

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday June 16, 2009
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, William Pfau, Tony DePace, Kam Hoopes, John Michaels, Jeff Anthony, David Ray, Zoning Administrator Pamela Kenyon and Counsel Michael Muller.

Absent: None

Meeting was called to order at 6:31 p.m.

Greg Smith asked if there were any changes or corrections to the May 19, 2009 minutes:

Motion by John Michaels to accept the May 19, 2009 minutes as written. **Seconded by** Kam Hoopes. **All in Favor. Motion Carried.**

1) V09-13 SENESE, JAMES & ANN MARIE. Represented by Kevin Kershaw. To alter pre-existing non-conforming structure, specifically to construct a proposed 2nd story addition over existing garage and a proposed addition on the west side of the garage, seek area variance for 1) A deficient front yard setback. 30 ft. is required, 21 ft. is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 3, Lot 77, Zone GB5000. Property Location: 3 Congers Point Way. Subject to WCPB review.

Kevin Kershaw stated that the applicants would like to put an 16' addition to the west side of the garage with a second story. They meet the west and rear setbacks but they do not meet the front yard setback. They only have 21' and they need 30'. Greg Smith stated that it is the same deficiency that existed before. Kevin Kershaw agreed but stated they did push the addition back by 2' from the front of the garage. He stated that the design and look of the house will remain the same.

Bill Pfau stated that there seems to be no issue with the neighbors because they have received an approval from the HOA Board of Directors, as well as letters of support from the neighbors. Greg Smith stated that this home is well hidden as well.

Kathy Bozony, LG Waterkeeper, stated that she has met with Jim Senese prior to this application with some concerns regarding stormwater management issues in the Congers Point area, however she has not discussed this project with him specifically. She stated that although this project is exempt from stormwater management requirements she feels that it should be a condition that is recommended by the ZA and reviewing Town Boards. She also raised the following concerns:

- 1) blasting for the addition due to the ledge rock in this area; and
- 2) algae blooms around the Congers Point peninsula should generate attention and should warrant minimizing the impacts from development to the shoreline. Stormwater

management and planting of vegetative buffers and restricting the use of fertilizers should be a requirement for all development, especially those that increase impervious surfaces and reduce permeability.

Kevin Kershaw asked if Kathy Bozony is requesting that something be required of the applicant. Kathy Bozony replied no but she highly recommends it. Kevin Kershaw asked if she had been to the site because it is all ledge rock where the addition is going. Kam Hoopes agreed and stated that the addition is just replacing impervious surface. It would be extremely awkward, if at all necessary to try to manage stormwater leaving the house, and they certainly cannot plant vegetative buffers with no soil. Kathy Bozony replied that they could add more vegetative buffers along the back side on the lake. Kevin Kershaw stated that would be hard to do because it is at a more than 45 degree angle and the property line is within 15'. He stated that downhill from the house there is a gravel driveway and lawn which he feels would be good enough to act as a buffer. Kathy Bozony stated that although the lawn is pervious she would be looking to add something more like a rain garden or some planting with a root base that can act as a natural filter for the stormwater. Kevin Kershaw stated that he added some stormwater measures in a previous project. He suggested that Kathy Bozony speak to the applicant with regard to additional plantings on the property.

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

RESOLUTION

The Zoning Board of Appeals received an application from James and Ann Marie Senese (V09-13) 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; most of the setbacks are being met and the setback deficiency is occurring on the right-of-way. It is awkward in that neighborhood.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, the houses are pretty well separated and buffered from one another by vegetation.
- 3) The request is not substantial; it is only one setback deficiency and it is only being encroached upon by a third.

- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the addition is going straight up over the garage and 16' of it is going out over ledge rock.
- 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 Bill Pfau, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

2) V09-14 FEDELE HOLDINGS, LLC. Represented by Joseph Pfau To alter pre-existing non-conforming structure, specifically to construct a proposed deck, seek area variance for 1) A deficient shoreline setback. 100' is required, 25.1' is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 142.00, Block 1, Lot 4, Zone RR10. Property Location: Tongue Mountain. Subject to WCPB and APA review.

