

**Town of Bolton**  
**ZONING BOARD OF APPEALS**  
**MINUTES**  
**Monday, September 15, 2008**  
**6:30 p.m.**

SEQR = State Environmental Quality Review  
PB = (Town of Bolton) Planning Board  
WCPB = Warren County Planning Board  
APA = Adirondack Park Agency  
LGPC = Lake George Park Commission  
DEC = Dept of Environmental Conservation

**Present:** Chairman Greg Smith, Tony DePace, Kam Hoopes, Meredith McComb, Jeff Anthony, Zoning Administrator Pamela Kenyon and Counsel Michael Muller.

**Absent:** William Pfau

Meeting was called to order at 6:30 p.m.

Greg Smith asked if there were any changes or corrections to the August 18, 2008 minutes.

Motion by Jeff Anthony to approve the minutes as written and read. Seconded by Kam Hoopes. Tony DePace abstained. All others in Favor. Motion Carried.

**1) V08-43 MUMBLOW, RUTH.** To alter pre-existing non-conforming single family dwelling, specifically to alter the roofline, construct a 5' x 10' rear porch and a 10' x 18' deck on the southeast side, seeks area variance for a deficient front yard setback. 75' is required, approximately 35' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-57B (1)(b). Section 186.00, Block 1, Lot 15, Zone RL3. Property Location: 840 Trout Lake Road. Subject to WCPB review.

Ruth Mumblow stated that they are seeking to replace their leaky roof and fix the back porch. She stated that they plan to extend the kitchen window to give a little additional space in the kitchen and they want to improve the outside of the house with the new deck. Greg Smith asked if 90% of the work would be done on the back side of the house. Ruth Mumblow replied that part of the deck is on the side of the house but the majority of the work is to the back of the house and it will not be visible to neighbors. Meredith McComb stated that this project was designed to be the least obtrusive as possible and the applicant is making some necessary repairs.

Pam Kenyon stated that there was no Warren County impact or correspondence related to this application. There were no comments from the public in attendance.

**RESOLUTION:**

The Zoning Board of Appeals received an application from Ruth Mumblow (V08-43) 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 it is attached to a pre-existing non-conforming structure.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, because it is largely screened by the existing structure.
- 3) The request is not substantial; in terms of acreage and the building that is being added onto is not substantial in relation to the acreage that exists.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it will be a safety improvement and an improvement to the existing structure for the applicant's benefit.
- 5) The alleged difficulty is self-created, but it is not outweighed by the benefit to the applicant.

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

**2) V08-42 ERIC FAHLBORG.** To alter pre-existing non-conforming motel buildings, specifically to add a 8'x 10' deck on unit 10 and a 5'x 20' deck on unit 30, seeks area variance for 1) a deficient side yard setback on unit 30. 15' is required 13' is proposed; and 2) to alter a pre-existing non-conforming structures in accordance with Section 200-57B(1)(b). Section 213.17, Block 1, Lot 33, Zone RCM1.3. Property Location: 3842 Lake Shore Drive known as the Juliana. Subject to WCPB REVIEW.

Eric Fahlborg stated that the deck for Unit 30 is the same design as a deck previously approved 2 years ago but is half the size so that it does not block the sunlight on the unit below. The decks will be using the same redwood stain. With regard to the deficient side yard setback he stated that he is proposing 13.5' and he is requesting a 1.5' so that it lines up with the deck above it. The deck for Unit 10 deck is the same style and meets all of the setback requirements.

Meredith McComb stated that she has been very supportive of a lot of expansions on this property. However, she was against the upstairs deck the last time because it overlooked a neighbor's property. Eric Fahlborg stated that he brought pictures taken this summer to show that a screening is now in place.

Kam Hoopes stated that he has been in favor of this project since they first heard about it. He thinks it not only adds a lot of value to the rooms involved but it also helps with the aesthetic qualities of the buildings themselves. Greg Smith agreed. Meredith McComb stated that the parcel has a great deal of development on it, however, the proposal will not increase impervious surface. She stated that she has been in favor of supporting individuals that want to keep participating in the tourist industry. She feels the pictures that the applicant brought shows sufficient screening from the neighbors since the applicant's last expansion.

Pam Kenyon stated that there was no Warren County impact or correspondence on this application. There were no comments from the public in attendance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Eric Fahlborg (V08-42) 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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this motel has been there since 1964 and it is a well established business.
- 3) The request is not substantial; considering the size of the operation.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; they are simple decks.
- 5) The alleged difficulty is not self-created, this is something that will be an improvement to the operation of the motel.

