePace barn/building, in 1998 he replaced wood and dirt floor on ground level to concrete, sheet rocked the second floor, installed two bathrooms to existing sewer pipe and he saw cots and mattresses on the second floor of the said building.
- Letter from Henry Caldwell—stating that regarding Bill Streever's accessory structure, he visited the structure on several occasions while Bill Streever lived on the property and Bill Streever used the building for storage, but also there were beds, a privacy curtain and

running water in the building, which he now would say may have been used as someone as a place for living.

□ Letter from Rolf O. Ronning on behalf of Bell Point Realty—regarding the pre-existing status of the carriage house/garage owned by DePace, stating that when he first got involved with the property in the mid-1990's he had been shown the entire property and at that time the carriage house/garage had an upstairs with at least one set of bunk beds, two other cot-like beds and an enlarged unfinished open room and downstairs there was either a ½ bath or ¾ bath with a sink and a toilet. At the time of the DePaces' purchase, the bed/cots were still upstairs and the bathroom was still functional.

From the public, Bernard Marki, neighbor to the west, said that (1) he remembers that in 1998 there were only four structures (1 barn, 1 log garage, 1 log camp and 1 cottage) on the property as shown on the map submitted by Gail and Anthony DePace when they subdivided their property in 1998 and certified by D. Dickinson in October 1998, (2) sometime after that there was one house sold (shown as 1 log camp on the map) and there was 1 cottage left and 1 barn left, (3) at some point the cottage was removed and the DePaces built a new home there as a year-round residence, (4) somewhere later on the barn was turned into a guest cottage—it had a dirt floor, you could see through the boards on the side—there wouldn't have been any running water, because it would have froze, (5) he is not sure when the four bedrooms appeared, as he does not recall ever seeing them and there wasn't a kitchen up there and (6) he is wondering why this was converted into a pretty much year-round residence or guest house without any previous applications, inspections, certificates of occupancy or permits to do so.

M. McComb replied by saying that (1) it seems to have progressed from putting some beds upstairs to running some pipes in and she is not sure at what point this has moved over into becoming how that makes this a separate single-family dwelling out of it, (2) she supported this plan at the last meeting, in large part, because the DePaces agreed they would not add further guest cottages to this property and that they are so close (within less than ½ acre) of being able to legally subdivide and put in two houses and two cottages on that land, (3) she knows it is an irregular way to go, but it does seem that there have been times in Bolton Landing where use has grown under the carpet.

K. Hoopes said there has been a variance already granted and M. McComb replied by saying that (1) if the variance was granted on incomplete or inaccurate information then this is good to look at, (2) she realizes that there could be grounds for asking what the heck is going on and (3) she also asked why this applicant is just bringing his materials to tonight's meeting instead of passing them out to everyone in advance as she feels this is a drawback.

G. Smith said (1) Streever had a barn there for the last 100 years, (2) there may have been cracks through the building or siding—that is how Streever took care of his property, (3) Streever wouldn't have had running water in the winter, but would have drained it since he didn't live there in the winter, (4) there is a separate leachfield for this running water that is in this barn, (5) there are seven letters stating that all of this was pre-existing, there were beds and cots upstairs and there were curtains separating the rooms upstairs—that's

the way it was and that's the way it is, (6) Tony and Gail DePace purchased the property and renovated the barn to work in and for storage—they didn't need permits to renovate the barn, (7) the barn was already a guest cottage upstairs so to speak and (8) nobody has ever lived there year-round since the DePaces have owned it—he has had a brother stay there from time to time and that is it.

M. McComb asked if it is correct that there isn't a kitchen upstairs and G. Smith said (1) there is no kitchen up there, which is why Tony DePace came to the ZBA to get a variance to put a kitchen up there—it is one open room with a couple of closet-type bedrooms up there—nothing has been done to put living quarters upstairs, it is open rooms like cubby holes up there, (2) the point is to clarify from the seven letters presented that this is pre-existing and has been there—it is not something the DePaces' have decided to build themselves and start now, so everything the DePaces have done is legal and to the book and (3) the ZBA is just here to clarify for this application that from these seven different letters from individuals who have observed what is going on up there, that this has already been there pre-existing prior to the DePaces purchasing the property.

M. McComb said that it made a big impression on her that the DePaces offered for the ZBA to put a condition that there be no further guest cottages for these residences. G. Smith said that the DePaces are better off leaving it as it is and possibly putting another structure on the property and using this as a guest cottage, because the DePaces only lack 3/10 of an acre in building it. M. McComb said that (1) there are trade-offs sometimes in zoning issues, (2) certainly it is a trade-off that this structure is very close to that stream, but it is not a side-by-side house on Lake George squeezing another property in there and (3) the DePaces made the offer of that compromise, which she thinks is a substantial compromise and given that it is still not, by the Zoning Administrator's determination, a guest cottage with a kitchen in it, the ZBA did consider the trade-off in granting the variance last month.

Correspondence:

□ P. Kenyon read a letter into the record from her to Tony DePace dated March 3, 2004 regarding an alleged violation stating that by her inspection she determined that since the guest cottage portion of the structure does not contain a kitchen it is not classified as an apartment, thus no violations exist.

Correspondence: Counsel read the following correspondence into the record.

□ Letter from John Tiger Jr. dated November 12, 2005—stating his fax (copy enclosed) was not acknowledged at the September 19, 2005 meeting regarding his concern with DePace application for a variance.

□ Fax copy from John Tiger Jr. dated September 19, 2005—concerns with the (V05-95) DePace September 19, 2005 ZBA agenda item.

Counsel said the fax sent from Mr. Tiger had not been read into the record at the September 19, 2005 meeting and P. Kenyon said she doesn't have the letter from Mr. Tiger Jr. in the packet, so she never received the fax, which is why it wasn't read into the record at the September 2005 meeting.

M. McComb referred to Mr. Tiger Jr.'s fax and asked about Mr. Tiger's point regarding no permits or any conversion and how he said that P. Kenyon said that a person needs permits for a conversion. G. Smith said that Tony DePace didn't need a permit because there was no conversion made—it was all pre-existing.

Counsel said that (1) if it is pre-existing, and the ZBA has substantial correspondence that may persuade them that that is so, then he certainly feels that that explains the absence of permits, (2) if it is not pre-existing then the absence of permits tells that it was done without permission, but the ZBA would have to accept the notion that it was not pre-existing, (3) P. Kenyon was not in attendance at the September 2005 meeting, he had never seen Mr. Tiger's letter, so there is a possibility that Code Enforcement Officer Mitzi Nittmann didn't receive it, but at the September 2005 meeting, he thought that every member of the ZBA including himself, accepted the notion presumptively that P. Kenyon had instructed that it was all pre-existing and all non-conforming—he would accept it, (4) after the meeting, he came to learn through several Town Board members that there were inquiries made on this very issue and the question of how he, P. Kenyon and the ZBA could have accepted the notion that this is pre-existing and non-conforming, because that perhaps wasn't so—he doesn't want to presume it isn't so—and then he admitted that having accepted the notation saying it is all pre-existing and non-conforming, the fact-finding was hopped right over and it was accepted, (5) if there is some notion that they were presumptively wrong, then they better do it right and present an ample record which is in the best interest of the applicant and the ZBA, (6) get to the facts and then the exercise will be if the ZBA accepts that it was pre-existing and non-conforming or do they not.

