

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, November 19, 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, Jeff Anthony, Tony DePace, Kam Hoopes, Meredith McComb, Tom McGurl, Jr., Bill Pfau
Town Counsel Michael Muller, Zoning Administrator Pam Kenyon

Absent: None

Chairman Greg Smith opened the meeting at 6:33pm by asking for corrections to the October 15, 2007 ZBA minutes.

K. Hoopes said that on page 6 for the motion for item V07-59 Vinette Seidler, it should be corrected in that Bill Pfau made the motion.

K. Hoopes said that on page 9 for the motion for item V07-60 Marcia Champagne, it should be corrected in that Kam Hoopes made the motion and Bill Pfau seconded the motion.

M. McComb asked Counsel for clarification on page 11, paragraph 1, sentence 2, which reads, "Counsel said that it goes there after the inventory, because the applicants have the right to overturn it." Counsel said it should read as follows: ***"Counsel said that it goes there after the approval because the APA has the right to overturn it."***

M. McComb said that for item V07-61 William Taft, on page 11, paragraph 1, the last sentence should read, "P. Kenyon said that the existing lot coverage is 19%." and she would like P. Kenyon's numbers added into the record.

RESOLUTION

Motion by Meredith McComb to accept the October 15, 2007 ZBA meeting minutes as amended. Seconded by Tony DePace. **All in favor. Motion carried.**

Note: The agenda items were heard in the following order: 1, 2, 4, 3, and 5-13.

- 1) **V07-36 OLIVER JR., CHET & MILLER, JOAN.** To alter pre-existing non-conforming structure. Specifically to increase the footprint and raise the roof, seek 1) area variance for deficient setbacks. a) Front; 50 ft. is required from the edge of the right-of-way, 14 ft. is proposed. b) Side; 15 ft. is required, 10 ft. is proposed. c) Stream; 75 ft. is required, 42 ft. is proposed; and 2) To alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.20, Block 1, Lot 25, Zone RCM1.3. Property Location: 8 Cottage Lane. Default approvals from the WCPB. Subject to APA Review. This item was tabled at the August 2007 meeting pending additional information.

Chet Oliver said that (1) in September when he was before the ZBA, some of his neighbors who spoke in favor of his project may have come across as overly argumentative, which he apologizes for, (2) he has changed his project to address the concerns of the ZBA and the possible impact of blocking his neighbors' partial view of the lake and (3) the new plans they submitted are in the same footprint as the previous plans.

G. Smith said that (1) he sees the applicant has done what the ZBA asked and what the neighbors asked, (2) he likes the look of this—the applicant kept the same footprint, and (3) it looks nice and will look nice once it is completed, (4) he can tell the applicant put a lot of work into it and started from scratch and (5) he is quite happy with it and he thinks the neighbor will be happy as well in keeping the same lake view. Chet Oliver said that he guaranteed the neighbors that they would have the same lake view, if not better. B. Pfau asked if the height would not be increasing then and Chet Oliver said that it would be increasing, as they are moving the peak back toward the wooded area 2 ft. Chet Oliver then referenced the maps to clarify. G. Smith said that is fine because it is toward the rear and that is not in anybody's view whatsoever back there.

M. McComb said that she had some concerns about the setback from the stream, but in looking at the property, she noticed there is a rise then it falls off, so she is not as concerned with runoff. G. Smith agreed.

From the public, John Englert, speaking on his and his wife Bonnie Englert's behalf, said that (1) they appreciate the ZBA's help in protecting the view of Lake George from their home in Pioneer Village, (2) Mr. Oliver has changed the direction of the roofline and his new plans so the building blocks less of the view and (3) they now feel they will go with whatever the ZBA decides.

J. Anthony asked if the APA has ruled on this yet and P. Kenyon said no, it will be sent to the APA if the variance is granted.

G. Smith said that (1) he is very happy with the new design the applicant came up with, (2) he feels the ZBA did their job and that it is being fair to the applicant's neighbor, (3) he feels that this isn't going to look as massive as it would have before, because all of the cottages down there where the applicant lives are pretty small, (4) he thinks this is a much better plan—this is going to work for the applicant, the neighbors and everybody involved and he thinks that when it is all said and done, the applicant will be happier with this than what the applicant originally proposed and (5) the applicant has his approval on this.

No correspondence.

The WCPB determined no County impact by default approval.

RESOLUTION

The Zoning Board of Appeals received an application from Chet Oliver, Jr. and Joan Miller (V07-36) 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;

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 #1 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, the applicant has proved today that he has considered alternatives and has developed alternative plans that are more acceptable than the original approved, which are quite adequate;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, this is compatible now with nearby properties and adjacent structures;
- 3) The request is not substantial, it is a deduction from the original request and it seems to be in line with the area and size of other buildings in the area;
- 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 Jeff Anthony and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion Carried.**

- 2) **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 October meeting at the applicant's representative's request.

Chris Gabriels, representing Harry Wolkin Trust, said that he was hoping the applicants could have been here, but they couldn't so the applicants ask that this application be tabled.

RESOLUTION

Now, upon motion duly made by Meredith McComb and seconded by Jeff Anthony, it is resolved that the ZBA does hereby table this application at the applicants' representative's request. **All in favor. Motion Carried.**

- 3) **V07-70 JONES, STEWART & DIANE.** Represented by Chris Gabriels. To alter pre-existing non-conforming single family dwelling. Specifically to construct deck, bathrooms, and kitchen additions. Seek area variance for 1) a deficient shoreline setback. 75' is required, 15' is proposed; and 2) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.15, Block 1, Lot 43, Zone RM1.3. Property Location: 160 Homer Point Road. Subject to WCPB and APA review.

Chris Gabriels, representing Stewart and Diane Jones, gave an overview and said that (1) 90% of the pre-existing house is within the 75-ft. setback, (2) any change to this house, with the exception of the far corner, would require a variance, (3) the houses on both sides of this house are significantly closer to the lake, (4) one aspect of the proposal is the screened porch which was already approved in 2002, (5) this is a retired couple now who have sold their main house and are hoping to live here a little bit longer, so they are electing to try to increase the size of the master bedroom on the first floor, (6) the applicants are hoping to get an additional exit from the first floor master bedroom, (7) the applicants are requesting a small deck to exit that first floor master bedroom, which would be the 15 ft. setback and (8) the applicants are looking for two additions on the back—a bathroom and a kitchen.

G. Smith asked what exists outside of the master bedroom now and Chris Gabriels said nothing—the existing master bedroom is on the second floor and they propose to move it down to the first floor. B. Pfau asked if the screened porch is part of this proposal and G. Smith said that was already approved. K. Hoopes said that it is part of the proposal to follow through on the screen porch with a deck on top and Chris Gabriels said yes, as proposed. P. Kenyon said that the variance for the porch expired in January 14, 2003. B. Pfau said that it is then part of this request. G. Smith asked when the Town of Bolton started making a variance only good for a year and P. Kenyon said it was in 2001. G. Smith asked if the applicant wants to renew that granted variance just as it was given to the applicants in 2002 and Chris Gabriels said yes.

M. McComb asked if there is enough room for the hot tub plus the new porch outside the master bedroom and Chris Gabriels said that it wasn't discussed, but he wouldn't think there was enough room on a 5 ft. wide deck to put a hot tub on.

Correspondence: Read into the record by Counsel.

- Letter received November 19, 2007 from Mr. and Mrs. Salvani - concerns

P. Kenyon said that if there is no increase in the number of bedrooms then septic is not an issue. M. McComb asked if there is any plan to address that at all and Chris Gabriels said that it has not been a problem and as the applicants are not attempting to increase the number of bedrooms and/or the usage, they are hoping that will continue. M. McComb asked if there will be an increase in bathrooms and Chris Gabriels said that existing is 1 ½ baths and what is proposed is 3 baths. J. Anthony said that it is the occupancy and not the number of fixtures, so if it is the number of bedrooms as P. Kenyon explained, then that tells you how many people could be occupying it and that tells you what their sewage demand is, which it is not changing, hopefully.

The WCPB determined no County impact with the condition stormwater and erosion control measures be implemented. P. Kenyon said that she believes the applicants are exempt from the town stormwater regulations, but stormwater and erosion control measures are always encouraged.

B. Pfau said that the only part of the request he originally had concerns about was the small deck in front of the house, because it did cause the structure to be closer to the lake, but it is a small deck that is very well screened from that side, so he doesn't have any problem with that part of it. G. Smith said that he doesn't either, because it is such a small deck and is really an emergency exit from the house. M. McComb said that (1) she also looked at this and thought that except for how the lakeshore bends and twists there, it wouldn't be a problem at all, because the applicants house, while within the 75-ft. footprint, it is behind the house next door to it and (2) this is certainly a modest request compared to many the ZBA sees. K. Hoopes said that he doesn't see anything outrageous about any of this. G. Smith said that the bulk of the new construction is on the backside of the house away from the lake.

