

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
December 15, 2009

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- Greg Smith, Jeff Anthony, David Ray, William Pfau, Tony DePace, Kam Hoopes, Counsel Michael Muller, Zoning Administrator Pamela Kenyon

Absent- John Michaels

The meeting was called to order at 6:31pm

Greg Smith asked if there were any changes or corrections to the October 20, 2009 meeting.

Motion by Kam Hoopes to approve the October 20, 2009 minutes as written. Seconded by Tony DePace. All in Favor. Motion Carried.

Greg Smith asked if there were any changes or corrections to the November 17, 2009 meeting.

Motion by Kam Hoopes to approve the November 17, 2009 minutes as written. Seconded by Jeff Anthony. David Ray and Greg Smith abstained. All Others in Favor. Motion Carried.

Jeff Anthony stated that in their packet they received a letter of reversal from the APA regarding a shoreline variance. He asked Counsel Muller if he could provide some insight to the denial and advise if there is anything that they should learn from it.

Counsel Muller stated that one of the things that they have learned is that nothing has changed. Procedurally, the ZBA is charged with granting or denying variances based on criteria that are specifically set within the Town Law. When the statute created the 5 criteria that they use today the State legislature said this is the mandate that is imposed upon ZBA determinations in Towns pursuant to Town Law. This statute has been around for 18 years, which is quite some time but it has not been around as long as the APA which was formed in 1973. Counsel Muller stated that most Towns followed the statute but some towns were slow to change and deviated from the mandated criteria. He stated that this went all the way up to the Court of Appeals, who stated that these towns should not deviate from the 5 criteria. Therefore they are the only criteria that the ZBA is allowed to apply. Unfortunately the Court of Appeals was not given the opportunity to consider that same question if the town were in the Adirondack Park. He stated that there is no dispute that the APA has a review jurisdiction over any sort of decision that the ZBA makes in granting the variance on issues of density and shoreline setbacks. Counsel Muller advised that he only wants to ZBA to use those 5 criteria.

Counsel Muller stated that often times the APA reverses such decisions or approvals of the ZBA and rejects them stating that the ZBA failed or inadequately considered things such as practical difficulties and unnecessary hardship. He stated that the other APA criteria is similar but they often apply different standards. Counsel Muller stated that in an effort to be cooperative he has assisted the Board and applicants, to discuss these additional criteria that the

APA will be looking for. However, he has done so in violation of the Court of Appeals decision. The ZBA tries to do their best to meet the Town and APA standards.

Counsel Muller stated that those applicants that have been denied have always had the opportunity to procedurally challenge the decision but they have not. These applicants have either decided to change their plan, avoid the variance or abandon the plan altogether. Counsel stated that if a challenge were to be made this issue would need to be raised again. He stated that if it were to go to court, the argument will be, on behalf of the APA, that those are our standards and if the State legislature chose to change the APA standards they would have done so, therefore they continue to impose their statutes and standards. Counsel Muller stated that it is an imperfect fit and it needs to be resolved in a court of law.

Kam Hoopes stated that the only way to get this to the court of law is to have an overturned applicant file an Article 78 against the APA. Counsel Muller stated that is one way. However, any aggrieved party could bring this forth to the Court, which means that even the ZBA could file a complaint. He stated that if an applicant were to ever take on the APA the Town could follow them backing our decision and use of mandated criteria. They would be asking the Judge to find that the APA is wrong, not challenging their superior jurisdiction but rather suggesting that they follow the structure of standards imposed upon the ZBA and not their own.

Kam Hoopes stated that his feeling on these reversals is strictly a zero tolerance approach from the APA. He stated that their criteria is substantially the same as what the APA uses but they do not use the same terms. He stated that this last reversal, which was overturned a second time, they did discuss and slip those words in there. Counsel Muller stated that the APA does read the record and it is important to deal with and discuss these additional criteria.

Counsel Muller stated that if an applicant were to be successful in appealing to the Court, he agrees with Kam Hoopes that they do have a zero tolerance and he feels that they would probably seek to challenge it again in the appellate Court. Kam Hoopes stated that he was not aware of the fact that the ZBA could challenge the APA themselves. However, it does make sense because the law demands that they offer reasonable relief to all regulations. Counsel Muller stated that although the ZBA is an aggrieved party, it is a better case when there is an applicant who leads the charge and the ZBA is there to support them.

Jeff Anthony stated that he is bothered by the reversal because there are several items that they need to be careful of when discussing applications. He finds that he agrees with some of the items that the APA has flagged and feels that they should be more cognizant because future variances could be reversed for the same reasons.

With regard to the Clarke decision, Counsel Muller stated that the APA criticizes the ZBA in its determination due to, "There was little discussion of alternatives or the overall environmental effects on intensified use of this small camp. Other than references in the first record for a holding tank to be addressed by the Town Board, which addresses sanitary variances under the local land use program." Counsel Muller stated that he sees a lot of issues with this: 1) As Kam Hoopes often correctly states, that this Board was not charged with the issues of septic and the ZBA is not in the position to grant septic variances and they are procedurally instructed to stay away from these issues. He stated that they learn what they can

about the septic but do not pass judgment on them. 2) with regard to the alternatives, he stated that he feels that they often deal with alternatives. However, one alternative would be not to build in the first place and perhaps they never discuss that. In this case in particular he feels that they did exhaust this alternative in terms of size. He stated that they diminished it down to a point where it was barely usable to sit on. There was a discussion that there needs to be some sort of functional equivalent of being used as a deck. He stated that this is a small camp on the lake that has a steep drop off and it was discussed that this would not be acceptable or logical as an alternative to put a patio there. Greg Smith stated that these items were addressed. Counsel agreed and stated that he is not sure how many alternatives is adequate with regard to the APA. He stated that he feels that they could exhaust their alternatives and come up with the best solution and still be subject to criticism that they give little discussion of alternatives.

Counsel stated that he would advise that the ZBA continue to use the Town standards but also have a discussion of practical difficulties, minimum relief necessary, concerns about substantial detriment to adjoining or nearby landowners, where this variance can be obviated by other feasible manner of doing something other than the variance, and how this difficulty arises. He stated that these are the old standards that they are not permitted to use per the Court of Appeals nor are they specified in the Town law but perhaps it does simple justice for the applicant that they tried hard to meet the requirements of the APA. If that goes up and gets shot down, it would be the right case. He stated that they will deal with this issue tonight with several of the items on the agenda. He stated that he is ready to assist them in anyway.

