

**Town of Bolton  
ZONING BOARD OF APPEALS  
MINUTES  
Tuesday November 16, 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, Jeff Anthony, Counsel Michael Muller and Zoning Administrator Pamela Kenyon

**Absent-** David Ray

The meeting was called to order at 6:36pm.

Jason Saris asked if there were any corrections or changes to the October 19, 2010 minutes.

**RESOLUTION**

**Motion** by Kam Hoopes to approve the October 19, 2010 minutes as written. **Seconded** by Tony DePace. Jason Saris and Bill Pfau abstained. **All Others in Favor. Motion Carried.**

*Note: When the meeting was called to order John Micheals was not present. Jason Saris indicated that the Board was short 2 members, which meant that 4 of the remaining 5 members' votes were needed for approval of each variance request. He stated that if any applicant wished to table their application for this month, they could be heard at next month's meeting.*

**1) V10-37 BOLTON GARDEN CENTER (Steve Budner).** Seeks area variance for deficient parking. 41 spaces are required for retail use. 8 spaces were approved on December 19, 2005 under V05-72. 34 spaces required at that time. Section 171.19, Block 1, Lot 62, Zones **GB5000** and RM1.3. Property Location: 4921 Lake Shore Drive. Subject to WCPB review. Discussion is also sought as to what constitutes a fast food restaurant. *Note: This item was tabled from the October meeting at the applicant's request.*

*Note: John Michaels was not present during this agenda item.*

Steve Budner stated that he is present tonight just because the measurements were done differently from one year to the next and does not feel that he needs a variance for parking. Pam Kenyon stated that she and Mitzi Nittmann went over and measured the square footage of all the buildings and did find that the applicant would need 41 parking spaces. With regard to the 2005 variance, decisions were based on the measurements that the applicant gave at the time and they did not include the greenhouses.

Pam Kenyon indicated that this was denied by Warren County; therefore it will require a

supermajority of 5 affirmative votes. Counsel Muller stated that the applicant does not have to take that risk and can choose to table the application. Steve Budner stated that this has been put off long enough and would like to have the issue resolved and move on.

Steve Budner stated that he does not feel that he needs a variance because nothing has changed on his property since 2005 except for a 90 sq. ft. shed. He stated that he is up for a parking variance for building requirements. He stated that greenhouses, as defined by NYS, are not buildings. Kam Hoopes stated that he talked to Pam Kenyon today, and because the applicant sells products other than plants in the greenhouses, parking was considered. He stated that the State's definition means that they are only doing agricultural work in there. Steve Budner disagreed and stated that it is all related to gardening. Kam Hoopes stated that the measurements have been taken and the greenhouses have now been included. Steve Budner stated that it is wrong to include the buildings because they are temporary structures as deemed by the State. Kam Hoopes stated that they are dealing with Town Code not State Code. Steve Budner asked if Town Code considers greenhouses as temporary buildings. Kam Hoopes stated that it is a retail space which makes it a building. Steve Budner stated that they are temporary buildings. Kam Hoopes stated that they have never been taken down and feels that the applicant may want to consider taking Counsel Muller's advice and table his application.

There was discussion regarding whether or not it should be heard tonight since the applicant would rather appeal the ZA's decision for the need for a variance. Jason Saris stated that he was uncomfortable discussing an appeal to the ZA's decision because it was not properly noticed. The Board agreed.

There was discussion regarding the parking. Counsel Muller asked if the applicant is seeking the same relief tonight which is for 8 parking spaces, with the additional 90 sq. ft shed and greenhouses being considered buildings. Steve Budner replied yes. Counsel Muller stated that the applicant is seeking relief to operate everything that is there and has been there since 2005 with only 8 parking spaces. Bill Pfau recommended that the applicant take Counsel Muller's advice even though it may be irritating and just seek relief for the 8 spaces. He stated that it would be easy to argue that he has been able to operate for 5 years with the spaces that they have and that nothing is really changing. He also indicated that the applicant has the opportunity to withdraw or table this up until the time of the vote. Steve Budner stated that he does not want to table this any further. Jason Saris stated that they should proceed with the agenda as posted.

