

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday December 14, 2010
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- Jason Saris, William Pfau, Kam Hoopes, Tony DePace, John Micheals, David Ray, Jeff Anthony, Counsel Michael Muller and Zoning Administrator Pamela Kenyon

Absent- None

The meeting was called to order at 6:30pm.

Jason Saris asked if there were any corrections or changes to the November 16, 2010 minutes.

John Michaels stated that he was present at last month's ZBA meeting but he was not listed in the present list. Pam Kenyon stated that there was a note indicating that he arrived late.

RESOLUTION

Motion by Kam Hoopes to approve the November 16, 2010 minutes as corrected.
Seconded by John Michaels. David Ray abstained. **All Others in Favor. Motion Carried.**

1) V09-33 SIMONSON, RICHARD & VIVIAN. Represented by McPhillips, Fitzgerald & Cullum, LLP. For the construction of a proposed single family dwelling, seek area variance for 1) a deficient front yard setback. 30' is required, 25' is proposed, and 2) In accordance with Section 125-10B(2)(d), 100' is required between infiltration devices and a wetland, 82.10' is proposed. Section 186.18, Block 1, Lot 31, Zones RCH5000 & LC45. Property Location: Shallow Beach Road. Subject to WCPB review. *Note: This item was tabled at the November meeting at the applicant's request.*

Dennis Phillips stated that this proposal is for the construction of a single family dwelling near a wetland. However, this location is entirely on the upland portion of the property and a home in this area is a permitted use. Specifically, they are looking for a stormwater and a right-of-way setback. He provided some details on the plan and map which exhibited the wetland delineation. He stated that although the area of disturbance will be less than 15,000 sq. ft., which would normally need a minor stormwater plan, the Zoning Administrator has upgraded the requirement to a major stormwater plan. Dennis Phillips stated that overall they are looking for a 82.10' or 17.9% percent variance from the wetland setback.

With regard to the right-of-way variance, Dennis Phillips stated that Shallow Beach Road runs in front of the proposed site. It is a shared private right-of-way that is used by 12 other homes and runs to the shore of Lake George. Even though this is a private right-of-way and is owned by the applicants, under the Zoning Code, it still requires a variance for the setback. He stated that they are seeking a 25' setback as opposed to a 30' setback which is a 16.7% variance.

Dennis Phillips provided some background information of the property. They included photographs of what the property looked like historically. He indicated that the old photo shows the same roadways that currently and will continue to exist. He stated that the proposed site for the house is about 1/2 to 2/3 of the way up the Shallow Beach Road before the beach area on Lake George.

Dennis Phillips stated that the applicants' property occupies 53.71 acres and is located on both sides of Homer Point Road. The property is mostly wetlands with 50.73 acres or 94.5% of the property as wetlands. He stated that there is 2.97 acres or 5.5% of upland area and the proposal is to build on this portion of the property. Overall they intend on developing 1% of the property and the remainder of the property will remain open space.

Dennis Phillips stated that the house site is relatively flat. All of the proposals for the site, including the house and waste water system will be done on upland properties only. He stated that the septic system will be on the other upland portion of the property, which will be conforming in all aspects. He stated that there will be a pipe that runs along the road to the drainage fields away from the wetlands to this upland area.

Dennis Phillips stated that this proposal will preserve 99% of the total property and 100% of the wetlands because there will be no construction inside of the wetlands. He stated that they took some of the general values of wetlands from the APA Act and brought them to review with the Board. With regard to flood damage and stormwater control, Dennis Phillips stated that the house in this location will have no impact on flood damage and stormwater control since no wetlands will be destroyed or substantially altered by their project.

With regard to wildlife habitat, Dennis Phillips stated that they are not seeking to destroy or alter any of the wetlands on the property. The flora and fauna that thrive in and use the wetland should not be changed. The house location should not have any affect on the wildlife in the area since there are other houses in the area which also do not appear to have any impact.

With regard to pollution treatment and sediment control, Dennis Phillips stated that they will be transporting all of their effluent far from the wetlands which is far removed from the building site and wetlands.

With regard to recreation, scientific research and open space, Dennis Phillips stated that

since they will be outside of the wetlands they will not have any impact on the adjoining wetlands. He stated that this was the same conclusion reached by the APA in their non-jurisdictional letter dating back to 2006 relative to this project. Dennis Phillips stated that a wetlands expert, Mark Rooks visited this property, flagged them and indicated that no wetlands subject to APA jurisdiction would be involved or affected by the proposed project. That conclusion was also reached by Agency staff in that same non-jurisdictional determination. Dennis Phillips indicated that this determination has been upheld by a Court in 2006.

With regard to stormwater, Dennis Phillips stated that a stormwater plan has been proposed and was signed off by the Town Engineer. He stated that the right-of-way that they are dealing with is located on the applicants' property, which means they are seeking relief from property that they own. This is a private right-of-way and is a non-exclusive for the people that use it. There are 12 other parcels that have the right to use this private road and only 10 appear to use it. He stated that these parcels only have the right to pass from their homes to the beach area or lakefront and back; they have no other rights to the right-of-way and there is no language that would indicate any prohibition of building a house next to the right-of-way. This is a seasonal right-of-way that gets used 5-6 months out of the year and development proposed does not interfere with the right-of-way. The applicants also intend to add some vegetative screening from the right-of-way to aid the minimal visual impact. In general, Dennis Phillips stated that the applicants feel that the impacts will be quite low to both the right-of-way and stormwater.

Dennis Phillips stated that there have been some issues raised with regard to drainage. He stated that some finger-pointing has been aimed at the Simonsons. However, in a peculiar way, the drainage is not their problem. The Simonsons are down slope from the drainage, so any water is coming onto their property as opposed to flowing from their property. Dennis Phillips stated that there is a history of drainage problems relative to adjoining properties. In 1999 Melody Manor was having a drainage and pollution problem, the coliform counts in Huddle Bay Brook were very high. At the time, the Town hired Jarrett Martin Engineers to investigate where it was coming from and what the problems were. A study found that there was a tunnel up slope from the Association property that was used by both Melody Manor and the Gate House Association. This tunnel runs under the Golhoffer property which is upland from the applicants and is something that could be walked through. The tunnel has different kinds of utilities and it was found that this tunnel had been compromised to the point that water was collecting and leaking out into Huddle Brook, across the Golhoffer property and Association property and into the wetlands. Dennis Phillips stated that this study also found that there was a spring that came up underground which was suspected to come as an outlet stream from liquid trapped inside the tunnel, which was resolved. The historical problems with drainage in this area are due to the Gate House Association property and not by any of the historical activities on the Simonson property or the road on the property.

