

Zoning Board of Appeals- Minutes December 17, 2007
State of New York
Warren County
Town of Bolton

Present: Chairman William Pfau, Tony DePace, Kam Hoopes, Meredith McComb, Jeff Anthony, Zoning Administrator Pamela Kenyon, Counsel Michael Muller.

Absent: Chairman Greg Smith and Tom McGurl, Jr.

The meeting was called to order at 6:37 PM.

W. Pfau asked if any changes needed to be made to the November 2007 meeting.

M. McComb commented for the new recording secretary that in her correction from last month that Pam's number be included in the minutes, not her recollection of the number. She remembers asking for a correction and she wanted the specific density number not her recollection.

Motion by T. DePace to accept the November 2007 meeting minutes. Seconded by K. Hoopes. All in Favor. Motion Carried.

- 1) V07-66 HARRY WOLKIN TRUST (Linda Queen).** Represented by Chris Gabriels. In accordance with Section 200-52, seeks area variance to place a 6 ft. stockade fence within the shoreline setback. 100 sq. ft. is allowed, 450 sq. ft. is proposed. Section 213.17, Block 1, Lot 34, Zone RCM1.3. Property Location: 3832 Lakeshore Drive. Subject to WCPB & APA Review. This item was tabled at the November meeting at the applicant's representative's request.

RESOLUTION:

This item was tabled at the applicant's request.

- 2) V07-73 SHEPPARD MACHINERY INC. (LAKESIDE AT NIRVANA).** Represented by David Mazzeo and Boswell Engineering. In accordance with Section 200-37B(4) seeks area variance for deficient shoreline frontage; 205' is required for a proposed 9 unit condominium project, 170' exists and is proposed. Section 171.15, Block 3, Lot 60, Zone GB5000. Property Location: 18 Sagamore Road known as Nirvana. Subject to WCPB review. This application is in conjunction with SPR07-37 & SD07-22.

RESOLUTION:

This item was tabled at the applicant's request.

- 3) **V07-76 BARTLEY, EDWARD & CAROLE.** To demolish and rebuild single family dwelling, seek area variance for 1) deficient front yard setbacks. 50' is required from the edge of the right-of-way, a) 8' is proposed on the north; b) 10' is proposed on the west; and c) 15' is proposed on the south; and 2) Lot coverage. 15% is allowed; 15.6 exists and 15.9% is proposed. Section 171.11, Block 2, Lot 6, Zone RCM1.3 Property Location: 28 Hidden Hills Drive. Subject to WCPB review.

Ed Bartley stated that he wants to demolish his existing camp and rebuild it for year round use. W. Pfau stated that according to the plans the house is to remain in the same basic footprint that it is currently in. M. McComb asked how many bathrooms and bedrooms were currently in the house. E. Bartley stated that there are five bedrooms and three baths on two stories and that he would like the new home to have the same. M. McComb asked about the height of the current building in comparison to the new building. E. Bartley stated that he did not know the current height and stated that the plans should indicate the height of the proposed building. W. Pfau asked what the current square footage of the home is. E. Bartley stated that it is 1,249 sq. ft.

M. McComb stated that the proposed home is 1,321 sq. ft and she understands that it will remain in the middle of the lot, but her concern is that it is an expansion of over density on a small lot. She continued that the lot is also encumbered by a right-of-way on three sides of it. W. Pfau stated that he understands her concern, however a .3% increase is very minimal and that the applicant is trying to maintain what he has on his lot.

K. Hoopes asked P. Kenyon if the density number was less the right-of-ways. P. Kenyon stated that she included the entire parcel in the density. M. McComb asked if there was any calculation of impervious surface that is applicable on the lot. P. Kenyon stated that 15% is allowed, 15.6% exists for lot coverage and they are going to 15.9%. M. McComb asked if the impervious surface of Hidden Hills Drive on three sides of this lot part of this 15.6% coverage or not. P. Kenyon stated that she included the entire parcel which is .27 acres for the lot coverage that she would have calculated and it looks like they have the ROW on three sides. M. McComb stated that the ROW would not be factored into the lot coverage. P. Kenyon stated that they are not part of the lot coverage. K. Hoopes stated that by looking at the plan if they included the ROW as impervious that there would be a lot more than 15% coverage.

W. Pfau asked the age of the current structure. E. Bartley stated that it was built around 1919. K. Hoopes commented that they have updated it along the way. E. Bartley stated that the problem is that there is no foundation and the heaviest support is a 2' x 4' and termites have eaten all of the sills. He continued stating that he tried to explore other less expensive options to avoid completely rebuilding, but no contractors wanted any part of it.

W. Pfau stated that there will be stormwater controls. M. McComb stated that it wouldn't be triggered unless they require it, because there is less than 1,000 additional square feet of new impervious surfaces proposed. P. Kenyon stated that there would not be any stormwater controls because it is under the 1,000 sq. ft but does encourage it.

M. McComb stated that she is concerned with not knowing the height of the current structure and the increase in height in the proposed structure. She continued that it could affect others views. E. Bartley stated that there is only one person in back of him and they are sliding the home to improve his view. He further stated that the only reason they are slightly angling their home is to improve their view that was blocked by an improved home of his neighbors. P. Kenyon stated that E. Bartley has a deed restriction stating that he cannot impact others views. M. McComb stated that they have correspondence from the neighbor (John Pricken) stating that he just found out about this application and hasn't seen any drawings. E. Bartley stated that he believes the height is about the same. M. McComb stated that based on the drawings, that it looks like a more substantial house. E. Bartley stated that the plan shows that the proposed house is to be approximately 30 feet and that he thinks the current home is few feet shorter. K. Hoopes stated that he has a full second story on the current house, the proposed house will have a full second story, the roof line travels in the same direction as the old one, but there may be some fringe, there are increases from left to right and up and down, but they do not appear to be substantial.

M. McComb stated that she noticed that they were enclosing the decks. E. Bartley stated on the south side yes, but on the north side no only partially. M. McComb asked if there will be stairs. E. Bartley stated that his insurance company required it at one point, but now it is not required based on the height distance between the two decks.

W. Pfau asked if the Board was in agreement that the height of the current building and the new building is within a couple of feet. M. McComb stated that comparing the plans and the picture of the current home that it looks like a much more substantial house. W. Pfau stated that he is basing his understanding on the overall square footage difference which is not substantial.

K. Hoopes stated since the setbacks are almost identical, and a .3% increase in lot density that this was an acceptable plan with the stipulation that stormwater measures be taken on this new structure.

W. Pfau asked if any public in attendance had any comments.

E. Zwick, neighbor who lives to the west of E. Bartley addressed the shift of the house. He stated that currently at the northwest corner of his house is a very sharp turn and he feels that anything that he could do to move the house location away from that turn would allow for an easier turn.

W. Pfau asked if E. Zwick's view would be affected. E. Zwick stated no. E. Bartley stated that most trucks cannot navigate the turn currently and that any movement away

from the road would allow for more access by more vehicles. W. Pfau asked how many people use the road. E. Bartley stated two other houses.

E. Zwick stated that the other concern would be parking, and that again the shift in the house would allow for more parking and off the road.

W. Pfau asked if there was any correspondence. P. Kenyon stated that there was no County Impact, but there was a letter from John Pricken, which Counsel read into the record.