Kam Hoopes stated that there is always an issue of parking in downtown and this business actually has decent parking for its operation. He stated that they are amenable to the request because the business has not changed significantly since 2005. It is a successful business with a lot of foot traffic. He stated that he does not feel that the business is overcrowding the streets.

Jason Saris asked if the new shed was serving other functions that the other buildings do not. Steve Budner replied that they make lemonade and hotdogs, and have recently

added pizza. He stated that they also used the space to warm up cider donuts in the fall. He stated that this was all approved by the NYS Dept of Agriculture. He has sold food at his business for 15 years. Jason Saris asked if the new shed has diminished his ability to park cars. Steve Budner replied no, the shed is where they were selling hotdogs, but they had problems when it would rain so they asked to put a shed there.

With regard to parking, Jason Saris stated that the parking is off the street and makes it one of the least congested spots in Town. Clearly the parking ordinance was designed in such a manner so that it would anticipate all of the businesses in the hamlet would require a parking variance of some sort. There is on street parking as well as public parking lots. He stated that the intent of the ordinance was to protect them from a business that wouldn't be directly in the hamlet and couldn't supply the parking.

There was discussion over whether or not what Mr. Budner is selling would define him as a fast food restaurant. Jeff Anthony stated that definition in Bolton Code for fast food is "An establishment whose principal business is the sale of pre-prepared or rapidly prepared foods and meals." Jeff Anthony stated that the Bolton Garden Center's principle business is not selling hotdogs but rather garden products. Bill Pfau asked who was seeking the discussion. Pam Kenyon replied that she rather not get into who is seeking the discussion. However, she did want to note that she has never thought that what the applicants are doing would constitute serving fast food. Steve Budner indicated that it is 0.1% of his total business. Kam Hoopes stated that this has come up before and it is usually brought up by people that feel that fast food is evil. He stated that there are a lot of businesses in Town that provide fast food. He would like to see this removed from the variance request. Jeff Anthony agreed but stated that he feels that they should put it to rest for good.

Counsel asked the applicant what his primary business was. Steve Budner replied that he is a retail garden center that sells furniture, crafts and other eclectic items. Counsel Muller asked the Board if there would be an issue to add an ancillary use of providing food or food products. Jason Saris stated that he feels that it is very consistent with this retail store. He also noted that many other retail stores in Town sell food items that tourists may be interested in, but it would not constitute as their primary business. Counsel Muller stated that the issue is raised every so often and this time it came up because there was concern that people were sitting down to eat the food. Steve Budner replied that he has always had picnic tables out front of his place. He stated that it provides people a place to sit while they are eating the donuts or hotdogs. Kam Hoopes noted that these tables are also for sale. Jeff Anthony stated that their code does not make mention of how people are to eat their food so this is really a mute point.

Bill Pfau stated that he gets irritated that they have to have these discussions based upon a third parties problem. He stated that obviously Pam Kenyon did not have a problem with this and yet they are dealing with someone else's complaint. He stated that the proper procedure if someone disagrees with the ZA's interpretation is to appeal it to the ZBA formally.

## RESOLUTION

**Motion by** Jeff Anthony that the ZBA has determined that the Bolton Garden Center is not considered a fast food restaurant establishment as classified by the Bolton Zoning Law; and the principal business of the Bolton Garden Center is selling of garden products. **Seconded by** Tony DePace. **All in Favor. Motion Carried. Note: John Michaels was not yet present.**

Jason Saris asked if there was any correspondence. Counsel Muller stated that they have a negative vote from the WC PB. Steve Budner asked if WC PB turned him down because the cars have to back out onto 9N. Pam Kenyon replied yes. Bill Pfau stated that the WC denial just means that the applicant will need a supermajority. Counsel Muller read a letter from Lynn H. Scott in support of the application.