In 1995, and then again in 2005 the Gate House Association obtained a dredging permit

from both the APA and DEC relative to sediment build-up in Huddle Bay. Dennis Phillips stated that their permits allowed the Association to dredge fairly substantial amounts of spoilage from Lake George and deposit them into a mound on the common area of the Gate House Association. The original permit allowed for a mound 2' high and the 2005 permit allowed for an additional 2' on top. These permits were APA 93-262, dated May 10, 1995 and 93-262A dated October 6, 2005.

Dennis Phillips stated that they feel that the mound causes some additional drainage issues for the Association because it acts like a dam to the water that would otherwise be flowing across the property. He provided pictures of what the area has looked like historically. They also provided pictures recently after a major rain event. He provided details from the pictures.

Dennis Phillips stated that as part of ZBA and PB reviews, the applicants were requested by the Gate House Association to help them with their drainage problem and they have agreed to do so. They have prepared a drainage plan that includes 2 culverts and a ditch along the road. The culverts have already been installed and when visited during the rain storm was found to have water flowing through it freely. The drainage ditch between the 2 culverts has not been constructed but would be part of this project to assist in the drainage of the water. Dennis Phillips stated that the Golhoffer property is across the road from the applicants and upon viewing the area after the rain found that no water was running across the road. Although there was some standing water in the area where the ditch would be constructed it was slowly flowing down slope to culvert closer to the water.

With regard to an alternate site, Dennis Phillips stated that they did a comparison with the proposed site versus and an alternate site. The only other site is another upland area which is close to the cemetery. The access to that building site would be off Homer Point Road. This site would also need infiltration basins and would be close to Homer Point Road and to the west of where a new road would be constructed. If they were to use the alternate site they would be 54' from the wetlands creating the need for a 46% variance in that location. Therefore it seems that the proposed site provides for the minimum variance necessary to achieve the applicants' goal.

With regard to the slope, Dennis Phillips stated that the proposed site is relatively flat. The alternate site is down slope from the cemetery with some pretty big slopes, with one area having 24% grade and might require some cuts and fills.

With regard to road disturbance, Dennis Phillips stated that on the proposed site they will use Shallow Beach Road and will not have any road construction. However, in the alternative site, with access off of Homer Point Road they would have to construct a new driveway, creating further disturbance.

With regard to septic systems, Dennis Phillips stated that both locations would be

conforming to the Town code and requirements.

With regard to the cemetery, Dennis Phillips stated that the proposed site does not have a view of the cemetery. However, with the alternate site they would be right under the cemetery, which has caused some concerns, one of which is that the applicants do not want to be in this location. Additionally, they have not investigated whether or not Town water could be extended or if they would have to dig a well, which would add to their expenses. They are also unsure if and what chemicals were used in these burials. There is some concern that these chemicals could be leaching into the down slope area which ultimately would end up in the wetlands. However, no testing has been done to prove that but they do know that cemeteries, in general, can be difficult.

With regard to visibility, Dennis Phillips stated that the proposed site would not have any general public visibility. In contrast, the alternate site would expose them to Homer Point Road, the cemetery and nearby neighbors. With regard to private visibility, they have nearby neighbors in both sites but in the alternate site they have the problem of public visibility. Neither spot will have visibility from the lake.

With regard to APA jurisdiction, Dennis Phillips stated that they have a non-jurisdictional letter for their proposed site, which means that the Site Plan Review would be done at the Town level. However, the alternate site would require either obtaining a non-jurisdictional letter or they would have to have APA review the SPR which would make this a much more difficult project for the applicants.

With regard to private economics, Dennis Phillips stated that on a long term basis in appreciation and value the proposed site is going to be greater as opposed to a home on the alternate site.

John Michaels stated that they are providing a comparison for two un-buildable lots because both sites would require a variance. He stated that typically when they talk about alternatives it is an alternate site that would meet the zoning requirements and the applicant would provide a reason(s) why they chose not to do that. Dennis Phillips stated that they needed to look at alternate site analysis so they constructed the analysis based on another site in general as more of a neighborhood setback analysis. He stated that he feels that this is more science driven rather than alternate site driven. There are two engineers saying that scientifically, the stormwater that they are proposing will work on their proposed site. He stated that essentially wetlands are a natural buffer and stormwater management area so what they are proposing is to treat stormwater before it goes into a natural stormwater retention basin. He stated that they were forced to look at this alternate site analysis based on the PB requirement. Dennis Phillips stated that both sites require stormwater setback variances, but the alternate site does not require a variance from the right-of-way which is a paradox since the right-of-way is on the applicants' property.

Dennis Phillips stated there are some neighbors that have voiced their concern over this project. One in particular is the Golhoffers who have the house upland from the applicant's property. He stated that when they did a review of the view from the Golhoffers; they found that they basically look down over the Gate House Association property and have a straight line view up the lake across Huddle Bay. Currently as they look across the wetlands, they do not see any development, but they do not have any scenic easement over the wetland property. He stated that they do not feel that the Golhoffers desire not to have a view of this house trumps the right that the applicants have to make some economic use of the property. Dennis Phillips stated that the Golhoffers will continue to have a view of the lake and will also have a view of the wetlands. He stated that they have agreed with the PB to retain a lot of screening from the right-of-way, so their view onto the applicant's property will be a filtered view. He stated that the applicants would also be willing to use color that would blend in with the environment. He stated that this is only one house that would be affected by this house visually and one more house would not disturb the neighborhood especially when it will be preserving the open space of the area.

Dennis Phillips stated that they are looking at a single family home that will be utilizing approximately 1% of the property as a whole. There are only two potential building sites, but both require variances. There are pros of the preferred site that outweigh the cons, so they are asking for 2 variances that they feel are relatively minor in nature.

Jeff Anthony stated that the Tom Nace letter was dated 6/17/09 and the drawings they are working with are dated 8/21/09 and asked what changed. Melissa Lescault replied nothing; stormwater was done prior to the final plans. She stated that they had some things removed from the plans to make them clearer for the presentation.