(NOTE: William Pfau recused himself)

Joe Pfau stated that this property is located in Tongue Mountain Estates has a two bedroom camp on it and a few outbuildings. The proposal is to build an uncovered outside deck on the southerly side of the camp. This property is a pre-existing non-conforming structure and they require a 100' setback but they are proposing existing setback of the camp of 25.1'. The deck is proposed to be built away from the water. He provided pictures of the proposed deck and what it will look like with the existing vegetation.

Joe Pfau stated that they picked this location due to the access into the cabin. He also indicated that there is a rattlesnake fence on this side of the cabin and it would provide a nice area to enjoy the outside while being in a safe environment.

Kam Hoopes stated that he does not feel this proposal will have any effect on the neighborhood character or nearby properties. Joe Pfau stated that he only has one neighbor and they will not be able to see this from their property.

Greg Smith asked if there used to be a deck on this cabin. Joe Pfau replied yes there was and there is a portion of the ledger still there.

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

RESOLUTION

The Zoning Board of Appeals received an application from Fedele Holdings, LLC (V09-14) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; the cabin is within the 100' setback from the lake and it is better to grant the variance than to move the cabin.

2) There will be no undesirable change in the neighborhood character or to nearby properties, there is only one other property in the neighborhood.

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; the applicant has pointed out that there is a rattlesnake population up there that they would like to be protected from.

5) The alleged difficulty is not self-created, a previous owner had a porch in this location prior to this 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 Kam Hoopes and seconded by John Michaels, it is resolved that the ZBA does hereby approve the variance request as presented. Bill Pfau abstained. **All Others in Favor. Motion Carried.**

3) V09-15 NOLAN, AGNES. Represented by D.L. Dickinson Associates. 1) For the construction of 2 proposed retaining walls, seeks area variance for deficient setbacks. a) Front: 30' is required, 0' is proposed, and b) Sides: A total of 20' is required, 1' is proposed on both sides, and 2) for the removal of vegetation within 10 ft. from the top of the slope of a drainage way per section 200-37B(b). Section 171.11, Block 1, Lot 54, Zone GB5000. Property Location: Lakeshore Drive adjacent to Lake George Camping Equipment. Subject to WCPB review.

Dennis Dickinson stated that the applicant owns a large piece of property off the west side of the road and she has a driveway access parcel to the lake just north of the Town of Bolton's public access and marina that is there. She received a variance a year ago to put a walkway in to utilize this property. Shortly after receiving the variance she got a notification from the

NYS DOT regarding a permanent easement for filling as part of the Route 9N project. Dennis Dickinson stated that the applicant is willing to do that but she does not want to lose her access to the lake, which has prompted this proposal. He stated that the applicant is seeking to be able to pull off the road on the lake side to park. In order to do so they will need to create a parking area with retaining walls, which are considered structures and will need to meet the sideline setbacks.

Dennis Dickinson stated that they would be filling a maximum of 6'. They will be vegetating the parking area and putting in plastic grids in the subsoil to grow grass that she can drive on which will assist with stormwater management. He stated that the impervious area will be minimal for the retaining walls.

Dennis Dickinson stated that they have put in an application to the State to discuss tapping into their existing culvert under the road and they would install a manhole so that they can have access. The remaining portion would be graded off as the State intended to do anyway.

Greg Smith asked if she would be removing the guardrails to gain access to these spots. Dennis Dickinson replied yes. Greg Smith asked why she is not going to continue to use the spot she has across the road because it is only 30' further away. Bill Pfau agreed. Dennis Dickinson replied that the applicant owns the property and wants access to it, she does not want to have to cross the road especially when she has her grandkids.

John Michaels stated that he is concerned with filling in a stream and building a retaining wall all so the applicant does not have to cross the street. Dennis Dickinson replied that she wants to build a retaining wall and culvert the stream which is what the DOT intended to do anyway. Greg Smith stated that they have not seen any sort of proposal of what the State wants to do. Dennis Dickinson stated that he could get copies of the DOT plans.

Kam Hoopes stated that he feels that this is more of a drainage ditch than a stream and asked if there was any stream source above it. Dennis Dickinson replied that most of the water is from the road. He stated that right now it is down to a trickle amount. Kam Hoopes agreed and stated that since this is the last property to be civilized everyone's drainage ends up there.

