

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, June 19, 2012
6:30 p.m.**

SEQR = State Environmental Quality Review
PB = (Town of Bolton) Planning Board
WCPS = Warren County Planning Staff
APA = Adirondack Park Agency
LGPC = Lake George Park Commission
DEC = Dept of Environmental Conservation

Present: Jason Saris, Tony DePace, Jeff Anthony, Donald King, John Michaels, David Ray, John Famosi and Counsel Michael Muller

Absent: Zoning Administrator Pamela Kenyon

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

Jason Saris asked if there were any corrections or changes to the May 15, 2012 minutes.

RESOLUTION:

Motion by Tony DePace to approve the May 15, 2012 minutes as written. **Seconded by** Don King. Jeff Anthony and David Ray abstained. **All Others in Favor. Motion Carried.**

1. **WALLER, RICH & WAUNEATA, KRONENWETTER, JOHN & MCBAIN, JAY.** In accordance with Section 200-72 of the zoning ordinance, seek to appeal the Zoning Administrator's interpretation whereby determining that no violation exists on the subject parcel as it pertains to the rental of the single family dwelling. This determination was based upon reviewing the definition of business, commercial use, dwelling- single family, dwelling unit, family, hotel, inn, motel, principal building, retail services- commercial, rooming house, tourist accommodations in the zoning ordinance and commercial use found in the latest illustrated book of development definitions. See interpretation/determination dated March 5, 2012 for specifics. The Planning Office does not become involved in the activities that are customarily associated with a single family dwelling such as a wedding, wedding reception, engagement party, anniversary party, social gathering, picnic, family reunion, graduation party, etc. Section 171.10, Block 1, Lot 7, Zone RL3. Property Location: 18 Skyline Drive.

Note: John Michaels recused himself from hearing this application.

Jason Saris stated that there are a lot of people present for this application and encouraged anyone wishing to speak to do so. He asked that all speakers address the Board instead of one another. He also encouraged everyone to stay on the subject at hand, which is about the Zoning Administrator's determination.

Dennis Phillips provided an outline of his presentation to all the Board members which included important evidence that they feel is relevant to the issue. They are appealing a legal determination of the ZA; this is a legal matter in terms of the meaning of the Zoning Ordinance and its definitions.

Dennis Phillips stated that this 19 lot residential subdivision called The Highlands of Bolton was created and approved by the PB in the 1980's. The Highland Castle primarily occupies lot 19. The road system that services this subdivision is entirely a private roadway system. They are not owned by the Town of Bolton or HOA. The roads are actually easements that are overlaid on specific lots in the subdivision. Dennis Phillips stated that the subdivision is zoned RL3 and according to the schedule of use regulations, the only relevant permitted use for the lots in the subdivision is for a detached single family residence. In terms of the definition of a single family dwelling under the ordinance; it 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. As they make this appeal they are focusing on the words "exclusively" and "one family or household". Relative to the one family or household definition they would like to point out that the definition does not say 2, 3, 4 or 10 families, it says only 1 family. They feel that the Zoning Administrator may not have given the words the weight they were due.

With regard to one family, Dennis Phillips stated that Section 200-8 says that a family means "one or more persons related by blood, marriage or adoption, or one or more persons in a permanent and stable relationship and residing as a traditional family unit sharing living expenses, cooking together as a housekeeping unit, sharing expenses for food, rent, utilities and other household expenses." These are all very close family relationships. Dennis Phillips stated that they submit that the people that want to rent the castle, for the most part, are not related by blood, marriage or adoption.

Dennis Phillips stated that they are looking at a public use in a private subdivision. This could also be considered commercial use or business use, but clearly the amount of rental activity that may take place for a residence as a wedding venue there would be a public use of the road system in a private subdivision. He provided pictures of the road system showing the narrow passage way. The travel section is approximately 12' wide which can comfortably allow 1 vehicle to pass. He showed an example of 2 cars trying to pass each other and they cannot do it within the 12'. This roadway is also curved and has steep slopes to work with the contours. The road system is not designed to be a road system for the public, but rather limited to the 19 lots in the subdivision. Dennis Phillips stated that they are not designed to handle the limousines, catering vans and panel trucks. He also does not believe that this type of use of the road was envisioned by the PB when this subdivision was approved.

Dennis Phillips stated that the Highland Castle is a beautiful facility. He provided a bird's eye view of the property which shows that the property is comprised of 3 structures; the main structure which is called the Castle, the gatehouse and a carriage house. In terms of this subdivision lot this is not the typical single family dwelling there is an extraordinary residential dwelling with a couple of out buildings. With regard to the out buildings they have some questions in terms of a 1985 permit that Mr. Lavender obtained from the APA. At the time the Town of Bolton had a height restriction; he is not sure what the permit said however instead of being within the height restriction the Castle was built at 46' which exceeds the APA threshold of 40', which triggered a violation. Dennis Phillips stated that in order to deal with that violation Mr. Lavender went to the APA and

they issued an after-the-fact permit, which had a number of general and special conditions attached to it. He stated that he has read that permit and has included it in their application. He does not know if that after-the-fact permit related solely to the Castle or whether it included the gatehouse and carriage house as well. Dennis Phillips stated that when he searched this permit at the WC Clerk's Office there was no permit or amended permit on file relative to the 1985 violation. Dennis Phillips stated that he was concerned about this and contacted the APA and spoke to their regulatory projects department who indicated that they did not have any record of permit 85-85 or any record of it being filed. He raises this issue because the permit specifically has a special condition that required Mr. Lavender to file that permit and have it recorded in his own name within 60 days or it is considered null and void.

Dennis Phillips stated that when something like this comes before the ZA there is a high level of due diligence required for the ZA to make a ruling as a matter of law relative to the ordinance. They do not feel that she did that with respect to the terms and conditions of this permit, nor do they feel that any permit exists at this point. This raises questions that should be addressed by Mr. Lavender and his Counsel as to what happened. Dennis Phillips stated that assuming it is a valid permit, it makes reference to the Castle 11 times as a single family dwelling, and it also says that no business or commercial activities other than telephone contacts will be conducted on the project site. It says the single family dwelling will be utilized for residential purposes only. It also says that if anything else is going to be done with regard to use and development of the property it requires going back to the APA for further consideration. Dennis Phillips stated that given the APA permit and the Ordinance they do not feel that there is any reading of the permit that would allow the retail use of the Castle as a wedding venue.

With regard to the title to Lot 19 Mr. Lavender, like everyone else in the subdivision, had a deed from the developer which had a number of exceptions and reservations. Dennis Phillips stated that they reviewed Mr. Lavender's deed to see what it said about the right-of-way through the subdivision up to his property. They found language that said "Granting to the party of the second part (Mr. Lavender), a pedestrian and vehicular easement and right-of-way over the road ways as shown on the aforesaid map". That language did not say party of the second part, heirs, licensees, permittees, successors and assigns, it specifically was for the party of the second part which would mean Mr. Lavender and his family, friends or guests. If he rented his house out to the traditional single family they would have a right as well. But there is nothing that says this could be expanded so that the general public could use the private road system to get to the castle.

With this background, Dennis Phillips stated that they make their appeal of the ZA's ruling. If you look at the 1st paragraph of the ruling they were a little bit disappointed because they think that she may have been a little too loose on her interpretation of what Judge Krogmann said in his Supreme Court decision. Dennis Phillips stated that the ZA indicates that the application for declaratory ruling came about because of Judge Krogmann's decision. He stated that Judge Krogmann's decision was appealing a decision of this Board before. Judge Krogmann's decision said that because the ZA denied the interpretation of the Zoning Ordinance that was submitted to this Board on letterhead of the Town. The ZA denied it and disavowed it in a court of law so Judge Krogmann said there was never a interpretation of the ordinance done by the proper party.

Basically he sent it back for the ZA to make a interpretation.

