

**Town of Bolton**  
**ZONING BOARD OF APPEALS**  
**MINUTES**  
**Tuesday- November 17, 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:** William Pfau, Tony DePace, Kam Hoopes, John Michaels , Jeff Anthony, David Ray, Zoning Administrator Pamela Kenyon and Counsel Michael Muller.

**Absent:** David Ray and Greg Smith (Greg Smith was only present for item # 5 Sagbolt, LLC V09-52)

Meeting was called to order at 6:38 p.m.

Bill Pfau announced that there is an appreciation dinner for Kathy Simmes at the Conservation Club on Saturday December 5<sup>th</sup> at 5pm. Everyone is invited to attend.

The Board tabled review of the October minutes until the December meeting.

**1) V09-37 O'CONNELL, LAWRENCE & CAROLYN.** For the construction of a proposed 36' x 48' garage/barn, seek area variance for deficient side yard setbacks. 50' is required, 18.6' is proposed on the south side and 35' is proposed on the north side. Section 213.17, Block 1, Lot 5, Zone **LC25** & RCM1.3. Property Location: 23 Canoe Lane. Subject to WCPB review. *NOTE: This item was tabled at the October 2009 ZBA meeting pending additional information.*

Larry O'Connell stated that as the ZBA recommended he investigated the possibility of a lot line adjustment and land swap. He stated that he contracted a land surveyor who has re-apportioned the lines. He provided details of the new lot lines proposed.

Bill Pfau asked if the barn is proposed in the same location. Larry O'Connell replied yes.

Kam Hoopes stated that he feels that this is a big improvement to the overall plan. He stated that this was exactly what he was looking for. Larry O'Connell stated that they took the maximum they could take without affecting the density of either lot. Kam Hoopes stated that he was not expecting him to wipe out the variance altogether, but just improve on it. Bill Pfau stated that it does seem to be a large improvement with regard to setbacks. John Michaels asked what the setback variance was now. Bill Pfau stated that it was 50' to 35'. John Michaels stated that was a big improvement.

There were no comments from the public in attendance.

Counsel read an email from Alex J. Shue, President of the Diamond Ridge Homeowners Association, who indicated that the DRHA Board is in support of the project.

**RESOLUTION**

The Zoning Board of Appeals received an application from Lawrence & Carolyn O'Connell (V09-37) 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; these are dimensional considerations.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, the house and barn will be out of the public view.
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it is a simple barn to cover up various pieces of equipment.
- 5) The alleged difficulty is not self-created, the original lot was created and will now be improved by a lot line adjustment.

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.**

**2) 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 October 2009 ZBA meeting pending additional information.*

Jim Pepper stated that the proposal is to build a modest-sized open sundeck off of the main living area of the newly constructed home. He stated that the home is built into the hillside, so the entry into the main living area is at grade level and on the lake side they are approximately 10' above the grade.

He provided more detailed plans and drawings. He stated that the site of the proposal is at the end of Cherry Lane in a quiet neighborhood. The homes in this area were built in the late 50's-60's. The property to the south is in the Bell Point Shores Association. It is the only one in the neighborhood that was constructed under the present 75' setback zoning. All of the homes in the neighborhood were built either prior to zoning regulations or with the previous 50' setback. The topography is moderate to steep slope from the houses to the lakeshore.

Jim Pepper provided photos of the 4 adjacent houses with regard to their deck structure. He stated that all of the homes have encroaching decks due to the previous 50' setback. He stated that he is asking for a deck that encroaches 34' to the shoreline. He stated that the deck is 14' x 18' with a bridge link to the house. He stated that he intentionally kept it away from the roof overhang to allow for most of the snow to fall off and hit the ground below. Jim Pepper stated that most of the neighboring decks are larger than what is being proposed. He gave approximate dimensions of the neighboring decks. He also indicated that all of these decks were built at the main living level which is 10-12' above grade on the lake side. John Michaels asked if he knows how far the decks are from the lake. Jim Pepper stated that he previously measured these dimensions roughly but does not have those numbers tonight. However, he knows that the house to the south was probably built in compliance since it is newer construction which would have been required to meet the 75' setback. He stated that most of the other decks are encroaching within the 50' setback. John Michaels stated that it would be helpful information to have. Jim Pepper stated that he provided that at the last meeting and would be willing to provide that again.

Tony DePace asked how far the bridge would extend. Jim Pepper stated that the bridge is 4' deep and 9' wide. He stated that he left it open along the house for snow fall and rain coming off the roof.

Jim Pepper stated that Warren County issued no County impact. They have the support of three their closest neighbors. He stated that there was one household that was in disagreement which is where all of the letters came from. He stated that there are 3 families that share the house and all 3 decided to write letters.

Bill Pfau stated that the Board accepts the fact that there are other decks in the area that do not meet setbacks. Jim Pepper stated that he wanted to clarify a few things from last month. He stated that Kathy Bozony stated that a variance was already previously granted to build a dwelling within a required setback. Jim Pepper stated that although that is true, the setback was grandfathered for the previous foundation. He stated that the variance previously sought was for the roof overhang. He stated that this was also a concern of the Schadler group. He stated that the variance granted 2 ½ years ago was a relatively minor variance.

