

**Town of Bolton**  
**ZONING BOARD OF APPEALS**  
**Minutes**  
**Monday, March 17, 2008**

**Present:** Chairman Greg Smith, William Pfau, Tony DePace, Kam Hoopes, Meredith McComb, Jeff Anthony, Tom McGurl, Jr., Zoning Administrator Pamela Kenyon, Counsel Michael Muller.

**Absent:** None

The meeting was called to order at 6:33 PM.

G. Smith asked if there were any corrections to the February 25, 2008 meeting.

Motion by Jeff Anthony to accept the February 25, 2008 minutes as written. Seconded by Kam Hoopes. **All in Favor. Motion carried.** (T. DePace, M. McComb, T. McGurl abstained because they did not attend the February meeting)

- 1) **V07-82 LAGOON MANOR HOMEOWNERS ASSOCIATION.** Represented by the Dock Doctors. In accordance with Section 200-93A (Other regulations applicable to planned unit developments), seeks area variance to demolish and reconfigure the docks. Section 157.05, Block 1, Lot 88.1, Zone PUD. Property Location: Brookhill Drive. Subject to WCPB, PB and APA review. This item was tabled at the February 2008 meeting due to a lack of a quorum. The Planning Board recommended approval with the following conditions: 1) 35 slips are allowed and 2) lighting that is to be located on the docks and the shore is to be downward facing and shielded with low wattage bulbs used.

Jeff Provost stated that since the last presentation before the ZBA they have received the Planning Board's recommendation, received the LGPC permit and have met with the APA and made a few changes on the application. He gave a brief summary of the application. He stated that the reason for changing the docks is to insure the use of all permitted dock spaces for the homeowners.

M. McComb asked the applicant to discuss any lighting plans for the project. J. Provost replied that they did not propose any lighting for the docks. He stated as a safety they will install a low voltage marker light at the end of the dock, but do not plan on lighting the whole dock complex. However, if they choose to add lighting he indicated that the Planning Board recommended downward facing shielded lights with the use of low wattage bulbs.

G. Smith asked if there will be any future changes to the docks. J. Provost replied that this is the only set of docks in the offering plan and that has been approved by the LGPC and APA. They are only allowed 35 slips and he does not see that changing.

M. McComb stated that she felt the Planning Board looked at the project thoroughly and is satisfied with their recommendations. However, she wants to be sure that the docks are not

completely lit. J. Provost replied that the Planning Board already set that condition. G. Smith stated that if they grant the variance, lighting and a 35 slip maximum should be a listed as conditions of the variance.

## RESOLUTION

The Zoning Board of Appeals received an application from Lagoon Manor Homeowners Association (V07-82) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item# 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; because this is a PUD,
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, there are no problems with any neighbors with this application,
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, since this is a PUD,

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

Now, upon motion duly made by William Pfau and seconded by Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition(s): 1) 35 slips is the maximum permitted, and 2) any lighting on the docks is subject to the Planning Board's recommendation of shielded, downward facing with the use of low wattage bulbs. Jeff Anthony recused himself. **All others in Favor. Motion Carried.**

- 2) **V08-02 MORAN, LAWRENCE & CLAIRE.** Represented by Greg Bonath. To alter pre-existing non-conforming single family dwelling, specifically to construct a 20'8"x 31'4" addition, seek area variance for **1)** a deficient front yard setback. 50' is required from the edge of the right-of-way, 34' is proposed; **2)** deficient side yard setback. 30' is required, 27' is proposed; and **3)** to alter a pre-existing non-conforming structure in

accordance with Section 200-57B(1)(b). Section 185.19, Block 1, Lot 42, Zone RCL3.  
Property Location: 55 Acorn Drive. Subject to WCPB review.

Greg Bonath stated that they are proposing an addition of a master bedroom, family room and bathroom to a pre-existing non-conforming structure. They are not changing the amount of bedrooms. The applicants are moving to the area and will be using the home year round. Currently the rooms are very small and they are looking to add 1 more room for their comfort. The one story addition will be in the back of the house and not be seen from the road. There is no problem with density on the lot, but the house was built too close to the road before the zoning came into effect.

W. Pfau asked what the addition will be built on. G. Bonath replied that it will be concrete slab. W. Pfau asked if the addition met the required setbacks. G. Bonath replied that the addition is 34 feet back from the road. M. McComb asked how far the front deck was set-back. G. Bonath replied approximately 8 feet. M. McComb asked if the storage building would remain. G. Bonath replied yes. M. McComb asked if the applicant considered relocating the entire structure back to meet the set-backs. G. Bonath replied no. M. McComb stated that she brought this point forward to determine whether there was a feasible alternative to the applicant. G. Bonath stated that this was the most reasonable way to expand the house without getting too big of a structure. G. Smith stated that the applicant was not asking for much and the addition is away from the front. M. McComb agreed and stated that the addition would put the density at 7 % which is still a small number.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Lawrence and Claire Moran (V08-02) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item# 2 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; the house sits where it sits and this is the least intrusive addition,
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, the house is remaining a one story structure and the addition is to the interior of the property,

3) The request is substantial; with regard to the setbacks from the front yard, but this is the location that the house is in and they are building an addition on it,

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

5) The alleged difficulty is not self-created; it is an addition to a pre-existing non-conforming structure,

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

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

- 3) **V08-03 GEORGE, JAMES & LAURA.** Represented by Greg Bonath. To alter pre-existing non-conforming single family dwelling, specifically to construct a 24'8"x 25'4" addition, seek area variance for **1)** deficient front yard setbacks. 50' is required from the edge of the right-of-way, **a)** 12' is proposed from Second Street right-of-way, and **b)** 16' is proposed from the unknown right-of-way on the north side; **2)** deficient rear yard setback. 20' is required, 12' is proposed; **3)** Lot coverage, 15% is allowed; 18% is proposed; and **4)** to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 2, Lot 8, Zone RM1.3. Property Location: 14 Second Street. Subject to WCPB review.

Greg Bonath stated that this proposed addition is for a pre-existing non-conforming structure. The applicant is looking to add a bedroom, bathroom and laundry room addition. He stated that they will be 3% over their density. It is not crowded and the house sits well on the lot, but it is an odd shaped lot. Without going higher, they decided to utilize the west side of the lot. They are maintaining the same amount of bedrooms and renovating a kitchen. The addition will be one story and will match the house exactly. There will be a half cellar underneath the structure. He stated that there are no other houses near this structure other than Kurt Truax and his property is located on the other side of the unknown right-of-way. G. Smith asked if they know anything about the right-of-way. P. Kenyon stated the right-of-way goes from Second Street to First Street and the kids used to use it as an access to and from school. G. Smith asked if the Bolton Central School owned part of it. P. Kenyon stated that on the tax map it is part of Second Street. G. Bonath stated that the applicant went to the school a few years ago to purchase a small little piece to square his lot off, but the school was not interested in selling it because they needed it for their density for future buildings.

G. Smith stated that he has no problem with the application. The placement of the addition is the most feasible place to put it without going up.