W. Pfau asked E. Bartley if there was any way that he could move his house further from this turn. E. Bartley stated that the architects laid it out this way and feel as though the Pricken's view will not be impacted. M. McComb stated that he is more concerned with the culvert and the road. E. Bartley stated that it could be shifted over as long as it does not affect the septic. M. McComb asked him to point out the current location of the septic.

K. Hoopes asked if anyone has run into their home. E. Bartley stated that no and only one person has actually run off the road onto the gravel because they were going too fast. M. McComb stated that in reading the letter from J. Pricken, that if the stairs are enclosed that you may want to put additional stairs on the home. E. Bartley stated that they do not plan to do this. K. Hoopes stated that if he did want the stairs that he would have to come back and get a permit and a variance from the ZBA.

E. Zwick asked if the dotted line on the plan represents the outer edge of the existing stairs and structure on the western end or does it represent the foundation of the existing building because there is a six foot difference. K. Hoopes stated that the dotted line is the old silhouette. M. McComb stated that it looks as though they are pulling it in the width of the stairs. E. Zwick stated that this is his point, that if they are removing those stairs the shift would be greater and allow for ease around that turn.

J. Anthony stated that if upon measuring at the north end of stairs to the proposed new outside wall, the building actually moves three feet away from the property line.

RESOLUTION:

The Zoning Board of Appeals received an application from Edward and Carole Bartley (V07-76) for an area variance as described above.

and, due to notice of the public hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Board;

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

and, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application;

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, different solutions have been looked at and none of them are suitable;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, the new house will be in almost the exact same footprint as the existing house;
- 3) The request is not substantial, with a .3% increase in livable space;
- 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,

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

Now, upon motion duly made by K. Hoopes and seconded by M. McComb, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) Stormwater management controls for minor project are to be implemented. **All in Favor. Motion Carried.**

- 4) **V07-77 SADDLEBROOK SUBDIVISION (ROLF RONNING).** In accordance with Section 125-10(2)(e) of the Stormwater and Erosion Control Regulations for major stormwater projects, seeks area variance for deficient percentage of the infiltration surface area below the prevailing frost depth or four feet (whichever is greater) in order to provide infiltration during winter months. A minimum of 10% is required, 0% is proposed for pond P4i and 0% is proposed for P5i. Section 139.00, Block 1, Lots 48.11 & 48.2., Zone RL3. Property Location: 83 High Meadow Farm. Subject to WCPB review.

R. Ronning stated that his Atty Dennis Phillips was present to address the issue of this application being sent to the WCPB for reasons unknown and then after that D. Dickinson, his engineer will be providing the overview of the project. He stated that Saddlebrook was approved but then they were sued by the Waterkeeper and for months they have tried to do the stormwater perfectly to avoid being sued again. He stated that they have to comply with three different stormwater ordinances and for six months they have tried their best to comply with everything. He stated that they have come to 99 %

but there is one little variance that they need. He continued that he was informed this afternoon by P. Kenyon that T. Nace has sent a letter which addresses this variance and asked the Board if they had the letter. The Board stated yes.

P. Kenyon stated for the record that the WCPB denied this without prejudice.

Dennis Phillips stated that on Friday this issue had been referred to the WCPB. He stated that he was surprised because he was not aware that WC had any interest in stormwater for a project of this nature in the sense that there are many other stormwater regulations but no County stormwater regulations. D. Phillips stated that he raised the question of had this been inadvertently sent to the WCPB and whether the WCPB had inadvertently decided to take some kind of action on it. He stated that they denied this without prejudice, and as you look at their denial it basically was looking for more information. D. Phillips stated that the questions that he has legally are was there a reason to refer this to the WCPB in the first place, he doesn't feel there is any statutory basis for it under the general municipal law as there is for subdivisions that may have a County impact. He also is looking at the action of the WCPB where they denied without prejudice and he interprets that to mean that the denial is without any prejudice to the voting requirements that are otherwise in place relative to the ZBA. He stated that he is making the legal request that with the denial without prejudice and with no County interest in any kind of stormwater impact here that this may have been beyond their authority and is asking for a ruling on that particular issue.

W. Pfau stated that he is making the assumption that they do not need a super majority for this project. D. Phillips stated that was correct.

J. Anthony asked for what reason it was sent to the County. P. Kenyon stated he is within 500 feet of County Route 11. R. Ronning stated no, and that initially Saddlebrook included the Abele parcel and he was going to access Saddlebrook from County Route 11, but then DEC didn't want him to cross Indian Brook so they changed the access to enter from New Vermont Road and they are no where near County Route 11.

M. McComb stated that she sympathizes with the applicant regarding the denial without prejudice, they have had this before and came up with, they can call it denial without prejudice, but our past practice has been that it does trigger super majority. She continued that if it was not jurisdictional to the County then she would agree to that part be taken off.

T. DePace asked if the County doesn't have stormwater regulations how can they even look at this. J. Anthony stated that the only reason it would get sent to the County is if it is 500 feet from something of significance, such as County, State or Federal highways, building, etc. and he doesn't think there is any of that in this case. P. Kenyon stated that she wanted to check the map. K. Hoopes stated that even if it was, they don't have any regulations. J. Anthony stated that the 500 ft would trigger just an advisory opinion. K. Hoopes asked why they would issue an advisory opinion if they don't have any regulations to issue them from. J. Anthony asked Counsel if it is within 500 ft that it

automatically goes to the County. Counsel stated that both he and K. Hoopes were correct. Counsel stated that procedurally the County was correct to have received this based on triggering events, but having stated that the question is what does the County do with it once they do receive it, and the answer is that they have nothing to do with it. W. Pfau asked why the County didn't notice that it is non-jurisdictional. Counsel stated that it worsened because they denied it, which triggers the super majority five and they said without prejudice, which he doesn't know what that is supposed to mean, and that if they accept that without prejudice that you cannot prejudice R. Ronning's application. R. Ronning stated that he never received notice that it was sent to WC and they denied because they needed information and had he had notice he could have provided that information to them.

P. Kenyon apologized to R. Ronning and stated that New Vermont Road is not a County Road, therefore WC has no jurisdiction. W. Pfau stated that they do not need a super majority for this and that he may proceed.

D. Dickinson, surveyor and engineer for the Saddlebrook project gave an overview of the subdivision project and stormwater plan. He stated that of the five stormwater treatment facilities, two of them have infiltrator ponds as part of their treatment. He stated that the infiltrator ponds on 4 and 5 are the ones that they had difficulty with. He stated that they had difficulty with separation distance to ground water in terms of requirement by the LGPC regulations for 10% of the basal area could be below frost, but two feet above the ground water table. He stated that pond complex 5 has two or three chambers and then an infiltration portion of it to meet the requirements. He stated that pond 4 complex has a double basin according to DEC standards and also utilizes the fire pond that they have provided for the fire company and another portion of that is an infiltration pond that meets the LGPC requirements, which infiltrates the water back into the aqua system. He continued that the DEC requirements want you to take the surface water collected, treat it and discharge it.