There were no comments from the public in attendance.

## RESOLUTION

The Zoning Board of Appeals received an application from Bolton Garden Center (V10-37) 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 should be discussion, as some of the parking requires vehicles back onto the State Route 9N. Since backing onto a State highway from a commercial establishment is an apparent violation of NYS vehicle and traffic law, staff cautions the Board regarding taking action that may promote unsafe vehicle movements;

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; parking is a dear quality in this town and the applicant has more than most businesses in Town and it is off the highway.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is in the GB5000 and there is a lot of business going on at this

location.

3) The request is not substantial; the number is substantial, however, it is downtown and most businesses in Town operate with a lot less parking, especially their own.

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. John Michaels abstained. **All Others in Favor. Motion Carried.**

**2) 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 October meeting at the applicant's request.

*This item was tabled at the applicant's request.*

**3) V10-45 DANIGER, DANIEL & CROMWELL, SHELLY.** To alter pre-existing non-conforming structures, specifically to raise the back kitchen roof and add a 10' x 24' woodshed to the single family dwelling and place a 3' x 5' roof over the carriage house porch, 1) seek area variance for a deficient front yard setback. 75' is required, 47' is proposed for the single family dwelling and 65' is proposed for the carriage house; and **b)** To alter pre-existing non-conforming structures in accordance with Section 200-57B(1)(b). Section 213.13, Block 1, Lot 6, Zone RCM1.3. Property Location: 73 Coolidge Hill Road. Subject to WCPB and APA review.

Dan Daniger stated that he had one correction, the agenda is supposed to read 5' x 10' roof over the carriage house. Pam Kenyon stated that it also changes the setback from 65' to 55'.

Dan Daniger stated that house was built in the 1840's and when the kitchen was put on it was put where the back porch was. He stated that when the deck was added it was never flashed and papered so it has been greatly affected by the weather. There is no room for header height so none of the doors have headers on them. He explained that the only way to put a header over the door is to put it on the second beam which is where the main roof is on the back of the house. He stated that this will also change the pitch of the roof.

With regard to the carriage house, Dan Daniger stated that when he applied for it in 2005 he forgot to ask for a roof over the entry. He stated that it has become apparent that they get wet coming in the door and it is getting moldy.

Dan Daniger stated that he has had several knee operations and is trying to make his house and property more comfortable to use. He stated that he is trying to move the wood shed closer to the woodstove. Additionally, this would provide a space for future expansion so it would be important to move it.

Kam Hoopes stated that the most important fact is that all the invasions of the setbacks are due to the pre-existing building. The applicant is not further encroaching on the setback. Dan Daniger stated that all of the construction and additions would be to the back of the house.

Jason Saris asked about the age of the structure. Dan Daniger stated that it was built in 1840, and it was all post and beam. As he gets older he wants to make this house more livable. He provided more details to the project. He is hoping to eventually have a bedroom and bathroom on the first floor. He plans to keep the slate roof and will not be changing the pitch on the front of the house. Jason Saris stated that this is a familiar scenario with older buildings in the community that don't meet the current setbacks. The applicant is not seeking uncommon relief for his residence.

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

Kathy Bozony, Lake George Waterkeeper, stated that she has provided her letter as well as some information to the applicant already. She indicated that she does not have any objections to the variance request. However, she did want to share some information. She stated that stormwater run-off is the number one polluter to Lake George and every effort should be made to minimize the effects of stormwater flowing into the lake. She stated that although this is upland, stormwater does eventually make its way down the hill side and into the lake. She stated that this renovation/addition is the perfect opportunity to bring this structure into compliance with stormwater. Kathy Bozony also stated that she is trying to get the public and Town Boards to understand the harmful effects of the use of fertilizers and pesticides and requested that the approval prohibit the use of pesticide and fertilizer use on this property.