With regard to Kathy Bozony's concern that the deck could facilitate future expansion, Jim Pepper stated that he understands her concern. However, he would be willing to add the condition that this deck could not be enclosed or added to the living space. With regard to Kathy Bozony's concern of finding a more compliant location, Jim Pepper stated that there is no other compliant location. He stated that they have one flat area along the lake side which has a blue stone terrace. He stated that although it is roughly the same size of the proposed deck, it is 150' away from the kitchen and 10' lower. Serving dinner would require multiple

trips back and forth which would be a hardship for some and a practical difficulty for all. He stated that the proposed area off the living/dining area is practical for convenient service to and from the deck and provides the only practical access from the social area to enjoy the lake side environment. The goal is the enjoyment of the outdoor environment within a reasonable access to the main living area.

Bill Pfau stated that they would be interested in learning more about the size of the proposed deck and the reason for its size. Jim Pepper stated that the size of the deck is to accommodate the current table, chairs and grill. He stated that the current table is 42" x 72". The deck size will allow them to situate the table and chairs so the guests can easily get in and out of their chairs and so that there is room to walk around. He stated that they also needed to have proper placement of the grill due to the roof overhangs and location of large hemlock tree that they intend to keep.

With regard to John Michaels comment that this request was self-created, Jim Pepper stated that it is hard to deny that. He stated that given his architectural background he is used to having to critique others' design without being in the head of the designer and understanding the criteria and issues that he/she went through. He stated that he did not incorporate this with the initial design because he didn't want to complicate the original design. He stated that he knew that he would be back here to make an appeal for a deck, but he was not sure of the size or the exact location at that time. Jim Pepper stated that dozens of design schemes over many weeks could not produce a viable alternative other than a deck projecting east of the existing foundation line.

Jim Pepper provided details about the floor plan and changes from the existing floor plan to the current floor plan. He stated that the only way to incorporate a deck outside the foundation line would be to sacrifice the internal flow on both levels and add more exterior walls with greater heat loss. He stated that incorporating the deck into the existing footprint would also have defeated the purpose of having an outdoor sundeck because it would be heavily shaded by the trees and the structure itself.

Jim Pepper stated that it was never his intent to bamboozle anyone. He stated that he knew what he had to do and that he would be back for this. At the time of the original construction of the house he was not prepared for the size, exact location or how it would fit within the framework of the existing steps to the dock and other landscape items.

Jim Pepper explained why he built the new house on the exact foundation of the old home. He stated that the cost of demolishing the entire house and starting over would have been much more costly financially and environmentally. He stated that it also would have affected the well lines, newly installed septic and utility and generator lines. He stated that if they were to move the house back it would have also greatly affected the environment, there would be a large cleared area closer to the lake and then more trees would need to be removed for the new site. Jim Pepper stated that although building on the existing foundation was financially and environmentally advantageous it created design compromises. He stated that the new home is not what he would have designed had he worked with a clean slate. Given the conditions that he had to work with he took the most reasonable and financially prudent route.

With regard to the question of whether this is self-created, Jim Pepper feels that it is not self-created. He stated that he built on the existing foundation and the only way to incorporate an outdoor deck into the design without requiring a variance would be to remove a notch on the main floor plan and lower level, which would create circulation problems at both levels. On the lower level it would create additional walls and heat loss. It would be difficult to have the radiant heat floors as well. On the main level, it would sacrifice the lake view, which is the point of lake front living. Any alternative would be impractical besides creating an additional financial hardship through construction and heat costs. The difficulty was not self-created because they purchased the home totally in compliance with existing setbacks at the time. After careful consideration of all options he stated that he decided that these compromises were too great and he would have to apply for a variance.

Kam Hoopes stated that the APA has taken a stance of zero tolerance for invading lake setbacks. He stated that they have had several of their variances overturned by the APA. He stated that a few of the previous applications have had the ability to carefully re-submit and get approval. However, he does not feel that this is one of those applications. Kam Hoopes stated that he is having a lot of difficulty with allowing this variance. He stated that not only is the applicant an architect but also a real estate agent who knows what everyone is up against with lake setbacks and side yard setbacks. He stated that this is not a proposed new building, it is well on its way to being completed and feels that this is a very "after the fact" request. John Michaels agreed. He stated that the applicant could have at least prepared the Board that he would be returning with an application for the deck. Jim Pepper stated that he should have said that. John Michaels stated that even if he did, he probably would not have gotten it because they would have wanted to see the actual design. He stated that they do not have open ended variances. He stated that he has difficulty finding that this was not self-created when the applicant has just admitted that 2 ½ years ago he knew he would be back for the deck. Jim Pepper stated that it is only self-created because he did not propose it 2 ½ years ago. He stated that he knew that it would be important to have a deck but he was not prepared to outline the details of the deck. He stated that he also feels that 2 ½ years ago there would not have been a problem to have an open-ended project because the APA was not as heavily involved.

