

**Town of Bolton  
ZONING BOARD OF APPEALS  
MINUTES  
May 17, 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, Tony DePace, John Michaels, Jeff Anthony, Counsel Michael Muller and Zoning Administrator Pamela Kenyon

**Absent-** David Ray

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

Jason Saris asked if there were any corrections or changes to the April 26, 2011 minutes.

Kam Hoopes stated that he had one clarification, under the Sarah Defty application, page 8, 2<sup>nd</sup> paragraph with regard to the following: “Kam Hoopes stated that this house is not part of the subdivision owned by Home Place Corporation.” Kam Hoopes stated that he wanted to be clear that there is no subdivision and that all of the houses and property are owned by Home Place Corporation.

**RESOLUTION**

**Motion by** John Michaels to accept the April 26, 2011 minutes as corrected. **Seconded by** Tony DePace. Jeff Anthony abstained. **All Others in Favor. Motion Carried.**

Jason Saris indicated that the Board is short a few members due to Bill Pfuia’s retirement from the Board and the absence of David Ray. Applicants will need to have 4 out of the 5 remaining members votes in order to receive approval. He stated that applicants could choose at any time to table their application.

**1. THE FUND FOR LAKE GEORGE & LAKE GEORGE WATERKEEPER.** In accordance with Section 200-72 of the zoning ordinance, seek to appeal the Zoning Administrator’s interpretation of Section 125-10B(2)(d). Based upon the Town Engineer’s recommendation, the Zoning Administrator has determined that a 100’ separation between the bio-retention system and shoreline is not required on the Gordon parcel designated as Section 213.09, Block 1, Lot 11. Property Location: 4044 Lake Shore Drive.

*Note: Jeff Anthony recused himself for this application.*

Chris Navitsky, Lake George Waterkeeper, thanked the Board for hearing his appeal for the Gordon variance application. He also thanked the Board in advance for a fair and impartial hearing.

Chris Navitsky stated that his goal is to prove that the approval of SPR10-21 by the PB in December 16, 2010 for the Gordon stormwater management plan was based on an improper determination and application of the stormwater management code and devices that do not conform to the Town's stormwater management ordinance and therefore should not have been approved.

Chris Navitsky stated that he presented the Board with a petition of appeal which details the description of their objections. The determination was for the stormwater management devices located near the lake and were claimed that they were not infiltrative devices and therefore the 100' setback from the shore was not a requirement. Chris Navitsky stated that the plan contained 2 stormwater devices that were approximately 10-15' from the shoreline.

Chris Navitsky outlined their objections:

1. The stormwater management plan submission reviewed by the PB on December 16, 2010 did apply infiltration as detailed in the engineering report for stormwater management. The ZBA may not be aware of the requirements of the Town's stormwater management ordinance, but it does require that there be no increase in the post development run-off from a 10 year storm event than what existed prior to development. Therefore any increase in stormwater must be infiltrated. The plan presented and approved clearly applied infiltration in the stormwater devices labeled pond 7p and 12p in the engineering report.
2. As previously mentioned the stormwater devices that were reviewed and approved on December 16<sup>th</sup>, provided infiltration to reduce the increased stormwater run-off and must be considered infiltration devices. He does not dispute the Town Engineer's reference to the DEC stormwater design manual regarding bio-retention devices as being filtering devices. But since they are infiltration devices, the DEC designation was not appropriate.
3. It should be noted in the approved minutes that the applicant states that the stormwater devices provided infiltration. On page 6, "He stated that the stormwater management system will be an infiltration system into the soil so there will be no discharge." Therefore it is admitted that the stormwater controls were infiltration devices.
4. It should be noted that the LGPC has jurisdiction for the stormwater management within the Lake George Watershed and not the DEC. Stormwater management plans must meet the requirements of the LGPC regulations and only if the development site exceeds 1 acre in disturbance, must the DEC regulations also be applied. The Town Engineer states that a 100' separation is not a required element of a bio-retention system per the DEC design manual. However, they argue that this is irrelevant since the LGPC and the Town's apply to this application as well. Chris Navitsky stated that they have provided a opinion from the LGPC's Executive Director with regard to the classification of a rain garden as an infiltration since it "transfers water to the ground" this is similar to the definition found in Bolton's stormwater management ordinance Section 125.