There were no comments from the public in attendance.

Jeff Anthony asked why this was being reviewed by the APA. Pam Kenyon replied that the carriage house is located within 75' of a stream. She stated that they will only be reviewing the carriage house and not the addition to the primary dwelling.

Dan Daniger stated that he will be removing the deck and intends to replace it with a small set of stairs and patio pavers. He stated that it will have drainage around the drip edge that infiltrates into the stone walls which is above the gardens. He stated that he has

had plenty of opportunities to infiltrate storm water and has done so. He also indicated that he has never used fertilizers or pesticides. He stated that they take good care of the water quality.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Daniel Daniger and Shelly Cromwell (V10-45) 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; the structure is non-conforming as it exists and any actions by this applicant would require a variance.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the addition of the woodshed is to the rear of the property, which will not be visible to any neighboring properties or the street. The roof over the garage is fairly nebulous, there is already a stoop there and it is just a minor addition to that building.

3) The request is not substantial; it is minor and it is all contained within the existing setbacks on the property as proposed by the Town Zoning Law and the only reason that this is here is because it is a renovation to a pre-existing non-conforming structure.

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, they are dealing with a non-conforming structure that has been in existence for a long time and it is not something that the applicant created.

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

The practical difficulty is the fact that they have an entrance into a garage structure that is not roofed. Rain water spills into the entry and steps which creates a practical problem. The addition of the woodshed to the rear of the building is probably it the best location, and from a practical perspective, the most proper location.

Now, upon motion duly made by Jeff Anthony and seconded by John Michaels, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) that minor storm water is incorporated into the project which is to be reviewed by the Zoning Administrator. **All in Favor. Motion Carried.**

**4) V10-46 BIVONA, GARY.** Represented by Jarrett Engineers, PLLC. To allow a 27.6 square foot retaining wall extension to remain, seeks area variance for a deficient front yard setback. 50' is required from the edge of the right-of-way, 6" is proposed. Section 171.07, Block 1, Lot 64, Zone RM1.3. Property Location: 43 Cobblestone Court. Subject to WCPB review.

Tom Jarrett stated that in August the ZBA granted a variance for the main retaining wall. That wall was to be 120 sq. ft and three variances were sought due to the shape of the property. When the wall was built, they were able to build it smaller than they anticipated and it was a little further from the property lines. Even though they lessened the relief necessary they found that in order to get the water into the infiltration system behind the wall they would need to extend it somewhat up the driveway. Even though it is connected to the main wall they have treated it as a separate structure for purposes of submitting this application. He stated that they really need something there to divert stormwater into the stormwater structures by either a wall, which the owner prefers or a berm.

Kam Hoopes asked if the structure already exists. Tom Jarrett replied yes. He stated that since they built the wall smaller the contractor thought they could just extend the wall up further without going through the formal process of approval. However, after measuring it they found that it did exceed the previous variance. Kam Hoopes stated that he did not see any problem with this. John Michaels asked if they planned to build the wall any further. Tom Jarrett replied no. Kam Hoopes stated that this is an improvement of the driveway.

Jason Saris asked if there was any correspondence. Pam Kenyon stated that there was no WC impact.

There were no comments from the public in attendance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Gary Bivona (V10-46) 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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties,
- 3) The request is not substantial; it is a small extension to an approved retaining wall.
- 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, however it does deal with storm water problems on steep grades near the driveway.

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

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

**5)V10-47 GALLAGHER, THOMAS.** Represented by Greg Bonath. To alter pre-existing non-conforming single-family dwelling, specifically to add a 20' x 16' addition, seeks area variance for 1) Deficient setbacks. Front: 30' is required, 24' is proposed; Rear: 15' is required, 2.5' is proposed; Side: A total of 20' is required, 18.6' 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 14, Zone GB5000. Property Location: 14 Hondah Loop. Subject to WCPB review.