Jeff Anthony stated that the last time they issued the variance the ZBA conditioned the approval requiring that the applicant seek any necessary permits from environmental agencies such as DEC, LGPC, APA or Army Corp. Dennis Dickinson replied that they have corresponded with all agencies but they were waiting for this issue to be resolved before making an application to the APA. Jeff Anthony stated that the applicant should have submitted all correspondence and permits from these agencies since the last variance asked for these things to be done and now they have an application for an even greater disturbance. He feels all of the other permits should be in place before the ZBA even considers this new application especially when dealing with determination of environmental impact.

Kam Hoopes stated that he agrees with Jeff Anthony but asked what the issue would be with approving a variance now because if these agencies do not issue a permit then their variance is null and void. John Michaels stated that they can't really answer the question about adverse environmental impacts because it has to be studied. He also feels that there is no need for them

to be first. Dennis Dickinson disagreed and stated that he feels that they should get the local board's approval before moving on. There was further discussion of this issue.

John Michaels stated that he is not comfortable with people filling in streams for a parking area. Dennis Dickinson stated that this is not an uncommon thing. Kam Hoopes stated that he feels that this is more of a drainage ditch which originates somewhere underground across the road. He stated that it will now just be taking any stormwater in an orderly fashion to the outlet. Dennis Dickinson stated that the outlet is to the side of the existing building and then continues on the same path as there is now. John Michaels stated that with more pipe there is less infiltration occurring. He stated that there is increased disturbance which will increase the amount of discharge. Kam Hoopes stated that the culvert would at least control the erosion and help carry it away.

Kam Hoopes stated that if the DOT plan does get moving it will take precedent over the previous variance because they will have to take care of everything up stream. He stated that he doesn't see why they couldn't be first to approve because all of the other agencies have to grant approval for it to be done and the filling of the stream will be occurring with or without this project. John Michaels stated that they cannot answer the question of whether or not this will have a negative environmental impact. Dennis Dickinson asked what environmental impact would it have because this is at lake level and there is nothing to absorb. Jeff Anthony disagreed and stated that they are dealing with wetlands and there will be some kind of environmental impact. He feels that there is not enough information provided to make a decision on that.

Tony DePace asked if DOT would have to come before the ZBA for a variance to extend the culvert. Pam Kenyon replied no. Jeff Anthony stated that they would have to get APA and Army Corp approval.

Pam Kenyon stated that there was no WC impact.

Sue Millington, representing Hondah Cottages, provided pictures of the property as well as a 1980 boathouse/dock permit that was made by her father representing Agnes Nolan, which does not present a conflict because she found it in the Town files. This does explain what DOT and APA think about this project.

Sue Millington stated that she agrees with the Board that this filling of the property will just make the original variance request easier to obtain approvals from the other agencies as well as making it an easier project to complete.

Sue Millington stated that this project is an enormous request. She stated that in reviewing the Environmental Assessment form and the applicant responded that this would not result in a large physical change to the project site. When she reviews this map it seems as though there is a large amount of fill that they will put in this property. She stated that she has walked this property, to her knowledge this is an active stream and the property leading to the lake would be considered wetlands.

With regard to the retaining wall, Sue Millington stated that she is concerned that they would need more support. However, these retaining walls will be on the property lines and therefore would need to have support from the adjoining properties.

With regard to requirement 3 on the Environmental Assessment form the applicant states that there will be no effect on the existing body of water. Sue Millington stated that here there was a DOT drainage easement and both the DOT and APA have called this wetlands. She is concerned that the culvert will increase the flow that already exists and it will not have the opportunity to absorb into the soil. Sue Millington stated that Tim Smith from the APA stated that “The property has wetlands situate upon virtually all of it.” and “Any new land use on Ms. Nolan’s property would be seen as a Class A Regional Project”

With regard to requirement 5, the applicant states that there will be no effect on adjacent properties’ drainage flow. Sue Millington stated that this area is subject to flood, so further clearing of this area would not help matters.

With regard to requirement 6, the applicant states that this project will not effect threatened or endangered plant or animal species. Sue Millington stated that as her photos show this property is full of dense vegetation with an active stream flowing through the middle of it. She stated that the proposed changes warrant a review by an environmental biologist to make that type of determination.

