

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, December 18, 2006
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: Chairman Greg Smith, Tony DePace, Kam Hoopes, Meredith McComb, Bill Pfau, Zoning Administrator Pam Kenyon,
Town Counsel Michael Muller

Absent: Tom McGurl, Jr.

Chairman Greg Smith opened the meeting at 6:35 pm, asking for corrections to the November 13, 2006 ZBA minutes.

Motion by Meredith McComb to approve the November 13, 2006 minutes as presented. Seconded by Tony DePace. **All in favor. Motion carried.**

G. Smith noted that the ZBA is lacking two members this evening and advised all applicants of their right to come back next month if they so desire.

1) **V06-44 COLE, DOUGLAS.** For the construction of a proposed single-family dwelling, seeks area variance for deficient density. 6 acres is required for 2 single-family dwellings, 1.74 acres exists. Section 185.20, Block 1, Lot 8, Zone RCL3. Property Location: 717 Coolidge Hill Rd. Subject to WCPB and APA Review. *Note: Density for 4 units is grandfathered until April 12, 2007. If the house was reconstructed in the same location as the one destroyed by fire a variance would not be required. The applicant chooses to construct a single-family dwelling further back from Coolidge Hill Rd.*

Douglas Cole gave an overview and said (1) he provided documentation showing the okay to rebuild the house and (2) they are proposing plans that are essentially the same footage footprint—only 173 square feet larger—but it meets all the setbacks.

G. Smith asked if all existing structures will remain and Douglas Cole said yes, but the shed behind the garage may be taken down sometime in the future.

B. Pfau asked if the density requirement is a result of moving the structure and P. Kenyon said yes, in moving the structure he would lose his grandfather clause—it is how the code is written. The applicant chooses to relocate the house where all setbacks can be met..

M. McComb asked if there would be a driveway and Douglas Cole said the existing driveway will be utilized.

M. McComb said she is concerned with 4 units becoming four single-family dwelling density and P. Kenyon said that each unit would require 3 acres. M. McComb asked if an apartment is considered a single-family dwelling and P. Kenyon said yes, in this zone.

M. McComb said (1) her concern is that every cabin on Lake George is considered a single-family dwelling and (2) the applicant doesn't need a variance—the property is completely compliant. K. Hoopes said that he doesn't see that each cabin is becoming a single-family dwelling. M. McComb said that if P. Kenyon has down that a small cabin without a kitchen is a single-family dwelling and it doesn't have an oven, then it would be a guesthouse. Counsel said that (1) perhaps M. McComb's concern comes from the code definition of a principal building, which is a very flexible definition, (2) in the code a cabin is defined as a principle building—so the ZBA needs to look carefully at zones to figure out how many principal buildings are permitted in certain areas, (3) P. Kenyon has correctly ascertained that there are four "somethings" that all kind of collide, and (4) the new code needs to be more specific on definitions in the code—but right now there is a blanket definition. M. McComb said that this trends toward the notion that every little cabin is a single-family dwelling. B. Pfau said he doesn't think the ZBA can just informally clarify code.

P. Kenyon asked the applicant if he considers the existing cabin a single-family dwelling and Douglas Cole said yes.

G. Smith said that he is in favor of this project.

No public in attendance.

No correspondence.

The WCPB determined no County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Douglas Cole (V06-44) 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 #1 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it has been demonstrated to be desirable;
- 3) The request is not substantial, there is one sideline setback being moved;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, they actually expect this to be an improvement as well;
- 5) The alleged difficulty is not self-created.