John Michaels stated that they still have the local code to follow and they have to answer the question of whether or not this was self-created. He stated that he is not comfortable with that. Jim Pepper stated that if he presented the deck 2 ½ years ago, the Board probably would have approved it. Jeff Anthony stated that they probably would not have had to consider the APA's stance. Now, the APA expects the Board to not only consider the 5 measures for approval but also to deal with the hardship and practical difficulty. John Michaels stated that he is not sure what the Board would have thought 2 ½ years ago, but they would have at least had the full picture. Jim Pepper stated that he was not trying to hide anything. John Michaels stated that the approval from 2 ½ years ago was not for full picture. Jim Pepper stated that he didn't think that it was that important at the time. Kam Hoopes agreed that they cannot speculate on what the Board would have done because even without the APA it has a large self-created component to it. They also don't know if the benefit could have been achieved by other means 2 ½ years ago.

Jeff Anthony stated that he expected to see a different design based on the comments and concerns from the Board last month. He stated that the pictures provided tonight of the neighbors' decks show that they are very narrow but run the length of the house. He stated that

he thought that the applicant would have presented something a little more like that and possibly gotten rid of the bridge because that is 4' of wasted space. He stated that the applicant commented that the bridge would be useful to get out of the drip line and to prevent snow from falling on the deck, but not many people sit on an open deck when it is raining or in the wintertime. He stated that he is not trying to design the deck but he would have hoped that the applicant would have come back with alternatives that would have added to their consideration so that they could demonstrate to the APA that there were schemes considered and rejected for one reason or another.

Bill Pfau stated that he agreed with Jeff Anthony. He commented that he likes that the applicant has established the necessity of the deck on this level. He also likes that the applicant has explored other alternatives for placement. There has also been a case made for the size of the deck. However, he agrees with Jeff Anthony that the applicant should consider pulling it back from the lake without losing square footage. With regard to John Michaels and Kam Hoopes concern about this being self-created, Bill Pfau stated that it may be true but that in itself does not preclude denying the variance.

Jim Pepper stated that the only reason he pulled the deck off the house is to prevent the snow from falling off onto the deck. He used a metal roof to handle the snow. He is not as concerned about the drip line because that can be handled by a rain gutter. Tony DePace stated that the 4' space really won't matter much because the roof overhangs 18" and with the snow coming off that size roof, it still will land on the porch anyway. Jim Pepper stated that he didn't think it would given the pitch. Tony DePace feels that the APA is not going to like this design.

With regard Jeff Anthony's comments, Jim Pepper stated that what he thought he was being asked at the last meeting was to present hardships and practical difficulties in a more articulate manner, which he has been getting into. Bill Pfau stated that he agrees that Jim Pepper was never recommended to re-design his plan. Jeff Anthony agreed and stated that they didn't, but that is always an option and alternative for applicants to consider. He stated that he felt that they asked for the applicant to go back and consider the whole package.

Jim Pepper stated that he spoke to Dave Rosebrook, Town Assessor, with regard to financial hardship. He stated that Dave Rosebrook's commented that homes without decks, lakefront or not, will certainly have a reduced value. Dave Rosebrook made the following comments: There has been no study that he knows of that has determined the loss of value. However, he cannot even think of a lakefront house without some sort of flat area for outdoor use. All properties on sloped sites, such as this one, have decks to enjoy the lake. If he were a perspective buyer, he would be turned off if the house did not have such area. The absence of an outdoor area convenient to the kitchen/dining area would result in a financial hardship or loss at the time of sale, either buyers would walk away or make a lower offer. Jim Pepper stated that if they didn't use the existing foundation, which guided them right into this problem, it would have caused a loss.

Jim Pepper stated that this deck is also handicap friendly. He stated that he has been dealing with a great deal of pain in his legs from walking steps, standing and just walking. He hardly goes down to his dock because of the distance and steps to that point. He stated that they also have a family member and friend, who visit often that are wheelchair bound. He stated that

this deck will allow them to be able to enjoy the lake. He stated that their entire first floor has been designed to be handicapped accessible.

Bill Pfau stated that the Board has three options, 1) to allow the variance, 2) deny the variance or 3) determine that the applicant is entitled to a deck on the lakeside, but should re-configure. He stated that he feels that the applicant is entitled to a deck. Kam Hoopes asked if there was a deck on the previous house. Jim Pepper replied yes, but it was not part of the footprint. Kam Hoopes asked if it met the setbacks. Jim Pepper replied yes.

John Michaels stated that there are compromises that one has to make when they build on an existing footprint. He stated that personally he had to give up a deck on his house to add square footage to his house. He stated that the applicant had several hundred feet to move this house back from the lake which gave options that most people don't have. Jim Pepper stated that he explained earlier why he used the existing footprint. John Michaels stated that should have been presented when the original presentation was made. He stated that all of that information does not apply to the deck, which is a separate issue. Jim Pepper stated that he disagrees that it is a separate issue. John Michaels stated that he cannot stand back and say that this issue was not self-created. He stated that the applicant has given plenty of information about everything else but still has yet to provide sufficient information that this was not self-created. Kam Hoopes agreed. He stated that if they had known that there was a deck that would be proposed in the future it would have been considered an incomplete application.