P. Kenyon asked when the structure was built and G. Smith said before 1950. P. Kenyon said she stands by her decision that this is pre-existing non-conforming and G. Smith said that he agrees. M. McComb said that (1) based on the letters, she is absolutely willing to go along with that, (2) she agrees that when she mentioned irregularities before it is that this is the only proposal before the ZBA that she can think of where there has been nothing in the packet in advance and the applicant has been given the option of just bringing their stuff to the meeting and (3) she thinks in the future it would be a good thing to not do that—to have everything submitted ahead of time. G. Smith said that he didn't consider this a packet tonight and the ZBA is only here to justify that the applicant has seven letters verifying it is pre-existing—it is not a variance application tonight. M. McComb said that (1) everybody else defends their project with their stuff submitted in advance, (2) she is not suggesting the ZBA deny it based on it, but she is making the point that a ZBA board member ought to be even more meticulous not less. P. Kenyon said that (1) she thinks she is pretty careful with making sure all ZBA members have everything two weeks prior, (2) had this been a new application the ZBA would have had the information two weeks prior, but this was not a new application but a clarification and

(3) it took the applicant time to get his information to get together for the ZBA, which he did and he submitted it to the ZBA. G. Smith said that is another reason Counsel read all the letters into the record, so everyone heard them loud and clear—fair and square.

B. Pfau said there is also written correspondence dated September 22, 2005 from the LGA also making a claim that the DePaces altered the barn structure into a three-bedroom dwelling and accused the ZBA of cronyism asked if any LGA member was present to make a statement in defense to comments in the letter.

From the public Kathy Bozony of the LGA said that (1) she is not accusing the ZBA, but asking the ZBA if there are two sets of rules, (2) one of the main emphasis in her letter is the fact that during the entire discussion there was hardly any mention of the fact that the single-family dwelling would be enlarged quite a bit and that it is 13' from the stream, (3) generally variances are granted for hardship for changing and enlarging buildings that are that close to a stream that runs into Lake George, (4) it definitely brings up a question—and she is not the only person bringing up this question—as to how quickly this was passed and (5) she knows all the ZBA members discussed it among themselves prior and decided that it was the better thing to do to create two single-family dwellings on this one piece of parcel.

G. Smith said that the ZBA members did not discuss the matter other than publicly at the ZBA meeting—nothing is discussed prior to the public meeting. M. Murray and several other ZBA members agreed. M. McComb said in Ms. Bozony's defense, there was a good deal of talk and she feels there was some discussion ahead of time. All other ZBA members said they had no knowledge of any discussion on this matter with or without the applicant prior to the public ZBA meeting and G. Smith asked M. McComb who the applicant discussed the matter with and she said it wasn't her.

Kathy Bozony from the LGA (1) said regardless, the main thing that it was passed as two single-family dwellings, she knows the acreage is just below what would have been possible to divide this family dwelling and (2) asked if there is any guarantee that they will not be divided in the future then guest cottages put on.

M. McComb said yes, there was a condition that there would not be further guest cottages, which was accepted as no problem by the DePaces.

Kathy Bozony asked what would happen if the parcel was divided 10 or 20 years in the future.

G. Smith answered by saying that (1) they would have to come before the ZBA to do that and (2) the reason the ZBA is here tonight is to clarify if this was indeed pre-existing. P. Kenyon said she stands by her position.

M. McComb posed the question that if there isn't any residence there now, is there a septic system for it (the barn) and what happens with the septic on that (the barn)? Tony DePace said that (1) regarding the septic system on the barn, the existing septic system

will be no longer—it will be an added-on septic system to his house, so it will be run further away from the brook than it is now and (3) he would really appreciate if the ZBA could stay focused on tonight's agenda as he has already had his variances. M. McComb said that (1) these people are all questioning whether Tony DePace's variances were granted under a lack of information or false information and (2) she thinks that based on the material Tony DePace presented, the variances were granted appropriately on appropriate information, but people have the right to ask the question—and the ZBA has asked it. Tony DePace said that he agrees with M. McComb that people have the right to ask the question, but it has already been discussed and if people need to review it again they can read the minutes.

Counsel said (1) if the ZBA stays on task, this whole proceeding on the DePace application has to do with something that eventually by resolution needs to be determined factually, which is why the ZBA is here, (2) it is persuasive that the Zoning Administrator says she looked at it, she stands by her facts and her personal inspection indicates that it is pre-existing and non-conforming—but that is evidence, as is everything that Mr. Marki may have said, the applicant may have said and submitted, (3) now the ZBA members are the masters of figuring out what is the fact and the fact is either that this does constitute and satisfy the requirements for pre-existing or it does not and (4) it would be helpful if the ZBA could find some rational basis in its decision and make some finding based upon the evidence that appears before it.

Now, upon **motion duly made** by Meredith McComb and seconded by Mike Murray, it is resolved that the ZBA does hereby determine that the guest cottage/garage is considered pre-existing, non-conforming. Therefore they stand by their 9/19/05 ruling. Tony DePace recused himself. **All others in favor. Motion carried.**

3) V05-61 CHILDRESS, JAMES & BARBARA. Represented by Richard Huck. To alter pre-existing non-conforming single family dwelling, seek area variance for 1) Deficient front yard setback: 30 ft. is required, 23 ft. is proposed; 2) deficient rear yard setback: 15 ft. is required, 8 ft. is proposed; and 3) to alter a non-conforming structure in accordance with Section 200-56A. Section 186.10, Block 1, Lot 29. Zone RCH5000. Property Location: 200 Sunrise Shores Loop. **SUBJECT TO WCPB REVIEW.**

Note: T. McGurl Jr. recused himself from the ZBA for this item as he may be doing some work on this cottage if approved.

Richard Huck, representing James and Barbara Childress, gave an overview by saying that the Childress' have a summer cottage in Sunrise Shores and they would like to add a second bathroom and a walk-in closet on to their cottage and then showed the proposed project on the map.

M. McComb asked if Sunrise Shores has a great leachfield out of the way and Richard Huck answered by saying no, each has a separate leachfield and some have put in their own pump stations.

B. Pfau asked about the front and rear-yard setbacks and Richard Huck pointed them out on the map. P. Kenyon said the applicant actually has two front yards and the addition is actually going on the side. B. Pfau asked if the existing building is 23' and P. Kenyon said yes.

