

**Town of Bolton**  
**ZONING BOARD OF APPEALS**  
**MINUTES**  
**Tuesday, March 23, 2021**  
**6:00 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, Brendan Murnane Joy Barcome, Holly Dansbury, Jeff Anthony, Jim Senese, Dan Sheridan, Planning & Zoning Director; Richard Miller, PE and Counsel; Michael Muller

**Absent:** Alternate; Lorraine Lefevé

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

**RESOLUTION:**

**Motion by Joy Barcome** to approve the February 23, 2021 minutes **Seconded by Jeff Anthony.**  
**All in Favor. Motion Carried.**

- 1. V20-34 Steven and Constance Moffitt:** Represented by Studio A. This item was tabled at the January 19, 2021 Zoning Board of Appeals meeting to determine if a principal building existed on both proposed lots. It was determined that the pool house and pool constitute a principal building. Therefore, both proposed lots have a principal building on each lot. The requested variance is to subdivide an existing 1.4 acre lot into two parcels of 0.93 acres and 0.47 acres in the RM1.3 zone which requires a minimum lot size of one acre. Seeking area variance to subdivide an existing conforming lot into two non-conforming lots. Section 200.14, Block 1, Lot 25, Zone RM1.3. Property Location: 11 Cotton Court. Subject to WCPS and LWRP review.

Jeff Anthony recused himself from this item.

Kirsten Catellier of Studio A presented the following:

- One of this Boards concerns was that lot 2 was lacking a principal building.
- They believe that the swimming pool bath house building combined with the pool and patio constitutes a definition of a principal building due to the size of the combined structures.
- This will support the Boards concerns with the lot 2 having a principal building.

Jason Saris asked Zoning Director, Richard Miller if he concurred with that determination. Both Mr. Miller and Atty. Muller replied that they did. Jason Saris asked how it was not an accessory structure with out a primary structure and not an accessory structure without a primary. Mr. Miller stated that RM1.3 allowed one principal building per 1.3 acres. The definition of principal buildings is any other structure that exceeds 1250 sq. ft. of floor space. Jason Saris said that there were times that this was not allowed when people wanted to build a garage before the house because this was not a primary use. Atty. Muller explained RM1.3 and said that if they leave the lot with the pool house, pool and other things, it seems to be an accessory structure. If you go to §200-8 (1)(g) in the code from the APA that states a principal building is any other structure that exceeds 1250 sq. ft. of floor space constitutes a principal building. He said that a sub part 2 under principal building says that an accessory structure does not constitute a principal building. So now we have gone in a circle. If there is an ambiguity it goes in favor of the applicant. This is definitely a principal building. As for the use, this zone seems to allow detached residence as the only principal building, but the definition tells us principal buildings are many things. He said there is a distinction here that a principal building, and a principal use are two different concepts. Jason Saris said that you could not have the use without a building that facilitates the use. Atty. Muller agreed and said that anyone reading the code would not have a problem in determining that this was a principal building, by size alone, on its own lot if you allow this lot to be created. Right now, it appears to be an accessory structure to the lot it is on now. By creating 2 lots this will be a principal building. Jason Saris asked if they came back and wanted to build a house on this lot would this automatically become an accessory structure. Atty. Muller stated yes, it would become an accessory structure. Holly Dansbury inquired if they could demolish this and propose a principal building. Atty. Muller stated they would not have to demolish this. They could put the detached dwelling on the lot and identify what they are deeming a principal building according to §200-8 (1)(g) as an accessory to the primary dwelling. Joy Barcome asked if it would from a primary structure to an accessory if they built a detached single family residence on it. Atty. Muller agreed. Jason Saris asked if that meant that in the future this would be allowed if someone wanted to start their lot development with a barn or garage as long it met the definition of a principal building and they could add the home at a later date. Atty. Muller stated maybe, they are balancing use and structure here. Jason Saris stated that the only difference in the two scenarios is that in one the structure already exists, but the lot does not and in the other the building does not exist, but the lot does. Atty. Muller said they had to acknowledge that these accessory structures equal over 1250 sq. ft. which constitutes a primary structure.