## **RESOLUTION**

The Zoning Board of Appeals received an application from James and Laura George (V08-03) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; besides an area variance,
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, because the location of the addition will not affect anyone,
- 3) The request is not substantial; it will be a good addition to a fairly small house,
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created,

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

Now, upon motion duly made by 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.**

- 4) **V08-04 WOLDRING, RIK.** To alter pre-existing non-conforming single family dwelling, specifically to construct a 32 square foot deck addition, seeks area variance for **1)** a deficient front yard setback. 50' is required, 2' minimum is proposed; **2)** Lot coverage, 15% is allowed, 17.5% is proposed; and **3)** to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.20, Block 1, Lot 19, Zone RCM1.3. Property Location: 114 Pioneer Village Road. Subject to WCPB review.

Rik Woldring proposed to expand his existing deck by 32 sq. ft to make the deck more usable. G. Smith stated that the addition looked like the only feasible way to add more space since there is a parking spot behind the cabin. Rik Woldring stated that there is an easement alongside of the cabin as well as the two parking spots. W. Pfau asked if he was going to keep the tree. Rik Woldring replied yes. K. Hoopes stated that he visited the property and tried to imagine how much extra utility that he was going to get by the little diagonal, but he looked at the size of the place and felt that any little bit will improve it. Rik Woldring agreed and stated

that the extra space will allow for a small table and chairs. G. Smith asked if he had received approval from the Board of Pioneer Village. Rik Woldring replied yes.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Rik Woldring (V08-04) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; it seems that there are not many alternatives to the applicant to expand this deck and work within the confines of the project site,
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is simply an addition to an existing deck and it is minimal at best,
- 3) The request is not substantial; at 32 square feet and the maintenance of the existing pine tree is a good move in the applicant's part to maintain the character of the wooded nature of 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, because there are no other options available to the applicant other than to work with the existing building, deck and available land on this property,

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

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

- 5) **V08-05 ROE MANAGEMENT.** Represented by James Roemer. To alter pre-existing non-conforming single family dwelling/docks, specifically to construct a 440 square foot sundeck and increase the length of the docks, seeks area variance to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section

171.11, Block 2, Lot 1, Zone RCM1.3. Property Location: 1 Braley Point. Subject to WCPB and APA review.

James Roemer proposed an extension of his existing docks with the addition of a sundeck. He stated that he already has permission from the LGPC. He is requesting the extension because run-off from a creek on his property into the lake has filled in around the docks and he does not have the depth to dock boats. He also stated that they have no beach and their docks are blocked by the house for any sunlight and they are requesting to build a sundeck.

P. Kenyon stated that the applicant was reserving his right to appeal her decision that this dock was attached to the structure and therefore needed a variance. G. Smith stated that it was obvious to him that the docks are attached. W. Pfau asked if the Town has jurisdiction if a dock is attached in any way to a home on the shoreline. P. Kenyon replied yes. K. Hoopes stated that it would fall into altering pre-existing non-conforming structures. G. Smith agreed and stated that they are also right on the water, so anything they wish to do in alteration of the home will need to come before the ZBA. T. DePace asked if the material was driveway pavers or landscaping stones would it still be considered attached. G. Smith and P. Kenyon replied yes.

M. McComb stated that the application states to reclaim sun lost by the shadow of the house and asked if the addition on the house took away the sunlight. James Roemer stated that there was no addition on the house. G. Smith stated that the house blocks the sun in the afternoon from hitting the dock. W. Pfau asked if the sundeck was attached to the existing deck. James Roemer replied no. W. Pfau asked if the LGPC issues their permit pending local approval. P. Kenyon replied that they usually wait and see what the Town does first but in this case they issued the permit first.

G. Smith stated that he has no problem with the application. The proposed sundeck is the same height as the pre-existing deck on the front of the house, it will not block anyone else's property or view and from the lake it will blend in with the house. M. McComb agreed and stated that it is a relatively small sundeck.

G. Smith asked if there was anything from Warren County. P. Kenyon replied that the WC Planning Board determined there was no County Impact, with the condition that appropriate stormwater and erosion control measures are taken. K. Hoopes stated that the WC Planning Board probably made a mistake, but did encourage the applicant to take care of some of the erosion problems that have occurred down there. He stated that he does not see a problem with this addition to the house. M. McCombs asked if K. Hoopes proposed any remediation for the erosion as a condition to the variance since it is on the same property. K. Hoopes replied no. T. DePace stated that most of the erosion and run-off is due to Route 9N when there is a 100 year storm and not necessarily the applicant's fault.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Roe Management (V08-05) for an area variance as described above.

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

And, whereas the Warren County Planning Board determined that there was no County impact; with the condition that appropriate stormwater and erosion control measures are taken,

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; the dock and proposed deck are part of the structure that does not meet setbacks from the lake,
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it will remain a home with docks and a sundeck on the lake,
- 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; as the use will remain the same for the deck and dock,
- 5) The alleged difficulty is not self-created,

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

Now, upon motion duly made by William 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.**

- 6) **V08-06 METZGER, IRVING & MARCIA.** Represented by Curtis Dybas. To alter pre-existing non-conforming structure, specifically to demolish and rebuilt/enlarge existing boathouse/docks (existing cribs to remain), seek area variance for **1)** deficient shoreline setback. 20' is required (Section 200-38D), -3' 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 34, Zone RM1.3. Property Location: 193 Homer Point Road. Subject to WCPB and APA review.

Curtis Dybas described the property as unique because there is over 400 feet of lakefront and yet all of the shoreline is subject to either a variance and/or public hearing. He described the map and the difficulty in placing the docks. The applicants have owned the property for 21 years. According to the deed the boathouse has been there approximately 60 years, but is not sure if it is the existing cribs. The dock has never been damaged by ice, it is in character with the other boat houses on Clay Island and in the bay. The applicants wish to remove the

deteriorating sundeck, remove the top of the existing cribs, reuse the cribs, add a 19'8" addition to the northeast and re-deck everything and build a new sundeck. The sundeck height and railing would match the existing. The location is important because it is protected by the bay. The applicants have two motorized boats, one is currently in the slip with the cover and the other sits on the southwest end of the dock. The proposal will allow for both boats to be under cover. He stated that the structure is 80 feet from the property marker and 61 feet from the tip of Mr. Irvine's dock. The LGPC has permitted two motorized boats and requires that the boathouse remain open for view. He addressed the neighbors concern of safety in the small bay. He stated that there are four boathouses currently, with at least one boat for each owner and he feels that all of the neighbors have to be cognizant of the safety factor of children and people swimming in the bay. He stated that both the applicant and Dr. Lynch have the best access to the lake without having to enter the bay. He stated that there is correspondence from Mr. Irvine stating that he has ran into this dock, but the dock structure has been there for 60 years. He stated that each Board member has the plans and elevations that have been approved by the LGPC. With regard to colors, the support posts in the boathouse will remain pressure treated lumber allowed to weather gray like the deck, the roof will match the house and trim work around the sundeck will match the deck on the house (i.e. white). They will use glass to enclose the railing so there will not be any visual balustrades up there, it will blend in with the house and will also be beneficial to maintain the visibility through the boathouse. There are four lights across the front for safety, but the lighting is indicated as low level downward facing and the applicants are open to any requirements that the Board may have.