Given the comments from the Board, Tony DePace asked the applicant if he would consider tabling the application and possibly re-design the deck. Jim Pepper replied that he does not have a problem with that. However, as Bill Pfau mentioned he was not directed by the ZBA to re-design the deck, but rather to provide more information on practical difficulties and hardships.

Bill Pfau stated that although this is a self-created problem he does not feel that there is anyway to get around it right now. If they agree that it was self-created it does not necessarily preclude the Board from granting the variance. Jim Pepper stated that he spoke to Walter Law, a previous Chairman of the ZBA, to discuss this issue. Walter Law stated that everyone on the ZBA is aware that most problems are self-created. Jim Pepper stated that given the design processes and issues that he had to deal with he does not feel that this was self-created.

Kathy Bozony, of the Office of the Lake George Waterkeeper, commented that 2 ½ years ago and in October of 2009 she recommended a shoreline buffer on this property with the qualifications that she had seen the site. She stated that she was invited to the site and she now knows that there are mature trees and natural vegetation there. She stated that she appreciates that the applicant is using the existing footprint which has created minimal disturbance. Mature trees and natural vegetation, including a filtered view, exist along the shoreline to infiltrate stormwater. She understands that this deck will not be converted into another room, given the size of the house. She is pleased that the deck will be constructed within the mature trees and none will be removed. She agrees that a re-design of the deck to bring it closer to the house and away from the lake would be beneficial, as long as it is worked around the existing mature trees. She stated that she has offered to provide some guidance to add a little more ground cover and vegetation under the canopy of some of the mature trees.

Jim Pepper thanked Kathy Bozony for visiting the site. He stated that he would provide additional vegetation at her recommendation. He would also agree to the condition that the deck would not become additional living space.

Counsel Muller read a letter from Stuart G. Tucker who is support of the project.

Sally Pepper stated that the Board was concerned with the distance between the neighbors' decks and the lake. She stated that Jim did measure the distance and none of them met the 50 feet. She stated that they can go back and measure all of the decks again and present it to them. John Michaels stated that they applicants chose to bring in these pictures and he would like to know the length and width of the decks and how far they are from the lake. He feels that could help them build their case. Jim Pepper stated that he would be happy to provide that as well as look at re-designing the deck.

Kam Hoopes stated that he is a big proponent of building within the same footprint, disturbing only the area that is already disturbed. He agrees that an outdoor deck is an improvement on any residence. However, he is still dealing with some big hurdles. He stated that the applicant is in charge of their own application and could choose to alter the plan further.

Bill Pfau stated that he feels that the applicant has provided sufficient information and has explored other alternatives. He personally feels that this is a legitimate proposition. However, he feels that a few of the Board members are having a hard time with the piece meal of the project and where he started from.

Jim Pepper requested to table his application.

**RESOLUTION:**

**Motion by Tony DePace** to table application V09-42 pending further information. **Seconded by Jeff Anthony. All in Favor. Motion Carried.**

**3) V09-56 SALAMONE, KEN.** Represented by Bruce Mowery. Seeks area variance for garage capacity. 3 cars maximum allowed, 4 cars proposed. Section 213.05, Block 1, Lot 6.1, Zone RM1.3. Property Location: 4124 Lake Shore Drive. Subject to WCPB review.

Bruce Mowery stated that last month he presented and received approval of the plan for the reconstruction of the house which is to be built on the existing footprint. During that process the ZBA learned that the house would have a 2 car garage. However, a previously constructed utility building also has 2 garage doors and the code provides that a single family dwelling is not to have more than 3 garage bays. He stated that they are seeking a variance for the additional bay.

Tony DePace stated that he does not agree with this restriction at all. He feels that they should be allowed to put as many cars as he wants in his garage. He suggested that they ask for more capacity because it is ridiculous limitation. Bill Pfau agreed but stated that they should only request the minimum necessary.



Jeff Anthony stated that there are 4 garage doors on the entire project and the applicant could have lied and told them that one was for boat or storage but he did not. Bruce Mowery stated that how the space is used after the fact is going to be hard to police. The Board agreed.

## RESOLUTION

The Zoning Board of Appeals received an application from Ken Salamone (V09-56) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, there has been previous review of the buildings last month and previously for the garage building and have determined that they are within the character of the neighborhood and consistent with the architectural character of the area.
- 3) The request is not substantial; one extra car bay, which is 25% more than what is allowed, which he does not feel is substantial
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; review of the construction of the structures and buildings previously and have determined that they would not.
- 5) The alleged difficulty is self-created, but he does not believe it is the determining factor in judging the variance.