With regard to requirement 11, the applicant states that there will be no major effect on existing traffic problems. Sue Millington stated that removal of the guardrail will assist in getting down to the site but how will the cars get back out since there is no turn around. She is concerned that cars will have to back out on Route 9N at an extremely busy area. She is concerned that there is a huge safety concern that they need to consider. The DOT is putting in sidewalks to make walking along the highway safer but this proposal would endanger those pedestrians. Sue Millington noted a 1980 application letter to Kevin Connerty from Herbert F. Sliff, DOT, who stated that the site is “.only 29.9’ wide. In order to construct a proper vehicle entrance onto a State highway and meet DOT standards 39’ of road frontage is required.”

With regard to requirement 15, the applicant states that there will be no public controversy. Sue Millington stated that her clients represent 16 tax paying citizens that uniformly object to this project. She stated that she also feels that many more town members and visitors may take issue with this as well since their safety will be of concern when trying to walk from downtown to the town park.

With regard to the criteria for an area variance, Sue Millington stated that the applicant must show whether the benefit to the applicant outweighs the detriment to the health, safety and welfare of the community. The applicant must also show that there will not be an undesirable change to the character of the neighborhood or nearby property. Her clients will be extremely affected by this project in more ways than one. Sue Millington stated that this applicant can achieve the benefit by other feasible alternative. The applicant owns property on the other side of 9N which she has been using for years as access to the lake. Sue Millington stated that the variance is substantial because they are asking for 0’ or 1’ setbacks where 30’ and 20 are required.

Sue Millington stated that in light of all that has been discussed her clients ask that this variance be denied in its entirety.

Kam Hoopes stated that there is a lot conflict involved in this property. He stated that he would like to see the DOT plans before moving forward. He feels if the DOT intends to do the same as this project than he does not see the harm in allowing the applicant to extend it a certain amount of feet in a controlled manner with a manhole. John Michaels agreed but stated that he is concerned with getting in an out of the parcel safely.

Dennis Dickinson stated that they are seeking a 1' setback from sideline from a property that has a building 1' from the property line, which in his mind would be in keeping with the neighborhood. With regard to the retaining wall, they have spent some time designing it and it will not require any assist from neighboring properties. With regard to the environment factors, Dennis Dickinson stated that they will be dealing with the APA closely who will indicate what type of life lives there and how far it will be affected. With regard to safety of the access to the site, Dennis Dickinson stated that this area is very busy so this is not the only site that pedestrians would need to exercise caution.

Tony DePace stated that the DOT is going to come in and do this project and they will not be able to do anything and asked why they wouldn't wait until that has been completed. Dennis Dickinson replied that the DOT engineers and project manager want to know what the Town will allow before they decide on the sidewalk. Greg Smith stated that he would like to see what the State would like to do with the widening and sidewalks. Kam Hoopes agreed and stated that if the DOT plans to do half of what the applicant wants to do anyway the impact will be minimized. He suggested that they grant an extension for the previous variance until they can see what the State wants to do in this area. The Board agreed.

Jeff Anthony stated that they really need to think about this application. He stated that he would not want to access the lake from this property. There is less of a need for access considering public access within a couple of feet to the north or south. Kam Hoopes agreed but stated that for property value reasons the applicant has been paying taxes and maintaining this. He feels that they should take it off her hands and say that it is unbuildable and take it off the tax rolls. Greg Smith stated that is not their department.

James Ferris of Hondah Cottages asked if he as well as some of the other Hondah Cottages residents could voice their opposition to the previous variance granted. Counsel stated that they were welcome to speak because it was a public hearing but since the variance was already granted there was not much that they could do about it. Kam Hoopes suggested that they may want to wait to speak when the applicant returns so that their concerns are fresh in the ZBA members' minds. Greg Smith agreed but stated that they were more than welcome to speak.

James Ferris stated that he has lived at Hondah Cottages for 34 years and spent over \$400,000 on his home. He stated that he has never had a water problem on his property until the applicant decided that she did not want people walking on her property and installed a fence on both sides. The applicant clear cut all the trees and vegetation and left it in a pile and big mess. Previous to the installation of the fence the stream used to flow perfectly down to the lake. However, now the stream goes all over to get out and it has flooded his basement. He is

concerned that extending the culvert will create a faster harder flow which will affect him even worse.

