

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
July 19, 2011
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, Kam Hoopes, John Michaels, Don King, David Ray, Jeff Anthony, Counsel Michael Muller and Zoning Administrator Pamela Kenyon

Absent- Tony DePace

The meeting was called to order at 6:31 pm.

Jason Saris asked if there were any corrections or changes to the June 14, 2011 minutes.

1. Kam Hoopes, pg 18 in the first resolution to deny the application was seconded by him but was also voted in favor of by Tony DePace which was noted mentioned.

RESOLUTION

Motion by Kam Hoopes to approve the June 14, 2011 minutes as corrected. **Seconded by** Jeff Anthony. **All in Favor. Motion Carried.**

- 1) **V10-56 VILLENEUVE, RAY & KELLY.** Represented by Stephen Jung. To alter pre-existing non-conforming single family dwelling, seek area variance for **1)** Deficient setbacks. **Shoreline:** 50' is required, 34' is proposed from the mean high water mark of Lake George and 11' is proposed from Edgecomb Pond Brook. **Front:** 30' is required, 1' is proposed; and **2)** To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.11, Block 2, Lot 25, Zone GB5000. Property Location: 16 Parkside Drive. Subject to WCPB review. *Note: This item was tabled at the March 2011 meeting, pending additional information.*

Stephen Jung stated that this application was tabled a few months ago because the Board wanted this to be reviewed by the Town Engineer for stormwater. A stormwater plan was done and submitted several times addressing the Town Engineer's comments and it has since been approved. The only other difference in the plans is that the rock wall shown previously has been removed.

Stephen Jung stated that the house plan has not been changed and briefly gave an overview of the project. The square footage has been increased a little by adding a master bedroom above the garage but it will all be within the existing footprint of the current house.

John Michaels stated that he was not present at the March meeting but he did note that the

applicant was supposed to bring back both a stormwater and landscaping plan and they only did the one. Stephen Jung stated that they decided to leave the landscaping as is. Currently it is just grass and they weren't planning to do anything to the landscape at this time except for the patio which will be made of pervious pavers.

Jeff Anthony stated that they are rather close to Finkle Brook and the lake and would have liked to have seen something done. He stated that he requested this at the last meeting and now the Lake George Waterkeeper has also suggested this as well in his letter. He stated that he was hoping to see something more than just grass down to the water. The reason they asked for the landscaping plan is because this application will not go for site plan review before the PB. Stephen Jung stated that the site plan was designed to keep the water on the site which is by regulation. Jeff Anthony stated that he would still like to see a landscaping plan since they are so close to the water.

Counsel Muller read the letter from the Lake George Waterkeeper for both applications V10-56 and V10-57. In their letter they recognize the stormwater management measures taken by the applicant but provided further comments for consideration: 1) require increased setback to a more compliant location for the proposed expansion of the garage/cottage, 2) require a continuous shoreline buffer along Finkle Brook and Lake George consisting of a 4 tiered vegetative buffer, 3) require a determination of the necessity for shoreline variance for the proposed patio retaining wall and 4) require site plan review from the Bolton Planning Board.

Redman Griffin, representing RPI, stated that his clients very much like the architecture of the home. However they are still concerned about allowing a variance to double the size of an already pre-existing non-conforming structure. He also feels that they should have a meeting with the applicants and the Waterkeeper to discuss the shoreline buffer that the Board and Waterkeeper are suggesting since they own part of the property on the south side of the brook.

Kam Hoopes stated that he appreciates the Waterkeeper's comment about possibly requesting a site plan review, which may make some of the Board members happy but he feels that there is very little room for this applicant to wiggle to get any significant increase in setback from the property lines. He appreciates that the applicants are going to work within the existing drip edge and disturbed ground. However he does not feel comfortable talking about landscaping plans since their job is just to look at the setbacks. John Michaels agreed that he likes that they are using the footprint but the applicants were asked to come back with 2 things and they only came back with one. Jason Saris stated that the applicant still can make the choice of what they want. Kam Hoopes stated that the stormwater management plan was his biggest issue and he feels that it will go a long way to alleviating most of the pressure on that shoreline. He stated that there is no way that the applicants would be able to get much in the way of a shoreline buffer on that lot. Jeff Anthony agreed but stated that as of March 1st contemporary stormwater management plans are not only about detaining and infiltrating but also using vegetation. The new regulations require vegetative solutions to this. He feels that a little bit of planting can go a long way. Kam Hoopes stated that they could incorporate that as a condition of approval. Jeff Anthony stated that he would be concerned with who would review it. Kam Hoopes stated that it would fall under their enforcement officer. Don King asked what kind of leverage the enforcement officer would have after the fact. Jason Saris stated that it would be

awkward because nothing had been agreed upon here. The landscaping plan is supposed to work in harmony with the stormwater plan.

