

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
March 15, 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, William Pfau, Kam Hoopes, Tony DePace, David Ray, John Michaels, Jeff Anthony, Counsel Michael Muller and Zoning Administrator Pamela Kenyon

Absent- None

The meeting was called to order at 6:00 pm.

Jason Saris asked if there were any corrections or changes to the February 15, 2011 minutes.

RESOLUTION

Motion by Kam Hoopes to accept the February 15, 2011 minutes as presented.

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

1) **V10-51 POWIS, RODNEY.** Represented by Paul Jankovitz. To alter pre-existing non-conforming single family dwelling, specifically to allow a patio and retaining walls to remain and to construct a new patio, seeks area variance for 1) deficient side yard setbacks. 20' is required, 0.4' is proposed on the north side, 6.1' is proposed on the south side, and 2' is proposed on the west side, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 1, Lot 47, Zone RM1.3. Property Location: 11 Brook Street. No action taken by the WCPB – default approval. See V09-30 & V09-31 for previous approvals. *This item was tabled at the February meeting as no one was present to present the application.*

This item was heard last on the agenda since the applicants were not present at the beginning of the meeting.

Charles Gianfagna stated that they bought this property for the very reasons being discussed in the Lavender item. His primary residence is in Albany and he and his family enjoy the small town community feel of Bolton. He appreciates that the Board is so willing to listen to the community's concerns when there are violations to the Code.

Charles Gianfagna stated that they bought the property a year ago and added a small addition and large porch off the back of the house to increase the living area. He stated that they ran into one functional problem when they tried to run the steps down from the porch. The land drops severely in two directions that they realized that they needed a landing. They hired a landscaper, who claimed to have done work up here before. However, he got a little carried away with how he executed the work and they ended up with some retaining walls which they did not realize would be an issue. He stated that the former owners now live next door and gave some advice to the landscaper as well. They had indicated that in the winter their cars used to slip down to the lower driveway so the landscaper put in a retaining wall to prevent that and raised up that part of the driveway which created the issue with the side yard setback. Charles Gianfagna stated that the landscaper will not be finishing this project for them because he does not have the confidence in him anymore.

Charles Gianfagna stated that the lower part of their property is a catchment area for the surrounding homes and it is very wet. The reason for the patio is to allow for the grandkids to play and them to sit and enjoy the outdoors. In the future, they would like to put some pervious paving down there to create a bocce court and to have further enjoyment of the back yard.

John Michaels asked if there were any comments or concerns from the neighbors. Pam Kenyon replied no. She stated that there was no WC PB action. John Michaels stated that he wished that they had received the plan up front, but he does not have a problem with what was done so far.

Jason Saris stated that they are requesting an additional patio. Charles Gianfagna further explained what they anticipated doing in the future with regard to the patio. He stated that it will take some thought for the layout and they will need to address the stormwater run off. He stated that the water follows a natural drainage pattern and they do not want to disrupt that.

Pam Kenyon stated that this area is wet and if it is developed they should be concerned with where that water is going to go. Charles Gianfagna stated that the intent is to lay it out in a way where it will not interfere with the water. John Michaels stated that he is concerned because the same guy that drew these plans is the guy who missed the fact that they would need a retaining wall for the patio to begin with. He feels that maybe the second part of this application should be done with a professional engineer that understands drainage. Charles Gianfagna agreed with him. He stated that they are not financially ready to do this project but it was recommended that they ask for it now.

Jeff Anthony stated that this could be handled with a condition that minor stormwater plans are submitted before they proceed with construction of this additional patio. Pam Kenyon stated that it should be designed by an engineer. The Board agreed.

Bill Pfau asked if they should separate the projects and have them return with engineered plans for the patio in the future. Jeff Anthony stated that normally they just make it a condition that they return for a minor stormwater permit application.

There were no comments from the public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Rodney Powis (V10-51) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#1 of the agenda.

The Board makes the following conclusions of law:

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

2) There will be no undesirable change in the neighborhood character or to nearby properties, it is an embellishment that will only improve the neighboring property values.

3) The request is not substantial; considering the total square footage, height and visibility involved.

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 with the following condition(s): 1) that a minor storm water management plan be submitted to the Town Engineer for review prior to construction of the secondary patio. All in Favor. Motion Carried.

2) **LAVENDER, JOHN.** Represented by Atty. Jacqueline Phillips Murray. In accordance with Section 200-72 of the zoning ordinance, seeks to appeal the Zoning Administrator's interpretation of Section 200-8, definition of Dwelling, Single Family. The definition reads as follows: "A detached building (not including a mobile home) of one or more stories in height, above main grade level, which is designed or used exclusively as living quarters for one family or household." **Interpretation:** Such code provision is not reasonably construed to include nor logically contemplated to also allow the same residence to be made available by the owner on a regular and re-occurring basis as a facility available to the general public providing an accommodation or place for weddings, receptions, corporate meetings, seminars or special events. Such a use contemplates a regular and re-occurring "commercialization" of the SFD involving gatherings of people, vehicles and activities including the catering of food, consumption of alcoholic beverages, professional entertainment and salon or spa services none of which is appropriate nor reasonably construed to be a SFD permitted use in a RL3 zoning district. Section 171.10, Block 1, Lot 7, Zone RL3. Property Location: 18 Skyline Drive.