Jeff Anthony stated that he has visited the site 3 or 4 times in the last couple of months. He stated that on his most recent visit. He found the northern most culvert under the driveway near the parking area at the beach, was flowing and when the water exited the pipe it flowed for a few feet and then it was calm. He stated that he chased it down into the lake and he believes that it is flowing on the same flow line as the lake. He stated that he looked to the east of the site that they are proposing and noticed a similar one even closer to the building site and that has standing water in it and is not flowing and was more at lake level. He also found a wash line on some of the vegetation, 6-7" above the flow line that was there. He stated that he was curious so he looked at some local docks and found that there is a mark on them which is caused by the high water mark staying the same for a while and this day it was down several inches. Typically in the Fall, they let water out of the lake at the dam. He had some hydrographs pulled up for the gauging station at Rogers Rock and on this particular day at the time he visited, the lake level was 319.6 and the mean high water line is supposed to be 320.2, which means that the lake was down .6 or 7.2" which tells him that his observation of the wash line on the vegetation would be correct and it would also tell him that water wasn't flowing in those 2 parts of the water body that come into the site. When he measures those on their map,

the outflow area to the building is 90' but on his map he only gets 85'. He stated that the other culvert stream when measured would get within 50-60' of the building site which is connected to the lake.

Jeff Anthony stated that his concern is that: 1) on the maps submitted there is no topography shown that proves where 320.2 is and 2) that some of these drain ways to the lake are within 100' of the building that is proposed. In an LC-45 zone or Resource Management zone, it will require a 100' setback from the shoreline. He asked Dennis Phillips if he has any data to prove or disprove that. Dennis Phillips replied that it is an engineering question and he would have to defer to them for that. Jeff Anthony stated that the only way that can be taken care of is to have the 320.2 line surveyed.

Kam Hoopes stated that the property is located in 2 zones the RCH5000 and LC45. Jeff Anthony stated that 90% of the building is in the LC45 zone. Kam Hoopes stated that they have 2 setbacks and both are supposed to be 100'. Jeff Anthony stated that he is not talking about the setback of the stormwater, this is for the structure itself, which if he is correct, would require another variance.

John Michaels stated that this is the type of things you run into if you buy 50 acres of wetlands that is not represented to be a building lot. He stated that both sites require variances and he doesn't know anyone who would buy a lot that they know they can't build on without a variance.

Jason Saris asked Counsel Muller if it was up to the ZBA to make the determination of whether or not this applicant needs another variance or whether it should fall under the Zoning Administrator. Counsel Muller replied that if the Zoning Administrator had the benefit of the information that Jeff Anthony was talking about she would have been the gatekeeper. However, it is now present before the Board so it is up to the Board to make the determination. Jason Saris stated that the Board should be looking at whether or not this is a complete application rather than looking at the project on the merits of the variance. Counsel Muller agreed. Jeff Anthony stated that from his perspective there is information missing that would prevent him from making a decision of the distance of the building from the shoreline. There was further discussion over whether or not this was considered an incomplete application. Counsel Muller stated that if they do determine this to be an incomplete application, it would be important to know if there are any other issues so the applicant can address those as well.

Jeff Anthony stated that he has one minor issue that can be easily rectified. With regard to the architectural drawings for elevations the building is finished from the floor of the lower level to the ridge line which is exactly 35'. However, when they step out of the walk out basement they have an additional 2 steps which would make the building 36.5' tall.

Jason Saris invited the public in attendance to speak.

Jim Sponskowski stated that he does not feel that it is proper for the public to be commenting on an application that has not been submitted. If it is deemed an incomplete application it is one that has not been submitted yet. He does not feel that they should be speaking on the matter until they know fully what they are dealing with. This mean high water mark could ultimately change the whole project and what the public might bring up tonight might be irrelevant a month from now. Jason Saris stated that they would be given the opportunity to speak again at that time. Kam Hoopes agreed. Bill Pfau stated that the public could make comments bearing in mind that the application may be changing. Counsel Muller stated that the application has not been determined incomplete but rather it has been challenged and Jeff Anthony has merely provided his opinion. In a public hearing it is important to air all of their concerns. Regardless of the outcome he is certain that this public hearing will not be closed tonight.

John Michaels suggested asking the applicant if they wish to table their application in light of the issue that has been raised. Dennis Phillips replied that in light of the issue raised they would request to table the application in order to speak to the surveyor and verify the mean high water mark to address the issue. Jeff Anthony stated that this will be difficult to survey this area and he will be carefully looking at the map to be sure that it was done correctly.

Dennis Phillips stated that the applicants would like to have a complete application before the ZBA and therefore requested tabling the matter until more information can be provided. Jason Saris asked if the applicant wished to hear any comments from the public in attendance. Dennis Phillips replied that he would rather wait to have a complete application available for comment and he knows that if he were on the other side he would want a complete application to make comment on.

Counsel Muller asked the ZBA if there were any other issues or concerns that they would like the applicants to address. Bill Pfau asked if the mean high water mark would affect the setback for the infiltration system. Jeff Anthony replied no he believes the wetland edge seems to be accurately flagged. If the 320.2 line comes in and was close enough to influence the stormwater management device they will have a problem, but he does not feel that it does.

Pam Kenyon requested that the applicants address the height issue. Dennis Phillips replied that they would look at that as well.

Jeff Anthony stated that he would like to read a letter into the record. It is a letter from the APA to Greg Smith and Herb Koster dated 10/22/09 and he feels that this Board should hear it. Counsel Muller read the letter into the record.

RESOLUTION

Motion by Kam Hoopes to table application V09-33 for Richard and Vivian Simonson at the applicant's request, pending further information on the mean high water mark and the height of the structure. **Seconded by** Jeff Anthony. **All in Favor. Motion Carried.**

2) V09-42 PEPPER, JAMES & SALLY. To alter pre-existing non-conforming structure, specifically to construct a 12' x 18' open sundeck, seek area variance for 1) a deficient shoreline setback. 75' is required, 41' 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 APA review. *This variance was approved by the ZBA Dec. 2009 and reversed by the APA. This item was tabled at the November meeting at the applicant's request.*

Jim Pepper stated that they are seeking a variance for a 12' x 18', 216 sq. ft deck. They went before the ZBA a few times in the fall of 2009 and in December of 2009 they were granted the variance approval. The application was then sent to the APA for their review and the decision was overturned in February 2010. Their reversal letter covers a lot of ground and since that time they have done their best to address their concerns and cover the ground they may have been missing from 2009.

Jim Pepper stated that the house is located at the dead end of Cherry Lane on Northwest Bay. The parcel is just under an acre on the lake. This neighborhood is heavily wooded and screened as is the applicants' lot. The topography of the property consists of a few plateaus but primary is a drop of 15-20'. All of the houses in this area are built into the hillside with the majority having walkout basements. The main living level is on the uphill side.