The benefit to the applicant is not 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 Meredith McComb, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion carried.**

- 2) **V06-45 ZAGER, JACK & ELLEN.** Represented by Curtis Dybas, Architect. To alter existing garage, specifically to construct a second story dormer to create a loft area. Seek area variance for a deficient front yard setback: 50 ft. is required, 12 ft. is proposed. Section 186.19, Block 1, Lot 25, Zone RM1.3. Property Location: 17 Opera Lane, off of Homer Point Road. *Note: This is an amendment to V05-40 approved by the ZBA on July 18, 2005.*

Curtis Dybas, architect, representing Jack and Ellen Zager gave an overview and said (1) in July 2006 the ZBA granted a variance to construct the proposed garage in this location, (2) the foundation was put in last fall and the garage constructed this summer, (3) he filed amended drawings at which time he found out that it was in violation with the variance granted in July 2006 and (4) he is present to seek a variance for the dormer on the southwest elevation.

G. Smith said that this is an after-the-fact. K. Hoopes said that (1) there is also more height on this and the building was shifted as well and (2) this whole thing could probably have been avoided if the ZBA amended its variance.

Curtis Dybas said that (1) by shifting the building, it is further away from the ROW, (2) the extra height in the garage door was to accommodate the owner's boat—the 7 feet

would not work and (3) eventually a bathroom will be constructed on the second floor. M. McComb said that it seems like a big change to add a second floor living space with a bathroom in it and Curtis Dybas said it was always a loft—it is not intended to be an apartment. G. Smith said that if the intent is to put a shower and a bathroom up there then it would be an invitation for a bed, microwave, sink, etc. Curtis Dybas said that there is no intent for this to be year-round. M. McComb said (1) it may not be the intent of the current owners, but it may be with future owners and (2) she thinks this should go to the TB for remediation.

Curtis Dybas said that part of this variance is a 50-foot setback from a 10-foot right-of-way and that 10-foot right-of-way line has nothing to do with a right-of-way of any public access that no one else can use. M. McComb said that building something that was not approved and not going to the TB for potential remediation or violation like others have had to is not fair. P. Kenyon said that there is correspondence from M. Nittmann saying that she couldn't send anything to the TB until the ZBA dealt with the variance. Counsel said that (1) he and M. Nittmann had a discussion that any enforcement issue is stayed until the ZBA acts and (2) M. Nittmann is to act if the ZBA chooses to not grant the request.

There was additional discussion regarding violations and how they are to be dealt with. Several ZBA members said they felt the applicants should go to the TB first then to the ZBA. Counsel said that a variance application as a matter of state law does stay any of these enforcement decisions. B. Pfau asked if it is appropriate for the ZBA to be discussing the after-the-fact aspect of this and Counsel said yes.

G. Smith said the current plan shows a dormer and bathroom upstairs and that is not what the ZBA originally approved—the ZBA originally approved a garage with storage space.

B. Pfau said he thinks the change is minor enough compared to the original plan and the ZBA shouldn't recommend it to the TB for remedial action. M. McComb said she doesn't feel it is the ZBA's job to circumvent the TB's job and K. Hoopes said this is exactly the ZBA's job.

No public in attendance.

No correspondence.

RESOLUTION

Motion by M. McComb to refer this matter to the TB for remediation. No second to the motion.

RESOLUTION

The Zoning Board of Appeals received an application from Jack and Ellen Zager (V06-45) 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;

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 #2 of the agenda.

The Board makes the following conclusions of law:

- 1) There will be no undesirable change in neighborhood character or to nearby properties, this is a variance granted previously for a right-of-way that only the home owner uses;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, the garage itself doesn't meet the setbacks;
- 3) The request is not substantial, it is a 1 ½ foot increase in height over the original approved project;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, as it is a dormer;
- 5) The alleged difficulty was self-created, as it was an after-the-fact, although a minor increase in the original project and a dormer was built that wasn't approved.

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

Now, upon motion duly made by Bill Pfau, it is resolved that the ZBA does hereby approve the variance request as presented (structure 1 ½ ft. taller than approved and second story dormer all after the fact) and seconded by Kam Hoopes. Greg Smith and Meredith McComb opposed. This matter is to be referred to the Town Board. **All others in favor. No Action Taken.**

Counsel said (1) the next step will be that if the Code Enforcement Officer has which she claims in a code violation she can bring an imposing of an alternative remedy to be brought before the TB, (2) the TB gives consideration to the possibility that there is an excuse, but also does exercise discretion and in some cases the penalty is \$0 and in others it is \$1,000 and (3) the TB can also decide to have the structure brought into compliance.