Jackie Phillips Murray stated that she is appearing on behalf of her client under very unique circumstances. In her experience she has never seen an interpretation of the Code from the Zoning Administrator that does not rely on the plain definitions in the code and relies upon mistaken facts. The facts relevant to the issue are 1) that the applicant has a single family dwelling and he rents out this property as a single family dwelling, and 2) he does not provide any commercial goods or services. She stated that anyone is permitted to rent the property and use it as a single family home. The Town Code does not regulate or prohibit the rental of single family dwellings.

Jackie Phillips Murray stated that the October 14, 2010 cease and desist order was based on a misstatement of facts. It alleged that Mr. Lavender's single family dwelling was being used for commercial purposes. However, commercial use is defined as "offering for sale, rent or distribution goods, services or commodities, retail or wholesale". Jackie

Phillips Murray stated that Mr. Lavender is not doing any of that. She stated that they met with the Pam Kenyon and the Town Attorney on November 12, 2010 and explained that in person and they were under the impression that they understood that. She stated that her client also offered to and did in fact confirm those facts in writing.

Jackie Phillips Murray stated that the Lavenders are renting out their single family dwelling and what that renter chooses to do is the renters business. Mr. Lavender can use his home and hire a caterer just like any other homeowner in this Town. She stated that it happens regularly. She has personally attended weddings and Fourth of July parties that fall under this interpretation. Therefore you can argue the same about the goods and services that someone procures at your single family home. The bottom line is that nothing in the Town Code prohibits a party or a homeowner from procuring goods and services and having them at their home.

Jackie Phillips Murray stated that Mr. Lavender is not providing these goods and services. All he is doing is offering his home for rent. She understands that this issue may have been precipitated by some neighbors concerned with Mr. Lavender renting his home out or the way it is being rented out. However, there is nothing in the Town Code that prohibits what is happening here.

Jackie Phillips Murray stated that they felt that they had resolved this issue and clarified the facts with the Town but still received this interpretation which relies on a misstatement of facts. That alone is an independent basis for this Board to annul this determination. Another basis is that the interpretation by the ZA sets forth a new code provision which can only be done at the TB level. She stated that there is nothing in the code that defines commercialization as it is defined in this interpretation. The Code clearly defines a commercial use and none of that is going on at the Lavender property.

John Michaels stated that the applicants' website does advertise for Longfellows catering and asked how that is not considered solicitation of goods and services. Jackie Phillips Murray replied that they are only offering suggestions of places that someone could get catering.

John Michaels stated that he is concerned with the amount of usage that this single family dwelling is getting on a "regular" basis. Their website indicates that their facility can handle 75-100 guests for functions. He stated that the Boards seriously consider all aspects of the project including septic, sewage, amount of bedrooms, gallons per minute, traffic and safety of the property and neighborhood when making a decision. Jackie Phillips Murray stated that there has not been any regular or recurring use of this property. It has only been rented out 4 times. She knows many single family homes that

are regularly rented out for events. She stated that although this may not be what everyone contemplated, but there is nothing in the code that prohibits it.

Jackie Phillips Murray stated that the interpretation is unlawful and creates new law. The only body that has jurisdiction to create new law is the Town Board. Jackie Phillips Murray stated that in these tough economic times it would be a shame if the TB put restrictions on how people rent their houses. People rent their houses so that they can continue to own them.

John Michaels stated that it seems that they fall within the commercial use, such as an inn and hotel. They are focusing on the single family dwelling definition but they need to look at what zone they would need to be in to offer these types of services. Jackie Phillips Murray disagreed and stated that they do not fall within any of those definitions. All of those definitions require that the premises are open to the general public and this not.

John Michaels stated that the website lays out the different costs for adding each service and does not understand how they can claim that they are not offering these services. Jackie Phillips Murray stated that the website is just providing suggestions and all that is being offered is rental of the property. She stated at this point they have not received any factual allegations from the ZA that the house is used on a given date in violation of the Code. This is an interpretation that is out of left field because it was not precipitated by any type of zoning violation or application.

Kam Hoopes stated that this agenda does not read properly because he does not believe that the ZA has authored this interpretation. Jackie Phillips Murray stated that she agreed. Kam Hoopes stated that this is the second time this year that agenda items have been brought to them and they do not have the proper stamp on them. Jason Saris stated that it is not always important that the ZA is the author, because if she adopts it as her own it becomes her interpretation. Kam Hoopes asked Pam Kenyon if this was her interpretation. Pam Kenyon deferred to Counsel Muller. Counsel Muller stated that he wrote it. He stated that as Jackie Phillips Murray indicated they did meet and had discussions with Pam and Supervisor Conover. He stated that he came up with this proposition, reworded it a couple of times and offered it to Pam as her interpretation.

