

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, November 18, 2014
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, Donald King, John Famosi, Matthew Slaughter, Holly Dansbury, Tom McGurl, Jeff Anthony, Zoning Administrator, Pamela Kenyon and Counsel Michael Muller

Absent: Michael Calautti

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

Jason Saris asked if there were any corrections or changes to the October 14, 2014 minutes.

RESOLUTION:

Motion by Don King to approve the October 14, 2014 minutes as presented. **Seconded by,** John Famosi. Jeff Anthony abstained. **All others in Favor. Motion Carried.**

1. **V14-26 F.R. SMITH & SONS.** Represented by Atty. Frederick Killeen and Tom Jarrett, P.E. For the placement of *a total of two (2) principal buildings utilized for commercial boat storage on a 4.92 acre parcel*, presently improved by one (1) existing commercial boat storage building, seeks area variance for deficient density pertaining to an additional commercial boat storage building to be built. To complete the applicant's project as proposed this site would require a total area of 10 acres (one "principal building" per *each* five acres). 4.92 acres exists. Applicant's proposal is to develop the site by reconfiguring the existing principal storage building creating two units by altering the existing structure and thereafter in an additional phase build another principal storage building consisting of two units. *The two phases in the proposed project are: Phase I of the project consists of reconfiguring the existing storage building. Phase II of the project seeks a density area variance for a second principal storage building on the same site .* Area variances sought include 1) a deficient side yard setback proposed for unit A1. 60' is required, 43' is proposed; 2) a deficient front yard setback for a portion of the structure connecting units B1 and B2 thereby creating one storage building . 200' required, 104' is proposed. (In reliance upon prior approval of this site's development and by virtue of SPR87-08 on July 30, 1987 approving a 12,000 square foot building, the proposal to structurally connect units B1 & B2 defines that structure as one principal building). An area variance is required to alter existing non- conforming structure (unit B1) in accordance with Section 200-57B(1)(b). An area variance is required for length. 120' is allowed, 158' is proposed for units B1 & B2, and 145' is proposed for units A1 and A2. Section 171.00, Block 1, Lot 10, zone RR5 & LC25. Property Location: 18 Edgecomb Pond Road. Subject to

PB, LGPC, WCPS, DEC and APA. See V13-01 for previous approvals. See SPR14-15 associated with this project. This item was tabled at the September 2014 meeting pending an advisory opinion from the PB.

Atty. Killeen gave an overview of what has happened before the Boards up to this point and stated the following:

- Restated that they are the oldest marina on the lake.
- They are looking for this project to expand the storage of boats.
- This matter has been before the Board several times.
- He submitted the Planning Board's October 2014 resolution to the Board.
- It is simply a boat washing and storage facility for the marina.
- He described the project pointing it out on a map to the Board.

Holly Dansbury asked if everything was satisfactory with the LGPC. Tom Jarrett replied the questions had been adequately addressed and the Town Engineer has signed off on all of the changes.

Jason Saris asked if the LGPC had any jurisdiction over the stormwater or if it was the jurisdiction of the Town. Atty. Muller stated the Town of Bolton had exclusive rights over stormwater and erosion control. Jason Saris asked if these comments by the LGPC were only due to the fact that the applicant had a Class A Marina Permit. Atty. Muller stated they would not have jurisdiction. He stated that the LGPC certainly has relevant concerns with stormwater and erosion, but once it was enacted by the Town of Bolton as a body of local ordinance it becomes exclusive to the town.

Jeff Anthony asked if B2 was a free standing building. Mr. Jarrett replied no and detailed it on the map showing how it was connected.

Atty. Radner stated:

- The 1987 approvals are irrelevant at this point.
- She cited the 1988 ordinance.
- They are going to build 4 buildings and call them 2 buildings by connecting them.
- They are trying to quadruple what is on the site.
- They need multiple variances for this project.
- Boat cleaning is not boat storage.
- Boat storage is already visible by the neighbors.
- Town of Bolton zoning ordinance does not allow density swapping.
- Boat storage is the only thing allowed on this site.

Greg Smith addressed the Board expressing his support of the project and his hopes that the Board would move forward in granting approval.

Henry Smith neighbor across the street from the site presented and read a letter expressing his concerns and objections to the project and requested a public hearing. Jason Saris explained that this was the public hearing.

Peter Barret stated he lives across the street from the site and he wanted the Board to focus on the fact that the applicant was looking for 4 times the density allowed. He questioned many aspects of the submitted applications and stressed his objections to the project.

Dan Daniger spoke in favor of the project and urged the Board to keep this business local.

Lee Harrison property owner next to this project stated her family has been here for a long, long time and expressed her many concerns and objections to this project.

Chris Navitsky stated that he is a customer of F.R. Smith. He asked how many variances are being requested. The Zoning Administrator stated 5. He stated he has serious concerns for the stream corridor and the protection of it and he strongly encourages the Board to look for a balance with the number of variances requested.

Mark Roden stated he was a native and spoke of his many concerns with the project and he believes that F.R. Smith is going about this the wrong way and he would like them to work with the zoning that is in place now. He would like the Board to table Phase II.

Atty. Killeen stated:

- Boat storage is a permissible use in these zones.
- Nothing about this project requires a use variance.
- There is to be no quick launch at this facility.
- This facility does not generate the noise or traffic that the Conservation Park does.
- They are proposing to build indoor storage.
- Boat storage is a relatively inert activity.
- This is a state of the art boat washing station.
- The hoist is a physical hoist that is installed and not motorized diesel powered hoist.
- The first building is subject to the 12,000 sq. ft. requirement.
- The second building is subject to the 11,000 sq. ft. requirement.

Tom Jarrett stated:

- The boat wash is to be relocated from the lake front to this facility.
- This will have an organic filter underneath the boat wash that will remove contaminants.
- The well is non potable and there will be no sewage on this site.
- The intent of the SEQRA form is not for stormwater it is for other liquids.
- They believe 7-9 trips per day is reasonable.
- The building configuration has not changed location or size since the 2013 application, they have only connected the buildings.
- The impact to the stream will be about 50' from the stream but the building will be 60' and then replanted.