D. Dickinson explained a cross section of one of the pond systems, stating that water comes in where it is treated, eliminates the silt, which then overflows into an area of a permanent wet pond and then different elevations of heights of where it will fill to depending on the frequency or intensity of storms, and an outflow device which gives you multiple outlets depending on what you are trying to do. D. Dickinson stated that in accordance with the LGPC rules they have an infiltration pond which will trap the water and let it percolate back into the ground. He stated that they have done that and met all the requirements and came to the ZBA to clarify the requirements so that everyone understood what they were doing and now they are having a problem on the review of this project after the original approval with the requirement for 10% of the basal area of the pond be frost protected. D. Dickinson depicted on the plan what he would normally do in these situations. He stated that T. Nace's concern is that this is a levy, which is to hold the water in, but also try to put the water in to dissipate it in the ground water. He stated that he and David Myers determined that they can do this and meet the requirements and not have failure and still get percolation. He stated that T. Nace's final point was in order to do that, they would need a very controlled substance here and be

able to compact it to hold the water back, but not compact it enough so that it didn't dissipate water. D. Dickinson stated that they went back and forth with different variations of this and finally told us no, and suggested that we apply for a variance and he would support our application because he feels that they can make up for this lack of 10% with the volume that they have in ponds required by the DEC for winter operation. The DEC ordinance states that in winter operation that can freeze, that you can develop a foot of ice in either of the basins therefore you need an additional foot of capacity and they have done that by raising the berm. D. Dickinson stated that although they did not give them 10% infiltration, that they have given them more than that in storage.

W. Pfau asked if the original variances received were still in effect and being used. D. Dickinson stated yes. K. Hoopes asked if the pond in the original variance was to be placed 70 feet from the nearest water to shoreline, where it needed to be a 100 feet. D. Dickinson stated yes. K. Hoopes stated to reiterate what W. Pfau said that the variances are still in effect and still required. D. Dickinson stated yes. K. Hoopes asked if they needed this 0% at the time of the first variance application. D. Dickinson stated no, that at the time T. Nace was satisfied with what they have proposed. He continued that after the lawsuit and the approval was rescinded, T. Nace's review criteria was cranked up a bit and he revisited some previous issues.

K. Hoopes asked if the infiltration pond was the last line of defense for the stormwater device and if it is the tail end for all of the overflow. D. Dickinson stated no, that it is more like an appendage to the pond complex and will only fill up when they have reached the height of overflow. K. Hoopes stated that it is the last line of defense for overflow in the event of large storms and that most of the time these ponds are to remain dry. D. Dickinson stated yes, if they are working properly. D. Dickinson stated that the LGPC and DEC require that if you are in the LG Basin that you must infiltrate water back into the system, he stated that it is not the last line of defense, but part of it.

W. Pfau asked if the PB was going to be aware of this request or were they waiting on action on this Board. D. Dickinson stated that they have to go back to the PB.

M. McComb asked with regard to the treatment of water, is it in natural soils or with fill as well. D. Dickinson stated that most of the treatment is in natural soil. He continued that they could bring any soil in, but that you need that soil to be packed so that it will hold the water but workable so that you can create the bases.

J. Anthony asked Counsel if he could explain the cooperation between the waterkeeper, developer, Town Engineer and the Town on coming to a conclusion. Counsel stated that an order and stipulation has been drafted and is waiting to be signed by Judge Krogmann. He stated that he had no doubt the he will sign that because all parties worked hard to come to a mutual agreement. He stated that the manifestation of the agreement so ordered by Judge Krogmann will return the large project Saddlebrook to the PB, and although there are some details within that order and stipulation it would be fair to summarize that R. Ronning will present his plans as they have been deemed present in July, he has no vested right in terms of the final decision on the stormwater or

subdivision and then with respect to what is ahead, is PB review, with an entire SEQR process, opening it up to a public hearing and it is entirely possible that there are some changes. He stated that the applicant will not have to start from ground zero, but will start from a platform of mutually agreeable terms, expectations and anticipations is fair to say. He further stated that they cannot go to the PB without having all variance lined up.

M. McComb asked if they could get a recommendation from the PB on this because they need 100% variation, because the requirement is 10% and they are at 0%. Counsel stated that procedurally yes, this Board could table it and refer it to the PB for its opinion, but his observation over the six years of participation that it boils down to engineering and perhaps the recommendations come best from the Town Engineer, and if T. Nace is 100% behind what is being proposed here, then he would urge the ZBA and the PB be 100% behind that. M. McComb stated that in T. Nace's letter that he was not 100% behind this, stating that he has been opposed to this proposal for infiltrators beds installed in the embankment of the ponds. She continued that he also said that the elimination of the infiltration capacity before frost level could be mitigated by making sure that the pond has sufficient storage capacity, which they have done. She stated that according to this letter she does not feel that they have T. Nace's 100% support of the project. Counsel stated that he feels that T. Nace's position needs to be supportive of what is proposed here before the Town is interested in endorsing it. P. Kenyon stated that was the point of T. Nace letter, to tell the ZBA that this was the best solution as what could be done. W. Pfau felt that this letter was in support. R. Ronning stated that since the lawsuit, they have been doing everything they can to make stormwater comply with the necessary regulations and come up with the best solution possible with T. Nace.

M. McComb stated that she was trying to keep his best interest in mind and that they have received a lot of new information tonight. She stated that T. Nace has always opposed this and although in his letter he is support of their new design for a large pond he still opposes the infiltration devices in the beds.

D. Phillips stated that he wished D. Dickinson would point this out, that he is not following that infiltration device mitigation method, what he is following is what T. Nace has agreed to in his last paragraph where he is basically following an over sizing method for the plans. K. Hoopes stated that you can see it on the drawings of the previous proposal which had clay barriers and the current proposal have no clay barriers. D. Dickinson stated that he was correct. D. Dickinson apologized for the confusion stating that there are no infiltrators, but he wanted to give a full picture of how they have arrived to this point. K. Hoopes stated that the original variance issued was carefully thought out and he is fairly confident that the original system would have worked but T. Nace thinks this will work even better.

W. Pfau stated that this has been an ongoing process and that he is not opposed to sending applications to the PB for their recommendation but they will be taking the same recommendations from Tom Nace. He further stated that this a small part of this large project that is going to continue and he believes that they should grant this and send it on

to the PB for them to continue. K. Hoopes stated that he agreed and that this issuance of the variance does not give the full approval of the overall large project.

Counsel asked D. Dickinson if they have considered all feasible alternatives and are there any feasible alternatives that they are obligated to need for the requested variance. D. Dickinson stated that they have done two other proposals which were given to T. Nace and in both proposals there were flaws. He stated that he called T. Nace and asked for his suggestions on what to do, and T. Nace suggested getting a variance. Counsel asked if this is the least amount that they need in order to accomplish what is required otherwise by stormwater regulations. D. Dickinson stated that the mitigation is that they still have the infiltration ponds to meet the requirements, they don't have the 10% that they suggested they get, but they do have the increased capacity in the basins. K. Hoopes stated that Counsel was asking if this is the best that they can do with all of the available options. D. Dickinson stated yes.