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 Meredith McComb, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

**3) V07-27 GALLO, GLORIA.** Represented by Jim Miller of Northfield Design. To alter pre-existing non-conforming single family dwelling, specifically to alter the roofline, modify the deck and construct an approximate 30'x 30' terrace, seeks area variance for deficient setbacks. 1) Shoreline. 50' is required, 28' is proposed; 2) Rear. 15 ft. is required, 6.32 ft. is proposed; 3) To alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 3, Lot 85, Zone GB5000. Property Location: 7 Congers Point North. Subject to WCPB determined no county impact.

Greg Smith stated that the ZBA has been told that the 30' x 30' terrace has been removed from the application. Jim Miller stated that he was correct.

Jim Miller stated that the applicant is seeking to do a facelift of the current building. They will not be increasing the footprint or the area of the structure. He stated that the project entails a couple of new dormers on the lake side and a new structure to deflect the rain from the entrance on the west side. The project will also involve new siding, new windows and a re-configuration of the deck and the actual surface area of the deck will be smaller. This project will be brought up to current standards. Greg Smith asked if the roof line will remain the same. Jim Miller replied that the height of the building will not change. Greg Smith stated that Congers Point HOA has sent a letter of support for the application. Meredith McComb asked if the terrace will be built at all. Jim Miller replied that they will have to come back for that request at a later date. Meredith McComb stated that the roof height will remain the same but asked if the volume will be increased with the new dormers. Jim Miller replied yes, but there will not be any living space in those dormers and they are primarily there for aesthetics. Meredith McComb asked if it will block anyone's views. Greg Smith replied no because they are on the front of the house and there is nothing between their house and the lake. Jim Miller stated that they are also well below what is allowed for roof height. Meredith McComb asked if the deed covenants of the HOA were more restrictive on roof height. Jim Miller replied not in this association.

Pam Kenyon stated that there was no Warren County impact and one letter from the Congers Point HOA in support of the application. Greg Smith asked if there were any comments from the public in attendance.

Kathy Bozony, Lake George Waterkeeper, requested that the ZBA have some discussion about stormwater management to be included in this application. She stated that she would also like to hear some discussion about this hard surfacing on the water. She stated that the topography shows that there is a slope that goes down to the lake. Meredith McComb stated that the terrace has been removed from the application so that aspect is no longer of concern. She stated that the applicant has mentioned some stormwater management on the west side of the house. She continued that Congers Point, given the existing conditions down there, could use whatever stormwater measures that could be added to this project. Kathy Bozony stated that since the terrace has been removed from the application she suggested that they add some shoreline buffering instead of the lawn in that area.

Meredith McComb asked if the applicant could describe what, if any, plans they had to incorporate stormwater management. Jim Miller stated that there will be no disturbance of the soil. Meredith McComb stated that although stormwater management is not required to be

implemented on this project but given the run-off situation that exists, if there is an opportunity to incorporate any of this as they resurface it would be a benefit to the lake and the property owners. Kam Hoopes asked if there is any evidence that shows there is a run-off situation on this property. Meredith McComb replied that she is not saying that this particular property has an existing run-off problem, but they are next to the lake. Kam Hoopes stated that he is opposed to surprising the applicants at the last minute with requests that don't have anything directly involved with the project. He stated that this is not an expansion and until a problem is established this Board does not have any business dealing with that. Jim Miller stated that on the west side the applicant has a water seepage problem and they are proposing to excavate along the existing foundation to put in a drain and they could put in a liter and gutter system on that side to hook into that new drain. Meredith McComb stated that the applicant has now stated that there is a problem with stormwater and she thinks it would be useful to the homeowners in their enjoyment of their property and to the water quality of the lake for the ZBA to discuss these issues.