- He spoke about the proposed screening for the southern end of the site and how it would protect the adjoining properties.

Atty. Muller read the following letters and e-mails opposed to the project;

Atty. Kathy Radner (this letter was not read into the minutes, per Atty. Radner's permission).

Elizabeth Harrison - 2

Joshua Pinkus

Sam Barrett

Francis Hawkins Pengra

Eloise Navatny - 2

Kate VanDyke -2

George F. Hawkins

Peter S. Barrett

Sean Craine

Peggy Barrett

Catherine Case

Raina Caldwell

Kate Frankel

Jill Johnson

John C & Elizabeth Lowe - 2

Atty. Killeen wanted to observe again that this was a not a use variance or a change of character to the neighborhood and he hopes the Board will consider what is being asked for.

Jason Saris asked the Zoning Administrator if she was comfortable that the relief being asked for by the applicant was adequate. She replied yes.

Jeff Anthony stated variances were very sensitive issues and they reflect the way a town perceives and enforces its Zoning law. He stated you can upscale the intensity of use or downscale the intensity of use of a variance but you need to weigh and balance this carefully in terms of the request. He feels this project is asking to increase its intensity of use and he can't support this application as it is presented. He believes the intensity of use is increased to the degree that the neighbors' concerns are valid. He stated that they had two resolutions to approve or to deny the project that had been drafted by the Town Attorney. Atty. Muller stated that they were offered as drafts and suggestions for the purpose that when the Board does make a decision they base it on findings of fact and conclusions of law and it was up to the Board to choose one way or another.

Jason Saris stated he would like to address the comments that the Board had acted in a manner that was not above board and he wanted to set the record straight and state that no one was doing anything underhanded.

Jason Saris stated that for years the way the Town's zoning had been interpreted was that an application like this didn't require a density variance. He explained that this was a long standing practice in this town and not something that was done to accommodate the applicant and this was the way the ordinance was interpreted for years. He stated this was viewed as

accessory structures and you can easily have 4 or more buildings on the site. He said the A.P.A. questioned the way the Town interpreted its Zoning and he believes that it is an allowable use and it is consistent. They are here to only enforce the Town's ordinance and that ordinance only. He does not see it as being a change of use and he is in support of this project.

Don King stated the Board is supposed to look at what the possible mitigations were and what the needs of the applicant were. He stated he has been on board to support this application but he has come around to feeling that the intensity of what this project is asking for is excessive and they have not come up with any alternatives. He stated he does not feel he can support this.

Matthew Slaughter stated he was the one that initially asked about attaching the buildings. He stated regardless the impact on the neighborhood is the same and he would have to align himself with Jeff and Don as they are pushing the limits.

Holly Dansbury stated their job is weighing the balance of the applicant's needs and the neighborhood. She stated it is a continuation of what is already there and with conditions for screening and downward lighting and a state of the art washing station that they are planning she is in support of the project.

John Famosi stated that the mitigating factors weigh this in the applicants favor and he does not believe it changes of the use of the property. The stormwater management plan and screening will help mitigate the factors of the environment impacts and neighbors. He stated he does have a concern of the precedent the combined buildings would set. Overall he would be in favor of approving the project.

Atty. Killeen asked if it would be appropriate to address each variance request separately.

The Board discussed whether or not to deny or approve each variance request separately with the Zoning Administrator and Atty. Muller and Atty. Killeen.

RESOLUTION

The Zoning Board of Appeals received an application from F.R. Smith & Sons, (V14-26) for an area variance as described above.

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

And, whereas the Warren County Planning Staff 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 Board makes the following conclusions of law:

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

FINDINGS OF FACT

- 1) The applicant is in the business of commercial boat storage on a 4.92 acre parcel which is situated in two zones (RR 5 and LC 25) and such use has been previously authorized in a structure not to exceed 12,000 square feet in area and this is permitted by a Site Plan Review approved by the Town of Bolton Planning Board on July 30, 1987 SPR 87-08 .
- 2) In accordance with prior approval in 1987 the applicant actually constructed a commercial boat storage building which is currently 6070 square feet in area. That existing building is used exclusively for commercial boat storage and involves incidental activities that are reasonably understood to be appropriate to commercial boat storage including boat and trailer transportation to and from the premises for the purposes of long term or seasonal boat storage, boat handling, and protection of stored boats and trailers.
- 3) No mechanical maintenance, quick launch, boat sales, nor boat repair is conducted at the premises nor are such uses reasonably considered as ordinary, customary or incidental to commercial boat storage at these premises.
- 4) The existing 4.92 acre parcel has sufficient density that would allow one structure. The parcel is currently improved by one principal building which is used for commercial boat storage.
- 5) The applicant's proposal is to increase the overall size of the existing boat storage structure. The proposal is based in part upon the original 1987 approval obtained in SPR 87-08 and upon further completion of the existing structure by adding 5,212 sq. ft. This is proposed by the applicant as Phase I of the project, intending to increase the size of the existing structure to a total of 11,282 sq. ft. which is within the limitation of the 1987 site plan approval on this parcel for a commercial boat storage building not to exceed 12,000 sq. ft. in area. The expansion of the existing building requires setback relief and a variance to alter or re-configure a pre-existing non-conforming structure.
- 6) The applicant's proposal in Phase II of the project is to build an additional commercial boat storage structure encompassing 10,943.5 sq. ft. of area on the same parcel. The methods of storage operation in the second building will be identical to the type of activities and uses permitted in the original building.
- 7) The existing commercial boat storage building which will be expanded to the limits approved in 1987 and the proposed additional commercial boat storage building, as proposed are each individually designed and configured as twin storage units joined by

a structural connection. The applicant's engineer proposes a plan which suggests that a connecting construction device assembled between what might otherwise appear to be independent freestanding structures should be considered by this board as creating an integrated structure, meaning that what looks like two buildings should in the applicant's view really be accepted as one building. If this proposition were to be accepted as true then what appears to be four separate buildings, this board is asked to consider as merely two principal structures.