Jim Pepper stated that they are seeking to have a deck that extends from the envelope of the house including the 30" roof overhang and will hang out 5'6" closer to the lake and runs along the face of the building for 18'. The deck will be serviced off of the living area. He stated that they will be at a 41' setback from the lake. Some of the adjacent properties are at 50', while others are at 28-30'. These homes were built in the late 50's early 60's when the setback was 50' from the shoreline. He stated at that time their house was built in compliance with the zoning at the time. Currently with the change in the required setback from the shoreline these houses in this neighborhood are pre-existing non-conforming homes and require variances for anything done to them.

Jim Pepper stated that in 2007, they demolished the existing house and rebuilt. He stated at the time they needed a variance because one corner of the roof was encroaching.

Bill Pfau stated that they have heard all of this before and suggested that the applicant move on and focuses on the points or issues that need to be addressed for APA purposes. John Michaels agreed. Walter Law explained that they have been through a process with the APA who have utilized their past meetings records for their review. He stated that he is concerned because although their meetings with the APA have provided hints to help

them with their application the biggest hint was to have a solid complete record so that is why they are burdening the Board with the details once again. He stated that if the Board can reconfirm the record from October, November and December 2009, and could send that record plus the additional minimal points from tonight's meeting they could move on.

Walter Law stated that the APA's reversal decision indicated that the ZBA "nominally" reviewed the criteria, which means that they would like the Board to provide the facts presented that support the determination. Something else that came out of those meetings was the fact that the applicants were willing to consent to several conditions on the resolution. However, these conditions were never added to the resolution, and therefore were not binding on the applicant.

Kam Hoopes stated that it was his understanding that the APA has the lack of ability to go back to previous meetings and that the review would be based upon tonight's meeting only. Walter Law replied that in the reversal letter the APA listed the papers that they received and reviewed and the only minutes that they referred to was the minutes from December 2009. He stated that the Town usually sends the minutes to the APA whether they need them or not. Pam Kenyon stated that they get all of their minutes and she always indicates on her agenda what meeting the application was tabled or adjourned from.

Counsel Muller asked Walter Law if he wants the ZBA to accept and adopt all of the prior proceedings for the minutes and discussions and use them as a platform for this evenings meeting. Walter Law replied that they would support that idea. He indicated that they want to be sure that not only the minutes are included but also any exhibits and other documents submitted at that time. Pam Kenyon stated that she normally keeps a copy of everything until they go through the process and once they get through the process she only keeps the overall approved plan. She suggested that the applicant come in to the office to be sure that they have a complete record. There was further discussion of allowing the previous record to be used as a complete record in addition to their discussions this evening.

RESOLUTION

Motion by Bill Pfau that the applicant's past applications in 2009 be sufficient as part of the minutes of the proceeding tonight and that the documents that accompany the minutes are part of the record as well. **Seconded by** Tony DePace. **All in Favor. Motion Carried.**

Walter Law provided photos of a mock deck that they put up for a site visit with the APA and their Counsel, Zoning Administrator, Town Counsel, Jason Saris. He stated that this was an attempt on their part to show the Board and APA, without flooring and railings, what would be there and where it would be. There are photos of the foliage as well, some of which were taken from the lake inward. He stated that some of the trees lose their

leaves but there is also a mix of evergreens so even in the winter time they will have screening with a filtered view. They feel that the pictures provide proof that the deck would not offend anyone's view.

Walter Law stated that this is a minimal variance request. They are down to 12' x 18' which is probably the smallest deck in that neighborhood. This is a residential lakefront neighborhood, and they are asking for a variance to conform to the neighborhood. Nothing goes on the deck that would create concern for the Town or APA; there is just enough room for a grill, table and chairs.

Walter Law reviewed alternate sites for the deck. The south side is too close to the neighbors' property, the west side gives them a view of the parking lot and is in the way of the entry to the house. The north side was a topic of discussion at previous meetings. He stated that there is a neighbor on that side as well and this is not the plan that they approached him with. This is also less screened by the foliage which makes it more visible overall. There is a pathway from the parking area to the lake which is really the only access to the lake from this point. There is also a large tree on the north side that would not have to necessarily need to come down but they do have some concerns that the footings could be disruptive to the tree. The deck is considered a sun-deck and there is no sun on the north side. Walter Law stated that adding a deck to the north side also raises the concern about further lateral expansions of an existing non-conforming structure.

Walter Law stated that there was also the suggestion of notching out the building and putting the deck within the house. He stated that it is an expensive proposition and affects the heat and removes the view that already exists. With regard to the suggestion of using the sundeck on top of the boathouse, Walter Law stated that the APA would not prefer this method because they recently were trying to eliminate all decks on boathouses. With regard to the use of the lower patio for their deck and dining, Walter Law stated that the kitchen is upstairs and the patio area is 150' away down stairs, which is not ideal for entertaining and enjoying the space.

Walter Law stated that the practical difficulty has been addressed before, the house was built in the location to preserve the underground power lines, existing septic, foundation because it was waterproofed and to move it back would have required blasting and further ground disturbance.

Walter Law reviewed the conditions that the APA would like to see incorporated into the resolution: 1) the deck would not be expanded in the future, 2) the deck would not be roofed over or enclosed by a roof and sidewalls, 3) the deck would not be enclosed underneath the deck, 4) the deck would be painted or stained in earth tone colors that are consistent with the house, 5) the existing trees would be retained and not be removed unless required for safety reasons such as a dying tree, and 6) there will be additional plantings and the ground would remain porous.

Jason Saris stated that after the meeting with the applicants and APA, he found that their biggest concern was the discussion amongst the Board of alternate locations for the deck. In an effort to add to that discussion, Jason Saris stated that from the interior of the house the northern end of the house would be poor access to the deck. You would be entering the deck through the kitchen space rather than the living area which is awkward.

Jason Saris stated that one of the there are a few reasons the A.P.A. is concerned with regarding encroachment on the lake. One reason is environmental and he feels that this application does not pose any environmental threat to the lake in any way. The other is for aesthetic reasons and he feels that the applicants make a valid point that the north end of the house would have a much greater aesthetic impact and would be more visible from the lake. With the deck in the middle of the house, given its size, it will blend in with the house. Jason Saris stated that the southern side is too close to the neighbors and the western side is right in the entry way to the property and could interfere with the septic system and utilities in this area. Not only is there no place to put it there, it is awkward having it on the front of the house and there are other practical difficulties in doing it.

Jason Saris stated that the applicants could live in a house without a deck, but this proposal is consistent with every other house around it and just about any other house in the community. He feels the most ideal location is the one proposed location and it has the least impact.