M. McComb asked if there will be a boat stored on the west side. Curtis Dybas stated that currently there is a boat stored there, but they wish to put both boats inside and that spot would not be used. M. McComb asked if the applicant would be okay if that was a condition. Curtis Dybas replied that it is part of the LGPC permit. M. McComb stated that there are other cases where a side of a boathouse that is encroaching on the neighbors' property is not used and she thinks that is a good condition to this application, if it is approved. G. Smith stated that they are not proposing to build the boathouse any closer to Mr. Irvine's dock. C. Dybas stated that they are using the existing footprint and the addition will be on the far side. He feels that this would present the least amount of environmental impact to the property. K. Hoopes stated that he felt this was the best solution for the Metzgers. It is the safest and smartest place to put the boathouse. He also agrees with building on the existing dock structure and likes that they are moving away from Irvine's property. He disagrees with putting a condition on the non-use of the west side because that space could be utilized for visitors. T. DePace agreed. M. McComb stated that it is encroaching not just on the setback, it is a negative 3 feet. Given that circumstance and that they have the other side of the boathouse to use, she feels that the west side should not be used.

M. McComb stated that a lot of boathouses try to be the less obtrusive and asked why they chose to use white trim for the railings. Curtis Dybas replied that they elected to match the existing house by using the roof shingles and upper trim to tie into the house. T. McGurl asked if the dock remained the same, could the applicants have three boats on their dock. Curtis Dybas replied yes, but they only have two and they have limited themselves to two by the LGPC permit. He stated that because of the amount of shorefront the applicants are allowed three docks and they are allowed up to 45 feet of boathouse and the applicants do not want to exercise that option. W. Pfau stated that this is the most restrictive situation for the property lines affecting the shoreline setbacks. He thinks that it is good because they are building away

from the neighbor's property and is not going to extend any further than the one that currently exists. G. Smith agreed.

G. Smith asked if any public in attendance wished to speak.

Linda Lynch, neighbor of the applicants, opposes the application. She is concerned for the safety of the individuals using the bay. The bay is small and shallow which makes it ideal for swimming. She is concerned that the additional dock will allow for more boats which will create more congestion in the small bay. She is also concerned that if they move the boathouse closer to the rocks it will be more difficult for them to maneuver their boats and will force the applicants to use the bay to turn around, which raises a safety concern. She stated that the Board talks about hardship and the applicants are inflicting their own hardship. She feels that they should consider utilizing the other side of the property for the boathouse. M. McComb stated that the applicant has already stated that they will not utilize that dock on the west side. With regard to the applicant's having to back out and turn around in the congested bay is a problem everywhere on Lake George, but this application is moving further away from the property line. She indicated that she disagrees with the Lynchs' letter. She visited the site and does not feel the structure would be shielded from Three Brothers Island if it was on the other side of the property.

T. DePace asked P. Kenyon if the LGPC limited them to two boats to that dock. Curtis Dybas stated that he has the permit and it states that they are limited to two motorized watercraft. T. DePace asked if they are allowed visitors. Curtis Dybas replied that the permit is for permanent watercraft and the LGPC indicated that they cannot police visitors use. M. McComb asked if any of the other neighbors in the bay have docks over or on the property line. Curtis Dybas replied no but some of them are within the setback lines. K. Hoopes stated that the safety issue has already been dealt with at the LGPC level and all they are dealing with is a property line setback. He stated that they have over 400 ft of lakefront which rules how big the boathouse can be. He feels the Metzgers are not able to reap the benefit of having all of that taxable shoreline because of the constraints.

Dr. Steven Lynch, neighbor of the applicant, opposes the application. He stated that the map provided does not show alternate locations. Mr. Dybas provided the LGPC with a map indicating two alternate locations for the dock on the other side of the property that would not need a variance. He feels that this is a self-imposed situation of an addition to a non-conforming structure. He is also concerned with an increase in boat traffic since the applicants frequently have guests over to visit.

Dr. Lynch stated that this project doesn't meet one section of the variance needs under Zoning Code Section 200-65. As he and his neighbors have stated, it does produce a detriment to nearby properties. There is a safety issue with children and other individuals using the bay. He stated that Mr. Irvine's daughter broke her leg because of the location of this structure. This is a pre-existing non-conforming structure that could not be built today. He feels the alleged difficulty is self-created because the applicants have two other alternate locations for the docks that would not require variances which the applicants refuse to use. He feels that this is a substantial change because they are increasing the boat traffic and density of docks in the small bay. He indicated that Michael O'Connor, who represents the Lynchs, has provided a letter enclosing a report from Fisher Maritime Consulting Group discussing the congestion in

the bay and issues that the ZBA should consider in their decision. He stated that Mr. O'Connor's letter referenced that the main basis for denying this application comes from the ordinance that the goal of the applicant can be achieved by some method other than a variance. As stated before the applicants have two alternate locations that would not require a variance.

W. Pfau stated that he is trying to understand Dr. Lynch's and his neighbors' objection to the project. He feels the result of this project will add one additional dock space in the boathouse and they have agreed to not use one of the existing dock spaces on the west side. The project is asking for the same number of dock spaces and he does not understand the neighbors' claim that it will add more congestion to the bay. Dr. Lynch stated that they cannot regulate the number of boats at those docks and they could still use that dock. W. Pfau stated that he could see the spot being used by visitors, but it is only one more boat and still does not feel that this greatly increases the congestion. He continued that the applicant could put this boathouse in alternate area but he questioned whether they were more feasible. T. DePace agreed and stated that this new boathouse will not intrude on Dr. Lynch's property at all. M. McComb stated that she feels that it is reasonable to limit the access to the westerly slip because the boathouse is on the property line. Dr. Lynch stated that the LGPC made this a condition, but he is concerned because there is no way to monitor this. M. McComb stated that she is not sure that it would go unmonitored considering the opposition from the neighbors.

G. Smith asked Counsel if there was more correspondence. Counsel indicated that he was not going to read the letters from Dr. Steven and Linda J. Lynch and Michael O'Connor since they have already stated their opposition and read the additional letters received:

Letter from Brad and Kris Irvine, opposing the project.

Letter from Charlotte Blumenthel in support of the project.

Letter from LGA Land Use Management Coordinator, Kathleen S. Lindberg Bozony in support of the project because it will not disturb the natural vegetative buffers.

WC Planning Board- No County Impact.

J. Anthony asked P. Kenyon what the APA concerns would be with the application. P. Kenyon replied that they would want them to meet the criteria when granting the variance. Counsel agreed. Other than the regular criteria they should have some discussion and consideration to practical difficulties and the hardships that may be involved even though they do not use these in granting the variance. Counsel urged them to be specific in exploring each element in the area variance. K. Hoopes stated that the APA usually has zero tolerance with shoreline setbacks and density issues. He asked Counsel if he felt that this boathouse would be considered within the shoreline setback. Counsel replied that he hoped not, but agrees with P. Kenyon that they should refer it to the APA. He encouraged the Board that if they intend to make a motion that supports the applicant that they need to deal with the issues of practical difficulty and hardship, which he feels could be considered part of feasible alternatives. He feels that there has been considerable discussion about this with regard to Dr. Lynch's argument, but they need to explore further as to why this may not be a feasible alternative. M. McComb stated that the property is unique in its shape and configuration. The applicants propose to build on the edge of their property because it is u-shaped. They are precluded from building off the end because it is a channel. It is possible to build on the other side of the property but they have heard that there are practical difficulties with doing so by altering the lakeshore that would be less attractive and more expensive to do than adding onto the existing crib dock that is already there. This is a right of the property owner paying taxes on over 400 ft of waterfront in the

Town and is the best location for a reasonable sized dock and boathouse. The applicant has accepted the limitation of only two motorized watercraft.