- 8) Accepting for the moment the applicant's position that two buildings will be constructed consisting of an 11,282 sq. ft. building and a 10,943.5 sq. ft. building on this 4.92 acre parcel, a density variance to allow that second commercial boat storage building on the same parcel is required. If of course the applicant's version is rejected and this board finds that in reality these are to be considered four separate buildings then the proper requirement would be that the applicant should be applying for more than one density variance.

CONCLUSIONS OF LAW

- 1) By virtue of prior a Site Plan Review approval by the Town of Bolton Planning Board on July 30, 1987 in SPR 87-08 the applicant's use of the parcel is authorized for a commercial boat storage structure not to exceed 12,000 sq. ft. in area. Subsequent to site plan approval in 1987 a commercial boat storage building 6,070 sq. ft. in area was actually built. Every site plan approval for land development on a specific parcel "runs with the land" and under the provisions of the Town of Bolton Zoning Code a previously approved site plan approval does not expire. This is especially true where, as here, the applicant has already partially proceeded on the parcel's development consistent with prior site plan approval. This applicant can under the terms of prior and existing site plan approval complete the existing building in accordance with SPR 87-08 not to exceed 12,000 sq. ft. in area. Any proposed changes in the original 1987 site plan approval will require the applicant to return to the Planning Board for a modification or amendment to the original approvals granted under SPR 87-08.
- 2) The variances sought by the applicant constitute area variances which in accordance with the requirements of Town Law and Zoning Code section 200-65 require findings as follows;
 - a) **Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variances sought.** Since about 1987 this specific parcel was

granted site plan review approval to be utilized as a commercial boat storage location, to be improved by a large boat storage facility and generally used in harmony with the surrounding properties which are of rural character. The Zoning Code specifies that such use is consistent with the rural character of Bolton and the lifestyles of its peoples which is in fact a very active and dominant recreational boating community along the waters of Lake George. Increasing the density by adding a second large commercial boat storage building as large as 10,943.5 sq. ft. poses serious challenges in achieving a reasonable balanced use of the property. One commercial boat storage building, not to exceed 12,000 sq. ft. in area which the applicant has permission to complete by virtue of the 1987 site plan review approval seems a sufficient development of the overall site. Limiting the site to the existing structure and acknowledging the existing prior approval to enlarge that principal building up to 12,000 sq. ft. in area, yet keeping the parcel limited to that single density, can insure that all boat storage traffic, movement of trucks, trailers as well as deliveries and return of boats to and from storage will be at the minimum appropriate to the site. A second building or even additional buildings and the proposed expansion of commercial boat storage activities at this site can reasonably and logically impose a detriment to surrounding properties by virtue of increased noise from machinery, equipment use and general activities associated with boat storage including boat washing, boat and trailer movement and marina personnel coming and going.

b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Indoor commercial boat storage involves unique requirements of building design by reason of the fact that many boats of various widths and lengths dictate how many and how often various stored boats may need to be moved to get to other boats stored inside the building and under cover. It is a logical necessity that bigger boats require bigger buildings. Additionally, ingress and egress on the site for larger boats and longer trailers will require a larger turning radius when moving boats in and out of storage. It is evident that the limited size of a 4.92 acre parcel, coupled with the fact that the zoning code and prior site plan approval already authorizes this parcel for one principal building not to exceed 12,000 sq. feet, a denial of the variance for a second principal structure assures that site development remains in an appropriate scale. The applicant's proposal to increase the site with an additional principal building density of 10,943.5 sq. feet is simply overuse of the property.

- c) **Whether the requested area variance is substantial.** The applicant's request for a density variance is substantial in that at a minimum the applicant seeks to double the building capacity of the parcel by seeking permission to build twice what is permitted by code.
- d) **Whether the proposed variance will have an adverse effect or impact upon the physical or environmental conditions in the neighborhood or district.** As previously considered, based upon a hard look at the evidence presented on this record, in support of and in opposition to the application, the granting of the density variance sought is highly likely to considerably increase vehicular or pedestrian traffic, and adversely and substantially change traffic patterns in the neighborhood or the district. The structural improvements and proposed methods of operation presented by the applicant reasonably demonstrate a doubling of the enterprise which is well beyond the capacity of the parcel's ability to reasonable support the increase in the size of the operation.
- e) **Whether the alleged difficulty was self-created.** What the applicant proposes to do is certainly self-created, in that it is a plan to expand their pre-existing commercial boat storage facility "on site" and to enlarge a commercial boat storage facility location that is already reasonably serving the commercial needs of the owner and showing a realistic and reasonable return of investment as currently improved. Additionally, even by virtue of a denial of the density variance sought, the applicant is still able to utilize to the fullest extent the remaining capacity of the prior 1987 site plan approval and thereby increase the existing single principal structure up to 12,000 interior sq. ft. Although a self-created difficulty does not necessarily require denial of the requested variance, on the merits of this plan, approval of an additional density for a second commercial boat storage building is unsupported by the facts presented on this record. If granted, the density variance sought would be an overall detriment to the neighborhood and the district and negatively impact the view, tranquility and traffic patterns of nearby properties.
- 9) **Based upon the findings of fact and these conclusions of law, this is a motion to deny the density variance sought by the applicant as presented. (Please note that this denial would NOT deny the area variances sought for the expansion of the existing building "alteration" and "setback". Further area variance approval would still be required if that is the pleasure of the ZBA.) If so..... CONSIDER.....** The expansion of the existing commercial boat storage structure requires setback relief and an area variance to alter or re-configure that pre-existing non-conforming structure.

Now, upon motion duly made by Jeff Anthony and seconded by Matthew Slaughter, it is resolved that the ZBA does hereby deny the density variance request as presented. Don King, Matthew Slaughter and Jeff Anthony **in Favor**. John Famosi, Holly Dansbury & Jason Saris **opposed**. Tom McGurl abstained. **No Action Taken**.