Dennis Phillips stated that they do not feel that the ZA gave due consideration to what Judge Krogmann did find in his opinion. In his opinion he did find that Mr. Lavender was promoting the Castle as a wedding event venue based on the evidence before him. They also do not feel that she gave due consideration to the findings of fact and conclusions contained in the APA permit. Dennis Phillips stated that when he wrote that he did not know that it was never filed. He was looking at it with the force and effect of law but now because it was never filed, the property is still in violation. Dennis Phillips feels that the ZA did not given due consideration on the issue of exclusively as living quarters for one family or household. Instead in terms of this interpretation, the ZA went off on a tour of the zoning ordinance and started quoting things that didn't really have to do with the question before you. The question is whether the use and promotion of the Castle as a wedding venue falls within the definition of exclusively as living quarters for one family or household. Dennis Phillips stated that if anyone that is in the RL3 zone had this type of operation or promotion it would be a degradation of the zoning ordinance and would render residential zones meaningless.

From a legal point of view, Dennis Phillips stated that they find the exclusivity as a major issue. They also look at whether the promotion and use of the Castle as a wedding venue would be a permitted accessory use under the zone, which they do not feel that it is. They also look at whether the use of the Castle as a wedding venue would be customarily incidental to a single family residential use. Dennis Phillips stated that some people may use their home as a wedding venue for a family or friend. However it is not customarily used to make money from it. This is something that is exclusive or private and would not be happening regularly. The Castle is holding weddings and events for people that are not of relation.

Dennis Phillips stated that the Castle has been promoted publicly, he provided 11 different internet citations promoting it as a wedding venue. He stated that it raises the question as to where Mr. Lavender goes during the time that the Castle is being used. He believes that he stays in the gatehouse, which has both kitchen and sleeping facilities. He also believes that there is an independent sewer system. If it does have an independent kitchen, it cannot be considered a guest house. He stated that there is also sleeping quarters in the carriage house but no kitchen facility. Dennis Phillips stated that based on information and belief, Mr. Lavender stays on the premises which would transform this property into a multi-family use because there is more than one family using the property. Upon information and belief Mr. Lavender's son uses the gatehouse as a summer residence which would make it 3 families, which would not be allowed in this zone.

On June 4, 2010, Mr. Lavender was interviewed by "The Examiner". In that interview he indicated that his goal was to offer his private estate for small and intimate wedding events. He also went on to elaborate on what was a small and intimate by saying they were turning away the larger wedding of 150-200 people or more. So based on that, if you are under 150 people Mr. Lavender would consider it a small intimate wedding. In the March 2012 Chronicle, Mr. Lavender indicated that he rented out the house 4 times in 2010. He also stated that one rental was for a function for the American Bar Association. Dennis Phillips stated that he is a member of the ABA

and is not related by blood, marriage or adoption and does not feel it would be considered as a use of a single family residential that would fall within the exclusivity doctrine or one family doctrine.

Dennis Phillips stated that they believe there is an upcoming wedding in April 2013; they know this from the potential bride's blog. They know that from the website of the Castle itself, as of 2010, there was a representation that the Castle was best suited for 75-100 guests utilizing the outside or covered terrace reception room. Tables could be set up in the great hall for smaller more intimate receptions of 36 guests. The Castle website also advertised intimate weddings, small receptions, rehearsal dinners, engagement photos, wedding photos, renew wedding vows, romantic getaways, corporate meetings, special events, honeymoons and anniversaries. The promotion was for uses that were not exclusively related to one family unit.

In January 2010 one website talks about taking a bunch of people to pull off a successful wedding. It says "Our recommended Lake George wedding professionals can work together as a team to provide the most memorable and unique wedding of your dreams. Choose your wedding planner, caterer, wedding cake baker, florist, music, videographer, photographer, salon and spa services." Dennis Phillips stated that this is not just come up and enjoy the Adirondacks it is an invitation to have a public party, which violates the exclusivity doctrine.

Dennis Phillips stated that the Castle also has a Facebook page with 1,387 friends. As they looked at the "friends", over 70 were directly related to wedding event or wedding industry. As recently as June 15, this property is being promoted as a wedding venue. He stated that when you look at the pictures on the site, the people in the pictures may be related to the Lavenders, however the tag lines are not personal, it just has "bride and groom" or "couple". It doesn't take much imagination to see that this is being promoted as a wedding venue when it even says that it is the perfect wedding venue.

Dennis Phillips stated that this a very expensive venue, Mr. Lavender is charging \$2,000-3,000/night, which seems to indicate that it is more than just a bed and breakfast. This doesn't seem to fit the exclusivity.

Dennis Phillips stated that they also looked at the outside trade and business promotion with regard to the Castle. They found that a lot of businesses and people advertise that they can provide services at the Castle. Longfellows put it in the same category as other major wedding venues. It is being treated as a commercial venue by outside vendors. Adirondack Weddings talks about it being an intimate setting for a perfect Adirondack wedding. There were 7 websites that link to the Castle as being a wedding venue. One such website called eventective.com advertised a reception capacity of 100 people at the Castle and put together a format banquet facility so you could see the seating arrangement.

Dennis Phillips stated that he does not agree with the thought of not looking into how people use their homes. From a legal interpretation they need to know what is allowed in a particular zone. What has been presented tonight are not residential uses. On June 30, 2011 there was loud music at the Castle, with passenger vans and stretch limos going up and down the road many times and

traveling quite fast. On September 16, 2011 a wedding was held at the Castle and on August 26, 2011 Fort William Henry used the Castle as an off-site wedding venue.

Dennis Phillips stated that if they look at the facts applied to the Zoning ordinance, there are permitted uses, permitted accessory uses, Type I uses and Type II uses. Permitted uses in this zone are for single family residential purposes for one family. There are some accessory uses, such as the guest cottage. He stated that they could not see this falling into a Type I use. However if it could fit Mr. Lavender would have an opportunity to go before the PB to get a special use permit. Likewise he could also try to fit this in Type II use but again would have to go before the PB. If he wanted a use variance he would need to come before the ZBA. Mr. Lavender has many avenues to ask for this permission.

Dennis Phillips stated that Section 200-14, states that any use that is not a permissible use by right, or by Site Plan Review in a given zoning district or which is not an accessory use to said permissible or Site Plan Review use shall be a non-permissible use and shall be deemed prohibited in that zoning district. There is language of prohibition in the ordinance. Based on the facts you cannot fit a wedding venue, open to the public, into the RL3 zone. Likewise for an accessory use.

Dennis Phillips stated that in conclusion they feel the ZA missed the facts on this. She missed the uses and promoted uses and the perception of what the Castle is. He stated that his clients and others in the neighborhood purchased their homes in the RL3 precisely because the attributes associated with property being used for one family and because their children and families are using the neighborhood. They feel the ZBA can render a decision by reversing the ZA's interpretation and that it is permitted by the zoning code. They do not see that Mr. Lavender should be allowed to continue his business when it is detrimental to the others in this subdivision.

Jason Saris stated that a few items, such as potential other violations, are not relative to the discussion tonight. However he would like to hear his thoughts about whether the ordinance is specific enough to prohibit these activities. Dennis Phillips focused on the exclusivity, however the ordinance does not have a time frame established for rental of a single family dwelling that establishes a residence there. He asked what is the difference with someone renting for a night to have a wedding and renting for a year and having a wedding during the time frame. Dennis Phillips stated that he knows that it is very common for residents to rent out their properties. However normally those rentals are limited in terms of how many people are there. He provided a contract of a type Lake George rental contract where there is a provision about how many people. When he looks at the definition of single family dwelling and one family and he does not see how one can conclude that what is happening at the Castle is the same thing. It is not uncommon to have weekly or monthly rentals on Lake George, however the people that are renting on a nightly basis are in the hotel and motel industry. Even though this has a very high nightly rate, it still has a nightly rate and most private residential people are not renting out their homes to strangers on a nightly basis. They are dealing with an interpretation that has led to a very strained definition of the zoning ordinance.

Jason Saris stated that his point is that are they looking at an inadequacy in the ordinance because it

is not specific. He stated that Counsel Muller has reminded them that when they are pondering the ordinance they need to ask themselves if it is the least restrictive, reasonable interpretation. He asked how that plays into this. Dennis Phillips stated that looking at the ordinance the permitted use is a single family residential and looking at the accessory uses it does not include a wedding venue. The Lavenders are not in the permitted or accessory use definitions which would put them in the Type I or Type II but that is a PB issue and otherwise they would be prohibited. Jason Saris asked if having his son's wedding at his house would be considered prohibited. Dennis Phillips replied no it would be a use customary and incidental to the ownership and control of a single family residential. If you were to open your house to the public for weddings and get paid for it would be considered a commercial public use.