M. McComb asked if the Abele piece legally separate from this parcel. D. Dickinson stated yes, it has been for sometime.

W. Pfau asked if any public in attendance would like to speak on this matter.

Chris Navitsky, Lake George Waterkeeper, handed out a letter to the ZBA and applicant which stated his opposition to the current design and offered other feasible alternatives. He stated that D. Dickinson provided a good walk through of water stormwater management systems are and that it is a combination of a number of treatment processes, but the most important one is the infiltration. He stated that the infiltration is the one that is required in the LG Basin, it is the method of stormwater treatment that you get the most pollute removal and treatment and that is why it is necessary to have it and why there is a 10% requirement to get stormwater into the ground in times of cold weather climates where the ground can be frozen. He stated that there are other feasible alternatives especially considering the size of the property. He asked why they couldn't use the nature soils located near the proposed site of pond 5 instead of creating an embankment which could get it below the frost line and into the ground. He also why pond 4 is located on the other side of the road with the infiltrators on the uphill side of the pond put into natural soils. He stated that there are areas where they could possibly address some of the stormwater runoff further up the hillside of the development so that they don't have to have these large basins at the bottom of the hill. He stated that with increased run off of all the frozen surfaces and reduced treatment because of the temperature impacts to the water and to the biological treatments in the wetlands and snowmelt, the current make up of the site is fine sand and silt soils which will bind up very tight when cold and freeze very quickly and even with building the ponds a foot higher that it will just hold more water and build more ice. He stated that with regard to the properties of water that the hydraulic conductivity is reduced which will slow down infiltration if they try to hold more water, which is why they want to get it below the frost line. He continued that these are along roadways with chlorides and salt will affect the soil structures and reduces the infiltration. He stated that with ice on the ponds, phosphorous removal will be null and void and nitrogen removal is stopped once you get

to 5 degrees Centigrade and the activities of the plants are significantly reduced which is where you get the biological treatment.

K. Hoopes stated that one of the problems he has is that as in the last time he handed them this at the meeting, and that they prefer to have this available in their packets to review prior and come prepared with questions. C. Navitsky stated that was not a fair statement because the last meeting was a special meeting and they only had three or four days to look at the application last time. He stated that as for tonight he was not aware that this application was in because they hadn't reached a settlement until last week. K. Hoopes stated that bringing this information in at the last minute is not helping his cause and that he roughly has known what this all about. M. McComb stated that they have only known T. Nace to be in opposition to this project and tonight they received a letter stating his approval last minute.

J. Anthony asked that in the process of the settlement, did they go over topics like this with the applicant, attorneys and all parties involved. C. Navitsky stated no, and that under Town Law the application had to stop until a decision has been made, so they were not talking about the details in going forward. K. Hoopes asked Counsel if the lawsuit was somewhat premature since there had not been final approvals given on the plan. Counsel stated that was true but that is arguing the merits of the case and they didn't in resolving, in the stipulation argue the merits of the case, they go right to the agreeable point which would constitute a settlement. He responded to C. Navitsky's point regarding the stay of Section 282, only stayed the proceeding in the Town with respect to the merits of what was before the litigation of the challenge to the site plan PB approval for subdivision and stormwater regulations. He stated that in a discussion between the attorneys that they have something outside of Section 282 stay which was ZBA action and that was not prohibited. Counsel stated that is probably why he didn't know about it and asked if he found out through public notice. C. Navitsky stated through the website.

K. Hoopes stated that if they are going to fine tune the variance that was already issued why they should delay. Counsel stated if they proceed with approval tonight and with the signed order and stipulation, this application could go before the PB in January. Counsel further stated that the points that C. Navitsky has brought tonight need to be determined if they are feasible alternatives. He stated that if they grant approval, the big picture then gets presented to the PB and all interested parties may once again speak and voice their opinions and challenge what is being offered by this applicant.

M. McComb again voiced her concern that T. Nace is still not 100% behind this proposal. Counsel stated that T. Nace will be involved in every bit of this issue when it goes before the PB. P. Kenyon stated that they plan to invite T. Nace to the PB meeting when it is back on the agenda.

W. Pfau stated that in his mind they look at T. Nace's letter as granting his support and approve this to then send it on to the PB for future progress. K. Hoopes stated that when they approve the first variance they seemed to feel that they were doing the right thing, and now this is an improvement upon that further. J. Anthony stated that what is

bothering him is that in settling a lawsuit, the two parties would have talked and come to an agreement on some of these finer points and at the last meeting Chris had the same comments that he saw other feasible alternatives that were viable and they did not consider any of those alternatives that he said were viable and they granted the variance. He further stated that both T. Nace and C. Navitsky are great engineers and he respects their opinions, but in this case they are two very different opinions and thought that the two of them would have talked as both being a party to this lawsuit. K. Hoopes stated that their affiliation and affinity goes towards T. Nace because he is the Town Engineer with their best interests in mind. He stated that C. Navitsky is someone who works for someone else, with their interests in mind. C. Navitsky stated that he talked to T. Nace today for clarification. He stated that the application was here because T. Nace denied it and asked him if that was the case. He stated that T. Nace made no mention of this letter but did say that he encouraged the variance because they enlarged the basin. He stated that his response was that it will not take away the problem of the lack of infiltration and asked if they can be put in elsewhere and T. Nace stated that would be something that they have to address if you raise that issue and to his concern that the additional foot added met the DEC requirements but not the Town requirements for the 10% below frost line.

D. Dickinson stated that when C. Navitsky first came here he invited him to his office with an open invitation to discuss any project that he was doing, and in the four or five years that he has been here, he has never seen him. He stated that if the issues that C. Navitsky has brought up are valid, T. Nace would make him respond to them. He stated that there is a lot of leeway in engineering and that it is more of a science than a finite thing and that there are a lot of ways of doing these things. He stated that over the years they have retained other engineers to assist them with some of these issues. He stated that with regard to infiltrators, that they are not the primary driving force, if you look at the DEC requirements for stormwater which are adaptations of the federal requirements, infiltrators are in there, but they are not the primary treatment. M. McCombs asked what the primary treatment is. D. Dickinson stated it was the wet ponds.

D. Dickinson stated that with regard to large storms, they do not get them that often and if it rains in the winter and there is snow cover, the snow cover absorbs a lot of the water and if it rains in the winter that not only is the pond frozen but so is everything else.

D. Dickinson stated that they have worked diligently with T. Nace to address all of his concerns, they are in compliance with T. Nace's letter which he believes is supportive of this application.

W. Pfau stated that he knows that they have been working with the Town Engineer for many years on this project and that he is going to vote in favor of this because T. Nace's letter states in part that he is supportive of this variance request because there is no practical way to provide that capability in the two ponds in question here.

M. McComb asked if moving the ponds across the road as C. Navitsky has suggested was examined as a feasible option. D. Dickinson stated they are trying to trap the most

amount of water to treat it and that you locate your pond to the lowest areas in the project. He stated that they have located the ponds to where they think they will work best and collect the most water and do the most efficient job. He further stated that the 100 ft separation distance that they are dealing with is a LGPC requirement and that the DEC requirement is that it could be placed right on the edge of the wetland edge and is unsure why if they are putting it in the ground to get to the wetland, than why does it have to be 100 ft away. M. McComb stated that it is clear that the DEC and LGPC have different regulations than the Town does, but that they have the LG Basin regulations to deal with.

D. Dickinson stated that if you want to be involved in these projects, organizations like the one Chris is involved in is a non-entity in which they have no basis in coming in and putting these comments forth. He further stated that everything that Chris has brought forward is looked at and internally respond to.