Greg Bonath provided details to the project. He stated that this addition will be put on the side of the property that has the most area. This addition will have a master bedroom and 2 bathrooms, which will then make this a 3 bedroom/2 bath seasonal home. He stated that their family is expanding and they need more room to accommodate everyone.

Greg Bonath stated that since this property is close to the lake he is putting the structure on concrete piers, they will not be digging or creating any ground disturbance. He stated that they will use pre-cast concrete and put them into the ground like standard footing which will be back filled. He stated that this is the best way to accommodate the applicants' request with minimal disturbance.

Greg Bonath stated that most of these houses have had some sort of addition or upgrade done to their properties. Kam Hoopes stated that he agrees that this is not an unusual request and this structure needs some attention.

Jason Saris asked how long the applicants have owned this house. Greg Bonath replied it has been in the family for quite some time. Bill Pfau stated that since this is the closest property to the lake and it is nice to see that the applicants have decided to stay on one level. Greg Bonath stated that he has not heard any feedback otherwise, but he feels that would have heard something if there was an issue. They considered the option of going up but he feels better with increasing the square footage this way to achieve the applicants' goal. He stated that he would assume to take down the structure rather than add another story because it is not the most structurally sound.

John Michaels asked if the HOA approved this. Greg Bonath replied that he is not sure if a formal approval came through. However, it is a tight community and he is sure that all of the neighbors were notified by the Zoning Office. Jason Saris stated that they do not enforce HOA rules. Greg Bonath stated that most of the neighbors have already done upgrades to their houses and he is sure that most are happy to see this being upgraded.

Jason Saris asked if there was any correspondence.

Counsel Muller read the following letters:

- 1) Nancy Foley, neighbor, who indicated that currently there is no water issues between the structures and wants to be sure that there are adequate provisions to take care of the run-off for the proposed new construction.
- 2) Kathy Bozony, Lake George Waterkeeper, regarding implementing stormwater management to bring the structure into compliance and the restriction of fertilizer and pesticide use should be a condition of approval.

Pam Kenyon stated that there was no Warren County impact with the recommendation that storm water management is looked into.

Rod Owens, neighbor, stated that he fully supports the project. This property has been in the applicants' family for a long time; and they are in need of some additional space. With regard to stormwater, he stated that he is not sure what they plan on doing with it because the water will run-off the roof and into the ground just as it always has. He stated that he has never used pesticides or fertilizers on his lawn nor have most of his neighbors.

Mary Owens, representing the Powers Family, indicated that they too fully support the project.

With regard to stormwater, Jason Saris stated that this is a relatively flat piece of property. John Michaels agreed but stated that there are some things that can be done. Pam Kenyon stated that they will have to be careful with stormwater because they have a high water table and probably will not be able to meet the separation distance. Jeff Anthony stated that they can vary the separation distance and ask the applicant to infiltrate to some degree where possible. The Board agreed.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Thomas Gallagher (V10-47) 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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a one bedroom, two bath expansion to a house that does not meet setbacks.
- 3) The request is somewhat substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, it is a non-conforming, pre-existing structure.

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

Now, upon motion duly made by Bill Pfau and seconded by Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) that the applicant will incorporate minor stormwater mitigation where it can be reasonably achieved. **All in Favor. Motion Carried.**

**6) V10-48 HAMILTON, MASON.** Represented by Michelle and/or Gerald Hamilton. To alter pre-existing non-conforming structure, specifically to construct a 16' x 5' handicap ramp, 14'7" roof extension and construct a 20' x 20' carport, seek area variance for 1) Deficient setbacks. Front: 50' is required, 7' 9" is proposed; Shoreline: 100' is required, 30' is proposed; and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 199.00, Block 1, Lot 6.1, Zone RR5 & RR10. Property Location: 31 Stone Place Road. Subject to APA review.