Jeff Anthony asked if the APA permit doesn't exist does the building rightfully exist and can anyone ask for or promote this building if it does not rightfully exist. Dennis Phillips replied that it exist subject to a potential violation that would put a freeze on the use and enjoyment of the property until the violation has been resolved. There was an attempt to resolve to violation but there was never any follow through on it. He does agree that this does not have anything to do with the interpretation. However with regard to the gatehouse and violation that may not relate to the interpretation depending on where Mr. Lavender goes during these events. He would also have to see where this fits into the Town of Bolton where there is an approved APA plan.

Chris Langlois, representing Mr. Lavender, provided materials for the Board to review. He stated that the ZA provided her interpretation, her conclusion was that nothing in the code, as written, precluded Mr. Lavender from renting his property and doesn't control or regulate that activity. In reviewing that determination there are a few principles that the Board should keep in mind: 1) Mr. Lavender, like anyone in the Town, is legally entitled to use his property for any lawful purpose not expressly prohibited or regulated by the code, 2) zoning regulations are to be strictly construed against municipalities and if there was any ambiguity or doubt as to the applicability, it should be resolved in favor of the property owner, 3) as ZBA members it is their job to interpret the code, not legislate, amend or modify the code or re-write it to achieve a particular outcome. There was some reference to Judge Krogmann's decision, he specifically at the end of his decision, added a footnote that said "legislation through this process of the Zoning Administrator is not a substitute for the Town Board amending, modifying or revising the Town Code to deal with any issues that affect the Town as a whole." and 4) They owe a certain degree of deference to the ZA and her interpretation of the code. This is her job and role, she has done that in this case because it is a thorough interpretation. He stated that Dennis Phillips seems to take issue with only one section that she considered which is the definition of single family dwelling. He feels that her decision should be given the respect and upheld unless there compelling evidence otherwise.

With regard to Jason Saris' question about how this is different from someone renting for a longer period of time. Chris Langlois stated that Mr. Phillips had a difficult time addressing this. He stated that he focused in on exclusively and family, he omitted a significant part of the definition. A single family dwelling is a detached building, not including a mobile home, of one or more stories about main grade level which is designed or used exclusively as living quarters for one family or household. There is no dispute that this property qualifies as a single family dwelling.

There was also some distinction between what a property owner could and could not do on their property, he submits that nothing in the code specifically regulates activity on their property. Nothing in the code makes a single family dwelling lose the character simply by renting it to a third party. Nothing in the code prohibits someone renting a property to have a function. He provided case law regarding a municipality that tried to regulate the rental of a home for one week intervals. It was determined that the rental does not change the characteristic of the property and turn it into a tourist accommodation. Mr. Lavender's property is a single family dwelling when he is there or when there are guests there. Nothing in the code specifically regulates what a renter of property can do during the period of rental. All Mr. Lavender does is transfer his interest in the property to third parties and those third parties are free to use the property as they see fit which is not inconsistent with the code. At last year's meeting, Town Counsel even admitted that the code does not regulate rentals in any way.

Chris Langlois stated that the ZA concluded that under the code, it does not fall into a commercial use because it does not involve the sale, rental or distribution of goods, services or commodities. Based on the code it cannot be put in that category or classification. In the last 2 years, Mr. Lavender has rented his property 8 times, 5 of which have not had a wedding use. With regard to the promotion or listing the property on-line making this a commercial use, Chris Langlois stated that it does not matter for the analysis of the code whether the use is advertised, it does not make it impermissible.

With regard to the APA permit, Chris Langlois stated that it probably wasn't addressed by the ZA because she was never provided with that information and even if it were provided it has no bearing on the interpretation of the code.

Chris Langlois understands that there are narrow roadways, but the ZBA is not being asked to grant a variance. In a variance analysis you have to look at competing interests, impacts, hardships, etc. The issue here is whether the code does or does not, as written, regulate Mr. Lavender's rental of his property. These impacts would be the same if Mr. Lavender was having friends over for dinner or whether a neighbor was having an event. Mr. Lavender has made attempts to make sure that his rental of the property minimizes the impacts to the greatest extent practical.

Chris Langlois stated that he has not been able to find a compelling error in the ZA's interpretation. She did a thorough review of the code and determined that the code does not attempt to regulate incidental uses of residential real property including those uses that come about by reason of a rental. He feels that this Board should uphold her determination and apply the code as written. If there are concerns with the code it should be addressed at the correct level which is at the TB.

John Lavender stated that his house has been mentioned as a facility, it is a home. There is no retail use and is not open to the general public. It is not a wedding hall, he has made his home available for enjoyment and use to a single person. He stated that there are restrictions within his rental agreement and one of those restrictions is that they respect his house and leave it as they found it. He stated that they allow the renters to bring family and friends but asks that those guests leave by 9pm. He is opening his home approximately 4 times a year for only certain people. John

Lavender stated that he has 2 bedrooms which allows a maximum of 4 people to stay the night. The rental rate is high which is probably why he only rents it 4 times a year. Unlike Dennis Phillips indicated, he only rents to one person.

John Lavender stated that there the word commercial has been used a lot. He is simply renting his home and what the renters decide to do is up to them. He is not holding events every night or every week. He stated that the average number of guests that have been at the house is 25 people.

John Lavender stated that there has been a lot of things going on for the past 2 years; a cease and desist, being falsely accused of opening a restaurant, serving alcohol, etc. He would like to see some changes and that everyone be honest. He would like to reach out and be a better community. He stated that Pam Kenyon has a lot of integrity and stood her ground. He commends her for not backing down from what she believed in. He stated that Kam Hoopes lost his position over this issue which was very unfair. He asked the ZBA to do the right thing and to support the ZA.

Jason Saris stated that the Bar Association get together, it does not seem to fall under the term "family". He stated that if a corporation would like to rent the space for an event or party, he asked if the ordinance allows for that. Chris ..stated that under the ordinance if Mr. Lavender was a member of the Bar Association and he volunteered his house to host their annual meeting he does not believe there is anything in the code that would prevent him from doing that. So if he rents his property to someone else and they want to do exactly the same thing that Mr. Lavender could do himself as a owner of property, nothing in the code says he can't.

Jeff Anthony asked how Mr. Lavender can lease it to Fort William Henry as a single person. John Lavender stated that he never rented his home to the Fort William Henry. He stated that a lot of what Mr. Phillips stated is incorrect. Jeff Anthony stated that he would like to hear some follow-up from Dennis Phillips with regard to these allegations.

Wauneta Waller, stated that the ABA was done through the Sagamore hotel, which would be commercial. She stated that Mr. Lavender wants to enjoy his property and that is all they want to do as well and they cannot do that with limos and delivery trucks on their road. She stated that even though it has only been rented 4 times a year it has the potential to be rented more often.

Jay McBain stated that this has been going on for a couple of years. There are passenger vans from the Fort William Henry delivering passengers to the Castle. There are photographs that have been submitted to this Board showing the amount of people using this home and roadway. Once the Lavenders offer their services, it becomes a business. They offer information about catering, photography, etc. If this was just a couple renting the home it would be different. He has to see everyone travel over his property. He stated that he owns the liability of those roads and he has a major problem with that.

Jay McBain stated that his family and neighbors are subject to the traffic on the roads. They are advertising for more than just one or two people. He has recruited other businesses to be part of his venue. He stated that third parties have an obligation to stay within the code which he feels are

being broken. This could happen in every development they have. He stated that it is not an intimate setting to have 75-80 people. This house was not designed or approved to have parties like this. Jay McBain stated that his well and property are downhill from this and he has to worry about failure of his septic system. He asked the Board to look at all the evidence presented tonight and previously to make their decision.