John Michaels agreed with the placement of the deck. However, his issue is the self-created aspect of this. The applicants could have easily asked for a deck at the time of the original variance for the re-building of the house because this house does not work without a deck. Jim Pepper stated that this was not intentional because he really did try to work it within the framework of the house. John Michaels stated that he understands that this is not the most ideal deck for this house, because it should have been designed in the first place. An 8' deck would certainly serve this house well; it would solve the problems with the patio doors, it would get them out more in line with the roof line of the existing house and would be a reasonable alternative, so he feels that there is definitely a self-created aspect. Jim Pepper stated that they had an 8' deck on the previous house and as he has mentioned before it was just adequate space to put a grill, table and chairs. The deck could come out another 6' and still not be visible from the lake. He feels that there should be some sort of recognition for being a homeowner who has continually taken care of their property and not added to the pollution or siltation of Lake George.

Jason Saris stated that he understands where John Michaels is coming from, but a lot of this has been mitigated. The applicant is using a pre-existing non-conforming location of the house and it happens to be the most practical location. He stated that if this had been a vacant lot this applicant may have been seeking a variance anyway due to the topography of the land. John Michaels stated that he understands, but he feels that this application has been segmented. Jim Pepper replied that his application was complete

and he never intended to come back for another variance because he planned to use the existing wall line. Jason Saris stated that instead of figuring out whether or not this was or was not an accidental mistake, they should be reviewing and evaluating the application to see if it meets the criteria.

There were no comments from the public in attendance. There was no correspondence. Pam Kenyon stated that she was not sure if this received WC PB. Jim Pepper stated that it passed previously and does not see any reason why it wouldn't have again.

RESOLUTION

The Zoning Board of Appeals received an application from James and Sally Pepper (V09-42) for an area variance as described above.

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

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

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 only reasonable side for this deck would be the lake front side. The south side does not have the room for construction. The north side would be too close to the northerly neighbors and is not screened from the lake. The pathway from the parking area to the residence does go along the north side of the residence which would also prohibit building the deck in this area as well. There is no sun on the north side of the deck, which would also cause a detriment to building the deck on this side. An entrance way would have to be built on the north side of the house to enter the deck if it were built there. The west side is not a consideration because it is already being used as a parking area. They have also determined that building the deck within the confines of the existing house would not be appropriate and would be costly.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a residence in a residential community on the lake. The deck itself will be on a structure where most of the houses on the shoreline have decks similar to the one proposed. This will not be visible from the lake and will be well screened from the residences on the north and south.

3) The request is not substantial; the 12' x 18' deck is the minimal amount required to have a working deck with a table, a few chairs and a grill. It is not a large deck by any means.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; It is heavily screened from the lake. There will be minimal ground disturbance, and will only need to install footings for the deck.

5) The alleged difficulty is partially self-created, however, they feel that it should not preclude the granting of the variance. The house was rebuilt on the existing foundation 50' from the lake which was the setback at the time of the construction of the original house and the setbacks have increased since that time. The old foundation that was reused, was waterproofed and draining systems were put in. Moving the house further away from the lake would have required blasting and more ground disturbance. This is the minimum variance that is necessary and is adequate to preserve and protect the character of the neighborhood and the health safety and welfare of the community. This is the minimum size deck required for appropriate use. It is consistent with the neighborhood and it is not offensive in any way.

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

The practical difficulty is that the applicants are trying to preserve the pre-existing foundation, utility lines, wastewater, etc. Building a deck into the house is not practical and will increase construction and heating costs. Granting the variance would be consistent with the spirit of the APA Act because the deck would not create problems and would not be offensive to the view, public safety or welfare. Substantial justice would be done. The adverse consequences of the applicant resulting from denial are greater than the public purpose sought to serve by the restriction. Denial would mean that the applicant would not have a lake front deck on a lake front house. The consequence of this would mean that the applicants would have to use a deck on a different level than their living area, with it being too far away and it would make it substantially unusable. They can still preserve the quality of the lake as well as the view from the lake because it is well screened and the views would not be affected.

This will not adversely affect the natural scenic and open resource space of the Park or any adjoining water body due to erosion, surface run-off, subsurface sewage affluent change or aesthetic character.

Now, upon motion duly made by Bill Pfau and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition(s): 1) the deck will not be expanded in the future, 2) the deck will not be covered or enclosed by a roof and side walls, 3) the underside of the deck will not be enclosed for a storage area, 4) the deck will be painted or stained in colors consistent with the existing house, 5) the existing trees will be retained and not cut unless for safety

reasons, 6) additional trees and shrubs will be added on the north and south sides of the property to add screening if deemed necessary, and 7) additional plantings will be done in the immediate area around the deck, and the immediate ground area of the deck and the incline to the lake will remain porous to prevent run-off. John Michaels and Kam Hoopes were opposed. **All Others in Favor. Motion Carried**

3) V10-51 POWIS, RODNEY. Represented by Paul Jankovitz. To alter pre-existing non-conforming single family dwelling, specifically to allow a patio and retaining walls to remain, seeks area variance for 1) deficient side yard setbacks. 20' is required, 2' is proposed on the north side and 6.1' is proposed on the south side, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 1, Lot 47, Zone RM1.3. Property Location: 11 Brook Street. Subject to WCPB review. See V09-30 & V09-31 for previous approvals.

NOTE: This item was moved to the end of the agenda.

RESOLUTION

Motion by Kam Hoopes to table application V10-31 for Rodney Powis. Seconded by Jeff Anthony. All in Favor. Motion Carried.

4) V10-52 MILLER, JOSEPH. Represented by Samuel Wahren Jr. To demolish and rebuild single family dwelling, seeks area variance for deficient front yard setbacks. 1) 100' is required from the edge of the Padanarum Road right-of-way, 65.8' is proposed; and 2) 50' is required from the 15' easement on the north side, 20' is proposed. Section 124.00, Block 1, Lot 55, Zone LC45. Property Location: 368 Padanarum Road.

Sam Wahren, Jr., owner of Glens Falls Modular homes represented the applicants. He stated that the applicants are proposing to remove a 50 plus year old structure and put a new one in its place. It will be in approximately the same footprint as the existing house, but it will be shorter in length and wider in width. According to the Engineer the design is satisfactory with the Town and the only issue that they are dealing with are the setbacks from the road and an easement granted many years ago to the people that own the property behind. The applicant has indicated that the easement was for logging purposes which has long since ended and is not used. The biggest use was for the locals for four-wheeling and has not been used for many years. This gravel driveway is adjacent to the property line and the applicant owns the other property. Sam Wahren, Jr. stated that if the Board deemed it necessary they could have a boundary line adjustment to allow for more use, but that would take more time.