FINDINGS OF FACT

- 1) The applicant is in the business of commercial boat storage on a 4.92 acre parcel which is situated in two zones (RR 5 and LC 25) and such use has been previously authorized in a structure not to exceed 12,000 square feet in area and this is permitted by a Site Plan Review approved by the Town of Bolton Planning Board July 30, 1987 SPR 87-08 .
- 2) In accordance with prior approval in 1987 the applicant actually constructed a commercial boat storage building which is currently 6,070 sq. ft. in area. That existing building is used exclusively for commercial boat storage and involves incidental activities that are reasonably understood to be appropriate to commercial boat storage including boat and trailer transportation to and from the premises for the purposes of long term or seasonal boat storage, boat handling, and protection of stored boats and trailers.
- 3) No mechanical maintenance, quick launch, boat sales, nor boat repair is conducted at the premises nor are such uses reasonably considered as ordinary, customary or incidental to commercial boat storage at these premises.
- 4) The existing 4.92 acre parcel has sufficient density that would allow one structure.
- 5) The applicant's proposal is to increase the overall size of the existing boat storage structure. The proposal is based in part upon the original 1987 approval obtained in SPR 87-08 and upon further completion of the existing structure by adding 5,212 sq. ft. This is proposed by the applicant as Phase I of the project, intending to increase the size of the existing structure to a total of 11,282 sq. ft. which is within the limitation of the 1987 site plan approval on this parcel for a commercial boat storage building not to exceed 12,000 sq. ft. in area. The expansion of the existing building requires setback relief and a variance to alter or re-configure a pre-existing non-conforming structure.
- 6) The applicant's proposal in Phase II of the project is to build an additional commercial boat storage structure encompassing 10,943.5 sq. ft. of area on the same parcel. The methods of storage operation in the second building will be identical to the type of

activities and uses permitted in the original building.

- 7) The existing commercial boat storage building which will be expanded to the limits approved in 1987 and the proposed additional commercial boat storage building are each individually designed and configured as twin storage units joined by a structural connection. The applicant's engineer has presented a plan which demonstrates that lateral support and structural integrity is provided by the designed connection between units which reasonably allows this board to determine that connected units constitute a single principal building. Although it is not controlling on this application, the Town is also informed that the Adirondack Park Agency has actually interpreted its own regulations on the applicant's existing building in determining that each separate unit without a structural connection will be construed for A.P.A. purposes as a single principal building so long as both units are utilized for the identical purpose of commercial boat storage. This finding on this motion although not exactly consistent with the A.P.A. interpretation is generally compatible with the A.P.A. position.
- 8) The construction and use of a second commercial boat storage building consisting of 10,943.5 sq. ft. in area on the 4.92 acre parcel requires a density variance to allow a second commercial boat storage building on the same parcel.

CONCLUSIONS OF LAW

- 1) By virtue of prior a Site Plan Review approval by the Town of Bolton Planning Board on July 30, 1987 in SPR 87-08 the applicant's use of the parcel had previously been authorized for a commercial boat storage structure not to exceed 12,000 sq. ft. in area. Subsequent to site plan approval in 1987 a commercial boat storage building 6,070 sq. ft. in area was actually built. Every site plan approval for land development on a specific parcel "*runs with the land*" and under the provisions of the Town of Bolton Zoning Code a previously approved site plan approval does not expire. This is especially true where, as here, the applicant has already partially proceeded on the parcel's development consistent with prior site plan approval. This applicant can under the terms of prior and existing site plan approval complete the existing building in accordance with SPR 87-08 not to exceed 12,000 sq. ft. in area. Any proposed changes in the original 1987 site plan approval will require the applicant to return to the Planning Board for a modification or amendment to the original approvals granted under SPR 87-08.
- 2) The variances sought by the applicant constitute area variances which in accordance with the requirements of Town Law and Zoning Code section 200-65 require findings as follows;

- a) **Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variances sought.** Since about 1987 this specific parcel was granted site plan review approval to be utilized as a commercial boat storage location, to be improved by a large boat storage facility and generally used in harmony with the surrounding properties which are of rural character. The Zoning Code specifies that such use is consistent with the rural character of Bolton and the lifestyles of its peoples which is in fact a very active and dominant recreational boating community associated with Lake George. Properly screened, appropriately designed and exterior finishes in earth tones, with sufficient natural buffers and downward shielded outdoor illumination in accordance with a thoroughly reviewed site plan approval, this site can support two commercial boat storage buildings and granting a density variance for the additional principal building would not adversely affect the neighborhood. Moreover the site as actually used and as proposed for continued use is essentially dormant for most of the year except for those few weeks before the summer boating season and just prior to winter storage. It is reasonable to conclude that the activities conducted on the property with two commercial boat storage buildings would not impose a detriment to surrounding properties.
- b) **Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.** The applicant has considered various configurations of expanding the existing building, however, making the existing building significantly larger so that the indoor availability of boat storage space is sufficiently increased to meet the applicant's customer demands is still limited by the requirements of code that impose maximum building size and height restrictions. Additionally indoor boat storage involves unique requirements of building design configuration in that the indoor storage facility must be large enough to accommodate many boats of various widths and lengths. Additionally ingress and egress for boat storage involves variable times for access and different methods of movement of boats. The applicant's proposed plan proposes two units integrated as a single structure. Such a design maximizes exterior facades which also enhance the opportunities to easily and safely remove and insert customer's boats. The proposed architectural design presents the most feasible alternative by maximizing the number of exterior facades affording a realistic flexibility for boat and trailer movement, security and storage configuration.
- c) **Whether the requested area variance is substantial.** The applicant's proposal in relation to the overall size of a 4.92 acre parcel presents a plan that in total

would actually enclose and cover “under roof” slightly more than one half acre. When mathematically compared to the overall parcel area of 4.92 acres, a density variance that grants permission for a second storage structure would still reserve approximately 4.4 acres or 89% of the remaining land as “open space”. Based upon a very practical square foot comparison of indoor space and remaining open land area, the granting of the requested density variance should not be considered substantial.

d) **Whether the proposed variance will have an adverse effect or impact upon the physical or environmental conditions in the neighborhood or district.**

As previously considered, based upon a hard look at the evidence presented on this record in support of and in opposition to the application, the granting of the variances sought would not, appreciably increase vehicular or pedestrian traffic, nor substantially change traffic patterns in the neighborhood or the district. The improvements and methods of operation proposed by the applicant remain subject to all requirements of Planning Board consideration by virtue of the fact that this project remains subject to all requirements of a proper site plan review. In that context all legitimately expressed neighborhood concerns and possible impacts and adverse circumstances, if any, concerning the applicant’s project can be properly addressed and fully considered by site plan analysis, stormwater and erosion control review and environmental quality review.