From the public, Kathy Salvani said that (1) she and her husband may be addressing the wrong board about the septic system, but if you have a structure that is over 50-years-old and the septic has never been addressed and nobody seems to really want to look into it, even though the house sits back 75 ft., the cove comes around and that water is closer than 75 ft. back, (2) she would think that during the construction phase of this everyone would want to look to see if the septic is adequate and is functioning properly, because she doesn't know about how they did it over 50 years ago, but there has been no evidence to her or her husband that it has ever been cleaned or repaired, (3) there is an indication that there is a problem with the septic, so they don't want their neighbors to be unable to continue with the project if there is a problem with septic and (4) as neighbors, they want to understand that they don't have to worry about the water quality if it is not addressed now. K. Hoopes said that (1) the board in charge of that sort of thing is the Town Board which stands in as the local board of health in addition to the Zoning Administrator and Code Enforcement Officer—those people are all the ones that are charged with that duty, (2) all they look at tonight as the ZBA is offering what relief it can for deficient shoreline setback for the existing building and (3) not only is the ZBA not charged with all the septic issues, but the ZBA is not at all capable of looking into it. Kathy Salvani said that her understanding is that if the applicants are adding two additional bathrooms, whether they have five bedrooms or three bedrooms, that is what determines usage. G. Smith said that (1) it all counts on the amount of bedrooms in the house and (2) the Salvanis can go

to the TB with this to see if they can do something with this. P. Kenyon agreed. M. McComb asked if the TB will be reviewing this as the local Board of Health and P. Kenyon said no, nothing will be sent to the TB as the local Board of Health for this. Counsel said that there is no event that triggers the jurisdiction of the TB. G. Smith said that is because the applicants are not adding any bedrooms—that is how the code is written. K. Hoopes said that (1) he would guess you would also need some sort of evidence that there had been some sort of failure or shortcoming and (2) if the system is working fine, it is not alerting anybody to a problem. Kathy Salvani said that (1) on occasion there has been septic odor, (2) she has heard from various people that would probably know, that the system broke down many years ago, (3) she doesn't know all of this, but she thought this would be the time to bring it up, so it could be looked into if everyone is so concerned about Lake George's water quality and (4) if there is a septic system that is not working properly then now is the time to address it while the applicants are under construction.

M. McComb asked if this is a two-story place currently. Chris Gabriels said (1) yes, there is an upstairs and (2) there is no change in the number of bedrooms. M. McComb said that she's looking for where three bedrooms, a bath and a half and a kitchen are going in the current and (2) the ZBA doesn't have what is inside now, so the ZBA doesn't have any way of knowing if there are three bedrooms in it now. G. Smith said that it shows that there are two upstairs and one downstairs. M. McComb said that is the new plan.

Counsel said that (1) it is correct that the ZBA does not have the jurisdiction to entertain issues on septic, septic variance and septic modernization, unless of course they are dealing with bedrooms, then still the ZBA is not involved, as it is P. Kenyon's initial determination as Zoning Administrator if there is a sufficient expansion that triggers this, (2) accepting all Kathy Salvani said as true—it is a 50-year-old system, it has a lot of constraints, it is not going to meet the appropriate setbacks—then it would be before the TB, (3) he doesn't see any of the issues that would trigger it to go to the TB and (4) if there is an odor or evidence of failure, the Salvanis can call the person from town that checks on that and if it is faulty it would still not go before the ZBA, it would go before the TB.

M. McComb asked if the ZBA can encourage the applicants to examine their septic in light of this variance being granted and Counsel said that it would not be binding on the applicant, but the ZBA could encourage. G. Smith said that he would like the ZBA to consider requiring the applicants to use stormwater on this. Counsel said that it would be a minor stormwater. Chris Gabriels asked if it is legal for the ZBA to impose stormwater on this project and Counsel said (1) yes, the ZBA can make a reasonable requirement on the area variance, (2) he thinks it is a reasonable request and (3) a minor one is not all that hard, as it is just done between the applicant and Zoning Administrator P. Kenyon. P. Kenyon said that it is more for what is being proposed—not the entire structure.

RESOLUTION

The Zoning Board of Appeals received an application from Stewart and Diane Jones (V07-70) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, it is a small camp and the change being proposed is modest;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, hopefully and this ZBA, though it is not binding, encourages this applicant to investigate the septic and make sure it is going to be working well;
- 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, hopefully;
- 5) The alleged difficulty is not self-created, the situation of a 50-year-old camp coping with the twists and turns of Lake George is more at issue and the applicant seems to have made an effort to keep the majority of the building away from the lakeside of the house.

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 Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) Stormwater management controls for a minor project are to be implemented. **All in favor. Motion Carried.**

Note: At this point in the meeting, P. Kenyon said she just received notification from someone that V07-73 Sheppard Machinery Inc. (Lakeside at Nirvana) is adjourned to next month.

- 4) **V07-71 KAUFMAN, THOMAS & LOIS.** Represented by Chris Gabriels. To alter pre-existing non-conforming boathouse. Specifically to raise the roof 1 ½ to 2'. Seek area variance for 1) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b); and 2) deficient side setback from the north property line in accordance with Section 200-38D, 20' is required, 0' is proposed. Section 171.16, Block 1, Lot 2, Zone GB5000. Property Location: 39 Sagamore Road. Subject to WCPB review.

Chris Gabriels, representing Thomas and Lois Kaufman, gave an overview and said that (1) the applicants have a 15-ft. right-of-way to the shoreline—a 15 ft. wide pre-existing boathouse, (2) the applicants have the right to reasonably maintain the boathouse per the Town of Bolton codes, (3) the dock is rotting, the roof is leaking and they would like to replace it, (4) the applicants are required by the building codes that they can not replace it in kind—they must raise it by increasing the size of the beams.

M. McComb said that (1) she was thinking about the applicants having no docking on the north side, but there is another dock on the north side of it and (2) asked how it lines up with Water's Edge. Chris Gabriels said that (1) there is a roof on the dock on either side of it, (2) this boathouse is squeezed in between two other boathouses directly adjacent, (3) this boathouse is probably about 8-9 inches lower and the applicants are looking to increase it between 1-2 ft., but they haven't gone through the engineers yet and (4) the applicants are well underneath the Town of Bolton's 16 ft. limitation. M. McComb said that it might be a safety good thing to what is proposed because it will make it clear that this is not just the same structure the applicants are adding to, which she assumes is a good thing. G. Smith said that (1) this is pretty simple in that the applicant wants to make it with what the code is saying it should be and the only way to do it is to use bigger beams and raise the roof and (2) the only reason the applicant is here is because the north side of the boathouse is right on the property line and the only way he can do it is to get a variance.

B. Pfau asked if the boathouse is on the Water's Edge property and G. Smith said no. Chris Gabriels said that there is a 15 ft. right-of-way. B. Pfau asked if it is on Water's Edge property and G. Smith said no, it is on the applicant's own property. B. Pfau asked why the applicant needs a right-of-way if it is his own property. G. Smith said that (1) the reason is because the applicant is on the property line and (2) there is a 15 ft. right-of-way that Kaufman owns that goes from the lake all the way up along the side of Water's Edge and over toward Sagamore Road to Kaufman's cottages. B. Pfau asked why it is called a "right-of-way". M. McComb said that she was shown a set of steps down that comport with what was on the map. B. Pfau said that the applicant would need a variance for both sides then. Chris Gabriels said that the applicant has a legal right to reasonably maintain the pre-existing boathouse, but he cannot maintain it as is because the building codes require that the applicant increase the size of the structural components. K. Hoopes said that (1) he went down there and he couldn't find it and (2) asked if the boathouse is between the other two boathouses and connected to the two of them. Chris Gabriels said yes, it is between those two boathouses and technically it is not supposed to be connected to the other two, but it is. K. Hoopes said that the boathouse is what he thought was the connection between the other two boathouses.

M. McComb said that (1) it is a change to a pre-existing nonconforming structure, (2) she certainly has no problem with this and (3) she wonders if there is any way to do those roofs of the boathouses to the north of it. K. Hoopes asked why the variance isn't set up for the north and south. P. Kenyon said that she had that question also. G. Smith said that it probably should be. P. Kenyon said that she is not sure, because this is a right-of-way and the applicants don't own the property. G. Smith said that the applicants own what is on it—they don't the property. Counsel said that (1) in the deed it says, "...also by this conveyance, granting to the parties of the second parcel, the right to construct and maintain a dock on the shoreline at the easterly end of the right-of-way described as being a strip of land being 15 ft. in width adjoining the northerly boundary line of the land to be conveyed leading from the premises of the parties to the first part...", (2) the fee interest in the dirt is owned by a different owner—it is not a boundary line and it is not separating parcels and (3) the rights the applicants have is a right of access along a 15 ft. wide strip—they do not own the deed or soil—and they have the privilege to put a dock at the end of that, so they really are not on the boundary line. B. Pfau said that means the boathouse is on the shoreline owned by Water's Edge. K. Hoopes said that the ZBA should properly be looking at the variance to the south as well as the north. P. Kenyon said it is on Water's Edge property. Counsel said that P. Kenyon's version is correct.

Counsel said that the footprint is the same footprint, but it is just going higher. Chris Gabriels agreed and said that he is required by the building code to raise it. Counsel said that it is an alteration of a pre-existing non-conforming structure.

The WCPB determined no County impact.

No comments from public in attendance.

No correspondence.

RESOLUTION

The Zoning Board of Appeals received an application from Thomas and Lois Kaufman (V07-71) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, the applicant is constrained by the building code in his repair and maintenance of this property;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it may make it somewhat safer to differentiate between this and the adjacent properties;
- 3) The request is not substantial, it is still underneath the boathouse height limit;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it is a repair and it will be safer;
- 5) The alleged difficulty is not self-created, it is a building code requirement.

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

- 5) **V07-62 WINNIE, DERICK & YVONNE.** Represented by Regina Konet, AIA. To alter pre-existing non-conforming structure. Specifically to enlarge the storage room and existing deck on single family dwelling. Seek area variance for 1) a deficient front yard setback. 50 ft. is required, 8 ft. is proposed; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.20, Block 1, Lot 52, Zone RCM1.3. Property Location: 106 Rock Cove Road. Subject to WCPB Review. This item was tabled at the October meeting as no one was present to present the application.

Regina Konet, representing Derick and Yvonne Winnie, gave an overview and said that (1) the applicants bought this lake house about a year ago, (2) they have wishes to improve the condition and function of the deck and the storage room, (3) she is here because the entire property is in a non-conforming area building zone and (4) she is aware there was a variance granted on the property by the previous owners (Mrs. Farrell) who had a grand design of a much larger deck than that being proposed.