B. Pfau asked if the applicant could reapply to a full ZBA next month. Counsel said that (1) he thinks M. Nittmann would put an end to this and (2) it ends with eventually if it is not appealed to a court or if it is appealed to a court and the court upholds the decision, it does have to come into compliance with the code.

Counsel said that he looked at the code—a guest cottage is permitted and if this thing was otherwise in compliance with a code, as of right it is a permitted accessory use.

3) V06-46 VANVALKENBURGH, PAT. Represented by Kevin Speck. To alter pre-existing, non-conforming single-family dwelling, specifically to roof over an existing 8.9' x 18' deck. Seeks area variance for 1) a deficient shoreline setback: 75' is required, 31' is proposed. 2) To alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 171.19, Block 1, Lot 48, Zones RL3 & RM 1.3. Property Location: 24 Heritage Village Rd. Subject to WCPB Review.

Kevin Speck, representing Pat VanValkenburgh, gave an overview and said (1) they are seeking an area variance and (2) they propose to build a roof over an existing deck.

G. Smith asked if the proposed roof is just to keep weather off the deck and not to enclose it and Kevin Speck said yes. B. Pfau asked how much closer to the pond the roof would be and Kevin Speck said it would be 1 foot closer.

No public in attendance.

No correspondence.

The WCPB determined no County impact.

G. Smith said this is very basic and very simple.

RESOLUTION

The Zoning Board of Appeals received an application from Pat VanValkenburgh (V06-46) 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 could not be achieved by any other means feasible to the applicant besides an area variance, the deck itself is already non-compliant;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, there are similar covered decks;
- 3) The request is not substantial, the majority of the requirement for the variance is because of the location of the pre-existing deck, not what is proposed to be added to it;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, it is a pre-existing structure they are just trying to make a little more usable.

The benefit to the applicant is not 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 Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion carried.**

- 4) V06-47 MILVANY, HELEN.** Represented by Atty. Susan Millington. To demolish and rebuild pre-existing non-conforming single-family dwelling, seeks area variance for deficient setbacks. 1) Front: 30' is required, 9.19' is proposed, and 2) Shoreline: 50' is required, 31' is proposed. Section 186.10, Block 1, Lot 21, Zone RCH5000. Property Location: 23 Sunrise Shores Loop off of Route 9N. Subject to WCPB and APA review.

Atty. Susan Millington gave an overview and said (1) the applicant is looking to demolish an existing structure—a small cabin down by the lake in Sunrise Shores condominium—and replace it with a structure that is approximately 275 square feet larger and (2) the front setbacks will remain the same, but the shore line setbacks would change by about 4 feet.

M. McComb asked if Sunrise Shores is a Home Owners Association or a cabin colony and Jack Milvany said it is a condominium owners association and each lot is a single-family unit. M. McComb asked what the source of water is and Jack Milvany said that it is Town water that is three-season and shut off in the winter.

G. Smith asked if what is existing now is that bad that it needs to be torn down and rebuilt completely. Jack Milvany replied by saying (1) yes, it was built as a summer seasonal place that has been built on several times prior to them owning it, (2) you have to step up into the bedrooms—it's a mess—one of the bedrooms has settled 4 inches and (3) part of the camp rests right on the ground where there is no foundation. B. Pfau asked if the entire house is in the 75-foot setback from the lake and Jack Milvany said yes. Atty. Millington said that 90% of it is going to stay within the existing footprint of the existing structure. B. Pfau said that he thinks coming closer to Lake George in that footprint will be very difficult. M. McComb said (1) she agrees and (2) there is really quite a large expansion of the deck as well as the house. Jack Milvany said that part of the attempt is to square the building off and to have it fit in with what exists in the area.