John Micheli, Hondah Cottages, stated that he feels that the plan the applicant has presented is very insufficient and lacking many important details. He thinks this will take a tremendous amount of fill and he is concerned that if they have a major storm during the construction much of the fill would end up in the lake. He feels that this property is an environmental disaster and needs to be evaluated by a professional.

John Micheli stated that he met Wayne Smith who is a neighbor of the applicant, who indicated that he has offered deeded access to the lake with a dock and parking space at his marina, but she declined. He feels that if approved this would leave the Town wide open to a major lawsuit with regard to pedestrian safety.

With regard to constructing retaining walls, John Micheli stated that in his excavating experience, the plan is showing that they are very close to the property lines and in order to excavate down for the wall the applicant would need to encroach on the Hondah property a minimum of 6-8'. He continued that anything over 4' requires a shoring of some kind or a sloping which would further the encroachment and Hondah Cottages will not even allow an inch.

Mary Owens, resident of Hondah Cottages, stated that they have always agreed with the ZBA to oblige by the setbacks. She feels that the applicant should not be given any consideration unless she abides by the regular setbacks of her property.

Randy Smethurst, resident of Hondah Cottages and President of the Board of Directors, stated that the removal of any mature trees or other vegetation will permit noise, smoke and odors from the Town sewer station and LG Camping Company to enter Hondah Cottages which will diminish the quality of life of the Hondah residents. The pleasant view and privacy provided by these trees will be taken away and will affect their property values as well.

Kathy Bozony, LG Waterkeeper, stated that this stream is a drainage way into the lake and the only vegetation in this section of Bolton Landing. Wetland plants are evident within the stream area and act as a natural protective filter from stormwater run-off to the lake. She feels that all of the agencies need to be notified and involved in this project. She also feels that there needs to be better discussion on whether or not the soils can even support the proposed retaining wall. She is also concerned about allowing a walkway to the lake and the amount of fill that would be needed to do so.

Greg Smith thanked all speakers and stated that they would take all of their comments into consideration. He also indicated that when the applicant does return to the ZBA they will all be notified.

RESOLUTIONS

Motion by Kam Hoopes to extend variance V07-13, with the same conditions, for one year. Seconded by Tony DePace. John Michaels abstained. All others in Favor. Motion Carried.

Motion by Kam Hoopes to table application V09-15 pending further information and request that the applicant provide copies of all correspondence from any other regulatory agencies that have jurisdiction over the project and the proposed NYS DOT plan for the permanent easement. **Seconded by** Tony DePace. **All in Favor. Motion Carried.**

4) V09-16 PATRICIA SHELLI. Represented by Jeff Tennent. To demolish and rebuild single family dwelling, seeks area variance for deficient side setbacks. 20' total is required, 2.5' is proposed on the north side and 3' is proposed on the south side. Section 171.11, Block 2, Lot 21, Zone GB5000. Property Location: 11 Parkside Drive. Subject to WCPB review.

Jeff Tennent stated that the existing house is a pre-existing non-conforming structure which negates the self created aspect and the applicants are now trying to improve on that. He provided details on how he has slightly changed the configuration of the house on the lot so that it lessens the proximity to the property lines. He stated that the proposed house is a bigger structure. However, they are not increasing the area of the footprint for the house. They will also be pulling the house back a little further. Stormwater will be incorporated into the new structure which currently does not exist.

Jeff Tennent stated that that there would be no undesirable change to the neighborhood, because there are several houses in this neighborhood that have already been updated. He stated that it also will not have any impact on the neighbors' views.

John Michaels asked what the overall height would be for the new structure. Jeff Tennent stated that it is a three story house that will be 35' or under. He stated that it is one of the only houses in this development that has not been altered and it is comparable in size. He stated that the location will not block anyone's views and the colors and design of the house is aesthetically pleasing.

Pam Kenyon stated that there was no WC impact.

Greg Smith asked if there was a HOA. Jeff Tennent replied no but he encouraged the applicants to approach all of the neighbors of this new proposal before they are notified by the Town. He feels that this way they can get any input from the neighbors before coming before the Board. Counsel stated that that he would read the letters from the neighbors.

Counsel read an email from Dolores Gianquitto who supports the project but was concerned with water being directed onto her property. Jeff Tennent explained that they are moving further away from this neighbor and stormwater will be incorporated into the project. Therefore any and all water coming from the roof of the structure will remain on the applicants' property.