G. Smith said he sees the Association unanimously approved the proposed project and Richard Huck said that is correct.

M. McComb asked if this is Blue Heron Cottage and Richard Huck said yes. M. McComb said this seems to be the sort of project that the ZBA was created to facilitate. G. Smith said that the applicants really don't have anywhere else to go other than the proposed side. K. Hoopes said that they are just filling in the nook.

Richard Huck said that the back door will stay where it is on the kitchen and the proposal is to extend the roof over it to cover the entrance and M. Murray replied by saying that makes sense. M. McComb said it seems to be a minimal solution to the applicants' needs and K. Hoopes said that for a tiny addition the applicants are getting a tiny bathroom and a walk-in closet.

No correspondence.

No public in attendance.

No County impact.

P. Kenyon said this is definitely a pre-existing non-conforming structure, as this house was built in 1963. G. Smith said it is pretty cut and dry and he sees no other solution.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-61) James & Barbara Childress 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 #3 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 would be no undesirable change produced in the character of the neighborhood, and there would be no detriment created to nearby property owners by the granting of this variance, it is very much in line with other properties in the Association and the Association unanimously agrees that it should be approved;
- 3) The requested variance is not substantial, it is minimal, there are no additional bedrooms and it gives the applicants a little more living space, but does not particularly increase the intensity of use of the property;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district by itself, in large part because it is so minimal;
- 5) The alleged difficulty is self-created, but the benefit to the applicant outweighs other considerations.

The benefit to the applicant is outweighed by the potential detriment to the health, safety and welfare of the community.

Now, upon **motion duly made** by Meredith McComb and seconded by Mike Murray, it is resolved that the ZBA does hereby approve the variance request as presented. Tom McGurl recused himself. **All others in favor. Motion carried.**

4) V05-62 EMANUELE, JOSEPH. To alter existing single-family dwelling, seeks Area Variance for 1.) Deficient front yard setback; 30 ft. is required, 12 ft. is proposed. 2.) Deficient rear yard setback; 15 ft. is required, .81ft. is proposed. 3.) To alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 171.15, Block 3, Lot 4, Zone GB5000. Property Location: 26 Hondah Loop. SUBJECT TO WCPB REVIEW. This item was tabled at the October meeting pending additional information. The WCPB determined no county impact.

Joseph Emanuele said they took the ZBA's advice and tried to make this plan more pleasing to the eye. G. Smith asked if the Association approved this plan and Marilyn Emanuele said the neighbor who had concerns has seen the plan and feels this plan is an improvement.

K. Hoopes said that (1) in comparison to the Emanuele's last application, this proposal is a much tinier and handsomer approach which will require a lot less work and (2) it will

make a better end result and he is all for it. Several ZBA members agreed that this plan is much better than the Emanueles' last application.

Correspondence: Counsel read the following correspondence into the record.

□ Letter from Marilyn Emanuele, President of the Hondah Cottage Association—stating that the Association does not dictate what homeowners have to do, they are leaving it up to the ZBA.

No public in attendance.

No County impact.

M. McComb asked if the Emanueles would be living in the home in the winter along with their son and Marilyn Emanuele said no, and said their son is in the process of purchasing his own home.

G. Smith asked if the Emanueles would be back in the near future for another variance and Marilyn Emanuele said no, hopefully not.

M. McComb said that (1) it is a big expansion to this place in comparison to a lot of the places down there, (2) this looks better than what is there now, but the notion of adding a second family to the property would be a consideration and (3) if the situation is temporary and Joseph and Marilyn Emanuele are not living there, then she wonders about the need for it, but also knows that the Emanueles have done a lot of work already. Marilyn Emanuele said that they aren't actually adding anything, but are they are changing the roof lines.

G. Smith said that the Emanueles are making it more aesthetic looking and M. Murray said that it is sensible K. Hoopes said the ZBA already granted the original variance, but somehow the original roof line slipped by the ZBA.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-62) Joseph Emanuele 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 would be no undesirable change produced in the character of the neighborhood, and there would be no detriment created to nearby property owners by the granting of this variance, but it will be an improvement;
- 3) The requested variance is not substantial, in fact they are cutting back on the visual impact;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district by itself;
- 5) The alleged difficulty is self-created, but it is self-corrected.

The benefit to the applicant is outweighed by the potential detriment to the health, safety and welfare of the community.

Now, upon **motion duly made** by Kam Hoopes and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion carried.**

5) V05-67 SCHWAB, BERNARD. To alter pre-existing non-conforming single family dwelling, seeks area variance for 1) deficient front yard setback; 75 ft. is required, from the edge of the right-of-way, 20 ft. is proposed. 2) to alter a non-conforming structure in accordance with section 200.56A. Section 186.14, Block 1, Lot 10. Zone RL3. Property Location: 948 Trout Lake Rd. SUBJECT TO WCPB REVIEW.

*This item was tabled until the December 19th Zoning Board of Appeals meeting, as no one was present to present the application.

6) V05-68 MacEWAN, ROBERT & DEBORAH. Represented by Mark Rehm, Esq. Seek to amend previously approved variance V05-55 to demolish existing structure and construct a 4-unit townhouse complex. Additional Variances required: 1) A deficient rear yard setback; 15 ft. is required, 7.3 ft. is proposed (10 ft. originally approved), and 2) Lot coverage 40% is allowed, 59% is proposed for 2 & 3. Section 171.15, Block 1, Lot 74. Zone GB5000. Property location: 22 Goodman Avenue, formerly known as Wilson's Laundry. SUBJECT TO WCPB REVIEW.

Mark Rehm, Esq., representing Robert and Deborah MacEwan, gave an overview and aid that (1) they are proposing 7.3 feet of relief instead of 10 feet, (2) they are trying to address the ZBA's concerns with this plan and (3) they propose a subdivision and have submitted an application for that. Atty. Rehm then reviewed the criteria and provided his thoughts on how he feels the proposal applies to the criteria.

M. McComb asked for details on the Homeowner's Association and Atty. Rehm said that it would be a not-for-profit Homeowner's Association, which will be responsible for the maintenance of the four homes as well as the surrounding property, so it looks good over time.

B. Pfau asked if the original proposal was that it would all stay as one commercial lot and then rent the units and Atty. Rehm answered by saying no, that wasn't the intention, but when the applicants originally went for their applications, in thinking after presenting to the ZBA in September, they needed to accomplish the subdivision so each individual town-home could be sold off individually—it was an oversight on the applicants' behalf. M. McComb said the ZBA approved it. Atty. Rehm said that there were approved variances for the building itself and the 0' lot line between the individual town-homes. B. Pfau said but that did not include individual lots at that time and Atty. Rehm said that is correct.

