

**Town of Bolton**  
**ZONING BOARD OF APPEALS**  
**Minutes**  
**Tuesday, October 18, 2011**  
**6:30 p.m.**

SEQR = 5 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-** Tony DePace, John Michaels, Don King, David Ray, Jeff Anthony, Zoning Administrator Pamela Kenyon and Counsel Michael Muller

**Absent-** Jason Saris and Kam Hoopes

The meeting was called to order at 6:32 pm.

Jeff Anthony acting as Chairman, indicated that they only have 5 board members present. If there are any applications that were denied by the WC PB it would require a super majority vote of all 5 members to receive approval tonight. He stated that any applicants have the right to table their application at any point if they feel that they would rather wait to have a full Board. He also indicated that all other applications will need 4 out of the 5 members votes to receive approval.

Jeff Anthony asked if there were any corrections or changes to the September 20, 2011 minutes.

**RESOLUTION**

**Motion by** Tony DePace to approve the September 20, 2011 minutes as written.

**Seconded by** Don King. **All in Favor. Motion Carried.**

**1) V11-37 ROCKWELL, DAVID & JOAN.** Represented by Don Russell. To alter non-conforming single family dwelling, specifically to add a proposed 180 ± sq ft deck, seek area variance for **1)** a deficient front yard setback. 30' is required, 24'9" is proposed; and **2)** to alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). Section 186.10, Block 1, Lot 28, Zone RCH5000. Property Location: 37 Sunrise Shores Loop. The WCPB denied without prejudice. *Note: This item was tabled from the September 2011 meeting.*

Don Russell stated that it was his understanding that the WC PB did not grant approval because they had not received HOA approval at the time of their meeting. He now has a copy from the last HOA meeting in which they were granted approval.

Don Russell stated that this deck already exists; the applicants are seeking to extend it out over the rock ledge in front of it. There is no visual impact because they are on a hill. The request is to allow safer access down to the lake because right now it is very rocky

and slick. This would cover up a little valley or crevice in the rock. They would like to have a rail around half of it and would be open out on the rock ledge.

John Michaels stated that the deck is rather unsafe right now so this would be an improvement. Don King agreed.

Pam Kenyon stated that they received a letter from the Lake George Waterkeeper; but asked if he would rather have the opportunity to speak.

Chris Navitsky, Lake George Waterkeeper, stated that they are not opposed to the variance request but request that the Board apply the town's regulations, particularly the imposition of reasonable conditions regarding the proposed use of the property and if granted, it should be conditioned restricting the enclosure of the porch area for living areas.

John Michaels asked if they intended to enclose the porch area. Don Russell replied no that is not their intention and the applicants would not have a problem with that being a condition of approval.

There were no further comments from the public in attendance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from David and Joan Rockwell (V11-37) for an area variance as described above.

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

And, whereas the Warren County Planning Board determined that there 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; the property is quite restricted due to its rocky nature, it will be an improvement from a safety standpoint. There really is no other location to put the deck given the access in and out of the cottage.

2) There will be no undesirable change in the neighborhood character or to nearby properties; it is minimal in size and already has a deck on it. It will improve the look with a little more balance.

3) The request is not substantial; it is a small square footage with minimal adjustments to the side and front line.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it improves the ingress and egress from the cottage. It will improve safety and the undesirable walking areas just outside of the cottage.

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 Don King and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor.**

**Motion Carried.**

**2) V11-47 LUDWIG, JIM.** Represented by Don Russell. To alter non-conforming single family dwelling, specifically to construct a roofed enclosure over existing bilco entryway, seeks area variance for **1)** deficient setbacks. Front: 50' is required, 40' is proposed. Side: 50' is required, 25' is proposed; and **2)** to alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). Section 186.18, Block 1, Lot 29, Zone **LC45 & RM1.3**. Property Location: 55 The Back Road. Subject to WCPB review.

Don Russell stated that they are going to be extending out a foot beyond the existing enclosures to get a couple of footings in to build the structure. The applicant is an elderly man and he is getting to the point where he cannot bend over to open his bilco doors anymore. This will allow an easy access to get into this space for storage and to take care of his utilities. He stated that they are asking for minimum relief from the front and the side yard setback is from the wetlands which is really his back yard and he really never even saw it wet all summer. Jeff Anthony asked if the HOA has signed off on this application. Don Russell replied that the Rainbow Beach Association has approved of the proposal.

