

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, February 26, 2007
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, Tom McGurl, Jr., Town Counsel Michael Muller, Zoning Administrator Pam Kenyon

Absent: Jeff Anthony and Bill Pfau

Chairman Greg Smith opened the meeting at 6:35 pm by asking for corrections to the January 22, 2007 ZBA minutes.

1. Tom McGurl, Jr. said that beginning on page 3 and throughout the document, “*Jerry Fascubold*” is spelled incorrectly, but he did not know the correct spelling.
2. M. McComb said on page 3, paragraph 5, sentence 4, her point #2 is talking about excavation within the 75-foot setback—her point is that moving it back doesn't help anybody. M. McComb asked if it is a 50-foot setback required, not a 75-foot setback as she had stated and asked that a note be made that the setback is actually 50 feet, not 75 feet as stated. K. Hoopes said that the agenda item description already correctly indicates that a 50-foot setback is required since it is in the RCH5000 zone, so an additional note is not necessary.
3. K. Hoopes said the note on page 6 should read as follows, “*Note: K. Hoopes made the above motion, but there was no second to the motion for approval of the application for Helen Milvany (V06-55).*”
4. K. Hoopes said that in “Other Business”, paragraph 3, the first sentence should read as follows: “*K. Hoopes said there were two issues they made motions on at the workshop, however, they were extracurricular for the ZBA and until they get an appeal they can have a hearing on, he doesn't think the ZBA should make a motion.*”
5. M. McComb said on page 16, paragraph 5, item 2 should read as follows: “*...(2) if the new building is going into a second story, they lose the argument that it is all underground...*”

RESOLUTION

Motion by Kam Hoopes to approve the January 22, 2007 minutes as amended. Seconded by Meredith McComb. **Four in favor. One recused**, Tony DePace, as he was not at that meeting. **Motion carried.**

- 1) **BETHON, THOMAS.** Represented by Atty. Thomas Gabriels. In accordance with Section 200-72, seeks to appeal the Code Enforcement Officer's interpretation of Section

200-56A as it pertains to a certificate of compliance having been issued to alter an existing single-family dwelling on that parcel designated as 171.15-1-83. Zone GB5000. Property Location: 7 Congers Point.

Atty. Thomas Gabriels, representing Thomas Bethon, said that (1) the actual address is 5 Congers Point, not 7 Congers Point as shown in the agenda item description, (2) they are here to get the ZBA's assistance in an ambiguity, (3) they are fully compliant with all the instructions given to him in order to do the work, (4) the applicant got about half way through the project when he was given a stop work order by the Town of Bolton Code Enforcement Officer and (5) they are looking for a determination from the ZBA as to whether or not they are actually in violation of any local zoning rules.

Code Enforcement Officer M. Nittmann said that (1) she and P. Kenyon each gave the ZBA members a packet and (2) the ZBA members need to make a determination if Mr. Bethon is in violation before they can proceed. G. Smith said that each of the three questions should be addressed individually. M. Nittmann said that (1) the first question is that she is asking the ZBA to provide a decision and interpretation as to what the definition of a non-conforming structure is, (2) their definition of a non-conforming structure is a structure which is in existence within a given zoning district of the effective date of this chapter which is not in conformance with the dimensional regulations for that planning district, (3) P. Kenyon's has made a couple of interpretations on her updated staff notes, which are not accurate—she (Nittmann) never considered this structure a pre-existing non-conforming, (4) our zoning came in 1979 and the building permit for this building was not issued until 1980, (5) the second question is for the ZBA to provide a decision and interpretation regarding the appendices attached to the structure—she needs to know if the decks, stairs or anything considered part of the main structure and included on the site plan, (6) the third question is asking the ZBA to provide a decision and interpretation that if any of the structure including all appendices which means decks, stairs, porches, etc. intrude within any setback zone if the entire structure is in violation.

G. Smith said that as far as he is concerned, the applicants got a variance for the decks on the house in 2006, so that takes care of the decks. M. McComb said that (1) past practice has been that a structure that needs a variance is not compliant—it is legal and (2) the most recent example is in B. Pfau's motion on page 11 of last month's (Jan. 2007) minutes says "...2. The benefit could not be achieved by any other means feasible to the applicants besides an area variance, because the existing home is a legal non-conforming building...", (3) this is the same thing—this is a legal non-conforming building—to be compliant means you actually meet the setbacks. If you get a variance it means you got a right to keep what you have, but it is not the same as a compliant building, (4) if you look at the impact of one interpretation versus another, the ZBA has been interpreting it as Counsel says in his notes, that if you need more variances you have a right to come into the ZBA—if you want to do something more than you have done you can come back to the ZBA, (5) if you take it that once you get a variance on a building that ceases to have any part of the considerations for further expansion of it—it is always non-conforming and the applicant can always come in and ask for a variance, but and if the ZBA gets into talking about compliant parts of structures and non-compliant parts of a structure, then she thinks it is going to be impossible to try to keep a handle on things.

K. Hoopes said that (1) P. Kenyon's notes show that she is going by past practices and that this building was approved in 1980 with its various setbacks and (2) she (Kenyon) was reading it as being a compliant building as of then—there was a porch put on after-the-fact. G. Smith said that was after 1979. K. Hoopes said that (1) the PB approved the site plan for the subdivision before the place was built, (2) how he is looking at it is that he agrees with M. McComb in that in moving forward, the 2004 ruling on 200-56B says that they are now from that point forward, going to consider all things non-compliant by the standard as of the ruling of 2004 as having to come to be reviewed by the ZBA for the request for a variance, (3) there is an awful amount of material from P. Kenyon and M. Nittmann—all meaningful and (4) the problem he has with the whole situation is the lack of communication along the way—this should have been able to be resolved a lot more before it came before the ZBA.

M. McComb said that (1) she agrees with P. Kenyon's interpretation of the setbacks and pre-existing setbacks—she trusts her reading on that and her application of how she (Kenyon) feels the code has been reviewed, but this has come up before and been answered before such that in Counsel's notes that say, "...I accept the Code Enforcement Officer's position as reasonable and rational. Frankly, it is an interpretation which I prefer and I would advise, should be Bolton's version, in fact, I thought it was..." and (2) it seems to go against the comprehensive plan. K. Hoopes said that he is uncomfortable having staff notes read into public record.

Counsel said that (1) if the Town of Bolton gets a new code the problem is solved—so there is a relatively creative section of the new code which is not yet law, that fits well, (2) these are rational, reasonable interpretations by both P. Kenyon and M. Nittmann and where there is an ambiguity—and indeed there is—it must be favorably resolved to Bethon, (3) Bethon was properly advised by the Zoning Administrator—it was based upon ration and reason and it is a course that Bolton must follow with respect to Bethon, (4) one would hope that these folks owe and make a decision in a quasi-initial setting here as ZBA members, one would hope that is the vote with respect to that policy because that is the right vote—that is the vote that shows that Bolton has done the right thing with this applicant, (5) he hopes the ZBA will then look at that section and give an interpretation of the rule as to what the Zoning Administrator, the Code Enforcement Officer and Counsel have to go by as of tomorrow morning, and whatever that interpretation is all parties will abide by it—that also protects Bolton in the sense that the ZBA has made the interpretation, (6) there will be people who may be adjacent to the Bethon project and who will not be as pleased when they see what is presently permitted or done and they may wish to take issue and challenge what the Town of Bolton has done—he would like to see Bolton's version of what was done interpreted, (8) he did ask P. Kenyon to notify as many people as possible of this issue so the audience position could be heard on the matter and (9) ultimately when the ZBA comes out of this thing, he thinks it is a decision, one which does do justice to Bethon and answers the question for Bolton from this point forward what that section means and how it applies.