B. Pfau asked if this application has been before the PB and Atty. Rehm answered by saying (1) yes they have been before the PB and (2) there were some very minimal items of the project itself that needed to be addressed as well as for the approval of a four-lot subdivision. B. Pfau asked what the plans are for the property if the subdivision doesn't go through and Atty. Rehm said they have not thought about that at this point in time.

K. Hoopes asked if the plan for subdivision came out of legal research after the applicants were before the PB and Atty. Rehm said that in preparing for the most recent PB meeting they found they wanted subdivision approval, but they didn't have a plot plan for subdivision approval, so that application had been made as quickly after as they could.

K. Hoopes asked if it is correct that the applicants met with the PB knowing that they were going to have to subdivide this later and Atty. Rehm said that is correct.

M. McComb said that (1) her vote against this the first time was not against the project, but against the speed with which a new concept for Bolton Landing was being embraced with what she thought was a minimal inquiry into its impact and whether it was really the best plan for this and (2) she sees and hears that there are some provisions for fences and asked for their proposed location. Atty. Rehm said that (1) there are proposed privacy fences that the PB asked to be included and (2) the PB has their application, which shows privacy fences along the concrete pads on the southeasterly end of the lot, which the PB thought would look nice and give each individual owner privacy from one another.

M. McComb asked if there is a corridor between the privacy fences for the concrete pads and the property line to the east of it. Atty. Rehm said yes, the privacy fences don't go right to the lot line—there is going to be a corridor. M. McComb asked if there would be a space for people to get through there and Atty. Rehm said yes, sure.

G. Smith asked what else the PB suggested and Atty. Rehm answered by saying that (1) the PB suggested the privacy fences, (2) there had been talk about sidewalks being added to the property—that is not conclusive as that is something new for the Town of Bolton and there is no plan for it, (3) the overall plan was generally well-received by the PB and (4) there was also some indication that the PB wanted some more definite answers as to the Declaration of Covenants and Restrictions which has been provided to both the ZBA and the PB.

G. Smith asked if the restrictions will be part of the deed of transfer of ownership to this property which the homeowners will have to abide by and Atty. Rehm said yes, when they propose this to the PB it will be a condition and it will likely be on the map to be filed in the County center. G. Smith said he does like the restrictions and he does feel that they should be a condition of transfer of ownership to each individual owner and Atty. Rehm said he and the applicants agree.

B. Pfau asked if the PB was aware when the applicants were in front of them last month of the applicants' plans to subdivide the lot into four properties and Atty. Rehm said he can't recall the answer to that. Counsel said (1) he thought the plan was developing as Atty. Rehm was presenting it and (2) the end result he (Counsel) left with was that while they may have started out not conceptually thinking these were undersized lots with individual ownership, the applicants came out of that meeting thinking there was a need to get approval for the undersized lots that would be under individual ownership, (3) then he (Counsel) thinks one of the PB members asked for the applicant to put a split the break in the ridge, so all of the sudden that which the applicant acquired at the ZBA for setbacks is slightly out of kilter and (4) then the PB embarked on a sidewalk discussion.

M. McComb said that she understood there was also some discussion on if every unit should be maxed and have the same number of bedrooms in it and that maybe some should be a smaller number of bedrooms to minimize the impact. Counsel said that is true, as the units were not getting smaller, but the impacts inside were less intensive.

K. Hoopes said that (1) the ZBA granted this variance after much discussion and (2) the only change he sees here besides the fact that they are speaking of individual lots and individual townhouses is the oversight that is 2.7' setback and 0.1' over the setback line, which would be the only change that would alter the numbers that the ZBA agreed to two months ago. Atty. Rehm said that is correct.

K. Hoopes said that (1) essentially the ZBA is just speaking today on the possibility of adding all these other variances which would have been the same—there are no other encroachments and (2) he doesn't see any reason why the ZBA can't continue. M.

Murray noted that the ZBA also agreed to give the applicants the 0' setback between the units so each apartment could be separate and not in violation.

M. McComb said that (1) K. Hoopes is absolutely right, (2) she feels this is a unique situation because there was a laundry here and that is a hugely impactful use in a residential area, (3) on the other hand it is worth spending a little time, from her reading of the Master Plan it does not say what the Town wants is more housing regardless, (4) there is a sense that the Town could use more housing for summer people doing jobs around here, but she doesn't see anything in the Master Plan that says the ZBA should ignore its limits, (5) it is great if this is a good plan for this, but she is concerned that the ZBA take note as of what is different about this project from every other lot in downtown Bolton Landing so the ZBA doesn't have everybody in Bolton Landing saying they don't have much space, but they would like to put in four separate residences. K. Hoopes said they already had this discussion.

G. Smith said he likes the addition of Schedules A & B and M. McComb said that she agrees and she also thinks that the Homeowner's Association is a great idea.

From the public, Fred Lethbridge Jr. said (1) he is concerned about the drainage, (2) he is concerned that if the property is wiped out that may lead to hazardous materials under it running into the brook, (3) he thinks the ZBA is making a huge step towards de-commercialization of a very proper zone, (4) he thinks the property in question could be a beautiful property that could be commercial business for years and years to come, (5) when his father and Mr. Wilson built the structure in 1946, they had an extreme problem with how to get rid of the waste introduced from the laundry—especially the very hot water, (6) there was always a lot of water coming from the laundry and leading to the brook, which may or may not have been the proper temperature and make-up to go into the brook and the lake and (7) they are taking the chance of building townhouses that in the end might never be built because of the hazardous area, materials, land and the filtration going into the brook.

M. McComb said regarding Mr. Lethbridge's concerns that (1) there will be PB site plan review of this project, (2) she thinks there is a sense on the ZBA that this conversion will have a lower impact on water usage and water quality than the existing laundry and (3) she thinks that if it turns out there is a toxic problem the PB will be addressing that. G. Smith said if there was a toxic problem then he believes that soil would have to be removed and new soil brought in to make it okay for building on top of.

No correspondence.

No County impact.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-68) Robert & Deborah MacEwan to amend a previously approved variance (V05-55) 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 after 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 #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;
- 2) There would be no undesirable change produced in the character of the neighborhood, and there would be no detriment created to nearby property owners by the granting of this variance, it is probably going to be an improvement to the neighbors;
- 3) The requested variance is not substantial, again, the ZBA has already granted the variance and the only material change is a 2.7' over the setback line adjustment to the north and a 0.1' over the setback line adjustment to the northeast;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district by itself, there is nothing established here that this is changing anything they haven't reviewed since September;
- 5) The alleged difficulty is not self-created, this is a matter of legal preference. The benefit to the applicant is outweighed by the potential detriment to the health, safety and welfare of the community.