Jim Senese asked if this was part of an estate planning strategy if there were any other options instead of a subdivision. Ms. Catellier stated this was the most logical plan for the applicant. She said the overall plan was for the existing residence to go to a child and they would keep the other. Jim Senese said he has seen where the real property went to one child and real cash went to the other which is a viable option and would not create 2 non-conforming entities as opposed to one conforming. Ms. Catellier explained that they wanted to stay here and next door to each other with the neighboring properties.

Jason Saris said he was struggling to this. The benefit to applicant here is an estate plan and really has very little to do with the utilization of the property. He does not know if this is the

grounds that they are supposed to be considering here as use of the property. Holly Dansbury said that it sounds like the ultimate goal is to build a new structure on the other property. Jason Saris said he was aware of this but the only reason to do all this is an estate planning purpose, not because they could not both use the property. Holly Dansbury said they could not put up another full-fledged house on the property if it was not subdivided. She said she believed that the goal was the ability to have to separate residences. Jason Saris said at looking at the 5 questions he believes that as an estate plan it can be achieved in another means.

Joy Barcome stated the applicant could have come and asked for the subdivision without stating that it was part of an estate plan, she is wondering if they are getting hung up on that piece. They have established that they are principal buildings on both lots and in the future if they want to build, the pool house will become an accessory.

Danny Sheridan asked if they would need to come back for a variance if they wanted to build a house. Atty. Muller said no if it meets all the setbacks. Jason Saris said if it did not meet all the setbacks they would be back before them looking for relief.

Atty. Muller said what they are struggling with is the creation of 2 undersized lots and the relief sought needs to be justified (as it should be). One of the strong justifications in favor is that it is not outside the character of the neighborhood. He advised the Board to go through the questions.

Atty. Muller went through the 5 questions with the applicant and the Board.

1. 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 area variance; *Ms. Catellier replied that it will not produce an undesirable change as it is in character with the adjacent parcels in the neighborhood. They believe it is in character with the neighborhood.*
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; Jason Saris stated this depends on what the benefit to the applicant is. *Ms. Catellier explained ideally the applicant is looking for 2 separate properties, deeds and mortgages which is why this is the best option for them. There was no other feasible means to accomplish this form of estate planning.*
3. Whether the requested area variance is substantial; *Ms. Catellier stated that they do not believe it is substantial based on the adjacent lot sizes in the neighborhood surrounding the subject parcel.*
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; *Ms. Catellier stated no, again this is in character with the existing properties, the soils are good and there is enough land for future building on lot 2.*
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance. *Yes, this is self-created.*

## No County Impact

### RESOLUTION

The Zoning Board of Appeals received an application from Steven and Constance Moffitt (V20-34) 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 #1 of the agenda.

1) The benefit could not be achieved by other means feasible to the applicant besides an area variance. *This is 2 non-conforming lots with no other real options for them to split them into separate parcels.*

2) There will be no undesirable change in the neighborhood character or to nearby properties. *There will be no change to the lot for now.*

3) The request is not substantial. *This is consistent with other non-conforming and smaller lots.*

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 no changes to this subdivision.*

5) The alleged difficulty is self-created. *These are 2 existing, non-conforming lots.*

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 Holly Dansbury and seconded by Joy Barcome, it is resolved that the ZBA does hereby approve the variance request as presented. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

2. **V20-03 John and Johanne Peterson:** Represented by Curtis Dybas. Seeks variance to remove the existing small rear addition and construct a 1½ story addition to the rear of the original cottage and renovate the original cottage. Seeking area variance to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 186.18, Block 1, Lot 29, Zone RM1.3. Property Location: 42 The Back Road. Subject to WCPS and LWRP review.

Curtis Dybas presented the following:

- They bought the parcel in 2006.

- They need a bigger place.
- They will move a storage room and construct an addition and renovate existing cottage to current code.

Jason Saris asked if they had received HOA approvals. Mr. Dybas replied yes and that a letter was included with the packet.

Holly Dansbury asked about the additional square footage. Mr. Dybas replied it was an additional 437 sq. ft. It is a small footprint.

### **No County Impact**

#### **RESOLUTION**

The Zoning Board of Appeals received an application from John and Johanne Peterson (V20-03) 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.