D. Phillips wanted to address J. Anthony and asked Counsel to either agree or disagree with him, that in terms of the other matter involving the PB and how they resolve getting that back to the PB, it is going back to the PB for a new SEQR review, a new public hearing, new stormwater consideration, new subdivision consideration, but also in their settlement they specifically dealt with an area of variances because they know that the PB can't act legally unless they have had certain variances in place. He stated that there is a provision in that settlement where all the parties acknowledged that the PB would take into consideration both the variances that were obtained before they reached their settlement and the variances that were necessary after they reached the settlement. Counsel stated that he agreed.

J. Anthony stated that he is concerned that they are being asked to make a decision on this without having all of the information. He stated that not having seen the stormwater plan, that he doesn't know if there are options, he doesn't know if this is the least variance that is required and he is going to be voting with a complete lack of knowledge. K. Hoopes stated that the thing that they have to remind themselves is that they aren't, and that he is the closest thing they have to an engineer on the Board. He stated that they can't ever figure that they are getting the absolute bottom line on something and that they have to be the judges on whether or not it is enough to make a vote on it. J. Anthony stated that stormwater is not an exact science and there are several different ways of doing it to get around the regulations and he doesn't know if this is the right way. T. DePace stated that if there was another way that would be cost effective to R. Ronning that they would have went that way instead of coming back for 4 years. R. Ronning commented that they could have several engineers' opinions, all of which could be different. He stated that the point is that D. Dickinson had his opinion of how to best do this, T. Nace stated otherwise and they have complied with what T. Nace has requested. He further stated that he feels this is the best system ever done before in Bolton, they have been put to the test, they do not want to be sued again and they are trying to do their best.

T. DePace stated that he could have based his vote on the letter of support from T. Nace. He stated that he understands J. Anthony's concern, but when the Town Engineer, who is keeping their best interests in mind, gives his approval, that is what he bases his decision on. J. Anthony stated that he agreed with him, but that they have to meet one measure, which is it the least variance that could be granted and still grant the relief and all that he is saying is that he does not know that. T. DePace stated that he would hope that T. Nace would have mentioned that in his letter. K. Hoopes stated that one of the things that make him feel like this is the least variance is that they already did this once and they were already convinced that it was a variance worth giving and now this has come back and it is a subtle change to what they originally approved and to him it shows that they were pretty close to the minimum to the first time around. W. Pfau stated the question is do they trust their engineer or not. M. McComb stated that the T. Nace stated that he is in favor of giving them a variance because there is no way of having that capability of the two ponds. W. Pfau stated that they are supposed to be a Board of laymen and look at evidence and base their decision on that.

RESOLUTION:

The Zoning Board of Appeals received an application from Saddlebrook Subdivision (Rolf Ronning) (V07-77) for an area variance as described above.

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

And, whereas the Warren County Planning Board determined that there was no County impact, County Impact was considered null and void after discussion of the WCPB denial without prejudice. All agreed that the WCPB has no jurisdiction in this matter;

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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties,
- 3) The request is not substantial, it is a small change of the previous variance;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, has not been established,

however, it is in fact an effort to mitigate those adverse physical and environmental effects;

5) The alleged difficulty is not self-created, they are putting these ponds in where nature is telling them.

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

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

5) **V07-78 KEILB, JOE.** Represented by Jesse Pepper. For a proposed two lot subdivision, seeks area variance for deficient density. 2.6 acres is required; 2.01 exists. Section 186.18, Block 1, Lot 27, Zone RM1.3. Property Location: East of 4528 Lake Shore Drive and being part of the John R. Loomis Jr. Subdivision. Subject to WCPB and APA review.

W. Pfau stated that before they start that there may be a discrepancy on the existing acres. P. Kenyon stated that there is a concern over whether or not the right of way that is located on the west side of these parcels are part of the parcel or a separate piece. She stated that she does not have the answer to this question. W. Pfau stated that they should address this in the beginning so that they know how much of a variance that they are looking at. Jesse Pepper stated that what they are trying to do, and maybe it was not clear in the application is that this is a subdivision of the one lot, but they are also dealing with a density issue and are including the lot right in front of it. He stated that the front parcel is 1.6 acres and the back lot is 2.01 acres as they see it in the back lot, so altogether it is 3.61 acres which would put them at .09 off of the density requirement for the three lots. J. Anthony asked if they were ever going to build on the lot closest to the road. J. Pepper stated that there is already a cabin on that lot. W. Pfau asked if that was the proposal. J. Pepper stated yes that was the ultimate proposal, but in filling out the application it was not written up that way. K. Hoopes stated that the map that he has shows three lots. J. Pepper stated that originally there were six lots in the subdivision. K Hoopes stated seven, because of the right of way. P. Kenyon stated that originally the front lot was three parcels and the back lot was three parcels and that they have been merged into two lots. K. Hoopes stated that the map that he has in front of him has Joseph Keilb's name on it three times, the two big lots that consisted of three lots each and one in between. W. Pfau stated that whatever way the proposal works that gives them the least request would be best. J. Pepper stated that he believed that this would give them the least request.

W. Pfau asked P. Kenyon if this was two lot subdivision coming off of one lot or a three lot subdivision coming off two lots. P. Kenyon stated that it was her understanding that it is a two lot subdivision coming off of one lot and that her biggest concern is that in everything that she has reviewed there is a right of way that goes through the front and back parcels.

Jim Pepper provided a more recent map from Bolster and Associates and explained the prior subdivision and paper road in between that was never constructed. He further explained the map. He stated that at one point they deeded over the section of right of way to Henleys. K. Hoopes stated that it will be essential to their plan that the right of way has been deeded over. Jim Pepper stated that in the Deed under Parcel 3 "Also all that tract of land, situate in the Town of Bolton, County of Warren, State of New York being the strip of land 40 ft wide, running between lots 61 and 62, 67, 68 and 69 as shown on the said Loomis Map." He stated that is this is what he believes to be the right of way that they have deeded over and the surveyor seems to think so as well. K. Hoopes stated that looking at that survey map, Rainbow Beach has laid claim to half of that. Jim Pepper stated that he could not tell if that were true or not. K. Hoopes stated that this determination will affect their plan because it could take out a large piece of land if it does not belong to them.

M. McComb stated that they received several things from Pam including staff notes, item #2- it appears that the right of way mentioned on Keilb's map is not part of the Keilb parcel, item #4- it appears that the right of way is a separate parcel, item #5- according to the description the right of way is separate, item # 8- according to the tax rolls, the roads are under the Loomis Association. W. Pfau asked if the biggest concern was who owns the right of way. P. Kenyon stated yes that she has too many concerns unanswered and is uncomfortable with the ZBA dealing with this issue tonight because she has too many unanswered questions. M. McComb stated that they also have letters from the Rainbow Beach Association saying that they have not had any chance to review this and would appreciate the opportunity to provide an opinion.