G. Smith said that in 2004 there was a variance granted to alter the structure and no one ever carried through with it. K. Hoopes said that as he recalls, that variance was for a much larger alteration than the one now proposed. M. McComb asked if the 1988 variance granted for 400 square ft. of new deck has now been enclosed. Regina Konet said that might have been part of the screen porch. K. Hoopes said that either way that is

water under the bridge and the ZBA should move on with the present stuff. G. Smith agreed and said that could have been 2-3 owners ago. B. Pfau asked for clarification on the variance granted in 2004 and P. Kenyon approached the ZBA bench with maps to clarify. G. Smith asked if the proposed deck is much smaller than what was approved in 2004 and P. Kenyon said yes.

M. McComb (1) said that on the agenda it is down for one front yard setback but it looks like it is increasing the sideline setback and that there are deficiencies from the code in every direction as the applicant's representative has noted and (2) asked if they need variances in every direction on this. P. Kenyon asked where M. McComb thinks the other variances come in and M. McComb said that it would be 5 foot from the side. P. Kenyon said that is existing. M. McComb asked if it is just the side deck, the new set of stairs and the storage area in the back and Reggie Konet said yes. M. McComb asked if the height of the project is changing and Regina Konet said no. P. Kenyon said that for the new construction on the south side, the closest point on the southwest side is 22 ft.

G. Smith said that this proposed deck is less obtrusive than the one approved in 2004. K. Hoopes said that (1) the ZBA also had reasons to approve the one in 2004 too and (2) in going down and looking at this place, it needs it at least as much now as it did in 2004. G. Smith agreed and said that (1) he has no problems with this—it is pretty minor and (2) it is going to spruce the place up a little bit and make it more user friendly and safer.

The WCPB determined no County impact with the stipulation that stormwater controls be implemented.

No comments from public in attendance.

No correspondence.

RESOLUTION

The Zoning Board of Appeals received an application from Derick and Yvonne Winnie (V07-62) 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 with the stipulation that stormwater controls be implemented;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, this will be an improvement in this property thereby raising all the other properties as well;
- 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.

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 Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) Stormwater management controls for a minor project are to be implemented. **All in favor. Motion Carried.**

- 6) **V07-69 BOLTON LAKE PARTNERS.** Represented by Jeff Strief. To alter pre-existing non-conforming structure. Specifically to reconfigure the front porch and add a new landing and stairs on the south side. Seek area variance for 1) deficient setbacks. a) front: 30' is required from the edge of the right-of-way, 9.4' is proposed from Lake Shore Drive and 3' is proposed from the private right-of-way; b) side: A total of 20' is required, 2.3' is proposed. 2) lot coverage: 40% is allowed, 41 ½ % exists and 43% is proposed, and 3) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 1, Lot 61, Zone GB5000. Property Location: 4955 Lake Shore Drive formerly known as the Hour Glass Shop. Subject to WCPB review.

Jeff Strief, representing Bolton Lake Partners, gave an overview and said that (1) they propose to remove the current awning that was added to the front building in the 1950s and replace it with another awning that has the same exact footprint, but will be higher up on the building so you can actually see in and underneath it much better, (2) the desire is to take what they feel is a less than attractive building that has been left to stagnate and to improve the overall appearance of the building and Main Street and (3) due to fire code regulations and the fact that the building was not up to fire code, they need to add a second point of egress in the back half of the building in order to use that for retail space, so rather than putting an emergency exit there, they are proposing a more attractive rear door that would also function as a retail door off of what is essentially in the warehouse space of the building.

M. McComb asked if the rear on the ground floor will be retail and Jeff Strief said that the whole ground floor will be retail. M. McComb asked if it will be one shop with the entrance in the front, but an egress in the back as well. Jeff Strief said that (1) the shop would be rented to two different tenants—Happy Jacks will take over the front half of the building and the second half of the building will be a new shop called Next Summer, which is owned by their business partners and (2) the shop in the back half will have its own point of entrance and egress in that back half, however, the main entrance to that second shop will be through Happy Jacks. Jeff Strief then referenced the floor plan to clarify. Jeff Strief said that (1) the space in the front, which was the original building, will be Happy Jacks, (2) there is a pre-existing opening, a large archway, into the back half of the space, which was originally built as a warehouse, that has been used for over the last 20 years by the Hourglass Shop as a retail space as well—they are simply going to rent out that retail space to the owners of Next Summer and (3) currently there is a sliding warehouse door which isn't good. G. Smith said that the existing warehouse door is not attractive for an entrance into a retail store. K. Hoopes said that it probably isn't handicap accessible either and Jeff Strief said no, handicap access would be through the front. T. McGurl said that the elevations designed for the front is a very nice improvement.

B. Pfau asked who currently uses the driveway and Jeff Strief said that there is a right-of-way in the side driveway for the Pratts and that is it. B. Pfau said that reason he asked is because the applicants are encouraging foot traffic on that driveway now, but there are no cars actually using the driveway. Jeff Strief said no, Cobber Pratt parks his truck back there and he doesn't know that Mrs. Pratt has a vehicle. G. Smith said that there is really no place for anybody to pull a car in there and park at any rate. K. Hoopes said that is a no parking zone and the only parking could be back for the Pratts themselves.

G. Smith asked if the entrance to Next Summer would be encroaching on the right-of-way with the porch sticking out the same distance as the one you use to enter upstairs and Jeff Strief said no, it won't actually be sticking out that far. G. Smith said that (1) the applicant wouldn't be encroaching on the right-of-way any more than what already exists, (2) the new front being proposed looks quite nice, (3) Jeff Strief has talked to him about the plans for the entire building as far as repainting and sprucing up the whole structure, which hasn't been touch since he was a little boy, (4) it is nice that the applicants are taking on this big project and really going to fix it up and make the whole building look nice and (5) from what the applicant has done with the other stores, he's not at all worried about the job that will be done with this one, because Jeff Strief has really set a good name for himself in what he has done for the other two buildings—he commends Jeff Strief for that. M. McComb said that she agrees very much and asked if the shed in the back is actually on Pratt's land. Jeff Strief said yes, the shed as far as they understand it is owned and used by the Pratt's and (2) it was a complete surprise to them when they got the survey to find out that 90% of the shed is on their property. M. McComb said that it is then the neighbor's shed on the applicant's property and Jeff Strief said yes, but in an effort to be good neighbors, they have no interest in causing a fight with them over that.

M. McComb asked if there are any apartments downstairs or in the basement and Jeff Strief said no, the basement is storage and utilities. M. McComb said that it is a building that will be a nice addition to downtown and a nice renovation in the business district.

The WCPB determined no County impact.

No comments from public in attendance.

No correspondence.

G. Smith said that he likes everything he sees—from the front, to the side to the whole project.

RESOLUTION

The Zoning Board of Appeals received an application from Bolton Lake Partners (V07-69) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit 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, contrary, it will be just the opposite;
- 3) The requests are not substantial, they pretty much match what is already there, just a slight reconfiguring;
- 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 Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion Carried.**

7) **V07-74 STRIEF, JEFFREY (Mrs. Whizzy's Fizz Poppo)** To alter pre-existing non-conforming structure. Specifically to place a proposed 6' x 13' awning. Seeks area variance for 1) a deficient front yard setback: 30' is required, 11'4" is proposed, 2) Lot coverage: 40% is allowed, 41 ½ % is proposed, and 3) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.19, Block 2, Lot 2, Zone GB5000. Property Location: 4938 Lakeshore Drive. Subject to WCPB Review.

Jeff Strief gave an overview and said that (1) they propose to make Happy Jacks into Happy Jack Kids and to make a candy store called Mrs. Whizzy Fizz Poppo Donut, Fudge and Candy Shop, (2) the building is a solid brick building with very poor insulation and because they are going to have candy in there, air conditioning is key to keeping everything cool and dry, (3) they propose to add some awnings to the front of the building to create shade on the brick, improve the overall appearance of the building and add a couple of trees to the front patio area that currently has nothing at all on it. Jeff Strief then referenced the computer-generated pictures of the proposal. Jeff Strief said that the only thing that might be confusing is the u-shape in the center awning, which will actually be constructed as part of the framing of the awning so that the window that is up there would remain exposed, so they wouldn't be covering it up even though the sides of it come higher up on that building.

G. Smith asked if the color shown in the pictures is the color of the awning being proposed as well and Jeff Strief said yes, a fabric sample has been included. T. McGurl said that it is a nice improvement from what is currently there.

G. Smith asked if the plan is to cut out the patio and put in some maple trees and Jeff Strief said yes, they weren't thinking of maple trees specifically, but that they wanted to use the same trees that line the sidewalks in town, which he has been told are locust trees. M. McComb said that dwarf locust trees would be good, as locust trees are wonderful typical Bolton trees, but they get very large and tall over the years. G. Smith said that they are a great shade tree when they get large and tall. Jeff Strief said that the only reason for that choice of tree was to keep the choice of tree consistent with the look of the town. K. Hoopes said that while a black locust tree is what the town has, if the applicant is looking for a canopy, a honey locust tree will spread more.

M. McComb said that she is not nuts about the striped awning, but on the other hand it is a candy shop and the applicant has done such a nice job with trees and the other businesses. G. Smith said that it will work with the colors that are already existing on the front of the building that is already there, so he doesn't have a problem with it. K. Hoopes said that he loves the stripes—it's festive. B. Pfau asked if the awning will be up all the time and Jeff Strief said yes and the u-shape cut out would be open, but they don't

intend to remove the wood awning that is currently there—they are just intending to cover it up, in fact their sign that you see hanging underneath would be attached to the wood structure that is already existing there, so all they are actually doing is covering that with a new fabric awning, so when it rains or snows, anything going through that cut out would actually hit that awning, so nobody is going to get wet. B. Pfau said that he would assume after 10 inches of wet snow that the applicant would be readdressing his thoughts on that. Jeff Strief said maybe, but the guys that gave him the quote on the awning told him that because of the angle, they didn't figure too much snow would stick to that—it would just slide right off, especially given the sunlight and sun exposure.