1) V09-42 PEPPER, JAMES & SALLY. To alter pre-existing non-conforming structure, specifically to construct a 14'x 18' open sundeck, seek area variance for 1) a deficient shoreline setback. 75' is required, 34' is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.12, Block 1, Lot 28, Zone RCM1.3. Property Location: 35 Cherry Lane. Subject to WCPB and APA review. *This item was tabled at the November 2009 ZBA meeting pending additional information.*

Jim Pepper stated that since their presentation in November they have made some changes based on the comments and suggestions of the Board. He stated that they will do their best to address and meet all of the criteria necessary by the Town standards and Walter Law will do his best to discuss the APA's requirements.

Jim Pepper stated that the property is 38,000-39,000 sq ft., a little shy of an acre. It is located in Northwest Bay at the end of Cherry Lane. Currently existing on the property is a new home under construction that came about by rebuilding on the existing foundation. There were a lot of reasons for rebuilding on the existing foundation: 1) the foundation was in good condition, it had recently been waterproofed and drain tiles and a lot stone were added, 2) a new generator system that was installed, 3) underground piping, power and cable were already in existence and 4) a new septic system, which includes two 1,000-1,250 gallon septic tanks and pump tank to pump up to an oversized septic system in the back of the property.

Jim Pepper stated that the property is well screened. At a previous meeting he was asked why they chose not to move the foundation back. He stated that besides the reasons stated above, the house was built partially on ledge rock already and if they were to have moved back it would have necessitated raising the building higher than it already is or blasting. Having done the project that way would have cost an additional \$50,000-75,000. He stated that this route

would also have created more disturbance to the land. Therefore he chose to build on the existing foundation. However, in the process of doing that he built on the existing footprint with a minor variance. At that time it did not include a deck. He stated that in the previous meetings he stated that he knew that he always wanted a deck and that he figured he would have to come back to the ZBA for a variance. He stated that John Michaels made an issue of this at the previous meeting. Jim Pepper stated that he wanted to retract his previous statement. He stated that there was no question that he knew he wanted the deck but in the text it stated that he tried dozens of design schemes for a deck to include in the original variance for the house. However, what it doesn't say is that it didn't come concurrent, one to the other. He knew he wanted a deck but it wasn't until after he tried to work a deck in after the variance was granted in April in 2007. From that point on he worked for many months redesigning the plan to try and put the deck within the footprint. It was at that time and not prior to the variance request in 2007 that he would have to come back. The minutes of 2007 probably show that there was some discussion of it. There was a comment by Kam Hoopes about whether or not the proposed deck would be substantial or not.

Jim Pepper stated that the topography of the lot provides that you walk into the house from the driveway onto the second floor and there is a basement that walks out to the lake. He provided more details of the current structure layout. With regard to neighborhood characteristics their site is no different than most of the properties to the north of them. He provided photographs of the neighboring properties from the lake. The neighbors to the south have similar properties with exception to the Steiner's house which was built to the new zoning of 75' setback. At the time when his original house and most of the houses in this neighborhood were developed, the setback was only 50' from the lake.

Jim Pepper stated that they have reduced the size of the proposed deck. It has gone from 371 sq. ft to 216 sq. ft. He stated that the Steiner's deck is 646 sq. ft., the Ahern's property has a 734 sq. ft. deck and is 52' from the lake, the Tucker property has a deck size of 472 sq. ft with a 25 foot setback. The Schadler, Thomas and Feist property has a deck size of 524 sq.ft. with a setback of 38 feet. Dr. Quinn has a deck size of approximately 480 sq.ft. with a setback of 39 feet. All of these properties have similar topography to the land. He stated that a lot of these decks as well as the one proposed has a lot of tree cover therefore it will be difficult to see even with the closer proximity to the lake than is permitted. He provided pictures taken while the house was being constructed to show the screening that is between the house and lake. He stated that John Michaels voiced his concern that after the deck was approved he would cut all of the trees. Jim Pepper stated that they have lived in the house since 1986 and there are more trees there now than when they bought the place. They have enjoyed the filtered view and plan to keep it that way. They feel that the Town should hold more homeowners accountable for the vegetation and protection of the environment in all projects especially those on the lake.

Jim Pepper that although the variance was seeking to extend 14' closer to the lake, with the pre-existing 30" overhang, they really are only encroaching 11'6". He stated that at the last meeting Jeff Anthony commented that he did not feel that the 4' bridge was necessary because he would not be using the deck in the rain or in the snow. He stated that they proposed that mainly for the drip line of the snow. He stated that they have a metal roof and his hope is to have the snow slide off into those pockets and they would only have to shovel the snow on the deck.

Jim Pepper stated that Kathy Bozony, Lake George Waterkeeper, has visited the site and has commented favorably on behalf of the project. He stated that she has suggested some ground cover along the front of the deck and they have no problem doing that.

Jim Pepper provided 3 potential revised plans for the deck that they explored. All options eliminated the bridge and pushed the deck back away from the lake. The plan that they chose to work with is a 12' x 18' deck. It will only accommodate table/chairs and a grill. They now will have a setback of 41 feet which is an increase of 6 feet from the previous plan. He stated that they feel that this is minimum request possible. He stated that they also considered moving the deck to the north side of the house. However, there is already existing landscape in this area and it would be lacking the sun which defeated the purpose of the deck. This might also require a variance for the side yard setback and would interfere with the privacy of the neighboring property.

Jim Pepper stated that they have a small flat area to accommodate a table and chairs on the ground level. However, the area is located a floor down from the kitchen area which would make it inconvenient and impractical for such use. The west side of the house only has a relatively flat area where the entrance to the house and where the septic system is located.

With regard to the APA's criteria, Jim Pepper stated that they demand that there be no impact on the water quality. He stated that there will not be any impact on the water quality. With regard to the neighborhood characteristics, he stated that they discussed the visibility or the lack thereof from the lake and from either neighbor.