With regard to treating stormwater in areas that run directly into the lake, Kathy Bozony, stated that their website has pictures as to the situation that is occurring under the surface of Lake George. She stated that there has been an increase in algae growth this year. She stated that she has been photographing just 200' north of this area which has a tremendous amount of algae growth. She stated that the algae is directly related to stormwater run-off, septic systems not working properly and fertilizers used on lawns. She stated that although this is not part of the agenda tonight, stormwater management and properly working septic tanks are our agenda. She stated that it is critical that they all take note that rain gardens and shoreline buffers would be of great benefit to this application. With regard to the algae, Kam Hoopes stated that he saw some algae in areas that he has never seen before and decided to speak with Larry at the Darrin Freshwater Institute, who identified it. He stated that he also spoke with Kathy Bozony and her water tester if a good nutrient for the algae would be goose fecal matter because the Town had a family of 30 geese circling in these areas of concern. He stated that he has not seen the geese in awhile and also has not seen the algae in amounts seen before. He stated that he feels that this particular problem that has been primarily confined to Bolton and Huddle Bay seems to have been alleviated to a certain degree. Meredith McComb stated that she does not have geese around her property and she was underwater last week and saw algae by her house and near the neighbor's property. She does not feel bad about educating applicants who have beautiful homes and want to contribute to the environment in which they live. Jim Miller stated for the record that the applicant's house, as well as all of Congers Point, are on public sewer. Kathy Bozony provided photographs of the algae and stated that the samples of algae was indicative of nutrient load and some from human waste, and not from animal waste.

Jeff Anthony stated that he would like to see some containment for the roof run-off at the drip line which is not all that expensive to install. Kam Hoopes stated that the applicant has stated that they plan to do gutters, drains and a dry well. Jeff Anthony agreed but stated that he would like to make that a condition of approval. Kam Hoopes stated that they will not have to because the applicant has already stated that they plan to do that. Meredith McComb stated that she did not have a problem making that part of the motion. Greg Smith agreed because if the applicant stated they intended to add stormwater controls anyway they will not mind having it as part of the motion and it will make sure that it gets done.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Gloria Gallo (V07-27) 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 and amended by removing the 30' x 30' terrace.

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 fairly simple request at the moment. It is a facelift on an existing building. It is not increasing the size of the building or the quantity of run-off. It is not increasing the roof height or roof lines so it is not affecting any views.

2) There will be no undesirable change in the neighborhood character or to nearby properties, it will be a positive change to the community by improving the quality of the visual character of the building.

3) The request is not substantial; this is an upgrade to the building's skin and it has nothing to do with landscape or environmental conditions.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the applicant has suggested that he will comply with minor stormwater criteria to be applied to the project by infiltrating roof run-off which will have a positive affect on the environment.

5) The alleged difficulty is self-created, nobody has to improve their property but certainly this is a step in the right direction and it is a good request for an area 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 Jeff Anthony and seconded by Meredith McComb, it is resolved that the ZBA does hereby approve the variance request as amended with the following condition(s): 1) to incorporate minor stormwater measures into the project, and 2) the 30' x 30' terrace has been eliminated. **All in Favor. Motion Carried.**

**4) V08-41 DONALD LYNCH.** Represented by Daniel Ryan of Vision Engineering. For an approximate 240 sq. ft. retaining wall to remain in its present location, seeks area variance for deficient setbacks. 1) Front. 50' is required, 41' is proposed and 2) Side. 15' is required, 13' is

proposed. Section 171.07, Block 2, Lot 10, Zone RCM1.3. Property Location: 35 Juniper Hill Drive. Subject to WCPB review.

*Note: Agenda item #4 V08-41 was heard after item #6 V08-36 at the applicant's request.*

Kam Hoopes asked if this application was an after the fact application. Pam Kenyon replied yes. Kam Hoopes stated that by the looks of it a retaining wall is absolutely necessary in this case. Donald Lynch replied yes. Greg Smith asked why he built the retaining wall without a permit. Donald Lynch replied that he didn't know that he didn't have the permit for the retaining wall. He had a permit for the building structure and didn't realize that it did not include the retaining wall. Meredith McComb stated that there is sometimes an issue that as walls grow and as the project becomes clearer, it exceeds the definition that makes it into a structure which might not have been anticipated. She stated that this wall is not between the applicant and a neighbor but rather holding back the two levels of lawn. Kam Hoopes agreed that this does not interfere with any neighboring property, it is a small request and he does not see how the applicant could have accomplished his entire project without the retaining wall. He feels that it is a reasonable oversight and reasonable request. Jeff Anthony agreed.

Pam Kenyon stated that there was no WC impact. There were no were no comments from the public in attendance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Donald Lynch (V08-41) 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; the applicant needs that size wall that was installed to hold back the area of earth he needs to make this project work.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is a wall abutting a neighboring property and it will keep erosion minimized by its existence.
- 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; it will have positive rather than negative environmental effects existing.

5) The alleged difficulty is self-created, because it is an after the fact application but the small size of the project seems a reasonable oversight to forgive with a variance at this point.