Jeff Anthony asked if anyone is occupying the house. Sam Wahren, Jr. replied yes, it is a second generation home that is in need of updating. He stated that it would not be a proper investment to improve what is there because of its age and the fact that it is not on a full basement. He stated that the proposal is for a 2 story cape cod with dormers and a

full basement.

Jason Saris asked why the new structure couldn't be moved to a more compliant area since it is being demolished completely. Sam Wahren, Jr. stated that the topography dictated the previous location of the house because there is a mountain behind the current house. He stated that the septic will not be moving and is in a compliant location. The applicants are asking for a minimal increase of 2' to the setback that already exists now. He stated that they moved the house back as far as they could without having to deal with run-off from the mountain.

Jason Saris asked if there were any comments from the public in attendance.

Kathy Bozony, Lake George Waterkeeper, recommends that stormwater management should be required for this site. The on-site waste water treatment system should be reviewed to be sure that it is in compliance with NYS regulations. The system should be built for the potential of a 4 bedroom home due to the garden spa tub and the attic space, which notes that it may be finished on site in the future. She also requested that the Board restrict the use of fertilizer and pesticide on this property.

Sam Wahren, Jr. stated the Engineer has already spoken to Pam Kenyon regarding stormwater who has found that this project does not warrant stormwater management. There is a 12 12 roof pitch on the home and there is an attic space that is unfinished but could be in the future. He indicated that the waste water system is a 1000 gallon septic tank which is up to code and the leach field will be brand new.

Pam Kenyon indicated that there was no correspondence other than Kathy Bozony's letter which she just spoke on.

RESOLUTION

The Zoning Board of Appeals received an application from Joseph Miller (V10-52) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; the applicant is proposing to build on the same footprint of the existing house which reduces ground disturbance.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is an antiquated building that is being removed to make way for a more livable modern facility.

3) The request is not substantial; this proposal may exceed the footprint slightly, but it is not of concern especially given the area and character of the neighborhood.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; this is occupying the same relative footprint with the exception of a full basement for more modern living conditions.

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

5) V10-53 GOLUB, COLLEEN. Represented by Chris Gabriels. To alter pre-existing non-conforming single family dwelling, specifically construct an 18.4' by 19' addition, seeks area variance to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 200.06, Block 1, Lot 17, Zone RM1.3. Property Location: 20 Loomis Lane. Subject to WCPB and APA review. See V04-56 for previous approvals.

Chris Gabriels stated that the issue that they are dealing with is a shoreline setback. The porch is 35-40' from the shoreline but the house itself is 55-75' from the shoreline. The addition has is within the 75' setback area so it is compliant. The applicants are hoping to get a conditional approval since it is a relatively new assignment that any addition to a pre-existing non-conforming home with a shoreline setback have its septic reviewed; they are in the process of doing that at this time.

Chris Gabriels stated that this property has already enjoyed a variance approval for the porch area. It was an open deck at one time and they covered it which has blended in nicely. He stated that the addition will also blend in nicely; the applicants will match the finishes that currently exist on the home. Chris Gabriels stated that this is a large lot with over 200' of shoreline.

Chris Gabriels stated that the applicants have requested discussion of the possibility of extending this expansion an additional 3 feet. He stated that at the time that the architect drew up the proposal he was under the impression that the addition would not meet the setbacks so they kept it in the existing footprint. Chris Gabriels stated that with the current survey they have found that the new addition does meet the setbacks and they would like to add the 3 feet. He stated that this will not further encroach on the lake or interfere with the setback.

John Michaels stated that he thinks the addition looks good and the property can handle the size of it but they need the septic to approve it. Pam Kenyon stated that since they are adding living space they need to address the septic. However, it could be addressed by providing a conditional approval because they will need to have septic approval from the local BOH before a building permit is issued.

Kam Hoopes stated that they are dealing with the problem that their agenda does not match the request and has not been properly noticed. Jason Saris stated that they should consider whether or not the additional 3' is a substantial change to the application.

Kam Hoopes stated that this Board cannot approve a septic variance and the only thing that is before them is the variance or relief sought from Section 200-57(1)(b). He stated that he is very familiar with this property and he does not feel that this will not change anything from the neighbor's point of view. Additionally there is a lot of screening between the properties. Jason Saris asked if the Board had any issue with reviewing this as an 18.4' x 22' addition.

RESOLUTION

Motion by Kam Hoopes to allow application V10-53 to be modified to reflect that the applicants are proposing to construct an 18.4' by 22' addition as submitted to the Zoning Office after the agenda was printed. **Seconded by** John Michaels. **All in Favor. Motion Carried.**

Jeff Anthony stated that this application will be going before the APA simply because it is a non-conforming structure within the shoreline. He asked if the APA will require discussion of their criteria of practical difficulty as well. Counsel Muller replied that Brian Grisi has indicated that if the addition is not intruding any further on the shoreline it is not offensive to the APA.

Jason Saris asked if there were any comments from the public in attendance.

Kathy Bozony, Lake George Waterkeeper stated that they encourage review of the on site waste water treatment system to be sure that it is certified by a licensed professional to be sure that it meets all of the standards. She stated that this project presents a great opportunity to bring this property into compliance with stormwater management. She

has noted that there are some infiltrators that seem to come from the parking area and it should be determined whether or not this is just from the parking area or if it is for the entire dwelling. Kathy Bozony stated that she has not visited the site, but the aerial photos indicate that they may need some vegetation between the house and the lake and this would provide a great opportunity to require a planting plan with native trees and shrubs for a natural shoreline buffer. She also requested that the Board prohibit the use of fertilizers and pesticides on this property.

John Michaels stated that there are a lot of trees on this property. Chris Gabriels added that the applicants have recently provided a \$75,000 storm water improvement plan that has already gone through the Town. Pam Kenyon indicated that this was approved through the Zoning Office.

There was no further correspondence. Warren County provided a default approval due to a lack of quorum.

RESOLUTION

The Zoning Board of Appeals received an application from Colleen Golub (V10-53) 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; this is a pre-existing non-conforming structure, so anything done to the structure would require a variance. This is the best possible location for this addition.

2) There will be no undesirable change in the neighborhood character or to nearby properties, aesthetically it is a very handsome design and is in keeping with the existing house architecture and style.

3) The request is not substantial; this is a small increase in living area with a game room down below.