Kam Hoopes stated that there are certain things that he just cannot get over on this project. He stated that he went over the previous files on this and he remembered a deck being there. He stated that he remembers the deck being beveled on the corner diagonally. He stated that he was not aware at the time that in April of 2007 he was seeking to move the concrete foundation out a few feet. He stated that he was under the impression that he was just building on the existing foundation and filling in 2 jogs. He stated that if he had known that he was moving the concrete out and this is where they were going to go with the project, he would not have voted for that variance in the first place. Kam Hoopes stated that he still has several concerns beyond the self-created aspects and alternatives available at that time. He stated that at the beginning of this meeting they have discussed how the APA has zero tolerance. He stated that the recent reversal has been handed down twice now on a very awkward lot with many constraints. He stated that he is not interested in jeopardizing their credibility with the APA by bringing something forward that he cannot get behind. Jim Pepper tried to clarify the confusion with the previous variance request. He stated that the additional 4' that filled in the 2 jogs was poured previous to the 2007 variance. He stated that when they chose to rebuild he could have built over the previous foundation which had the jogs without needing a variance. However, since he did not want to do that he need to get the variance for the additional 4 feet. Kam Hoopes stated that it was an after the fact variance and he was not aware of it at the time. Jim Pepper stated that he needed the variance to be able to legitimize the closer foundation wall and to be able to build on the newer foundation to fill in the jogs. He stated that he felt that it was made perfectly clear at the 2007 meetings. Kam Hoopes stated that when he visited the site he thought the deck was being adjusted dimensionally. Jim Pepper stated that there was a deck on the original house and when they poured concrete out front anticipating the addition the deck remained but it was setback 58-60' from the lake.

Kam Hoopes stated that the APA is not going to care about all of this stuff. He stated that he is going to have a tough time supporting him against the APA because of the nature of this application. He stated that the original setback was 50' and he was careful to pour the original foundation 50' from the lake. However, since then the setback has increased to 75 feet and he has since maximized the 50' setback plus. Jim Pepper stated that he is not asking for anything more out of the ordinary and that many of these types of applications have been approved. Greg Smith stated that things have changed from difficult to obtain to almost impossible.

Jeff Anthony stated that he has seen some progress made in the way of exploring alternatives. One such alternative would be to move the deck to the north side of the building and he sees merit in that and the APA may see that same merit considering that it would not be further encroaching on the lake. He stated that he does not feel that being in the shade is a reason to not consider this alternative especially since they have a sundeck on their boathouse. He stated that it might consider a side yard variance he feels that it might be a better alternative. Jim Pepper stated that he felt that the APA would take issue with the side yard setback. Kam Hoopes stated that they may say that in the regulations, but they have yet to take issue with side yard setbacks. They seem to be more concerned with shoreline setbacks. Greg Smith stated that even on the north side, he still will not meet the 75' setback. Kam Hoopes agreed but stated that he will not be encroaching any further which he feels the APA would be more favorable to.

Bill Pfau stated that he is all for helping the applicant with the APA but he has yet to see the Board deny an application because it will not pass muster with the APA. He feels that they should look at this application within their own standards and help with the APA review. He stated that he feels that they are going off on a tangent. Kam Hoopes stated that he is looking at their own criteria and he is concerned with the self-created aspect of this project. Bill Pfau stated that he feels that is only one of the criteria and they base their decision on the overall criteria. With regard to alternatives he feels that there have been a series cascading decisions along the way that painted the whole project into a corner. Bill Pfau stated that he feels that the argument could be made that alternatives have been considered. Kam Hoopes agreed but they are all after the fact.

Counsel Muller stated that Jeff Anthony brought up the potential of a feasible alternative of having the deck on the north side. He asked the applicant if he would consider it a feasible alternative to achieve the benefit that he seeks. Greg Smith stated that the side deck would require 2 variances instead of just the one. Jim Pepper stated that he has explored this alternative and does not find it feasible. He stated that it would conflict with a nice blue stone walkway already in place, which is how they gain access from the driveway to the dock. The structure itself would require a side yard setback as well as a shoreline setback. Counsel asked how it fit into the architecture of the house. Jim Pepper stated that they would still have to access the deck from the same point in the living area and create a walkway around to the north. Bill Pfau stated that another point is that this will increase the structure from the lake. Kam Hoopes stated that they already have a breakfast porch in this area that covers that width so this is not just open area. He added that the least of his interest is protecting the blue stone walkway. Greg Smith stated that the height of the topography could also be an issue. Jim Pepper stated that if this were his alternative he wouldn't bother doing it. Greg Smith stated

that it has been established that having a deck on the north side would be a detriment. He feels that they should move forward with what the applicant would like.

Walter Law stated that he wanted to thank Pam Kenyon and Kate Persons for their assistance with getting a handle on the APA reversals. With regard to the Town standards he feels that one of the problems that the APA is having is that they are not able to see the factual basis for conclusions or resolutions that various zoning boards are making. He feels that they need them highlighted.

With regard to feasible alternative, Walter Law stated that they have established that other alternatives would still require variances. This alternative would also increase the amount of structure visible from the lake, which may not be a direct complaint from the APA but it could be from people looking in. However, this property is well-screened and they feel that people cannot see in. They can barely see the house let alone the proposed deck. Walter Law stated that Jim Pepper tried to incorporate the deck inside the existing footprint. This would have created a problem for the flow to the interior of the house as well as affect the support system for the house. He stated that they really only have 2 choices to either have a deck that admittedly violates lake shore setbacks or not having a deck at all. Walter Law stated that they have set up sufficient facts to show that there are no other feasible alternatives.

With regard to an undesirable change in the neighborhood, Walter Law stated that Jim Pepper has provided sufficient evidence that the neighbors to the north have decks and are closer than 50' to the lake. He stated that the present proposal brings the setback to 41' feet, which is in keeping with the neighborhood. He stated that Jim Pepper also supported the fact that this is not going to be a change to the neighborhood by supplying photographs of the vantage points from the house. These pictures show that the lake is hardly visible, therefore the deck will not be visible. Walter Law stated that Kathy Bozony, Lake George Waterkeeper, has indicated that she was pleased with the project and supported the project. He stated that the Peppers have lived in the house since 1986 and the amount of tree coverage has increased.

Walter Law stated that the project would not be considered substantial. He stated that a 12' x 18' deck is not substantial in relation to the house. He stated that although it violates the 50' setback it is not a substantial violation. This is also the minimum that Jim and Sally Pepper could live with. He stated that they have minimized their request so that all the deck will accommodate is a table and chairs and grill.

Walter Law stated that in the recent reversal of the Clarke variance the APA requested that they try to find some flat ground. He stated that would not work in this instance since the Pepper's kitchen is on the second floor on the lake side. He stated that even if they were to eat downstairs and the grill was down stairs the kitchen is not and they would have to travel the stairs several times to serve a meal. He stated that when you think of lake front living you don't think of that type of situation.