Mason Hamilton stated that his current condition requires him to be in a wheelchair, which creates the need for the handicap ramp and carport. He needs to be able to get in and out of the vehicle and be able to clean off the snow and ice from his vehicle in order to be able to get to work daily. The ramp is to get in and out of the house and the shed roof over the ramp is to protect the ramp from the snow and rain. This will follow the same roof line. The carport does not impede any further on the roadway, stone wall or maple tree. He stated that he has spoken to Tim Coon, Highway Superintendent, who indicated that it would not impede plowing operations. Run-off will shed to lawn areas on the property and flows away from the pond which is the shoreline that they are dealing with.

Kam Hoopes stated that he has never been up to this property before and found this to be a very cool area. He stated that he does not see anything offensive in this project. This is all doable and will not be affecting any neighbors. He stated that it is undeniably a safety feature and will not be causing any problems with the right-of-way. This setback from the shoreline is from the applicant's own pond and is on the same level of the house.

Jason Saris stated that practical difficulty is that the house is a pre-existing non-conforming structure and any changes would require a variance. He stated that applicant is seeking the minimum relief to accomplish the benefit. He reminded the Board that they should discuss some points regarding APA requirements since they will be reviewing the application due to the shoreline setback.

Kam Hoopes asked if this is a man made pond. Mason Hamilton replied he believes that it is. He stated that some of his neighbors have indicated that at one time it was a small brook and the previous homeowner created what exists now and erosion has taken its course and that is why it is so close to the road. He stated that it flows off to the right of the pond away from the structure.

With regard to alternate sites of the carport, Bill Pfau stated the carport is located in a flat parking area that currently exists on the property. Jason Saris added that it should also be

noted that the ramp needs to go by the door and it has to lead to the carport in order to function as designed.

There was no correspondence or comments from the public in attendance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Mason Hamilton (V10-48) 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#6 of the agenda.

The Board makes the following conclusions of law:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; the handicap ramp has to be near the door and the carport has to be near the ramp and those locations are in conflict with the right-of-way and pond setback.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a remote area and this addition will just add to the already neat and tidy property.

3) The request is not substantial; this 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; the pond is on level ground and the drainage is off and away from the house into the woods in the other direction. There is also very little outflow from the pond in general.

5) The alleged difficulty is not self-created, this is a safety issue for wheelchair accessibility. The configuration of the existing structure, the access into the structure and the handicapped ramp access into the existing structure is predetermined and the location of the carport has to be designed to support such design. The practical difficulty is that they have to meet these geometric situations. This is also a pre-existing, non-conforming structure so everything the applicant seeks to do will require a 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 Kam Hoopes and seconded by Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

**7) V10-49 MELODY MANOR, INC.** Rose & Damian Alessi. To alter pre-existing non-conforming structure, specifically to construct a second story deck and living space, seek area variance for 1) Height. 35' is allowed. 47'11" is proposed; 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.14, Block 1, Lot 61, Zone RCH5000. Property Location: 4610 Lake Shore Drive. Subject to WCPB and APA review.

Damian Alessi stated that he and his family have operated Melody Manor for years. They have resided in Lake George and operated this business and lived here in the summer. He stated that they are now empty-nesters and are in the process of selling their house in Lake George and would like to become full-time residents in Bolton. He stated that they have a 2 bedroom apartment at the hotel and since this will be their full time residence they would like to be able to enjoy their property more fully.

Damian Alessi stated that the proposal will create the least amount of environmental impact because they are not adding to the footprint or roof space. He does not feel that this will visually impact any of the neighbors. With regard to the height, Damian Alessi stated that it is part of an existing building which looks like a ranch house from the front, but it is built into the hill and has multiple levels on the back, which creates the height issue. He stated that he is not sure whether the height issue is due to visual impact or safety, but he feels that visually is not an issue.

With regard to stormwater and pesticide use, Damian Alessi stated that they have done their part. He stated that for the last 10 years they have provided a buffer along their stream, they have captured rainwater and used it in their gardens and they have never used pesticides or fertilizers. They are also trying to create some rain gardens because they get quite a bit of run-off from 9N.