Rebecca Smith, neighbor, stated that the past 2 years have been very disappointing and stressful. She wishes that the neighbors could have had a meeting to discuss this issue. She feels torn because she knows that the Lavenders love this area and their home. If he needs to rent his home for money she would hope he could just say that. Their neighborhood has had a hard time getting people to contribute money to fix the roads, more wear and tear on the roads would cause them to be redone sooner than later. Rebecca Smith stated that she feels that Pam Kenyon and Kam Hoopes have been placed at blame. She is also concerned that if you take away the ability for people to rent their homes, you will affect a lot of other people in town. She hopes that this can be resolved peacefully.

Bob Williams, stated that he bought his home in a residential area. He agrees that Mr. Lavender has the right to rent his home. However he also has the responsibility to know what is happening at his property. There are a lot of legal issues here. He feels that if there is an accident, they will all be liable. He does not pay to maintain that road for one of his neighbors to make money off of it.

John Kronenwetter agreed with Bob Williams and Jay McBain comments. He does not feel this is customary use of the property. He stated that recently he had someone stop him on his property to ask where the Castle was located while his children were outside. While they were sitting there on the roadway they started to go backwards, this also happened with a new resident of the subdivision. He feels that this creates undue risk to everyone.

Chris Navitsky, Lake George Waterkeeper, stated that they have concerns with the precedent that may be set with regard to the determination. They are not looking to restrict anyone's right to use or rent their property but they feel that it should not be done at the sacrifice of others. With regard to all the discussion about the code, the one thing that he didn't hear was the purpose and objective of the chapter which is to promote the health, safety and general welfare of the community and to protect the property values and aesthetics of the community by channeling and directing growth and regulating and restricting the height and number of stories on buildings. It further states the purpose and objective of this chapter to ensure the optimum overall conversion, protection development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Adirondack Park and to preserve the character and beauty of the Adirondack Park setting to the benefit of the community and to retain the natural vistas of the Adirondacks and of Lake George to the benefit of the residents and visitors. Chris Navitsky stated that there is something in the code that they can point to and raises the question of the use. The statement that the ZA does not get involved with activities customarily associated with single family dwellings is concerning, it should be a major purpose when the use has a detrimental impact to the community and environment.

Christopher Shue, real estate broker, stated that he is not associated with this matter in any way. However he does feel this is a very slippery slope to tell people how to use their property. He understands the concerns of the applicants. However it should be addressed at the appropriate place in Court if they have proper grievances. He feels that the applicants have shifted the burden of their countersuit to the Town. With regard to Mr. McBain's claim of owning the roads, he stated that he has incurred that liability on his own and that was a voluntary act. He does not feel that you can tell people what to do with their property and you cannot regulate rentals. This area survives on the rental business.

Bob and Carol Hayes stated that they support the appeal. If this is not approved, he feels they are allowing anyone to do whatever they may want to do in residential neighborhood. Mr. Lavender has shown no regard to any of the 16 other families.

Walt McConnell stated that he retired here a few years ago. He stated that in small towns he feels that it should be done as neighbors. The community should work together with give and take. It should be done sitting down as neighbors and not in courts of law. He stated that this would never happen in the Anchorage, he hopes that this can be worked out neighbor to neighbor. Walt McConnell stated that John Lavender opens up his house for other things. Recently they had a fund raiser for a man in the community that has cancer and raised several hundred dollars because he was willing to share his house.

Zandy Gabriels raised the issue that the county had with the bed tax in trying to define what occupancy was and how taxes would apply. They defined cottages and bungalows however an omission was found in the legislation.. Initially if you had 4 or less cottages or bungalows you didn't have to collect tax. However the Treasurer found a loop hole which he closed. If a property owner operates 5 non-housekeeping cottages and during portions of the year rent them for a minimum of 3 nights, it was considered transient would have to collect occupancy tax. He stated that the Treasurer had the authority to interpret the intent and spirit of that law to do this and he suggests that the Board has the same ability to do interpret the intent and spirit of the law as it applies to this time period of renting.

Lori Walker spoke on behalf of John Lavender's character. She stated that the Lavenders opened up their home for youth groups out of the kindness of his heart. She stated that John Lavender has also volunteered his time to help a person in need. She doesn't feel that there has been a lot of open dialogue with the community and neighbors. She encouraged them to work together as a community.

Bob Williams stated that they would not be here tonight if John Lavender approached them in the first place. They didn't hire attorneys first and they did not start the lawsuits. They tried to square it away and they were forced to hire an attorney. They can all work together but it requires everyone.

With regard to the roads, Willie Bea McDonald stated that when Dave Tennent subdivided the

property it was not the same as it is today. There wasn't the rules and regulations that they have today. The roads were not separate entities, everyone's property went to the center line of the road so everyone owns part of the road. They were private roads strictly for the use of residents and their families. Willie Bea McDonald stated that no one has been compensated for taking over the road. With regard to selling property she would hate to be lying to people all these years about the zoning and allowed use of the zoning. She stated that the Board needs to be aware of the intent of the zoning.

Jason Saris closed the public session of the application.

Dennis Phillips stated that the details about the Fort William Henry using the property on August 26, 2011 was provided by Mr. McBain who observed the vehicles from the Fort William Henry going up and down the road. He stated that they may have falsely assumed that it was a rental with the Fort William Henry. He added that in the definition of single family dwelling they have been focusing on exclusively and one family but they missed the words living quarters. By advertising corporate events, cocktail parties, etc, it would violate the living quarter of the definition.

Chris Langlois stated that Mr. Lavender has an attorney due to the Town suing him. It is unfortunate that it has turned into this but he has responded to litigation brought upon him.

Jeff Anthony stated that no matter which determination is made it has no bearing or reflection on the ZA's capabilities and dedication to her job. She does a wonderful job and they all respect that. He feels this boils down to one particular fact, which is intent in use. If he rents his home he is renting it to use a home. Those individuals could hold a wedding or party there. However he does feel that it crosses the line to promote the use of having events. Jeff Anthony stated that if they do not support this appeal there is nothing that can stop Mr. Lavender from going from 4 rentals a year to 365 rentals. There is nothing in the code to restrict that. The provisions in the zoning law are simple and clear and there is relief in the zoning law to get a special use permit. All of the concerns mentioned tonight would be reviewed in the appropriate forum. The intent of the zone and all residential zones need to be preserved, allowing this type of activity in these zones is not consistent with the zoning law. He feels that this would set a precedent that would open up the possibility of happening elsewhere. He has reached these conclusions very carefully over the past year and half and has reached them on his own. Jeff Anthony stated that he did ask some colleagues to review this file and his conclusions to see if he was off base and they both came back with the same conclusion.

Jason Saris stated that this is difficult and just being here tonight shows that the TB should look at this ordinance. Ultimately what is done here tonight might not be the final say anyway. He struggles with the part of the law that says that it needs to be the least restrictive, reasonable interpretation. They have a ZA to make a interpretation and for them to overturn it they have to say that it is unreasonable to accept. He stated that he is not so sure he likes her interpretation but if the ordinance allows for it than it becomes a legislative act to fix that. He is not sure if this interpretation is unreasonable. Jason Saris stated that they also need to consider that upholding Pam's interpretation does not rule out the that there may be certain activities that are in violation.

John Famosi stated that if they let the interpretation stand it opens up the possibility to allow for people to use their property however they feel. There is a distinction between residential use of a personal residence and a commercial use; he feels one is a violation and the other is not. He feels that certain activities could be allowed. Jason Saris stated that they are not there to compromise but rather make a determination on the ZA's interpretation.

Tony DePace stated that they can make a determination of what is happening up there. Jeff Anthony agreed that there is enough information that allow them to come to a reasonable conclusion.

RESOLUTION

Motion by Don King and Seconded by Jeff Anthony to propose the following:

The Zoning Board of Appeals has given consideration upon the submission of substantial evidence, including all prior proceedings relevant to the issue. This Board has heard the Zoning Administrator and given due consideration to her reasoning, and after a full public hearing of all issues relevant to the code interpretation of March 5, 2012, such hearing including the opportunity to consider and deliberate upon many statements from the public and interested parties on all sides of the issues, the following constitutes a **RESOLUTION** proposed upon findings of fact and conclusions of law.