1) The benefit could not be achieved by other means feasible to the applicant besides an area variance. *This is a pre-existing, non-conforming structure and in order to do the work they need the area variance.*

2) There will be no undesirable change in the neighborhood character or to nearby properties.

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 cottage.*

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 Joy Barcome and seconded by Jim Senese, it is resolved that the ZBA does hereby approve the variance request as presented. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

- 3. V21-04 Robert O’Keefe:** Represented by AJA Architecture. Seeks to make alterations to exterior finishes, windows and doors. Add second floor addition consisting of a residential apartment over restaurant. Add covered patio extension and stairwell addition and green space. Seeking area variance for 1) a deficient east front (9N) setback. 30’ is required, 8.5’ existing, 5.4’ is proposed; 2) a deficient north front

(Common Drive) setback. 30' is required, 5.0' existing, 4.2' is proposed; 3) a deficient south side setback. 8' is required, 0.0' is existing; 4) a deficient total side setback. 20' is required, 4.2' is existing; and 5) to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 171.15, Block 1, Lot 59, Zone RCH5000. Property Location: 4947 Lake Shore Drive. Subject to WCPS and LWRP review.

Andy Allison and Sara Tuttle of AJA Architecture presented the following:

- They were in front of the Board last month and received setback variances but needed a determination as to whether this was 1 or 2 apartments.
- It has been determined that it is 2 apartments which triggers a parking variance.
- The 2016 variance took care of the restaurant parking.
- The owners plan to live here with their children and they have two children.
- They have been requested by the insurance company to address the parking in front of the restaurant which is part of the reason for the reduction of parking spaces.
- They are adding some green spaces.
- It is fairly common for limited parking spaces in the middle of town.

Jason Saris asked if they were asking for relief for 2 spots for each apartment to 1 spot for each apartment and 3 spaces that had been approved for the restaurant. Mr. Allison agreed. He said the restaurant owners were planning to live in the apartment.

Holly Dansbury stated it was typical within downtown area.

Mr. Allison stated that the insurance company has been pushing for them to fix the parking.

Jeff Anthony asked if the second part of the application was already approved. Atty. Muller stated this was correct.

Jason Saris said he was comfortable with 1 parking spot for each apartment as it would be family occupied and he had no problem for relief for the restaurant.

No County Impact

## **RESOLUTION**

The Zoning Board of Appeals received an application from Robert O'Keefe (V21-04) 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 #3 of the agenda.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance. *There is no other means, parking is very tight in the hamlet.*
  - 2) There will be no undesirable change in the neighborhood character or to nearby properties. *There is community parking in the vicinity.*
  - 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. *None whatsoever.*
  - 5) The alleged difficulty is not self-created. *It is only self-created through the construction going on in the area.*
- 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 Jim Senese and seconded by Brendan Murnane, it is resolved that the ZBA does hereby approve the variance request as presented. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

4. **V21-05 Bunk House LLC, Peter & Kimberly Forseca:** Represented by Anthony DeFranco, PE. Seeking area variance for 1) extensive landscape work within the 75 foot shoreline restriction, 0 feet is proposed; 2) increasing maximum lot coverage to 20.56% from the existing 19.53%, 15% is allowed; and 3) to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 200.06, Block 1, Lot 13, Zone RM 1.3; Property Location: 40 Loomis Lane. Subject to WCPS, APA and LWRP review.

Anthony DeFranco, PE. presented the following:

- They purchased the seasonal residence last year.
- The existing driveway is tough to navigate.
- They are getting up in age and would like to live there as long as they can, so they need to improve the driveway and walkways.
- There is a lot of exposed bedrock and heavily compacted overused property on the shorefront.
- They will be using permeable pavers and creating a stone drain to capture some of the runoff toward the lake.
- They would like a small patio to the north to be able to sit on.
- They would like a sitting area and fire pit near an existing small patio by the lake.
- They will be increasing the coverage from 19.5% to approximately 20.5%.
- They would like to propose boulders on the steeper bank with erosion control netting to establish vegetative coverage and lessen stormwater runoff.
- They will be bringing in about 100 yards of topsoil.
- The impervious area will increase about 498 sq. ft.
- They will need a LGPC permit.