Kam Hoopes stated that he is concerned because this came from a serious outside influence, which was not generated by the Zoning Administrator. Counsel Muller stated that it was generated from the Town and he takes instruction from the TB. He stated that he is not sure that Pam Kenyon personally agrees with it but it is the position of the Town. Kam Hoopes stated that if she personally disagrees with it then it is not her

interpretation. Counsel Muller agreed but the appeal would still be here by someone else. Kam Hoopes stated that he appreciates that but he is a big fan of doing things in the proper order and fashion. He appreciates all of the public and John Michaels' comments but he feels that this is stretching the limits. He served for over 4 years on the Zoning Revisions Committee and they had all kinds of suggestions there and they would be willing to entertain suggestions on tidying up this piece of their zoning regulation as well. He stated that defining this to be fair to all involved is difficult because they are not in the business to tell people how to utilize their private homes. However, he does understand that neighbors do not want to see commercial activity or increased traffic in a small neighborhood community. He feels that they have taken one of their definitions and are testing it. The website is very professionally done, however he is aware of dozens of houses on the lake that have websites for renting their property.

Jeff Anthony stated that he disagrees. He stated that this website suggests that this is a business and people can rent his house for commercial activity. The site also suggests where to get those services and outlines different prices. Jeff Anthony stated that he rents his house in Saratoga for the track season. He stated that he has no idea of what that renter does during their stay nor does he tell them what to do or make suggestions. This is a business entity by planning and suggesting something. He stated that if he were to offer these suggestions and charge different rates that are published, he would be violating his zoning law in Wilton. He feels that this flies in the face of zoning. Kam Hoopes stated that he understands. However, if it is true that Mr. Lavender is just providing suggestions and phone number, then they do not have anything in their zoning prohibiting it.

Jeff Anthony stated that this was not the intended purpose of use when it went before the APA for a permit and the Town for a permit. If it was they would have looked at the sewage capacity, the access capacity of the highway, parking, and all of the things that are needed to support this kind of activity. This is the kind of activity that requires a volume of services and support. He stated that he talked to the APA twice about this issue and their permit was issued for residential use only. John Michaels stated that their thought on the application for the turnaround last year was not for seeing how they can park 100 cars, but rather how are they going to get the applicant what he wanted to get his garage in there. He stated that there is no place for 100 cars here.

Kam Hoopes stated that he is not arguing that point but tonight they are dealing with individual's private rights for the use of their property when it is not clearly defined in the Code. Tony DePace agrees, but they cannot deny the fact that the owner is operating a commercial entity. He stated that if his neighbor had a wedding at his house one weekend during the summer it is understandable, but if it were done every weekend he

would have an issue with it. He stated that most of the weddings that he has been to that under these circumstances have been either the owner's children or relatives and not a third party and it was not posted on a website. Kam Hoopes stated that there are many people that rent their house for the same amount of time each year. He asked if this would then regulate and limit them to their own right to do so. John Michaels stated that this is day by day or by the hour, not for extended periods of time. Kam Hoopes stated that is where their gray area is because their Zoning Code does not define this.

Jason Saris stated that they do seem to be dragging some things into this. He stated their task is to determine whether or not this is a commercial use or not and therefore constitutes a violation.

Jackie Phillip Murray stated that there has been a lot of discussion about the website. However, the website is a website and not a land use and the focus has to be on the land use. Jeff Anthony stated that the website is advertising a commercial activity. Jackie Phillip Murray stated that all that the website is doing is renting a private residence. John Michaels stated that the site has different prices. John Lavender stated that the website indicates that the prices do not include any food. He stated that is just for the venue and time itself.

With regard to Kam Hoopes comments, Jackie Phillip Murray stated that she wanted to explain the history of the interpretation. She stated that there is an email from November 9th from Counsel Muller to Supervisor Conover. In that email it states that at this point, Bolton does not formally have any written interpretation on what constitutes a legitimate and reasonable use of a single family residence. She understands that the website can be misconstrued but it is just a website. It is not within the scope of the Town Code to regulate websites or regulate based on websites, nor is it within the scope of zoning to regulate anything other than land use.

John Michaels stated that if they expect every single family house to have 75-100 people regularly, they would be taking a whole different look at this house, from the environmental, septic, water, and traffic. Jackie Phillips Murray stated that none of these uses have occurred with 75-100 people by a third party. Jeff Anthony stated that they are asking for it to be allowed to occur in the future. Jackie Phillips Murray stated that they have not asked for anything except whether or not a single family house can be rented out. That is why she premised this the way she did because there is no application pending. The posture of this is very unusual, they are here to address the misstatement of facts that are in the interpretation of the ZA. She agrees with Mr. Hoopes that the interpretation was not written by the ZA and thus far the ZA has not affirmed that this is her interpretation. Jackie Phillips Murray stated that it is her jurisdiction to make the

interpretation and this does not seem to be hers. Jason Saris stated that it is her interpretation if she chooses it to be. He asked Pam Kenyon if this is her interpretation. Counsel Muller stated that it is her interpretation but he was the author of it. He stated that this is not the first time that he has authored something for the office. Jason Saris stated that they need to figure out whether or not they should even be dealing with this at all. He stated that regardless of who wrote the interpretation it is the ZA, with her authority, who agrees and has made this her interpretation.