PROPOSED FINDINGS OF FACT

- 1) The premises of John Lavender, commonly known as the Highland Castle at 18 Skyline Drive in the Town of Bolton, Warren County, New York, also known as Tax Map Parcel 171.10-1-7, is principally improved by a single family detached residential structure situated entirely within the RL 3 zoning district as designated on the official zoning map for the Town of Bolton.
- 2) The principal dwelling on the premises is occupied by John Lavender and Yvonne Lavender as a single family residence.
- 3) John Lavender and Yvonne Lavender offer and advertise their single family dwelling as available to the public as a venue for private parties and social events. By contractual arrangement with third parties, in exchange for payment of a fee paid to John Lavender, the owners of the single family residence permit the third party to utilize the dwelling for the specific purposes of holding weddings, wedding receptions, engagement parties, anniversary parties, professional gatherings and similar social events. John Lavender and Yvonne Lavender do not host such events as their personal, family or household event and they allege that the third party in the contractual arrangement who has paid a fee to hold the event at the dwelling is the host.
- 4) John Lavender and Yvonne Lavender allege that the use of the premises for the described events is by virtue of an arrangement by which they lease their single-family dwelling to a third party, who

during the tenure of their event, is merely a private tenant hosting the described events. As alleged by Lavender, the third party pays a fee for the event and thereafter, the third party is has permission of the owner of the residence to host the event as a rightful exercise of a tenant's occupancy rights which should be considered customary and incidental to the tenancy.

5) By written interpretation/determination dated March 5, 2012 the Zoning Administrator determined "that no violation exists on the subject parcel as it pertains to the rental of the single family dwelling. This determination was based upon reviewing the definition of business, commercial use, dwelling – single family, dwelling unit, family, hotel, inn, motel, principal building, retail services-commercial, rooming house, tourist accommodations in the zoning ordinance and commercial use found in the latest illustrated book of development definitions."

6) Pursuant to Town Law Section 267-a5(b), an appeal was timely filed with the Zoning Board of Appeals by Richard and Waunita Waller, John Kronenwetter, Jay Mc Bain, and others, challenging the Zoning Administrator's interpretation/determination of March 5, 2012.

CONCLUSIONS OF LAW

1) The primary residence of John Lavender at 18 Skyline Drive, in the Town of Bolton, Warren County, New York and situated on Tax Map Parcel 171.10-1-7 in the RL 3 zoning district in the Town of Bolton is improved by a single family detached dwelling, occupied by the owner John Lavender and his spouse, Yvonne Lavender, and situated upon a residential parcel in a residential subdivision of lands and adjacent lands similarly developed and occupied by single family detached dwellings.

2) The Town of Bolton Zoning Code section 200-8 provides a definition of DWELLING, SINGLE-FAMILY as "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."

3) The arrangement by agreement, contract or otherwise of a single family detached dwelling situated in an RL 3 zoning district between the dwelling owner and any third party who pays a fee to the owner for the use of premises for the event or otherwise provides a financial benefit to the owner of such premises in exchange for the exclusive use of the owner's single family detached dwelling for the primary purpose of hosting a private wedding, wedding reception, business seminar, professional or social gathering does not constitute a customary, reasonable or incidental use of the premises appropriate to single family detached dwelling occupancy as such arrangement, in actuality and potentially, constitutes excessive and unreasonably intensive use of the premises inappropriate to be considered as residential occupancy contemplated by the Bolton Code definition of DWELLING - SINGLE FAMILY.

4) The actual and potential use of such residence by the owner under an agreement with successive third parties who, by agreement, contract or otherwise with the owner, will utilize the owner's single family detached dwelling in any residential zoning district and within a neighborhood that is predominantly developed and improved exclusively by other single family detached residences creates unreasonable circumstances inappropriate to the purposes of a residential zoning district in that as demonstrated by proofs presented at the hearing include

negative impacts of traffic, excessive parking, outdoor noise, litter and crowd control circumstances significantly inappropriate to the character of surrounding properties and adjacent residential neighborhoods.

5) That the Zoning Administrator's determination /interpretation of March 5, 2012 is in error and is not based upon a correct interpretation nor a proper application of the requirements of the Town of Bolton Zoning Code. Such determination/interpretation failed to consider sufficient relevant fact finding, which at a minimum requires investigation and inquiry into the substance of the agreement between the owner and any third party who is alleged to be hosting a private event in exchange for the payment of a fee to the owner. The Zoning Administrator's inquiry before making a determination/interpretation should have, at a minimum, extended beyond the owner's representations that the circumstances are simply a landlord/tenant relationship as it is apparent upon the conduct of this hearing that such allegation is without merit as substantial evidence has been presented on this appeal demonstrating that the primary purpose, if not the sole purpose, of the arrangement is an agreement to utilize a single family detached dwelling as a venue for reoccurring private events constituting the equivalent of a use similar to commercial enterprises that are customarily appropriate in hotels, restaurants and places of public assembly as opposed to a private residence.

6) It is an error within the Zoning Administrator's determination/interpretation of March 5, 2012 to fail in making reasonable inquiry into the contractual relationship between the owner of the residential premises and the arrangement by which a third party host is authorized by the owner to host an event in that the Zoning Administrator did not make thorough inquiry or investigation beyond personal inquiry with the owner. Upon this hearing, it is evident that the owner's allegation that a contractual relationship with the host for an event is merely a landlord/tenant relationship is not substantiated by the facts and as well the owner's explanation challenges logic and exceeds credibility. The record upon this hearing demonstrates that the owner presents a substantial marketing and advertising presence on the internet offering the Highland Castle as an exclusive private setting for an intimate wedding, wedding reception or similar event and promotes such use as the primary purpose of the relationship between the owner and the third party host. Notably, the owner's advertising and marketing presents a schedule of fees that are oriented around the type of event, the duration of the event, where typically a landlord relationship is an agreed fee as rent for

an agreed period of duration of tenancy. Fundamentally, substantial evidence upon this hearing satisfactorily demonstrates that the third party host specifically rents the owner's single family detached dwelling for the primary purpose of hosting an event. The Zoning Administrator's determination/interpretation wholly failed to consider such essential aspects of the relationship between the owner and the third party host, and in failing to do so and as a consequence thereof, the Zoning Administrator's determination/interpretation of March 5, 2012 is in error.

7) In this instance, the use of a single family detached dwelling at 18 Skyline Drive in the Town of Bolton in an RL 3 zoning district as a premises available to the public as to be utilized on a reoccurring basis by any member of the public as entering into an agreement with the owner to pay a fee in exchange for permission to utilize the owner's residence as a venue for hosting a private wedding, wedding reception, business seminar, professional or social gathering or and similar event by which the owner receives compensation in exchange for permission to use the premises primarily for such event constitutes a use which is neither incidental to, ordinary nor customary to the reasonable occupancy of a single family dwelling in an RL 3 zoning district, nor is it a use appropriate to protecting and preserving the character of the adjacent residences as such use constitutes a substantially negative change in the character of surrounding residential neighborhoods.

8) In addition to determining that the Zoning Administrator's interpretation of March 5, 2012 is in error, it is appropriate to state that the issue presented is more than a pure legal interpretation of the underlying zoning law in that proper application of the zoning code by the Zoning Administrator is also appropriately addressed. In this instance, the Zoning Administrator's determination of March 5, 2012 is in error in that proper application of the zoning code in an RL 3 zoning district should appropriately include further inquiry as to the actual use, intensity of use, impacts upon the neighborhood character and the essential elements of the type of consideration ordinarily given to such activities in an RL 3 zoning district. It is proper to comment that within the RL 3 zoning district and pursuant to the table of uses specified in the zoning code, there may be circumstances by which the subject premises could be utilized for the purposes considered in that the Residential Low Density Zoning District permits by Type I – Uses Permitted by Special Use Permit “Commercial or agricultural service uses involving more than 2,500 s.f. in APA Rural Use areas and more than 5,000 s.f. in APA Low Intensity Use areas”. By virtue of the Zoning Administrator's determination of March 5, 2012, in finding no requirement that Lavender's use of the premises would require being subject to a Planning Board site plan review, such determination is in error as proper application of the code does require a Type I Site Plan Review to substantiate the appropriateness of such use in the zoning district so as to allow a public hearing and consideration of those issues that would be attendant to such procedures, including the appropriate SEQRA analysis relative to matters of negative impacts, if any, to the premise, adjacent residences and the surrounding neighborhood.