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

5) The alleged difficulty is not self-created,

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

Now, upon motion duly made by Kam Hoopes and seconded by Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented and amended with the addition of 3' to the south, with the following condition(s): 1) that the septic is brought into compliance with the Town Planning Office. **All in Favor. Motion Carried.**

6) V10-54 SHELLI, PATRICIA. Represented by Bartlett, Pontiff, Stewart & Rhodes P.C. To alter non-conforming single family dwelling and storage building, specifically to allow a patio/retaining walls and storage building extension to remain, seeks area variance for deficient setbacks. 1) Storage Building: a) Side: 8' minimum is required, 2.3' is proposed, and b) Rear: 15' is required, 1.2' is proposed; and 2) Patio/Retaining walls: Sides: A total of 20' is required, 1.5' is proposed on the north side and -0.8' is proposed on the south side as a portion is constructed on the neighboring parcel (171.11-2-22); 3) Lot coverage: 40% is allowed, 47.8% is proposed; and 4) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.11, Block 2, lot 21, Zone GB5000. Property Location: 11 Parkside Drive. Subject to WCPB review. See V09-16 for previous approvals.

Jon Lapper stated that the applicants are seeking an after the fact variance but it was not something that they anticipated. He stated that they found that they had to raise the house 2' because the ground water. They compensated by making the ceiling height on 2 of the floors lower so there wasn't a height issue with the building, but the result was that the finished first floor was approximately 2' higher which then created the need to increase the height of the patio area. He stated that the contractors viewed this as a landscaping item, but in Bolton it is considered a structure, which is why they are there for the additional impervious area. He stated that when they realized this was an issue they stopped construction and submitted the application.

Jon Lapper stated that the patio is an attractive addition and they have done a nice job with improving the neighbors view to the north side. However, on the south side because of the location of the fence they were not sure of where the property line. Since a survey has been completed, they have found that it does go slightly over the property line, but they have gotten a letter from the neighbor to the south indicating that he is satisfied with the issue.

With regard to the shed, Jon Lapper stated that the applicants tried to make it more attractive by covering up the propane tanks. However, in Bolton they measure from the

eaves which made the structure non-conforming but again was done to improve the view for the neighbors to the north and from the applicants.

Jon Lapper apologized that this was an after the fact application but he does feel that these are minor changes because they were done to compensate for the required increase in elevation in grade and to improve the aesthetics overall.

John Michaels stated that he thought Jeff Tennant was the contractor for this property and would be surprised if he didn't know the rules. Ron Shelli stated that originally Jeff Tennant was to have this project but ultimately they ended up with a different contractor. John Michaels stated that he is concerned because they cannot grant a variance on a property that the applicants have no legal right to. He appreciates that they have a letter from the neighbor. However he feels that this would require some form of legal easement or boundary line adjustment that can be filed with the County. Jon Lapper stated that they may be dealing with an adverse possession issue at this point since the fence has been there since before 1983 when the applicant purchased the property. He stated that they are not making that claim but they built it up to the fence which is where everyone thought was the property line was. Ron Shelli explained that the fence was put up before they purchased the property. He stated that it has been over the line for over 35 years and he has no concerns over this whatsoever.

Kam Hoopes stated that the wall is just the beginning because the next step is to get into the fact that there is no building permit for other parts of the project and it is almost fully completed. This project not only exceeds the various setbacks but also the allowed density for the lot.

Bill Pfau asked if the deck was part of the original plan. Pam Kenyon replied no. Jon Lapper replied that there was a concrete patio that was underneath the overhang but they had to construct something to make up for the addition of the 2' to the ground level. Bill Pfau asked if the patio was built where it was supposed to be. Jon Lapper replied yes but it extends 8' beyond where it was shown in the plans to connect it to the parking area due to the grade change. Bill Pfau stated that he does not understand why someone would create a raised patio so close to the property line. Jon Lapper stated that it would have been just a walkway because it would have been at grade, but it became a raised patio due to the 2' grade change. Kam Hoopes stated that there is also the addition of 4 stone pillars that was not part of the plan. Jon Lapper stated that they were added for aesthetics. Kam Hoopes stated that they are nice but the only thing that they have drawn is enforcement. This is much more than a flat stone patio or landscaping element.

Ron Shelli stated that they can remove about 3' feet since they are pavers and not solid concrete. However, it is going to create another problem because if they use the walkway as approved, the ground would slope down drastically. He stated that is why the neighbor was happy with the adjusted plan. John Michaels stated that they cannot grant a variance on property that the applicant does not own. Jason Saris stated that they are all

in agreement that they cannot grant a variance on someone else's property. He suggested that they move on to discuss other elements of the project.

John Michaels stated that the original plan was very conceptual and it was portrayed that is was that way because the applicants didn't want to spend a lot of money on the plans if the ZBA was not going to approve it. He stated that they never really saw the final plan. Kam Hoopes stated that as long as the parameters are worked within, he can handle conceptual drawings with qualifications. However, this plan is coloring outside the lines in a lot of ways.

Jon Lapper stated that even though they went over the property line on the south side it addresses the issue of visual impact to the neighbors because they will not be looking at a slope that cannot be landscaped or mowed. Kam Hoopes stated that this would have been a good discussion in the normal review of the original variance request. Jon Lapper agrees that there is no question that when the finished floor was raised 2' they should have realized that there would be ramifications and come in to the Zoning office at that point. He stated that the neighbor to the south is definitely happier with this outcome. Kam Hoopes stated that variances run with the land, no matter who owns it next.

Kam Hoopes asked if this is something that should be referred to the TB. Counsel Muller replied that the TB is involved in enforcement and it would be their call to refer it to them. He is not sure if the TB would want to delve into this unless the ZBA feels strongly that this is an enforcement situation. Kam Hoopes stated that this neighborhood is pretty tight in its confines. However, when things good bad they go really bad and it is in your face.

Counsel Muller asked if the applicant has asked the southern neighbor for an easement to allow for the encroachment or projection. Jon Lapper replied no they have not because they presumed, incorrectly, that the letter would show how strongly the neighbor felt, but it is something they can approach. Counsel Muller stated that this sounds like it has a positive possibility of being an acceptable solution to the problem on that side. At least with that in hand they can come to this Board with a zero setback permission. There was further discussion regarding moving the walkway back from the property line or having an easement or lot line adjustment. Ron Shelli stated that this is not something that he wanted to do. He stated that before the got the variance they found this lot to be level. However the County inspector noticed the water and required them to raise the footings about 24", which created this whole problem. He stated that he can move this if necessary.

Jason Saris stated that they can only grant relief on their own property and cannot just go by a letter that the neighbor is accepting of the encroachment. Ultimately the applicant wants a compliant property and the proposal does not satisfy that. Jon Lapper stated that in their defense the applicants did not know they were over the property line until they had it surveyed.