Pam Kenyon stated that there was no WC PC impact and they have a letter of approval from the HOA.

There were no comments from the public in attendance.

## RESOLUTION

The Zoning Board of Appeals received an application from Jim Ludwig (V11-47) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#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; it is a minimal variance to cover the existing bilco doors.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties; it has been approved by the HOA.
- 3) The request is not substantial; compared to the size of the lot.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it make actually be an improvement.
- 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 Don King, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

**3) V11-32a BERKOWITZ, NED & ROBERTA.** Represented by Kevin Kershaw. **1)** For the construction of a proposed detached garage with storage above, seeks area variance for a deficient front yard setback. 30' is required, 4.06' is proposed. **2)** To alter single family dwelling, specifically to add a two story addition, seek area variance to alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). **3)** To

allow a 10.10' x 9.6' storage shed to remain, seeks area variance for deficient setbacks. **Front:** 30' is required from the edge of the right-of-way, 15' is proposed. **Side:** 8' minimum is required, 1.9' is proposed. Section 171.19, Block 2, Lot 5, Zone GB5000. Property Location: 17 Congers Point South. Subject to WCPB review. *Note: This item was tabled at the August meeting*

Kevin Kershaw stated that 2 months ago they proposed a garage on one side of the house; with the suggestions from the board, they tried decreasing the mud room and size of the garage and found that it will not work. They have since re-configured the plans and moved the garage to the other side. They will still have a mud room and guest bedroom above. Dennis Dickinson has prepared all of the engineering for the stormwater.

John Michaels asked if there was a grading plan for the driveway. Kevin Kershaw replied there are elevations because when they get down to the garage doors it is flat. John Michaels asked how far below is the road from the garage. Kevin Kershaw replied that it is approximately 11'.

John Michaels asked if this will be gravel or black top. Kevin Kershaw replied that it will eventually be black top. John Michaels asked if the stormwater was calculated for black top. Kevin Kershaw replied that it is not denoted on the plan but it should be the same. Pam Kenyon stated that Bolton considers crushed stone as impervious surface so the calculations would be the same.

Counsel Muller read the following letters:

- 1) Robert and Anne Pierson in opposition due to the impact on the neighborhood, their view and property value. They provided pictures and appraisal reports supporting their concerns.
- 2) William Bashant, McDonald Real Estate Professionals, Inc, in support of Robert and Anne Pierson's concern.

Bob Sweeney, representing Bolton Landing Marina, the immediate neighbor to the south, stated that his client is not opposed to allowing for a garage on the subject property. However, they are opposed to the proposed placement. He stated that he can tell that the Board is very conscious about the law and has given consideration to certain criteria in the Bolton Zoning Law and NYS Town Law. Bob Sweeney stated that this is very substantial variance request; it is 86.5% under the zoning law. This is only 4' off the property line. There is an internal roadway used by Bolton Landing Marina and Performance Marina. In the summer this is a very busy location with car/trailer and pedestrian traffic. The applicants do have the right to use this road as access. However, locating the garage in this spot will create more concern with mix the pedestrian and residential traffic already occurring on this road. This structure is proposed to be only 4' off the property line which is a safety concern.

Bob Sweeney stated that the Pierson's have raised the issue of affecting the view shed and neighborhood.

Bob Sweeney stated that the benefit could be achieved by other means by making it a smaller structure and located within the setbacks. This road is immediately adjacent to the Bolton Landing Marina building. In the winter there is snow and ice that comes off of there onto this road which affects vehicular and pedestrian traffic to the location of this garage. He does not feel that it will be a safe condition and he questions the amount of snow and ice that would come off of this new building and onto the narrow corridor.

Bob Sweeney asked if there was a report from WC PB. Pam Kenyon indicated that there was no WC impact.

Bob Sweeney asked if there was a stormwater report. Kevin Kershaw replied yes it is on the plan.

Bob Sweeney stated that if there is construction going on in this corner of the lot they will be using this narrow commercial driveway. If this is to be approved they would request that the Board give consideration to applying conditions to protect the road and area. He stated that they are concerned that emergency vehicles may not be able to get through this area and would like the applicants to find out whether or not it is feasible for emergency vehicles to pass.

Bob Sweeney stated that they are not opposed to their neighbors having a garage but they do not feel that this is the right location.