9) Upon this Resolution determining that the Zoning Administrator's determination/interpretation of March 5, 2012 is in error and further that the determination of this Board upon hearing the appeal is that the use of a single family detached dwelling by John Lavender is not a type of use embraced within the customary, incidental and ordinary reasonable uses of a single family detached dwelling in an RL 3 zoning district, it is important to emphasize that the Zoning Board of Appeals determination, upon this appeal, in no way impairs nor is it intended to be construed as prohibiting an owner or an occupant of a single family detached

dwelling in any residential zoning district in the Town of Bolton from hosting any personal or private event at their residence as it is correctly stated that the Town of Bolton Planning Office does not become involved in the activities that are customarily associated with a single family dwelling, such as a wedding, wedding reception, engagement party, anniversary party, social gathering, picnic, family reunion, graduation party, etc. as such activities, in order to be reasonably considered customary, incidental and appropriately associated with a residential use do not include a "for-profit" aspect nor a commercialization of such activities as a regular and reoccurring venue for such events as such distinction may be reasonably made based upon the substantial evidence presented in this appeal and as supported by the facts determined by this Board.

Don King, Jeff Anthony and John Famosi in favor. Tony DePace, Jason Saris and David Ray opposed. No decision.

Jason Saris; "Let's take a five minute recess.

Chris Langlois asked who prepared the statement and when was it prepared.

Tony DePace stated that he wanted to make his own motion that was not written and prepared for them. He is basing his decision on what has been presented.

Motion by Tony DePace to appeal the Zoning Administrator's interpretation based upon the facts presented tonight and based upon the intended use of this property. From what was heard this evening and the advertising that has occurred, the use of the home and the use of the road by non-resident vehicles he feels the property is being used as commercial use. The use changes the character of the neighborhood. There are 16 other houses who didn't buy into this neighborhood for commercial use. This is and always has been a residential area. His conclusion is that the Lavenders are using the Castle for commercial business; they are renting the property on a daily basis and he cannot think of anything other a daily basis rental as a business. This motion is to overturn the Zoning Administrator's determination based upon the facts presented and heard tonight. **Seconded by** Don King. Jason Saris and David Ray opposed. **All others in Favor. Motion Carried.**

2. **V12-11 BOGERT, MICHAEL.** Represented by Justin Remington. To alter pre-existing non-conforming single family dwelling, seeks area variance for **1) Deficient setbacks. Shoreline:**

50' is required, 23' is proposed from Trout Lake Brook; **Front:** 30' is required, 26' is proposed; **Rear:** 15' required, 5' is proposed and **2)** To alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). Section 186.14, Block 1, Lot 70, Zone RCH 5000. Property Location: 60 Beckers Drive. Subject to WCPB and APA review. *NOTE: This is an amendment to V11-33 approved on 9/20/11.*
Note: Item V12-11 was tabled at the applicant's request.

3. V12-12 DANIELS, JOHN & CONSTANCE. Represented by the LA Group. To alter pre-existing non-conforming single family dwelling, specifically to add a patio, spa, reflecting pool, stairs and reconstruct retaining walls, seeks area variance for **1)** a deficient shoreline setback. 75' is required, 63' is proposed; **2)** Length: 120' is allowed, 152.75' is proposed; and **3)** to alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). Section 213.05, Block 1, Lot 9, Zone RM1.3. Property Location: 4110 Lake Shore Drive. Subject to WCPB and APA review.

Note: Jeff Anthony recused himself.

Mike Harcourt, LA Group, stated that this was previously approved on April 20, 2010 which included variances for the expanded building including deficient shoreline setback, height and alteration to a pre-existing non-conforming structure. In general these variances have to do with the landscaping improvements. The home is a pre-existing non-conforming structure and even an at grade patio adjacent to the house needs a variance because it is considered connected to the house. They feel the improvements are a benefit to the environment and aesthetic quality of the project and community.

They are reducing overall impervious coverage currently on the site by over 3700 sq. ft by removing an existing asphalt driveway. They are increasing the capacity of the previously approved stormwater management facilities by over 20 cu ft. They are also adding significant planting and landscape improvements throughout the site. The core of the project is the patio, which includes a spa, reflecting pool and BBQ area. The patio will be built at grade, it will not be visible from the lake. He provided a plan that showed the hard surfaces that are going to be removed.

Mark Hartcort provided details to the storm water management plan. There have been some changes to the existing grades to better assist the stormwater.

Mark Hartcort stated that there were some conditions from the previous approval with regard to plantings and permeable pavement and they will still be met.

John Michaels asked if this will be behind the septic area. Mark Hartcort replied yes.

Chris Navitsky, Lake George Waterkeeper stated that they are not opposed to the requested variances and are in support of the many aspects to the plan. However he does have concern about the stormwater retro fits which are within the 100' setback from the lake and will require a

variance. However, they support the design concept for the retrofitting.

There was no WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from John and Constance Daniels (V12-12) 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; this is a better design than previously submitted, they are eliminating part of the long driveway which is a big plus and they are moving the parking area further from the lake.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the impact is between the house and the garage.

3) The request is not substantial; they are increasing the stormwater ratios on the site.

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, during construction the applicants discovered a better idea.

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. Jeff Anthony recused himself. **All Others in Favor. Motion Carried.**

4. V12-13 DIBIASE, GLENN & MARY ANN. To alter pre-existing non-conforming single family dwelling, specifically to construct an attached garage, seeks area variance for **1)** a deficient side yard setback. 15' is required, 8' is proposed; and **2)** to alter pre-existing non-conforming

structure in accordance with Section 200-57 B (1) (b). Section 156.20, Block 1, Lot 37, Zone RCM1.3. Property Location: 56 Poiner Village Road.

Glenn Dibiase explained that he is seeking a variance to put up a 2 car garage. His lot and adjoining lots are only 100' wide and his house is right in the middle of the lot. His septic system is on the south side of the house so he can't put it there. If he were to put it along the driveway in he will have greater disturbance to trees and vegetation and will be right next to one of the only houses that he can see. He has ledge rock on the other side. He is seeking an 8' setback, the neighboring house on this side is over 100' away with dense woods coverage between. The HOA has reviewed the preliminary plans and have no objection.

Don King stated that he will be taking down 2 trees one of which is already deteriorating. He asked what the distance will be from the edge of the driveway because there is a lot of ledge in there and asked if they will need to blast. Glenn Dibiase stated that he has altered the stairs to the deck to hopefully avoid blasting. The garage will be about 10-12' from the deck. Barry Kincaid has been up there and they may have to do some probes but he has about 12-15' right now. He is hoping that he will not have to blast.

There was no correspondence or WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from Glenn and Mary Ann Dibiase (V12-13) 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; locating the garage in this position is practical considering the site constraints and proximity to neighbors and surrounding conditions.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the house is isolated and not visible from the roadway or nearby properties.

- 3) The request is not substantial; it is very minor.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; other than the possible removal of some rock, if the applicant so chooses, there is not much of an environmental impact.
- 5) The alleged difficulty is not self-created, the lot is narrow and there is no other place to consider locating this garage.

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

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

5. V12-14 CARAVELLA, GARY. Represented by Jonathan Bunker. To alter pre-existing non-conforming structure, specifically to demolish and rebuild single family dwelling, seeks area variance for **1)** deficient setbacks. **Front:** 50' is required, 20.42' is proposed; **Shoreline:** 75' is required, 9.91' is proposed; **Side:** 20' is required, 9.72' is proposed; and **2)** to alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). Section 200.14, Block 1, Lot (part of 10), Zone RM1.3. Property Location: 145 Cotton Point Road. Subject to WCPB and APA review.

Jonathan Bunker, stated that the applicants are seeking to demolish and rebuild a non-conforming structure. The current house is not adequate for year round use. It also has water leakage and rodent issues. The owners have explored all other alternatives for reconstructing the house without a variance however due to site constraints, it is not feasible and would cause a greater disruption to the site and shoreline.