Walter Law stated that this will not have an adverse affect on the physical or environmental conditions of the neighborhood or district. It is only a request for a deck. There is heavy natural screening, there is no ground disturbance or tree removal.

With regard to the self-created aspect of the project, Walter Law stated that it is. However, this house was built back when the setback was only 50 feet. He stated that even though this is self-created in any way, both the Town law and the APA regulations specifically say that a variance cannot be denied simply because it is self-created. The alternative to not being self-created would be to build a house to meet the 75' setback. However, that would have created additional problems including major disturbance and financial hardship.

Walter Law stated that this is reasonable application which has been scaled back substantially. There is heavy screening in place and it will not affect the neighbors. He feels that the main point or focus of the APA will be whether or not it has been proven that this is the minimum relief necessary, and they feel that it is. He stated that the APA also likes to talk about whether or not the consequences to the applicant are greater than the public purpose. He stated that they discussed the fact that it is not visible, it is in keeping with the neighborhood.

Walter Law stated that if the Board is willing to approve this variance with conditions, they would be willing to accept those conditions.

There were no additional letters submitted for this application. There were no comments from the public in attendance. Pam Kenyon indicated that there was default approval from the WCPB on all applications on the agenda.

RESOLUTION

The Zoning Board of Appeals received an application from James and Sally Pepper (V09-42) 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 by default approval;

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#1 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; minimum relief to seek this benefit has been met.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, as the record shows.
- 3) The request is not substantial; a small deck is proposed that encroaches on the 75' setback minimally.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; this is well screened from the lake.

5) The alleged difficulty is partially self-created, but should not preclude this from being approved.

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 Bill Pfau and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented. Jeff Anthony and Kam Hoopes opposed. **All Others in Favor. Motion Carried.**

2) V09-64 ESTATE OF INEZ M. CLARK. Represented by Cornelius Burke. To demolish and rebuild single family dwelling, seeks area variance for deficient setbacks. 1) Front: 75' is required, 13.1' is proposed; and 2) Sides: 20' is required, 4.5' is proposed on the east side and 12.75' is proposed on the west side. Section 186.00, Block 1, Lot 20, Zone RL3. Property Location: 824 Trout Lake Road. Subject to WCPB review.

Con Burke stated that they are seeking to take a non-conforming structure and revitalize it. He stated that he and his wife would like to move there if they have the means to complete the project. They feel that this would greatly enhance the neighborhood.

Greg Smith asked if the issues with the leach fields and potential contamination have been cleared up. Con Burke stated that they have done a lot of work done on the property already. They have had engineers and surveyors out there. Test pits have been dug, water testing has been done and site plans have been developed. He stated that they have done everything possible to be able to feel comfortable in moving forward with this project. Con Burke stated that their issues are with the setbacks. He stated that they are not seeking to go outside of the current setback but rather stay within or decrease it.

Kam Hoopes stated that he feels that the plans look great and it will be a huge improvement over what currently exists. He stated that the setback issues pre-date the zoning and he takes no issue if they intend on staying within what currently exists. With regard to the septic issues, the applicant will be on his own with the TB. However, if they cannot be solved, this variance will not be worth anything to them anyway.

Con Burke stated that he wanted to move back further onto the property, however, they would be dealing with a pre-existing sanitary system on the adjacent property. Kam Hoopes asked if the church project is stalled. Greg Smith stated that he thought it was for sale. Con Burke stated that he has not seen much action taking place on that property in quite some time.

John Kitzen, representing the church at 20 Trout Lake Road, stated that like most of the neighbors in the area would like to see something done with the building. However, there are some outstanding title issues that have not been resolved from the Estate of Inez Clark. He stated that Inez Clark willed the property to 3 different people. Bob Slovak actually bought a property across the street. Originally was 2 properties, one of which was the church and this

property was the parsonage. Inez Clark then subdivided the property and subsequently the subdivision records have been lost, so they are unsure of how the property line was divided.

John Kitzen stated that one of the issues he has as a property owner on the west side of the property is specifically the driveway. He stated that he had conversations with the late Helen B. Clark. She never used the driveway and it is actually part of the church property. The surveyor was reluctant to include the entire driveway in the initial survey application to the Town which is why there is a 12'5" line on the side of the building. He stated that there are several issues and they have had 30 years to resolve them. There are 2 deceased people and no probated wills. He is not sure how the application can move forward considering the fact that the will was never probated in the State of New York. John Kitzen stated that he tried to resolve this with Ms. Clark and she indicated that she would settle this matter in Court. He stated that he is waiting for the probation of the will.

With regard to the hardship of the setback, John Kitzen stated that the Town should not make order out of chaos that was caused by extremely lax actions of the applicant to follow proper legal procedures and clear title to the property. They have had more than 30 years to resolve the title, property liens and apply for variances when there were far fewer restrictions and all of those options have been ignored by the applicant. He stated that it should not be the position of the Town of Bolton to bail out property owners who should have made applications decades prior. If they lost use of their property due to their own negligence and lack of action, the ZBA does not have to make it their problem. He does not feel that any variance for a home should be granted due to septic and well issues on the property. He stated that this is a self-created variance.

John Kitzen stated that he would be willing to work with the applicants on the septic. He stated that he has the open septic in the back. It is open due to issues with the Town engineer who did not want to approve it. He stated that he had to walk away from it at that point after the septic tanks were already in. The original proposal was to put a leach field in which was rejected and were advised by the Planning Office to install the leach field as it is now and the Town Engineer rejected it and recommended going with the original application. He stated that the church property stalled because he was fed up with the whole process. They spent thousands of dollars and followed Bolton's advice to the tee and he feels that he was penalized for it.

John Kitzen stated that if they approve the variance request it will deny him the re-dress to the Surrogate's Court to protest the will and variance. Kam Hoopes stated that they have to assume that the application is correct and if it is not correct it is not worth the paper that it is printed on. Greg Smith stated that if the applicant can't legally get the property to do what he is asking for the variance then it can't happen.