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

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

**4)V09-48 BURRELL, CHESTER & ELIZABETH.** Represented by Don Russell. To construct an approximate 106' x 2'6" retaining wall that will be attached to an existing after the fact retaining wall, seek area variance for deficient setbacks. 1) Front: 75' is required, -0'

is proposed; and 2) Shoreline: 75' is required, 50' is proposed. Section 185.00, Block 1, Lot 39, Zone RCL3. Property Location: 487 Trout Lake Road. Subject to WCPB and APA review.

Don Russell stated that the applicants started to build this wall over the summer and thought of it as a landscape feature. He stated that none of this would have ever come up except he is proposing to build an addition on the east side of the home and when he put in for a permit application it was noticed that the stone wall exceeded what was allowed per the code. Don Russell stated that it was not their intent to do something under-handed.

Don Russell stated that the project site is located on Trout Lake in a scenic corridor, so the applicant does not meet the setbacks for what was built. The applicant would also like to extend this wall down to the road. This wall helps with erosion control by picking up the stormwater and it is a nice asset to the neighborhood. He stated that the County found no impact.

Jeff Anthony stated that when he visited the site he saw a wall on the other side of the driveway that is being built, which is not on the plans. He asked if the applicant would need variance with that as well. Don Russell replied that that he did not believe so. The applicant is trying to create a curb and does not plan to extend that any further. Kam Hoopes stated that the applicant should be aware if they should choose to increase the size of that wall as well, he will need to come before the ZBA for a variance. He stated that when he visited the site he found it to be very neat and well kept. The stone wall is very much in keeping with the neighborhood. The retaining wall is there to civilize the landscaping and there is a pre-existing retaining wall at the bottom of property that they are trying to link to. He stated that they may see a problem with the APA but he is willing to take the chance. John Michaels agreed. Bill Pfau agreed and stated that although the rock wall is a structure, it is only a rock wall and there are plenty around this area.

There were no comments from the public in attendance.

There was no WC Impact.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Chester and Elizabeth Burrell (V09-48) 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# 4of 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 various setback considerations in the front and lakeshore. However it is on the other side of the road from the lakeshore.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a showcase property in that neighborhood and will be nearly invisible.

3) The request is not substantial; this is a simple effort to keep erosion and sedimentation down and keep the driveway where it belongs.

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, in anyway that this Board needs to be involved with.

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.**

**5)V09-50 ROCKWELL, DAVID & JOAN.** Represented by Don Russell. To alter non-conforming structure, specifically to expand the living space, extend the porch and new covered entryway, seek area variance for 1) a deficient front yard setback. 30' is required, 17' minimum is proposed: and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.10, Block 1, Lot 28, Zone RCH5000. Property Location: 37 Sunrise Shores Loop. Subject to WCPB review.

Don Russell stated that this structure was originally part of a cabin community designed for summer rentals. Unfortunately any changes to these types of structures require variances. He stated that they are proposing some much needed storage space, a half bath and a handicapped access porch. He stated that the entire project exceeds the density less than 1%. Pam Kenyon indicated that the applicant was not over the density because in this zone they are allowed to occupy 40% of the lot.

Don Russell stated that the setback is due to the driveway that wraps around the 3 sides of the house. He stated that the applicants are trying to improve upon this small dwelling which only has 800 sq. ft. He stated that this would allow room mostly for storage and will be slightly expanding the screened porch a little bit.

Jeff Anthony asked if the large pine tree will remain near the screened porch. Don Russell replied that it would stay.

John Michaels stated that he appreciates this minimal expansion so that it does not affect any neighbors' views. Don Russell indicated that they have approval of the HOA.

Kam Hoopes stated that he likes that the screened porch and the handicapped access fill in a jog in the building. Bill Pfau agreed and stated that he likes the low impact additions to the house.

Kathy Bozony, from the Office of the Lake George Waterkeeper, stated that she was pleased to hear that the pine tree is going to stay, as well as some of the other mature trees. She asked if there was any way to look at some of the areas around the structure to provide for more vegetation to infiltrate stormwater.

John Michaels asked for some clarification of the septic location and capability. Don Russell explained that he knew where the tank was, but was not sure of the location of the field. John Michaels stated that he raised the issue because he thought that they were requiring certification of the system when there is an expansion of living space. Pam Kenyon replied that they are but only for shoreline variances.

## **RESOLUTION**

The Zoning Board of Appeals received an application from David and Joan Rockwell (V09-50) 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#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; there is a front yard setback that is only being marginally increased.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a very modest proposal, part of it filling in a jog and adding a handicap ramp is an improvement.
- 3) The request is not substantial; it is the minimum relief necessary.
- 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 cabin pre-dates the owners by quite a bit of 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 John Michaels, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

**6)V09-49 GREEN ISLAND LLC (LORENCE & LINDA QUEEN).** Represented by Chris Gabriels. In accordance with Section 200-93A (other regulations applicable to Planned Unit Developments), seeks area variance to convert an “L” shaped dock into a “T” shaped dock. Section 171.12, Block 1, Lot 1, Zone PUD. Property Location: 35 North Island Drive. Subject to WCPB, PB, TB & APA review.