M. McComb said that there is also an issue of once you have a variance if it factors into further determinations about use of that parcel and Counsel said of course it does—they are all cumulative. M. McComb said that she doesn't think that has been the interpretation consistently and Counsel said that (1) the Zoning Administrator draws from the language

available to her and (2) he believes that the oversimplified exception is that if you put an addition on the side of a building that is in the wrong place that doesn't meet say shoreline setbacks but you are on the backside of the building and you are not imposing further on the shoreline setback it is a freebee, it comes as a matter of right to add on to that building, because you don't need a variance to add onto the opposite side of the building. M McComb said that isn't how it has been. P. Kenyon said it has been that way. Counsel said that (1) he believes that Zoning Administrator is here to speak on it and (2) if she (Kenyon) says it has been enforced, the ZBA wouldn't see it because the ZBA is not asked to review those if the Zoning Administrator says they are good.

M. McComb said that if the ZBA is going to make a determination in this area it seems that a variance should not stop the building from being considered non-compliant and that further changes to it require review of the ZBA. K. Hoopes said that is not what the ZBA is saying here—the ZBA is not saying that just because you get a variance to put a porch on you can also put a garage on too. M. McComb said that she believes the way P. Kenyon came to this determination was the lakeside had been varianced and this addition was over the compliant part of the building. K. Hoopes said that (1) he would like to hear directly from P. Kenyon on this matter and (2) the ZBA is short two members tonight, so while he feels the Bethon matter should be addressed, he feels the ZBA may want to table the three questions M. Nittmann has until more ZBA members are present to discuss and vote on that matter.

Zoning Administrator P. Kenyon said that (1) she is only here to make observations, (2) she read through M. Nittmann's correspondence to the ZBA and to her it was like she (Nittmann) was asking for an interpretation which to her (Kenyon) when you ask for an interpretation, you don't quite know how to interpret the code, (3) when she comes to the ZBA when somebody has appealed her (Kenyon's) decision she knows exactly what she is saying to everyone of the ZBA members—she doesn't ask for interpretations at that point—she states her position and her reasoning behind it, (4) right now nobody has appealed her (Kenyon's) decision in granting the certificate of compliance, (4) she has an issue as to when M. McComb was in her office on Friday and they were talking about this item and another item on this evening's agenda, and M. McComb said something to the effect that P. Kenyon shouldn't be the Zoning Administrator, so she (Kenyon) questions how M. McComb can even sit on the ZBA and answer the questions being asked of her (McComb), (5) regarding the Alkin item M. McComb referenced, P. Kenyon said that building was originally constructed in 1915 and to her that was a case of a pre-existing non-conforming structure, which in the definition of the Bolton code it tells you what a non-conforming structure is and (6) in going through M. Nittmann's notes, what concerns her the most is that it says M. Nittmann is saying that Counsel is telling her (Nittmann) to not discuss any of this with her (Kenyon). M. Nittmann said that P. Kenyon's last comment is not true. P. Kenyon said that M. Nittmann's notes state "...in regards to me challenging the interpretation, the advice given by Mike Muller is an after-the-fact as the violation letter went out two weeks ago prior to the e-mail and I believe he is trying to tell me that it should not be discussed between the ZA and myself in the office..." M. Nittmann responded by saying that (1) that was a copy of an e-mail to Rob MacEwan who asked how things were going and on how that notice of violation went out, (2) Counsel did say that he didn't think she (Nittmann) should challenge P. Kenyon's position or interpretation and (3) she felt that she had already challenged P. Kenyon's interpretation by sending the notice of

violation out and when she asked and Counsel about that, he thought that it should come before the ZBA and that they weren't going to get any further in the office and that is why she (Nittmann) wrote that he felt she (Nittmann) shouldn't discuss it anymore in the office, because they were going to leave it to the ZBA to make the determination. P. Kenyon asked if M. Nittmann thinks she should have discussed it with the Zoning Administrator before sending out a notice of violation and M. Nittmann said that she believes at this point she and P. Kenyon both have equal powers. G. Smith said that (1) he has heard enough of this nonsense and (2) he wants the conversation to pertain to exactly what Bethon's application is. P. Kenyon said that (1) M. Nittmann just said that she should not challenge the Zoning Administrator's interpretation and (2) Counsel is noted as saying that Lisa Nagles did create a rule to do away with the ambiguity. Counsel said the last statement is true—Lisa Nagles has a proposed section. P. Kenyon said that (1) unfortunately this is ambiguous and they have to side with the applicant, (2) the applicant had to stop working—his contractors had to stop working—all because of something the Code Enforcement Officer did, (3) originally M. Nittmann sited the applicant for a violation on a non-conforming structure and (3) asked if it is true that tonight she is hearing that M. Nittmann doesn't feel that is the case any longer. M. Nittmann said no, that is not what P. Kenyon heard.

G. Smith said that (1) he thinks the ZBA should allow Mr. Bethon to continue with construction as the Town of Bolton granted him a certificate of compliance to do so—it would not be fair of the Town of Bolton to put a stop to this, (2) this nonsense that is going on in the Planning Office is getting so embarrassing, not only to the Town of Bolton and the contractors, but to this board (ZBA)—he is sick and tired of it—this board (ZBA) as far as he is concerned, is not making any ruling on this tonight—what is going to go on from tomorrow and beyond is going to go on as it has been going on, (3) the Town Board supposedly has come up with something from Lisa Nagles that is supposed to come out soon and they will start doing it then and (4) he is not going to go back and forth all night long with this nonsense and get nowhere, because it will be an argument that will go on for two hours more tonight and he is sick and tired of the whole nonsense—if the Town Board doesn't like it then he will excuse himself from the ZBA. M. McComb said that she feels the only other alternative is for the Town of Bolton to pay to put it back to how it was, which she doubts anyone would be happy with either, (2) this is a big deal and this is not a property that came in for the first time—it was sent back in 2006, (3) what she was referring to in the minutes was not an attack on some ruling of P. Kenyon's, but she was just pointing out that it has been a practice of the ZBA to consider things one way—this is not information, (4) she is curious why this ambiguity of the impact of a variance on a structure comes up—it is possible that P. Kenyon has been interpreting it this way all along and nothing has ever come before the ZBA and (5) she is in agreement with G. Smith and K. Hoopes that if you have a lot and you build something on it that is not compliant with the setbacks, if you get a variance for that, the question then becomes whether it then does or does not mean that the entire building envelope is also available to you. G. Smith said this house was compliant when it was built and M. Nittmann said that isn't correct. M. McComb said that the ZBA gave the applicants three variances for shoreline setbacks in 2006. T. DePace said that doesn't matter—these applicants shouldn't be involved in this. M. McComb agreed.

Counsel said that (1) what the Zoning Administrator had determined for Bethon stands—that is in the nature that there cannot be any further code enforcement with respect to ascertaining violations, because, P. Kenyon's version is correct—the ZBA abides by that, (2) he wants to urge the ZBA to know that it is a reoccurring question that comes up, so his reaction to that in the aftermath would be that he would say to P. Kenyon and M. Nittmann that they need to follow the rule of Bethon and that is that will be the rule until the Town Board comes up with something. G. Smith said that is exactly what should be done until the Town Board comes up with their new ruling that is right around the corner.

K. Hoopes said that (1) he is guessing that this is M. Nittmann's appeal, and he would like to ask M. Nittmann to table her part of this issue on these three questions until the ZBA has a full board and (2) regarding Bethon, he agrees that under these circumstances, the ZBA has to find in favor of the Zoning Administrator's original interpretation. Counsel said that P. Kenyon's interpretation is rational and reasonable as is M. Nittmann's, but when you have two of those, it must be favorably interpreted for this particular project.