Jack Milvany said that the side you get the most expansion is not on the lake side, but on the east side. M. McComb said she keeps looking at the ZBA's requirement to grant the minimum variance necessary. Atty. Millington said (1) this will make for a nicer looking camp, (2) the front setback will remain the same, (3) the only reason they are here for the variance is because it is pre-existing and (4) the other setback is only going to change 4 feet as far as the deck is concerned, so it is going to move 4 feet closer to the shoreline setback than what is pre-existing. M. McComb said (1) it is a 25% increase in the size of the camp and (2) it is new construction in the 75-foot setback.

B. Pfau asked if any of the trees on the slope will be removed and Jack Milvany said no.

Correspondence read into record in its entirety by Counsel:

- Letter from Kathleen Bozony of the LGA dated December 14, 2006 - opposed.
- Letter from Chris Navitsky, Lake George Water Keeper dated December 15, 2006 - concerns, requested conditions of approval.
- Counsel summarized a letter from the Board of Managers of Sunrise Shores Condominium dated September 8, 2006 - in favor of proposed changes.

M. McComb asked if the ZBA has to grant a variance from the code's prohibition of holding tanks and Counsel said no, the TB of the Town of Bolton sits as a local board of health and they will convene upon proper application to make a determination as to whether or not the variance sought is appropriate, but it is always a test of wills and uncertainties here and (2) clearly new construction does not permit a holding tank, but there is question on if this is new construction.

M. McComb said that (1) P. Kenyon has been very vigilant in that if you are to rebuild exactly what was there then you are grandfathered and if not, then you are not. P. Kenyon said (1) that is correct and (2) she has not even been given a chance to review the septic on this project yet.

M. McComb asked how this could not be considered new construction by the Town of Bolton Code and Counsel said that it is not the Town of Bolton Code, but the NYS Sanitary Code—Schedule 75A. M. McComb asked if the Town of Bolton Code is allowed to be more restrictive than the NYS Code and Counsel said no, not with respect to the local board of health, the Department of Regulations and the facts that are applied to replacement and new construction.

T. DePace asked if the applicant got a variance, could they could build the proposed house on that footprint and use the existing septic system and P. Kenyon said yes, if they are not adding any bedrooms they could. M. McComb asked if they are adding a bedroom and Jack Milvany said no. Atty. Millington said that the applicant will actually be cleaning up the beach area and making it better by replacing a cesspool with a system that is going to work.

M. McComb said that she does not think a 25% increase in the size of that cabin given its location is not minimal and Atty. Millington said that the only reason the applicant is here is because it is already a pre-existing non-conforming use in that location.

G. Smith asked if the square footage of the existing deck compares to the square footage of the proposed deck and Jack Milvany said it is going from 573 square feet to 738 square feet. M. McComb said that 738 feet of deck is a lot of deck. Jack Milvany pointed out the existing deck and the proposed deck on the maps and clarified the proposed change in size.

B. Pfau said that (1) he sees it as the applicant expanding the footprint over 30% and (2) he would be more in favor of the project if the applicant were to propose moving the building back from the lake as a compromise—adding to the deck size and going closer to the lake is asking too much.

Jack Milvany said that the Association has approved these plans and are comfortable with going the additional 4 feet out. K. Hoopes said that he doesn't find 4 feet offensive at all especially considering it is just deck and the house has filled in little niches—the ZBA usually looks favorably on that as far as expansions. G Smith agreed. M. McComb said that (1) she doesn't think moving the building back on this lot is feasible, (2) bringing the deck around the front would minimize the impact and (3) adding deck onto the sides will impact the neighbors. Jack Milvany said that he has taken a lot of the deck away from the beach area so they are less of an impact on that and this proposal moves them farther away from imposing on others.

P. Kenyon said that in response to M. McComb's concern with the applicant getting a septic variance, some have gone to the TB first and the TB wouldn't grant a variance for a septic until the ZBA made a decision.

No public in attendance.