Jason Saris asked it involved a seawall. Mr. DeFranco said there was already an existing seawall that appears to be in good shape. Jason Saris asked how much regrading would be involved. Mr. DeFranco said that they would be taking some of the steepness out, but it would not be flat by any means. Holly Dansbury asked if they would be removing ledge. Mr. DeFranco replied no. They are not proposing any blasting.

Holly Dansbury said she did not see any swales for the stormwater to runoff. Mr. DeFranco explained the plan to capture the water and said they could add a swale if needed.

Chris Navitsky stated that they recognize the benefits, but they have some concerns with the variances with the extent of the disturbance and the shoreline setbacks. They would recommend implementing a 3 tiered shoreline canopy to add some trees to that buffer and they feel there should be some more stormwater management. The impervious cover is increasing on the non-compliant lot, and removal of mature vegetation should be addressed tonight too. They also feel tree planting would make it more compliant with the LWRP for water quality protection.

Mr. DeFranco said he did not agree on the reduction of the impervious area. He goes into all projects trying to do this and they have discussed ways to do this and he detailed these ways to the Board. They always try to do more than what is required for stormwater retention. Jason Saris asked about potentially including more trees. Mr. DeFranco said it was possible and they could try to plant in the south corner, but the bank is ledge and bad soils and they would be disturbing more area. Holly Dansbury agreed and said they looked like they were adding significant vegetation. Mr. DeFranco said they would do what the Board would like. They were buffering the south side with evergreens. Joy Barcome asked why they took the trees down. Mr. DeFranco said that he knew one large tree was removed due to the fact that it was not doing well that advised that it should come down.

Jeff Anthony asked if they had enough depth and soil under the impervious pavers for good infiltration. Mr. DeFranco replied that he believed they did.

Atty. Muller asked what constraints they had on the project and what they were trying to avoid. Mr. DeFranco replied they were trying to avoid the shallow bedrock and ledge that was exposed. Atty. Muller said that the development of the land along the shoreline is to protect, preserve and soften what exists.

No County Impact

## **RESOLUTION**

The Zoning Board of Appeals received an application from Bunk House LLC, Peter & Kimberly Forseca (V21-05) 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 #4 of the agenda.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance. *Basically, in working with the existing area there is no other way to do it.*
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. *This will improve the neighborhood and fit in nicely.*
- 3) The request is not substantial. *This is no more than 1% increase.*
- 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.*
- 5) The alleged difficulty is self-created. *They are trying to improve the existing bedrock and ledge on the site.*

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 Holly Dansbury and seconded by Brendan Murnane, it is resolved that the ZBA does hereby approve the variance request as presented with the following conditions; 1) A swale is to be added by the driveway and 2) A tree is to be replanted where one was removed. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

5. **V21-06 Patrick and Martha McHugh:** Represented by Patrick and Martha McHugh. Seeks variance to construct an addition to the existing camp and renovate the original camp. Seeks area variance to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 186.10, Block 1, Lot 22, Zone RCH 5000; Property Location: 29 Sunrise Shores Loop. Subject to WCPS and LWRP review.

Marty McHugh presented the following:

- This is a small seasonal camp.
- They have been working with the neighbors and the HOA to make sure they would be compatible.
- Due to the proximity to the lake and neighbors, it has been tricky, but they feel they have finally achieved this.
- This will be about 500 sq. ft.

Jason Saris inquired if this needed a shoreline setback variance. Holly Dansbury replied that she had looked it up and they did not.

Holly Dansbury asked why they were increasing to the east. Ms. McHugh said they had been approved by the ZBA for an expansion about 2 years ago and were approached by a neighbor who said that the approved expansion would block his view and they were not inclined to go up but after working with the neighbor and HOA they thought this would be the better fit.

Ms. McHugh's neighbor stated he was onboard with this plan.