John Michaels asked when they planned to start construction. Stephen Jung replied not until after Labor Day. John Michaels stated that they had time to get a plan together to come back for approval. Kam Hoopes stated that he is not comfortable with doing landscaping plans and would have no problem asking for the applicants to go before the PB to have site plan review. John Michaels and Jeff Anthony both felt that this was something that the ZBA could do and that it was not necessary for it to go to the PB.

Stephen Jung stated that according to the Waterkeeper's letter it seems that the garage has more to do with the landscaping plan. He asked if they could keep the house separate and put the planting as part of the garage so that they can get moving with their construction plans. Jeff Anthony stated that this project impacts the entire stream corridor. He stated that although he would like to see some planting he does not agree with the Waterkeeper suggestion of being a 4 tiered plan. Jason Saris stated that they could take the garage out of the equation, but it seems that a lot of the members are looking to have a comprehensive planting plan for the property regardless of what happens with the garage.

Stephen Jung stated that he designed this site for the water to not leave the site and be centrally held on the property. Kam Hoopes understands that he designed a stormwater plan, but the Board asked for a planting plan because it can only help with stormwater. Jason Saris stated that the stormwater plan may deal with the house water run off, but you are still talking about 11' between the structure and the stream. Ray Villeneuve stated that he is not sure that he can plant anything there because they don't own all of that area. He asked what type of materials are they supposed to use. Jeff Anthony stated that they are not there to design their plan but there are people out there that do these types of plans. Overall they need to look for something more than just grass that has varying heights and roots to better infiltrate the water. Ray Villeneuve stated he is concerned that they do not have enough room to do much of anything since they do not own next to the stream. John Michaels stated that if they could have a landscape architect who was familiar with the rules and regulations tell them why a planting plan is not possible or provide a design that is appropriate it would go a long way.

Jason Saris explained to the applicants that if they chose to table this and bring back a planting plan they could decide to do so at this time. However, if this were to be voted on and not approved then they would need to start the process over again. The applicants decided to table the application.

RESOLUTION

Motion by Kam Hoopes to table application V10-56 pending a landscaping plan. **Seconded by** Don King. **All in Favor. Motion Carried.**

- 2) **V10-57 VILLENEUVE, RAY & KELLY.** Represented by Stephen Jung. To alter pre-existing non-conforming garage, seek area variance for **1) Deficient setbacks. Shoreline:** 50' is required, 10' is proposed from Edgecomb Pond Brook. **Rear:** 15' is

required, .5' is proposed; and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.11, Block 2, Lot 25, Zone GB5000. Property Location: 16 Parkside Drive. Subject to WCPB review. *Note: This item was tabled at the March 2011 meeting, pending additional information.*

Stephen Jung provided the details of the proposal for the garage which has not changed from the prior meeting. Currently this building is a 1 car garage and they are proposing to add a loft second floor and change the exterior significantly. They will use the existing footprint for the building and roof. There had been talk of moving the building. However the building does not affect any neighbor visually and moving it would be difficult since the property is not large enough. He feels that this is a more environmentally sensitive solution. This building will not have any bathroom facilities but will have an additional area to hang out and will compliment the residence.

John Michaels asked if they were eliminating the garage spot. Stephen Jung replied yes. Kam Hoopes asked if they will be building on the same slab. Stephen Jung replied yes. John Michaels stated that he is concerned with the increase in size to 2 stories. Jason Saris agreed that they are significantly increasing the size of an already non-compliant structure. Kam Hoopes replied that it is for more space and it gives it a more aesthetic appeal. John Michaels agreed but feels the same could be accomplished with a one story structure. He stated that he was surprised that they would not be affecting anyone's views. Stephen Jung provided photos of the view from the brook as well as other neighbors' property. Kelly Villeneuve stated that when they put this application in all of their neighbors were notified and had the opportunity to say something in writing or in person. She is confused why the Board is so concerned about the neighbors' views when no one has complained. Jason Saris agreed but explained that they also have to look at the zoning criteria that applicants have to meet to get a variance. He stated that it is good that the neighbors do not object but the decision is not up to the neighbors.