Jonathan Bunker stated that they have received approval from the Cotton Point HOA. The home initially proposed was larger but was reduced after going before the HOA Board. The existing house has 6 bedrooms and the new house will only have 5 bedrooms. Hutchins Engineering has been retained to design a new holding tank system to replace the existing non-conforming septic system which should contribute to overall improved water quality to the lake. The structure will not alter the character of the shoreline as it is just a replacement of an existing residence. It will also be consistent in design and character to the other homes in the neighborhood.

Jonathan Bunker stated that the increase in building footprint is less than 250 sq. ft. and is on the opposite side of the lake. The existing structure has 2' overhangs and they are proposing 3' overhangs. John Michaels asked about the height of the building. Jonathan Bunker replied that he is not sure but it falls within the allowed height for the code.

Jason Saris asked why it cannot be moved further back from the lake. Jonathan Bunker stated that it is already on the road as it stands. Jason Saris stated that it is 23' from the road. John Michaels stated that there is ledge in that area, he stated that they could get a foot but not much more than

that. Don King stated that if there is an option to not go any closer to the lake it should be considered. Jason Saris that the APA is going to want to review this and they do not like to see anything going closer to the lake. He asked if the structure could be moved back a foot so that it does not further encroach on the lake. Jonathan Bunker stated that he does not see that being a problem with moving it back or removing the overhang.

Chris Navitsky, Lake George Waterkeeper, appreciates the Boards questions regarding the alternative design. They do not support the design of moving closer to the lake. He would also like the patio area to be considered to be permeable because that would improve the stormwater. The applicants are indicating that they are reducing from 6 bedrooms to 5 bedrooms. However under DOH law, the office and shop that can be considered as potential bedrooms and should be considered with the holding tank design. Jason Saris stated that they will be required to get a septic variance.

WC denied without prejudice because a review of the tax maps indicates that this parcel is owned by the Association paperwork indicating an ownership interest and County staff is reluctant to render a decision until the application is either the Association or some proof of ownership is demonstrated.

RESOLUTION

The Zoning Board of Appeals received an application from Gary Caravella (V12-14) 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; it is a very small piece of property. The applicant is not really expanding the house beyond the borders or towards the lake.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a new more modern structure that isn't expanding much more than a couple hundred square feet. It will be an improvement to the neighborhood.
- 3) The request is not substantial; the footprint is being maintained with the exception of

the 150 sq. ft expansion to the east away from the lake.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; there will be an improvement to the septic system by converting the existing leach field which is located on ledge to a holding tank which is environmentally beneficial.

5) The alleged difficulty is not self-created, the applicants have had this land for some time and they are improving it without any other deficiencies to the rest of the property.

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 Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented with the following conditions: 1) that the location of the primary structure is moved back 1' to the east from its present footprint to allow for the eave on the house to coincide with pre-existing non-conforming structure so it is no closer to the lake, and 2) that minor storm water is required. John Michaels abstained. **All Others in Favor. Motion Carried.**

6. V12-15 BERKOWITZ, NED & ROBERTA. Represented by Kevin Kershaw. To alter pre-existing non-conforming single family dwelling, specifically to construct an attached garage, mudroom, multi-purpose room and deck, seek area variance for **1)** deficient setbacks. **Front:** 30' is required, 20.5' is proposed. **Side:** 8' minimum required, 2.1' is proposed; and **2)** to alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). Section 171.19, Block 2, Lot 5, Zone GB5000. Property Location: 17 Congers Point. Subject to WCPB review.

Ned Berkowitz provided some history of the changes to the proposal. The garage is much more scaled down. It is now a one story structure. They will only need to remove one tree that is closest to the home. This is not attached to the house. They are also seeking to build a 15' x 10' mudroom and room above it attached to the house. There will also be a deck leading up to the garage.

Ned Berkowitz stated that they are handling the stormwater coming off the garage and mudroom structures into a trench next to the shed. There is also an infiltration trench around the mudroom structure and a trench drain at the entrance to the garage doors. Additionally, he is working with a landscaper to handle some additional stormwater from the roadway.

John Michaels stated that he feels this is the right plan for the property and neighborhood. Jeff Anthony agreed that it better fits the site. Don King stated that the architecture is also better than previously proposed.

Kathy Spahn, neighbor stated that she likes the idea of the proposal. The roofline will not be any higher and they will be removing the one tree which will improve her view. Ned Berkowitz stated that the mudroom has a height of 23' which is 10' lower than the existing house and the garage is

16' lower.

Jim Senese, President of Congers Point HOA, stated that they want to support the Berkowitz garage project. However he would prefer that they abide by the bylaws of the Congers Point Association. They have a construction review committee that needs to review the project before it comes before the ZBA. He stated that the committee received their plans last minute which did not allow proper time to review. What concerns the officers the most, is that the neighbor that it will impact the most is in Florida and has not been able to respond or see the plans. He asked that the ZBA work with the HOA to allow proper notification of the neighbors.

Chris Navitsky, Lake George Waterkeeper, appreciates the Board and applicants work on this proposal. They are not opposed to the variances, they only suggest reducing the existing gravel driveway. Ned Berkowitz stated that he plans to address this area with plantings.

Don King stated that during the construction phase they would not disrupt the Peirson's since it is vacant land. Jim Senese stated that the Pierson's were just concerned that construction vehicles might be crossing their property. Jason Saris stated that when they approve a project they do not authorize anything to be done on anyone else's property. If there is an issue, it becomes an issue between the neighbors. Don King suggested that they could put up some construction fencing.

RESOLUTION

The Zoning Board of Appeals received an application from Ned and Roberta Berkowitz (V12-15) 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; many alternatives have been looked at.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, the neighborhood is very tight and this will fit in with the character of Congers Point.
- 3) The request is not substantial; this has been significantly reduced from the original

proposal. The applicant has worked hard to reduce the impact to neighbors and the environment. The garage is now one story and they have significantly reduced the driveway from Congers Point Road.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; They are addressing stormwater.

5) The alleged difficulty is not self-created, it is the only way the applicants can have a garage.

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 with the condition that during construction the applicants are mindful of the neighbors and neighborhood. **All in Favor. Motion Carried.**

7. V12-16 5 BOATHOUSE LANE, LLC. Represented by Ike Wolgin. For the restoration and creation of retail space in the north storage/utility building, seeks area variance for parking. 33 spaces required (19 spaces required for north building and 14 spaces required for the south building) – 10 spaces exist. Section 171.16, Block 1, Lot 10, Zone RCH5000. Property Location: 5 Boathouse Lane. Subject to WCPB review. ***NOTE: This application is associated with SPR12-18 for a retail use.***

Note: Jeff Anthony recused himself.

Ike Wolgin stated that the property currently has 2 wood framed buildings built in the mid 1800's. They were previously owned by FR Smith and were used for boat storage and maintenance for years. For the last 16 years he operated Lake George Kayak Co. out of these buildings, which is a small canoe and kayak livery, rent, sell and small adjustments to no octane craft. In addition to renting canoes, kayaks and stand up paddle boards but they also sell them and the various accessories and sundries that go with them. The operation in the past has been mostly congested in the south building; they have their cash register, changing area and office. They also do sales and demos in this area. The north building is fairly dilapidated but has been used as storage for rental boats and 2 port-o-johns.

Ike Wolgin stated that they want to repair and restore the north building and use the space much more efficiently. He provided the plans for the building. The business plan will not change in any way.

With regard to parking, Ike Wolgin stated that they have 10 spaces. He doesn't agree with the calculation of the 33 spots. He does not anticipate that the renovations will attract more business. It will not change the character of the neighborhood. They are neighbors with Sagbolt's facility and F.R. Smith. Ike Wolgin stated that the lot is only so big and there are no other alternatives. With regard to it being substantial, Ike Wolgin stated that the calculation for the spaces is based on

the square footage of the building. However, that is not taking the fact that 2/3's of the building is storage. Based upon the amount of space that is occupied by customers and retail space, he calculates that he would need approximately 15 spaces. With regard to it being self-created, Ike Wolgin stated that it is a small lot that he has owned for quite some time and he is just looking to improve it.