The WCPB determined no County impact.

No comments from public in attendance.

No correspondence.

RESOLUTION

The Zoning Board of Appeals received an application from Jeff Strief (V07-74) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit 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, this is just going to lend a little shade and a little cover—it will be an improvement;
- 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.

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.**

8) V07-67 BARBOZA, JACOBA. To alter pre-existing non-conforming barn. Specifically to allow an approximate 11 ½' x 31 ½' addition built in 1999 to remain, seeks area variance to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 200-56A was the code in effect in 1999. Section 156.00, Block 1, Lot 30, Zone RL3. Property Location: 168 Valley Woods Road. Subject to WCPB review.

Jacoba Barboza gave an overview and said that (1) the red barn was existing and approved in 1992 when Joe Deppe was in, (2) her understanding at the time and up until very recently was that the property line was in a different location than it actually is today, (3) the addition that was put onto the barn was a one wall with a pitched roof, which was strictly to block the wind from her horses while using their running shed and (4) when she moved in she was always under the assumption in the North Country you want a north wall to block the wind, but where she lives the wind comes out of the west, so she did that strictly for the shelter of the animals.

G. Smith asked how they found out the applicant needed to come before the ZBA, as the applicant built this barn 8 years ago. Jacoba Barboza said that when she built that she had been at somebody else's place prior to that and it was told by Pam Kenyon at the time anything for agricultural you did not need a permit for, so when she built this she didn't go and she still understands that she doesn't actually need a building permit for this—it was just to make sure the setbacks were met. G. Smith asked how the applicant got here before the ZBA and she said it was do to a complaint. T. McGurl said this was built 8 years ago and it seems that there is point that if the variance runs out after a year, then this would run out after a year as well.

Counsel said that (1) it has been a long process and they have tried to narrow it down and keep all of the issues that were a matter of complaint alive in the process so to speak, (2) this actually definitively solves all problems and the one problem they thought they could address and solve, (3) Jacoba Barboza's rendition is absolutely correct that you don't need a permit to build an agricultural building—she wouldn't need the permit, but she would need the variance and (4) they were in the awkward position of that the applicant needs a variance. P. Kenyon said that (1) the applicant would still need a certificate of compliance from the Bolton Planning and Zoning Office and (2) the Town of Bolton does not issue building permits and (3) Warren County does not issue building permits for agricultural use. Counsel said that (1) if you called Warren County today and asked if you need anything to build an agricultural building, the answer would be "no" and (2) if the ZBA grants the relief sought, it would make this totally in compliance with the

Zoning Code. M. McComb asked about alternative remedies for this and if the matter has already gone to the TB. Counsel said no, it was given a stay and it had not been before the TB because, Jacoba Barboza had an absolute right to bring an application to the ZBA to seek the relief sought. M. McComb said that given the alternative remedy that was imposed on another property up there for an equally miniscule violation in her opinion, she doesn't see why this should be different. K. Hoopes said that this is sort of bringing one application in to compare to another and that to him is setting a precedent. G. Smith said that the ZBA doesn't do that.

G. Smith asked about the applicant saying she thought the property line was somewhere else. Jacoba Barboza said that (1) she thought it was somewhere else than where it is, which is why she believes the existing barn was approved and accepted and agreed upon when Joe Deppe was in—that is where the area variance is coming in and (2) it is now brought to the attention that it is only 22.6 ft. from the eaves to the property line, which at the time it was approved in 1992 and built, based on all approvals and everything it was accepted, but now bringing to the attention that isn't where the property line is. B. Pfau said that the applicant assumed setbacks were correct when the original building was built, so she assumed the add-on would meet setbacks. G. Smith said that at least the add-on was further away from the property line. Jacoba Barboza said that the add-on does meet the setbacks, but it is because it is attached to the other barn that it doesn't.

Jacoba Barboza said that regarding M. McComb's concern of any previous, she had gone through a site plan review and was approved for agricultural use. M. McComb said that she understands that.

The WCPB determined no County impact.

No comments from public in attendance.

No correspondence.

G. Smith said that (1) it sounds to him that the applicant did nothing intentionally wrong, from what he has read and what he has seen, (2) he sees no reason to send the applicant to the TB, (3) this is 8 years and the applicant was told she didn't need a building permit for agricultural use, (4) he feels the applicant just got mixed up in laws that seem to be different today than they were when she got the permit to build what's too close to the property line, (5) he thinks the ZBA should grant the variance for this and put this to rest, because he doesn't think the applicant did anything intentional that she didn't think was right, (6) besides that, the applicant is down in the back there pretty much by herself where he doesn't think it is affecting any of her neighbors, (7) he hasn't gotten any complaints and whoever did complain isn't here to speak on it, so he doesn't have a problem on it and (8) he just thinks the applicant got caught up in a mix-up as far as what she needed a permit for and what she didn't and where the property line was or where she thought it was. J. Anthony said he totally agrees.

RESOLUTION

The Zoning Board of Appeals received an application from Jacoba Barboza (V07-67) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) There will be no undesirable change in neighborhood character or to nearby properties, it is a structure that was built in 1998 and it is an agricultural use building;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, as the structure does not meet setbacks;
- 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.

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

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

Motion Carried.

- 9) **V07-68 WEST SHORE ASSOCIATION.** Represented by George Timpanaro. Seeks area variance for 1) to alter pre-existing non-conforming docks in accordance with Section 200-57B(1)(b), and 2) deficient side setback from the north property line in accordance with Section 200-38D; 20' is required: -6' is proposed. Section 200.18, Block 1, Lot 32, Zone RM1.3. Property Location: Island View Loop. Subject to WCPB and APA review.

George Timpanaro, representing West Shore Association, gave an overview and said that (1) they propose to leave the docks in the same location, crib three of the finger docks and angle them, because on the inside coming in, there is very little space to move around, (2) over the years, the boats just kept banging the docks constantly so it becomes an economic thing, as they had to get them repaired every year, (3) if they crib the three finger docks and move the southern one slightly to the end of the walkway, then angle the rest and measure 10 ft. between each one, it would make better egress to get in and out of there, (4) the boats have gotten increasingly larger, so now when they come in there is not enough room to maneuver the back end so they hit those docks constantly and (5) the docks would be in the same location—they are not moving them—they are going to be right where they are now.

M. McComb asked if the ZBA can give the applicant a variance to build on somebody else's property. George Timpanaro said that it is on West Shore Association property. M. McComb said that it extends negative six feet. K. Hoopes said that it is pre-existing non-conforming. George Timpanaro said that has been like that since day one. G. Smith agreed asked if these docks have been like this for the 35 years the applicant has been there and George Timpanaro said yes, actually George Ganter built them 55 years ago. G. Smith asked if the dock that is non-conforming is the one that the applicant is not going to touch and George Timpanaro said that no, they just want to angle them and they want three cribs and four angles. K. Hoopes said that even still, that pulls part of the dock away from the violation. Counsel said that (1) the applicant would be reducing the encroachment and (2) in answering M. McComb's question, no, the ZBA can't grant that as a new right, but it is not necessarily a new right, but that is it was an acquired right, as the docks have existed since 1969. M. McComb said that it strikes her as that there is an alternative in using the inside of the six-fingered dock for dock spaces along that. George Timpanaro said that he can't move the outside six fingers and M. McComb said that she is not talking about moving it, it looks like deeper water than the applicant has in the four-finger dock close to the shore. George Timpanaro said that the inside docks are in very shallow water—you can see shale, which is why they want to crib the four of them, so they can secure those boats. M. McComb said that it seems to her that there is an alternative of becoming more compliant, to take off the inboard one of the four bay docks and put that boat on the inside of the long dock. K. Hoopes said that he doesn't understand M. McComb's point. George Timpanaro referenced the maps to clarify the proposal.

K. Hoopes said that (1) he thinks it is an improvement all the way around, (2) the cribbing will help tie the whole thing down—stake docks are pretty fragile as it is and (3) he is amazed at the depth of the stake docks on the outer fingers. B. Pfau said that (1) he sees no problem with reconfiguring the docks as proposed and (2) he does question the Boon Bay Association letter claiming that the applicant's dock lengths do not reflect what is on the registration, which interests him basically, because if that is true, it would tend to decrease the variance that would be necessary for that dock. George Timpanaro said that (1) Ken Parker, the neighbor right behind him, claims that the problem is that it is five feet longer than it should be, since there was an addition put on, (2) they are not interfering with anything, as it has been that way since 1955, (3) in 1969, Mr. Pagano was the first one to get into the West Shore Association, which was formed with 11 houses and his wife was short and stocky, since he (Parker) had a 22 ft. Formula boat, his wife

had a hard time getting in and out of it, so he (Timpanaro) is imagining that Mr. Pagano must have asked permission to put the little addition on so Mrs. Parker had a better chance to get into the boat, (4) he told Ken Parker that since McCauley's owned it, he (Parker) didn't voice any kind of opinion, and when Schroeder was there, Ken Parker never complained, then when Ralph Boyce owned it, there was no complaint by Ken Parker, now Ken Parker, who has been there about nine years, who never complained about it, is now bringing it as a complaint, (5) he (Timpanaro) took over the dock chairmanship in 1982 and they asked for permission and a permit from the LGPC at that time to fix the crib dock, so they got a permit for that, (6) he assumes they must have asked permission for the small addition, but they didn't change the map and put the added feet on the map, but he thinks it should be grandfathered after 38-40 years, as it didn't do any harm and nobody was complaining and (7) if the ZBA wants him to take them off, he will. K. Hoopes asked if all the fingers on the inner docks are the same length and George Timpanaro said not really, they diminish a little bit—they are between 19 and 18 ft. on the fingers, but the width is the same. K. Hoopes asked if the extension they are talking about here is the little 3 ft. ramp that goes out and George Timpanaro said yes, it is not interfering with the Parker's property and the Parker's boats don't go near it—if anybody, it is them (West Shore Association). K. Hoopes said that he thought it was the length of the last finger they were talking about and he paced them off and they look the same. G. Smith agreed. K. Hoopes said that there is a little extension that parallels the shore—no the finger that goes out, but the little 3 ft. extension that will probably be removed when the applicant goes to re-angle the dock. George Timpanaro said that (1) it can be removed, but either way it is no problem, if it makes Mr. Parker happy and (2) it is of no use really and (3) Mr. Pagano has now passed away and his wife has serious Alzheimer's and is in a nursing home in Florida, so the daughter and son have now taken over the estate, but it is not complete until Mrs. Pagano passes on and the reason the addition remains is because the kids want it as a memory of their mother and father, which is all that amount to.