- e) **Whether the alleged difficulty was self-created.** In part, what the applicant proposes to do is certainly self-created, in that a plan to expand their pre-existing commercial boat storage facility “on site” is logically understood to be a desirable business opportunity to enlarge a commercial boat storage facility at a location where their principal activity already exists. Nevertheless, it is a logical development expansion for the parcel and when properly balanced with the requirements imposed by a required site plan review, the self-created argument is not sufficient to preclude granting of the variances sought. Moreover, a self-created difficulty does not necessarily require denial of the requested variance.

Based upon the findings of fact and these conclusions of law....this is a motion to grant each of the area variances sought by the applicant as presented. (or.... with conditions to be recited as part of the motion).

Now, upon motion duly made by Holly Dansbury and seconded by John Famosi, it is resolved that the ZBA does hereby approve the density variance request as presented. John Famosi,

Holly Dansbury & Jason Saris **in Favor**. Don King, Matthew Slaughter and Jeff Anthony **opposed**. Tom McGurl abstained. **No Action Taken**.

Jason Saris asked if the Board could consider the area variance requests at this time. Atty. Muller replied that they could. Jason Saris requested that the Board make a motion on area variances.

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: The applicant has looked at different alternatives and this is the best one.
 - 2) There will be no undesirable change in the neighborhood character or to nearby properties. This is a minor addition that has been previously granted to the applicant to utilize the storage of boats indoors which is a current use of the property since construction in 1987.
 - 3) The request is not substantial; the applicant has the ability to expand due to a previous variance granting.
 - 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the construction of the new building will have some environmental impacts but they have done an adequate job to minimize the impact to the neighborhood. Any neighborhood concerns expressed could be mitigated by a proper Site Plan Review.
 - 5) The alleged difficulty is not self-created; this was something that was granted to the applicant many, many years ago.
- 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 **John Famosi**, it is resolved that the ZBA does hereby approve the following 3 area variance requests as described in the F.R. Smith application applicable to buildings B1 & B2 of Phase I of the project; **1)** A deficient front yard setback for a portion of the structure connecting units B1 and B2 thereby creating one storage building. 200' required, 104' is proposed. **2)** An area variance is required to alter existing non-conforming structure (unit B1) in accordance with Section 200-57B(1)(b). **3)** An area variance is required for length. 120' is allowed, 158' is proposed for units B1 & B2. Tom McGurl Abstained. **All others in favor. Motion Carried.**

2. **V14-38 BURNS, THOMAS & CATHERINE.** Represented by Mark Hughes. To alter non-conforming single family dwelling, specifically to raise the roof to create attic storage and increase the size of a covered entry, seek area variance for 1) deficient setbacks. Shoreline: 75' is required, 0' is proposed; Front: 50' is required; 7' is proposed; and 2) To alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 200.14, Block 1, Lot 10, Zone RM1.3. Property Location: 163 Cotton Point Road. Subject to WCPS review. This item was tabled at the October meeting pending additional information.

Mark Hughes stated;

- He is changing the roof line from a hip roof to a gable end.

- He is changing the footprint of the house by 3' or so.
- He detailed his drawings to the Board.
- He explained the small porch in the corner was in question and he measured it to the road.
- He stated it would not stick out more than 3'.

Jason Saris asked if the shoreline setback would be changing. Mr. Hughes replied no not at all. Jason stated that only the front yard setback would be changing by about 2'. Mr. Hughes agreed.

Jason Saris asked if he was increasing the overall non-compliance. Mr. Hughes said he was not. Jason Saris asked for the reason for expansion. Mr. Hughes replied to add stairs inside for access to the storage.

RESOLUTION

The Zoning Board of Appeals received an application from Thomas & Catherine Burns (V14-38) 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 Staff;

And, whereas the Warren County Planning Staff 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: the desire for more storage requires going up so as not to encroach on the setbacks more.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. The roofline change will not be visible from many angles and the essential design of the house is minimal.
- 3) The request is not substantial; Minimal changes.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created; this is an area where there are pre-existing non-conforming structures everywhere and they were purchased that way.

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

Now, upon motion duly made by Matthew Slaughter and seconded by Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

3. **V14-46 LYNCH, STEVEN & LINDA.** Represented by Jarrett Engineers. For the construction of a proposed seawall and stairs, seeks area variance for deficient setbacks. Shoreline: 75' is required, 0' is proposed. Sides: 20' is required, 0' is proposed. Section 186.15, Block 1, Lots 30 & 31, Zone RM1.3. Property Location: 177 Homer Point Road. Subject to WCPS and APA review.

Tom Jarrett of Jarrett Engineers presented the following:

- The applicant wishes to construct a sea wall.
- They have worked diligently together with DEC, A.P.A and the Corp. of Engineers to design the wall to meet everyone's current standards for wall configuration.
- They have modified the wall to a canted wall essentially comprised of 45 degree angles.
- This is to allow wildlife to enter and leave the lake and reduce erosion.
- They are proposing to put in a vegetated buffer behind the wall to trap runoff from the lawn into the lake.
- Warren County Planning staff has suggested conferring with Warren County Soil & Water which they have no problem with.

Jason Saris asked if there are presently erosion problems on the property. Mr. Jarrett replied that there were.

Jeff Anthony asked if the other agencies had signed off on the project. Mr. Jarrett replied that DEC and The Corp. of Engineers are both waiting to approve upon Town Action. He stated the A.P.A. had given them a non-jurisdictional letter.

Tom McGurl asked how many courses the wall extended above the water line. Mr. Jarrett stated they were essentially 2 courses above mean high water mark.

Jason Saris asked if the plantings on the back side would be even with the wall. Mr. Jarrett replied they would extend a little above the wall because of a geese problem.