John Kitzen stated that they do not have a driveway, so if they want to keep the building they will need to set it back slightly. He stated that would then possibly affect his septic and well placement and separation. He stated that he would be happy to work with the applicant since he is the surrounding property owner on 2 sides in order to make it happen. He stated that it is in his interest to have him build a house. However, he does not want to give up his property rights to his adjoining property, specifically the driveway. He stated that he is not saying that it is his driveway, nor is he saying that he would grant an easement. Kam Hoopes stated that

the application does not speak of any easements or sharing driveways. John Kitzen stated that he feels that the setback is already too close to the road, therefore they will need to move the structure 25' off the front in order to provide parking. Kam Hoopes stated that he understands that Mr. Kitzen has issues with things that have occurred in the past, but they have nothing to do with what is going on with this application. John Kitzen disagreed stating that he does not feel that there is a valid property line as stated in the application. He does not agree with the western boundary. Greg Smith stated that without the legal property line and legal deed to the property the applicant will not be able to do anything with this variance.

Bob Slozak, owner of 819 Trout Lake Road, stated that he has owned his property for 23 years. Four years ago there was a septic system put in at the church property and the Town came out and denied the location. His understanding was that it was due to an underground stream or water coming off the hill across the septic location. The church septic system is less than 25' from the proposed location on the Clark property. He asked how they could grant permission for the septic on the Clark property and the Hammel property was denied. Bob Slozak stated that he also has a concern about the separation distance between the well and the septic system. He stated that there is only 35' from the center of the septic system to the well which is not a lot of space.

Bob Slozak stated that he often checks on the Church property especially when no one is there. He stated that 4 years ago they had a storm that produced approximately 3 inches of rain. He stated that he came up a week after that storm and found 6" of water in his basement. In checking the church property he walked by the Clark house and he noticed that the water in the basement was about 1' from the bottom of the window opening. He stated that there is a high water table across the street.

Bob Slozak stated that Earl Madison's property on the east side of the applicant's property sits approximately 3-4' below the level of the Clark property. On behalf of Mr. Madison, with a 4.5' variance on that side, he is concerned with the septic system leaching onto his property.

Bob Slozak stated that the Clark property does not allow for parking on the sides or back due to the amount of land there. They would only be able to park in front which would cause potential problems especially with snow and snow removal.

Kam Hoopes stated that he understands Mr. Slozak's concerns. However, they are not issues that the ZBA is charged with dealing with. He stated that the ZBA only deals with the setback variance being sought. Bob Slozak stated that he and his wife are opposed to this project because he does not feel that there is enough room to do what they want to do.

Con Burke stated that he would be willing to talk to any and all of these neighbors on a private level to address their concerns and issues. He stated that he has already done a lot of the legal work and planning work. He stated that if there were any concerns he would not be interested in moving forward with this project. He stated that he has spent a lot of money in hiring professionals to complete tests and surveys. He understands the concerns that this is a small lot, but there are smaller lots. He stated that a house has already existed on this lot before and was functioning fine until it was neglected.

Kam Hoopes stated that the property values in this neighborhood will all benefit by the completion of this project. Bill Pfau asked if the applicant felt that they would have sufficient room to provide off street parking. Con Burke replied yes.

David Ray asked who currently owns the property. Con Burke replied that they are in the process of purchasing the property. He stated that if he can get the variance then this will move the sale along.

RESOLUTION

The Zoning Board of Appeals received an application from the Estate of Inez M. Clark (V09-64) 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 by default approval;

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#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; these are all dimensional considerations.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, as proposed this will be a boost to the neighborhood and nearby properties.
- 3) The request is not substantial; compared to the current structure on that site.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; this is going to be an improvement on all of those various features.
- 5) The alleged difficulty is not self-created, the structure is very old.

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. **All in Favor. Motion Carried.**

3) **V09-61 TEKMITCHOV, VASILIKI.** Seeks to amend condition of approval set forth by the ZBA on July 14, 2008 and August 18, 2008 when approving V08-32 involving a two-lot

subdivision. Specifically the condition reads as follows: ***The number of required parking spaces is reduced from 10 to 7 and become usable.*** 5 spaces are now proposed. Section 171.15, Block 3, Lot 74.1 & 74.2, Zone GB5000. Property Location: 4960 Lake Shore Drive. Subject to WCPB review.

Vasiliki Tekmitchov stated that she has been doing business in Bolton Landing for 40 years as Von Tek Hairstylist. She stated that she purchased the property in 1967. She stated that Pam Kenyon has indicated that there was a discrepancy in measurements which she was not aware of. She stated that the property has been the same since before she owned it. The parking situation on her property is better than most businesses and residences on Main Street. She stated that she was not aware that she was in violation. She stated that she looked at the survey plan from Dennis Dickinson and realized that there was an incorrect measurement. She stated that truly she only could have had 6 spaces but Dennis Dickinson put that she could handle 7 spaces. She stated that she is a hair dresser, she is not a surveyor. She paid a professional to assist her and she put full trust in him to present it. She stated that the property has not changed. She wants to be in compliance with the Town.

Greg Smith asked if she still had people renting the apartments. Vasiliki Tekmitchov replied yes. She stated that her tenants are only allowed one car per apartment. She stated that most of the time people rent her space because they can walk everywhere. Greg Smith stated that at the last meeting the issue was raised that some of her tenants were parking in the Congers Point right-of-way. Vasiliki Tekmitchov stated that there was one incident last summer. In the leases she indicates where the tenant are allowed to park. She stated that in this instance this car did not belong to her tenants. She stated that whether it is her tenants or not, there is a police department that can be contacted in these situations.

With regard to the August 2008 variance, Bill Pfau asked if there was room for seven 10' x 20' parking spaces. Pam Kenyon replied yes, she believes that if they parked cars in the garage there would have been enough parking. Bill Pfau asked if she was eliminating the use of the garage for parking. Pam Kenyon replied yes and the remaining spaces will stay the same.

Kam Hoopes stated that he visited the site and found that there is an abandoned vehicle down there, which is partially in the right-of-way. Vasiliki Tekmitchov stated that the car belongs to an ex-tenant and she has contacted him to remove it. She stated that if he does not remove it then she will contact the police to have it removed.

Kam Hoopes stated that he is concerned because the garage has garbage in it which is a health hazard. Vasiliki Tekmitchov stated that she has people in the neighborhood that harass her all the time when she goes down to the lake. She stated that these individuals drop their garbage in her garage. She stated that she intends to find someone as soon as possible to close up the side door which would stop people from dumping in there. However, until that work is completed she will be having the garbage removed.