Jason Saris stated that Robert Todd, neighbor submitted a letter indicating that they have reviewed the plans and feel that it will be an improvement to the neighborhood.

Peter Rosenthal, 12 Parkside Drive, has spoken with most of the neighbors who are in full support of the house and garage project.

David Ray, stated that RPI likes the look of the house but indicated that they wanted to meet with the applicants. He asked if that has happened. Stephen Jung replied that they never met.

Redman Griffin, representing RPI, stated the whole problem is that they are being asked to have a variance for a pre-existing non-conforming structure. This structure is supposed to be 15' from the property and it is 6". He stated that they have offered to meet with the applicants regarding this matter and a planting plan. They feel that the job they did on the house is wonderful, but they do take issue with adding to the non-conformity of the structure.

Jason Saris stated that one of the criteria that they are supposed to examine is whether or not this is the minimum request necessary for the applicant to achieve its goal. Stephen Jung stated that a non-conforming structure already exists. He has spent a lot of time on the design to

make this building appealing and an improvement to the property. This is not going to block anyone's view significantly, it will be a nice addition to the community. Jason Saris stated that he understands that but he is not sure that they can answer that this is a minimum to achieve the benefit. Ray Villeneuve stated would it make a difference if they could take it down 2'. Jason Saris replied that if they could take it down 2' and still accomplish what you want then this is not the minimum.

Jeff Anthony feels that this should be reviewed as one project because the stormwater is for the entire project site. John Michaels agreed but they wanted to proceed because they wanted to get some feedback. He does not see how this would meet their criteria. He doesn't understand why they need a loft nor have they demonstrated why it is necessary. He is not sure that having a landscaping plan will change his mind about the garage being 2 stories. He would love to hear some architectural reasons for why it needs to be 2 stories. Kam Hoopes agreed with Jeff Anthony that these projects should be combined because the impact of the garage gets would be less than with it standing on its own. Jason Saris stated that he is troubled by an expansion of this extent to something that violates the setback by so much. He stated that the garage is not a valuable structure currently and it will be unrecognizable when it is done, he doesn't understand why they wouldn't just consider trying to move it off the setback even by a small amount. Ray Villeneuve stated that he is concerned that even if they moved it back that they still wouldn't get approval. Jason Saris stated that any decrease in the impact would be better than what is being presented.

Kam Hoopes stated that he appreciates the imagination and flair that has been added to the building. He stated that one of the biggest sticking points between the Board members, Waterkeeper and RPI is the garage. Ray Villeneuve stated that they are seeking to have the loft and to create office space down below. They also have 4 kids and they may need to expand into other rooms which would be the loft in this case. He stated that they are not increasing the width of the garage, but they are seeking to get the additional height for space. The applicants asked for suggestions to how to get their approval. Jason Saris stated that they cannot design their plan. All the Board is asking them to do is to consider other options and to provide reasons why or why not it would work.

Don King stated that they really only have one resistant party in the audience right now. He feels that if they sit down to talk with RPI they could really resolve some of these issues. He stated that there isn't anyone on this Board that doesn't want this project to go through, but there are some due considerations that have be dealt with by the Board.

Jeff Anthony stated that they really should start with looking at the very first criteria to strengthen their case. Discussing why the benefit cannot be achieved by any other means feasible. He stated that they should discuss what other alternatives were looked at and why this one is the best one.

Jason Saris asked if the applicants wish to table their application. They replied yes.

RESOLUTION

Motion by Kam Hoopes to table V10-57 pending further information. Seconded by Don King. All in Favor. Motion Carried.

- 3) **V11-24 DELARM, MICHAEL.** To alter non-conforming structure, specifically to add a 10'x 26.5' addition on the residential portion, seeks area variance for 1) a deficient side yard setback. 20' is required, 10' is proposed; and 2) To alter a non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.19 Block 1, Lot 83, Zone GB5000 and **RM1.3.** Property Location: 4935 Lake Shore Drive. Subject to WCPB review.

Mike DeLarm stated that they are proposing an addition to the rear of the residential portion of the main building. He provided photos of the area they intend to expand. They intend to use this area as a sitting/sun room/living area. Currently it only has one window and they would like to open it up for the extra space and more natural lighting.