No County Impact

## **RESOLUTION**

The Zoning Board of Appeals received an application from Patrick and Martha McHugh (V21-06) 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.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance. *It is already a pre-existing, non-conforming structure.*
  - 2) There will be no undesirable change in the neighborhood character or to nearby properties. *The neighbors and HOA have already given input and approved the project. This stays within the spirit of the neighborhood.*
  - 3) The request is not substantial. *This makes living area a little better.*
  - 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Fits with the other lots and homes within the neighborhood.*
  - 5) The alleged difficulty is self-created. *It fits within the community and neighborhood.*
- 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 Brendan Murnane and seconded by Dan Sheridan, it is resolved that the ZBA does hereby approve the variance request as presented. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

- 6. V21-07 David Massaroni, Capri Village:** Represented by Studio A Landscape Architecture & Engineering, DPC and J. Lapper, Esq. Bartlett, Pontiff, Stewart & Rhodes, P.C. Seeks area variance to 1) increase allowable density from 5.75 principal

buildings to 15 principal buildings and 2) to alter two non-conforming structures in accordance with Section 200-57B(1)b. Section 213.13, Block 1, Lots 51/52/35, Zone RCM 1.3; Property Location: 3926 Lake Shore Drive. Subject to WCPS, APA and LWRP review.

Jeff Anthony recused himself from this item.

Atty. Lapper presented the following:

- The applicant is an experienced developer and has the property under contract subject to land use approvals.
- This is a very old fashioned development.
- The proposal is to upgrade the property with new stormwater and sewer.
- It will have dramatically less impact in terms of number of bedrooms, traffic generation, water consumption, living units.
- He detailed a chart of existing and proposed.
- No new development is proposed in the shoreline setback.
- They are proposing to build a series of homes and townhomes.
- They view this as a major upgrade to the site and a big improvement to the town.

Kirsten Catellier of Studio A presented the following:

- She detailed the existing impervious and pervious surfaces on the plans.
- She showed the proposed improvements of the overall site on the site plans.
- The proposal includes a combination of single family dwellings and town houses and the utilization of 2 existing structures which she detailed on the plans.
- A total of 15 units are proposed in the total buildings.
- All but 2 of the proposed structures will comply with the side and shoreline setbacks.
- Most of the existing structures do not comply.
- The main access to the property will be in the center of the parcel at the existing curb cut.
- This will access all units with the exception of 4 and 5. These will be accessed from Route 9N with existing curb cuts.
- They will be buffering the north and south sides of the property lines along with landscaping throughout the site
- They will maintain the existing pool for the residents.
- There are 3 existing docks, beach, deck and a boathouse at the shoreline which will remain.
- Currently there are no stormwater management practices on the site, and they will be adding fully compliant stormwater management practices.

Jason Saris asked if the proposed structures would be year round. Atty. Lapper replied yes.

Holly Dansbury inquired about the total reduction to impervious surfaces. Ms. Catellier said it would decrease 23%.

Jason Saris stated that the existing buildings were grandfathered in for what they are. Once they are knocked down and moved around the parcel only has the area for 5.75 units and they are proposing 15. He asked if they were proposing 15 units because that was what they felt was financially feasible. Atty. Lapper said it also fits on the site well without overburdening the shoreline compared to the amount of people that were on the shoreline now. This is compatible with the one across the street. Jason Saris asked why they could just do 6 which would not be a substantial density. Atty. Lapper replied that the simple answer was that value of the property is based on the money generated by the motel units. They need to consider the fact that they could just keep slapping coats of paint on what exists, and it could stay there forever due to the grandfather aspect. This will not benefit the site visually and does not require any upgrades to the utilities and stormwater is nonexistent at this time.

Holly Dansbury asked if there would be all new wastewater systems. Atty. Lapper replied yes, along with stormwater and landscaping.

Holly Dansbury inquired to what they would look like. Atty. Lapper stated they had some sketches, but they had not been fleshed out yet. They were going to be high end.

Atty. Lapper stated that they feel that the practical difficulty is that they have these pre-existing small antiquated motel units that people are not looking to rent anymore. They need to be replaced and to bring them up to code and modernize them would be very expensive. He stated that they had met with The Waterkeeper and received very positive feedback.

Rick Butler neighboring property owner said he thinks the plan is fantastic.

Chris Navitsky corrected Atty. Lapper and said he never spoke to him about this site. He stated that he liked the fact that they were clustered and not developing the shoreline. He said the triple request on density seems to be a lot and thinks it could be brought down a little bit.