Counsel Muller stated that this was precipitated by a compliant or complaints. He stated that based upon the complaints, the Supervisor's concerns and the website they Zoning Office looked into this issue. He and Pam Kenyon had correspondence and meetings with one another and with the applicant and their counselor. He stated that after that meeting they had a better understanding of the use of the property. After further discussion with the Supervisor and Town Board members, they instructed him to work with Pam and provide the interpretation. He stated that he was instructed that Bolton's position would be that this constitutes a commercial use. Counsel Muller understands that the ZBA is not responsible for regulating websites, however the way it is being offered in the website does indicate a commercial use which is a violation. He stated that rental for business events and as a banquet hall do not fall under a permitted use of single family dwelling.

Jason Saris stated that the question has been posed that this interpretation came from the TB and not the ZA. He understands that the ZA may not personally agree with the zoning ordinance. He also understands that the ZA can make this her interpretation. However, what the applicants counsel and what Kam Hoopes have asked is whether or not Pam Kenyon, as Zoning Administrator, adopted this interpretation as her own. Jackie Phillips Murray agreed that the Zoning Administrator should be speaking up and affirming this determination. Kam Hoopes stated that he does not feel that this is following the proper procedure. Clearly the Zoning Administrator is under duress and he does not like that anyone can interfere with the Zoning Office. Jason Saris agreed. Counsel Muller requested that they back off of the Zoning Administrator. He stated that he was honest in how this issue was brought forth and how the interpretation was made. He stated that this was originally brought to the attention of the TB and that is how it progressed. This interpretation is Bolton's stance and position on the matter.

John Michaels stated that he thinks that this application should be discussed on the merits. Jeff Anthony agreed and stated that he feels that they should be dealing with this issue. Bill Pfau stated that he agrees with Kam Hoopes, but he does feel that it issue is secondary. Kam Hoopes stated that it may be secondary but it is primary because they are being asked to change the zoning or bend the Code in such a way that they set a

precedent. Jeff Anthony stated that zoning was set in place to protect the interest of people who buy a piece of property and expect to live in a zone that they purchased the house in. He stated that this goes way deeper than the definition in their zoning law, it comes down to basic zoning. Kam Hoopes stated that the basic zoning refers to the intent and he is talking about the execution.

John Michaels stated that the website advertises this as accommodations. This is not a home. Jackie Phillips Murray stated that regardless of how the website is misconstrued, it does not affect what is actually happening, which is the rental of the house. John Lavender stated that the different prices are for the use of the property. He stated that they are not providing any food or services. John Michaels stated that it can be easily misconstrued considering the big difference in price for each additional item added. John Lavender stated that he has never sold food, beverages, spa services or entertainment services at his house.

Jackie Phillips Murray stated that there is nothing in the code that prohibits the rental of a single family dwelling. There is also nothing in the code that prohibits using a website or what the website can say. Jason Saris agreed, however, he does feel that the website is like a sign. When someone has a sign indicating that they are a restaurant, the expectation is that they are a restaurant and they are serving meals. He understands what they are saying and he has no reason to not believe them, but hopes that they can understand the conflict of the Board because it looks like they are.

John Michaels stated that he does not feel that the normal expectation on a single family residential neighborhood is to consistently rent it for 75-100 people. John Lavender stated that is not happening. John Michael understands, but that is what is being advertised on their website. Bill Pfau stated that his problem is that this residence is not being offered up exclusively as living quarters. It is being offered up for events which he feels is a commercialization of the property.

Jackie Phillips Murray asked if they ZBA would change their perspective if they were to revise the website. John Michaels stated that if they want to come back with a revised proposal they can bring in a new application. He stated that they have to stick with their agenda and deal with what is in front of them and make the determination of whether or not they support the interpretation. Jackie Phillips Murray stated that she only raises this because she does not believe that the Board has the correct facts before them. The website has been revised which was a product of their meetings with Counsel Muller and Pam Kenyon.

Kam Hoopes stated that if they go this direction and work based upon this website, he is

well aware of many other property owners that rent their homes and have websites and this would apply to them as well. Jason Saris stated that there may be more violations out there but they are only here on this application alone. Kam Hoopes stated that his argument is only for the strict letter of the law of their zoning regulations. Sometimes they have to take a position that they are not personally in agreement with. Jeff Anthony stated that this has to do with intent. If the intent is to rent this for activities, functions, weddings, meetings, etc, they are now participating and suggesting other uses other than a single family dwelling. Kam Hoopes stated that people only rent their property for revenue. Jeff Anthony agreed and however, the intent in this situation is to rent it for functions and not living quarters.

Jackie Murray stated that the current website is clear and is different then what is in front of the board members. She stated that they have old information that should not be part of their decision making for this matter. Jeff Anthony stated that they have 3 alternatives 1) let them vote it the way it is now, 2) come back with another application with proof of a revised website or 3) ask for a variance. Counsel Muller stated that they would not need a use variance. He stated that this is the type of activity would be permitted in this zone under site plan review.