Jon Lapper stated that the applicant is stating that they would be willing to move the wall back a few feet so that it is on their property line. However, it would still need a variance. Jason Saris asked if they wish to table this application to look at talking to the neighbor or reconfiguring the wall and come back with a proposal that they can act on which could lead to their compliance. Patty Shelli stated that their choice would be to move the wall back on their property. Jason Saris stated that they are still going to need relief and the Board will need to know how much relief is necessary.

Jason Saris stated that one of the criteria that they go by is that variances are to be granted in minimums and it sounds like zero is not necessarily the acceptable minimum. Ron Shelli stated that he wants to make the Town happy. The house has been sitting for months and they cannot get a certificate of occupancy until this matter is resolved.

Bill Pfau stated that normally he would like to see the applicant come back with a new presentation. However, given the time of year and the status of the project currently he would not object to the applicant providing us with the information tonight to be able to act. Jon Lapper and the applicants had some discussion as to how far back from the property line they would be willing to move the wall back. They decided that they would move the wall back 1.5' from the fence. Therefore the wall would be all on their property entirely and 1' from the property line itself.

John Michaels raised the concerns over the large pillars. He stated that they seem awful large and makes it more massive when looked at. Jon Lapper stated that they were used as a design feature to make it more interesting. He stated that they are not essential to the structure itself and not something that couldn't be changed. Kam Hoopes asked if there if there is anything in the code regarding railings. Pam Kenyon replied that they would have to refer to Warren County. Kam Hoopes stated that he wasn't sure if they would need a railing due to the grade change. Ron Shelli stated that they intend to add approximately 1' of top soil and add shrubbery, which would take the grade from 26" to 18". Jon Lapper stated that the code is that more than 18" requires a railing and it wouldn't be that after they backfill.

Jason Saris asked if there were any comments from the public in attendance.

Dolores Gianquitto, northern neighbor, stated that her home is 6' from the Shelli's house and have been neighbors with the Shelli's for a long time. Her concern with these changes is how it has changed the stormwater run off. She stated that the building looks really nice but during construction she notice water flowing from their property into her basement. She stated that she had questioned the builder several times and he assured her that the stormwater was in place and functioning properly. Sometime in August the builder came to her and indicated that some changes occurred and that the surveyor feels that these changes might affect the run off and suggested that she come to the Town if further variances are needed. Dolores Gianquitto stated that she wants to be assured that

the stormwater management controls are in place and functioning properly and that any of these changes will not affect the stormwater run off.

Jon Lapper stated that the stormwater on the north side of the property there is a French drain, eave trench with a perforated pipe along the entire length of the house. Nothing that is being requested tonight should affect that because the patio is pitched to the catch basin in the parking area in the front. Patty Shelli added that there are also 2 additional drains, one in the front and one in the back of the house. At the Town's request they also added #2 stone all around the foundation. Ron Shelli stated that they did comply with all storm water requirements. Bill Pfau asked if they could have the engineer go back to be sure that this is functioning properly.

Dick Gianquitto asked if there the same provisions were used for run off from the patio to the drains. Jon Lapper replied no the eave trench runs just along the house itself and the remaining 8' of the patio is sloped toward the drain in the front of the house.

John Michaels stated that he feels that normally 2' grade change would not be an issue but with the pillars added it stands out. Jon Lapper stated that the pillars could be removed if the Board finds it necessary. Ron Shelli stated that they intend to make this a nice patio area with shrubs and flowers; it was never intended to be a structure. Tony DePace stated that he agrees with taking the pillars down to the patio level.

John Michaels stated that he would rather see this as an incomplete plan with landscaping because he is having a hard time visualizing the final product. He does not want to design this project and feels that it wouldn't hurt to have the applicants come back with a planting plan and an engineers report reviewing the stormwater. Jason Saris agreed that the Board cannot design the project. He stated that the applicants have 2 options; 1) they can proceed on the proposal as it is or 2) they can table it and address some of these concerns.

Jon Lapper stated that the applicants are already willing to move the wall back onto their property. The applicants have also agreed to take down the pillars if the Board chooses. Jeff Anthony stated that if they remove the pillars they are going to have to address the need for a railing for code purposes. Tony DePace agreed that they will definitely need some sort of railing in order to get their certificate of occupancy. Bill Pfau stated that they also still have the issue of having this looked at by the Engineer for the stormwater.

Jon Lapper asked if the Board would consider a conditional approval so that they could get their certificate of occupancy subject to a landscaping plan. Kam Hoopes stated that he is more concerned about invading the setbacks then the landscaping plan. They have 47.8% density on a lot that allows only 40%. Jon Lapper stated that it will be reduced with moving the wall back. Kam Hoopes agreed but he is not sure by how much. He stated that he would be more comfortable with the applicant tabling the application and coming back with a plan that they can act on. Counsel Muller suggested that the Board

make a motion to that effect.

Jason Saris asked the applicant if they wished to table their application. Jon Lapper stated that they are looking for the certificate of occupancy and are trying to be as flexible to what the Board wants. The applicant cannot get the certificate of occupancy because they require a variance since this plan is different than the one submitted. Pam Kenyon stated that she didn't sign off because of the need for the variance. Additionally she is concerned about the stormwater and would like to see it reviewed. Kam Hoopes agreed that there seems to be a lot of changes made along the way. Jon Lapper stated that the County Building Inspector told them to raise the house 2'. Kam Hoopes stated that he understands but it wouldn't have hurt to talk to the Town at the time about what kind of changes this might produce. He stated some bad decisions led to a cascading affect of changes needed which were not approved.

Jason Saris stated that the Board cannot design this project for the applicants. He stated that there has been some discussion about whether or not this is the minimum variance necessary. He stated that he cannot tell how Board members will vote and stated that the applicant can either take their chance with the vote tonight or they could address some of the concerns raised and come back at a later time.

Jeff Anthony stated that they will not resolve the stormwater issue tonight because the suggestion tonight was to have the Town Engineer look into the original stormwater design to see if it complies and whether or not it is working. Jason Saris agreed and stated that is why he suggesting to table the application. Jeff Anthony added that this was also a concern from some neighbors and will not be an issue that they can resolve tonight. Jason Saris stated that the Zoning Administrator has also raised this concern.

Jon Lapper requested to table the application so that they can have time to address the issues and concerns raised tonight.

RESOLUTION

Motion by Kam Hoopes to table application V10-54 at the applicant's request pending further information and stormwater review by the Town Engineer. **Seconded by** Jeff Anthony. **All in Favor. Motion Carried.**

The meeting was adjourned at 10:30 pm

Minutes respectfully submitted by Kristen MacEwan