M. McComb asked if there is any point of looking at whether this is a new interpretation contrary to past practice and not relevant to Bethon. Counsel said that (1) that may be a valuable endeavor, (2) he inquired and was able to ascertain and he believes P. Kenyon that this has been her application and her understanding for as long as she has been Zoning Administrator—they had that discussion, so that would be a consistent history and (3) M. McComb as ZBA members and Counsel are unlikely to see that, because when an applicant comes in and says they want to put a porch on the backside of the house and it won't even be near the lake, the Zoning Administrator says "yes"—it is not a ZBA issue. P. Kenyon said that (1) her staff notes in December 2006 minutes shows this is how she has always interpreted this, which is the same interpretation she has always made. M. McComb asked if P. Kenyon would enforce the decision if the ZBA makes the determination that if you are not compliant you need to have a variance for any alteration. P. Kenyon replied by giving the example of a compliant structure built in 1902, they want to put a little front porch addition on that needs a side yard setback so they come to the ZBA and the ZBA grants the variance for a side yard setback on a totally compliant structure, then they come to her and want to get another building permit to add onto the compliant part of the structure, then yes, she would give them the certificate of compliance—that is how she would interpret it until the ZBA makes the ruling or the code is changed for her not to interpret that way. G. Smith said that is how P. Kenyon has been interpreting it for the last umpteen years and Counsel agreed.

M. Nittmann said that (1) in the Alkin case, that structure was built in 1955 and does not meet shoreline setback—his new addition is totally compliant in the back and meets the shoreline setback, meets the sideline setback, but he had to come to the ZBA for a variance because his house was built in 1955 making it a pre-existing non-conforming structure, (2) Mr. Bethon's structure, built after the inception of the code still does not meet the shoreline setbacks in at least three places, yet he is allowed to build on his conforming part because his house was built in 1980—she doesn't feel that is fair to the residents of the Town of Bolton, that one man cannot build on his house without a variance because his house was built pre-code and another man can. G. Smith said that is another loophole found in the code recently that can possibly be looked at.

K. Hoopes said that it is apples and oranges—(1) P. Kenyon is saying you start with the theory of a building that is compliant and once there is an addition to it that would put it out of compliance and (2) M. Nittmann is starting the Alkin situation with a building that is non-compliant and then she is adding on something that is compliant. M. Nittmann said that both of the structures are non-conforming—they were just build at two different times. K. Hoopes asked what part of the Bethon's is non-conforming and M. Nittmann replied by saying that he has three places on the decks—the deck that goes over the septic over the through line and on the side by the boathouse, half of that stone deck is in the shoreline setback. K. Hoopes asked if it is correct that those were built after and M. Nittmann said no, the front deck was actually at the same time the house was built. K. Hoopes said that (1) they are approaching the subject from two different directions—P. Kenyon and M. Nittmann are butting heads on this and (2) he again asks if M. Nittmann would like to table the three items she wants a determination on, because they are short members tonight—also, they haven't come to a decision on threshold yet, so making a decision on M. Nittmann's #2 item with that hanging in the air.

Jim Miller said that (1) in their case the area they are constructing on is in conformance and the area outside of that is what is non-conforming and (2) it is a matter of sequence—when an applicant comes before any town you go through a series of events to get to your final building permit and you construct your project—to do that in a fragmented way and to go through the course the town dictates, then to have it go back to Point A that they addressed many months before is an odd way of doing this. G. Smith said that he is well aware that the applicant did go through the right stages. G. Smith said that the ZBA apologizes for what the applicant has gone through, but if the applicant had come in for a variance, he doesn't think the applicant would have gotten what they built, because the neighbors hadn't been notified in how high the applicant was going, the stone walls, etc. Thomas Bethon said that before he even went to an architect, he went to each of his neighbors and every one of them had no problem with what they are doing because everything they that they built is right in the code. G. Smith said that Mr. Bethon told him he had gone over everything with his neighbors. Thomas Bethon said he sat down and talked with his neighbors in the beginning of the summer. T. DePace said that he was referring to the variances for the stone walls. Thomas Bethon said that the other floor variances were something he got stuck with—he bought the house and got fined for something he didn't even do. M. McComb said the applicant also built non-compliant patios and G. Smith said they are not getting into that now. M. Nittmann said that Hugh Wilson lives next door and came in asking why that building didn't get a variance for the addition going on right now.

From the public, Mary Dreyer said that (1) she was noticed for this hearing, (2) she was never spoken to about any of the height differences—all of the sudden the building looked tremendously different and blocks a lot of their view, (3) they look right over Congers Point and (4) none of this was discussed with them—she was very curious with the tremendous difference coming on with the new construction. G. Smith said that Thomas Bethon spoke with all of the association neighbors, not people outside the association. Thomas Bethon said neighbors within 500 feet. Mary Dreyer said even so, the project does impact her property. M. McComb asked if the ZBA has anything in writing about the neighbors' approval and G. Smith said yes, but it doesn't matter.

From the public, Barbara Drake, neighboring property owner, said that (1) Mr. Bethon has done a wonderful job, (2) she thinks all of the neighbors have approved a number of things, but she disagrees with the fact that he brought up any height requirements or height sizes with anyone else in the neighborhood—they were not advised of it and no one knew anything about and were surprised regarding the height of the building and the additional size of the building and (3) the Bethons are wonderful neighbors, but she does not believe it was at all what the neighbors thought it would be. M. McComb asked if the association has any regulations and Barbara Drake said (1) yes, that the plans have to be presented and she doesn't know if that was the case and (2) it does say in the by-laws of the association that all plans do have to be brought before the association for approval before they can be issued—sometimes she knows that hasn't always been the case, but it is definitely written in the by-laws.

Thomas Bethon said that (1) he spoke with his adjacent neighbor who got plans and (2) the only change was the raising the roof an additional six feet and the roof went from a flat roof to what is shown on the map. K. Hoopes asked if Thomas Bethon already had a second floor there and Thomas Bethon said yes. Jim Miller said that he wanted to make the point that the height is within the code. G. Smith agreed and said that he is well aware that it is all within the footprint of the original house.

RESOLUTION

Now, upon motion duly made by Kam Hoopes to determine that the zoning administrator was within her rights to issue a certificate of compliance, no violation exists, no variance is required and the applicant can proceed. Seconded by Tony DePace. **All in favor. Motion carried.**

K. Hoopes asked if M. Nittmann would be willing to have her item tabled. G. Smith said that the Town Board supposedly has a cure for all of this that is coming out anytime now, so until that time, he wants to go with what they have been going with then go on from there. M. McComb said that her point in pressing this is that it says in Counsel's staff notes, he has advised P. Kenyon to hold up on granting approval to a similar project. Counsel said (1) that is correct, (2) this ruling of what was applied Bethon equally will apply and he will follow it until it is amended and (3) he knows of two other cases in terms of going higher and deeper and those answers would be consistent with the rule of Bethon as a matter of right. M. McComb said that (1) it comes up a lot with waterfront parcels that building higher and deeper on the same footprint is an expansion of non-conformity, (2) she voted favorably of Mr. Bethon's continuing because of this specific situation and (3) if Counsel is now saying that this is the way it will be done here on out until there is an interpretation from the ZBA then she'd like that on the record. Counsel said that (1) he is not saying that—he is saying that it is not a choice on his or the ZA's or the COE's part—they must follow the rule of Bethon, (2) an example of a case that was already before the ZBA was an applicant who has a large house close to the lake who wished to make the house larger and the ZBA's answer to the variance was no, so the applicant's alternate plan that has come back to the discussion stage is that he will duplicate the size of the house but he plans to go deep to make an extra floor where there is no floor now—Counsel's position on this case was that deeper is bigger and considered an expansion, so that applicant had to come to the ZBA for a variance and (3) the version applied

to Bethon would allow, he believes, relief, if the footprint stays the same. G. Smith said that (1) he agrees—if the footprint stays the same and (2) P. Kenyon said that has always been her interpretation. M. McComb said that deeper is in the same footprint and higher is in the same footprint—that has been considered an increase in non-compliance. K. Hoopes said that they are not setting a precedent here and M. McComb said that Counsel said they are setting a precedent. G. Smith said that (1) things should be left the way they are, because they will be changed soon anyway with Lisa Nagles' rule on the matter, (2) he is sick of this nonsense of the ZBA having to be between this person and that person, (3) the Town Board is not taking a stance and not making up their minds as to what should be what and who should be running what, (4) he is sick and tired of it—he is not going any further with this tonight—that is it—they are going onto the next applicant—it is not fair to people sitting out here—they will be here all night long listening to this nonsense, because the Town Board won't take a stance and make up their mind as to what needs to be done and (5) M. Nittmann's application is tabled.