Application V09-49 was tabled at the applicant’s request.

**7)V09-52 SAGBOLT, LLC.** Represented by Attys. Benjamin Pratt and Jonathan Lapper. In accordance with Section 200-93A (other regulations applicable to Planned Unit Developments), seeks area variance to 1) rehabilitate the “land-side” of the steamboat dock including new walls, benches, fencing, lighting and landscaping; and 2) To demolish and replace lakeside food service/snack bar building and decks. Section 171.16, Block 1, Lot 16, Zone PUD. Property Location: 110 Sagamore Road. Subject to WCPB, PB, TB & APA review.

*(Note: Greg Smith sat in on this application due to Jeff Anthony’s recusal.)*

Ben Pratt explained that they are requesting an amendment to a PUD. The Bolton ordinance requires that an amendment to a PUD is to be reviewed first by the ZBA. In effect, the ZBA would be making a recommendation to the TB, because they are the only authority to allow the change because it is a legislative change. He stated that he is hoping for review and recommendation by both the ZBA and PB before going before the TB next month.

Ben Pratt gave an overview of the proposed changes. He highlighted that they will be replacing the food service building and will be adding an additional bathroom to the facility. This building currently serves the pool, beach and dock area. The second part of the project is to rehabilitate the steamboat dock to get back to having the steamboats dock again at this site. In doing so, they will also re-do the landside of the docks and convert these areas into decks. They plan to add some vegetation and landscape in this area and will retain all of the trees. This area will not only be better for stormwater but will also be more aesthetically pleasing. This area will also be made handicapped accessible to the dock and existing restaurant.

Ben Pratt provided further details of the proposed plan. He stated that the proposal provides a better use for the space with less environmental impact and will increase the commercial opportunities of the steamboat dock and the increased food and beverage service.

With regard to the additional bathroom, Ben Pratt stated that the additional sanitary waste will be handled by 6” line that was installed when the pool was constructed.

Ben Pratt stated that this proposal will not have any undesirable change to the neighborhood or nearby properties. The request is not substantial. The physical and environmental impacts are

limited and he feels that they meet all of the tests of the ordinance, should they wish to apply them.

With regard to review and approval required of other agencies, Ben Pratt stated that WC has found no impact. The NYS Office of Parks, Recreation, and Historic Preservation have determined that there will be no negative historic impact. The NYS Liquor Authority has seen drawings and information and seem to be happy. They have a letter from the APA who seem to be content but will not make a determination until after the Town has made its decision. He stated that the APA actually visited the site and were blown away by the work that was done since last year. They looked at this and do not seem to have any difficulties.

Greg Smith asked why there were expanding the food service area for the pool. Ben Pratt replied that they expanded for commercial and hygienic reasons. He stated that the one bathroom was completely over-used and they needed an additional bathroom. The food and beverage service for the area has increased because of the existing pool. They also wanted to take advantage of creating another spot where people can sit and spend money. Although that existed before, they will now have full bar service and more of an environment to enjoy.

Kam Hoopes stated that this proposal is a very positive improvement on the Sagbolt's ability to do good business which then turns into good business for the Town. He stated that it is also aesthetically pleasing.

Jane Gabriels, neighbor of the Sagamore, asked why they have put fence around the pool and asked how that will affect the new project. Mark Tabor of the L.A. Group replied that the fence encloses the pool as required by NYS code. He stated that it is tied into the existing building and will continue to tie into the proposed building. This will act as a separation from the guests and the general public. The fence will be gated and opened to the guests of the hotel only.

Zandy Gabriels, representing other property owners on Green Island, stated that they are in full support of the changes being proposed by Sagbolt. He stated that this is an excellent, modest minor change that will enhance the Sagamore's summer recreation facilities so that we can have increased tourism throughout the entire town and facility. He stated that they will be expressing the same sentiments to the PB and TB and APA if necessary.

**RESOLUTION:**

**Motion by** Kam Hoopes to favorably recommend application V09-52 to the Town Board.

**Seconded by** John Michaels. Jeff Anthony recused himself. **All Others in Favor. Motion Carried.**

**8)V09-53 BAILEY JR., HOWARD & NANCY**, Represented by Atty. Stefanie DiLallo Bitter. For a proposed two lot subdivision, seek area variance for deficient 1) Lot Size: 2.6 acres is required, .42 acres is proposed for Lot 1 and .04 acres is proposed for Lot 2; 2) Lot Width: 125' is required, 35' is proposed for Lot 2; 3) Lot Depth: 150' is required, 47' is proposed for Lot 2; 4) Lot Coverage: 15% allowed, 49.9% is proposed on Lot 2; and 5) Rear Setback: 20' is required, 7.9' is proposed on Lot 2. Section 200.14, Block 1, Lot 16, Zone RM1.3. Property Location: 14 South Beach Avenue. Subject to WCPB and APA review.