Counsel encouraged the Board to discuss the other side of the property that is wide open shoreline and does not require a variance to build a boathouse. He asked them to narrow the issue to what is the difference between practical difficulties and its undesirability for the location of the dock.

J. Anthony stated that looking at the application there is a lot of merit to what has been proposed by adding on the existing dock. However two things have come up tonight that he did not take into consideration when visiting the site and he is not prepared to rule on; 1) the development of the east shore because he is not aware of the ecology of the lake in that area and 2) removal or disruption of a neighbors' views. He is concerned with regard to the APA and meeting their requirements that if they are going to discuss practical difficulties and hardships that he is not ready to make that recommendation without looking at these additional issues brought to light.

G. Smith stated that the LGA was concerned with disturbing natural shoreline and it would not be necessary to do that in granting them the variance to continue to have their boathouse where it has existed for over 60 years. Counsel stated that they should tie that into the hardship considerations as well as the practical difficulties of the economic feasibility. The applicant is proposing to alter an existing dock, which is less expensive then demolishing the old and moving to a new location. G. Smith stated that it is also a detriment to the aquatic life on the other side. M. McComb stated that it is also a detriment to the applicant if the dock is in a more vulnerable location. Counsel asked if anyone knew the depth of the shoreline on the side that does not require a variance. G. Smith stated that it is quite deep based upon observation of being in that area. Counsel indicated that this would include building a new dock system whereas the variance would allow the applicant to utilize existing cribs. W. Pfau agreed and stated that coupled with the damage factor from ice and wind that it would be enough for practical difficulty. Counsel stated that they have enough discussion and they now need to build it into the elements of what constitutes their motion.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Irving and Marcia Metzger (V08-06) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#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; in an effort to overcome the hardships and practical difficulties that the applicant has in achieving the benefit he is desiring he has no other means feasible or reasonable than an area variance,

2) There will be no undesirable change in the neighborhood character or to nearby properties, safety issues notwithstanding the character itself and the nearby properties are not in jeopardy,

3) The request is not substantial; it is adding an covered space for one existing boat, bringing their total boats allowed permanently to two, and there is one extra space being created by this new dock pattern,

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; in fact if they take the Lake George Association's opinion into effect, it is going to have less physical and environmental effects than if they worked any other plan,

5) The alleged difficulty is self-created, as most projects are, it is not a reason to deny the variance,

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

Now, upon motion duly made by Kam Hoopes and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented. Jeff Anthony abstained for reasons previously mentioned. **All others in Favor. Motion Carried.**

- 7) **V08-07 RUSSELL, LESLIE.** Represented by Donald Russell. For the construction of a 51'10"x 29'6" garage with storage/workspace, seeks area variance for a deficient front yard setback. 75' is required, 47' is proposed from the edge of the right-of-way. Section 171.14, Block 1, Lot 2, Zone RL3. Property Location: 398 Potter Hill Road. *Note: This application is in conjunction with SPR08-05 for an accessory structure greater than 1,500 square of floor space.*

Don Russell stated that he is proposing to take down the existing building and relocate a new structure on the lot. He stated that it will have a three bay garage with an upstairs for storage and a small woodshop. G. Smith asked if this was the best location for the structure. Don Russell stated that when he bought the property he intended to restore the building, but upon exploring that option he found that the foundation was not good and there was a lot of pressure coming off the road. He stated that the new location is flat, it was cleared by a few microbursts that took out about 30 trees. K. Hoopes feels that it is a great location for the new structure and that it does not interfere with any neighbors. He feels that it is an exchange for a building that is dilapidated and in the right-of-way. G. Smith stated that only neighbor that this would affect would be Mr. Roberts who lives across the street and he submitted a letter in support. J. Anthony stated that the project will clean up the road corridor and is set-back of the road nicely. He feels that it will fit nicely into the neighborhood character. Don Russell stated that there is a slight change from the original application. He stated that he would like to change

the roof pitch. Currently the overall height is just less than 27 feet and he has chosen a dormer that is a straight shed instead of the full gable, which would require another 2 feet of height. He requested to change the ridge height to reflect that he is requesting 29 feet. G. Smith stated he was okay with that because it is still within the limits. M. McComb stated that looking at the topography of the lot the new location would make the structure less visible from the road and it is an improvement in traffic patterns. She asked if any plumbing was proposed for the structure. Don Russell replied no.

G. Smith asked if there was any correspondence. Counsel read a letter from Steve Roberts in support of the application.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Leslie Russell (V08-07) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#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; the level spot that the applicant has to build this structure does not meet setbacks from Potter Hill Road,

2) There will be no undesirable change in the neighborhood character or to nearby properties; it will be a positive affect on the scenic corridor in the removal of an old building and the construction of a new one,

3) The request is not substantial; in numbers,

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, this is the most feasible location for the building,

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

Now, upon motion duly made by William 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.**

- 8) **V08-08 FOUR HORICON AVENUE, LLC.** James Palazzo. To alter pre-existing non-conforming structure, specifically to create 3 retail spaces and 2 apartments, seeks area variance for **1) Deficient setbacks. a) Front.** 30' is required from the edge of the right-of-way, 0' is proposed from Route 9N and 0' is proposed from Horicon Avenue; **b) Side.** 8' minimum is required, 0' is proposed; **2) Lot coverage:** 40% is allowed, 50% is proposed; **3) Density.** 35,000 square feet is required, 13,068 square feet exists and is proposed. **4) Parking:** 61 parking spaces required; 1 space exists and is proposed; **5) To alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b); and 6) As a condition of approval set forth by the ZBA on 8-17-98 when approving V97-31 to alter the structure, approvals are required. Condition #7 reads as follows: If there are any modifications made to the plans submitted, said modifications must be presented to the ZBA.** Section 171.15, Block 2, Lot 36, Zone GB5000. Property Location: 4973 Lake Shore Drive, Intersection of Horicon Avenue and Route 9N known as the Lake George Kayak Co. Subject to WCPB review. *Note: This application is in conjunction with SPR08-06 for a multi-family dwelling and signage.*

Jim Palazzo stated that the previous owner had come before the ZBA in 1998 and gotten all of the necessary approvals for 4 retail stores. He bought the property about a month ago and could have gone forward with the project but decided to alter the design. G. Smith stated that with two apartments upstairs parking will be an issue and asked how they will deal with that. Jim Palazzo stated that he has a letter from Wayne Smith permitting his tenants to park 3 cars on his property. T. DePace stated that he didn't know if parking was an issue, because the Town needs more rooms to house individuals. He stated that he knows several individuals who are looking for apartments that do not even own cars. M. McComb stated that she would like to see the letter from Wayne Smith added to the file but agrees with T. DePace that the Town is looking to add apartments. This housing would be accessible and useful to someone who doesn't own a vehicle. She does not feel that it should be a condition that if you have housing you must have parking. K. Hoopes stated that anyone living there is going to have to take care of their own parking problem and it should not be something that J. Palazzo has to worry about. G. Smith stated that it would be helpful to have Wayne Smith's letter on record.

J. Palazzo stated that they came back with a different design because he comes from a small town and wanted the building to have that small town feel. G. Smith stated that he liked the facade and it looked like a great facelift for the Town.