John Michaels stated that the applicant is renting out the house for functions and not the use that they approved or what it is primarily zoned for. He stated that the renter should be using the house as a dwelling in which the Lavenders use the property and not for a secondary use of weddings or functions. Jackie Phillips Murray argued that the residence is only being offered for rent and what the renter chooses to do is up to the renter. The Lavenders have not provided any goods or services. Jason Saris stated that John Michaels point is that when you rent it out for hours, rather than days, there is not much a renter can do with it as a normal primary use. Counsel Muller stated that not only is it for hours, but by function, and there is a different rental increment depending on what they want to use it for.

Jackie Phillips Murray stated that there is nothing in the code that sets limitations for the rental time period; a lot of codes have that, but Bolton's does not. Jason Saris agreed, but the basic definition of a single family dwelling would be difficult to accomplish in a short amount of time.

Jackie Phillips Murray stated that what is happening is a re-write of the code. She stated the code does not have the provision as to the amount of time for it to be used or what a renter can or cannot do on the premises. Jason Saris stated that it does not seem that they have all the relevant information. Jeff Anthony asked if he was considering this an incomplete application. Jackie Phillips Murray stated that they are not submitting an

application; they are just seeking an appeal. Jason Saris stated that although they do not have an application. The Board is still being asked to supply a decision and they would need all appropriate information to make an informed decision.

John Michaels asked Jackie Phillips Murray to read the definition of the single family dwelling into the record and explain how that coincides with what the applicant is doing. Jackie Phillips Murray read that the dwelling-single family is “a detached building, not including a mobile home of one or more stories in height, above main grade level which is designed or used exclusively as living quarters for one family or household”. Kam Hoopes stated that the “or” used in the definition indicates that there is some leeway to the use.

Jackie Phillips Murray stated that if they look at the definition of tourist accommodations, for example in the code a hotel is “a commercial facility providing transient lodging, containing 6 or more rental units” and an inn is defined as “a commercial facility resembling in character a traditional residential construction with common access providing transient lodging and meals which is characterized as common dining facilities and leisure rooms.” She stated that there is no provision of lodging or meals that are characterized as dining facilities at the Lavender residence. This is a single family home with a dining room and kitchen and bedrooms. John Michaels stated that they are advertising this as accommodations. Jackie Phillips Murray stated that the website has been changed and they are reviewing old facts. John Michaels stated that the applicant had an opportunity to supplement the record and he can only deal with what was provided to him. Jackie Phillips Murray stated that they indicated that they would change the website and put that in writing in the November 16th letter. She does not feel that they should be required to provide this especially since the ZBA does not have zoning authority over websites and advertising. The ZBA has authority over land use and there has been no allegation that Mr. Lavender has actually used his land in furtherance of a commercial purpose.

Jason Saris stated that he can see John Michaels point. He understands that the applicant has told the Board that he has changed his site and that he is not providing those goods and services and never has, but it does conflict with the information that is in front of the Board. Jeff Anthony asked if this would be considered an incomplete application. Jason Saris stated that it seems that they do. Jackie Phillips Murray stated that she does not understand how that would be their responsibility. She stated that they are appealing the ZA interpretation and not applying for any variance. It is not their responsibility to develop that record. Jason Saris stated that he is not sure whose obligation it would be, but it probably would have been in their best interest to do it anyway. In all fairness to the Board members, the applicant is seeking the ZBA’s determination and the Board

needs all of the facts and information in order to make an informed decision.

Kam Hoopes stated that if the website didn't exist this would become a non-issue. Counsel Muller stated that it is the use that the website advertises which has been called into question. He stated that he does not personally know for a fact if these uses have occurred; they are relying on complaints. Kam Hoopes stated that a person is allowed to rent their single family dwelling. They are also allowed to throw a party or a wedding at their house. The real issue is the website because it is printed like a resort brochure. If they took that down there is no violation because you can rent your house according to Bolton regulations.

Jason Saris stated that it makes no difference if the website is up or down. The job of the ZBA is to determine whether or not they are operating a commercial business. Kam Hoopes stated that he goes back to his original statement that anyone is within their rights to rent their property and the renters are within their rights to do everything that you would do on your property which includes having parties, catering, holding weddings, etc. Tony DePace stated that they are dealing with something that could be occurring more frequently than just the occasional party. Kam Hoopes stated that it is something that can be addressed in the Zoning Revisions Committee but not here. Jason Saris agreed that their zoning language is a little weak. He also understands that in the past, Counsel Muller has advised that in cases of nebulous or weak zoning, the tie goes in favor of the applicant.

Counsel Muller stated that although they are not regulating websites or businesses, he stated that they are using that information to base their decision on whether or not the use of the land is in violation. He stated that he has just checked the site and it is still advertising weddings and events. Counsel Muller stated that he agrees with John Michaels that the Bolton Code does not allow for the rental of a single family dwelling for the afternoon or evening. He stated that ordinary and customary uses of a single family residence does not anticipate that one is going to run a business from your single family residence location just for those inter-rentals for those legitimate activities that the homeowner could conduct. He stated that Bolton has the obligation to protect the single family residences from that type of activity.