Chris Navitsky asked where the face of the wall was. Mr. Jarrett replied that it would be at the existing shoreline. Chris Navitsky stated that it looked like it was 2' out from the mean high water line. Mr. Jarrett replied that was not the intent and they were not grabbing land. Mr. Navitsky stated that he wanted to know how they would protect the low water and state forest preserve when excavating. Mr. Jarrett replied that this was typical for building any sea wall. He explained that they would need to dig below the lake bed for stability. Mr. Navitsky asked if they would be filling back in. Mr. Jarrett replied with mostly rock. Mr. Navitsky asked if the Army Corp of Engineers approved this. Mr. Jarrett replied that they worked with them and they were just waiting for the town approvals.

RESOLUTION

The Zoning Board of Appeals received an application from Steven & Linda Lynch (V14-46) for an area variance as described above.

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

And, whereas the Warren County Planning Staff determined that there was no County impact with the stipulation that the Warren County Soil & Water be consulted on this project before approvals are granted.

And, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application; this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: There is substantial erosion and adding this sea wall will minimize this in the best way.
 - 2) There will be no undesirable change in the neighborhood character or to nearby properties. It will give an aesthetic value.
 - 3) The request is substantial; there is a significant amount of construction involved in installing the seawall correctly, but current techniques will be implemented to minimize the disturbance.
 - 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 physical conditions but it will improve the shoreline erosion and mitigate existing stormwater runoff.
 - 5) The alleged difficulty is self-created; the owners purchased the property in this condition but the difficulty is not substantial enough to deny the variance.
- 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 condition that Warren County Soil & Water be consulted. **All in Favor. Motion Carried.**

4. **V14-47 ULBRICHT, KENNETH & ROSEMARY.** Represented by Jarrett Engineers. For the construction of a proposed seawall and stairs, seek area variance for deficient setbacks. Shoreline: 75' is required, 0' is proposed. Side: 20' is required, 8' is proposed. Section 213.05, Block 1, Lot 16, Zone RM1.3. Property Location: 16 Marion House Drive. Subject to WCPS and APA review.

Tom Jarrett of Jarrett Engineers presented the following:

- This will modify an existing sea wall to install stone steps for an access to the lake.
- There will be no encroachment to the water.
- DEC has already granted a permit for this project.
- They believe they have resolved all the outside agencies requests.

RESOLUTION

The Zoning Board of Appeals received an application from Kenneth & Rosemary Ulbricht (V14-47) for an area variance as described above.

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

And, whereas the Warren County Planning Staff determined that there was no County impact with the stipulation that; with the stipulation that the Warren County Soil & Water be consulted on this project before approvals are granted.

And, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application;
this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: This is the best feasible means for access to the lake.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. This is a natural stone staircase in keeping with the neighborhood.
- 3) The request is substantial; but the actual work is not substantial in nature.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it will improve access to the lake and produce a beneficial impact on the wave impact on the lake.
- 5) The alleged difficulty is not self-created; shoreline improvements result in this variance request.

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 Famosi and seconded by Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

5. **V14-45 FELICE, JOSEPH (Vision Design Builders)** Represented by Atty. Jon Lapper and the LA Group. For a proposed 6 lot cluster subdivision (5 building lots and 1 common lot), seeks area variance for deficient density. 6.5 acres is required, 3.22 acres exists. Section 200.18, Block 1, Lot 7, Zone RM1.3. Property Location: 4178 Lake Shore Drive known as Diamond Village Resort. Subject to WCPS and APA review. Subdivision and SPR approval is also required but has not yet been applied for.

Atty. Jon Lapper presented the following:

- After extensive engineering work and soil tests they have determined that they could only have a maximum of 5 single family dwellings.

- This is dramatically less than what is already there.
- There are 57 bedrooms which would be reduced to 16.
- This is 41 principal buildings under Bolton Code.
- He detailed all the different areas that would be reduced if they removed the existing structures and replaced them with the 5 single family dwellings.
- The total impervious surface would be reduced from 68,000sq. ft. to 28,000sq. ft.
- Commercial boat launch will be eliminated.
- 21 boat slips are to be reduced to 10.
- He explained that the property as it exists can stay there but if someone is to come in to fix it up they would need to conform and have a compliant septic system which would not support the 57 bedrooms that are there.
- This resort was built before any stormwater was required.
- They will be going from a non-permitted use to a permitted use.
- They are only looking for a density variance for this project.
- He detailed the plans.
- He explained the property is in 2 zones, but they would only be using the property on the lake side.
- They would also be removing all buildings within the 75' setback of the lake.
- This project would be within all required setbacks.
- He believes this is not a substantial request.
- This would be a positive environmental impact.
- He went through the criteria for granting a variance.

Jason Saris stated that Mr. Lapper referenced what was there presently but he wanted to know why they could they not develop in a way that was compliant and did not require a density variance. Atty. Lapper replied that it would only allow for two houses and that would not be cost effective. Jason Saris replied that this was not grounds to grant a variance.

Atty. Lapper stated this was an area variance, not a use variance and because of all the proposed improvements to the lake and the town code, they believe this is a reasonable and realistic request.

Matthew Slaughter asked what the need was to take this motel off the market. Atty. Lapper replied that at some point the motel will need to be redeveloped and it will not work with the septic requirements under the present code. He stated that this new project would be a benefit to the lake.

Lynn Call, a neighbor, asked questions if the proposed homes were one or two story. Atty. Lapper replied 2 and 3 stories, between 4,000 to 6,000 sq. ft. homes. Ms. Call stated that was huge and asked if they were 3 bedroom homes. Atty. Lapper replied one of them was 4 bedrooms and 4 of them were 3 bedrooms. Ms. Call stated her concern of being overshadowed by the huge homes on the property line and she is suggesting a barrier or privacy screening. Atty. Lapper replied that the homes would not be on the property line but they would be happy to do something like that. Ms. Call inquired how many slips for each house. Atty. Lapper replied 2 slips for each house.

Christopher Sokol stated his thoughts and asked the Board to reconsider this project.