B. Pfau said that he is still confused a bit, because the letter from the Boon Bay Association specifically states that the length of the last finger is 24 ft.

Correspondence: Read into record in its entirety by Counsel.

- Letter dated November 13, 2007 from Boon Bay Association - favorable subject to condition.

George Timpanaro said that (1) when the finger dock was built it was 19 ft. on the map—18 or 19 ft., it doesn't matter—after 35 years that he is there, it has never been brought up or talked about, (2) he assumed that somebody involved at the time gave permission, as Mr. Pagano wouldn't do it on his own—he must have asked permission and Joe Gantor was still alive at the time, but unfortunately he has passed away, so they can't ask him and Mr. Pagano has passed away, but he is sure he didn't do it intentionally and (4) it is not interfering with the Parker's dock, because the Parker's dock is actually on the West Shore Association's line and (5) if the ZBA want them to take that off, then they will. J. Anthony asked if when the LGPC granted the permit for the modification if they said anything to correct the difference from the 24 ft. down to the 19 ft. by going back to their record drawings and George Timpanaro said no, Mr. Parker went back, because he is on the board. J. Anthony asked if the LGPC issued the permit allowing 24 ft. and George

Timpanaro said yes, he got it in three days. B. Pfau said that (1) is odd, because if someone has a dock on the lake, the LGPC loves to run around with a measuring device to make sure they get every penny out of that dock and (2) why the LGPC would let the applicant slide with 4 ft., he has no idea. Counsel said that Ken Parker is the Boon Bay Association spokesperson and is also on the LGPC board. Kevin Lyons said that it was the last finger, not the 3 ft. part that K. Hoopes was referencing. George Timpanaro said that it is the last finger that Ken Parker is complaining about. B. Pfau asked if the north finger is 4-5 ft. longer than the rest of the docks and Kevin Lyon said yes, that is correct. B. Pfau said that is what the purpose of the letter from the Boon Bay Association is about, so the letter is clear. Counsel said that (1) that is where the need for variance is sought—at that point and (2) the ZBA's consideration is if there are feasible alternatives. K. Hoopes said that of course you can take that to any kind of an extreme—are there other alternatives, yes, you could take the whole dock out and have no north finger and Counsel said that it should be reasonable. K. Hoopes said that if that dock has been in place for 50 years and the LGPC issues a further permit for it of which Mr. Parker seems to have some sort of status, it sounds like it should stay. George Timpanaro said that the WCPB determined no County impact.

George Thurston, Boon Bay Association member, said that (1) the projection K. Hoopes was referencing is not what they are concerned with—they are concerned with the last finger dock, (2) the process with the LGPC indicates in 1982 that that last dock was 19 ft. long and it is actually 24 ft., so it is in non-compliance with what was purposely designed to be, so if that was removed, it would make it a little easier to make it into that slip, (3) they have a docks and there is a dock that comes part way out then a channel that comes straight into their dock and the boats coming into the slip (referenced on the map) have to maneuver the turn and angling the docks would improve this situation, as the boats wouldn't have to turn so far, (4) there is always an occasion for bumping into their docks, which is caused by the prevailing southerly wind, which is just a fact of life in maneuvering a boat at slow speed—you are just a victim of the winds, (5) they think restoring the dock to what is approved would be the most acceptable thing to do, since there is going to be a change, and (6) they totally agree with angling of the docks—they think it is a good idea. T. DePace asked what the LGPC said when the applicants went for the permit and George Thurston said that he doesn't know what the LGPC's position is at this point. George Timpanaro said that (1) the LGPC said that according to the original map it was 19 ft., which is where Mr. Parker went to seek it out and see what it was then in 1981, which is when they (West Shores Association) sought a permit to do the big crib dock and it was never changed—he doesn't know why it was never changed, because it was already in effect since 1969 and (2) it is just to him, an oversight as far as he can see. B. Pfau said that unless there is a reason why this would be a hardship on the West Shore Association, he doesn't see any reason not to put them back to the length as shown on the certificate. George Timpanaro said that he thought it could possibly be grandfathered since it has been so many years. K. Hoopes said that at this point they have been issued a new certificate by the LGPC, which covers exactly what they are proposing here—24 ft.—for the existing dock, what is there. T. DePace asked if the permit was issued for 19 ft. or 24 ft. and George Timpanaro said that according to Ken Parker, who is on the LGPC board, it is listed as 19 ft. on the master map. B. Pfau said that the LGPC obviously don't know it is 24 ft., because they'd be charging West Shore Association for it if they knew it. George Timpanaro said that Mr. Lindyburg was the

dock chairman then and Ken Parker told him (Timpanaro) that had they changed it on the map when they first put the application in for the big dock to be done saying that it was 24 ft. since 1969, it would have been grandfathered. T. DePace said that the LGPC thinks it is 19 ft. J. Anthony said that the map attached to the application shows four of the docks labeled as 3 ft. by 18 ft. K. Hoopes said that measurement is P. Kenyon's notation. M. McComb said that is the map that the LGPC looked at and (2) the map the ZBA has shows docks that are 18 ft. long. George Timpanaro said that they are registered at 19 ft. George Thurston said that the docks gradually get longer starting with 16 ft. with the last dock being 19 ft. T. DePace asked if the applicant would have any problem making the north finger dock 19 ft. and George Timpanaro said no. G. Smith said that would make the finger docks 16 ft., 17 ft., 18 ft. and 19 ft. long, respectively. George Timpanaro agreed. P. Kenyon said that the LGPC thinks the docks are 3 ft. by 12 ft. docks. Counsel recommended the ZBA table the application until P. Kenyon can speak with the LGPC to clarify their fax and get the exact criteria. G. Smith asked if the 3 ft. by 12 ft. is the crib—not the docks, as the docks and all agreed it was. K. Hoopes asked if the 3 ft. by 18 ft. figures are part of the application and P. Kenyon said yes. J. Anthony said that when you measure the encroachment across the property line using this drawing (the LGPC map) with the 18 ft. dock you get about 5.5-6 ft. with the 18 ft. dock, but when you extend it out to a 24 ft. dock, you are getting about 8.5 ft. K. Hoopes said that when the docks are angled, it is going to be longer than 18 ft. G. Smith said that's incorrect, as they are coming out to the same point. K. Hoopes said that the far point stays on the north finger, but they are no longer perpendicular to their walkway. G. Smith said that the 45 ft. length is going to be cut down to 42 ft., because the last finger is going to be moved in 3 ft. to be put on the angle. George Timpanaro said that the outside corners don't change—the lengths will remain the same. Additional individual discussions ensued that were inaudible on tape. Counsel said that it is an 18 ft. dock that needs 6 ft. of relief.

The WCPB determined no County impact.

RESOLUTION

The Zoning Board of Appeals received an application from West Shore Association (V07-68) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, it is a dimensional consideration;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, these docks have been in existence for decades;
- 3) The request is not substantial, again see the condition that these docks are acceptable to the LGPC;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, in fact, with the reconfiguring of the angles and stuff, there will be less wood chips floating around in there and fiberglass hunks;
- 5) The alleged difficulty is not self-created, this is an improvement on the situation that is there now.

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

Now, upon motion duly made by Kam Hoopes and seconded by Meredith McComb, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) The encroachment on the riparian rights on the north side is to be no greater than 6 feet as presently exists and documented by the Lake George Park Commission. **All in favor. Motion Carried.**

9) V07-72 COSTAS FAMILY PROPERTIES. Represented by Atty Michael O'Connor and John Mason of Sunsoval Inc. To alter pre-existing non-conforming single family dwelling. Seeks area variance for 1) deficient setbacks. a)side: 20' is required, 11' is proposed; and b) shoreline: 75' is required, 40' is proposed; and 2) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.19, Block 1, Lot 3, Zone RM1.3. Property Location: 112 Homer Point Road.

Atty. Michael O'Connor, representing Costas Family Properties, gave an overview and said that (1) they were here in 2004 obtaining the variance to make modification of that house, (2) they have now begun the modifications and wish to modify the modifications that were granted, (3) the ordinance has been changed in that if you alter a non-conforming structure, you need to come in for a variance even if the alterations or changes aren't more non-conforming, (4) everything they are talking about will be going out of the back of the building, but it will be altering a non-conforming building, so they are here for looking for a variance. He then referenced the map to clarify the plans for the ZBA.

Atty. O'Connor said that (1) the total net footage for this change by footprint is 262 ft. on the main structure, so it is not a significant change, (2) the reason for the change is because, as it was proposed before, it had people on the second floor coming out of their bedroom, walking across the hallway past an open stairway, to go to the bathroom—they wanted to shift the stairway to the back of the house so they could attach the bathroom right to the bedroom, (3) they are here because of the ordinance, (4) in 2004 they were talking about demolishing the roof and some of the walls on the second floor, but with this proposal they will take the roof, the second floor walls and deck out, so they can add a foot of living space to make the ceiling on the first floor 9 ft. and the ceiling on the second floor also 9 ft., (5) they will not change the height of the building—they have changed the pitch on the roof to accommodate that—the height of the building will not increase, (6) it is within the building envelope—he doesn't think it is significant or substantial, (7) he faxed the Kileens these proposed plans and they seem to be satisfied and (6) he doesn't think this will be noticeable to anybody except the Costas—for the most part, it is internal changes.