G. Smith stated that he has a concern with run-off. His mother and father-in-laws home and business is next door and is flooded frequently and asked what the applicant proposes to remediate that. K. Hoopes asked if this will require a major stormwater attention. P. Kenyon replied no, because it is less than 1000 sq. ft. of new impervious area. T. DePace asked if they thought about putting gutters on the building. Jim Palazzo stated that there are gutters on the back of the building now, but they are going the wrong way. He stated that he has no problem rectifying any existing stormwater issues. He stated that he could catch the water coming off the back of the building with a down spout and run it along side of the building and get it down to the street.

W. Pfau asked what effect filling in the corner of the building at Horicon and State Route 9N would have on visibility of making that turn. J. Palazzo stated that when individuals stop at the red light they are passed where the nitch is going to go. K. Hoopes agreed and stated that there is approximately 12 feet of sidewalk from the curb to the front of the building. M. McComb stated that the location of the set-back building has proven to be problematic because 2 or 3 businesses have not been successful in that location. She feels that this would assist in resolving that and overall the project could re-energize that end of Main Street. G. Smith agreed and stated that it also assists in resolving the ice problems off the corner roof on the sidewalks in the winter.

G. Smith asked if they have any plans to change the facade of the concrete section on Horicon Avenue. J. Palazzo stated that he is considering a few different ideas to cover this area, but ideally he would like to stone that side of the building. He stated that this side of the building takes a lot of abuse from the plows and weather in general.

P. Kenyon asked the applicant if there was anyway that they could do a stormwater plan for the back of the property because she has an issue with him casting stormwater off of his property. Counsel agreed, but understands that they have a lot of constraints to deal with. T. DePace asked if they could put a catch basin in the back of the property. J. Palazzo stated that currently there are gutters off the back of the building. One casts off to the neighbors property and the other is off Horicon. He stated that there was a down spout there, but it was ripped off. K. Hoopes suggested that they look at putting something in the space between the back of the building and the old Post Office. T. DePace asked P. Kenyon what she was suggesting for stormwater. P. Kenyon stated that she was unsure and suggested that the applicant come into her office to discuss some potential ideas before he goes before the PB. W. Pfau suggested that they ask the PB to come up with a recommendation or plan for stormwater. J. Palazzo stated that he could get some commercial pipe to accommodate more water volume. G. Smith agreed but stated that the concern is where they are going to put it.

G. Smith asked if there was any correspondence. P. Kenyon stated that there was no County Impact based upon the information that the applicant supplied at the meeting. M. McComb read Wayne Smith's letter which granted Jim Palazzo to park three cars in his lot.

Gary Hughes gave a description of the proposed materials and colors. J. Anthony asked if the PB will still have architectural review. P. Kenyon replied yes, it is on the agenda for this month.

G. Smith asked if he intends on starting the project immediately. J. Palazzo replied yes and that he wants to get the Lake George Kayak Co. up and running as quickly as possible.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Four Horicon Avenue, LLC (V08-08) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#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; the applicant is working with existing Main Street businesses,
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it looks to be an excellent revitalization of that part of Main Street,
- 3) The request is substantial; with regard to the ordinance and number of variances required, but this is the condition that businesses on Main Street are working with and the ZBA is balancing the benefit to the community to have this revitalized property,
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the developer is going to work with the Zoning Administrator and the Planning Board on further aspects of Site Plan Review to do the best possible job with remediation stormwater run-off,
- 5) The alleged difficulty is not self-created, it is a relatively minor change to an existing business on Main Street,

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

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

- 9) **V08-09 THUNDERBIRD MOTEL OF LAKE GEORGE.** Represented by Leonardo Chiraboga. **1)** For the placement of a 12'x 12' marina office building, seeks area variance for a deficient shoreline setback. 75' is required, 0' is proposed; and **2)** For commercial boat storage, seeks area variance for deficient setbacks. **a)** 100' is required from Lower Brereton Road, 42' is proposed; **b)** 150' is required from the mean high water mark, 62' is proposed. Section 213.13, Block 1, Lot 55, Zone RCM1.3. Property Location: 3908 Lake Shore Drive. Subject to WCPB and APA review. *Note: This application is in conjunction with SPR08-07 for a marina and commercial boat storage.*

Lenny Chiraboga stated that the first part of the request is for the marina office as part of their expansion of the marina. Primarily it is an issue of safety to have a marina office for visibility for those that may be in distress in the water or on a boat. Another aspect is the location, they felt it was best to be adjacent to the boathouse to hold life jackets and boating supplies. Any other location on the property would bring it closer to the parking lot which poses potential

safety issue especially with children. It is both safe and convenient to be able to house files, telephone and transaction processing machines in this location. Other locations would not be suitable due to water penetration or because they are already being used by motel staff or motel supplies. They are limited on their placement on the shoreline and if they move it closer to the buildings it will block the main view of the lake. He stated that the office would be the same color and would blend into the boathouse. He stated that the building is a pre-fab building that will be brought to the site. M. McComb stated that the office is substantially smaller than the existing boathouse. T. McGurl asked if the new space would be adequate enough to house the office and all of the life jackets. Lenny Chiraboga stated that he tried to be conservative in his request and feels that it should be able to house everything. T. DePace asked how many boats and personal watercrafts the LGPC permits them to have. L. Chiraboga stated that they are permitted 5 boats and 2 personal watercrafts, but they also have non-motorized craft. W. Pfau asked if they considered housing the marina office inside of the boathouse. L. Chiraboga stated that there is not enough room and the decks are only 4 feet wide. He also indicated that the location of this office would not have an impact on any neighbors views. M. McComb agreed and stated that the closest neighbor was considerably elevated from this view.

G. Smith asked if there was any correspondence. Counsel read the following letters:

Letter from Maureen E. and Robert C. Burhmaster opposing the application.

Letter from William R. Hall opposing the application.

Letter from Raymond Oliver opposing the application.

WC Planning Board- No County Impact with the condition that the application be clarified as to the marina operations for the hotel guests and general public to identify the office area from the motel operation so that the two business operations are distinct entities on the site plan and to identify safety plan for boat storage owners.

K. Hoopes stated that with regard to the boat storage, it must be a scramble to get the boats out of there and the motel up and running each year. He stated that the applicant is requesting to doubling their setback with boat storage and it is supposed to be invisible from the right-of-way and luckily the motel building is doing that. Lenny Chiraboga stated that the first location for commercial boat storage is screened because there is a building in between it and Lower Brereton Road. From 9N they are screened because they are much lower and not very visible. He continued to describe the other locations for boat storage.

G. Smith asked if any public in attendance wish to speak on the matter. Dave Dougal who indicated that he lives on Lower Brereton Road and shares a dock with Ray Oliver. He stated that his dock is the closest to the applicant's property. G. Smith asked if that was on the south side of the Fire Departments access road. Dave Dougal replied yes. He stated that he is opposed to the application. He is concerned that the applicant misrepresents his planned number of boats. T. DePace asked if the number was in regard to rental or storage boats. Dave Dougal replied rentals. T. DePace stated that currently he is only permitted 7 motorized crafts total and that he would have to return to the LGPC to obtain permission for more. Dave Dougal stated that he understands that but he believes that his intention is to increase that number. He stated that the operation of those boats is a safety concern for him. He stated that there are 4 or 5 neighbors who oppose the plan for the office and the expansion that he intends to do. G. Smith stated that the applicant is there to get approval for an office and even if he does not get approved he still has the marina permit to run the rentals and this will not change anything. D. Dougal stated that the applicant's plan is to go beyond this. K. Hoopes stated

that he is maxed out in space already because he has customers renting dock spaces and he has the rentals. T. DePace stated that if he feels that he is operating more boats than he should that they should take that up with the LGPC. Dave Dougal stated that the applicant is applying for permits to expand his marina. K. Hoopes stated that this is beyond their jurisdiction.