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

7) V05-69 JORDON, PAUL & LORI. For the construction of a proposed right-of-way to access a proposed indoor maintenance facility on an adjacent parcel, seek area variance for deficient front yard setbacks 50 ft. is required, 5 ft. is proposed from existing garage and 25 ft. is proposed from proposed indoor boat maintenance facility. Section 140.00, Block 1, Lots 80 & 81. Zone RL3. Property Location: 640 & 624 Federal Hill Rd. SUBJECT TO WCPB REVIEW.

Lori Jordon gave an overview, said that they were in front of the WCPB and there was no County impact and showed the proposed plan on the map.

G. Smith said that (1) his understanding is that the applicant's have looked rigorously for months for a piece of property to build this maintenance facility on without breaking the bank with all their life savings and (2) nothing was really available and anything the applicants did find wasn't as good a piece of property as the proposed location.

B. Pfau asked if it is two separate building lots and Lori Jordon answered by saying yes, but the lot listed under her in-laws is a lot that she and Paul Jordon have a warranty deed where the property was transferred to them almost three years ago, but her in-laws have a life estate and that is why it is under their name. B. Pfau asked if it will remain two separate pieces of property and Lori Jordon said for now yes. G. Smith said technically speaking Lori and Paul Jordon own both parcels and Lori Jordon said that is correct.

B. Pfau asked for clarification on the variances being sought and P. Kenyon said the applicants are seeking a front-yard variance because to access the boat maintenance facility the applicants have to use the existing driveway to the house and because the driveway accesses two different parcels it is considered to be a front-yard setback.

M. McComb asked if this was all one parcel there would be no problem and P. Kenyon said yes, that is correct—it is kind of silly the applicants are here, but legally it is required. G. Smith said (1) it's a legal requirement, (2) he doesn't see the applicants selling the parcel since they will have their business on it and (3) the applicants have tried for a couple of years to find a piece of property to put this on and this turns out to be the best place for it.

K. Hoopes said there are certain technicalities, because it is creating a new front-yard setback off the side-yard line. P. Kenyon said that is correct—it meets the side-yard setback, but it doesn't meet the front-yard setback.

From the public, Rod Owens, adjoining neighbor, said he has no objection to this project.

M. McComb said that (1) she thinks life tenancies sometimes go on longer than people expected them to which can be a great thing and (2) she thinks this is something easily handled by the ZBA.

No correspondence.

No County impact.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-69) Paul & Lori Jordon to 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 after 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 #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;
- 2) There would be no undesirable change produced in the character of the neighborhood, and there would be no detriment created to nearby property owners by the granting of this variance;
- 3) The requested variance is not substantial, in fact the request hinges on a technicality;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district by itself;
- 5) The alleged difficulty is not self-created.

The benefit to the applicant is outweighed by the potential detriment to the health, safety and welfare of the community.

Now, upon **motion duly made** by Kam Hoopes and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented **All in favor. Motion carried.**

8) V05-70 McGURL, THOMAS. Represented by Jonathan Lapper. For a proposed 17 lot subdivision (SD05-25), seeks area variance for deficient shore frontage. 335 ft. is required as per section 200-37B4 of the zoning ordinance, 175 ft. is proposed. Section 170.00, Block 1, Lots 22.1. Zones RCL3, LC45 & LC25. Property Location: 520 Trout Lake Rd., known as Twin Pines Resort. SUBJECT TO WCPB & APA REVIEW

Note: T. McGurl Jr. recused himself from the ZBA for this item, as the applicants are his parents.

G. Smith (1) said that the ZBA is here to deal with the lakeshore frontage only—not for the 17-lot subdivision and what is going on on the west side of the road and (2) asked all in attendance to try to keep it at that and that the PB would be dealing with the other issues.

M. McComb said that she agrees that the only variance the applicants are here for is for the deficient shoreline, but at the same time, ignoring the 17-lot subdivision and the impact of that is something that she feels she needs to consider in whether or not to grant that shoreline. K. Hoopes said that only applies to it as much as those 17 lots affect the 175' of shoreline and M. McComb said (1) exactly, but she doesn't think it is just a matter of talking about 200' of shoreline and (2) if somebody has something to say she is willing to listen. K. Hoopes said the ZBA has some letters, but G. Smith was referring to items like tree-clearing, stormwater, erosion, etc.

Atty. John Lapper, representing Tom McGurl Sr. and Marylou McGurl, gave an overview and said that (1) the McGurls approached him (Atty. Lapper) and surveyor Matt Steves for options of how to dispose of the property—whether to sell it as a resort as it is now or to subdivide it, (2) they came up with this evening's proposal, which is a conforming subdivision with the exception of tonight's variance request, (3) the proposed subdivision would be 18 lots plus their home, so 19 single-family lots, which would be on the gently curved and sloping road up the mountain to provide really nice side lots, (4) they proposed a HOA lot which would be across the street from the lake access lot, which would minimize the impact of tonight's variance, because a lot of the HOA activities, like parking, would take place on the much larger lot across the street from the lake, (5) the current resort can accommodate up to 180 guests plus the applicants, so if it is 18 homes plus the applicants you won't have 10 people per house, so it will be less of an impact, (6) subdivision and stormwater drainage will be addressed before the PB, (7) there is over 900' of frontage on the lake that the applicants own, but what they built as the lodge building on the lake is what the applicants want to convert into their own home, (8) to avoid needing a variance, they could split the HOA property so there would be 175' on one side and 160' on the other side of that structure, so they could convey 2 lots to the HOA and not need a variance and (9) the reason they are here is the benefit of the applicant versus the burden on the neighborhood and there is no good reason or benefit to convey wetland property in two lots to the HOA just to say they conform to the code.

K. Hoopes said that he would tend to agree with Atty. Lapper if he were trying to get the 335' any old which way, but he thinks the ZBA needs more than 175'. Atty Lapper said the ZBA's job is to grant the minimum relief necessary and the applicants can expand it by another 50' to bring it to 225', but no closer in order for the applicants to have their privacy. K. Hoopes said it is going to have to come closer to the applicants' house, because you can't go the other way.

G. Smith (1) said that the applicants have 925' of shorefront and (2) asked the distance from what is proposed to be Mr. and Mrs. McGurl Sr.'s residence on the lake toward Stuart Smith's property, which is considered swampy land. Atty. Lapper said it is about half of the 925' that is unusable swampy land, but it still counts as shoreline under the Code. G. Smith said (1) that would leave 475' from the proposed McGurl residence to the property line, so if the applicants only want to take 175' the McGurls would have 300' of shoreline, (2) it was a good point made that there should be a bit more lake frontage for the HOA, because there would be 18 pieces of properties with dock rights and beach rights. K. Hoopes said that he was thinking of angling the additional beach perpendicular to the lake and away from the single-family dwelling the McGurls would be taking.