G. Smith said that as he was looking at what the ZBA granted in 2004 and what is now being proposed, it looks like less of an impact now than it was back then. Atty. O'Connor said dimensionally it is—they are less intrusive on the south boundary. G. Smith said that (1) it is all away from the lake and all on the backside and (2) no correspondence has been received on this matter.

The WCPB determined no County impact.

K. Hoopes said that (1) the shoreline setback has changed, since it is now measured differently due to the ordinance change, (2) the question came up as if this is a whole new variance or an amendment to the original variance, (3) he tends to look at it as an amendment to the variance and would use all the original measurements that the ZBA would approve and (4) he agrees that what the ZBA is looking at now is not a substantial change in any way—the applicants have moved the pillared entryway away from the side lot line toward the center of the lot and have moved the double hatched piece altogether and everything is much more consolidated and all consolidated toward the center of the lot and away from the lake and the lot lines, as such, he thinks this is just a minor amendment to the ZBA's original variance. G. Smith asked if the ZBA can do that and Counsel said yes. G. Smith said that is how he is looking at it too, because it is so minimal. M. McComb asked if there is an additional deck and Atty. O'Connor said no. M. McComb said on one drawing she has it is labeled "D" which is the punch out on the north side. T. McGurl said that is part of the approval of 2004. Atty. O'Connor said that (1) M. McComb is looking at Tom Jarrett's plan, which is the one that was done in 2004, which is why it is confusing and (2) Tom Jarrett sent the ZBA everything that was approved in 2004 and hatched it as if they are doing it now. B. Pfau said that just as important is the fact that the proposed additions themselves meet setbacks, is a fact that the applicants are not adding on to the size of the house as viewed by the lake, so therefore it is fine with him if the ZBA approves this as an amendment to the 2004 variance. M. McComb said that B. Pfau voted against this last time. B. Pfau said that he did vote against it because of the piece that was added on to the north side of the house that added to the length of the house as viewed from the lake.

M. McComb asked what the lot coverage is for the three major buildings and Atty. O'Connor said that the lot size is within the compliance of the statutory amount, as 15% is the open area. P. Kenyon said that (1) the lot size is sufficient to account for the proposed construction and (2) the stormwater permit she issued before this is satisfactory for this proposal.

K. Hoopes asked if the ZBA needs the five balancing acts to tweak this as an amended variance and Counsel said that the ZBA can just say that they meet all of the five balancing criteria in that, as was originally presented the findings were made and that this is an amendment to that variance (V04-41).

No correspondence.

No comments from public in attendance.

RESOLUTION

The Board makes the same conclusion of law as set forth for V04-47.

Now, upon motion duly made by Kam Hoopes and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the amendment to V04-41 as presented. Meredith McComb opposed. **All others in favor. Motion Carried.**

10) 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.

At the applicants request, this item was tabled.

11) V07-75 PEHNKE, ROBERT & ANNETTE. To alter pre-existing non-conforming single family dwelling. Specifically to create a lower level addition. Seek area variance for 1) deficient front yard setback: 50' is required; 12' is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.20, Block 1, Lot 23, Zone RCM1.3. Property Location: 16 CottageLane. Pioneer Village. Subject to WCPB review.

Robert Pehnke gave an overview and said that (1) they have a pre-existing building with storage space underneath the existing building and existing deck and (2) they propose to enclose the storage area to make a useable room.

G. Smith asked if it would be made into living space and Robert Pehnke said that it is actually a studio and storage. B. Pfau asked about trees coming down and Robert Pehnke said that there is one hemlock in the middle of the deck that will have to be removed,

which is a shame because they made a lot of effort to save that tree over the last 36 years, but he hopes to keep all the rest.

The WCPB determined no County impact.

No correspondence.

No comments from public in attendance.

G. Smith said that (1) he has no further questions on this—it is pretty simple and (2) it is all there—the applicant is just going down a little deeper and closing it in. M. McComb asked if blasting would be needed and Robert Pehnke said no, it's all sand down there.

RESOLUTION

The Zoning Board of Appeals received an application from Robert and Annette Pehnke (V07-75) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, it is kind of a pre-existing situation and this looks like the most logical way of gaining a little extra space to add onto the building;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it is fairly well-hidden—you don't see it from the street or the adjacent properties and it is underneath the existing deck, so it is not creating a visual impact;
- 3) The request is not substantial, it is quite modest;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

- 5) The alleged difficulty is not self-created, it is just working with an existing bad situation.

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 Jeff Anthony and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion Carried.**

12) BOYD, RICHARD. Represented by Atty. Cindy Lunsford of Jones Ferradino. In accordance with Section 200-72 of the zoning ordinance, seeks to appeal the Zoning Administrator's determination that site plan review is not required to convert existing single-family dwelling located at 835 Trout Lake Road into a guest cottage. Section 186.00, Block 1, Lot 49, Zone RL3.

Atty. Elizabeth Coreno of Jones Ferrandino, representing Richard Boyd, gave an overview and said that (1) they are appealing the Certificate of Compliance issued for the erection of a primary residence along with an accessory use on the right-hand parcel as shown on the map, (2) in April 2007 the site plan review of this project was dismissed by the PB as saying that their (PB's) oversight was not required, then a secondary application for a building permit was filed in and around June 2007, (2) they are asking the Zoning Compliance Certificate be amended and have the site plan returned to the PB on the grounds that the PB made an interpretation of the code, which in essence is the Zoning Administrator's job as well as this board's (ZBA's) ultimate responsibility for oversight. Atty. Carrino then referenced the maps to clarify sites and the existing view. Atty. Carrino said that (1) there is an existing single-family home on the Belanger parcel, (2) Richard Boyd's house is on the left-hand parcel, (3) the reason the picture of the existing view from Richard Boyd's porch to the lake is included is so that the ZBA can see that Mr. Boyd's home was built with his view in mind, as the bottom floor is the entry level, but the porch looks out toward the lake and the family room is built right behind large French Glass doors, so both the purchase of the property, the construction of the home and his maintenance of the porch are all in reliance of the view, (5) they are here tonight to ask for this relief mostly because of the economic and aesthetic impact to Mr. Boyd if the house, as proposed, is erected, (6) the plans that were submitted to the Planning Department show that the house would be erected directly in front of the Boyd view line, (7) the initial application that was filed in 2007 shows that originally the proposed project was further back on the lot and would not have impeded the Boyd view line, (8) the original application was for a primary residence with an accessory structure, in which the application acknowledged was larger than the 1,500 square feet and once an accessory structure hits 1,500 square feet, there is a site plan review required for accessory structures larger than 1,500 square feet of floor space, (9) the Zoning Administrator has found that all accessory structures including barns, garages, carports and boathouses, if larger than 1,500 square feet of floor space, require this type of review, however, the resolution by the PB found that it was not required, because the basement was not included in the definition of floor space, so they (PB) dismissed the application and (10) when the new plans were filed for the main building only, no mention is made of

what is going to happen to the accessory structure and they moved the building right down into the (Boyd) site line.

Atty. Carrino continued by saying that (1) their understanding is that in order to change a pre-existing, non-conforming structure, which this lot is an acre and a half, that currently the zoning says that principle structures require three acres in this particular zone and one and a half acres is about half short of what is necessary to change this—their understanding is that ZBA oversight is required and a variance must be applied for anytime that you change, amend, knock down, build back up, a non-conforming structure, (2) the legal framework for how they took this appeal is that the Zoning Administrator has the sole duty to enforce the provisions of the code as they exist as well as interpret code provisions, (3) the New York State Town Law provides that anytime that a person withstanding objects to a determination by the Zoning Administrator, that appeal comes to the ZBA in the particular municipality and the reason for that is to allow this board (ZBA) an opportunity to be the final say in how the code is interpreted—the statutory scheme in New York is set up for that type of protection for homeowners in New York, (4) in the Bolton Zoning Code, the term “floor space” is used many times over to determine when certain types of reviews are triggered, however, there is no further definition of “floor space” in the code—no singular definition exists, (5) according to the Zoning Administrator's notes she received before tonight's meeting, the practice has always been, when calculating floor space, to include areas such as porches, decks, basements and attics and when there is no further definition the plain meaning of the words are used by referring to the dictionary, (6) they ask tonight for the reversal of the compliance decision, because, the existing family home is larger than 1,500 square feet—that is going to become the accessory structure—so, it is a modification of an accessory structure larger than 1,500 square feet, notwithstanding that, it is a demolition or a modification of an existing structure depending upon how it all plays out, on a lot that requires three acres of land to build a primary residence, (7) the ZBA has the power to reverse the Compliance Certificate and return it to site plan review before the PB, (8) the applicant has an absolute right to develop his property, build a house, to have a guest house—they understand that—what they are missing here an opportunity for the adjoining neighbors to have an opportunity to speak on that and by finding this particular application zoning compliant, they lose the ability to have that kind of oversight to give the Boyds' voice to express their concerns about a direct loss of their view—a pecuniary loss of market value in their property, (9) presumably, the definition of “floor space” that the PB gave was that the Warren County Building Code defines “floor space” as “habitable space”, but the law in New York is that if in fact a code does not specifically define a term, then the plain meaning applies as well as the precedent for how that term has been applied in the town by the Zoning Administrator all the way back, (10) the determination in this case, if in fact it is found that 1,500 square feet only means “habitable space”, then all other decisions by the Zoning Administrator that have been made are called into question—all other determinations that included basements, porches, closets, bathrooms, hallways, are then all of a sudden called into question and that a new definition for a sole applicant that applies “floor space” in this particular way is considered arbitrary and capricious as to this particular application, (11) if the ZBA feels that applying a new definition is necessary to avoid this question in the future then the ZBA has the power when this meeting is done to go to the Town Board and say “We need you to speak further on this. We cannot keep interpreting this terminology—

whatever the legislative body wants—please define this further”, (12) that will apply for all those decisions forward—this application is to be considered as it exists today, (13) there are two specific items in this application that make it zoning not compliant—the structure to become the accessory structure is larger than 1,500 square feet of floor space and the parcel itself is an acre and a half and current zoning requires three acres to build a principle structure, (14) they are simply asking for a correction of the process—they are not saying that Mr. Belanger can’t build his home or doesn’t have the right to have a home on his property—what they are saying is that they would like an opportunity for the process to be corrected in order to give neighbors a chance to comment on this, as well as respect the precedence of the Zoning Administrator in prior applications and (15) they ask that the application return to the PB where it started and where it should continue.