Stephanie Bitter requested that the ZBA look at this presentation as a workshop. It has come to her attention that the project as a whole failed to incorporate a main piece. She stated that they are working with what they have. The applicant came to her office seeking to handle estate planning and what options he might have as it exists. The main residence exists on 14 South Beach. The property also has one cottage located on the northeastern portion of the property and another cottage on central portion of the northern section which is already its own parcel. She stated that they are proposing that the cottages act independently with contractual access to the lake. Stephanie Bitter stated that she understands that the application will need to be supplemented given the contractual access to the lake. They do not have enough shoreline to allow for the access so it will require an additional variance. The cottages have been rented out since the 1950's and they are trying to make this property more compliant.

Stephanie Bitter stated that the plan does not indicate the location of the holding tanks for the cottages or the septic system for the main residence. This will be supplied at the next meeting. The cottages and residence are all facilitated by the lake which will also be detailed on the plan.

Kam Hoopes stated that reading the request was quite overwhelming. However, upon visiting the site he found that he could understand what they are trying to do.

John Michaels stated that he is concerned that they would try to sell these cottages without any parking area. Stephanie Bitter stated that they understand that there are definite limitations some of which could be handled by easements. John Michaels asked for the applicant to provide more details on the plan that would show that access and easement.

Bill Pfau asked when the one cottage was separated from this lot. Stephanie Bitter replied sometime in the late 50's and no variances were required at the time.

Counsel read a letter from the Lake George Waterkeeper in which they voiced their many concerns with regard to this project.

John Michaels suggested getting the PB recommendations since it will be headed that way for subdivision. Bill Pfau agreed. Stephanie Bitter asked if they should return to the ZBA first before going to the PB. Kam Hoopes stated that he hates pawning off their responsibilities to the PB because they do not know what they do and vice versa. John Michaels stated that he only suggested it because so many of these issues will affect the planning. Bill Pfau agreed. Kam Hoopes stated that he feels that they should wait and see what the plan looks like. Then there focus will be narrowed strictly to the variance requests and if granted all of the other issues will be addressed at the PB level. The Board agreed.

Stephanie Bitter stated that she will return with detailed plans for the next meeting.

**RESOLUTION:**

**Motion by Kam Hoopes to table application V09-53 pending further information. Seconded by Tony DePace. All in Favor. Motion Carried.**

**9)V09-54 ELVIN, KEITH.** To alter non-conforming structure, specifically to construct a 4'x 18' handicap ramp and a 4'x 6' shed roof, seeks area variance for 1) deficient setbacks. a)

Front: 30' is required, 13' is proposed, b) Side: 8' minimum is required, 2' is proposed on the east side; c) Rear: 15' is required, 14' 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 15, Zone GB5000. Property Location: 16 Hondah Loop. Subject to WCPB review. Shed roof is after the fact.

Keith Elvin stated that he is looking to construct a handicap ramp for his handicapped son. The size is an ADA requirement to allow for the proper pitch. The shed roof is already in place. It was added by a local contractor who indicated that he could add up to 100 sq. ft without a variance. However, he was not aware that the previous owner had variance requirement that he exceeded that amount. He installed the shed roof to be able to safely access the door and entryway.

Kam Hoopes asked what the previous variance was for. Keith Elvin replied that the previous owner raised the house up 11 feet. Kam Hoopes stated that he has no problem with the handicapped ramp or shed roof keeping ice and snow off their heads to get in the door. He feels that these are minimum requests for safety and access. Bill Pfau agreed. He stated that it seems that alternatives were explored and this was the best plan.

Kathy Bozony, Lake George Waterkeeper stated that she has no comments about the ramp or the shed roof either. She stated that when she visited the site she was going to recommend vegetation rather than lawn for this property. However, the applicant has installed stone paving where all the lawn was. She stated that it goes from the property line to the house on three sides of the building. She is concerned that there is no permeable surface right next to the lake. She is not sure of the alternatives here but would ask if something could be done to have some sort of permeable surface on the property.

Randy Smetherst, neighbor, stated that he is not sure of the plan since it was not made available to him. He stated that there is a deck that was built without a permit or variance. Bill Pfau stated that he is not aware of any violation for the deck. Randy Smetherst stated that Mitzi Nittmann is aware of it. Counsel Muller asked how long ago the deck was built. Randy Smetherst replied that he was not sure but Mr. Elvin made it bigger without a variance or a permit. Counsel Muller asked when the deck was enlarged. Randy Smetherst replied shortly after Mr. Elvin purchased the property. Counsel stated that the deed into Mr. Elvin was in 1999. He stated that the deck that was built by the previous owner stands since it is over 10 years old. However there could still be a concern with the deck since Mr. Elvin purchased the property. Kam Hoopes stated that the Planning office is not required to send neighbors the plan, but it is available for review at the office. The ZBA provided a plan and more details as to what the applicant wishes to do.