Atty. Muller suggested that they consider the merits of the application and if it is worthy of approval following the 5 balancing questions. Atty. Lapper said that if you look at the what exists on the site right now, you will see motel units that are right on the property line or in some cases over the line and in order to renovate these units exist now, you would have privacy issues and setback issues for new people. This was built on the property line before there were any codes creating a practical difficulty. This is not good for development as it does not create any distance or protection for neighbors or these people. This can't be obviated by any feasible way other than a variance. You would have to use the buildings as they are or knock them all down. The site can accommodate the 15 units which will improve the site.

Holly Dansbury inquired about the scenic corridor line and units 3 & 4. Atty. Lapper explained that they are using what is there and eliminating the attached motel buildings. They will be cosmetically upgraded. These 2 homes were owners' homes.

An adjacent neighbor asked for clarification on the number of units. Atty. Lapper replied 15. Jason Saris asked if these units would be individually owned. Atty. Lapper replied yes.

No County Impact

**RESOLUTION**

The Zoning Board of Appeals received an application from David Massaroni, Capri Village (V21-07) 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.

1) The benefit could not be achieved by other means feasible to the applicant besides an area variance. *The applicant went through a lengthy process to determine that this was the most practical use in addition to reducing the intensity to the property.*

2) There will be no undesirable change in the neighborhood character or to nearby properties. *This is an older, dated motel which will be improved by this project.*

3) The request is substantial. *They are reducing the intensity of use and improving the infrastructure and wastewater.*

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 reduction in the intensity of use.*

5) The alleged difficulty is self-created. *This is basically driven by economics. The practical difficulty is that the present location of the existing buildings hugs the boundary of the property. From an economic standpoint it seems ill advised to modernize the buildings as they are difficult to maintain and renovate which reduces their value. They are not marketable accommodations; they are antique proven by the fact that the motel has been out of business 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 Holly Dansbury and seconded by Jim Senese, it is resolved that the ZBA does hereby approve the variance request as presented. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

- 7. **V21-08 Bonnie View LG, LLC:** Represented by Studio A Landscape Architecture & Engineering, DPC and Balzer & Tuck Architecture. Seeks area variance to 1) maximum length of house is 120 feet, 172 feet is proposed; 2) modification of the recreation building within the 50 foot shoreline setback, 0 feet is proposed; 3) modification of the lakeside cabana within the 50 foot shoreline setback, 15 feet is proposed; 4) replace existing wood deck and relocate stairs within the 50 feet shoreline

setback, 0 feet is proposed; and 5) to alter non-conforming structures in accordance with Section 200-57B(1)b. Section 186, Block 14-1, Lot 52/31, Zone RCH 5000; Property Location: 4654 Lake Shore Drive. Subject to WCPS, APA and LWRP review.

Jeff Anthony recused himself from this item.

Atty. Jon Lapper presented the following:

- The applicant is proposing to remove 25 buildings from the site and convert it to one single family home.
- They want to maintain what exists to the lake because that is a big part of the value and enjoyment of the property.
- This is a huge reduction.
- They received a very positive letter on this project from Chris Navitsky.

Kirsten Catellier of Studio A presented the following:

- She went over the plans with the Board showing what exists and what would be removed.
- There are multiple units being removed in many of the structures.
- They will maintain the existing curb cut at Route 9
- They will maintain the existing drive and narrowing it.
- They are proposing to restore the landscape to a pastoral setting.
- They will be buffering the adjacent property owners.
- They will resurface the existing tennis court.
- At the main residence they are proposing a parking area and stabilized lawn for fire vehicles.
- There is a water feature and a covered structure for parking and a garage.
- Both the main residence and guest cottage will have a walkout basement with a patio.
- There will be patio to the north of the main residence with hot tub and fire pit.
- They will access the waterfront on paths.
- The stairs will be relocated for easier use.
- They will maintain the beach area, recreation building and pavilion.
- The recreation building is an existing motel unit that they will convert.
- They are stabilizing disturbance by planting additional vegetation at the shoreline.
- There 174 existing trees on the entire site and they propose to remove 25 because they are either dead, dying or diseased. 4 of which are in the shoreline area.
- They will be adding 81 trees in their planting plan.
- They are heavily vegetating the shoreline.
- They are proposing a green roof over the recreation building.