W. Pfau asked if they could establish ownership of this property at some point so that they could act on it. Jim Pepper stated that he wished that this came up in every single ZBA meeting, because if they hire an engineer or surveyor to lay out your property and they give you a survey map, then he is inclined to believing what they say. He stated that just because someone questions it doesn't mean that they are engineers or surveyors. He continued that the eight or nine concerns that P. Kenyon has can all be consolidated onto that one right of way. He stated that if there is an issue, and he does not know if there is as issue because it doesn't say it on this deed, but the this 40' by 40' right of way

W. Pfau asked Counsel if there was a legitimate question as to who owns this piece of property and if so, should they act on until it is cleared up. Counsel stated that they should not act on anything unless they have a clear understanding of the facts. He stated that J. Pepper made a valid point that when a licensed land surveyor puts their name on a survey map, they are basically certifying that it constitutes a valid depiction of the property owned by the owner. Counsel stated having said that he can suggest that without getting Dave Bolster in jam on this because this is perhaps where it starts. He stated that if you look at the Deed, it comes out of Book 1292 Page 249 which he believes is the instrument that he used, in which Jeffrey Pohl was the referee for the ownership...with Henleys. He goes through a series of what he would call historical descriptions with the existing lot 68 and because of the recent map and it does go by the

metes and bounds again an eventually gets around to calling it lot 67 referring back to a very early subdivision by John Loomis, but also the same deed talks about a Lot 69. He stated that with mention of the lots it grants some rights with respect to access ingress and egress across Sawdust Road, in addition it grants a right of way for ingress and egress over fifty foot strips that runs on the easterly side of lots 67, 68 and 69, but this is not ownership, it is right of way. He stated that it further grants another right of way for ingress and egress by foot as was specifically reserved in an old deed of Rainbow Beach in Book 455 at Page 46. And in addition to that it grants fee ownership of land that Mr. Pepper read previously. Counsel stated that if he were to look at this deed instrument not knowing the background or history, he would as Dave Bolster did depict Lots 66, 68, 69 and also depict that 40 ft. strip and enclose it in dark lines to show that is what they own. Counsel stated that if they are asking if this property has good clean title, he stated no that he would have to know more about it. K. Hoopes asked that any decision that they make tonight would be contingent on the facts as they are presented by the applicant. Counsel agreed. K. Hoopes stated that he would not be uncomfortable with this as they are presenting it and from what Counsel has told them, anything that they grant at this point is only as good as the facts that they have given them. P. Kenyon stated that she is not trying to tell the ZBA how to do their job, but she is just presenting information that she has gathered and suggested that they might want to table the application to give some consideration to the different surveys. Counsel stated that the ZBA can exercise their discretion and like to have an answer with respect to the Rainbow Beach area of occupancy. Counsel stated that if they realize that it has been characterized as a fault or deviation in their plan, then the applicant would have to come back. M. McComb stated that if it comes back that they do own all of the land and they have 3.6 acres and they are talking about a three lot subdivision that ends up with minimally substandard lots, that is a very different application than making two lots out of 1.7 acres. Counsel stated that M. McComb's point is well taken in that they are wise to look at this comprehensively and that an applicant is supposed to tell them the whole concept and not segments of the whole. Counsel stated that the applicant needs to speak frankly and tell the ZBA what they have in mind. J. Pepper asked if the 1.7 acres was coming from the County tax maps. M. McComb stated yes. J. Pepper stated that in comparing a map from a surveyor versus the County tax map, that they should trust the surveyor map with regard to accuracy. M. McComb stated that she agreed, but given the number of letters that they have received that stated they have not been given notice given the number of different of numbers we have on this parcel. J. Pepper stated that letters they received regarding notice have nothing to do with the acreage and asked how many letters there were. M. McComb stated that she was unsure of the total because several were given to them this evening. She stated that Rainbow Beach Association seems to get their act together and not stand in the way of improving properties. J. Pepper stated that this was not part of the Rainbow Beach Association. K. Hoopes stated that he didn't see anything from Rainbow Beach. M. McCombs stated that yes they did.

W. Pfau asked if this is doable or is it an impossible task. Counsel stated that it is very possible if the owner could provide a certificate of title from a title company or Dave Bolster could certify the description on the map. Jim Pepper stated that they do not have a title insurance policy but could obtain that for this property. J. Anthony stated that

there are a series of notes in the lower left corner of the map and the very first note says that this survey was prepared without the benefit of an abstract of title and is therefore subject to any easements, covenants or restrictions of record and any statements of facts will be disclosed. Counsel stated that D. Bolster took the Henley referee deed from Jeffrey Pohl and has depicted it as he should. Jim Pepper stated that he has the deed from Mary Henley to John Henley as well. He continued that he understands the issue is the 40 ft by 40 ft strip and whether or not the right of way is deeded and asked Counsel upon reading the deed if this was correct. Counsel stated yes. Jim Pepper asked if it was safe to say that J. Keilb owns the right of way. Counsel stated that it is safe to say that the deed describes the 40 ft theory. Jim Pepper stated that they are dealing with a 40 ft piece out of a 3.6 acre total parcel and it is an RN1.3 with a minimal lot size of 1 acre and whether they need a lot line adjustment or that they could grant a variance so that they could end up with instead of a 1.01 acres or .99 acres that they are still capable of granting a variance for that. Counsel stated yes. M. McCombs stated that several people have had a problem with not knowing exactly how much is on this parcel, because the applicant says they have 3.6 acres, but that is not the proposal before this Board, it is to subdivide half of that. Jim Pepper asked if it is a hanging offense if they change the application. W. Pfau stated no but they need to have clarification of what their application is. W. Pfau stated that he can sense that P. Kenyon is not comfortable with proceeding with this application not knowing the size of the lot. Jim Pepper stated that other than the 40 ft strip they know the size of the parcel.

M. McComb stated that when they are talking about a parcel between a lake and a wetland there are a lot of house down there and they make the point that their lot is bigger than most of the other lots, but dividing 2.01 acres which is the applicant's contention of the parcel size, and dividing that into two one acre lots does not mean it is ok because the minimal lot size of 1.0 acre as opposed to 1.3 acres refers to when there is adequate density on the parcel being subdivided and that if they want to make that proposal, that they are using all of the density down there, she would be find it strengthens their case, but given that this proposal is not in front of them and given P. Kenyon's concerns it does not help their cause. Jim Pepper asked why there was an issue of wetlands because they have been told it is APA non jurisdictional. M. McComb stated that anywhere there are a lot of dense cabins, she tends to look carefully as to the size of the lot and look at that. K. Hoopes stated that they do not have a lot of dense little cabins in this situation. Jim Pepper stated that most of the lots in the vicinity are 1 acre or less and that they have some of the largest lots in that area. He further stated that he is aware of some correspondence, one of which is from Clifford Muzante who has made a statement about wetlands, and there are none on this property. He continued by requesting that the PB not take the complaints as gospel, since they cannot take the survey as gospel. He stated that he and P. Kenyon were at the property and there is a little water which is right next to C. Muzante's septic system and that if he ever has a problem and has to redo his system he will have a problem. He stated that it was approved a few years ago for the Rainbow Beach common septic and there are many cottages that pump up to that area and stated that this is probably pretty good soil. He stated that they have done a number of test holes and the P. Kenyon has seen them and they are good to reasonable, but will let Pam discuss that. J. Pepper stated these lot sizes are easily compatible to the lot sizes of the

community. W. Pfau agreed with the applicant and stated that no one likes to be put off for a month or two, but his point is that they are asking for a variance for a subdivision because the property is not large enough but the problem is that they do not know how large the property is to see how much of a variance will be needed. K. Hoopes asked if the access to the back two lots would be accessed through the 40 ft piece. J. Pepper stated that he was correct. J. Pepper stated that he feels that they are reacting to a couple of letters. W. Pfau stated that he is reacting to what Counsel has advised. Counsel read the following letters into the record:

1. Robert L. Bebee, LLC in opposition of the project.
2. Steven Connelly in opposition of the project.
3. William J. White, representing the Basin Bay Association, in opposition of the project.