There was discussion of the apartment layouts and the subdivision of the property. Kam Hoopes suggested that they provide some clarity by talking about which apartments get which space. Bill Pfau asked why they are adverse to using the 2 spots in the garage to add to the total of parking spaces because they don't have to be used. Pam Kenyon stated that she believes that there was a condition on the previous variance which indicated that the spaces had

to be made usable. Bill Pfau stated that they are usable if they exist. Pam Kenyon stated that she does not feel that they are usable. Vasiliki Tekmitchov stated that she does not park cars in the garage because she needs additional storage space.

Kam Hoopes stated that if they don't orchestrate this, it will create problems. He suggesting allowing for 2, possibly 3 spaces for the apartment house. He stated that this would be the minimum variance since they are providing one car per habitable space in the apartment which is what the applicant is willing to go with. This will also provide extra space because there is more space available. With regard to the business parcel and apartment, he stated that there are 2 spaces in front of the garage and the possibility of having those cars in the garage. He asked the Board if they should be looking at this request for the minimum of 4 parking spaces.

Kathleen Spahn, Congers Point, stated that she appreciates the ZBA's consideration to this application and their careful interpretation of the zoning ordinance. She stated that from the beginning she has had a problem with this subdivision because the right-of-way is a little dirt road. Congers Point owns and maintains this right-of-way as their backdoor. She stated that there are 16 houses in Congers Point and only 2 of those people have the right to cross that right-of-way. Kam Hoopes stated that is why he is inclined to reduce the number of cars there so that they could police it better. Kathleen Spahn stated that with regard to a parking issue, she understood that this was private property and should be handled by a lawyer. She stated that she does not believe that the police will be able to anything because it is a civil matter. Dennis Murphy stated that the police are there to protect property and keep the peace. He stated that it is not their duty to enforce civil law.

There was further discussion on the amount of spaces that should be set as the minimum. Kam Hoopes asked if they should separate the variances because they are separate parcels. Greg Smith stated that he feels that they should keep to one variance since the applicant owns both pieces. Kam Hoopes asked if the variance would run with the land should the applicant decide to sell one or both of the properties.

RESOLUTION

The Zoning Board of Appeals received an application from Vasiliki Tekmitchov (V09-61) 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 by default approval;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; it is the minimum relief necessary without using the garage.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, these parking spaces along with off street parking is sufficient for this project.
- 3) The request is 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 partially self-created, because a sub-standard size lot was 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 Bill Pfau and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

4) V09-62 HAMILTON, EDGAR. Represented by Mark Roden. To alter non-conforming structure, specifically to remove a portion of and enclose an existing open deck, cover an existing open deck, and construct a ½ bath, seeks area variance for 1) deficient setbacks. a) Front: 50' required, 25' is proposed, b) side: 30' is required, 5' is proposed on the west side and 17' is proposed on the east side, c) rear: 30' is required, 13' is proposed, 2) Lot coverage: 15% is allowed, 34.5% is proposed; and 3) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 185.20, Block 1, Lot 23, Zone RCL3. Property Location: 62 Millstone Drive. Subject to WCPB review.

Mark Roden stated that structural problems exist on the current roof. It is 2' x 4' frame. He stated that he would like to take the whole roof off and replace it with scissor trusses. The expansion is taking the existing porch on the lake side and carry that wall along the length of the house. This will create a more aesthetically pleasing front of the house facing the lake. He stated that there are other structural issues that need to be handled as well.

Mark Roden described some of the details of the proposed expansion. Next to the proposed kitchen he wants to install a half bath. Otherwise, the floor plan will remain the same and he will just need to re-work the square footage that is already covered. The decks that are there now extend past the porch by 20" and he wants to trim that off so that the roof line is straight going across. He stated that he would like to cover the existing deck that is left for safety issues.

Greg Smith asked what the existing density was. Mark Roden replied that currently the coverage is 34.8% and they are proposing 34.5%. He stated that by removing the deck he will be eliminating square footage. He stated that he is re-working what already exists. They are not changing the roof line to keep with the cottage theme. The house will not be used year round, it has seasonal water and septic for the community.

There were no comments from the public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Edgar Hamilton (V09-62) 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 by default approval;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, in fact tidying up this cabin should improve the neighborhood.
- 3) The request is not substantial; they are taking a jog out of the side of the building and improving the home aesthetically.
- 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 bringing it up to current standards.
- 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 Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

5) V09-63 RUECKER, HARRY. Represented by Maggie Stein. To alter non-conforming structure, specifically to renovate existing restaurant, add deck entry to 2nd floor apartment, build roof over existing patio, and provide handicapped access to restaurant, seeks area variance for 1) deficient setbacks. a) Front: 30' is required in the GB5000 zone and 50' is required in the RM1.3 zone. 7.09' is proposed on the north side, 15.29' is proposed on the east side from the edge of the right-of-way along Dula parking lot and 10' is proposed on the west side; b) Rear: 15' is required in the GB5000 zone and 20' is required in the RM1.3 zone.

11.81' is proposed; 2) Lot coverage: 40% allowed in the GB5000 zone, 52.3% proposed; and 3) Parking: 34 spaces required, 5 spaces previously approved; 4) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.19, Block 1, Lot 64, Zones GB5000 and RM1.3. Property Location: 4933 Lake Shore Drive. Subject to WCPB review.

Maggie Stein of Eric & Eric Drawing Services, stated that they are proposing to extend the dining area in the main floor of the house which was originally a restaurant. They plan to replace the existing kitchen and add on a dishwashing room to the end of it. They will be adding an entry to the front and a handicap ramp to the side. They plan to remove the stairs on the first floor and replace that access to the second floor apartment with an exterior stair and deck. She stated that they are staying within the existing footprint of the front porch. Maggie Stein stated that they started to renovate the existing kitchen and found that structurally it was not able to be prepared. She stated that they are proposing new construction on the existing footprint. The only places that they will be off of the existing footprint is for the new entry, handicap area ramp, the new second floor stairs and deck and outside dining area. She stated that they will be putting a roof over the outdoor dining area which now only has an awning. The permanent roof will follow the existing footprint of the outdoor dining area.

Maggie Stein stated that this property falls within 2 different zones which makes the setback issues very difficult to meet.

Bill Pfau asked if the second story is getting larger. Maggie Stein replied that they will be filling in the stairwell on the second floor but it will not increase the floor area overall and the only change to the second floor is that it will get a set of stairs and deck which will access the front apartment on the second floor. She stated that the entries to the back apartments on both the first and second floor will remain the same.