Greg Smith stated that there were 12 other letters from the neighbors in support of the proposal.

Rita Woshner, 13 Parkside Lane, stated that she is in support of the project. However, she was concerned that if the applicant had not notified her, she would not have known about the project. Pam Kenyon stated that she was on her list of individuals to receive notification. Rita

Woshner stated that they did write a letter of support but did have some questions regarding the time frame and access to the property.

Ron Shelli stated that they would be starting construction after September 15th so not to disrupt anyone's summer. With regard to access to the property for construction, he stated that his wife's aunt owns the adjacent camp and they have permission to use that road and they have an easement over Rita Woshner's and another way as well. John Michaels stated that he thought there were a fence and a shed on the other easement. Jeff Tennent stated that the shed is on the property line and they have agreed to rebuild a new shed in a different location in exchange for the easement across the property. Pam Kenyon asked if that was part of this application. Jeff Tennent replied no but he wanted to get this settled first and he will have to come back with the moving of the shed away from the line unless it is less than 100 sq. ft.

Kathy Bozony, LG Waterkeeper, had the following concerns:

- 1) The applicant claims that they will only be using 29% of the lot for development. However, she feels that they are not considering the additional impervious surfaces added to the site which should be addressed and verified.
- 2) A stormwater management plan should be added as a condition of approval
- 3) Addition of rain gardens and vegetation besides just the retention basin.
- 4) The applicant has stated that the proposal is not self-created because it was approved as a building lot years ago. However, what is self-created is the size of the structure on a substandard lot.

Jeff Tennent stated that in the GB5000 zone and the allowed density is 40% and there are existing impervious surfaces there. He stated that they also plan to incorporate stormwater which currently does not exist. With regard to additional plantings, he stated that they plan to add vegetation on the property for stormwater.

RESOLUTION

The Zoning Board of Appeals received an application from Patricia Shelli (V09-16) 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; due to size of the lot and the present location of the house.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, the applicants have spoken to the neighbors involved with this project and there are no objections.
- 3) The request is substantial; but compared to what exists there now it does diminish it.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; stormwater management will be implemented in this project.
- 5) The alleged difficulty is self-created, on a lot that is a little small.

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.**

5) Proposed amendment to Local Law No. 3

Counsel explained that the TB has requested some clarification in the terms of structure and what is considered jurisdictional and non-jurisdictional. They discussed the definition for fence. The Board agreed that the definition was adequate.

Counsel reviewed the proposed definition of a jurisdictional structure. He stated that basically anything that is more than 6 inches above grade and in excess of 100 sq. ft, including eaves. Kam Hoopes stated that he thought that they ran into trouble with the APA before regarding this because they consider anything, including things flush to the ground to be considered structures. Pam Kenyon replied that the APA feels that if you can mow over it, it is not a structure. Counsel asked if they were concerned that it had to meet both criteria to be considered a structure. There was further discussion of the definition. The Board agreed that the definition should read, "...6 inches above grade or in excess of 100 sq. ft., including eaves."

Counsel reviewed the proposed definition of a non-jurisdictional structure which states that any structure less than 6 inches or less than 100 sq. ft., including eaves shall be placed, installed or constructed without the requirement of a certificate of compliance or building permit so long as the structure is placed in such a manner to meet half of the setback requirements in the zoning district. A minimum separation of 3' shall be required between any non-jurisdictional structure or any adjacent structure.

John Michaels stated that he is concerned with calling it non-jurisdictional. He asked if there was different language they could use because they are calling it non-jurisdictional but they will be required to meet setbacks. Pam Kenyon agreed. John Michaels suggested that they move anything that requires setbacks be placed under the jurisdictional definition and anything that does not require meeting any regulations be considered non-jurisdictional. Bill Pfau suggested that they use Type I and Type II under the jurisdictional definition. Counsel stated that he liked that suggestion and would use that.

Jeff Anthony stated that he felt more comfortable in leaving the definition alone because it follows suit with the APA definition. The Board agreed. Counsel stated that he would include Type I and II into the jurisdictional definition and present it to the TB for their review.

The meeting was adjourned at 8:50 pm.

Minutes respectfully submitted by Kristen MacEwan.