Kam Hoopes stated that he is all for that, but he wants to know where the zoning regulations support that argument well enough. Counsel Muller stated that the Zoning does not regulate rental in anyway. However they have to be grounded in what they find to be ordinary and customary in the use of a single family residence. Kam Hoopes stated that owners are allowed to use their properties in this manner and this is not an unreasonable use of the property. He feels that they are drawing a fine line here. He is

not sure what they are being asked to do or what resolution they are to make.

David Ray asked if they are making a determination of whether this is a commercial use or not. Counsel Muller stated that they need to determine if this is ordinary and customary use of a single family dwelling. If they find it incidental or ordinary, they would find favorable to Mr. Lavender. If they do not find it incidental or ordinary in use for a single family dwelling or appropriate without site plan review, they will uphold the interpretation. Jason Saris re-read the interpretation into the record.

Kam Hoopes asked if this house was open to the general public. Jackie Phillips Murray replied no. Kam Hoopes stated that is a lynch pin word in this interpretation. Jackie Phillips Murray stated that they need to focus on the land use and not the website. This house does not have a sign out front or claim to be open to the general public. This is a private home and it is posted as private on the land.

Jackie Phillips Murray stated that the Lavenders are not offering catering, alcohol beverages, professional entertainment or salon and spa services. She stated that the interpretation factually on its base is flawed. If the Board were to agree with this interpretation they are re-writing the code and setting a awful precedent. She stated that if they are going to stop Mr. Lavender from renting his property in this manner then they would need to stop anyone in Town from doing so.

Ed Faetz, year round resident of Apple Hill, stated that he likes the customary and ordinary interpretation presented. Most people in this room understand the definition of the single family dwelling and what is being proposed by Mr. Lavender does not fall under that definition. If Mr. Lavender wants his business to be successful he will be having these events more frequently and he is not sure what noise or things that may come from it.

Carol and Bob Hayes, Highlands neighbor, stated that they are adamantly opposed to the activity occurring at the Lavender property. He stated that they are in total agreement with the interpretation and are opposed to any variations to such. The cease and desist order should remain in effect. They purchased this home due to its quiet residential neighborhood and they would like to keep it that way. They feel that Mr. Lavender's appeal shows a complete disregard for the safety and privacy of the Highlands residents. The website shows the true intent or his quest to change the definition. Their personal liability, maintenance cost and safety of resident would rise due to the increased traffic on a private road system that is no wider than a driveway. Even if they remove the website, they still have concerns that the burden will fall on them and that this operation can still continue to go on.

Jake Nittmann stated that he understands what each side is saying and that there have been complaints. He asked if there has been proven facts either way. Even if the website states prices, if this doesn't happen then how can they still be in violation. He asked if they don't see it happening, how they can be in violation of the code.

Laurie Golhoffer, Highlands neighbor, stated that they are year round residents with two young children. They like their quaint neighborhood, quiet evenings and strolls through their neighborhood. She stated that the neighbors are aware of one another, their hidden driveways and blind areas of their curvy road. She stated that weddings, parties, and corporate retreats involve not only many out of town guests, but catering companies, florists and other entities that are necessary for such functions, which they have seen on that road. What Mr. Lavender is proposing would not only increase their traffic in their neighborhood but also decrease the safety of it and would also raise the noise.

Rich Waller, Highlands neighbor, stated that he agrees with a lot of the Board members that this is a commercial entity. He likes the Lavenders but he does find that they are advertising a business in a residential area. They have a right to rent their home for a single family residence, but not as a place to hold events. He stated that this website is still the same and it is advertised on many wedding sites.

Rebecca Smith, Highlands neighbor, stated that she has known the Lavenders for 25 years. She really wanted to come more in support of this but does have concern with allowing 75 plus people on the property. She understands that the Lavenders are trying to reinvent themselves especially when monetary things happen. She finds it upsetting that the Supervisor claimed that this was illegal before even talking to the Lavenders, which is an embarrassment to the Town. This is one of our neighbors and it is awful to talk about one of them without first getting the right information. Rebecca Smith stated that there is a lot of nitpicking and they really need to look at the zoning altogether. She stated that it does make her worry since this is a resort community that thrives on tourism.

Rebecca Smith stated that they do not have all of the facts. There are two buildings on the lot but they do have separate septic tanks. She stated that she knows the Lavenders love that mountain with every part of who they are and hopes that this doesn't get too gruesome here. She is disappointed that Mrs. Kenyon has not stated her own opinion. She wishes that they all could have met to find out what is going on like she has done with the Lavenders. She hopes that they can give him chance and this could be friendlier. She moved away from Manhattan to come to a place where people were not angry and handled things better; a place where people are not afraid to admit what they believe in or write.

John Lavender stated that he is renting his home and wants to keep it as simple as that. He does not want to be pushed into commercialization for his property. He does not intend to sell any additional goods and services. He feels that it is only creative marketing to let the word be known that there is a unique home in a beautiful area for rent. What the renter does with the property is up to them. He is not providing them with anything other than a home and is not trying to create a business. He takes pride in his home and he will not allow a renter to do something to his home that would destroy that. He stated that they screen their renters and actually turned down tenants who they felt were not appropriate renters. He stated that he is just renting his home and he wants it marketed that way. It listed with a few realtors in the area and he would like to have it exposed on many websites. He has rented it a total of 4 times, one with 11 people and another for 16 people. With every experience the people have walked away loving the experience and area. His intent is not to rent this out all of the time.