2) VO7-02 PASSARETTI, DONNA. To alter existing u-shaped dock/boathouse, specifically to extend the dock portion only 10 ft. Seeks area variance for a deficient side yard setback. 20 ft. is required, approximately 2 ft. is proposed. Section 200.18, Block 1, Lot 45, Zone RM1.3. Property Location: 47 Hemlock Pt. Rd. Subject to WCPB & APA Review.

Donna Passaretti gave an overview and said that (1) the sand keeps coming into her dock, (2) she got a permit from the LGPC in November 2006, (3) her dock isn't really usable as it currently exists, (4) to move the dock, it would cost \$37,600 which would be exorbitant and (5) she is asking for the 10 foot extension.

K. Hoopes said that (1) the 10 feet the applicant is asking for is just about the exact amount where her lawn chairs are in the boathouse now, (2) he doesn't think the applicant is going to stop the sand and he also doesn't think it is increasing, and (3) he thinks the 10 foot extension request is acceptable as long as it is acceptable to the immediate neighbor. Donna Passaretti said that she has a letter dated October 24, 2005 from her neighbor Mr. Bailey saying that he doesn't object to this. K. Hoopes said that (1) it looks like a reasonable solution especially considering the nature of the sand there and (2) the applicant should feel free to look into some dredging there which may help the situation.

G. Smith asked how close the nearest brook is to the dock and Donna Passaretti said that there is no brook. M. McComb said that (1) she agrees that very few people have cribs built on a beach as this property does now, (2) the ZBA had another case of a dock that was too close to the line and the ZBA approved the dock and denied use of the north side, (3) because it is the neighbor to the north and their house is oriented looking that way, while this applicant may not have plans to rent out the right of that dock space, but another owner might subsequently and that would protect this neighbor's property rights without unduly diminishing the applicant's and (4) she personally has this situation where she lives and she doesn't use the north side of the dock and the next neighbor to the south doesn't use the north side of his and it works out just fine.

K. Hoopes said that he is uncomfortable asking for conditions on something without somebody requesting besides ZBA members trying to project. M. McComb said that thinking of neighbors and the fact that these two are getting along, but it is a taking of the property rights to the north to an extent and they still have an expansion of three sides. K. Hoopes said that if the neighbor had a dock there that this was going to interfere with then the ZBA might see fit to project. M. McComb said that (1) it is not the neighbor's docks she is concerned with, but the neighbor's house because it is their view out there and (2) if some subsequent neighbor decides they want to tether a cabin cruiser right in front of the neighbor's house, that doesn't seem like it is a good idea.

Donna Passaretti said that her neighbor to the north has signed a letter stating he doesn't have any objections to this proposal. M. McComb said that (1) her point is that with the property she is looking at the case of whether or not it is reasonable for them to use that and (2) she has no objection whatsoever with the extension. G. Smith said that he doesn't where the ZBA can tell the applicant that she can't dock a boat on the north side of the dock.

No correspondence.

No public in attendance.

The WCPB determined there was no county impact by default approval, as there was no quorum.

M. McComb said that it is just a matter of being equitable to the neighbors and K. Hoopes said that it is not being equitable because the neighbors aren't asking for it. M. McComb said that the current northern neighbor may not live there forever and it does encumber the neighbor's property. G. Smith said that it is not that close. T. DePace said that he has seen where there has been a problem like that where the property owner has gone to the LGPC and the LGPC would make a ruling on that if it is necessary.

RESOLUTION

The Zoning Board of Appeals received an application from Donna Passaretti (V07-02) 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 by default approval, as there was no quorum;

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) 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, as it has been presented to the ZBA—these houses are all very similar and have very similar situations with the docks;
- 3) The request is not substantial, as it is only a request for a 10-foot extension to the dock;
- 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 the health, safety and welfare of the community.

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

- 3) V07-03 LOPICCOLO, PETER.** Represented by Edward Breen. To alter pre-existing non-conforming structure, specifically to convert a screened porch to a kitchen/dining area. Seeks area variance for 1) a deficient front yard setback, 75 ft. is required, 55 ft. is proposed. 2) To alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 213.17, Block 1, Lot 3, Zone RCM1.3. Property Location: 4 Canoe Lane. Subject to WCPB Review. *Note: After the Fact.*

Peter Lopiccolo said that (1) he had a screened-in porch that was rotting, (2) over the last 9 years he has done a tremendous amount of work to improve the house, (3) he fell through the rotting floor in the fall, opened it up and reframed the floor and repaired it, (4) they have a very small kitchen in the house, so he decided to make half of the porch into an addition with an additional seating area to the kitchen, and (5) he wanted to enclose it, so he came to the Zoning Office and was told to apply for a variance.

G. Smith asked how much of this is done and Peter Lopiccolo said 99%. T. McGurl asked if it has grown in size and Peter Lopiccolo said no, it is the actual exact duplicate footprint of what existed. G. Smith said that it looks good—it is squared-off completely and nothing is sticking out. K. Hoopes said that (1) another thing to point out is that the request for the variance is for deficient front-yard setback, (2) since the applicant is in the scenic corridor he has a 75-foot setback from the main road and (3) the applicant is already 55 feet back from there and it is

flush to the house. G. Smith said that nothing looks any different than it did before. M. McComb said that also, unlike some applications, this applicant is enclosing one porch, but he still has a porch. Peter Lopiccolo said that aesthetically he has tried to improve the property over the last 9 years.

No correspondence.

No public in attendance.

The WCPB determined there was no county impact by default approval, as there was no quorum.

G. Smith said that (1) he knows after-the-facts can be sticky at times, but he doesn't see where this is really something where the applicant was trying to pull wool over the ZBA members' or the Town's eyes. M. McComb said that she doesn't see the need to refer this to the Town Board and G. Smith agreed. M. McComb said that she doesn't think there is any question that if the applicant did come in for a variance that he would have gotten one. G. Smith said that the applicant would need to make sure he comes in before doing anything in the future as to not have an after-the-fact situation and Peter Lopiccolo agreed.

RESOLUTION

The Zoning Board of Appeals received an application from Peter Lopiccolo (V07-03) 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 by default approval, as there was no quorum;

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 applicant is in a scenic corridor that wasn't there when the house was built;

- 2) There will be no undesirable change in neighborhood character or to nearby properties, it is a minor area and repair is also part of the project of the deteriorating structure;
- 3) The request is not substantial, it is a small low kitchen;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it will probably make the property more safe;
- 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 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) **V07-04 SMITH, CANDIDA & REBECCA.** Represented by Fred Brown. To alter pre-existing non-conforming structure, specifically to place solar panels on the roof, raising it approximately 6 inches. Seek area variance for 1) a deficient front yard setback, 75 ft. is required, 9 ft. is proposed. 2) To alter pre-existing non-conforming structure in accordance with Section 200-56A. Section 155.00, Block 1, Lot 43, Zones RM1.3, LC25 & RR5. Property Location: 606 Edgecomb Pond Rd. Subject to WCPB Review.

Fred Brown, representing Candida and Rebecca Smith, said that they are proposing to put 32 solar panels on the roof of this building.

G. Smith said that there was some confusion as to whether this would need a variance or not, but the applicant is in the right place. Fred Brown said that (1) his main problem with this is that he came to the Town of Bolton in November 2006 and in that period from November to when the work was going to start three weeks ago, he had been into the office at least four times making sure he had everything he needed—right down to getting the permit a week before the work was supposed to start—now it is delayed and he has to go through this and (2) he does not have a problem with getting a variance—it is the process he went through and (3) he can see why people do things in this town without permits. K. Hoopes said the ZBA apologizes for the applicant's delay. G. Smith said that (1) the ZBA does apologize for the delay, (2) he is not 100% sure on what exactly happened, but when it comes to solar panels, he believes what it came down to is the type the applicant wants on top of these buildings is going to be level with the height of the building as it is, so he doesn't see a problem with it and (3) apparently there are solar panels that stand up 8-10 feet tall which are going to look different and it wouldn't just blend in like these ones, which would be totally unnoticeable to people.