Bill Pfau stated that the applicant is staying within the existing footprint and from a variance point of view doesn't feel that they could ask for much more than this. Bill Pfau asked for some details regarding the exterior façade of the building. Maggie Stein provided details of the new exterior which were highlighted in the renderings. Kam Hoopes stated that he feels that this is a great improvement and he looks forward to seeing the finished product. Greg Smith agreed.

There were no comments from the public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Harry Ruecker (V09-63) 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 by default approval;

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item# 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 building itself is non-conforming. They are staying within the original footprint so this is the minimum relief necessary.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a building that has needed a major upgrade. The plan looks nice and there have been no objections from the neighbors.

3) The request is not substantial; they are staying within the original footprint.

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

6) V09-65 TWIN BAY VILLAGE. Represented by Vision Engineering. To alter non-conforming structure, specifically to add a 5' x 5' landing with 9 risers to existing grade to a 130.5' long motel structure for a second means of egress, seeks area variance to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.06, Block 1, Lot 14.1 Zone RM1.3 & RL3. Property Location: 4799 Lake Shore Drive. Subject to WCPB review.

Kam Hoopes stated that this seems to be a code situation. Greg Smith asked if this was due to the DOH. Dan Ryan of Vision Engineering replied yes. He stated the DOH does regular inspections of the business. They are imposing regulations that came into effect after the operations of the facility was constructed. One of the items is the requirement of a second egress stair from the building. He stated that they will be constructed the stairs from pressure treated wood framing, with a 5' x 5' landing, with approximately 9-10 risers depending on the grade.

Bill Pfau asked why this was a requirement. Dan Ryan explained that they have to an exit to grade. Greg Smith stated that this is mandated and they need to grant the variance to do this.

RESOLUTION

The Zoning Board of Appeals received an application from Twin Bay Village (V09-65) 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 by default approval;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

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

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

7) V09-60 McPARTLON, J. PETER. To allow a 10'x 16' gazebo to remain in its present location, seeks area variance for a deficient shoreline setback. 75' is required, 57.5' is proposed. Section 200.14, Block 1, Lot 46, Zones **RM1.3** & LC25. Property Location: 4224 Lake Shore Drive. Subject to WCPB and APA review.

Note: Bill Pfau recused himself.

Peter McPartlon stated that they are seeking a variance to allow for a gazebo to stay in its present location. Greg Smith asked when the gazebo was placed on the property. Mr. McPartlon replied that he got the gazebo 3 months ago. Greg Smith asked if he obtained any permits. Mr. McPartlon replied that he did get all the permits. Pam Kenyon agreed and stated that when Mitzi went down to measure they found that it was not put in the proposed location and that it did not meet the setbacks that were required from the stream.

Mr. McPartlon stated that they didn't want to move the gazebo because a lot of attention was paid to placement. He stated that the previous setback for the garage was 50' so when that did not work out they found out where the septic and sewer lines were to avoid those as well. He stated that they tried to keep it away from the stream the best they could. He stated that they will be 53' from the stream which was better than the 50' from the garage. However, the zoning now calls for 75' setbacks.

Greg Smith stated that the applicant got the proper permits but found that he could not put the gazebo in the proposed location due to what was underground.

Kathy Bozony, Lake George Waterkeeper stated that the septic tank and lines should have been put on the plan so that the Board and public could have seen that those were not encumbered by the gazebo and aided in the placement of the gazebo because they could not do any other alternatives. Based on the variances granted in 1992 and 2004 for the setbacks from the stream, she stated that she does not know what the property looks like and is not sure if there is vegetation between all of the structures or if any of them have any stormwater management on them. Mr. McPartlon stated that the driveway is all stone. He stated that there is also more stone to the back of the garage. The shed has been in existence forever. Mrs. McPartlon stated that there are gardens and vegetation between the garage and stream. She gave further details of the vegetation of the property.

RESOLUTION

The Zoning Board of Appeals received an application from J. Peter McPartlon (V09-60) 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 by default approval;

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item# 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; they have the septic tank and line as well as other things to avoid in the yard.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, It is a nice gazebo situated between the shed and garage and it is on the other side of the house.
- 3) The request is not substantial;

- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created,

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

Now, upon motion duly made by Kam Hoopes and seconded by Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented. Bill Pfau recused himself. **All Others in Favor. Motion Carried.**

8) V09-59 KUDLACK, RICHARD. For the construction of a proposed single family dwelling, seeks area variance for a deficient shoreline setback. 100' is required, 75' is proposed. Section 141.00, Block 1, Lot 3.11, Zones RL3 & LC25. Property Location: 5879 Lake Shore Drive. Subject to WCPB and APA review.

Richard Kudlack stated that he owns the Northwest Bay Farm which is a 35 acre lot. He stated that he received an approved subdivision from the Town and the APA. The APA approved a particular site for a large house which he is not building. The rest of the site is undeveloped and he intends to keep it that way. He stated that this is his dream property and where he would like to retire.

With regard to the location of the house, Richard Kudlack stated that he wanted to chose a location that would be best for a solar house. He stated that the best location is within a 4 acre field so no clearing would be necessary. He stated that the location faces south which will receive the most sunlight. The property falls into 2 zoning districts; LC25 which requires 100' stream setbacks and RL3 zone which requires 75' setbacks. He stated that in looking at the setbacks and the layout of the house he found 2 problems; the setback was pushing the house back into the shade and into some severe topography. He stated that the best place for the house would put it on the 75' line for additional hours of sunlight. He stated that RL3 zone is approximately 400' from the house.

Richard Kudlack stated that there would be no effect on the stream. The lot is already cleared and has been for a long time since it was used as a farm. He stated that the driveway is already in place and everything on the driveway is controlled by a new stormwater system. Greg Smith stated that the topography of the land does not go towards the stream and besides that they have the road in between the two. Richard Kudlack stated that contrary to a letter that he saw this is pitched 3 degrees.

Greg Smith stated that they do not have plans for the actual house because he discussed this with Pam Kenyon and Rich about not spending money on plans for something that may not be feasible to happen. He felt that it would be best to get a feel from this Board before proceeding to the next level. Richard Kudlack provided a basic style of house that he is interested in. He stated that the house will not be visible from the lake, road or from anywhere. Kam Hoopes stated that he did not feel that it was necessary to see a particular floor plan. The reason for the location of the house is for the solar aspect that he would like to have.