W. Pfau stated that the code states that the commercial boat storage cannot be visible from the public right-of-way. P. Kenyon agreed. Lenny Chiraboga stated the only year round residents are the Ludwigs and they do not have a problem with it. M. McComb asked if Lake George was considered a right-of-way. Counsel replied yes. W. Pfau stated that the area is pretty well screened from the lake. M. McComb stated that the trend is that there is increasing amounts of year round residents and they should be taking all neighbors into consideration. K. Hoopes agreed, but stated that for the most part the boat storage is not visible. G. Smith agreed and stated that the biggest issue from the neighbors is the operation of the marina business.

J. Anthony stated that he is concerned with a note on the map indicating potential new parking spaces and/or winter boat storage. He is concerned that there will be 10 more boats stored here than indicated. Lenny Chiraboga replied no and that he would not put boats on the grass. M. McComb agreed with J. Anthony. G. Smith asked what the maximum amount of boats the applicant is requesting to store on the property. K. Hoopes stated that they should limit him on the amount of boats he is allowed on the property. T. DePace asked if the applicant will have to go before the LGPC for boat storage. P. Kenyon stated that the LGPC is going to tell the applicant that he needs approval for commercial boat storage. T. DePace asked if the applicant should go there first. P. Kenyon stated that they will not grant anything until they hear from the Town of Bolton. G. Smith stated that currently there are 24 boats being stored on the property. K. Hoopes stated that if anyone is uncomfortable with that number that they can make it a condition of approval. J. Anthony stated that he just wants the words "and winter boats" off of the map. G. Smith stated that they can do that to as well. Lenny Chiraboga stated that he would agree to that and to the maximum of 24 boats stored on the property in the winter. T. McGurl asked if these boats are limited to where they see them on the map or can they put them where they want, because he is not convinced that they are being placed where they say that they are indicated on the map. K. Hoopes stated that they could state as a condition, a maximum of 24 boats as indicated on the map. M. McComb stated that looking at one of the storage areas the map indicates 10 spots and currently there are 7 and she doesn't see how they will be able to accommodate 3 more boats. Lenny Chiraboga stated that the map is drawn to scale and that it is all in the way that the boats are parked. He stated that currently he does not have 10 boats to put there and he was projecting a potential of 10 boats in the future.

M. McComb stated that the office doesn't seem to cause anything but an improvement of the marina rental situation but the adjacent properties cannot be screened from commercial boat storage along the lake. W. Pfau stated that it has to be screened from the right-of-way and not from adjacent properties. T. McGurl stated that he is concerned that they have put more conditions on commercial boat storage in the past. M. McComb stated that they have also considered adjacent property owners views in the past. K. Hoopes stated that they should look at each application separately and act separately.

Counsel encouraged the Board to discuss feasible alternative with regard to the shoreline setback. For example, the applicant is applying for a 12' x 12' office which is logically

situated near the marina, but a 10' x 10' office would not need this setback relief, because it could be there as a matter of right and that is a feasible alternative. M. McComb asked if there was going to be any signage on the building. Lenny Chiraboga replied that they may possibly have a 2 ft. sign that would not be illuminated because there is no night operation. M. McComb stated that it is a nice trade off that there will be no sign and the building will not be placed in the middle of the waterfront. It is a less obtrusive location and the extra 44 sq. ft will be useful to the business.

M. McComb asked if they could separate the application into two variances. Counsel replied that they could look at it comprehensively or separately. K. Hoopes stated that he doesn't see why they should separate the application because it all goes together. It also goes to the PB and they get to add their input as well. He feels that it is reasonable to assume the constraints on the map because he cannot launch boats, he has docks in place and very little wiggle room. He does not see this as increasing the congestion in the bay because it has be full marina right next door and it is located in a busy area of the lake. T. McGurl stated that he would like to see the application separate. He has no problem with the office, but does have a problem with the boat storage. He questions how well screened this will be. K. Hoopes stated that they have discussed limiting the number of boats allowed and their locations. T. McGurl stated that he is comfortable with the 10 spots behind the motel unit but does question the other locations. J. Anthony stated that the map indicates that these boats are 20 feet long. Counsel suggested that they could set the limit of space in linear feet as opposed to number of boats and let the applicant decide what size boats to fit within that limited space. He continued that although it important to determine the number, Site Plan Review would be the proper place to be doing the calculations but the ZBA can certainly express their concerns and make their recommendations. He stated that their task is to determine if the applicant can have a shoreline set-back for an office and set-back variances from the public right-of-way. G. Smith stated that they will split the variance and start with the shoreline variance first.

Note: The application was separated into two variance requests as follows:

## **RESOLUTION**

The Zoning Board of Appeals received an application from Thunderbird Motel of Lake George (V08-09) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#9 (1) of the agenda. Marina Office.

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; including having a 10 x 10 shed could be located in a less advantageous position as of right and this seems a better alternative,
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is associated with a specific existing rental business, and in no way increases that capability,
- 3) The request is substantial; with regard to the ordinance but it is toward the center of the applicant's property and is in the least obtrusive location for the building,
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it is not going to be a constructed building, but a pre-fab placed building,
- 5) The alleged difficulty is self-created, but a desire to assist a motel owner in making his business more profitable outweighs that,

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

Now, upon motion duly made by Meredith McComb and seconded by William Pfau, it is resolved that the ZBA does hereby approve the variance request for the marina office as presented. Jeff Anthony opposed. **All others in Favor. Motion Carried.**

## **RESOLUTION**

The Zoning Board of Appeals received an application from Thunderbird Motel of Lake George (V08-09) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#9 (2) of the agenda, commercial boat storage.

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; because of the setbacks from Brereton Road,
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, because there is a filtered view of the boats and they are in front of closed motel units on a closed property in the winter on a road under little use in the winter,

- 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; there are very few neighbors that can see it as a storage business,
- 5) The alleged difficulty is not self-created, because of the size of the property,

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

Now, upon motion duly made by William Pfau and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented with the following conditions: 1) recommend to the Planning Board that the boat storage be confined to where it is depicted on the map as 24' x 20' and to determine linear footage of 480 sq. ft. in the footprint shown on the map. Jeff Anthony was in favor. Tony DePace, Greg Smith, Tom McGurl and Meredith McComb opposed. **No Board Action.**

Counsel encouraged the applicant to meet with the Zoning Administrator to come up with a different plan for commercial boat storage.