Ned Berkowitz stated that he appreciates their concern for their safety in using that road for ingress and egress. However, they have been doing so since 2001. Placing the garage on that side would not cause any situation of any greater influx of traffic. The greater risk to safety is the continued use of that driveway by the Bolton Landing Marina's own customers who use it as a pedestrian thoroughfare. The majority of vehicle traffic comes mainly from Performance Marina because as most know that the Bolton Landing Marina is a dry dock facility and the majority of their boats are launched mechanically with hydraulic lifts. He stated that they have a letter from Performance Marine indicating that they have no concerns.

Ned Berkowitz read from the FEIS study done by the Saratoga & Associates when the original Bolton Landing Marina was proposed as follows: "There will be year round access ways permitted to all adjoining properties as determined by pre-existing easements, and/or as agreed between American Marinas and adjoining property owners." "Item 19- All drives on site will be plowed and maintained during winter months to

ensure emergency vehicle access.” Ned Berkowitz stated this is the first time that this concern has ever been raised. They are trying to place a 2 car garage in a less obtrusive environment at the request of the Board and placing it next to an existing fence. This is next to a large commercial structure; they are not impacting their ability to conduct their business.

John Michaels asked what happened to the plan of having access off of the Congers Point Road instead of going around. Kevin Kershaw stated that they decreased the size of the garage and mud room and found that they still could not park a vehicle in front of the garage. Ned Berkowitz stated that they would also have to remove the 3 trees. John Michaels stated that they are still limited on the amount of room in front of the garage to park a vehicle in front of it. Ned Berkowitz stated that at least they would be in their own driveway and not on the right-of-way.

John Michaels asked how they would feel if their neighbor in front of them decided to build a garage that blocked their view. Ned Berkowitz stated that they have built a garage since he has lived there and it abuts on his property and he has had no concerns with it. John Michaels stated that he is concerned because not only will they potentially block their neighbors view but they are doing so under a variance. Ned Berkowitz stated that he would be upset if his view was blocked.

Counsel Muller read the following letters:

- 1) Jim Senese, President of Congers Point HOA, in support of the project.
- 2) Jason Saris, President of Performance Marine, in full support of the project.

Chris Navitsky, Lake George Waterkeeper, stated that the Waterkeeper appreciates the comprehensive review by the ZBA specifically for the request of the analysis on alternatives and for reducing disturbance. They request that the Town apply their regulations, particularly the imposition of reasonable conditions on the use of the property and balance of potential negative impacts during their deliberations.

Chris Navitsky stated that the project should result in a no net increase in impervious cover. However the plan is to increase the impervious cover within close proximity to the lake. The WC Planning Department staff notes recommend “discussion to determine if a smaller structure is possible”. Although a smaller structure may not be possible, it is possible to replace some of the driving and impervious surfaces with grass cover.

Additional information should be provided on the stormwater management system. The applicant should be commended for adding stormwater management on the addition. However it does not appear that the plan is coordinated with the site contours on the site plan and it is uncertain how stormwater will be conveyed to the basin. Additional stormwater management should be required for the existing impervious surfaces to bring

the site into compliance with stormwater regulations and reduce water quality impacts.

Chris Navitsky stated that they also would like the ZBA to consider having SPR by the PB. The project proposes disturbance and construction within the critical environmental area along Lake George.

Jody Connelly, stated that she originally objected to the prior proposal because of the trees coming down. She feels that this new proposal is a great location for the garage because they are backing up to the Bolton Landing Marina which is an ugly structure. The garage will not affect the traffic on this street; there will be no more foot traffic than there is now. Additionally the applicants can use either road in the winter time. With regard to the comment about emergency vehicles accessing the area, she stated that there is already a 6' fence in this area. She does understand the Pierson's objection however she does feel that this is the best location on the property. She stated that they could consider not having a second story which would still allow the Pierson's a view from their property since they are higher than the Berkowitz property.

With regard to obstructed views, Ned Berkowitz stated that when they were preparing for their construction one of the areas of concern they addressed was where they were going to park their construction vehicles and trucks. Separating the two properties was a row of 20' pine trees which the Piersons wanted him to take down. Until those trees were taken down the Pierson's did not have an unobstructed view. The view they are seeing now is due to the fact that he removed trees. Additionally there is an elevation difference which would allow for them to have a view.