John Michaels stated that they are not encroaching any further on the side yards. He asked if this expansion will be big enough to achieve their need. Mike DeLarm replied yes. They have a large back yard that they have spent a lot of time and effort fixing it up and they would like to keep it that way. This expansion will just allow them to better use the family room space and provide more natural light.

Kam Hoopes asked if they ever completed their other project to fill in the jog on the antique building. Mike DeLarm replied no, they ended up putting a storage shed on the property because the County wanted them bring the barn into compliance with insulation, bathrooms, sprinklers, etc.

Jason Saris asked if this will match the existing house. Mike DeLarm replied yes.

Pam Kenyon indicated that there was no correspondence or WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from Mike DeLarm (V11-24) 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 applicant meets all setbacks except the side but it will remain the same as it is now.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, the only place that will see this expansion is from the parking lot.
- 3) The request is not substantial; it is a 10' addition to a large 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,

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

- 4) **V11-25 HAYES, ROBERT.** To allow a portion of a non-conforming patio to remain, seeks area variance for a deficient shoreline setback. 75' is required, 71' is proposed. Section 200.10, Block 1, Lot 9, Zone RM1.3. Property Location: 21 Cotton Point Road. Subject to WCPB and APA review.

Robert Hayes stated that he and his wife purchased this lot about a year ago. They hired an engineering firm to do the site plan, stormwater management and septic and hired another engineering firm to do the house design. In all of their meetings with these firms they emphasized that they wanted to comply with all of the ordinances and laws and created a design that did so. They submitted these plans to the Town and with some minor modifications the site plan was approved and the same was true with the County. The site was developed and house was built but when it came time to get the certificate of occupancy the Zoning Officer came out and discovered 2 things; 1) the patio was closer than 75' from the lake by approximately 4' and 2) that the patio was built exactly as it was shown on the approved plans.

Robert Hayes stated that he met with the Town to try and figure out what they should do and the suggestion was made to apply for a variance. He stated that they are seeking to have approval to allow the patio to remain where it was built in accordance with the original plans and approvals.

Pam Kenyon stated that she was partially at fault, as the patio an oversight on her part.

Kam Hoopes stated that the patio is flush to the ground. Given the lay of the land, he would not have had any issue with the patio even if they reviewed this before. Robert Hayes stated that he has spoken with both neighbors on each side and neither of them have any issues with it.

Jason Saris stated this will be subject to the APA so they will discuss the hardship or practical difficulty criteria. Counsel Muller stated that at one time the APA was not interested in patios at ground level. However he suggested that the Board handle the criteria as usual. John Michaels stated that one hardship would be that this is not easily removed; it is steel reinforced stamped concrete.

Kam Hoopes stated that even though this is after the fact it really gives them an idea of what this looks like and how well the stormwater plan is working. He stated that the measures they have taken have really helped with control. Robert Hayes stated that the patio was taken into consideration when developing the stormwater management plan.

RESOLUTION

The Zoning Board of Appeals received an application from Robert Hayes (V11-25) 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; this is a shoreline setback.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is flush to the ground, this new house is a great enhancement to the neighborhood. There is no visual impact from the lake and neighbors.
- 3) The request is not substantial; it is a semi-circle patio that sweeps through the shoreline setback slightly, but 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;
- 5) The alleged difficulty is somewhat self-created, but the Town of Bolton also takes some responsibility in this aspect.

The practical difficulty is that this was built exactly from the approved plans. The approved patio which is stamped concrete in rebar does not allow itself for any changes. This was overlooked on the previous plans and to remove it now would create more disturbance within

75' of the shoreline.

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

- 5) **V11-26 LEVY, HOWARD.** For the construction of a proposed garage, seeks area variance for 1) a deficient shoreline setback. 75' is required, 43' is proposed; and 2) garage bays, 3 bays allowed, a total of 7 proposed. Section 171.07, Block 1, Lot 54, Zone RL3. Property Location: 5191 Lake Shore Drive. Subject to WCPB and APA review.

Howard Levy stated that since they have moved up here and enjoyed the winters they have realized the desire to keep their cars in the garage in the winter. They currently have 2 garages on the property which are used to store their antique cars. One is a one car garage which existed before they bought the property is located 140' to the north and the other is a 4 car garage on the south end of the property which is about 160' from the house which makes the use of that somewhat impractical in the winter. This proposal is for a 2 car garage closer to the house.