K. Hoopes said that he believes the PB is going to get to review this project in its entirety. Counsel said the PB will not and that is why they are here. P. Kenyon said that (1) the PB determined that site plan review was not required on the accessory structure. Counsel said that (1) the PB asked the question of if this is an accessory structure less than 1,500 square feet it doesn’t need site plan review, which is correct and true and (2) the applicants standing before the ZBA are suggesting that it is an accessory structure that will exceed 1,500 square feet. G. Smith said that is because it is the Boyds’ determination of habitable space as compared to Zoning Administrator P. Kenyon’s determination of habitable floor space. Counsel said that (1) there is no clear definition in the code in how to calculate the measurement of interior floor space, (2) they do calculate porches, decks, things like that when talking about the size of a structure, (3) the Town of Bolton seems to include everything and anything on basements and attics, (4) when Code Enforcement Officer Mitzi Nittmann, is applying and reaching out for criteria that is available to her in the Uniform Housing and Building Fire Prevention Code enforced by Warren County—not the code they use here—and she is legitimately within the requirements to do so, (5) the Town of Bolton does not enforce the Uniform Housing and Building Fire Prevention Code, but it does rely upon it and they also rely upon a book titled “The Latest Illustrated Book of Development Definitions” which is persuasive and helpful, but not the law, (6) there is an argument to be made and the argument being made tonight is that it should be considered all floor space including the basement, but he is now being told that part of it is habitable and part is not. T. DePace asked if P. Kenyon would consider a basement with utilities or a washer or dryer down there only as floor space and P. Kenyon said yes in her opinion, which is how she has always defined this—she is very strict in this. T. McGurl asked if he has a basement of some sort, but is not on a slab or a crawl space, if he is paying taxes on that as part of his home and Counsel said that it is not in the cue of what is calculated for assessment purposes, but it does say on the card.

T. McGurl said that (1) this proposal would have a dramatic impact on the Boyds’ house, (2) he believes that when the house the Belangers purchased was listed for sale, it was listed as more than 1,500 square feet, which would lead him to think that when the Belangers bought it, they initially thought they were buying a house with more than 1,500 square feet and (3) if this proposed house was not impacting someone else, he would say that he usually does side with Zoning Administrator P. Kenyon on those sorts of things, but this has dramatic impact and he does think it takes away the Boyd’s opportunity to go to the PB to voice their concerns regarding their property value going down the drain

completely due to the diminished view. Counsel said that (1) the ZBA will make a determination they will live by and (2) if the ZBA says that given the facts that this is 1,500 square feet or less then they are all done now worrying about if it is an extra large structure, but if the ZBA determines that it is correct being calculated using the formal area as the total calculation within the building to determine whether it is at that 1,500 foot threshold or greater (*inaudible*), so that is the appeal and that is the interpretation that is sought here.

B. Pfau said that the most compelling thing presented is the fact that Zoning Administrator P. Kenyon is changing the way she is totaling up the square footage in the middle of the application. P. Kenyon said that she didn't change the way she totals up the square footage and B. Pfau agreed, saying that she is proposing to change it in the middle of the application. K. Hoopes said that it isn't the Boyds' application. Counsel said that definition defining floor area gross is "the sum of the gross horizontal area are all enclosed floors of the building including cellars, basements, mezzanines, penthouses and lobbies from the exterior face to the of the exterior wall or from the center line of a common wall separating these buildings, but excluding any space from floor to ceiling height of less than 6 foot 6 inches." P. Kenyon asked height of the basement and Mike Belanger said about 6 feet 2 inches. P. Kenyon said that (1) she walked the entire house and to get to this basement area she has to go through double doors and had to duck down, (2) inside it was all made up of stone—it was a stone foundation, (3) it was wet and this wasn't what she considers a typical new house basement, but this was a different situation, where it was old, dark tiny—just small, dark and dingy.

T. McGurl asked what the harm would be in sending it back to the PB and Counsel said that is what the ZBA is here for tonight—to tell them what direction to go, then they know that it does require site plan because of how it is being calculated or it does not. K. Hoopes said that it has been long-standing that there are very well accepted real estate methods for calculating interior square footage of a house and he was amazed himself when they don't include basements, garages, and attic spaces that may even be converted into a living type area, so he thinks living space or habitable space is what needs to be taken into consideration as the standard the ZBA has to look at in this particular case, because they are well accepted and used by everybody. P. Kenyon said that (1) there is nothing in the Bolton Zoning Code for the ZBA to interpret, which is what the ZBA's job is—to interpret, (2) K. Hoopes mentioned that the real estate methods of calculation don't count garages—she wants to point out that one of the reasons this whole section of the code came about was because of a huge building on Trout Lake Road, so if that was the case, the whole reason why they brought this section of the code in, they wouldn't be applying to a garage or a storage shed, because they are not considered in those calculations and (3) she doesn't agree with using the real estate method or calculations or with what Town Counsel will be proposing to the TB, because that would totally negate what the board works for. Counsel said that he had a discussion with TB members and the TB members wanted a standard and the standard offered was that when the definition is not available specifically in the Bolton Town Code, the Town of Bolton would look to the Uniform Building Code in New York State for a definition and the Town here can by local law or ordinance can have a stricter requirement, so if there are some gaps, they are not making it up or interpreting it—they'd be going with the state code. P. Kenyon said

that if they go by state code for floor space, then they are going to throw out everything they worked hard to get.

K. Hoopes said that the ZBA is trying to calculate what this guesthouse contains for square footage, which is a more important question than he thought the ZBA was facing, as it sounds like the ZBA is creating code at this point. Counsel said that the ZBA is interpreting it. K. Hoopes said that it seems there is a very gray area here and there is a fairly large swing the ZBA would be initiating here and that is a creation of code. B. Pfau said that (1) he agrees with K. Hoopes that this would be creating new code, (2) he is also not prepared to answer this question tonight because there is more into it, as he hadn't heard P. Kenyon's interpretation of why she figured it this way in the past and (3) he strongly agrees that Atty. Coreno makes a good point that this is being changed in the middle of this application and if Zoning Administrator P. Kenyon has always calculated floor space in the same way, then it should not be changed for this application. M. McComb said that she doesn't think that Zoning Administrator P. Kenyon is proposing to stop including all basements in her calculations, but she thinks that P. Kenyon is proposing to not include this particular basement because it is more like a root cellar. P. Kenyon said that she did include this in the 1,726 ft. M. McComb asked if P. Kenyon is proposing to stop figuring basements as part of floor space, but just suggesting that this is a singular case that would really only apply to this particular property and P. Kenyon agreed.

T. McGurl asked if this is a space you actually walk into, that you don't need to belly-crawl to get into. P. Kenyon said yes. T. McGurl said that (1) it is an older home which would mean it going to have a shorter basement anyway and (2) while he doesn't think you can say it is a full basement, it is a basement space where you can store things, so he would say it is a basement. K. Hoopes asked what number P. Kenyon is going by now and P. Kenyon said that based on the PB's decision and on Counsel's decision, she is going with 1,490 square feet. Counsel said that given his and the PB's decisions, this applicant is still correct that it is the interpretation that is done not by the Town Attorney or the PB, but by the ZBA. K. Hoopes (1) said that the Zoning Administrator does the first interpretation and (2) asked P. Kenyon if she is still standing by the original 1,726 square feet. P. Kenyon said that (1) based on based on what she saw when she went into this basement, it is different than what you'd see in a modern basement and (2) she is counting the basement in the floor plan calculation because you could store things in that space—that is the way she has always done it. P. Kenyon asked if the Belangers could store something in that space if it were dry and Mike Belanger said yes. P. Kenyon said then she is standing by her interpretation in being consistent with what she has always done, that it is a basement and is included in the floor plan calculation, so the floor plan is 1,726 square feet. Counsel said that (1) the Zoning Administrator made an interpretation that she will count and calculate the basement in the gross floor area and (2) it is a recommendation—not law or mandated, so the ZBA can over rule it—it is suggested that any ceiling height less than 6 feet 6 inches could be excluded.

K. Hoopes said that one other thing he's seen in the paperwork and he believes it is part of the appeal is the fundamental nature of a guesthouse regarding whether or not it is for guests or for rent. Atty. Coreno agreed and said that is the second point. K. Hoopes said that needs to be addressed. Counsel said that is a good one to struggle with because often

times you get really close to you can't have a kitchen, but a kitchen has been defined as having a stove versus not having a stove. K. Hoopes said an oven. M. McComb said that on page 20005, there is a definition of an accessory use structure, which is exactly as presented which says "including a guest cottage not for rent or for hire". Counsel said that often times he sees in other municipalities where there is a separate structure called a guesthouse for an in-law, while it is not rented it is permanent occupied though.

Mike Belanger said that (1) basically the definition "accessory structure" does not state a limit to square footage, except when you go to attachment 4 where it lists permitted uses "#7 being a guest cottage" without any comments then "#9 accessory structures less than 1,500 square feet", which seems to be a little ambiguous in interpretation, so somebody that looked at that would question why they are even here and (2) "guest cottage" definition also does not have a limit. M. McComb asked if Mike Belanger has come to ask to make this an accessory structure instead of a primary structure so he can build another primary structure and Mike Belanger said that (1) only because when he went to Zoning Administrator P. Kenyon in the beginning, he didn't read the code book and he did everything she asked, (2) when P. Kenyon asked him to list everything she said including porch and basement and (3) she basically said that he'd have to get a variance and it should not be an issue—not a promise he would get it obviously—but he did everything according to what the Town of Bolton has asked him.