Fred Brown said that (1) the building near the road, 100% of the power is going to be generated by these panels for this building and the power that they do not use will be sold back to the grid which will supply the people of Bolton Landing, (2) the panels going on the upper two buildings, which he doesn't need a variance for, are going to supply half the power for

those two buildings and one of them is a large storage facility which uses a tremendous amount of power and that power can also be sold back to the Town grid, (3) the state of New York is also paying for half of this project and (4) anybody in the State of New York can apply for the same process they went through—you put solar panels on your house and the system is \$100,000 the state will pick up half of it, providing you fall into the state's category based on the state's inspection.

M. McComb said that (1) she is sorry that the applicant didn't get told to ask for a variance in November, (2) in December, Zoning Administrator P. Kenyon brought the matter to the ZBA and she (McComb) thinks the understanding was that the ZBA just as soon keep a hold of review—she thought the ZBA did have review of all such things and (3) the location on Edgecomb Pond Road makes this project a good idea, but she doesn't know that she would like to give a blanket okay to solar panels, because she thinks it is going to be real visible. Fred Brown said that (1) it is going to be visible, but the Governor of the State of New York wants people to have alternative power sources, (2) the checks were already cut for this project for \$83,000 that the state has given them for this project and now it is being held up and (3) if this was going to be held up again tonight, he would go back to the state. G. Smith said that what the applicant is saying is that he has been given a deadline by the state of New York and if the applicant isn't given the okay to do this then the state will take back the money and the applicant will have to start all over. Fred Brown agreed and said that the state is behind putting solar panels on the roof—they want you to do this. G. Smith said that (1) those are a few of the reasons the applicant is here and (2) the ZBA apologizes for the problems the applicant had in getting in front of the ZBA so late.

The WCPB determined there was no county impact by default approval, as there was no quorum.

No public in attendance.

No correspondence.

G. Smith said that he sees no problem with this project—it is going to be an asset. T. McGurl said that he doesn't see as that the solar panels are going to show up anymore than a metal roof.

RESOLUTION

The Zoning Board of Appeals received an application from Candida and Rebecca Smith (V07-04) 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 by default approval, as there was no quorum;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, they are only nine feet away from the right-of-way;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, except surplus of electric power that could serve the town;
- 3) The request is not substantial, it is a 6-inch increase to the roof for the height of that building is certainly not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it will be a positive thing;
- 5) The alleged difficulty is not self-created, in as far as they believe in alternate power.

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 Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion Carried.**

5) V07-05 LAVOY, GARY & ANNEGRET. Represented by Kyle LaVoy. For a proposed lot line adjustment between those parcels designated as 186.06-1-2 & 1.2, seek area variance for deficient density. 2.6 acres required (2 residences exist), 1.35 acres exist, 1.22 acres proposed. Section 186.06, Block 1, Lot 2, Zone RM1.3. Property Location: 4767 Lakeshore Drive. Subject to WCPB Review. *Note: This application is in conjunction with SD07-01.*

Kyle LaVoy, representing Gary and Annegret LaVoy, gave an overview and said (1) Gary and Annegret LaVoy own both properties and (2) the driveway to the south property currently crosses the property line of the north property and (3) they would like to move the property line 12 feet, so the southern property sustains its own driveway.

M. McComb asked if the deficient density is that they don't have 1.3 acres for each lot and P. Kenyon said that (1) they are in the RM1.3 zone requiring 1.3 acres for per dwelling and (2) they are proposing 1.22 acres. K. Hoopes said that (1) as it stands now, one of the lots is

presently compliant and the other is deficient—what they are proposing is to reverse the order and (2) these are pre-existing lots—all they want to do is shift it 13 feet to include the right-of-way that is in place or remove the necessity for the right-of-way. G. Smith said that it would not require a right-of-way. M. McComb said that (1) presumably this allows the applicant to sell the other parcel and (2) the right-of-way stays with the larger compliant parcel. Kyle LaVoy agreed with K. Hoopes in that it would negate the need for the right-of-way.

K. Hoopes said that (1) there is currently a driveway going up to the new house on high ground and (2) the shift in the lot line 13 feet would pretty much take the whole driveway and keep it on the one lot. G. Smith said that the whole purpose is to keep the driveway on one lot instead of having to go over the other piece of property. M. McComb asked if the variance is from 1.2 acres to 1.3 acres and G. Smith said the lot sizes will be opposite of what they are now—they are already two separate parcels.

Correspondence: Read into the record in its entirety by Counsel.

- Letter dated 02/23/07 from Scott Langdon, General Partner of DAL Associates, Inc., - requesting item be tabled to next month pending further investigation.
- E-mail dated 02/24/07 from Katherine L. Jones, General Partner of DAL Associates, Inc., - opposed.

The WCPB determined there was no county impact by default approval, as there was no quorum.

No public in attendance.

G. Smith said that he doesn't see where holding this up for 30 days is going to make a bit difference regarding DAL Associates. M. McComb (1) said that she thinks that if DAL Associates finds out this is a shift of a little over a tenth of an acre it wouldn't be a problem and (2) asked if the north lot has been using the common driveway. Kyle LaVoy said that the north lot has a right-of-way that will be carried over if the lot line adjustment is approved. M. McComb said that there is nothing controversial with this request. G. Smith agreed and said that it is simple—there is nothing to hold the applicant up.

RESOLUTION

The Zoning Board of Appeals received an application from Gary and Annegret LaVoy (V07-05) 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 by default approval, as there was no quorum;

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item #5 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, they are just trying to make these properties work better for both of them;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, there was a slightly deficient lot and a compliant lot before and that will remain the case with the lots reversed;
- 3) The request is not substantial, it involves a little over a tenth of an acre lot line adjustment;
- 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, as it is pre-existing.

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) **V07-06 CHEYENNE HOLDING CORPORATION, CARL CROZZOLI.** Represented by Frank Jelley. For the construction of a proposed retaining wall/stairs. Seek area variance for a deficient front yard setback. 75 ft. is required, 0 ft. is proposed. Section 199.11, Block 1, Lot 6, Zone RL3. Property Location: 956 Wall Street. *Note: This retaining wall replaces a wall previously removed.*

Carl Crozzoli said that he is representing Cheyenne Holding Corporation.

G. Smith asked how long ago the pre-existing retaining wall was taken down and Carl Crozzoli said that it was taken down a couple of months ago. G. Smith asked if it was the same size as what they propose to be rebuild and Carl Crozzoli said yes. P. Kenyon said that her understanding was that it was going to be larger than what was taken down and Carl Crozzoli replied by saying that it is following the same pattern and pointed out the location on the map. M. McComb asked if there were steps and Carl Crozzoli said no. M. McComb said that means

it has changed. G. Smith said he is not sure if putting steps in it would be making a big change to it if it is in the same footprint and is the same height. Carl Crozzoli said the reason for the steps is so people, like the fuel deliverer, can get to the front of the house.

K. Hoopes asked what the original wall was made out of and Carl Crozzoli said stone. K. Hoopes asked why it was removed and Carl Crozzoli said that it was deteriorating and falling down. K. Hoopes asked where the applicant put the stone that was removed and Carl Crozzoli said it is stored in the back of the property. P. Kenyon said that she was under the impression that the applicant was going to be extending the retaining wall and asked if the applicant is now saying it will be replaced exactly as it was before, just made of different material. Carl Crozzoli said yes and no—it is being built on the exact footprint that exists now, but they are asking for an extension on the other side of the drainage and he then went to the map to clarify. T. McGurl asked if the side towards Chapmans on the other side of the run-off is where the applicant wants to add to and Carl Crozzoli said yes. T. McGurl asked what it would be made out of and Carl Crozzoli said cultured stone, which is stone made of concrete—stones stacked on one another.

M. McComb said that (1) she thinks it would be good to get the retaining wall back there—she thinks there has been Highway Dept. swales and work done along that road and (2) it would be better to get the whole wall for stabilizing the bank. G. Smith agreed.