The WCPB determined no County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Helen Milvany (V06-47) 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 #4 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, it is all dimensional stuff being talked about;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it is an improvement architecturally if not structurally;
- 3) The request is not substantial, there is some filling in of niches and the four feet of deck in question is not substantial—it is the lay of the land ;
- 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, age has had its way with this building.

The benefit to the applicant is not 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. Meredith McComb & Bill Pfau were opposed. **All others in favor. No Action Taken.**

From the public, Pearl Rathwell said that the applicant's property blocks 3/4 of her view of the lake and (2) it is very rocky there—anything done will require heavy equipment and blasting.

K. Hoopes said that the applicant is under very strict instructions by the association. G. Smith agreed and said part of the association's instructions is that the land has to stay the way it is now as it exists. Pearl Rathwell said that her concern is with the fireplace and things like that—the basic structure.

P. Kenyon and Counsel reinforced the need for applicants to consider tabling their applications if they are not comfortable in not having a full ZBA tonight.

5) V06-48 GIKNIS, CHARLES. Represented by Michael Schusteritsch. To alter existing single-family dwelling, specifically to construct a 5'x 8' second story deck on the north side. Seeks area variance for a deficient front yard setback. 100' is required from the edge of the right-of-way, 70' is proposed. Section 185.00, Block 1, Lot 4, Zone RR5. Property Location: 38 South Trout Lake.

Michael Schusteritsch, representing Charles Giknis, gave an overview and said (1) he is proposing to build a 5-foot wide by 8-foot long deck with no stairs on the second floor, (2) the previous contractor had installed a door on the second floor and if a balcony is not provided the homeowners insurance is going to be cancelled, and (3) he spoke to the Zoning and Planning Office and was told he would need a variance because the proposed deck is 114 feet from the center of the road and it should be 125 feet.

G. Smith asked if it this a safety issue and Michael Schusteritsch said yes, there were electrical lines that were near the door entrance that were moved approximately two weeks ago to meet the safety code.

K. Hoopes said that (1) for most of his troubles this applicant usually points the finger at a previous contractor—the owner is responsible and the ZBA doesn't look favorably on that matter, (2) the driveway measurements are inconsistent—the numbers need to be made consistent and (3) he thinks it is good idea to put a balcony where there is a door.

No public in attendance.

No correspondence.

RESOLUTION

The Zoning Board of Appeals received an application from Charles Giknis (V06-48) 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, 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 #5 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, the applicant has to build the deck to get home owner's insurance and it is attached to the building that is there;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, in part because it is such an insubstantial request for a variance;
- 3) The request 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, in fact it will make this property safer and more compliant;
- 5) The alleged difficulty is not self-created, in that it sounds like there were power lines that prevented installing this deck when the house was originally built.

The benefit to the applicant is not 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 Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion carried.**

- 6) **V06-49 WHIPPLE, HOLLY & MILLER, FAITH.** To alter existing single-family dwelling, specifically to construct a 2 story addition on the west side. Seek area variance for a deficient side yard setback. 15' is required, 8' is proposed. Section 213.17, Block 1, Lot 4, Zone RCM1.3. Property Location: 18 Canoe Lane off of Route 9N. Subject to WCPB rHolly WHipple gave an overview and said they are proposing to build a two-story addition on their house, (2) the proposed addition will not increase the size of the house, (3) they are looking to fill in the ditch.

Holly Whipple gave an overview and said that (1) they are asking to build an addition on the west side of their house, (2) there is a small part of the addition that comes into play with their neighbors' property and (3) the addition is to be right on the back corner to fill in the niche.

G. Smith asked if the pin location is unknown and if the applicants are here to be on the safe side and Holly Whipple said yes, and the purpose of the addition is to make office space in the loft and to give additional space downstairs.

No public in attendance.

No correspondence.

The WCPB determined no County impact.