With regard to the differing setbacks, Kam Hoopes questioned why the stream is more critical 400 feet up the hill than down the hill. Richard Kudlack stated that he needs to know if he has the 75' setback because the house will be designed differently. Kam Hoopes asked if this will require Site Plan Review. Pam Kenyon replied yes. Kam Hoopes stated that under these circumstances he feels that this will have adequate review by the PB.

Bill Pfau stated that since the APA will be looking at this application he suggested that they discuss other feasible alternatives. Richard Kudlack stated that the APA doesn't have to review this other than the 25' variance. Bill Pfau stated that he understood, but is looking at reasons for why other alternatives wouldn't work regarding the placement of the house to maintain the 100' setback. Richard Kudlack stated that he moves the house down hill he would start to lose the solar power. It would also require removal of trees to provide for a location of the house. Bill Pfau stated that the proposed location is the optimal position for a solar house.

Kathy Bozony, Lake George Waterkeeper, stated that Chris Navitsky reviewed this application and the statement regarding the 3% pitch. She stated that Chris reviewed the pictures of this area and thought that the area was pitching towards the stream. He has not reviewed Tom Hutchins inspection. With regard to alternatives, she stated that post construction and stormwater management and looking at this opened area, if there is going to be grapevines that it will not impinge on the solar plants and vegetation where it has been previously cleared. She stated that when Mr. Kudlack starts to design this it may end being 100' depending on what he ends up building.

Greg Smith stated that he is pleased to see that only one house is going on this 35 acre lot and that he is choosing to go with a house that will be extremely environmentally friendly.

RESOLUTION

The Zoning Board of Appeals received an application from Richard Kudlack (V09-59) 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 by default approval;

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item# 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; this is a setback situation. The setback has been mitigated extremely well by the sophisticated stormwater management and pond system that has been installed, which will handle everything and take it down the hill away from the stream.

2) There will be no undesirable change in the neighborhood character or to nearby properties, because there really is no neighborhood or nearby properties. The property is surrounded by NYS land. This is a handsome project to date and expect no less.

3) The request is not substantial; 300-400' down the driveway the setback requirement is 75'. There is nothing that changes between that and where the setback changes to 100' that is environmentally sensitive. It is a LC25 zone versus and RL3 zone, so the 75' should suffice.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; given the stormwater management already in place and the solar house being proposed.

5) The alleged difficulty is self-created, because it is the applicant's dream home. However, the self-creation is mitigated by the fact that this location is optimum for a solar home and anything less diminishes the effectiveness of the solar house.

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

9) V09-58 DAVILA, JOSEPH AND OLGA. To alter non-conforming structure, specifically to allow an 8'2" by 9' front entrance and 8'2" x 18' landing and stairs to remain, seek area variance for 1) a deficient front yard setback. 50' is required, 2' is proposed; and 2) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 185.15, Block 1, Lot 25 Zone RCL3. Property Location: 59 Three Oaks Drive. Subject to WCPB review. After the fact.

(Note: This item was heard third)

Greg Smith asked how long the porch has been in existence. Joseph Davila stated that they have had a shed cover over the entrance to the house and it was leaking into the house. He stated that he hired someone to look at the problem. The contractor that he hired took it apart and told them that it would need to be replaced and recommended that he do a gable instead of a shed roof for aesthetics as well as snow removal. Greg Smith asked when the work was done. Joseph Davila stated that it has been in place for a few years. Pam Kenyon stated that this was brought forth due to a complaint.

Kam Hoopes stated that this seems like a logical solution to a problem and the only draw back is that procedures weren't followed. However, for safety and convenience sake he feels those items are beyond luxuries they are safety issues. Greg Smith asked if he or his contractor knew that they would need a variance or permit to do this construction. Joseph Davila replied no because in his mind he felt this was just a replacement or repair of what already exists. Greg Smith stated that he believes that the applicant was not being malicious in his actions. He feels that he was just trying to make an improvement to the home. There is no change to the environment around the house and it took care of the problem.

There were no letters or comments from the public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Joseph and Olga Davila (V09-58) 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 by default approval;

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item# 9 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; minimal relief was applied for.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, there have been no objections from the neighbors.
- 3) The request is substantial; however, they only re-built what was there.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, as this building is pre-existing non-conforming.

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

10) V09-57 RUSSELL, BERNARD & SHIRLEY. Represented by Tom Ramsay. To alter non-conforming structure, specifically to construct an 18'8" x 19'6" addition to restaurant, seek area variance for 1) deficient front yard setbacks. 75' is required from Route 9N, 60' is proposed, and 50' is required from private right-of-way, 25' is proposed; and 2) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.11, Block 2, Lot 3 Zone RCM1.3. Property Location: 5116 Lake Shore Drive. Subject to WCPB review.

(Note: This item was heard second)

Tom Ramsay stated that the applicants are seeking to put an addition on the southeast corner of the structure, which will square up the building on that end. He stated that the roof line will stay the same. This addition will add approximately 200 sq. ft to the kitchen and 160 sq. ft of a covered porch. Greg Smith asked what will be under the covered porch. Tom Ramsay stated that it will be a concrete pad with a continuation of the roof, which will be used for storage.

Greg Smith stated that this will square off the building in that location. He stated that it seems to be a much needed improvement to the structure since the kitchen is so small. He stated that this will also conform the roof line and the height won't be an issue. He also indicated that they will not have to do much digging either. Greg Smith stated that the right-of-way that they are close to is owned by the applicants and that right-of-way is used by everyone that lives in back.

There were no comments from the public in attendance. Pam Kenyon indicated that there was default approval from Warren County.

RESOLUTION

The Zoning Board of Appeals received an application from Bernard and Shirley Russell (V09-57) 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 by default approval;

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#10 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; there is a right-of-way involved.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this restaurant has been in existence for a long time and this will tidy up the back of the building.
- 3) The request is not substantial; this is filling in a jog and tying up some loose ends.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; no issue or concern has been established.

5) The alleged difficulty is not self-created, the structure has been there a long time.

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

Greg Smith stated that he has completed 16 years of service to the ZBA. He will be continuing his service to the Town by serving on the TB. He stated that he has recommended that Jason Saris take his place to complete his term on the ZBA.

The meeting was adjourned at 9:51pm.