John Michaels asked if they considered only making this a one story structure. Kevin Kershaw replied yes but they will still have a peak of the roof they are dealing with but it would be lower. John Michaels asked what height is being proposed. Ned Berkowitz replied 20'6". Kevin Kershaw stated that if they were go back to where the Pierson's would potentially put a house it is already 7-8' higher than the ground by the garage. John Michaels stated that there is evidence of the appraisal showing a loss of \$85,000. Ned Berkowitz stated that he is not sure that this was ever classified as lake view lot. It has been vacant for 35 years and had an obstructed view up until he took trees down. Anne Pierson, stated that the pine trees were not 20' tall.

Jeff Anthony asked if there was any concern that the Waterkeeper raised regarding stormwater. Don King replied yes, especially without having more information from Dennis Dickinson regarding contours and the steepness of the driveway. Additionally, at the last meeting the Board shared their concerns about the layout and size of the retaining walls and while this seems to be a better location he is extremely concerned about the devaluing of another property.

David Ray stated that he is also concerned with taking away someone's view. He asked what the height would be if it were just a single story. Kevin Kershaw stated that it would be approximately 16'. John Michaels stated that if they added contours it would help them know if that would make a difference. David Ray stated that it would be nice to see a picture of where a house would go on the Pierson property with a simulated view out with the garage they are proposing.

Tony DePace stated that he feels that applicant needs to make this garage smaller. He does not feel comfortable taking whatever small view the Pierson's may have.

Jeff Anthony stated that the applicant can take the Board's comments into consideration and table the application. The applicant agreed to do so.

Counsel Muller asked if they could provide an idea of whether or not this Board will ever accept a plan for a garage in fairness to the applicant.

Ned Berkowitz stated that he has had the plans re-drawn and the garage relocated to a less obtrusive area at the request of the Board. He has made concessions to put it in this location which is snowier and is also not attached. He did all of this in an effort to meet what he thought were the conditions communicated to him at the last meeting. He reminded the Board that the Pierson's were opposed to the last proposal as well.

The Board requested additional information for stormwater, a grading plan and view shed analysis.

## **RESOLUTION**

**Motion by** John Michaels to table V11-32a pending further information on a stormwater management plan, grading plan and view shed analysis. **Seconded by** Tony DePace. All in Favor. Motion Carried.

**4) V11-43 BOERICKE, RALPH & NANCY.** To alter non-conforming single family dwelling, specifically to add a bedroom and bath above existing garage, seek area variance to alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). Section 186.00, Block 1, Lot 11, Zone RL3. Property Location: 866 Trout Lake Road. Subject to WCPB review.

Ralph Boericke stated that they currently have a 2 bedroom house which is not a problem until they have their family visit. They would like to add a third bedroom over an existing garage with a bathroom. This is a non-conforming structure and the proposed change will not increase the footprint or run-off and it will enhance the property value. The addition will also conform to the colors and architectural style of the building.

Ralph Boericke stated that they are not going up a full 8'; they want a sloping ceiling a will only be raising the elevation by approximately 5' at the rear.

There was no WC PB impact. There were no comments from the public in attendance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Ralph and Nancy Boericke (V11-43) 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 the right place to put this addition.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this will not block anyone's view.
- 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; this is the same footprint so the run-off will be the same.
- 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 Tony DePace 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) V11-44 CALDWELL, SAMUEL.** For the construction of a proposed 32'x 23' sugar shack, seeks area variance for a deficient front yard setback. 100' is required, 70' is proposed. Section 171.00, Block 1, Lot 2, Zone LC25. Property Location: Edgecomb Pond Road.

Sam Caldwell stated that this is a very steep property. He tried to back this up in the property to a reasonable place but it is 70' from the property line which does not meet the setback. There is minimal impact; he will only have to take down one tree. Additionally, the building is well screened from the road. It will be constructed with dark materials and a dark green roof.

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

Don King asked if there was going to be any commercial sales out of the structure. Sam Caldwell replied no it will not be open to the public. He stated that it will only be used seasonally for about a month and half.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Samuel Caldwell (V11-44) 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 applicant has laid it out so that the location is part of the end of an existing road cut which will minimize the removal of any vegetation or creating further storm water issues.