B. Pfau asked how the Zoning Office deals with unsubstantiated lot lines as far as setbacks go and P. Kenyon said that (1) the information the ZBA has in front of it is based on an actual survey—she assumes the survey is correct and (2) the survey shows that there is 8 feet there. K. Hoopes asked if P. Kenyon figured this with her scale and she said yes. K. Hoopes said that if the drawing is correct and the scale is correct then the ZBA can grant the variance on that. G. Smith said that the neighbors have been notified and the applicants said they are very close to their neighbors and the neighbors have no problem with the proposal.

M. McComb asked if this is approved as a three-bedroom house already and Holly Whipple said yes, the existing square footage is 2,400 square feet and this proposal would increase that to about 2,930 square feet. M. McComb said that she is not usually in favor of granting variances to add loft space, (2) it is also the largest house in the neighborhood already, (3) on the other hand it is filling in a niche in the existing house towards the back of the property, so she doesn't have a big problem with it and (4) it is already impermeable surface.

RESOLUTION

The Zoning Board of Appeals received an application from Holly Whipple and Faith Miller (V06-49) 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) There will be no undesirable change in neighborhood character or to nearby properties, there have been no objections from any neighbors and it is well concealed;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, as this part of the house does not meet setbacks from the side;
- 3) The request 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, this is quite a small addition to the house;
- 5) The alleged difficulty is not self-created.

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

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

7) V06-50 SIMONSON, RICHARD & VIVIAN. In accordance with Section 125-10B(2)(d) of the stormwater regulations, seek area variance for a deficient shoreline setback. 100' is required, 25' is proposed. Section 186.18, Block 1, Lot 31, Zone LC25. Property Location: Shallow Beach Road off of Route 9N. Subject to WCPB review.

Richard Simonson gave an overview and said (1) he has 55 acres, which is mostly wet and this location is probably the only buildable spot in the 55 acres and (2) he can't make the setback, but Tom Nace has approved the project, as nothing will be going into the wetlands.

M. McComb asked if the pond is 25 feet from the wetlands and Richard Simonson said that (1) the pond is 75 feet from the wetlands and (2) there is a 24-inch perforated pipe that is for stormwater.

B. Pfau asked what part of the project doesn't meet setbacks and Richard Simonson said the stormwater run-off—the water that is running off the roof—is not far enough away from the wetlands according to the code. K. Hoopes asked if this is a case where the ZBA should wait for the PB to make a decision on stormwater review. P. Kenyon said that in most cases, the PB relies on Tom Nace, who has approved this project's stormwater.

M. McComb (1) said that the entire management of water is going to be taken care of by the fill being brought in and (2) asked about the building sites on the 55 acres. Richard Simonson said that this site is one potential building site on the 55 acres and there is a possibility of a building site behind the cemetery. K. Hoopes said that the 55 acres is mostly wetlands. Vivian Simonson said that (1) you would want to be as close to the lake as possible, (2) they have 1700 feet of water that is used by the neighbors, (3) they feel this is the best area to take care of their property and (4) in the original subdivision this proposed lot was prepared to be a lot years ago but the waterline was only run so far—it has already been prepared as a lot.

M. McComb said that (1) there is already a lot of water running down the hill from upland construction, which has nothing to do with these applicants, but it should be noted and (2) it seems to here that the stream is already overflowing its bank, (3) there is a lot of water already running down on this land and (4) this project is predicated on the applicants bringing in all the fill needed for stormwater. M. McComb asked if the applicants propose paving the driveway down to their property and the Richard Simonson said no, that driveway has been there for 75 years—they just maintain it by putting some gravel on it and smoothing it out. K. Hoopes said that the area is flat as a pancake and G. Smith agreed. Vivian Simonson said that the APA said the plan is good and Tom Nace approved it also.

P. Kenyon said that the applicants received Warren County approval by default, have received APA approval, have received approval by Tom Nace, and will go for PB review this week.