Mike Belanger said that (1) he would like a fair hearing so if any of the ZBA members are friends of the Boyds, he would ask they remove themselves from the decision and (2) he is not a local and doesn't have that advantage, so he just wants to make sure he has a fair chance of being heard. G. Smith said that Mike Belanger does have a fair chance of being heard. M. McComb said she met the Boyds for the first time today. K. Hoopes said that they ZBA members need something more compelling to recuse themselves than just being friends of the applicant, as it is a small town here—they need a stake in it or something to that effect. Mike Belanger agreed and said he just wants to be promised that it is going to be fair.

Mike Belanger said that (1) the third page says "any term in this chapter not defined in this or other sections of the chapter shall carry customary meaning", so he looked up the definition and wherever you go you are probably going to find the same thing, "established by common use, commonly used, practical, usable in accordance with convention" and another one is "held by custom, established by common use", (2) he looked into what towns and cities have defined "floor area" or "floor space" and they are usually the same—"cellar space regardless of intent or use or habitable use of space" is from the New York Court of Appeals in a decision made in New York City, (4) from the New York Multi-Dwelling Law on the New York State Legislative website "floor space" is described as "the sum of gross horizontal areas of all of the several floors of a dwelling or dwellings of an accessory structures on a lot measured from the exterior faces of exterior walls or from the center line of parted walls except cellar space and also including except open or roofed terraces", (5) from the Town of Yorktown in New York the definition of "gross residential floor area" is the same thing "except unenclosed porches, decks, patios, cellars and basements", (6) the Town of Bolton states in its book that any definition not listed, the Town of Bolton will use the common definition and he repeatedly came up with the common definition excluding cellar space and (7) he

attached the notes from Bolton Town Counsel, who seems to be a little more indecisive tonight than what he put in writing, as he (Town Counsel) wrote on page 1 of his email to the Planning Administrator, “it is never in the best interest in the Town of Bolton to have an interpretation that is different than the standard already provided by the State Codification and Regulation”. Counsel said that he stands by that.

T. DePace asked where it would go if it is over 1,500 square feet and Counsel said that if it is over 1,500 square feet they know exactly, procedurally, where it has to go. T. DePace asked if it says over 1,500 square feet of living space and Counsel said it says “over 1,500 square feet of floor space”. G. Smith said that then it has to go before the PB for site plan review. Counsel said that (1) he does not dispute the cases Mike Belanger has cited and (2) the authority he (Counsel) has relied upon is basically excluding basements and (3) the only authority he could find that would include a basement is the practice of Zoning Administrator P. Kenyon, the treatise he read to the ZBA and the suggestion he read to the ZBA excluding areas of 6 feet 6 inches or less.

Mike Belanger said that (1) put in his situation, when you have a word in the code that you don’t have a definition for, he personally doesn’t think that the Zoning Administrator has the right to do an interpretation of a word not already established and (2) the Zoning Administrator has a right to enforce the code, but she is making a very narrow definition of a word (“floor space”). M. McComb said that (1) zoning is a very local thing, so when Mike Belanger says “this is how it is commonly interpreted in the Village of Yorktown”, she doesn’t find that in the slightest bit relevant here, because porches may be enclosed as a matter of right and made part of your living space and because people have a basement that becomes extra guest space and (2) she realizes Mike Belanger has a pretty poor basement, but she still doesn’t see overturning Zoning Administrator P. Kenyon’s way of looking at this. T. DePace said that he sees it as that this square footage is being used for items you can’t have upstairs (heat ducts, well pump, sump pump, etc.), so this is utilized floor space as he sees it. M. McComb said that this determination doesn’t say that Mike Belanger can’t build another structure on his property, but it is saying he doesn’t get to come in and do it without review of the site. K. Hoopes said that (1) this is strictly Zoning Administrator P. Kenyon’s interpretation—they may have butted their heads against something that needs improvement or alteration in the future, but right now it has worked this way for P. Kenyon this way in the past for quite some time, (2) the ZBA only gets called on when the Zoning Administrator’s reading of the Zoning is challenged by any citizen, (3) what he sees here doesn’t give him enough to get his teeth into to go against Zoning Administrator P. Kenyon’s interpretation—not on these circumstances.

Mike Belanger said that (1) he is stuck with about \$25,000 shelled out, (2) he has a non-refundable deposit from his modular company, (3) he told P. Kenyon from day one—kidding, but he guesses it has come to it—that he’ll chop half of his front porch off just to get it under the 1,500 square feet and (4) the interior space is 1,100 square feet—the porch is very deceptive for the size of the house—it was listed as 1,100 square feet. T. McGurl said that there is area other than in the Boyd’s view where the house can be built and (2) it seems that “unneighborly” to be building right in front of the Boyd’s house. Mike Belanger said that (1) it is actually not exactly there, (2) he has worked from day one with Richard Belanger, (3) he has spent money and has excavated, (4) he doesn’t want to block the Boyds’ view and he doesn’t block all their view and (5) he has spent

thousands of dollars trying to come up with a solution. T. McGurl said that (1) in this meeting tonight, no one is saying Mike Belanger is going to lose his deposit or anything else—he is simply going to have to go to the PB for a review process. Mike Belanger said that he'll take half the porch down if the ZBA wants—it's a shame to take a beautiful façade of the house, but he'll chop of the porch to get a house he can live in in the winter. T. McGurl said that he is curious why Mike Belanger is so adverse to going to a meeting with the PB to explain what he wants to do. Mike Belanger said that he started this in the fall of last year. T. McGurl said that it took him two and a half years to get through the planning process for his own home. Mike Belanger said that (1) he has a feeling he will be shot down, (2) he has six months to use his new construction loan—he is going to be paying on money that he doesn't even have in his pocket come probably another month, (3) he has six months to have the house done—everything is totally screwed up, (4) the factory has \$16,000 or his and he spent money on engineers, (5) he wants some of the view, but he doesn't want to take all of the Boyds' view and (6) he considered of not building the basement, but lowering the height of the home and (7) he also considered knocking down the cottage and building there, but that would be throwing out the purchase price of \$170,000 and then he'd lose a cottage that he would like to have. K. Hoopes said none of this has anything to do with the ZBA. Mike Belanger said that he knows this is painting him as the “evil outsider” coming in and saying that, “oh, he has the best view and boom, I'm going right in front”. K. Hoopes said that is not what the ZBA is here for. Mike Belanger said that he just wanted to make it clear. G. Smith said that the ZBA is here to determine if how Zoning Administrator P. Kenyon determined it is correct or not. K. Hoopes said that he thinks he and several of the other ZBA members are starting to see where they are getting really close to code creation here and not just, code enforcement and this isn't the place or time for the ZBA to determine that.

M. McComb asked if there is any ramification of this being a substandard lot on this in any way since it is pre-existing. P. Kenyon said that pre-existing is fine. B. Pfau asked if Mike Belanger can get around the maximum square footage by just removing parts of the house and P. Kenyon said yes, absolutely. K. Hoopes said that (1) Mike Belanger can take parts off or tear the whole thing down and (2) Mike Belanger not only controls his application, but he controls his whole project. Mike Belanger said that (1) he will continue to work with the Boyds to find another solution, but he is limited by rules—100 feet away from a well, he already has an existing septic and (2) he would love to not be here, because the Boyds are great people. M. McComb said that if it weren't 35 feet high it probably wouldn't be in the view either and Mike Belanger agreed. K. Hoopes said that is not any of the ZBA's concern. Atty. Coreno said that the Boyds would be willing to work with Mike Belanger as well. Mike Belanger said that it is such a narrow valley that has a view that he wants that the Boyds want to keep that it is hard. Counsel said that is what a site plan is all about and asked if the ZBA would feel comfortable making a resolution saying the ZBA confirms what the Zoning Administrator has interpreted. K. Hoopes said yes, that is what the ZBA is here to do—either confirm or deny it. B. Pfau said that he thinks for now, that is the smart thing to do and K. Hoopes said that is the only thing the ZBA can do. Counsel said that he will give those instructions to the TB that the ZBA wants them to deal with this regarding specification in the existing code and the upcoming code. P. Kenyon said that she feels it is very important the definitions be discussed prior to any TB decision be made.

Counsel said that from this point forward, it should be say so in the minutes that, should the ZBA what Zoning Administrator has applied here for her interpretation, then they will incorporate it to include all floor areas inside, whether it be in the basement, attic if used for storage or porch, in floor space calculations. G. Smith said that is the way Zoning Administrator P. Kenyon has always done it and it shouldn't change in the middle of this.

RESOLUTION

Now, upon motion duly made by Bill Pfau and seconded by Kam Hoopes, it is resolved that the ZBA does hereby uphold the Zoning Administrator's original decision and past practice whereby Site Plan Review was required to convert the existing single family dwelling into a guest cottage. **All in favor. Motion Carried.**

Mike Belanger asked if once he goes back to the PB, if either party can then appeal the PB's decision and then it would be back to the ZBA. G. Smith said no. Mike Belanger asked if the PB is higher than the ZBA and K. Hoopes said no, the PB is different than the ZBA. Counsel said that (1) if the PB gives Mike Belanger a decision he doesn't fine amiable, he can appeal it, but it is an appellate process called an Article 78, which is in a court of law. Mike Belanger asked who hears that case and Counsel said court. Mike Belanger asked if that would be Warren County and Counsel said yes. Counsel said that Mike Belanger can appeal the ZBA's decision tonight through an Article 78 in a court of law as well.

Meeting adjourned at 9:32pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
11/19/07