No correspondence.

P. Kenyon said that (1) she spoke with Highway Superintendent Tim Coon who said that he wants to make sure that ditch goes back to exactly as it was last year. G. Smith said that he believes it will because it will be in accordance with what is pre-existing there in the same exact spot, because the ditch has to continue along the front. Carl Crozzoli agreed. M. McComb asked if the applicant will make sure the drainage ditch is reestablished when the wall goes back in and Carl Crozzoli said yes, he is going to go a step further and put a 12-inch pipe underneath. G. Smith said that the applicant should check with the Highway Superintendent regarding pipe size and Carl Crozzoli said that he would.

No public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Cheyenne Holding Corporation, Carl Crozzoli (V07-06) 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 #6 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, a retaining wall runs along the road—you can't move it;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, a drainage ditch that had been there prior to this project being started will be restored in connection with the applicant checking with the Highway Department;
- 3) The request is substantial relative to the code, but it is for an edge of property retaining wall, which accounts for how substantial it is;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it will improve the physical and environmental effects;
- 5) The alleged difficulty is self-created, it was taken down and the applicant wants to replace and extend it.

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 to approve with the following condition: The drainage ditch located within the Town right-of-way is to be restored to its original configuration unless approvals are granted by Highway Superintendent, Tim Coon to make changes. Seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion carried.**

- 7) **V07-07 THE GROVE ON LAKE GEORGE, LLC.** Represented by James Zelewski. To Demolish and rebuild pre-existing non-conforming single-family dwelling. Seeks area variance for 1) deficient front yard setback, 75 ft. is required from Cotton Point Road, 21 ft. is proposed. 2) In accordance with Section 200-19 distance between structures; a) 27.6 ft. is required between the proposed structure and units 18 & 17 to the north, approximately 15 ft. is proposed. b) Distance to access structure right-of-way 20 ft. is required, 7 ft. is proposed. Section 200.14, Block 1, Lot 2, Zone RM1.3. Property Location: 89 Cotton Point Road, Cabin # 19 of the Grove (Doulides). Subject to WCPB Review.

James Zelewski, representing The Grove on Lake George, LLC owner Craig Rivers and property lessee Chris Doulides, gave an overview and said that (1) they have a very unique zoning situation with this property, (2) Mr. Doulides wanted to make some improvements, but the camp can't be jacked-up—it is rotting out and (3) Mr. Doulides came to him to draw up a plan to do repair on the property and he in turn came to the Zoning Office seeking guidance on what was needed, hence the reason they are present tonight.

G. Smith asked if they are proposing to make it 30 inches longer and James Zelewski said yes. M. McComb asked if that includes the decks and James Zelewski said yes. G. Smith asked if association approval is needed and James Zelewski said that it is privately owned—Mr. Rivers gave Mr. Doulides permission.

M. McComb asked for clarification on the roadway labeled “The Grove” and James Zelewski said that it is the horseshoe shaped gravel drive that goes through. M. McComb asked how far the right-of-way is from the road. K. Hoopes said that one owner privately owns the cabins, so there is no right-of-way shared by the cabin lessees.

Chris Doulides, Grove hut owner, said that (1) the property is owned by Craig Rivers and it has been in the Rivers family for umpteen years, (2) basically it is like a trailer park, but they are not trailers—they are seasonal cabins, (3) they own the structure and Craig Rivers owns the property and leases the space under their cabins to them and (4) it is a very unique situation. K. Hoopes said that he recalls it started out as 10 platforms and things have progressed.

M. McComb said that it is so incredibly densely built down there. James Zelewski said that Mr. Doulides probably has the most room of all the people down there. M. McComb (1) asked if there are any implications of the wetlands across the road as there is no setback from wetlands and no stormwater required and (2) said that the second-story turns into living space. James Zelewski said that it is not high enough for living space—it is just for storage.

M. McComb said that she noticed the extension on the northeast corner of the north side on the building that is not on the plan and asked if the shed would go away. Chris Doulides said yes, they'd remove that existing shed. M. McComb asked if the existing structure labeled "The Shed" which is virtually contiguous with the building is there now on the south side would be removed and James Zelewski said that it is an existing structure. K. Hoopes said that he is more concerned with the distance from the Provost property and Chris Doulides said it is about 7 feet. James Zelewski said that it is getting closer by about 4 inches. M. McComb asked how an 18-foot building with windows on top isn't additional living space and James Zelewski said that he just put the window in there for aesthetics. G. Smith said that they should add another variance in here for the distance to the Provost property and P. Kenyon said that 20 feet is required.

The WCPB determined there was no county impact by default approval, as there was no quorum.

No correspondence.

No public in attendance.

James Zelewski said that they would not be doing a foundation, but would be using techno-posts in order to not take away from the drainage in the area. G. Smith said that it would be a good improvement in this location and maybe others in that area will follow suit eventually.

RESOLUTION

The Zoning Board of Appeals received an application from The Grove on Lake George, LLC (V07-07) 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 by default approval, as there was no quorum;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, this is strictly a dimensional consideration;
- 2) There will be no undesirable change in 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, he is of the opinion is that freshening up that structure will do just the opposite;
- 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 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.**

- 8) **JIM SPLONSKOWSKI.** In accordance with Section 200-72 of the zoning ordinance, seeks to appeal the Zoning Administrator's determination that a 75' setback is not required between the wetlands and single-family dwelling to be located on that parcel designated as 186.18-1-31 (Vivian & Richard Simonson) as in this particular case the Lake and wetlands

are one of the same. Reference Section 200-37B and Definitions; Shoreline and Shoreline Building Setback. Zone LC45.

Jim Splonskowski said that (1) he is here to see if they can reverse P. Kenyon's decision on the 75-foot setback, (2) P. Kenyon brings up a good point that the APA states that there is not a specific setback required, but it is a case-by-case basis, (3) he thinks everyone can agree that these codes and regulations are guidelines—they are not carved in stone, and (4) a wetland up in the middle of a farm field requires a different approach than a wetland that contains the same water as Lake George and (5) Dennis Dickinson, project engineer said at the last PB meeting that the water in the lake is the same water in the wetlands.

M. McComb said that (1) she understands Mr. Splonskowski's concern with this project, but the code doesn't have a setback for a house from the wetlands—it has a setback for stormwater management on a house, which presumably is going to be outside the house, so if there are wetlands nearby, that would be more restrictive and it would involve ambiguity—she thinks that is a valid concern and setback and (2) to make the argument that the wetlands and the lake are one in the same is really a tough approach to take.

James Splonskowski said that (1) when the water in the lake goes up the water in the wetlands goes up and when the water in the lake goes down the water in the wetlands goes down, (2) it is a very important spawning area for the fish in Lake George—the same fish that swim in Lake George swim in these particular wetlands, (3) something that happens in that wetland is going to have a direct result on Lake George, which has to be considered, (4) the intent of the rules and regulations is to protect the environment and (5) these things are not carved in stone. G. Smith said that the Town Regulations in regards to this are carved in stone—that is what the ZBA is to go on.

K. Hoopes said that the APA signed off on this particular project and M. McComb said (1) no, the APA ruled that it was non-jurisdictional, (2) she spoke with Brian Grisi and asked how he could say there would be no involvement of wetlands and he (Grisi) said that they have a zero foot setback from the wetlands and the Town of Bolton has a 100-foot setback, so the Town of Bolton should enforce its setback if it likes and (4) she wouldn't want to do it on the argument that the wetlands and the lake are one in the same. Jim Splonskowski said that the wetlands adjoin Lake George—they are not adjacent to it.