Counsel Muller read the letter from the Lake George Waterkeeper offering the following suggestions: 1) require alternative location for the garage to allow for better separation from Braley tributary, 2) require site plan review from the PB and 3) require stormwater management.

Howard Levy responded to the Waterkeeper's comments. With regard to putting the garage on the west side of the driveway, he stated that if you have seen the property they know that area is raised up about 3' and further up there is an ancient ice house. The location that they are requesting currently is gravel and they use it for storing their car and tractor with a canvas type covering over it. With regard to stormwater run-off, he stated that there is a 2' diameter culvert fed upstream from their house and over their driveway. He does not see how that a small garage will really affect that much.

John Michaels asked if the garage will cover what currently sits outside on the property. Howard Levy replied yes. John Michaels agreed that the current garage is not user friendly in the winter due to its distance from the house. He also agrees that the water seems to come onto his property and not from his property. Jeff Anthony suggested that they require minor stormwater for the project.

RESOLUTION

The Zoning Board of Appeals received an application from Howard Levy (V11-26) 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; the location selected is rational, it is approximate to the house and is on an existing disturbed area.

2) There will be no undesirable change in the neighborhood character or to nearby properties, it is set back far enough from the road.

3) The request is not substantial;

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; if minor storm water measures are in place for the garage there should be minimal or no environmental effects. Visually it will fit in with the character of the property.

5) The alleged difficulty is self-created, but not in anyway that concerns this Board.

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

Now, upon motion duly made by Jeff Anthony and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition(s): 1) that minor stormwater is required. **All in Favor. Motion Carried.**

- 6) **V11-27 BREALT, LORI.** Represented by Joel Mosher. To alter non-conforming structure, specifically to enclose and enlarge footprint of back porch by 2' to create additional living space, seeks area variance for 1) Deficient setbacks. Front: 75' is required, 48' is proposed. Side: 20' is required, 14' is proposed; and 2) To alter a non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.07, Block 1, Lot 25, Zone RM1.3. Property Location: 9 Federal Hill Road. Subject to WCPB review.

Joel Mosher stated that they are seeking to extend the back part of the existing porch. It is currently poured slab with no foundation under it. They would like to put in construction tubes and piers and change the pitch of the roof to allow the interior of the house to be all at the same

level. The materials used will match the rest of the house.

Jason Saris asked if this is enough space. Joel Mosher replied yes it will now make it a 12' standard room and they feel that it will make a difference in their use of the room. Jeff Anthony stated that they are definitely asking for the minimum relief. John Michaels stated that no one will even be able to see this. Joel Mosher agreed that it is hidden between the trees and houses.

Pam Kenyon indicated that there was no correspondence or WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from Lori Brealt (V11-27) 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; this is a minor variance.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it will not be visible to any neighbors.
- 3) The request is not substantial; it is the minimum relief necessary.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created,

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

- 7) **V11-28 GRAMEGNA, JOHN.** 1) For the construction of a swimming pool to be

attached to existing storage building/deck, seeks area variance for a deficient front setback. 50' is required, 27' is proposed. 2) For the construction of a proposed deck to be attached to existing cabin and single family dwelling, seeks area variance to alter a non-conforming single family dwelling in accordance with Section 200-57B(1)(b). Section 213.17, Block 1, Lot 9, Zone RCM1.3. Property Location: 3841 Lake Shore Drive. Subject to WCPB review.

John Gramegna stated that he would like to put a pool on his property that will not impede upon the business that he intends to have. He does not feel that he could put this in any other location other than what is proposed. This is a 3.5 acre lot and the layout of the land including the wetlands, the 100' buffer to the wetlands, 50' setback from the road and the road that goes directly through their property he is down to about 1.5 acres to utilize. On that 1.5 acres he already has 2 septic systems, an amphitheater, a coy pond, formal gardens, two garages, a shed, a playscape and a half acre of driveway and an underground propane tank. He also has to take into consideration that in the future he would like to have a 2 story pavilion to use as a banquet type facility for weddings.

John Gramegna provided pictures of the property. He stated that there are only 1-2 spots that he could put the pool but he feels that it would take away from where the weddings would be taking place which would be at the amphitheater or in the formal gardens.