J. Pepper stated that each letter that has been read have valid points, however each is concerned with creating smaller lots than allowed, but each of the neighboring property owners who are complaining have much smaller lots than what they are proposing.

J. Pepper stated that W. White is the new attorney representing the Basin Bay Association and that Bob Cardone, who is present, is the President of the Association. He explained that the litigation mentioned was inherited by his son and son-in-law when they bought the property and that the litigation was started against J. Henley and G. Garlick because of the sale to S. Millington. He stated that the litigation has nothing to do with the lot, he stated that there is a lis pendens on the beach area and Henley had a dock there since 1956 and the Garlick about the same time and the Association now wishes to take those docks away from them and that issue will be resolved by a judge.

W. Pfau asked if the 40 ft. right of way is the only flaw in this application. P. Kenyon stated that her concern is who owns the right of way and stated that if Counsel is comfortable saying that the applicant owns the right of way, she no longer has a concern. Counsel stated that having read the description in the deed of the 40 ft right of way have met some of the qualifications that he has when he renders the opinion that this the description describes fee ownership, but he has not see the Loomis Map and he would certainly like to see that.

W. Pfau asked Counsel if they should proceed based on what he just said. Counsel responded that he ZA doesn't want them to proceed so they shouldn't. W. Pfau stated that none of the members seem to have a problem with the actual subdivision, but they want to know how big the lot is and P. Kenyon is uncomfortable with the application. M. McComb stated that with regard to the question of feasible alternatives to grant a lesser variance if there is a 1. something lot adjacent and they turn the two into three, instead of the one into two, that would make her happier. Counsel stated that this is what he is trying to get the applicant to face up to, is that if they have a larger plan here, that they should come forth and tell the PB of that larger plan. He stated that this Board should not grant them this variance unless there is the least amount necessary, and if they are going to include that lot, that they should tell them. Jim Pepper stated the reason that it came this way, was that one there was some question on Jesse's behalf at the onset, but secondly, assuming this is the one lot, back lot which includes the three individual parcels

plus the right of way, it was relatively simple to use that survey which was already in existence to construct a line across them and divide them equally into two lines. He stated that if they are both one acre or shy of one acre they meet the minimal lot size requirement. He asked if it would make it better if they move they have a lot line adjustment to make each of the lots larger. M. McComb stated that she was concerned that the next thing would be that they would want to subdivide the other parcel. Jim Pepper stated that an easy solution would be to have a deed restriction for no further subdivision. He continued that if they felt it was advantageous for them to add some extra buffer area that it could be done.

Counsel stated that the plan projects a little bit further down the road like when the house is constructed. He stated that as a requirement they will need to be 50 feet back from the right of way. He stated that this is more thought to try and make sure that they have a plan that is going to work, that it is the minimum means necessary to allow the home to exist. Counsel state that if it makes their plan easier to understand than they invite them to do it. M. McComb stated that Jesse brought up that with the two lots together they are very close to having an as right subdivide into three. She continued that they are further away from subdividing either one of them into two. J. Pepper stated that he is aware of all of the problems and has gone through them dozens of times. He stated that the schematic house location shows the clearance distances on all sides of the property from wells and septic. He continued that they have a proposed location of the septic system, they have gone to the trouble of having a survey map drawn and test holes done. He stated that when it comes time for construction they will go back to do further test holes and feels that they will have no issue with the setback.

J. Anthony stated that he was concerned with the scale of the map shows that the setback is actually 25 ft. Jim Pepper stated that it says NTS, not to scale, because the sketch was done after the fact.

Jim Pepper read correspondence from Kathleen and David Sales in opposition to the project.

J. Anthony asked that with regard to the correspondence in the schedule, the jurisdictional determination by the APA, the maps have all dealt with the non-Route 9N part block of parcel that dealt with the three lots in the back. He stated that he doesn't know if they are legally advertised for this discussion. Counsel stated no he wasn't entirely secure about that. Counsel stated that rendering all changes for or against the Park, that with respect to Bolton that Pam has a greater point that he hopes the Board will uphold which is to get more facts, and it can only benefit the whole process. He stated that by tabling the application will allow for more fact finding, enable proper notification to those claiming they did not receive notice and accurate publication of the agenda.

K. Hoopes stated that there are enough questions that have come up and he is very interested in tabling this issue.

W. Pfau asked if anyone else in attendance wanted to speak on this briefly. Bob Cardone, President of the Basin Bay Association, stated that he was not aware of the letter from W. White and that he doesn't have a dog in this fight. He stated he felt that there were people that were concerned and that they should allow for them to come up and voice their concerns and opinions before the Board. He stated that his property will not be affected by this project and that as President has not heard anything that would get him upset. He stated that speaking for the Association that he does not have a problem with what they are trying to do as long as it doesn't affect the Association's right of ways, etc. He stated that the only concern that has been brought up several times is the discrepancy of the lot size and if they can prove it one way or the other, he would be fine with that.

K. Hoopes stated that they are looking at this as an incomplete application. Jim Pepper stated that he has never seen this level of scrutiny over a surveyors map in all of his years attending the ZBA/PB meetings. J. Anthony stated that it also had to do with not being advertised correctly and that anyone claiming to have not received proper notice, if a variance was granted, they could go to a lawyer and get an Article 78 against the Town. J. Pepper stated that he was not aware that it was not advertised correctly. J. Anthony stated that the front parcel was not included in the advertisement. P. Kenyon stated that the front parcel is not part of the proposal. J. Pepper asked if they could evaluate it as it was written. J. Anthony stated that the notice on this could change by adding that other piece of property. M. McComb stated further that if they don't add that other piece of property then she comes up against the requirement that they grant the minimum variance and is there an alternative available to you besides the area variance and yes there is. J. Pepper stated that there is an alternative available, and asked does it make any difference in the total picture. K. Hoopes stated that these two lots are being subdivided for sale. Jesse Pepper stated that no, they wanted them for personal use.

W. Pfau stated that P. Kenyon is uncomfortable with the amount of information she has for this proposal and Counsel has recommended that they table this until she gets the available information and stated that most of the Board feels that way. Jim Pepper stated that he doesn't want to beat the issue, but Counsel just said that according to the Deed that right of way is part of the property. J. Anthony stated that it is even more basic because the project was not even advertised and noticed legally. K. Hoopes stated that the Board is mostly on their side on this, but they just want to fill in some of the holes.

J. Pepper asked the Board to specify exactly what they need so that they can comply for the next meeting. K. Hoopes stated that if they table it, they would just come back next month or in two months, whatever they preferred. J. Pepper asked what they would like to see. W. Pfau stated whatever P. Kenyon thinks would be enough information for this application to proceed. M. McCombs stated that she would like to see them try to examine the alternative of incorporating the third lot to make for two compliant lots. K. Hoopes stated that there is a right of way that runs down the middle and they cannot use that to add to the lots to make compliant lots. M. McComb stated that if it is all one parcel being subdivided that they could end up with an advantageous density construction on this.