K. Hoopes said that (1) P. Kenyon's staff notes are the basis by which these determinations were made, (2) in the case of Section 200-37B there is an address to cutting restrictions that states the case of shorelines of all lakes, ponds, swamps, wetlands, etc. that you can remove a certain amount of vegetation as noted—P. Kenyon uses this determination it says, because it specifically states wetlands, so she applies this section of cutting to the wetland, (3) Section 200-37B 2 addresses shoreline setbacks and states that the minimum setback from all bodies of water measured from the mean high water mark from the principal building—in this case a single-family dwelling is 100 feet and is located in the LC45 Zone, (4) in determining that the wetland is considered a body of water for which the setback has been met, P. Kenyon relied on the definitions: the definition of a wetland is “...any *land* which is annually subject to periodic and continual inundation by water commonly put through the bog, swamp, marsh, which is

either one acre or more in size located adjacent to a body of water, including a permanent stream, with which there is a *free interchange of water* at the surface in which case there is no size limitation...”, (5) the definition of shoreline is as follows: “...the mean high water mark at which land adjoins the waters of lakes, ponds, rivers, streams within the town...”, (6) the definition of a shoreline building setback is as follows: “...the shortest distance measured horizontally between the points of buildings and the shoreline of any lake or pond, brooks, streams—or river—in the town...”, (7) P. Kenyon takes this route to her decision that a wetland by definition is more land than body of water—the key term there is free interchange of water as opposed to a stream or blue water, especially moving blue water which carries anything that touches it away immediately, (8) a wetland or a swamp, even by environmental standards, is often considered God's own big sponge that acts like a filter or buffer between what happens on the land that adjoins it and where the water then meets the blue water and (9) there is a theory that having your frontage on a wetland before it reaches the blue water is preferable—you would get a credit for being on that wetland instead of being on the shore itself, which is why the Lake George is trying to reintroduce the wetland down in West Brook, because it has a wonderful filtering and buffering effect on the lake. James Splonskowski asked if K. Hoopes is saying it is better to build on the shore of a wetland than on the shore of the lake and K. Hoopes said yes, absolutely. Jim Splonskowski asked if it is correct that it would be better to be 100 feet away from the wetland. K. Hoopes said that (1) there has been nothing established with this building that it is going to be a threat, even if it is on the blue line, (2) the Town put up standards according to zone, (3) primarily what the ZBA does is that the Zoning Administrator makes the determination and in this case, P. Kenyon could not find anything in the regulations that would support a determination any other than what she found—he (Hoopes) agrees with her on that and (4) by the ZBA's regulations and provisions this is not really a shoreline. G. Smith agreed with K. Hoopes' last point.

T. McGurl asked if it is correct that Jim Splonskowski is asking the ZBA to look at the lake and the wetlands as one in the same and Jim Splonskowski said yes, in this particular situation. T. McGurl said that (1) he is intimately involved with a wetland, as he lives right next to a massive one and (2) he doesn't see as you can view a lake and wetlands, by any circumstance, as the same thing—regardless of if a wetland is in a parking lot, or it is on the side of a lake, adjacent or touching, they are two biologically different areas that cannot be viewed as one in the same. Jim Splonskowski said that (1) he is asking the ZBA to view them one in the same because of his concern for the protection of the water in the lake and the wetlands and (2) when you have the fish and turtles swimming back and forth, you have to determine where you draw that line. G. Smith said that the mean high water mark is moving water and a wetland isn't really moving water. Jim Splonskowski said that issue of moving water is going to come up, but tonight they are here for P. Kenyon's interpretation.

K. Hoopes said that (1) Jim Splonskowski has not proven that there is any threat, (2) the Simonsons have done a very serious job in trying to ameliorate any kind of threat—even if they were on a shore itself and (3) the ZBA can't just reinterpret its Zoning Regulations at will without just cause—they are very legally bound to take care of the regulations, but also take care of the applicant. Jim Splonskowski said that he understands that.

M. McComb said that there is still the setback for one stormwater pond on the table and asked if there is any other stormwater maintenance around the house or if the pond is 100% of the stormwater. P. Kenyon said that it is around the house in all areas. M. McComb asked why the stormwater management contiguous to the house is required and P. Kenyon said that it is. Counsel said that there is a setback requirement for the stormwater advice established by the stormwater regulations. M. McComb agreed and said that (1) she is asking if there is only one stormwater device on this project or if there is more—K. Hoopes has said there are more. P. Kenyon said she does believe there are more. Counsel said that P. Kenyon is right that there are more and not all of them need setback relief from the stormwater regulations requirement, but pose a setback from wetlands, but not all of them. M. McComb asked if that is a different meeting and Counsel said yes.

M. McComb said that (1) regarding K. Hoopes' idea that maybe it is not a bad thing to build on wetlands, her key from the code book would be the designation as LC45, which does not permit single-family dwellings as an as-of-right use on it and (2) in LC45, it states "...one house per 45 acres and single-family dwelling is not a permitted use without site plan review on it..." which is different. K. Hoopes said that (1) he didn't say it was advantageous to build on wetlands—he said that shoreline might be preferable to the blue water shoreline—again, that is just his editorializing and (2) on the one hand, some environmental advocates feel that the wetlands are a filter and remediate the effect between the lake. M. McComb said that (1) if the setback between the house and the mean high water mark is less than 100 feet, then that is a different story and (2) saying that wetlands and land are one in the same, so she doesn't think Jim Splonskowski can use that argument.

From the public, Kathy Bozony of the LGA, submitted photos of the area and said that (1) the lake is 109 feet from the proposed house, (2) one of the pictures shows that the lake is a lot closer to the house than the map they were given, (3) the additional photos are showing that that type of peninsula is a wetland, which is very valuable and (4) the property they are talking about has been filled in and some of the neighbors say that hit has been filled in recently—there is a lot of new fill in there.

From the public, Richard Simonson said that (1) he has lived there thirty years and he doesn't think it has been filled in at all and (2) there is a pile of dirt in one dry spot that he put down there when he had a septic system built and the intention was to keep that dirt to do some work on his property—the pile of dirt is still in that location and has not yet been used.

Correspondence: read into the record in its entirety by Counsel.

- Letter dated 2/20/2007 from Martin Oldenburger and family - in favor of the project.
- Letter via e-mail dated 2/23/2007 from Carl and Nancy Kluck - in favor of the project.

From the public, Chris Navitsky, Lake George Waterkeeper, asked if it is correct that the Town of Bolton interprets wetlands along Lake George as not being open water and Counsel said yes, it is considered land, not open water. Chris Navitsky said that (1) it is critical to try to protect the buffers, even if they are wetlands, (2) the impact removing all the buffers and building right

up to wetlands can be seen—the development of deltas on the lake are clearly evident, which is why they are trying to go through a huge project to try to reconstruct the wetland down on the south end and (3) he would encourage people to look at that, because removing everything up to the shorelines, wetlands and streams is just degrading the environmental quality of the lake.

Atty. Melissa Lescault, representing the Simonsons, said that (1) much time, effort and money has been invested in this project based on P. Kenyon's interpretation so far—if at anytime P. Kenyon interpreted this that a 100-foot setback from the wetlands would be required, she doesn't believe her clients would have brought this project as far as they have, (2) the shoreline setback is from a body of water—not from a wetland, which is not a body of water, as defined in the Town of Bolton's code and in the APA's code and (3) she requests the ZBA affirms P. Kenyon's decision and dismisses this matter tonight.

M. McComb said that the measurement that P. Kenyon takes from the body of water is from the closest water and P. Kenyon said she takes it from the mean high water mark. M. McComb said that (1) yes, from the mean high water mark, but when you measure along the edge of a map and it dips in—there have been a lot of cases that have come before the ZBA and maybe something has changed she doesn't know about—she remembers cases where shoreline isn't straight and in this case the shoreline isn't straight, so if there is an inlet there, then that is a case that can be made if that is closer than 100 feet and (2) just because the APA flags wetlands doesn't mean that nothing else is wetlands—the APA appends, they are invited to come and stake out the edge of a particular building site and (3) because of APA's regulations, the road on the north side of the building site is the edge of the wetlands on that side and the APA have flagged the limits of the wetlands around the building site, but that doesn't mean that there are no other wetlands. Atty. Lescault said that she believes the APA would have flagged wetlands if there were any closer to the building site and M. McComb said (1) that is true, but there is a 100-foot setback in the code for stormwater management, for which she agrees that it is not a matter for discussion tonight and (2) the ZBA has to follow the code.