John Gramegna stated that he purchased this property to be his retirement home. Since he has owned the property he has made some amazing upgrades to the property. He has put on a new roof, painted the house, put up a new carriage house, paved the driveway and a tremendous amount of landscaping.

With regard to the neighborhood, John Gramegna feels that this will not be an eyesore because they are in an area which has several hotels and motels. He provided pictures of what the pool will look like. Additionally he could provide landscaping around it. John Michaels stated that he is concerned that this is an above ground pool and he was hoping that it would not look like this. He agrees that the applicant has done a wonderful job with the property but he feels that this does not fit in with the quality of work that has been done on the rest of the property. John Gramegna stated that the pool would not be part of the wedding venue business, it is more for his personal use. However when he rents the property for the wedding venue the pool will be available for their use.

John Michaels stated that with all of the current uses on this land it does not seem that the applicant is not getting the full benefit of this land. The applicant has listed several different things that are already used on this property and this pool has nothing to do with his business.

Jason Saris asked if the pool will look just like what is being shown in the pictures. John Gramegna replied yes but it does not have to be an eyesore. Jason Saris asked if there will be any landscaping. John Gramegna replied that he will do whatever is necessary. He stated that he has put a lot of money into this property and helped the local economy by using local contractors. He feels that he has done an amazing job with the property and would not blow it now by putting an eyesore up. He plans to do some amazing landscaping with shrubs and trees

and flowers. He stated that when someone is driving south they will not see this without having to turn around but it will be visible going north and from the Juliana Motel.

John Michaels stated that when he was up there for site visit the applicant had indicated another area next to the carriage house which would block the pool. The only thing impact there was 2 trees and he wouldn't need a variance. John Gramegna feels that it would be more of an environmental impact to remove the trees. John Michaels stated that he will spend more in landscaping to cover the pool than he would to replace a couple of trees. John Gramegna stated that he does not see this as an alternative. He has light post that lights the whole yard and a couple of nice trees. The proposed location is directly in the sun, it is not even half of what the variance calls for and by rights it should be a side yard, not a front yard. Kam Hoopes stated that he has 2 front yards due to the driveway. John Gramegna stated that the road goes through his property. John Michaels stated that when he bought the property that road already existed and he knew that he would have to deal with the additional setback. John Gramegna stated that he has already spent \$250,000 on the property and he doesn't plan on stopping with just that. He wants to continue to make improvements and to expand his business.

There was no correspondence or WC impact.

Pam Kenyon stated that she will provide the regulations on proper drainage of the pool. John Gramegna stated that he doesn't have to drain this pool over the winter but he would take the regulations.

With regard to the deck to connect the 2 buildings, John Gramegna stated that the carriage house is 9.5' away from an addition that is on columns on the mansion. He wants to build a deck between the 2 to match the deck in the front of the carriage house. He cannot put anything on the west side of the house because of the buried propane tank. Kam Hoopes stated that the only reason this portion of the application is before the Board is because it is attached to a pre-existing non-conforming structure.

RESOLUTION

The Zoning Board of Appeals received an application from John Gramegna (V11-28) 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; given the various considerations of use and layout of this property.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this was a previous bed and breakfast surrounded by motels and other similar businesses so it will fit in with character of the neighborhood.
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is somewhat self-created, but not in any way that affects this board.

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 Don King, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition(s): 1) that landscaping is installed around the pool as presented by the applicant. John Michaels opposed. **All others in Favor. Motion Carried.**

- 8) **V11-29 McALEER, ANNETTE.** To discuss condition of approval set forth by the ZBA on April 13, 1998 when approving V98-11 to construct a residence and garage with a deficient front yard setback. Specifically the condition reads as follows: "Outside of what is needed for the construction of residence, garage and septic system, no additional trees are to be removed". Additional trees have been removed. Section 171.18, Block 1, lot 11, Zone RL3.

Art McAleer stated that they received notification regarding removal of trees. He stated that they are seeking an amendment to the original variance which will allow them to maintain the septic system. The house was built on a rocky ledge and the issue is that they only could put the septic down the hill off the rock face that they are sitting on. In order to construct the septic the prior owner had to put in a road. The road goes from the south side of the property down along and parallel to an access road for some neighboring houses down below. They are not fans of removing more trees but they need to have access to the septic.

Kam Hoopes stated that he was there today and found that they have more growth occurring on the septic system which they will have to deal with as well. Art McAleer agreed. The prior owner was his father-in-law who went through some tough times after he built the house and he did not maintain the septic.