Kam Hoopes stated that the height issue definitely jumps out at you but he is very familiar with the property. He stated that most of the height restrictions come from a safety standpoint because most fire equipment can only reach up to 35'. However, the side of the building that they would need to approach first would be the front which would not be affected by the height and does not see any reason why the fire company would try to fight a fire from the back side of the house. With regard to the neighbors, Kam Hoopes stated that they have some good screening between the properties. Although it is a big building it has been there and minimal is changing to the structure itself.

Jason Saris stated that they need to address the height issue from an aesthetic point of

view from the lake. Damian Alessi stated that he does not feel that they are very visible from the lake because the existing building would somewhat block the addition. Jason Saris stated that the applicant is proposing to build away from the lakeside. The structure and addition will be screened from the lake by the building that already exists. They are not adding onto it to make it look any bigger and this is also located in a bay, away from the main body of the lake.

Jason Saris asked if the applicant had considered alternative locations. Damian Alessi replied yes but they all required expanding the footprint and would create further disturbance. They felt that this proposal had the least impact to achieve their goal.

Jason Saris asked if there was any correspondence. Pam Kenyon stated that there was no WC impact. Counsel Muller read the letter from Kathy Bozony, Lake George Waterkeeper regarding to stormwater management and the restriction of fertilizer and pesticide use.

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

Paul Golhoffer, neighboring property owner across the brook, stated that he and his wife fully support the project.

Bill Pfau stated that this Board has not dealt much with the height issue. He stated that this is a commercial property and it is a big structure in general. This is a just a minor change to the view of this building. Jason Saris stated that the aesthetic issue of height totally depends on the property and situation of the house on it.

Jeff Anthony asked if they needed to include anything in their discussions regarding APA requirements. Pam Kenyon commented that this is a height variance, not a shoreline variance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Melody Manor (V10-49) 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#7 of the agenda.

The Board makes the following conclusions of law:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; other locations to accomplish the same benefit are not available.

2) There will be no undesirable change in the neighborhood character or to nearby properties, Melody Manor will look almost the same as it does today. The view from the driveway will show a small change.

3) The request is substantial; numerically the height request is substantial. However the mitigating circumstances of its location, and other issues discussed, such as fire safety, relieve that substantiality.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it is being placed within an existing roof line, which will not change the run-off. The applicant has indicated that they have already taken measures to address stormwater run-off from their property.

5) The alleged difficulty is not self-created, when building a hotel, the sleeping quarters for the owners are always in the worst place to allow for the best for the guests. This will add some relief to the applicants for when they move to Bolton permanently.

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.**

**8) V10-50 HERRMANS, HAKEN & JOAN.** Represented by Michael Tuck. To alter pre-existing non-conforming structure, specifically to construct an approximate 157 sq. ft. second story addition, seeks area variance to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.10, Block 1, Lot 14, Zone RM1.3. Property Location: 28 Huddle Lane. Subject to WCPB and APA review.

Michael Tuck stated that the applicants are proposing to make alterations to a non-conforming pre-existing structure. The existing residence is approximately 54' from the shoreline and the area that the focusing the expansion on is away from the shoreline in the northwest corner of the house. They are proposing to relocate the wall of the second floor, which sits back approximately 4' from first floor wall. He stated that it will not increase the overall footprint of the house or the increase the impermeable surfaces on the site. No excavation will be required.

Michael Tuck stated that in changing a non-conforming structure they are required to confirm that the septic complies. Tom Jarrett has done some testing and has found that it does not meet the current standards so the applicants will seek a separate permit for the



septic upgrade.

The addition is approximately 148 sq. ft. and the second story wall will now be in line with the first floor. They are also planning some exterior alterations to the aesthetics of the house.

With regard to septic, John Michaels asked if the applicant has enough room to expand the septic in the future. Tom Jarrett replied yes they will be putting it behind the garage.