- 2) There will be no undesirable change in the neighborhood character or to nearby properties; it cannot be seen from any where. It is an attractive structure.
- 3) The request is not substantial; it is a minimal footprint on a substantial piece of land.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the proposed driveway is in keeping with the existing driveway and topography. The design will be incorporated to compliment the architectural style of a sugar house.
- 5) The alleged difficulty is self-created, because there is nothing there right now, but this is not offensive any way.

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

**6) V11-45 PERRY, MARK & LINDA.** Represented by Curtis Dybas. For the construction of a proposed 460 sq. ft. one story kitchen, entry and covered terrace addition, seek area variance for **1)** a deficient front yard setback. 75' is required, 71' is proposed; and **2)** to alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). Section 156.00, Block 1, Lot 13, Zones **RM1.3 & RL3.** Property Location: 121 Federal Hill Road. Subject to WCPB review.

Curt Dybas stated that there is an existing paved patio in this area where they are proposing this addition. This one story addition will house a new entry, kitchen and covered terrace. They are dealing with adding to a pre-existing non-conforming structure.

John Michaels stated that the existing structure is approximately 72' from the road. Curt Dybas stated that it is hard to determine how far back they are because of the way it is measured. They measure from the center line of the road and deduct the 25' and there is question as to whether the road is in the center of the 50' right-of-way. They were close enough and they were told to come before the Board.

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

## **RESOLUTION**

The Zoning Board of Appeals received an application from Mark and Linda Perry (V11-

45) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#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 pre-existing structure and they are between 71 and 75' from the road.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this will be an improvement to the farm house.

3) The request is not substantial; it is a minimal addition given the size of the lot.

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, this house is pre-existing non-conforming structure.

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

Now, upon motion duly made by John Michaels and seconded by Don King, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

**7) V11-46 STEWART'S SHOPS CORP.** Represented by Chad Fowler. For the construction of two proposed additions, patio, covered entry and pergola, seeks area variance for deficient parking: 6 additional spaces required, 0 additional spaces proposed. Section 171.15, Block 3, Lot 24, Zone GB5000. Property Location: 5004 Lake Shore Drive. Subject to WCPB review.

Chad Fowler, stated that they are addressing a few problems with their existing building.

The size of the walk in freezer and cooler, which are too small and the reason for the addition to the rear. The second addition in the back is for an additional bathroom, they have a lot of customers that use these bathrooms and often there is a line. The addition will allow them to add another bathroom and enlarge the other one.

Chad Fowler stated that they are also seeking to add some additional seating outside. This is the reason for the parking variance. He stated that they would love to have extra parking but it is not feasible on this lot. Although the parcel looks large, the space behind the building is virtually unusable due to the slope and the way that the building is positioned.

Tony DePace stated that this shop is already creates a traffic hazard in Town. He stated that he is concerned that adding more space to allow people to hang out longer is cause for concern. He stated that if they could add more parking it would relieve the stress on this road. Chad Fowler agreed that they need more parking. However the additional seating and interior changes are not to bring more people in, but to better handle the people that they have.

Don King asked why they couldn't look into moving the seating to the back of the building and provide more parking in the current seating area. Chad Fowler stated that although this is a large parcel the amount of usable space is limited due to the 15' drop-off into the wetlands. He is not sure if it would even be feasible to use much of the back of the building. He stated that is why the additions have been planned the way they are; to avoid the bank.

John Michaels stated that he feels most of the people that are using the seating area are pedestrian traffic coming from the park or town. David Ray asked if they were increasing the retail space inside. Chad Fowler provided a floor plan for the cooler and freezer space. The cooler will be pushed back and would allow for increase space in front of that. However they will be pulling the counters forward, so it ends up being a wash.

There was no WC impact. There was no correspondence.

Chris Navitsky, Lake George Waterkeeper, stated that they are not opposed to the project but do feel that this does provide an opportunity to improve compliance with the Town Code regarding stormwater management. They request that the ZBA apply the Town regulations in particular the imposition of reasonable conditions incidental to the use of the property. They feel that a stormwater management plan should be required to bring the property into compliance. Although the amount of increase of impervious cover may not require a plan under the code there does not appear to be any stormwater management for the over 1/3 acre of existing impervious cover. The use generates high run-off volume with corresponding high pollutant loads. An attempt should be made to reduce

the water quality impacts.