John Michaels asked why they have not tried to access through Mohican Heights. Art McAleer stated that the Mohican Heights people put up resistance to allow them to access to their septic system. His father-in-law let this access road grow back in and there is no other way to get into the septic unless the Mohican Heights Association grants them access. Kam

Hoopes stated that he can understand their concern and it is not unusual to have this type of resistance since it will not benefit them in any way.

Don King stated that he walked the property today and he observed that there were both new and old stumps that went all the way across the front of the house. He was not able to find the road but it appears that he did not walk far enough to see the road. He stated that from the porch they have steep exposed rock face with trees around it that have been cut down which is no where near the septic system. Art McAleer stated that he thinks he is looking at the trees that were taken down when the house was first constructed. He stated that there was one tree that they took down right in front of the house but he had some concerns about safety with that one. Don King stated that to him it looks like the property was clear cut.

Kam Hoopes asked if they planned to remove the fallen trees. Art McAleer replied yes it will benefit the property and neighborhood.

Pam Kenyon asked when the septic system was put in 1998 if the prior owner needed to put the road in. Art McAleer replied yes. Pam Kenyon asked if you can see where the road was. Art McAleer replied yes. Pam Kenyon stated that removal of the shrubs and trees on the septic would not be a condition of approval, but rather a right. Jason Saris agreed. As far as the road goes the applicant should be allowed to keep the road maintained to access the septic system. However he does feel that they should delineate where this road is and their Zoning Office should be made aware of it.

Kam Hoopes stated that he is assuming that the 1998 ZBA would try to keep from a clear cutting situation. The rock outcropping does not allow much support for tree life and the hardwood pines remaining were trimmed at the lower limbs and the view would be fine with those in place. Jason Saris stated that he is not so concerned about what has been cut and what should not have been cut because there is new growth and there will be new growth. The biggest concern is delineating the areas to maintain the infrastructure of their property. Kam Hoopes agreed that they should have a cutting zone. Art McAleer stated that he would be happy to supply the Town with a plan.

Don King stated that there have been more trees removed than what is being claimed. Jeff Anthony agreed. He stated that when he looked at the canopy at the front of the house it is consistent from the northeast and southeast so you can only venture to think that it would have been closed in front of the house. He feels that they created a panoramic view instead of a filtered view. Don King stated that no trees exist in front of the house and the canopy exists on both sides. Art McAleer stated that there is a rock face on the front of the house. Don King stated that here are a lot of stumps in the rock face. Jeff Anthony agreed and stated that trees grow in rock. Art McAleer stated that he has the invoice from Richard Sears which indicates that they only removed 5 trees. Don King stated that there are a lot more than 5 trees taken down. John Michaels stated that at some point someone clear cut the property. Art McAleer asked the Board what they would like him to do.

Jeff Anthony suggested a remediation which require the applicant to have the access driveway and septic system surveyed onto a map so that it is clearly defined. The applicants will have

the right to clear and maintain that but are restricted from further cutting unless it is for filtered views in the future. Kam Hoopes stated that they should also be allowed removal for safety. Don King stated that if that were the case, then the applicant should have removed a lot more on either side of the house. Pam Kenyon stated that the regulation allows for any homeowner to take down within 20' of the foundation and 10' around the well or septic.

Jason Saris stated that he likes Jeff Anthony's suggestion. He stated that the applicant is not seeking to remove other trees on the property other than to maintain the driveway. He stated that if the applicant wants to remove other trees in the future he would have to take that up with the Zoning Administrator or even the ZBA if necessary. Pam Kenyon stated that she would prefer that if the applicant wants to cut outside of the delineated areas that they have to come back to this Board for approval.

There was no correspondence or WC impact.

RESOLUTION

Motion by Jeff Anthony to amend the previous variance to allow the applicant to cut trees in a specific area for maintaining the septic access road and septic system with the following conditions: 1) the applicant provides a survey map plotting the septic and septic access road, and defines the limit of maintenance and clearing for that area. 2) 20 ft. can be cleared around the perimeter of the foundation of the single family dwelling and garage, and 3) any future cutting outside of this area will require variance approval. **Seconded by** David Ray. **All in Favor. Motion Carried.**

The meeting was adjourned at 9:06pm.

Minutes respectfully submitted by Kristen MacEwan.