M. McComb asked what the formula is for waterfront in this zone and P. Kenyon said that in Section 200-37B-4 the first lot in this zone (RCL3) requires 175' then each additional lot requires an additional 10'. M. McComb said (1) that is how she read it and **(2) she disagrees that all the ZBA is looking at is the waterfront, because if the ZBA grants the applicants a variance to have this many lots have access to this waterfront by dint of that then the PB is stuck that the applicants are all set to go and so she feels the ZBA needs to discuss this.** Atty. Lapper said that is completely wrong, because that would apply to each house that had lake frontage and these houses will have lake access—not frontage. P. Kenyon clarified that the proposal is for 17 lots to share lake access and for the 18th lot to have its own lake access.

K. Hoopes said it does not hog tie the PB in any way if the ZBA gives the variance on the concept of them accessing whatever the ZBA winds up granting. M. McComb said she has heard feedback from the PB on previous variances the ZBA has granted. K. Hoopes asked from whom and M. McComb said from Henry Caldwell, John Gaddy and other PB members.

From the public, John Gaddy, PB member said that (1) there is a traditional see-saw going back and forth whether the PB reviews variances beforehand or skip variances before they go to the PB, (2) he agrees with M. McComb that the PB has gotten saddled with a couple of things—one of which is the bridge from the Saddlebrook subdivision, (3) he thinks in some of these situations there needs to be more discussions between both boards and (4) on some of these issues, the ZBA can't just drop it into the PB's laps and think that they are going to solve any problems that will arise.

K. Hoopes said that all the ZBA does is decide in theory if a bridge could cross that river and John Gaddy replied by saying that it becomes more than a theory—it becomes a practical matter. K. Hoopes said (1) the ZBA can't act like engineers and should try to and they shouldn't act as the PB, (2) the ZBA is supposed to be good at deciding whether or not in theory these things can get a variance and (3) a variance is no good if the PB decides that a project is at fault. M. McComb said (1) that is only if the ZBA makes it a condition of approval and (2) in this case of if anything she has seen come before the ZBA with all of these substandard lots being created based upon the addition of some wetlands on the side, if there were ever a project to say "What does the PB think about

this before the ZBA grants a variance” this is it. K. Hoopes asked why M. McComb is calling the lots substandard and M. McComb answered by saying that if they are 1.88 acres in LC25 that is a substandard lot and (2) there are some lots of 122 acres with no building lots on it, but there is Lot #12 which is 1.88 acres in LC25 where the minimum 5 acres, so that is a substandard lot. Atty. Lapper said that all of the lots are going to be standard lots and he explained in his cover letter sent with his application that lot #12 would be merged.

P. Kenyon said that as a result of the PB meeting, the layout of the proposed lots is going to change. M. McComb asked if the ZBA could see the layout before they vote on the variance request and P. Kenyon said the only thing the applicant is here for is deficient shore frontage and the layout of the lots doesn't matter.

M. McComb said she would like the PB's thoughts on this before making a decision on the variance and P. Kenyon said it has already gone before the PB.

From the public, John Gaddy said that (1) the PB was looking at the idea of trying to change the configuration of the subdivision to try to get more of a conservation planning idea where the McGurls would dedicate a large parcel of land that would not be developed and then the lots would be re-configured so there would be a concentrated development down low and trying to keep a large parcel of land intact and (2) one of the concerns is fragmentation, which was discussed among the PB.

B. Pfau said (1) that makes sense and (2) three years ago they discontinued the practice of the PB reviewing variances prior to them coming to the ZBA and he thought that was done with the understanding that all variances involving major subdivisions were going to go to the PB first, which is one of the reasons he has always and will continue to recommend variance requests like this one go to the PB first. P. Kenyon said it was determined the ZBA would make that decision on a case by case basis and this application was before the PB for the overall concept. M. McComb said she agrees with B. Pfau that it should go to the PB first.

Atty. Lapper said that this is a major subdivision for the number of lots, but this variance is still minor shore frontage. M. McComb said what the applicants construe as minor shore frontage, in her thinking is extremely large, as the applicants are already getting a huge reduction in the requirement of shore frontage for access to the lake by dint of being an Association and the applicants are only offering 50% of the land required from that.

Atty. Lapper said that the subdivision could be done without the lakefront lot—19 residences, but since the lake is there it would be nice to offer people a place to put a towel down. M. McComb said that she has no problem with subdividing, but her question is how many waterfront lots the applicants have—not how many lots they can subdivide.

M. Murray asked why not start on the other side where the brook is the property line on the other side of this lakefront property, deed over the amount needed to give the applicants need for division without any variances—not develop it, just leave it—and if the HOA discovers that it needs more area than the 175' that is on the southerly side of the proposed McGurl residence, then let the HOA pay for having as much of that parcel needed for adequate beach and for an adequate number of people to enjoy the lake and let the HOA pay for it as needed. Atty. Lapper said that in that case the applicants would be conveying a wetland lot to the HOA, which doesn't make sense for them having to be responsible for that. G. Smith said he doesn't think the McGurls want development on either side of their proposed residence.

K. Hoopes said that the proposed single-family dwelling isn't on wheels, so it just can't be moved. M. McComb (1) asked how many of these pre-existing lodges and things have been changed, torn down, renovated and rehabbed and (2) said that she agrees that this looks to be in pretty good condition, but this is too big a project to hang it all on holding on to that existing structure

Counsel said that (1) the ZBA has lots of questions as to what the PB did, so he read several sections of the October 20, 2005 PB minutes regarding **(SD05-25) MCGURL, THOMAS** into the record, (2) there was a lot of discussion by the PB and (3) he just wanted to leave the ZBA with the impression that some aspects of the PB is that they are shipping it over saying they want to get a recommendation to find how the ZBA wishes to interpret this, then the ZBA is sitting here saying they might want to shovel it off to the PB so that the ZBA doesn't make a commitment the PB can't live by—somebody has to go first. M. McComb said that (1) she doesn't think it is shoveling it off to invite some back and forth, (2) this is a big subdivision that is being proposed to access through the minimum lakefront width for a single lot—they are proposing to grant access to 18 people and saying a single dock is what they are looking for, (3) all the talk about 5 acre and one acre lot sizes—those are the minimum lot sized—the zone is for 3 acre lots, 25 acre lots and a little bit of it for 40 acre lots.

T. DePace asked if it is correct that the ZBA is here just for shore frontage tonight and Counsel said yes, that is the only variance that is the topic tonight. G. Smith said that the applicants can already do the 18-lot subdivision legally without needing a variance or anything. Counsel agreed and said that while he hasn't seen this latest version, he thinks the applicants lots are okay.

Correspondence: Counsel read the following correspondence into the record.

□ Letter from Vida Lapins, present owner of 573 Trout Lake Road—opposed.

K. Hoopes said that the Lapins letter and several other letters received do not deal with shore frontage, but deal with environmental effects, which is germane to the PB, but not to the ZBA, so he would like to limit the reading letters into the record to those that deal directly with lakeshore frontage.