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

**5) V08-10a 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 50 unit townhouse project, seeks area variance for **1) deficient density:** 43 acres required, 37.6 acres exists; and **2)** in accordance with Section 200-37B(4) Shoreline Regulations, seeks area variance for deficient shore frontage. 625' 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 and was tabled at the July 14, 2008 ZBA meeting pending a recommendation from the PB. The PB recommended no more than 44 units which would require no variance for deficient density and that the ZBA use the formula that starts with 44 units and for every unit deducted from the proposal the applicant gains a lake access right and if there is no reduction of units no variance should be granted for deficient shore frontage.*

*Note: Agenda item #4 V08-41 was heard after item #6 V08-36 at the applicant's request.*

Meredith McComb asked if the ZBA could discuss the density issue based on the PB's recommendation. She stated that Pam Kenyon calculated the density accurately but feels that the developer gave her figures based on 7 acres that are not part of this project. She feels that Pam's determination of density should be reduced by those 7 units that were part of her determination last December. Kam Hoopes asked the Counsel what the proper procedure is for this and asked if they should be discussing this without the applicant's presentation. Counsel replied that although Meredith McComb's question is valid and appropriate, the process begins with the applicant's presentation.

Kamil Homsey of the Global Realty Group, who is financing the project, stated that due to lack of representation from both their attorney and engineer that they would like to request tabling the application to be heard next month.

**RESOLUTION:**

Motion by Kam Hoopes to table the application at the applicant's request until the October 2008 meeting. Seconded by Tony DePace. **All in Favor. Motion Carried.**

**6) V08-36 BROOK HILL DEVELOPMENT, INC.** Represented by the L.A. Group. In accordance with Section 200-93A (Other regulations applicable to planned unit developments), seeks area variance to relocate Building 200 approximately 25' to the north. Section 157.05, Block 1, Lot 88.21, Zone PUD. Property Location: Fox Run, Lagoon Manor. Subject to WCPB, PB and APA review. *The PB gave a favorable recommendation.*

*Note: Agenda item #6 V08-36 was heard before item #4 V08-41 and #5 V08-10a.*

*Note: Jeff Anthony recused himself from this application.*

Jeff Anthony of the LA Group stated that normally he would not present to the ZBA but he has been the consultant for this project since 1987 and he is the only one left in his office to represent this project because no one else knows anything about it. He stated that the request is due to the fact that Building 100 which was built in 2000 was moved approximately 30' west of where it was originally approved. This request was approved by the APA as well as the Town of Bolton. The building was moved because the topography in that area was not spec under the original survey and they wanted to move it off of some steep slopes and shallow bedrock. He indicated on the map that Building 100 is now in the up against the site for Building 200. When the APA approved the relocation of Building 100 they knew that they would have to request an amendment to the PUD to move Building 200. They didn't move 200 at the time because they were interested in getting 100 done, as well as solve other problems at Lagoon Manor, such as upgrading the sewage system, stormwater management, and water systems as well as other things the APA requested. The culmination of that request was that they completely re-wrote APA permit #89-292A and there is now a completely new permit #89-292B which has been approved by the APA and allows them to move Building 200 roughly 30' to the north. This area was prepared when the site work was done for Building 100. The area has been graded flat, the access road/driveway was built, the utilities were installed for the site and will just need to be attached to the actual building. Permit #89-292B the APA requested to upgrade the stormwater management plan to current Town, State and DEC standards. They have done that completely on their own and the existing plan meets today's standards and it is for the entire project including existing and future buildings. There is a SWIP permit issued by DEC in place and it governs all the construction on the site. Jeff Anthony stated that the PB already approved this at last month's meeting and the WC PB has also approved this application. Pam Kenyon stated that she did not have the approval from the WC PB on file but she does not think that there any County impact. Jeff Anthony stated that the APA requested that they have a concurrence letter from the HOA at Lagoon Manor approving the relocation of Building 200 and they have that as well.

Meredith McComb asked if the height elevation would not block any existing building's views. Jeff Anthony replied that this building is actually behind all of the other buildings and he further explained the location using the map plan.

### **RESOLUTION:**

The Zoning Board of Appeals received an application from Brook Hill Development, Inc (V08-36) 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; it is a dimensional consideration.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this has been a long part of an original plan and it is a part of the neighborhood character.
- 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; and to the contrary the entire project has been upgraded to a state of the art, modern standard for environmental protection.
- 5) The alleged difficulty is not self-created, this was part of the original plan and it was altered due to terrain considerations.

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 recused himself. **All others in Favor. Motion Carried.**

Meeting was adjourned at 7:21 p.m.

Minutes submitted by K. MacEwan