Chris Navitsky stated that many times the opinion of the Lake George Waterkeeper is regarded as a difference in engineering opinions. However, in this case it is not only their opinion but also the determination of the LGPC that designs such as these require a variance. It is difficult to conceive a site plan for increased impervious cover within 100' of the lake, not requiring a variance to reduce the stormwater management if the Town requirements are to be met.

Chris Navitsky requested the ZBA support their appeal of the Zoning determination regarding the stormwater management devices for SPR10-21 and overturn the determination. This site plan was approved with the installation of infiltration devices within 100' of Lake George as shown on the plan and admitted to the PB. The Site Plan approval by the PB is an error of law and should be void.

Kam Hoopes asked how the Waterkeeper has determined that there will be an increase in stormwater run-off. Chris Navitsky replied that there is an increase in impervious cover as well as substantial disturbance and removal of trees and vegetation. Kam Hoopes stated that he visited the site today and there has been a ton of blasting and ledge removal. He has not been there until this point, but he cannot imagine what the ground cover was over the ledge which is impervious itself. Chris Navitsky stated that in the stormwater management plan they called that grass and woods cover, so the information came from the applicant.

Jon Lapper representing the Gordon family provided a little background. He stated that the applicants had been looking for a property for some time before this site came on the market. This site had the pre-existing house approximately 40' from the shoreline. However, instead of taking advantage of the grandfathered location, like so many others do, their goal was to comply with the zoning and avoid any variances and make this a compliant site. They have demolished the existing house and would like to move the house back 75' and implement a stormwater system that does not require a variance. They brought in the LA Group to design a system to comply with this. They would have asked for a variance if they were required to.

Jon Lapper stated that this comes down to whether or not this system is an infiltration device. The definition of an infiltration device is a stormwater recharge area, dry well recharge basin, retention basin or any other engineered structure designed to infiltrate stormwater. The definition of infiltration is the downward movement of water from the surface to the subsoil. He stated that he will have Mark Tabor explain how this bio-retention device was designed. He stated that they have documentation from the EPA and DEC that these are systems that are designed for situations like this where they are dealing with a setback from a body of water.

Mark Tabor, of the LA Group stated that the difference between a rain garden and bio-filtrations is that a rain garden transports surface run-off to the existing subsoil. Bio-filtration on the other hand is a filtering practice. It filters stormwater run-off through an

engineered soil and planting media and brings it to a stone reservoir in the bottom where it is collected in a perforated pipe and discharged out; it is not transported to the soil. Typically it is discharged as a surface discharge on the ground at a slightly lower elevation.

Mark Tabor stated that throughout the process they worked diligently with the Town Engineer to be sure that they were in compliance with everything. Their original submission was very clear in detail, specifically showing the pipe at the bottom of the bio-filtration system and the model is specifically shown to discharge from the basin to a surface discharge. Additionally they have the stormwater management report itself that states that it is functioning as filtering device as a closed system. The reason it is functioning as a closed system is 1) clearly they cannot infiltrate within 100' of the lake and 2) at the bottom of this there really is no real opportunity for infiltration due to the significant bedrock that exists on the site. In order to eliminate any potential doubt they have since included a liner at the bottom on the system to remove any fraction of a doubt that nothing is transmitted to the ground. He stated that this liner is what is specifically recommended by the NYS DEC and other regulatory agencies.

Jon Lapper read a portion of the December 2010 minutes and asked Mark Tabor to clarify his statement. Mark Tabor stated that he does not recall saying that, but it is possible in the transfer of or natural progression of discussion those words can get throw around interchangeably because it is a similar system and they have similar properties in that they filter through the top. The top strata is similar, but the difference is how the water is transmitted from that point. Mark Tabor explained that the minutes should have read that the soil he was talking about was that it was the soil within the device. As for the mention regarding that there would be no discharge, he feels that it may have been misconstrued especially given the fact that all of their submitted documentation supports that this would be discharged. Jason Saris stated that it seems that it means that it does infiltrate into the device medium or soil and that it would not discharge into the surrounding soil. Mark Tabor agreed.