M. McComb said that this is a lake community and these lakes are the goose that lays the golden egg for the local economy, so she doesn't find it inappropriate to say that if you are proposing this type of change that this is only 200' of waterfront.

K. Hoopes said that he agrees that if you could hog tie the whole development by tying up that lakefront access, then you are correct that is hijacking the program, it is very doable and people can turn it into a tailspin by sending it to the PB then back to the ZBA. M. McComb said she doesn't think it would be a terrible tailspin. G. Smith said they are going in circles.

Correspondence: Counsel read the following correspondence into the record.

□ Letter from Chet and Elizabeth Burrell—concerns.

□ Letter from Michael S. Zamore on behalf of adjacent property owners Fran Zamore and Esther Rosenthal—opposed.

K. Hoopes said that (1) the ZBA exists because there are Zoning Regulations that exist by law, (2) he thinks that the ZBA exists to provide timely and reasonable relief, (3) tying things up going from one thing to another he doesn't think does the applicant or the Zoning Regulations any good and (4) the proposed shore frontage is a beach and implying that if the ZBA denied this variance that the whole project will fall apart—yes you can block this whole development by one little chink in the armor, but he doesn't think that is a reasonable way for the ZBA to respond to these things.

M. McComb said that (1) she agrees the ZBA exists to grant relief but she disagrees that the ZBA's purpose is to grant timely relief if there are still outstanding questions, (2) she also thinks the purpose of the ZBA is to uphold the Zoning Ordinance as much as to grant relief from it, (3) she would be a lot more inclined to support this proposal if she knew what the plans were to accommodate 17 lot owners equally on the waterfront, (4) she said this would seem to be key holing which intensifies the use and (5) she doesn't think it is trying to hamstring all development by questioning that the applicant has the amount of shore frontage for one house there, the applicant is planning to give 17 households access and the applicants are not saying what their plans are.

B. Pfau said that (1) his position is that as a Board, the ZBA has discussed 175' and he feels the PB should look at this variance request and (2) he is not going to vote on this variance request at this time without the PB's comments.

G. Smith said that (1) it is unfortunate the Town will be losing another business—another nice cottage colony—on the lake, because within 10 years there aren't going to be any businesses left, (2) the McGurls are legally bound to do this—the ZBA cannot stop them from subdividing their property into these 17 lots, (3) the proposed 17 residences having 17 more boats on Trout Lake, he feels, will be a big impact on and detrimental to Trout Lake, (4) the McGurls can go around this by getting a variance for 175' on one side and 170' on the other side of their personal residence if they chose to do that and not grant

that property to their son, (5) this is a large application—175' for 17 boats is a lot and he cannot overlook that and (6) he feels this is something the PB should look at and give the ZBA their advice on this—the PB may have a thought that the ZBA isn't thinking of tonight—he feels it isn't something that they should jump on and make a decision on tonight.

K. Hoopes said that (1) he thinks it is making a big assumption that all 17 people are going to own a boat and are going to want to keep it on Trout Lake and (2) and the other concept that this is going to be turned into the River Ganges (is also unreasonable—it has not been in his experience in his 50 years here that this small number of people will create that kind of disturbance.

T. DePace asked if there are any restrictions on docks on Trout Lake and P. Kenyon said no, just setbacks and the LGPC is not going to regulate anything on Trout Lake. T. DePace said that (1) Associations do work, (2) he has driven by Trout Lake going to Warrensburg and he doesn't think 17 more boats on Trout Lake won't make that much of a difference and (3) if there are no regulations on the number or size of docks that can be put on Trout Lake he doesn't understand why the ZBA is trying to make a rule to that effect.

M. McComb said that the ZBA may not be able to do anything about the number of lots, but it can do something about this little key hole. T. DePace said that (1) he doesn't think this is a key hole and (2) he thinks the McGurls are giving a lot by committing to giving 124 acres to remain forever wild to T.D. McGurl Jr.

M. McComb said that (1) she thinks it may end up being a terrific proposal, but she agrees with G. Smith and B. Pfau that she would like to get all possible input and (2) to say there is nothing the ZBA can do when they need everything except this gargantuan lakefront access deal.

From the public, Thomas McGurl Jr. said that (1) the piece of land they are suggesting for lakefront access was chosen because that piece of land is the one that would have the least impact to anyone in the outside community—it will directly impact his parents who will be living right next door, (2) this is not a piece of property that is being carved out of the woods and creating a subdivision, which he thinks is the impression some people have, (3) this is a business which has been there since 1920--there is no question that this proposal is a change, (4) he does not see 175' as a key hole in any way—if he were suggesting that they would give 50' access with a strip of land to travel across where they could put one dock out there is not what they are suggesting, (5) this 175' of land is not wetlands or anywhere near it and (6) the McGurls can avoid the variance altogether which is perfectly acceptable for them to do by taking the 175' and add the 160' of wetlands in front of his own home to it, but that would be taking one waterfront lot and splitting it three ways, (7) his understanding from the gist of the letters is that it is the cutting up that people want to avoid, so in order to meet the credentials of the Town and the Zoning Ordinance they would have to cut it up more for a technicality, because the piece of land down there that he is going to put down by his house cannot be used for

waterfront—you are not going to be able to get a boat out when the water goes down in the summer and it is a swampy area, but it can be done to avoid the variance, (8) he thinks there is some misunderstanding of what they are here for which is asking for the variance for the shore frontage—that is all, (9) the questions about the 17 lots or water frontage, stormwater run-off and all these different things are not issues for the ZBA—they are issues for the PB and they will be addressed, (10) they are living there—they are not going anywhere—he works in Town—he lives on the property—his parents live on the property and plan to do so for the rest of their lives—they are not leaving, (11) if he were going to sell his house tomorrow and walk out then yes, there would probably be reason to raise some alarms and be concerned, but he is not going anywhere and he will be damned if after 20 years of work—very hard work—he is not going to just throw this piece of property away, (12) the first thing he said when they sat down was that they don't want this land all carved up—they have worked to hard, they are not going anywhere and they don't want to see it that way, (13) his parents have a right to retire—he doesn't want to do it anymore—that is what they are looking for here and (14) they want this to be a good project and that is why one of his first credentials was that he doesn't want any variances then this one happened to come up, but there are no variances for these lots whatsoever and he wants this thing to meet the Town Code not just by the letter of the law, but the intent of the law as well.

M. McComb said that she doesn't have a plan in front of her that requires no other variances because the plan in front of her has substandard lots. Thomas McGurl Jr. said that Atty. Lapper already explained that has nothing to do with this variance.

M. McComb said that (1) she accepts that the McGurls are good people, have run a good business and that Thomas McGurl Jr. doesn't want to do it anymore, but that is not really relevant either—the number of times the ZBA has had people come in and swear on a Bible that they are living on the land forever then something changes shortly thereafter is not something that she can ignore and (2) as far as this not being key holing, this is exactly the definition of key holing and if the applicant wants to come with a plan for how 17 lot access works on this, she may well be convinced, but she is not convinced that the applicant could simply add the wetland area to meet the waterfront, because there is the question of where the access to the area is and how it impacts the other lots and their access.