Dave Forshey of Chelka Lodge stated they support this project. He stated they would like a fence barrier and the construction time period. Atty. Lapper stated they would be happy to talk with them about this project and he believes the barrier whether a fence or a hedge would be beneficial.

Chris Navitsky stated this would have definite improvements to the septic and stormwater. He stated that there would be an increase to living space and questioned the amount of bedrooms. He explained that this would be exempt from stormwater by town code and he would like to see the Board make a condition to take it back to an undisturbed site and then implement stormwater regulations. He stated that there is a possibility for an alternative design that would be more compliant. Matthew Slaughter inquired what he meant about decreasing the stormwater. Mr. Navitsky explained the stormwater code and said if the applicant decreases the existing impervious cover, due to the fact that they don't have any stormwater implementations installed at this time, they would not do not need to do any at all. He explained if they take this to an undisturbed site they would actually get stormwater management.

Atty. Lapper stated that the footprint is the most significant in terms of impervious and this is a dramatic decrease from what is there now. He stated that 16 bedrooms would be a condition of approval and is all that the septic for that site could support. He stated that there will be stormwater devices installed and they are trying to do this right.

The following correspondence was submitted in opposition of the project.

Marie Louise McClure
Joe Carrier
Lorna & Bob Turner
Maureen Bellotti
Alice English Lyman
Katerine Mazzella
Mitchell Pearlman
Ted Mazzella
Laura & Tom McKean
Charles & Maria Tornaro
Bob & Bonnie Benteen
Paul Duffy
Melisa DeRose
Kristen Quinn
Ed & Alice English
Brock & Kimberly Petrosso
Ann Marie Jones
Bob & Marissa Neff
George & Renee Uhlich
Marisa Bellotti

Seth & Kelly Cutter
George Bellotti
Daniel McDougal
James DeMase
Lori DeRose
Lisa Royce
Jennifer Sullivan
LG Waterkeeper

Don King asked if the property is transferred to a party that wants to keep the cottage industry intact the Board would have no control over the septic or stormwater. Atty. Muller replied that they would not, assuming that there were no violations on the property. He stated the Board would have influence over a new project.

Jason Saris stated that the DOH inspects resorts annually. He stated that he finds these types of applications troubling and he does not find a lot of room in the Boards' balancing act on these types of projects. Atty. Lapper stated he had spoken with the A.P.A. and they had been encouraging due to the dramatic decrease from what is on site. He said in terms of the balancing act he was hoping the Board would put in a little more credence in the dramatic change of removing all the structures and impervious surface and making the property conform as a use. He stated that he believes this is beneficial to the town. Jason Saris stated that he believes it is a substantial variance.

Tom McGurl stated there is no doubt that this would be an improvement but the stumbling block is it is a big variance. Mr. McGurl stated that there were at least 2 three story houses. He asked if the project would still be feasible if they took out one of the houses. Atty. Lapper replied it would not and he hoped they could see that there are so many positives here for the town.

Matthew Slaughter stated that a way to view this was that ultimately they would be having less density than what is there even though it does not meet the density requirements. Jason Saris stated that he found it very hard to believe that lake front property would lie abandoned and unutilized.

Don King stated that he sees it as an opportunity to take care of a derelict piece of property.

RESOLUTION

The Zoning Board of Appeals received an application from Joseph Felice (V14-45) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#5 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: The applicant has done extensive research into the cost associated to redeveloping the property subsequent to purchase to see what would be required to be a feasible return on this property.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. It has been shown that they have the ability to reduce the number of structures and impervious surfaces on the property which will create an opportunity for the implementation of stormwater and new septic systems to code.
- 3) The request is substantial; but this will eliminate a significant amount of traffic in the summer months on the land and waterfront which is a substantial improvement, along with newly proposed septic system.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; this will be a positive effect by the improvements to the septic systems and stormwater controls and buffers between the neighbors.
- 5) The alleged difficulty is self-created; this is mitigated by the fact that the improvements to the property will greatly improve what exists now.

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

Motion to Approve SEQRA Short Form

1. Do any of the Board Members have concerns with any of the items listed 1 through 20 in Part 1, on the SEQRA Form as submitted by the applicant? No
2. Will the proposed action impact any of the items listed 1 through 11 in Part 2 of the SEQRA Form? No

Now, upon motion duly made by Don King and seconded by John Famosi, it is resolved that the ZBA does hereby approve the variance request as presented with the following conditions;

- 1). The Planning Board should consider the stormwater remediation to the degree that the property is being developed as an undeveloped site. 2). All major construction like blasting etc. is not to happen between Memorial Day and Labor Day. This motion includes a negative declaration under the SEQRA short form for this application. Jeff Anthony abstained. Jason Saris opposed. **All others in Favor. Motion Carried.**

6. **V14-40 RUBIN, FREDRIC.** Represented by Eugene Baker. To alter non-conforming single family dwelling, specifically to remove an 8'x 12' porch and replace it with an 11'x 15' screened in porch along with a roof over existing deck to accommodate a swing, seeks area variance for 1) a deficient front yard setback. 30' is required, 28' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-

57B(1)(b). Section 186.14, Block 1, Lot 64, Zoning RCH5000. Property Location: 14 Becker's Drive of Route 9N. Subject to WCPS review.

Eugene Baker presented the following;

- This project is to make the screened in porch bigger.
- This is a non-conforming structure.
- They are not taking it to the end of the building.
- This is a minor project.

Tom McGurl asked if they were encroaching on the setback about 2' and adding about 70 sq. ft. on the porch. Mr. Baker replied yes they were looking for a 2' relief and that there was an existing 96 sq. ft. porch that they were removing.

RESOLUTION

The Zoning Board of Appeals received an application from Frederic Rubin (V14-40) 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 Staff;

And, whereas the Warren County Planning Staff 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: These are very simple and practical means to improve the building.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. They are compatible to other structures in the area.
- 3) The request is not substantial; It is very minor increase in deck space.
- 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 visually compatible with the neighborhood.
- 5) The alleged difficulty is not self-created; it is 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 Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

7. **V14-41 PRITCHARD, ADAM.** Represented by Devin Duval. To alter non-conforming single family dwelling, specifically to demolish and rebuild deck with larger dimensions and enlarge the front entry stoop, seeks area variance for 1) a deficient front yard setback. 50' is required, 3' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.18, Block 1, Lot 9, Zone RL3. Property Location: 35 Sunrise Lane off Potter Hill Road.