Kam Hoopes stated he questioned what the infiltration possibilities were before any disturbance took place. He feels that the Gordon's have done a tremendous job in moving the house back and addressing the stormwater.

John Michaels stated that the only other option would be to pump the stormwater up. Jon Lapper stated that it would be hard to do that in a major storm. Pam Kenyon replied that pumping stormwater is illegal.

Mark Tabor stated that there was a lot of back and forth and good faith effort to work with the Waterkeeper to address comments. Ultimately what they have on site as it exists is a small infiltration basin beyond the 100' from the lake that takes some of the run-off from some of the impervious surfaces and infiltrates it into the soil. This is from part of the driveway and roof. This further allows them to meet their attenuation goals and their volume requirements as well. This process was also coordinated very closely with the

Town Engineer to make sure they were doing the right things.

Jon Lapper asked for some clarification regarding the computer model for the amount of storage that they need. Mark Tabor stated that they went back after the Waterkeeper's comments were made and addressed this issue. Essentially they had not run the time frame out far enough and it showed a reading at the end that some of the volume of run-off was lost and therefore there must be some sort of infiltration. Mark Tabor stated that they went back and ran that out further. They also found that in order to meet the regulations they would need to put some sort of infiltration further than 100' from the lake. With those changes they were able to meet the 10 and 25 year requirements.

Tony DePace asked if a pipe will come directly out of the stormwater system and into the lake. Mark Tabor replied yes the pipe that comes out of the bio-retention area will discharge, depending on the final elevations on site, it will discharge very close to the top of the existing seawall or a just below.

Tony DePace asked what was going on with the septic system since there seems to be a large amount of water by the mound. He is concerned that this will come right off the septic system and flow downhill towards the lake. Jon Lapper replied it is due to a swale on the road that has to be redirected. He stated that it has nothing to do with the bio-retention system. Tony DePace stated that he understands but it is still concerning that it is running downhill. Pam Kenyon assured the ZBA that it is definitely being worked on.

Chris Navitsky stated that they would never advocate pumping stormwater, he was simply suggesting that there are other systems that could be worked. He stated that it appears that the applicant has changed a couple of things. These changes occurred after his office discovered some concerning numbers in the stormwater management report. They had meetings with the applicant and they were addressed. However all of these changes occurred after they filed their appeal and after the approval of the PB. They feel that these are substantial changes to the plans. The applicants have started excavation and now they are looking for areas to infiltrate. Therefore they feel that this is after the fact application.

Chris Navitsky asked if they can amend approved minutes. He argued that the minutes were approved and they mentioned infiltration 2 times in a row. He does not feel that an applicant or another Board can change another bodies approved minutes. Jason Saris stated that they have not attempted to change them, they are just trying to understand them.

John Michaels asked Chris Navitsky what he feels would be a practical solution. He stated that he has not heard him offer any suggestions. Chris Navitsky replied that there are plenty of opportunities to change their plan. He stated that one option would have been to leave the house where it was. He stated that they suggested this same thing for another project in this same area. He doesn't understand the need for blasting and excavating to move the house back just to make it bigger. John Michaels stated that he

feels that the applicants have moved back 75' from the lake which deserves merit. Chris Navitsky agreed but they have to balance it all. This project is changing the existing soil structure, removing trees and replacing it with lawn, they will increase the run-off and nutrient run-off, run it through a bio-retention, which at best removes 40% of their phosphorus, and then run pipes into the lake. He feels that they are resulting in more nutrients after development. He does not feel that homes with pipes discharging into the lake is a good practice that they should be getting into. Chris Navitsky stated that if they moved the stormwater closer to the source and around the house and not at the bottom of the near the lakeshore, would have been better. Essentially they are taking all of the things off that made the site stable. He stated that yes it could eventually become stable in 5-10 years, but it was stable. John Michaels disagreed and stated that he feels that by removing the rock and placing soil they have improved the run-off for the site. Kam Hoopes agreed and added that they do not have any numbers on how stable the soils were to begin with.