Thomas McGurl Jr. said that is why they are asking for a variance. M. McComb said it is not just a matter of this is a little thing. Thomas McGurl Jr. said that (1) there are no dock regulations on Trout Lake and (2) as he discussed with the PB, there intent is to have one dock—Twin Pines currently has two docks, but it would have no need for two docks or any docks for that matter—their intent was to put one dock there for the homeowners to have access. M. McComb said that she lives in an Association and everybody has their dock space and the ones in close to shore where it is shallow.

Thomas McGurl Jr. said that (1) they have set up this plan for what they want, which is one dock and if people can't fit their boats on that, then people won't have a boat and (2) originally the idea was discussed that there would be no dock, but he doesn't think that is

very marketable. M. McComb said that if the applicants have a plan for one dock that is going with the Association that they are willing to make a deeded part of the deal, she would be very interested to see that and Thomas McGurl Jr. said they already brought that up to the PB.

M. McComb said that (1) Thomas McGurl Jr. is telling her to approve what looks to a lot of people like a massive variance on shorefront access and the applicants don't want to show what the plan is to the ZBA and (2) this is directly involved with that usage. Thomas McGurl Jr. said that by the technicality of the law, they could be entitled to 17 docks in that space. M. McComb said she wants the applicants to show her what they want to do.

From the public, Elizabeth Burrell, resident of 487 Trout Lake Road, two properties beyond Twin Pines, (1) said that she feels very strongly that there is a lot of value in taking the time to have the PB review the proposal, (2) said that it appears to them to be like the cart before the horse in granting the variance for the shoreline before the PB has had an opportunity to review the plans for the subdivision and (3) asked for clarification on the process.

P. Kenyon said that (1) the application has been before Warren County Planning Board and they determined no County impact, (2) if this variance is granted by the ZBA, the complete packet will be sent to the APA for their review and the APA will have 30 days to review the variance to make sure the ZBA met all the criteria when they granted it, (3) the PB will be responsible for reviewing the subdivision and they will also review the structure that is down by the lake to convert that from a commercial structure to a single-family dwelling.

From the public, Kathy Bozony of the LGA (1) said that she is confused as to why the ZBA is looking at old drawings versus new drawings that were submitted for this Thursday's PB meeting, because the clustering from her understanding is completely out of the question at this point, (2) said that she is looking for an interpretation of Section 200-37B-4 in regards to if it is based on the shoreline frontage or if it also has to do with the lands that are involved in the access of Trout Lake and (3) read her letter into the record (she sent 10 copies of that letter to the Zoning Office last Wednesday or Thursday) regarding concerns with shoreline frontage.

P. Kenyon said she doesn't have that letter.

K. Hoopes said that (1) the applicant did agree to move the lot line another 50', (2) 175' represents 52% of what the applicants need, which is not what he would consider massive, (3) 225' represents 2/3 of what they would need by the Zoning Regulations, (4) he wants to remind everybody that a compromise was brought to the table and (5) he also wants to remind everybody that key holing is one negative term you could use, but we also want to be something less than too elitist around here and not allow people access to the bodies of water—that's why we have parks—Rogers Park and Veteran's Park are serious forms of key holing on Lake George.

From the public, Glen Mosebach, resident of Trout Lake, said that (1) he would like the ZBA to let the considerations to be proper and to be careful in what they are going to do, (2) there are a lot of boats and a lot of action on Trout Lake, (3) the ZBA has to consider a lot of things before they make a decision on this variance, (4) the applicants say they aren't going to move, but there are no guarantees and (5) there aren't many lakes like this in NY and what the applicants are asking to do is change it—and it will never come back.

From the public, Mark Roden, Bolton resident, said that (1) as far as Trout Lake is concerned his family was the only one there year-round until he was 15, (2) he is only in Bolton Landing now because he designs and builds homes, (3) he doesn't think it is fair to say that he has his and you can't have yours, (4) he has a really hard time saying it is not right to develop anything, (5) the swamp area in question is home to many birds, (6) the applicants proposed a compromise, (7) new people should be welcomed to the Town, (8) the McGurls have a right to develop their property and if anyone doesn't want it developed they should offer the McGurls a reasonable amount of money to buy it and not develop and (9) he doesn't think it should go back and forth from the ZBA to the PB.

G. Smith said that (1) the McGurls have worked hard over the years and do deserve the right to develop their property and sell of the lots so people can build homes and share our community—he is not against that, (2) the ZBA has to go through the proper steps of getting where the McGurls want to be, (3) he is not against what the McGurls want to do whatsoever—not at all, (4) the McGurls don't need to be here, but he appreciates that they are here to make things better than what they could possibly do, (5) this overall project is a big project that involves a lake and he wants to make sure the ZBA does the right thing and (6) he doesn't see it being a problem to send it to the PB for their review.

From the public, Pat Babe said that she is not against this project, but she did have concerns about the environmental impacts, which are all being addressed tonight.

Atty. Lapper said that (1) this is a unique variance request because the applicants have the land and (2) he suggests that on the other side they can deed it to the Association and parking would be across the street and in addition to the 225' they already offered, they could restrict a covenant from the other side that it would never be granted for lakefront access to anyone else.

G. Smith said that he understands not wanting to break it up into three pieces. Atty. Lapper said that the PB also liked the idea of clustering and the PB wants them to go forward with the project.

K. Hoopes asked about clustering and asked if it was correct that if there was relief to be sought it would be an area variance to be sought to cluster an area that is also commercial. Counsel said that (1) by the virtue of interpretation a variance is in order, but it is also possible that the interpretation could change and (2) a variance is possible but it is not permitted in the zone.

Now, upon **motion duly made** by Meredith McComb and seconded by Bill Pfau, it has been decided by the Zoning Board of Appeals to send this item to the Planning Board for their recommendation. Tom McGurl Jr. recused himself. Tony DePace and Kam Hoopes opposed. **Motion carried.** *This item shall be placed on the December 15th Planning Board Agenda.*

B. Pfau said that he would like to see the Town get to the point that applicants will know that their application may have a fair chance of going to the PB for their input for a major subdivision and Counsel said that based on what he is hearing from the ZBA, he will work on a master process in an effort to not slow applications down.

From the public, Mark Bernstein, new owner of Camp Walden, said that (1) the question should be as to how many properties can do this in the future, (2) Trout Lake is a quiet lake, (3) not all 17 boats would go out at the same time, so he doesn't think this project will be that big of an impact and (4) he can't imagine anybody buying one of those proposed homes without a right to put a boat on Lake George.

Meeting adjourned at 9:40 pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
12/06/05