Chad Fowler stated that they currently have an oil and water separator in the parking lot that drains to a dry well so there is some protection and treatment. John Michaels stated that they are just talking about crushed stone and drains around the new additions. Jeff Anthony asked if the applicant would be in favor of adding minor stormwater management to the addition and impervious spaces. Chad Fowler replied that they would be in favor of that.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Stewart's Shop Corp (V11-46) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#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; This is just adding some cooler space to the back which abuts the existing wetlands and an additional bathroom, which might be an environmental plus because people are usually waiting in line and who knows where else they may be going.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the pergola will add to the look of the building.

3) The request is not substantial; compared to the size of the lot.

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 Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) the applicant will incorporate as much minor stormwater management as possible around the building. **All in Favor. Motion Carried.**

**8) V11-48 KENNEDY, SPENCER & HEATHER.** To alter non-conforming single family dwelling, specifically to construct a 12' x 14' enclosed porch, seek area variance for **1)** a deficient front yard setback. 50' is required, 47.9' is proposed; and **2)** to alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). Section 171.06, Block 1, Lot 15, Zone RL3. Property Location: 5 Whitetail Lane. Subject to WCPB review.

Spencer Kennedy stated that they are looking to build a porch and are closer to the right-of-way than what is allowed. This is the only place to put this porch. This will be a 3 season porch for now but they will be making it possible for 4 season by insulating it.

David Ray stated that this is back in the woods and cannot be seen from the neighboring properties or roadway. It will be a great addition to the building and will provide some additional living space.

There was no WC impact. There were no comments from the public in attendance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Spencer and Heather Kennedy (V11-48) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#8 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; it is a minimal request and is pushed back in the woods.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is not visible from other properties.
- 3) The request is not substantial; not for this property.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is self-created, but not in any way 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 Tony DePace and seconded by John Michaels, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

**9) V11-49 KENZIE PROPERTIES, LLC** Represented by Jeff Tennent. **1)** To discuss variance requirements pertaining to a proposed subdivision. **2)** To alter non-conforming structure, specifically to add decks/deck extensions, seeks area variance for **a)** deficient setbacks. Front: 30' is required, 20' is proposed from Route 9N and 15' is proposed from Penny Candy Lane. Rear: 15' is required, 4' is proposed; and **b)** to alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). **3)** For the construction of a proposed garage, seeks area variance for deficient setbacks. Front: 30' is required, 3' is proposed from Penny Candy Lane. Rear: 15' is required, 2.3' is proposed. Section 171.15, Block 2, Lot 51, Zone GB5000. Subject to WCPB review. Property Location: 5023 Lake Shore Drive.

Jeff Tennent stated that this proposal is to make some changes to the existing building; to enhance it physically and economically. He provided a rendering of the building with the additions. They are not changing the footprint of the existing building. They are proposing to add balconies to the front of the apartments and add a sliding door instead of the windows for access.

Jeff Tennent stated that currently there are 4 apartments in the building, one office in the rear and one office on 3 floors on the north end of the building. What he is proposing is to keep the first floor as restaurant/retail space. The front stairs would be taken out. The overflow commercial parking is proposed where it is now, which he previously had an easement on the property but now owns. The second floor currently has 2 apartments and one of the floors from the office and enter from the back. That would remain the same, however the office space would become one of the residences. The upper floor would

have partial residential partial office space. The stairs accessing the apartments and offices would change. The use is the same but is shifting around in the building.

Jeff Tennent stated that since these will now be residences, most people would like a garage and storage, so he is proposing to add a garage with storage above built into the back hill. There would be one garage per unit for a total of four and all access to the residences would be to the back of the building. He has purchased the property to the back and is in the process of a lot line adjustment. He stated that he could provide the necessary documentation to the Board.

Jeff Tennent stated that they would sell the apartments individually and the residents would own and maintain the building in common as an association.

Don King asked if the applicant will keep the commercial space for himself. Jeff Tennent replied that the commercial space would be sold as a business. He stated that he is providing an opportunity to allow someone to buy only what they need.

Jeff Tennent stated this will improve the tax base for the Town because they can tax them individually, the use stays the same and the parking requirements drop because they are moving to more residential space and visually it stays virtually the same and the proposed garage is hidden behind the building.

Pam Kenyon asked how many apartments and how much retail space will exist. Jeff Tennent replied 2 commercial spaces and 4 apartments. Pam Kenyon stated that she has not made any decisions as to what approvals will be needed. This is open just for discussion.

John Michaels stated that the use of this has not really changed and does not have any problems with this application.