RESOLUTION:

Now, upon motion duly made by Kam Hoopes and seconded by Jeff Anthony, it is resolved that the ZBA does hereby table the request pending additional information. **All in favor. Motion Carried.**

- 6) **V07-79 KEATING, JOSEPH.** Represented by Howard Raymond. To alter pre-existing non-conforming single family dwelling, specifically to construct a 14'x 21' porch. Seeks area variance for 1) a deficient front yard setback; 75' is required from the edge of the right-of-way, 57.6' is proposed, and 2) To alter a pre-existing non-conforming structure in accordance with Section 200-57B (1)(b). Section 140.00, Block 1, Lot 38, Zone RL3. Property Location 151 Padanarum Road.

H. Raymond represents Joe Keating, who is a seasonal member of the community. He stated that they want to build a three season porch on the back of his house. He understands that the setback is relative to being grandfathered because the building was built before the setback were in place.

W. Pfau stated that the building is a pre-existing non-conforming building. He stated that the proposed porch is on the back of the house away from the right of way. J. Anthony agreed stating that he looked at the site and it was great. K. Hoopes stated that the only way to meet the setback is to have the three season porch non-contiguous with the house, which would not make sense.

W. Pfau asked if there was anyone in attendance that wished to speak on this matter. P Kenyon stated that there was no County Impact.

RESOLUTION:

The Zoning Board of Appeals received an application from Joseph Keating (V07-79) for an area variance as described above.

And, due to notice of the public hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning 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# 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 the neighborhood character or to nearby properties,
- 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;
- 5) The alleged difficulty is not self-created, since the house was built before the zoning areas were laid out.

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

Now, upon motion duly made by M. McComb and seconded by T. DePace, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

Addendum to Zoning Board agenda December 17, 2007

- 7) **Town Board:** To discuss proposed amendment to be added to Chapter 125-5D Stormwater and Erosion Control, Chapter 150-3C Subdivision of Land and Chapter 200-8C Zoning. Specifically, the amendment is as follows: The general applications of the New York State Uniform Fire Prevention and Building Code and Energy Conservation Construction Code are to be read in conformity with the provisions of this Chapter unless local law, town code or town ordinance in effect specifically authorizes or provides a stricter requirement or specification.

Counsel explained that the TB has this legislation on its agenda and it is under consideration. He stated that it is proposed as an additional level within the definitional sections. He stated that in three locations in their book, that they don't get involved much in stormwater erosion control or subdivision of land, but they do get involved in zoning. He stated that the proposal is to allow for the application of some certainty on interpretations. So right now we do our best to interpret whatever it says in the code by allowing the ZA to take a position, hopefully it is done in plain English, and if it can't be interpreted in plain English than perhaps it can be interpreted by a dictionary that they use by the American Institute of Architects and Code Revision Committees and then he suggested that this legislation would allow the ZBA, and PB to take some leadership from definitions that might be available in the Uniform Fire Prevention, Building Code and Energy Conservation Code. He stated that he does not know what they all are, but if they have a Town Code or Ordinance that makes a specific or stricter requirement, that is what applies in Bolton. He continued that where they have nothing to be guided by,

rather than put all the pressure on the ZA and Town Counsel to come up with their interpretation, followed by the ZBA and PB interpretations, to go to this Uniform Code. He stated that statewide it is uniform and applied in all of the Counties and most of the municipalities that have adopted it in terms of having a building inspector. He used the example of a recent application of a guest house and the including the basement in the calculation of meeting the requirements of a guest house. He stated that the first application that they would use in the Uniform Fire Prevention and Building Code would be to look and see what the code says about that. The code would say that the basement is not a habitable space and therefore should not be counted in the calculation of floor space, this is based on assessor's science (they do not use basements in their assessment) and also based upon the American Institute of Architects.

Counsel stated that he is just trying to get them some uniformity, which will not only work well for him or for Pam, but it works well for the applicants because the applicants come from different backgrounds and they, as well as those who represent them, are using these same codes.

K. Hoopes stated that he like the idea that it made things more uniform, easier to follow and gives them something to fall back on. He asked how this was going to affect their most recent ruling. Counsel stated that their most recent ruling would no longer apply, but stated that this legislature is not for them to adopt, it is if they find this acceptable, to continue to recommend to the TB. He stated that the TB has not enacted it yet and is looking for feedback from both the ZBA and PB.

K. Hoopes stated that in their previous ruling they were supporting Pam's interpretation. Counsel stated that he doesn't know if it will be challenged because the time is almost up on the 30 day statute of limitations. P. Kenyon stated that she believes that the applicant will be coming back to apply for a variance to have two single family dwellings on that parcel.

M. McCombs stated that her reaction to this is that while it is nice to have everything be uniform, there is nothing more local than zoning law and our setbacks, density requirements and the way they are all calculated are a whole, not h-o-l-e, but w-h-o-l-e, and she is not certain if they wind up giving Pam another layer of information to look at for the convenience of people that want to come from elsewhere and not read our laws. K. Hoopes stated that he did feel it was about a hole or lack in their zoning. Counsel reiterated that where local law, Town Code or Town ordinance makes a specific authorization or stricter requirement or specification that prevails. M. McCombs stated that she agreed with the language, but they have also had cases before them where they have used APA's setbacks from wetlands instead of ours.

S. Wilson (PB Member, as public in attendance) asked if it is adopted would it be something they were required to use. Counsel stated that he thought the ZA and the Town Attorney would be required to use it. K. Hoopes stated that it would be used in the absence of something else. M McComb stated that she was concerned that applicants

could come and say that they don't like their interpretation and use this tool to their advantage to overrule them.

Counsel gave another example that the Uniform Fire Prevention Building Code and Energy Conservation Code does not in any way regulate retaining walls and Bolton has a very specific and strict definition of what constitutes a jurisdictional retaining wall. He stated that if we have this in our code, the first thing is that someone could come back and argue that it is not a retaining wall, it is just a seawall, but by looking at the Uniform Fire Prevention Code you would find that you get no help, but in our code, you would find a very specific requirement and they would prevail there and not have to use the Uniform Code. On the other hand, if they cannot find a definition in their local code, they will look in the Uniform Building Code, and if they cannot find it there, then it might not be a zoning issue.

P. Kenyon stated that the NYS Building Code is a huge book and she will be required to interpret it. She stated that the building inspectors have to go to school to interpret their own code and she has no interest in becoming a building inspector or interpreting their code.

M. McComb stated that applicant's can come before the Board for an interpretation if their ordinance appears to have a hole in it.

P. Kenyon stated that she is an actual building inspector, because under the old code she had to take five tests and weeks of training and that it is not as simple as some feel it is.

K. Hoopes stated that his interpretation of what Counsel is presenting is that this is an additional tool that they can use in the lapse of local code or local ordinance.

M. McComb stated that she feels that it is another layer for Pam to have to look at. K. Hoopes stated that it is only another layer when it is necessary for them to look at it. P. Kenyon stated that she agreed with M. McComb that it is another layer, that they have their code and that if they need to make changes to our code, then they should make changes. K. Hoopes stated that this would be used so that they don't have to create code on the spot.

F. McDonald (public in attendance), stated that someone recently said at an open meeting that this ZBA gives out variances like candy, which he disagrees with.

RESOLUTION

Motion by M. McComb to recommend to the TB not to pass this legislation. Seconded by T. DePace. K. Hoopes and J. Anthony opposed. **All others in Favor. Motion Carried.**

Meeting was adjourned at 9:47 PM.
Minutes submitted by K. MacEwan