Devin Duval detailed his project to the Board and stated that they wanted to extend and give more support to the existing deck and also enlarge an entry stoop.

Tom McGurl asked why the deck needed to be bigger. Mr. Duval stated the applicant wanted to extend the deck and it was only another 2'. Jeff Anthony stated this extension would not encroach on any yard setbacks. Mr. Duval agreed. Jeff Anthony stated that it was totally within the setbacks.

RESOLUTION

The Zoning Board of Appeals received an application from Adam Pritchard (V14-41) 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 Staff;

And, whereas the Warren County Planning Staff 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 deck needed to be repaired and the slightly larger deck will not encroach on any of the setbacks. The front stoop is a minor increase to the road setback and will bring it to code.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. This will be an improvement.
- 3) The request is not substantial; this is a minor request to a pre-existing non-conforming structure.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it is similar to what already exists.
- 5) The alleged difficulty is not self-created; this is pre-existing non-conforming structure. The benefit to the applicant is not outweighed by the potential detriment to health, safety and welfare of the community.

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

8. **V14-42 LINDER, MARY.** Represented by Sam Caldwell. To alter non-conforming single family dwelling and garage, specifically to add a 10' x 32' deck on the east side of the single family dwelling and a 6' x 15' breezeway between the house and garage, seeks area variance for 1) deficient setbacks. Front: 75' is required, 31' is proposed. Side: 20' is required, 9' is proposed on the west side; and 2) to alter a non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.18, Block 1, Lot 15, Zone RL3. Property Location: 88 Mohican Road.

Clarence Linder detailed the project and presented the following:

- They are looking for a breezeway to the garage and a porch on the front of the house.
- Currently there is a paved driveway in front of the house which will be removed.

Jason Saris asked if all structures were staying where they are and they are not encroaching on any other setback lines. Mr. Linder said they were not.

RESOLUTION

The Zoning Board of Appeals received an application from Mary Linder (V14-42) 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 Staff;

And, whereas the Warren County Planning Staff 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: This won't encroach any further on the setbacks.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. It will improve the building.
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created; this is a pre-existing non-conforming use that will not encroach any further on the setbacks.

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

9. **V14-43 BOYNTON, CASEY.** Represented by Dennis Austin. To alter non-conforming single family dwelling, specifically to add an 5'x 8' second floor deck and a 4' x 5' covered entrance, seeks area variance for 1) a deficient side yard setback. 20' is required, 8' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-57B(1)(b). Section 200.18, Block 1, Lot 43, Zone RM1.3. Property Location: 4148 Lake Shore drive. Subject to WCPS review. See V14-03 & V13-26 for previous approvals.

Dennis Austin presented the following:

- They would like to add a small portico on the back side of the house and a second floor deck off the master bedroom.
- The original house only has one entrance.

Tom McGurl asked if this was the third variance on this property. The Zoning Administrator replied that it was. Tom McGurl stated that his concern is that the house was slowly growing bigger and bigger. Mr. Austin stated he believes that this will be in the original footprint. He explained that he is new on this project and is trying to pick up the pieces. He explained that the drawings that the homeowner had, is different from what the Town had and what the County had. He explained that what the Board had in front of them was a set of plans that were as-built.

Jeff Anthony explained that the entrance porch was going to the road side and not encroaching any further on the lake. Mr. Austin agreed.

Don King stated that he noticed NiMo was there. Mr. Austin replied they had but no work had been done on the property since April.

RESOLUTION

The Zoning Board of Appeals received an application from Casey Boyton (V14-43) for an area variance as described above.

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

And, whereas the Warren County Planning Staff 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: An entry porch is very practical and is a positive addition which can only be achieved by a variance.

- 2) There will be no undesirable change in the neighborhood character or to nearby properties. This house is not very visible and surrounded by woods.
- 3) The request is not substantial; this is very modest in size.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is self-created; but they are not reasons to deny a variance. 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 Matthew Slaughter, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

10. **V14-44 ROBERTS, DEANNA.** Represented by Donald Roessler. To allow an apartment to remain in the prior day care center, seeks area variance for deficient density. 17,424 square feet exists. 35,000 square feet is required overall for 1 single family dwelling and two apartments. Section 171.15, Block 1, Lot 69, Zone GB5000. Property Location: 15-17 Stewart Avenue. Subject to WCPS review. See V84-4 for previous approvals to convert existing garage into 1 apartment and 1 day care center. See SPR14-24 for a multi-family dwelling associated with this project.

Donald Roessler presented the following:

- They would like to continue to use the former daycare as an apartment.
- This will be less impact to the area, water, sewer and property.
- Previously there were 16 kids on the property every day.
- There have been no changes to the outside of the building.
- They have only removed furniture and added beds.

Jeff Anthony asked if the Day Care operation was gone. Donald Roessler replied it was due to the State and the changes they had made to Ms. Roberts Day Care License changing the ages and amount of children she could have on premise. He stated that this did not allow her to sustain the business.

Jason Saris stated that this change would be very consistent with the neighborhood.

RESOLUTION

The Zoning Board of Appeals received an application from Deanna Roberts (V14-44) for an area variance as described above.

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

And, whereas the Warren County Planning Staff 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#10 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance:
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. This will make less traffic in the area throughout the course of the day
- 3) The request is not substantial; It is just one apartment and the facility is remaining as is physically.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the apartment will remain the same as is.
- 5) The alleged difficulty is not self-created; The State changed the requirements for operating a Day Care.

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 John Famosi, it is resolved that the ZBA does hereby approve the variance request as presented. Holly Dansbury Abstained. **All others in Favor. Motion Carried.**

The meeting was adjourned at 11:24 pm.

Minutes respectfully submitted by Kate Persons.