- 10) **V08-10 TWIN BAY VILLAGE. Tamara Chomiak.** Represented by Atty. Matthew Fuller, Matt Steves of VanDusen and Steves, and Daniel Ryan of Vision Engineering. For a proposed 44 unit townhouse project, in accordance with Section 200-37B(4) Shoreline Regulations, seeks area variance for deficient shore frontage. 565' of shore frontage is required, 122' exists. Section 186.06, Block 1, Lot 14.1 and Section 186.07, Block 1, Lot 7, Zones RM1.3, RL3 and RCH5000. 4804 Lake Shore Drive. Subject to WCPB review. *NOTE: This application is in conjunction with SD07-25.*

Matt Fuller stated that they are seeking approval for the number of units allowed under the zoning. The motel structure on the east side of 9N and the two parts of the motel unit on the west side of 9N would be razed. The calculation of proposed units was based on the total motel units. He discussed some of their feasible alternatives and how they got to the proposed plan based on aesthetics, septic and stormwater needs. The amount of units proposed has not been finalized because they are still discussing the septic system designs with DEC, which will ultimately decide the number of bedrooms and units they can have. They have had a preliminary meeting with DEC and they seem to favor the community septic that they are proposing. He stated that the single family residences will be duplex units. He stated that the 99 feet of shore front was measured as it winds and turns and doesn't include docks.

Dan Ryan, Project Engineer, stated that currently the land is considered intense use with regard to impervious surfaces. One of the benefits of this project is that the motel on the lakeside of 9N will all be completely removed. In addition, the congestion and density of use on the west side of Route 9N will be removed to allow for future development up the mountainside. He stated that the parcel is 30 acres with only a couple of acres being utilized. He feels that spreading this project out will add a lot of benefits from the perspective of septic, stormwater and other features of the site. In meeting with DEC and designing the septic they have done test holes. He stated that they have done some preliminary grading layouts to maintain a 12% or less grade on the proposed road.

Matt Fuller stated that the property is going to be commonly owned. The individual unit owners would own their footprint and the association will own all of the common areas including the lakeside. He described the lakeside plan. He stated that they envision some sort of common area or lounge with lockers and bathrooms.

W. Pfau asked if any of the individual homeowners would have a dock space. Matt Fuller replied no. The family owns the Villa and they have a dock which will remain. He stated that they are not going to change the docks in anyway. However they are still considering the possibility of the homeowners association have a boat or kayaks for community use.

T. McGurl asked how they can approve the variance for 44 units if they don't know what the total number of units will be. Matt Fuller replied that they applied for the maximum number to get it out of the way. T. McGurl stated that he was uncomfortable starting a large project with a sizable variance right off the bat. Given the shore frontage he asked how many units they would be entitled to without a variance. P. Kenyon replied that according to the code they would be entitled to one unit. T. McGurl stated that the variance that they are asking for is pretty substantial. M. McComb stated that she is comfortable talking about the project if this is a conceptual presentation, however she is uncomfortable talking about approving a variance without knowing the specifics of the project. She is also concerned that there is not necessarily a great trade off in the removal of the densely used areas and spreading it around because there are still a lot of driveways, construction on the mountainside and maintenance of the roadways. K. Hoopes disagrees and feels that the applicants are reducing the intensity of the impact on the shoreline through this project. He doesn't feel that all of those individuals will be using the shore front at the same time. T. McGurl stated that they could and they should be dealing with maximum possibility of usage. T. DePace stated that even if each unit had 2 people and all used the beach at the same time, they are going to take care of the property better than someone there for the week. W. Pfau stated that he was uncomfortable with the amount of units proposed. Matt Fuller stated that they decided to go for the maximum, but by no means do they expect to be able to accommodate that. He stated that the number was based on P. Kenyon's calculations and the real number will be dictated by when they get into the large engineering part of it with the PB and that number will get to where it really is. T. McGurl stated that he doesn't disagree with the project overall but is extremely uncomfortable with 44 units. K. Hoopes stated that they are going for their maximum but doesn't feel that they will be able to get their maximum. He stated that they are getting rid of all of the buildings on the roadsides and will expand onto the 30 acres up the mountainside. He stated that all of the buildings on the plans will be beyond screened and will provide a relatively unobstructed view of that bay. The applicant is not envisioning dock slips for everyone and any docks that are there are subject to other regulatory agencies. T. McGurl stated that they are going to have to find out the maximum number of units allowed anyway, so why not wait to present this application with the number they are seeking.

J. Anthony stated that he is not opposed to this type of project. He continued that it is not out of sequence to do their homework first which they will have to do anyway to get a DEC or DOH permit and come to the Board with a real number because they are going to have to get there anyway before you go to PB or any other agency. He stated that granting a variance for the maximum allotted is contrary to the ZBA's mission and goal to approve the minimum variance possible. He suggested that the applicant do more work and develop the project in more detail and then bring it back to the ZBA with a complete application. W. Pfau agreed and

stated that when they do return he is still going to recommend that it goes to the PB for their recommendation. G. Smith agreed.

G. Smith asked if any public in attendance wished to speak on this matter.

Doug Langden stated his family owns property on the southwestern aspect of the proposed project. He stated that he and his family support cleaning up both the lakeside and west side of 9N. However he is concerned with the restricted shoreline and 44 units. He stated that they are concerned with congestion on the beach next to their property. He stated that his grandchildren did some calculations and if each unit has 3 people in it at any one time they would have 0.92 ft or 11 in. of shoreline a piece and if 4 people were using each unit they would have 0.69 ft or 8.28 in.

Dennis Phillips representing Don Russell and Charles McNulty who are adjoining neighbors to this property. They have a right-of-way across this property as well. He stated that they had an opportunity to speak with Matt Fuller before this meeting to discuss the project and his clients are supportive of the concept. He stated that they have no opposition to a variance being issued. He stated that their concerns are PB issues in terms of how the density ultimately results from what the sewage disposal will allow and the small bay and dockage.

Chris Navitsky, Lake George Waterkeeper, stated that he feels that some benefit can come from this project, such as redevelopment of the site, cleaning up the shoreline and reducing the impervious surfaces. He asked if there was a grandfather for the lot that was subdivided. P. Kenyon stated that the docks were part of the calculations as required. He is concerned that they may need APA approval. He feels they may be getting ahead of themselves if they grant the variance and find out that the project isn't even feasible. He commented that he feels that the land will get better use. Typically when families come to vacation they don't always spend their time on the lake they visit other areas. People with townhouses or second homes typically will come and utilize the lake. With regard to Twin Bay's website it mentions cottages and cabins and asked if they were part of the hotel units that will be razed or are they around the Villa. Matt Fuller replied that the cabins by the lake are to be razed, but the cabins around the Villa the family intends to keep. M. McComb asked if all of those cabins around the Villa all have the right-of-way to same 122 ft of waterfront. M. Fuller replied yes.

Andrea Maranville, Director at the Marcella Sembrich Memorial Association, stated that the Board of Directors has not had the opportunity to review a comprehensive proposal. Given that there is no way of knowing the potential impacts on the zoning variance request without seeing a proposal they are requesting that the ZBA table this item pending a comprehensive plan to comment and provide an opinion on. Matt Fuller stated that he will provide a copy of the plan.

Leslie Russell adjoining property owner stated that she is concerned that if they include the additional cabins around the Villa and the proposed 44 units, the beach is going to be very congested and really adds to the density of the property.

Matt Fuller requested that the Board table this item until they can gather more information to present a more comprehensive plan.