Bill Pfau asked if their liability insurance is a commercial policy. John Lavender replied that he just has a homeowners policy and he requires that the renter provide their own insurance on their homeowners policy that would cover any damages.

Bob Hayes asked how much the Lavenders get from the caterer. John Lavender replied that he does not get anything from the caterer. He is just charging an increased fee for the additional use of the property. Bob Hayes stated that he is still very concerned with the road traffic and safety. He works on the roads frequently and has even been brushed by a car while doing maintenance. It is also very dangerous when entering Horicon Road because there is a blind spot. People in the community are used to dealing with it, but he is concerned that it is a safety concern with people that are unfamiliar with the area.

Jay McBain, Highlands neighbor, stated that his property is the one that allows access to and from the Lavender property. He is friends with the Lavenders and has talked to them about his issue. He stated that the property is beautiful and one of the best in the area. He stated that he has taken a couple up there to have pictures taken after a wedding for free. However that was only for 8 people. His concern is that the Lavenders are proposing that they could accommodate up to 75 people. He stated that anyone that lives up there or has been up there can contend that the roads are difficult to get around. He just paid a lot money with the other neighbors to have them repaired. This is a single lane road; they cannot allow the value of their homes to change or risk the safety and welfare of the neighborhood to allow this. He stated that if they allow this now, it could happen anywhere. He feels that everyone has the right to rent their home out. However, the intent is to use this commercially and that is what should be voted upon tonight.

Zandy Gabriels stated that most of the home renters in Bolton rent weekly at the minimum. He stated that a few rent their houses out on an hourly basis. He feels this is an issue that the Town will need to face because as times get harder, more people will want to rent out their properties to help pay for them. He is not sure where the property owners go when it is rented out, but he feels that the Town should because it would show their intentions of what they will do with their property. If they are not on site, it seems that they may be considered a little more commercial.

Zandy Gabriels stated that the code states that a single family dwelling is living quarters. He stated that it is hard to live on the property for just 4 hours. So renting it hourly doesn't really define living quarters.

With regard to the roads, Zandy Gabriels stated that they are horrendous. He stated that the neighbors have complained as well. He feels that an occasional party at any location on that road is acceptable. However, doing this every week would be a different story.

Zandy Gabriels, stated that after this determination tonight the Town really should address language for modifications to the Code so that this issue is more clarified in the future. He feels that this definition or language should come from the ZBA and not the Town Attorney. He is not sure that the Zoning Revision Committee ever got around to addressing this seemingly important issue for the community and applicant. He feels the Board should be addressing the definition of living quarters and the length of time that people are renting out. This is not a new issue. It has been addressed from another point of view by Warren County regarding Occupancy Tax. He is not sure that it fits in with that but they may have some definitions that they could work from.

Jackie Phillips Murray thanked all of the public for their comments. She stated that the one thing that stands out from all of the comments is the difference in opinion as to what would give rise to a commercialization. Some feel that that once a summer is ok but more than that isn't, and others feel that once a week is ok. She stated that all of the differing opinions demonstrate that the Town Code does not regulate this. She stated that the Town Code is deficient in addressing this issue. This Board has the opportunity to say that this is outside of their function because it is not their duty to rewrite the Code. She stated that their job is to see if this interpretation has support in the Town Code and by the facts. The facts given by the land owner have not been disputed regarding selling commercial goods or services; all he is doing is renting his home. On that basis alone the interpretation is faulty. The Code does not provide regulations on rentals. With regard to Mr. Gabriels comments about the definition of living quarters, Jackie Phillips Murray stated that it is defined as "designed or used exclusively as living quarters". She stated that it is beyond dispute that this home is designed as living quarters. It is also beyond

dispute that Mr. Lavender uses it as living quarters.

Jackie Phillips Murray stated that this is beyond the ZBA authority to rewrite the code by upholding an interpretation that is based on erroneous facts. She stated that the interpretation alone needs defining because what is “regular” and “reoccurring”. She feels that the Board should nullify the interpretation and the matter should be properly before the Town Board.

Rebecca Smith asked what they do now since they are at this stand still. She asked if they will continue to allow the rental use, but cap the amount of people, resubmit for an application. She asked if it was beyond the scope of the ZBA. Jason Saris stated that they will not be making changes to the zoning they are just deciding whether or not they will uphold the interpretation.

Counsel Muller read the following correspondence:

1. Letter from John and Karen Kronenwetter in opposition with activities occurring at the residence.
2. Letter from Christine W. and Michael J. Kaye, in strong opposition.
3. Letter from H. Craig Treiber in strong opposition.
4. Letter from Richard J. and Elizabeth Burmaster in opposition.
5. Letter from Kurt and Florence Stoffel, in opposition.
6. Email from Larsons, 18 Skyline Drive, in opposition.
7. Letter from John and Karen Kronenwetter, in opposition.