Tony DePace asked Chris Navitsky what his opinion is regarding the quality of water that will be put back into the lake through this system. Chris Navitsky stated that he feels that it will be rather concentrated. They promote stormwater management closer to the building site around the buildings because he feels that they would get a lot more water. He feels that it will not be as clean as it could be.

With regard to the septic system area, Chris Navitsky stated that it was a wet area, but it was in balance. Now that they have taken out all the soil and trees they are having a ponding problem.

Jason Saris stated that they make an interesting point with regard to the setback. The setback was mostly for assessed values and not for stormwater. He stated that when the new ordinance is considered maybe more weight should be given to looking at the lay of the property rather than try to address everything with a specific number. It tends to put applicants in a bind to address stormwater as well as come into compliance with the ordinance. John Michaels stated that if they infiltrated closer to the source it would make sense to say that their infiltration setback should be the same as the building setback to get these closer to the source. Chris Navitsky stated that it does make sense, and Jeff Anthony can attest that the APA has found issues like this and are considering making some changes.

Jason Saris asked Pam Kenyon if she had anything that she wanted to add to the discussion. Pam Kenyon indicated that she relies heavily on Tom Nace's opinion and review. She read the following from her 12/16/10 email to Chris Navitsky: "I am in receipt of Tom Center's letter dated 12/15/10 wherein it states that NYS DEC Stormwater Management manual defines a bio retention system as a filtering device and not an infiltration device. Furthermore 100 ft. separation from a shoreline is not a required element of bio retention systems per the NYS DEC Stormwater designs manual. Based on our Engineer's recommendation, I have determined that a variance is not required".

**Motion by Kam Hoopes** to uphold the Zoning Administrator's determination for the Gordon application. **Seconded by Tony DePace.** Jeff Anthony abstained. **All Others in Favor. Motion Carried.**

2. **V11-09 LYNCH, STEVEN.** Represented by the Michaels Group. To demolish and rebuild guest cottage, seeks area variance for a deficient side yard setback. 20' is required, 7.4' is proposed. Section 186.15, Block 1, Lot 30, Zone RM1.3. Property Location: 177 Homer Point Road. Subject to WCPB review. See V10-10 for prior approvals.

*Note: This item was heard first on the agenda. John Michaels recused himself from this application.*

Jonathon Bunker, of the Michaels Group, stated that in the Spring of last year the applicant obtained an area variance to demolish and rebuild a guest cottage with a deficient side yard setback. The location of the house was to be 12' to the north of the pre-existing guest house, maintaining the same side yard setback. The 12' relocation would have allowed room to replace and enlarge an existing shed to the south for which the applicant had hoped to obtain a separate variance. The applicant has since decided to abandon the shed variance and seeks to relocate the new guest house back to the pre-existing one. All building plans are identical to those previously approved and no other changes are proposed beyond the building location.

Jason Saris stated that they will be building where the existing building was. Jonathon Bunker replied yes, they wish to maintain the 7.4' setback with the overhang. Jason Saris asked if there were any other changes. Jonathon Bunker replied no, they already have a building permit and this is an 11<sup>th</sup> hour change.

Jason Saris asked if there was any correspondence.

Counsel Muller read the following:

1. Letter from Charlotte Bloomenthal, in opposition.
2. Letter from Lake George Waterkeeper, not in opposition to the variance, but did suggest that the ZBA require that the on-site waste water treatment system is adequately sized, installation of a shoreline buffer and the restriction of pesticide and fertilizer use.

Pam Kenyon stated that there was no WC Impact.

With regard to the status of the existing building, Jason Saris asked if it was a pre-existing non-conforming structure. Pam Kenyon replied yes. Jason Saris stated that although they do not deal with septic variances, he asked Pam Kenyon is she was satisfied that the proposed system is compliant. Kam Hoopes stated that he recalls this being brought up in the previous application and that it was being checked. Jonathon

Bunker stated that it was a stipulation of the previous variances.

Jason Saris asked if storm water measures will be taken on this project. Jonathon Bunker replied yes that design has already been conducted.

Jeff Anthony asked if the office will have a closet. Jonathon Bunker replied no.

There were no comments from the public in attendance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Steven Lynch (V11-09) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;

2) There will be no undesirable change in the neighborhood character or to nearby properties, this building is relatively shielded by cover behind and the small setback in a rise in terrain which puts the property next to it, above it.