K. Hoopes said that (1) the ZBA referred this to the PB for more information as they talked about it—not for their advice on the ZBA's variance, (2) he was comfortable that if the APA wasn't interested in this project and the Town Engineer said it was a viable plan, then he thought the variance had very good merit and (3) this is a big project with a lot of things to consider, so he wanted to hear how all the other things fell into place for the PB before the ZBA issued the variance.

M. McComb said that if there is a difference between some stormwater management that requires meeting that setback and some stormwater management that doesn't she would like P. Kenyon to clarify that if it comes up next. P. Kenyon said yes, she will review that if M. McComb would like her to.

From the public, Lynn Gollhoffer, neighboring property owner, said that (1) this project directly affects them, (2) regarding Atty. Lescault's statement that the Simonsons would not undertake this project if they didn't think it was totally acceptable—she has a problem with that since two other people in the process of developing this land had their project denied—one reason being because several people along with the Simonsons fought this issue, so when the

Simonsons undertook this issue, they were very well aware that there had been an issue in developing this wetland and (3) she agrees that the Simonsons should be able to build their dream house—there is an area that has been indicated, and was indicated several years before when the other individuals wanted to build, that there is a dry area that they have already clear-cut to put a septic system in (to her knowledge, without permission) and G. Smith asked what this has to do with the interpretation of the code. Lynn Gollhoffer said that (1) where the mean high water ends—the shoreline—is a parking lot and in back of that is a ponding area, which when you follow the shoreline, it goes around in an arc to the ponding area, which you can take from the lake with a boat in there, (2) they are saying that the shoreline and the one portion of the wetland are one in the same, because it is a tributary and (3) the beach continues around the back area—she believes that is part of the shoreline. M. McComb said that if Lynn Gollhoffer has documentation of that, it would more substantial. K. Hoopes said that (1) while pictures are good, measurements are needed and (2) even if they issue a variance and the measurements turn up wrong, then the variance is not worth the paper it is written on. M. McComb said that if it can be established that the measurements are wrong that is a topic for another meeting—it is not on the agenda tonight.

Richard Simonson said that (1) he doesn't think he ever came to oppose any development of that property by anybody and (2) he doesn't believe anyone ever brought it to a point of development as they have.

RESOLUTION

Now, upon motion duly made by Kam Hoopes to uphold the Zoning Administrator's interpretation of the wetlands. Seconded by Tom McGurl. **All in favor. Motion carried.**

Other Business:

1. K. Hoopes (1) said that it was brought to his attention by a PB member that M. McComb stood before the PB against the last item talked about, in quite forceful terms and (2) asked if M. McComb should have recused herself from this item tonight and should recuse herself further from this issue if it comes before the ZBA again. Counsel said yes. M. McComb asked why and Counsel said that (1) if you take the position of advocacy with respect to an application in another forum as was the PB, then you should not be an independent decider. T. McGurl said that M. McComb just lost her impartiality. M. McComb said that she has spoken in another forum against building down there on many previous occasions and Counsel said that he could probably find some wiggle room in those instances, but in this instance in the setting of the PB meeting, M. McComb came directly out against it. M. McComb said that she wouldn't have spoken except for Agenda Item #8 on tonight's agenda and she read it and she thought it was P. Kenyon's interpretation that the lake and the wetlands are one in the same and she called her to make sure she was correct on that. Counsel said that in the context of that they are only challenging the interpretation and he can make that distinction in his mind, perhaps M. McComb is right, but K. Hoopes' point, that he totally agrees with, is that if M. McComb takes an adversarial position with respect to the applicant's cause, you can't then sit in the next board forum and say you are an impartial voter—you can't.

2. K. Hoopes (1) said that it was also brought to his attention that M. McComb was traveling in the same vehicle with Kathy Bozony of the LGA and (2) asked Counsel about his stand on this matter. Counsel said that the best possible instance is that there is nothing going on in terms of collaboration and all that, but it is the inference of impropriety that counts. M. McComb said that she objects strongly to inference. Counsel said that (1) he says that from a very social standpoint, (2) he is a town judge and is evaluated constantly by what he does in regard to impropriety and (3) he gives M. McComb the benefit of the doubt that she and Kathy Bozony are not in the car collaborating, but if someone sees it and they live in the Town of Bolton they evaluate M. McComb on the appearance of impropriety. M. McComb said that (1) she finds that the notion of what everything that is said by anybody in connection with a zoning application needs to be said in the presence of the applicant—the applicant doesn't make his plans or decisions and (2) if she comes in and based on information she gets from Kathy Bozony and she in secret decides one thing and comes into the meeting and doesn't share that information, where it came from and what she is basing the decision on, that is improper, but to say that nobody on the ZBA should talk to anybody in the community because that could have the appearance of impropriety is not right. T. McGurl said that Kathy Bozony is not an impartial source—she is one side. K. Hoopes said that M. McComb wasn't just traveling, but traveling to the site of an applicant. T. McGurl said that it was inappropriate. M. McComb said that yes, she was, because the LGA had done stormwater management on that stream. T. McGurl asked if M. McComb traveled to the site with Dennis Dickinson, who represents the other opinion on the matter available to M. McComb. M. McComb responded by saying that if Dennis Dickinson wants to take her down there and show her his opinion it is fine with her, (2) she has gone to Rolf Ronning before and walked land with him and gotten his take on everything and (3) she thinks that as long as you bring the information that you get to the public meeting, it is all to the public's good.

T. DePace said that he believes the issue is that M. McComb went with Kathy Bozony and M. McComb said that Kathy Bozony is a friend of hers and they were looking at that because the LGA had a project she wanted information on. T. DePace said that Kathy Bozony didn't have permission to be on that property. P. Kenyon said that Kathy Bozony cannot just go onto anybody's property without the property owner's permission. M. McComb said (1) that is fine, (2) she went on the Gatehouse Property with Kathy Bozony, which Kathy Bozony said she had permission to go on to look at the LGA remediation of that stream that is coming down off of the Gatehouse property and (3) it is Kathy Bozony's contention that that new project that they had done there, already water is spilling over the bank and into that flat plain. T. McGurl said that to any observer who saw that, M. McComb is a private board member to Kathy Bozony, because they are going to the sites themselves—that is how people would see it, there is no way to avoid it. M. McComb said that sometimes when women go out to look at sites you are more comfortable not going alone. T. DePace said that he thinks it would be better for M. McComb to find somebody else to travel with, because if there was a question. T. McGurl said there wouldn't be a question then. P. Kenyon said that M. McComb should take a Town of Bolton official with her instead. M. McComb asked if she is allowed to seek out information from people who have concerns and Counsel said yes, absolutely, for example, he has no criticism where

tonight M. McComb referenced her seeking information from APA representative Brian Grisi. M. McComb said that (1) the reason she spoke at the PB meeting was because she thought that Agenda Item #8 from tonight's meeting that this might not need a variance anymore, (2) somehow she twisted the reading around and she called P. Kenyon to try to clarify it and during the course of that meeting it stayed twisted and she was still under the impression that if this ruling stood, it would not come substantively before the board.

Counsel said that he had no criticism and would encourage M. McComb the guidance of any government official and ask any question as part of her inquiry—that is solid territory that you don't have to worry about at all, but when you go to the advocacy group it is a bad territory to be in, because an advocate's advocacy is not necessarily in the interest of the applicant's concern that M. McComb is an impartial voter of the ZBA. K. Hoopes said that it is a conflict of interest.

Counsel gave an example and said that (1) you can get the facts from the public officials and (2) M. McComb should not go up to sites with Kathy Bozony—it doesn't matter what she says, she is an advocate. K. Hoopes said that (1) another issue where it was almost like M. McComb was reading off the same page as Kathy Bozony was where Kathy Bozony accused the ZBA of deciding an issue beforehand and (2) it shows in the minutes that M. McComb said that statement from Kathy Bozony was true. M. McComb said that she did not say that.

Meeting adjourned at 9:23 pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
03/05/07