Randy Smetherst stated that he is concerned with the project since the previous project did not receive a variance or permit. He stated that he checked with Mitzi Nittmann who indicated that no permit was ever obtained. Pam Kenyon stated that Mitzi Nittmann normally discusses this type of thing with her. She stated that Mitzi has not brought this to her attention nor has she cited Mr. Elvin with a violation. Counsel Muller stated that since there has been no violation the Board should look at this application on its face and they should proceed. If they find that there is some investigation going on Pam Kenyon will find out immediately.



John Michaels asked if why all of the patio blocks were added. Keith Elvin replied that they were added to provide better access to the ramp. This allows for the quickest access to the front of the house and entry.

## RESOLUTION

The Zoning Board of Appeals received an application from Keith Elvin (V09-54) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#9 of the agenda.

The Board makes the following conclusions of law:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; the applicant needs wheelchair access for his son and there isn't any other place to put this and the shed roof will provide coverage to safely access the front door.

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 self-created, but the applicant needs to make the house wheelchair accessible for his son.

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

**10)V09-55 SISCA, FRANCIS.** Represented by John Shafer. To alter non-conforming structure, specifically to construct a second story addition, porch roof and dormer, seeks area variance for 1) deficient setbacks. a) Front: 50' is required, approximately 2' is proposed, and b) Side: 30' is required, 25.5' is proposed on the north side; and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 157.05, Block 1, Lot 4, Zone RLC3. Property Location: 39 Horicon Lane. Subject to WCPB and APA review.

Fran Sisca stated that he owns this property with his parents. The house needs some updating with siding and a new roof. The current house has 3 bedrooms, a master bedroom that his parents use and the remaining 2 bedrooms that his family of 6 shares. They are proposing to change the roof line of the building to extend the bedroom and library out. However it would all be within the footprint as it exists today. They are also proposing raising the roof over the master bedroom by 4' and putting in a dormer for a future 4<sup>th</sup> bedroom. On the back side of the house they are proposing to add a roof over the door to provide safe access.

Bill Pfau asked if the second story addition would be staying within the confines of the first story that is there now. Fran Sisca replied yes. The current second floor is very small and is inside the existing footprint. He stated that they are seeking to move it forward to the same plane that is on the lower level.

John Michaels stated that he is concerned that the septic should be reviewed given the increased living space. Pam Kenyon stated that she discussed this briefly with the applicant and contractor at the office but stated that there was never a conclusion reached or any follow-up. Fran Sisca provided a plan for the septic system that was designed for the house in 1982. He stated that the system was designed for a 3 bedroom house and there are leach fields on the neighbor's property. John Michaels stated that the ZBA members are not septic experts and all they are seeking is certification from engineer that the current system was reviewed and that it is functioning properly. John Shafer stated that he recalls the discussion with Pam Kenyon. He stated that with the updated fixtures, the current system would be able to handle 4 bedrooms. Fran Sisca stated that he does not plan to add the additional bedroom at this time, but will in the future. Kam Hoopes stated that as far as the variance is concerned they need to consider this application as having 4 bedrooms.

With regard to the overall project, John Michaels stated that he was pleased with the plan. The only issue that he has is with the septic review. The Board agreed. John Michaels stated that they need a letter or report from a licensed engineer that the system has been reviewed and is functioning properly. He stated that it must be an engineer because in another application in which they requested the same, they got was from a plumber. Jeff Anthony agreed that it needs to be a licensed engineer.

Jeff Anthony stated that the Waterkeeper has suggested that stormwater management be considered on this property since it is shoreline. He stated that he feels that it has been the policy of this Board that on shoreline projects that they have at least minor stormwater work done on this project. Fran Sisca asked if anyone was on-site to look at the stormwater or was that just a general statement because he just had \$3,500 worth of stormwater management installed on the property. Tony DePace suggested that he bring that plan in as well. He stated that he thinks that the same person that signs off on the septic will need to sign off on the stormwater as well.

Kathy Bozony, Lake George Waterkeeper, stated that they need to look at this proposal with the consideration that there could potentially be more than 4 bedrooms. There is a variance for a little cabin on the other property. She asked if that was used as sleeping quarters. Fran Sisca replied no, it is not the intention of the cabin. However, his daughter has slept there on occasion. Kathy Bozony stated that per NYS attics, basements, libraries, etc. need to be

considered as potential bedrooms as well and should be counted in their design calculations. She read an excerpt from the design handbook. Pam Kenyon stated that this is not a requirement for the ZBA to follow.

Jeff Anthony stated that the variance for the small playhouse had a condition that it not be used for living or sleeping. He stated that if it is going to be, he agrees with Kathy Bozony that it should be included in the design flow. Kam Hoopes stated that they cannot start calling this playhouse a bedroom. Pam Kenyon stated that she would look into that. Kam Hoopes stated that he felt the intention of that condition was that it not be developed further. Jeff Anthony stated that he hoped so, but he was not sure of the wording.

**RESOLUTION:**

**Motion by** Kam Hoopes to table application V09-55 pending further information from a licensed professional engineer regarding the stormwater and septic system. **Seconded by** Tony DePace. **All in Favor. Motion Carried.**

The meeting was adjourned at 9:30pm.