3) The request is not substantial; the setback invasion is substantial but the request to maintain that setback is not substantial.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it has been noted that stormwater measures have been taken into consideration and are planned in the future.

5) The alleged difficulty is not self-created, the present owner did not put the building in its current location.

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.**

3. **V11-10 MEFFORD, LISA.** To replace and enlarge existing deck, seeks area variance for 1) Deficient setbacks. Front: 50' is required, 14.3' is proposed. Sides: 30' is required, 8' is proposed on the west side and 18' is proposed on the east side; 2) Lot coverage: 15% allowed, 21% proposed; and 3) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 185.20, Block 1, Lot 20, Zone RCL3. Property Location: 73 Millstone Drive. Subject to WCPB review.

Roger Mefford stated that the cottage has an existing 14' x 14.7' deck is 28 years old and needs to be replaced. They would like to replace the deck and expand 6' off the front for additional seating area. It will maintain the existing side setbacks. The area that they will be expanding is in the front which faces the HOA common parking area. The expansion will not affect anyone's view to the lake.

Kam Hoopes stated that the 50' setback on the front is due to the right-of-way and not an invasion of the lake setback. He asked when these cottages became privatized. Lisa Mefford replied that they were privatized in the 1980's. Kam Hoopes stated that the lots are small because of the natural position of the cabins. The side setback issues are shared by all of the neighbors because they all have the same constraints.

Kam Hoopes noted on the plans that the applicants will be adding a hedge that will block the deck from the uphill neighbors and the downhill neighbors will more than likely not view this deck because they will be only looking at the lake.

Kam Hoopes stated that the only thing that would normally be alarming is the increase in density. However, given the nature of the size of the lots and the modest scale of the cabins, this is minor increase to a deck to make it more user friendly. He stated that density is considered for aesthetic reasons, but in this case it does fit the character of the neighborhood and surrounding properties.

Jason Saris asked if this will remain as an open deck. Roger Mefford replied yes.

Pam Kenyon indicated that there was not WC impact. There was no correspondence or comments from the public in attendance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Lisa Mefford (V11-10) for an area variance as described above.

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

County Planning Board;

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is in character with the neighborhood and surrounding properties.
- 3) The request is not substantial; the request is minor and will be adding an additional 6' to the front yard setback.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; there are no critical environmental resources that will be affected. Nor does it have any negative affect on neighbor's view of the lake.
- 5) The alleged difficulty is not self-created, but it is a request to have additional deck space.

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

4. **V11-11 THURNAU, HENRY.** For the construction of a proposed 26'x 38' pole barn, seeks area variance for a deficient front yard setback. 75' is required, 20' is proposed. Section 140.00, Block 1, Lot 29, Zone RL3. Property Location 893 New Vermont Road.

Henry Thurnau stated that he is seeking to build a barn on the property and this location is best due to the steep topography of the land. Kam Hoopes agreed. John Michaels stated that one could just look at this plan and question why he chose to place the barn in this location especially given the amount of acreage available but the topography does not lend itself to any other location.

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

## RESOLUTION

The Zoning Board of Appeals received an application from Henry Thurnau (V11-11) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; due to the terrain and topography of the land.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is a house and pole barn on 7 acres of land.
- 3) The request is not substantial; it is on almost 7 acres of land.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; due to the size of the lot.
- 5) The alleged difficulty is not self-created, the difficulty with the property is not something that the applicant had anything to do with.

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

Now, upon motion duly made by John Michaels 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. V11-12 SALVAGNI, CATHY.** Represented by Atty. Michael O'Connor. To allow an expanded utility cabinet and enlarged patio to remain and to construct a proposed dormer, seeks area variance for 1) Deficient setbacks. Shoreline: 75' is required, 4' is proposed. Side: 20' is required. 3' is proposed; and 2) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.15, Block 1, Lot 42, Zone RM1.3. Property Location: 166 Homer Point Road. Subject to WCPB and APA review.

*Note: Item VII-12 was tabled at the applicant's request.*

The meeting was adjourned at 7:45pm.