From the public, Mike Elliot, neighbor, said that (1) he has a right-of-way on this property, (2) the driveway to the lake is maintained by eleven families, (3) the values of their properties are their beach and docks, (4) if the right-of-way is in any way disturbed, (ex. low water table) there will be a large amount of mud, (5) he would request there be conditions put on the road so they can continue to use it, and (6) he thinks the project will destroy the right-of-way and that it will decrease the value of his home.

K. Hoopes said that he thinks the cooperation from all of those down there in maintaining the road will be beneficial and would be a solution. B. Pfau said that Mike Elliot's concerns should be brought up to the PB. G. Smith said that he thinks if the applicants want to build a year-round home there they may want to make some road adjustments.

Mike Elliot said that the whole thing is about water—if the land were dry they wouldn't be here. K. Hoopes said that the applicants would also be bringing in fill, which should be a positive aspect.

From the public, Jim Splonskowski, neighbor, said that (1) it is correct that currently water from the Gatehouse is coming onto their properties, (2) the requirement is a 100-foot setback and the applicants are looking for 25 feet, which would be throwing out 75% of the requirement and (3) the ZBA is treading on thin ice in protecting Lake George.

Correspondence read into the record by Counsel:

- Letter from Frank Panella dated December 8, 2006 - opposed.
- Letter from APA dated February 28, 2006 - non-jurisdictional determination.

Correspondence read into the record by G. Smith:

- Letter from Kathy Bozony of the LGA dated December 18, 2006 - opposed

B. Pfau read into the record the following part of the stormwater erosion control section of the Zoning Code that states "...stormwater recharge areas shall be located a minimum of 100 feet from the subsurface treatment system of wastewater treatment system unless it is demonstrated that a lesser separation will not adversely effect the functioning of such leech fields..." and said that in light of that if there is a motion made by the ZBA in favor of the project it would be a good idea to include Tom Nace's approval of this system as a condition of approval.

K. Hoopes said that he thought the ZBA was strictly concerned with the stormwater devices being within the 75 feet and P. Kenyon said it also included construction of the proposed house, but a variance is not needed for that. M. McComb also referenced the same section of the Zoning Code as B. Pfau did and said the first part reads "...infiltration devices for major projects shall be located a minimum of 100 feet from Lake George and various other things and a wetland...a separation of more than 100 feet may be required in cases where contamination of the water supply is possible due to highly permeable soils, shallow groundwater and similar situations..."

K. Hoopes asked if the house meets setbacks and Counsel said the house is not required to be set back from the wetland because it is not in Bolton's code and the APA has said it is a non-jurisdictional wetland. M. McComb asked if the ZBA is allowed to be more restrictive than the APA and Counsel said yes, as long as it is in the Town of Bolton's Zoning Code. M. McComb asked what the square footage of the proposed house is and Richard Simonson said that it is under 3,000 square feet. M. McComb said that the size of the house contributes to how close it is to the stormwater retention and the wetlands.

K. Hoopes said that all the ZBA is here to talk about is the stormwater device and Counsel said that is correct. K. Hoopes said that if the Zoning Administrator and Counsel are comfortable with this and it is going before the PB in three days and all the ZBA is being asked for is the relief of the stormwater device, then he is in favor of granting the variance. Counsel said that the PB can accept this, reject this, or accept it with conditions.

G. Smith said he thinks this should go to the PB first for their recommendation. K. Hoopes said that the applicants may want to go to the PB first since there is a diminished ZBA this evening.

B. Pfau said that the ZBA could also make a motion on Tom Nace's condition. K. Hoopes said that he is very comfortable with Tom Nace's advice.

Jim Splonskowski asked for clarification of the proposed stormwater device and Richard Simonson referenced the maps to clarify.

G. Smith said he'd feel more comfortable getting the PB's recommendation first.

Jim Splonskowski said that his understanding is that the water from the house will be diverted toward the road they are concerned with..

Motion by Kam Hoopes to table the application, pending a recommendation from the Planning Board, and keep the public hearing open. Seconded by Tony DePace. **All in favor. Motion carried.**

Meeting adjourned at 8:50 pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
12/22/06