David Ray asked if the 1<sup>st</sup> level will always be retail space. Jeff Tennent replied yes. He stated that he would have restrictions on the type of business that could occupy the space since there are residences above. David Ray asked if he will have to move his propane tank in the back for the garage. Jeff Tennent replied yes.

Tony DePace asked what his plan was while they were being sold. Jeff Tennent replied that he would not be able to do anything to the building until he had someone purchase it. He cannot accept deposits or sell anything until they have approval from the Attorney General's office. Tony DePace asked if he will rent them out. Jeff Tennent replied he has strict requirements to who he rents to. He currently has one empty now.

Don King asked if the stormwater is existing now. Jeff Tennent replied yes and they

have found that all of the stormwater from the back of the lot is going into the facility. John Michaels stated that they will probably need a little more stormwater for the garage. The applicant has indicated that he will have the lot line adjustment to the back which will allow for more room. Jeff Tennent stated that they are only talking about the balcony roofs which already has pavement under it. The stormwater that was done previous is currently capturing and treating all of the stormwater to the back of the property now. They will just have to adjust it a little bit for the garage.

Tony DePace asked how far off the north property line are they. Jeff Tennent replied 2.3' which is better than it used to be.

Counsel Muller stated that what is being discussed is a condominium. He read the definition. This a permitted use in GB5000 by Type II Site Plan Review special use permit. He is not sure of the applicants plan but it sounds like he is headed for serious consideration and it should be presented to the right board. He urged this Board not to take action on any items because it will be part of the condominium plan and should not be segmented. Jeff Anthony asked if there are any density issues or requirements. Counsel Muller stated that Jeff Tennent will have to come up with his specific plan before they can go forward.

Pam Kenyon stated that they will need elevation for all 4 sides. She asked if the Board would like to see grading plans. Jeff Anthony replied that he would like to see the stormwater and grading for the garage area because there are no physical changes to the rest of the property. Jeff Tennent stated that he has no problem with that. Pam Kenyon stated that they need to sit down with the interested parties. Counsel Muller suggested not to take any action with either board until they have their meeting.

Jon Wright representing Agnes Nolan, stated that since August 2010 his client has been in litigation with Kenzie Properties, LLC. The litigation has to do with a boundary line issue between Kenzie's northeastern and Nolan's southeastern corner. He provided plans that the applicant submitted which showed differing lines and even a taking over of a portion of her property. He stated that the WCPB also raised the boundary line issue as well. He stated the applicant is now showing that he owns this property now, although he has not received a conveyance or provided evidence to prove otherwise.

Jon Wright stated that as John Michaels has pointed out earlier, when applicants are before this Board seeking a variance they are essentially asking for special treatment. However, he does not feel that an applicant that has been conducting himself like this is entitled to special treatment. The applicant is indicating that he will have a lot line adjustment on the back of his property, but if he were in their shoes he would want to have it in writing.

Jon Wright stated that the plans were rather vague so he does not have a lot of specific objections. However he understands the intent is to potentially sell a portion of the retail space on the first floor. His client is concerned with any increase in the intensity of this use.

Jon Wright encouraged the Board to verify the lot lines that have been provided by the applicant before moving forward.

Jeff Tennent stated that in the original application, Mrs. Nolan was present and indicated that she had no problem with the proposal. Those maps also showed this area as parking spaces. He has pictures that show the fence that Mrs. Nolan put in and shows parking right up to the fence. This 11' x 23' area has been a cloudy issue but has been paved over since 1950 when it was Ray's Turnabout Restaurant.

Jeff Tennent stated that in this area the State came through with a different right-of-way. There are definitely some issues that need to be addressed and they are addressing those. He stated that Mrs. Nolan had the fence torn down last year by Con Burke because it defined his case. However, she made him fix the fence when he constructed the building because they damaged it. The fence goes along the property line and the area has always been paved and used as a parking lot as the pictures show from the Dairy Queen and even before that. There are some issues here but have nothing to do with the building or what he is requesting.

Jeff Anthony stated that he wishes them the best in working these issues out.

There was no resolution for this application. It was discussed at the ZBA meeting and the applicant was instructed to provide more detailed plans so that the Zoning Administrator can determine what approvals will be necessary.

The meeting was adjourned at 8:39pm

Minutes respectfully submitted by Kristen MacEwan