Jason Saris stated that this exercise tonight shows them that their zoning ordinance is flawed and has some serious shortcomings when covering this issue. He recommends that they look at the new draft zoning ordinance to be sure that this issue is well defined. Although it is only a draft, the TB has the opportunity to review it, move forward with it and make changes as deemed necessary. He highly recommends that the TB consider doing this.

Kam Hoopes stated that he hopes that everyone can see how tough it is to do zoning because it is tough to put them into words and definitions that are fair. He stated that he worked on the Zoning Revisions Committee and they have a draft but it is currently stalled. He stated that when it does resurface, they will again have public hearings and he suggested that the public attend to help improve and streamline the regulations. He also encouraged that they talk to the Town Supervisor and show an interest in seeing these revisions moving forward.

RESOLUTION

Motion by John Michaels to uphold the interpretation. The applicant has indicated that the purpose of the website is to increase business and revenue, which clearly indicates that it is a business. The interpretation is exactly what a detached single family dwelling should be, with the primary use as living quarters for a single family or household. Further, the ZBA finds that if this property were to be used as intended by the applicant, it would be a detriment to the neighborhood for the health, safety and welfare to the community and neighbors. The infrastructure to support this level of activity is questionable and it should be explored and proven if they were to do this. The applicant would also need address water/sewer systems, emergency access and safety of the neighborhood. **Seconded by** Jeff Anthony. Kam Hoopes and Jason Saris opposed. **All others in Favor. Motion Carried.**

3) 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.

Jason Saris stated that the applicant has requested to have this item tabled. They have received correspondence from the Gordon family requesting that if this is tabled, would the ZBA consider holding a special meeting so not to hold up their project. He asked Pam Kenyon what the legal requirements are for notification of a meeting. Pam Kenyon replied that they would have to notify the neighbors 10 days prior to the meeting and publication in the newspaper would be 5 days.

John Michaels stated that they have not received a stop work order from the Town. Kam Hoopes stated that is one of the points that he raised today. He stated that the applicant made a big issue of having this on the agenda and yet he is away on vacation. He stated that the Town Engineer has already given his okay and there doesn't seem to be any violations. Jason Saris stated that the Gordon's project is in total compliance and they have not been in violation. Counsel Muller stated that this matter was approved by the PB. A component of their approval on the storm water permit had to do with the type and location of storm water devices. He stated that the type and location became controversial. He advised Pam Kenyon that they would take the Town Engineers review and opinion of the type and placement to be Bolton's position. He stated that this was not an interpretation but rather followed the guidance of their engineer. The Waterkeeper takes issue with that issue and did not in a timely manner appeal the issuance of the storm

water permit by the PB. Since the time had elapsed on the appeal the Waterkeeper then decided to appeal the interpretation of the Zoning Administrator.

Counsel Muller stated that this was slated to be on the February agenda. Right before that deadline for the February submission date it seemed that the Waterkeeper, his attorney, the Gordon family and Town had come to an agreement with the type and placement of the storm water devices and that there was no need for the appeal. However, they did a complete 180 and at that time it was too late to put on the February agenda.

Counsel Muller recommended that they let the application be adjourned. The Gordons may not be entirely happy with that, however, they are not holding up their project. Jason Saris asked if the Waterkeeper is successful in persuading the ZBA to see things his way, what happens to the Gordon family who did something that was completely in compliance. Counsel Muller stated that they would not be staid and they would be able to challenge that decision in an Article 78 proceeding. Bill Pfau stated that they could also apply for a variance. Counsel Muller agreed.

Kam Hoopes stated that he would prefer not to have a special meeting. Jason Saris stated that it is not necessary since the publication requirement would put the meeting 2 weeks from now which is close enough to the next meeting.

Jeff Anthony indicated that he would have to abstain from hearing and voting on the application since they are the consultants for the Gordons. David Ray stated that he too would have to abstain.

RESOLUTION

Motion by Kam Hoopes to table application for The Fund For Lake George & Lake George Waterkeeper until the April 2011 meeting. **Seconded by** Tony DePace. Jeff Anthony and David Ray abstained. **All Others in Favor. Motion Carried.**

With regard to the Lavender issue, Zandy Gabriels asked about enforcement for any future issues. Jason Saris stated that the question of enforcement should be addressed by the TB. Counsel Muller stated that the TB should be made aware to what is in the minutes and not enforcement because the code regardless of the interpretation and the fact that it has been upheld is a very fruitful discussion on the current ordinance as well as the proposed draft ordinance does not specifically address this. Jason Saris agreed and stated that it would save them a lot of grief in the future.

With regard to the Sagamore's recent approval, Zandy Gabriels asked about the procedure in which the site plan approval was granted by the PB. He feels that it may have required a variance or that it was a PUD amendment. Procedurally he wanted to know if his time frame has elapsed on an appeal of the decision that occurred in January. Counsel Muller explained that he has the opportunity to appeal with 60 days.

The meeting was adjourned at 9:20 pm.

Minutes respectfully submitted by Kristen MacEwan