## **RESOLUTION:**

Now upon motion duly made by Meredith McComb and seconded by Kam Hoopes it is resolved that the ZBA does hereby table the application at the applicant's request. **All in favor. Motion Carried.**

- 11) **V08-11 LIEBLER, JAMES & ANN MARIE.** For the placement of an 11' x 12' storage building, seeks area variance for a deficient side yard setback. 30' is required, 22.6' is proposed. Section 199.07, Block 1, Lot 5.32, Zone RCL3. Property Location 349 South Trout Lake Road. *Note: After the fact.*

James Liebler stated that he put a shed on the property when he was building his house. He didn't realize that he needed permit for the shed or that he did not meet the setback. He stated that he can't move it closer to the house because of the driveway. Because of the setbacks the only other places to put it would be on the other side of the house or the front lawn. He stated that the structure can be moved, but he has a generator that he has wired to the house, so he would have to change that. K. Hoopes stated that he would have placed the shed in the same location and doesn't see any other placement as an improvement on the location. He stated that the applicant is not infringing on any present neighbors. W. Pfau agreed. G. Smith stated that if the structure was foot shallower and 2 ft narrower, the applicant would not have had to come for a variance. T. McGurl asked if the measurement of the structure was based on the floor or the eaves. James Liebler replied the eaves and the floor is 10' x 10'. J. Anthony stated that he had no problem with the application and was pleased to see that there is vegetation behind the shed which is in the setback area. He asked the applicant if he plans to keep that vegetation. James Liebler replied yes.

G. Smith asked if there was any correspondence. P. Kenyon stated there is no County Impact.

## **RESOLUTION**

The Zoning Board of Appeals received an application from James Liebler (V08-11) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#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;

- 2) There will be no undesirable change in the neighborhood character or to nearby properties, presently there aren't any nearby properties, and if there were it wouldn't be,
- 3) The request is not substantial; because if the eaves were removed, he wouldn't even need a variance,
- 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 self-created, it is not a problem in granting the variance,

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

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

- 12) **V08-12 SCHWEICKERT, THOMAS & DORIS.** Represented by D.L Dickinson Associates. For the construction of an approximate 187 sq. ft. retaining wall, seek area variance for deficient setbacks. 1) Front. 75' is required, 35' is proposed, and 2) Side. 20' is required; 2' is proposed. Section 156.00, Block 2, Lot 11, Zone RM1.3. Property Location: Federal Hill Road. Subject to WCPB review.

#### **RESOLUTION:**

This item was withdrawn at the applicant's request.

- 13) **TOWN BOARD.** To discuss proposed amendment to Chapter 125 "Stormwater and Erosion Control" Section 125-5D; Chapter 150 "Subdivision of Land" Section 150-3C; and Chapter 200 "Zoning" Section 200-8C of the Town of Bolton as follows: The definitions provided within the New York State Uniform Fire Prevention and Building Code and the Energy Conservation Construction Code shall be available to supplement and assist in the application of the provisions of this Chapter wherever this Chapter shall fail to provide its own definition or meaning. In the event that local law, town code, town ordinance or zoning board of appeals interpretation defines, authorizes or provides a clear definition, stricter requirement, interpretation or specification, such town code, town ordinance or zoning board of appeals interpretation shall prevail.

Councilmember Rehm stated that she was there to support Counsel's proposal to use the NYS Uniform Fire Prevention and Building Code and Energy Conservation Construction Code as supplements to our Town Code. These supplements would only be used when there the Code is lacking a definition or if there is a need for clarity in Town Code. She stated that the Town Board has agreed that it make sense for them to have some credible resource to use. She stated that they are encouraging the supplements use in definition only and not suggesting that the NYS Building Code is going to replace the Zoning Code.

P. Kenyon stated that she is concerned in using these supplements because there are 6 books to refer to. Councilmember Rehm stated that she did not realize that the NYS Building Code was so extensive and had hoped that there would be one place to look up definitions as in the Town

Code. Unfortunately there are several places to look up definitions and it may not be necessarily an easy tool to use but it will be an approved credible source for those rare occasions when the Town Code is lacking. She stated that if she thought that these books were to be used everyday, she wouldn't even be recommending it. Counsel stated that the sole purpose of this proposal was because he was asked by the Town Board to come up with a credible resource. He stated as protocol they look at Town Code first and if that fails them, then they look at Town Ordinance and if that fails them, they go to a ZBA interpretation. He continued that absent all of that and they have no place to find a definition they would resort to the definitions that are available in the NYS Building Code. This is not something specifically mentioned in the Code and is something sought in the Code to lock it in so that it is a resource that is credible and required. Councilmember Rehm reminded the Board that if past Town interpretations are stricter then they will stand.

K. Hoopes asked if this was just to be used by the Zoning Office and that applicants cannot just come in and look up definitions. Councilmember Rehm stated that many of the applicants are represented by attorneys and architects from outside of the area who may be familiar with the NYS Building Code and this could ease any confusion. M. McComb stated that she is concerned that people from other places will decide that this is something that they can look at. She stated that she would be favorable if there was one list of definitions in the NYS Building Code but she is uncomfortable that the definitions are spread over 6 books. She has spoken to some individuals who have used the NYS Building Code and they have indicated that looking up a simple definition will bring in so many more factors to consider and create more complexity. She feels that their past practice of the Zoning Administrator providing an interpretation or the Zoning Administrator asking the ZBA for an interpretation has served them very well in the past and does not wish to change that. G. Smith and W. Pfau agreed.

K. Hoopes agreed with Councilmember Rehm that the use of these books would be extremely rare. J. Anthony agreed and stated that it would make him feel more comfortable knowing that something is there to assist them.

Councilmember Rehm stated that Counsel has also provided the Zoning Office with the American Institute of Architects book and asked if that was easier to use. Counsel replied yes. Councilmember Rehm asked if it has definitions. Counsel replied yes. Councilmember Rehm asked why Counsel didn't recommend the AIA book as their resource. Counsel stated that this proposal would be incorporated into the Code. He chose the NYS Building because the Court recognizes this source to apply definitions where the definition is not locally available. He stated that the AIA book is not as expansive as the NYS Uniform Code, but is an excellent source. He continued that whatever they choose, the Zoning Office needs to be consistent in its use. T. McGurl stated that if they adopt the NYS Building Code could an applicant use the Code in an appeal and state that the Town is not using it. Counsel replied yes in the early stages, but with an interpretation the ZBA decision would prevail. P. Kenyon stated that she is already using the AIA book and finds it easy to use and resourceful. K. Hoopes asked why they needed to adopt new language if it is something that she is already using. Counsel suggested substituting the AIA book in place of the NYS Building Code in the proposal. Councilmember Rehm stated that it should be put into the Code so that everyone knows that this is the back up document when the Town Code is lacking. G. Smith agreed that it should be in writing. J. Anthony stated that the NYS Building Code is of a higher authority than the

AIA book but agreed that he does not know how much they want to get into researching a definition.

Counsel asked for some clarification. He stated that P. Kenyon likes and uses the AIA book, Mitzi Nittmann uses the book, and asked the ZBA if they were comfortable with using the AIA book as a source. M. McComb opposed. All other Board members were in favor.

J. Anthony wanted to make the Board members aware that next week is Adirondack Government Days at the Crowne Plaza in Lake Placid. It is sponsored by NYS Department of State and the APA. He stated that they offer a lot of seminars, workshops and discussions that are credited toward their continuing education as Board members. He stated that there is one good discussion on shoreline development as interpreted by the APA and as presented by the Department of State.

Meeting was adjourned at 11:15 p.m.  
Minutes submitted by K. MacEwan