Bill Pfau asked how they thought the APA might handle this. Jeff Anthony stated that the addition is proposed away from the lake but the house itself is within the setback. Counsel Muller stated that this addition is under 250 sq. ft. and feels that the APA will not find this addition a great concern. Jeff Anthony stated that they should still provide the findings of fact to cover all of their bases. Counsel Muller agreed.

Michael Tuck stated that the current condition of the low roof sheds snow and run-off along the higher wall. Since this is the northwest corner, there is a substantial amount of snow that builds up. He stated that the applicants have replaced the asphalt roof with a standing seam metal roof hoping to shed the snow. However, given the L-shaped configuration of the garage/mudroom roof, the snow sticks and builds up against the house. He stated that this eventually has made its way through and caused some water damage and has frozen some pipes. He stated that a big portion of this project is to mitigate most of these hardships.

Kam Hoopes stated that the number one hardship on this property is the geese. He understands that the applicants have tried this and indicate that it doesn't work. He stated that it does work and suggested that they use fishing line and maybe place it lower. Tom Jarrett stated that the landscaping that they have added on the shoreline has also somewhat deterred the geese as well.

Jeff Anthony asked Tom Jarrett if the ZBA asked the applicant to add minor stormwater with their last request and if so, was it implemented. Tom Jarrett replied that the applicants offered minor stormwater and they did build a berm across the shoreline and the drainage course on the north side. Jeff Anthony stated that the Lake George Waterkeeper's letter is requesting that they consider adding storm water. However, the applicants have already done so and they are not adding any additional impervious area. Tom Jarrett stated that within the last year their landscaper's have also stopped using fertilizer and pesticides on the property.

Jason Saris asked if there was any correspondence. Counsel Muller read the letter from Kathy Bozony, Lake George Waterkeeper, regarding stormwater management compliance, review of on-site wastewater system, and restriction of pesticide and fertilizer use.

Pam Kenyon stated that there was no WC impact.

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

Kathy Bozony, Lake George Waterkeeper, stated that she has since spoken to Tom Jarrett regarding the on-site waste water treatment facility and finds that it is being designed appropriately. She stated that the applicant has voluntarily decided to upgrade the on-site waste water treatment facility and commends them for their effort. With regard to stormwater, Kathy Bozony stated that the previous project was for a retaining wall but she is not sure that the current house is in compliance with current stormwater. They recommend that applicants try to bring their structures into compliance when they have the opportunity to do so. With regard to shoreline buffering, Kathy Bozony stated that when they put in the berm but they removed some bushes in this area. She suggested that the applicant consider adding some more substantial bushes and vegetation; this will not only help deter the geese but it will also provide a natural buffer for the shoreline.

With regard to septic, Tom Jarrett stated that they have designed a site modification system. He stated that Pam Kenyon has approved the placement of the fill and they will test the fill in the spring and she will issue a formal permit in the spring. John Michaels stated that he would like to see that added as a condition of approval.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Haken and Joan Herrmans (V10-50) 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#8 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; they are keeping the expansion away from the lake.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties,
- 3) The request is not substantial; it is a small addition

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the applicants are staying within the existing footprint.

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.

The practical difficulty is the way that the structure was built. According to the architect there is a tendency for snow to accumulate in the valleys of the structure and on the roof. The structure is affected when snow melt occurs, which is also a hardship on the applicant. Structurally and technically the building needs some modifications. While this is an improvement in the applicants' benefit and use it is also solving a structural problem.

Now, upon motion duly made by John Michaels and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) that the modified septic system is reviewed, installed and approved by the Zoning Administrator prior to a certificate of occupancy being issued by the Warren County Building Codes Department. **All in Favor. Motion Carried.**

**9) 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 item was approved by the ZBA Dec. 2009 and reversed by the APA.*

*This item was tabled at the applicant's request.*

Minutes respectfully submitted by Kristen MacEwan.