Jason Saris stated that he has never witnessed a parking problem in this location. The idea of having businesses get parking variances is to be sure that the activity will not cause a hazardous situation.

Zandy Gabriels stated that he drives by this periodically and does not feel that this will be a problem. He likes what the applicant is doing with the property. The parking requirements for Bolton are severe and the ZBA may want to ask the TB to look at the standards. He does not believe that 33 spaces would be necessary given then business plan.

Ben Pratt, representing Sagbolt, LLC, stated that it is not clear to them where the 10 spots will be located and whether or not it will be on any other properties. Those spaces were not shown on the plans. It seems to Sagbolt that if the retail space of the buildings is more than doubled, it is likely that it will be used and will attract more customers which would require more parking.

Ben Pratt stated that Sagbolt has received complaints as well as observed the customers of LG Kayak Co using Sagbolt property and the roadway. At the present time the transportation operation of the Sagamore is being run out of that warehouse which is a complication to traffic in that area. They believe that if the existing situation is difficult, even though they have been able to live with it for the past 4 years if you more than double the size of the operation it is only logical to assume that you will increase the intensity of use. There is no public parking on Green Island, so if you add additional number of vehicles it is going to be congested.

Ben Pratt stated that they feel the standards with respect to an area variance are not met with respect to this request: 1) they cannot measure if there are 10 spaces because they are not on the plan, 2) if 33 spaces are required and 10 or fewer exist, it is a significant variance and 3) this is self-created because they are expanding the use and intensity of use at this location which is creating the parking problem. Ben Pratt stated that they cannot predict the future and they cannot predict what will be going on in the future. Variances run with the land and retail uses in the future may come into this property and will have the benefit of this variance as well.

Ike Wolgin explained where the spaces would be located and stated that he would be happy to put them on the plan. With regard to doubling the space or intensity of use, he already owns and operates this business out of these buildings. They do not use the space efficiently and that is why they are trying to improve the property.

Jason Saris stated almost every business in town has a substantial parking variance. John Michaels agreed. He stated that this application seems to be a reconfiguration of the current buildings and does not see this as an increase in use or intensity.

RESOLUTION

The Zoning Board of Appeals received an application from 5 Boathouse Lane, LLC (V12-16) 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; the applicant is asking to reconfigure existing buildings, they are not adding any square footage to the property.

2) There will be no undesirable change in the neighborhood character or to nearby properties, it will improve the quality of the neighborhood; it will be more upscale and a nicer facility.

3) The request is not substantial; from its present use with only 10 spaces and not increasing the building or business, this is not substantial. The business has worked with the 10 spaces for the last 16 years.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; this is an improvement to the area.

5) The alleged difficulty is not self-created, the buildings have been there for a long time.

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. Jeff Anthony recused himself. Don King opposed. **All Others in Favor. Motion Carried.**

8. **V12-17 DAWSON, MARK.** To alter pre-existing non-conforming single-family dwelling, specifically to allow a partially constructed patio and storage building to remain, seeks area variance for **1) Deficient setbacks. Side:** 20' is required, 2' is proposed. **Rear:** 20' is required, 3' is proposed; and **2)** to alter pre-existing non-conforming structure in accordance with Section 200-57

B (1) (b). Section 186.06, Block 1, Lot 8, Zone RM1.3. Property Location: 18 Belle Lodi Lane. Subject to WCPB review.

Mark Dawson stated that he is seeking an area variance for approximately 200 sq. ft for a walkway along the back of the house. It is built out of treated lumber set on grade.

Tony DePace stated that he knows this property and there is a lot of uneven ground all around the house. He stated that there is a lot of grade difference from the driveway to the back of the house. Mark Dawson stated that the eaves on the house are very small so whatever comes off the roof ends up right at the back of the house. The snow lays against the house. He was hoping to eliminate that with the deck so he has an area to remove the snow and stop the water from splashing along the back of the house as well as having the benefit of an even walkway to the shed.

John Michaels stated that part of the application was left blank, he was not sure they should be accepting it. Mark Dawson replied that he has been working with Pam Kenyon and Mitzi Nittmann for quite some time now and they accepted it the way it was.

Jason Saris asked if the benefit could be achieved by any other means. Mark Dawson replied no, this is the only way to provide a way to walk on smooth ground. It would also make the back of the house a little more presentable.

Jason Saris asked if this project will produce an undesirable change to the neighborhood. Mark Dawson replied no, no one can see it.

Jason Saris asked if the variance request was substantial. Mark Dawson replied no it is very minor.

Jason Saris asked if this was a self-created difficulty. Mark Dawson replied that it is not self-created, the uneven ground has existed since the house was built.

There is no WC impact or comments from the public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Mark Dawson (V12-17) 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; in order to create a more level ground it would require blasting which could cause damage to the foundation or the structure itself. The deck will provide some safety for walking.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is built against the hill and is not visible from anywhere but just uphill from it.
- 3) The request is not substantial; no it is a small, it is approximately 200 sq. ft. of decking. It will only be a 15% increase to the existing deck.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; if anything this will be dealing with a better conditions for storm water.
- 5) The alleged difficulty is not self-created, the terrain has existed since the house was built and it is not being changed.

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 Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) to provide some minor storm mitigation such as down liters to minimize the erosion. Tony DePace abstained. **All in Favor. Motion Carried.**

9. V12-18 ALLEN, BRIAN. Represented by Real Goods Solar. To alter pre-existing non-conforming single-family dwelling, specifically to add solar panels, seeks area variance for **1)** a deficient front yard setback. 100' is required, 30' is proposed, and **2)** to alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). Section 185.00, Block 2, Lot 11, Zone RR5. Property Location: 716 Trout Lake Road. Subject to WCPB review.

Brian Allen suggested that the Town look at some of the variance and non-variance things when it comes to solar panels. They do not change the height or existing structure. It really doesn't change anything other than going green.

Brian Allen stated that it takes a lot of time to get solar panels. He stated this project 2 years ago. NYSERTA grant funding which is part of the NYS legislature and is a long process. They also have to deal with bank loans, federal and state tax credits that change based Congress and the NYS legislature. He stated now they are dealing with Chinese tariffs on solar panels over the past few weeks which changes the entire configuration on bank loans, tax credits, etc.

Brian Allen stated that when he started this process there was nothing in the ordinance for Bolton and now there is. He stated that it would be nice if variances were not necessary for things that really don't require a variance in terms of solar panels.

Olia Preval, Real Goods Solar, stated that solar panels will be on the back of the house which is facing south. They have to go on the south facing roof in order to produce enough energy. If they do not produce enough energy they will not qualify for the State incentives and tax credits.

Olia Preval stated that the modules will not have an adverse effect on the character of the neighborhood, they will be on the back of the house and cannot be seen from the road or nearby properties. The variance is not substantial. Olia Preval stated that this is not self-created because the house is a pre-existing non-conforming structure.

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

RESOLUTION

The Zoning Board of Appeals received an application from Brian Allen (V12-18) 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 #9 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, the solar panels are on the rear of the property and not facing any nearby neighbors and will not be visible from the street so there is no change in the character of the building structure or property as viewed from surrounding areas.
- 3) The request is not substantial; it is a modification to equipment on the roof, there is no physical changes to the building other than that.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it will be energy savings and have positive

environmental effects.

5) The alleged difficulty is not self-created, the building has existed in this location as a 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 Jeff Anthony and seconded by Don King, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

10. **V12-19 BOLTON LANDING MARINA, LLC.** Represented by Bartlett, Pontiff, Stewart & Rhodes PC. To alter pre-existing non-conforming building, specifically to allow a retaining wall to remain in its present location, seeks area variance for **1)** a deficient shoreline setback. 50' required, 37.5' is proposed; and **2)** to alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). Section 171.19, Block 2, Lots 3, 10 & 11 combined. Property Location: 4932 Lake Shore Drive. Subject to WCPB review.

Note: Item V12-19 was tabled at the applicant's request.

The meeting was adjourned at 10:45pm.

Minutes respectfully submitted by Kristen MacEwan.