Trevor Flynn and Brett Balzer of Balzer & Tuck detailed the plans presented the following:

- They are reconstructing the 4 unit cottage to a recreation building.
- They need to bring it up to today's code to make it compliant.

- They will abandon the existing stone wastewater cistern located under the building and put in a whole new wastewater treatment field for all proposed structures up along Route 9.
- They have a letter from Chris Navitsky who recognized they are not asking for anything more than the APA would allow.
- The boathouse is LGPC jurisdiction.
- The first floor of the rec building is the roof structure of the boathouse. All at the same level.
- They are proposing a 250 sq. ft addition to the left of the rec building for mechanical storage.
- They will be adding 2' to the current height to allow for insulation.
- The current elevations are decreased from what was previously proposed after speaking with the Planning Board.
- They went to their neighbor at Northward Ho and looked to see if the proposed boathouse would obstruct their view.
- They will be reducing the length of some of the docks.
- They will be repurposing and rebuild in the same footprint an existing non-conforming cabana structure.
- The main residence is in excess of 120' due to the patio space and retaining wall which mitigates the grade change.
- The patio space requires the retaining wall.
- They have located the main house and guest cottage well back from the shoreline.

Atty. Lapper stated that they are looking at the chart this site can accommodate 12 principal building, 49 exist and they are proposing 1. 25 structures are being reduced to 4 and the bedrooms will be reduced from 95 to 10. This is a pretty dramatic reduction and they hope that the Board can see that when balancing this it is a modest request.

Jason Saris asked about the water feature. Mr. Flynn said it would be a contained and treated shallow water feature like a koi pond. No water would run away from it.

Jason Saris asked if there was any way to separate the retaining wall from the house, so they did not require a variance for a house over 120'. Mr. Flynn explained that they looked at this, but the patio is above 6" grade making it a structure. Jason Saris said the patio would need to be separated from the house to make it under 120'. Holly Dansbury stated she had the same concerns. Atty. Lapper said they could separate this. Jason Saris said this would be one less significant variance they would need. Atty. Muller asked what the overall length of the home would be if the patio was removed. Mr. Flynn replied 120' to the end of the eaves.

Holly Dansbury asked if there were any plans to add any other structures in the future. Atty. Lapper replied that this was it.

Holly Dansbury asked if they would be renting out the guest cottage. Mr. Flynn replied that it would not.

Atty. Muller stated that on this particular parcel, the code allows for two residences. Jason Saris said the guest cottage could be considered a guest residence.

Mr. Navitsky stated that they had met with the applicant's agents and recognize the change in the use. There concerns are for the variance requests and not the uses. Specifically, for the ones at the lake. They feel that they could reduce some of the shoreline hardening. There is really an increase of use along the shoreline. They also question the amount of the existing trees along the shoreline. Huddle Bay is the most productive bay with the most algae on Lake George. He feels that the project should comply with the LWRP policies and preserve the natural shoreline of Lake George.

Claire Postisal co-owner of a property in Sunrise Shores sent a letter and spoke of her comments and concerns about the project and the development along the shoreline.

David Rockwell property owner in Sunrise Shores inquired about issues relating to reworking the wastewater and the removal and addition of fill. Jason Saris stated this Board was here to deal with variances, and they would discuss this with the Planning Board and to talk with Director of Planning and Zoning.

Atty. Lapper said they are requesting to improve what already exists. They are removing the existing wastewater holding tank right at the lake and moving it up near Route 9. They are also reducing the 8' stairway to a 4' stairway and they feel they are making everything better, more attractive and softer at the shoreline. In a balancing test, taking everything away from the site, replacing septic, stormwater and landscaping, it is important to maintain those grandfathered rights for the buildings. They will improve them and repair them. They feel that there is a lot of green along the shoreline. This will look much better than what presently exists.

Brett Balzer said the recreation building would become a vegetative roof calming down some of the stormwater. The cabana will stay within the existing footprint. The boathouse is LGPC jurisdiction and is an allowable use and size. They are well within regulations. The deck is existing, and they are only resurfacing it and moving and reducing the stairs coming up from the beach to be more compliant. With respect to trees, the surveyor was showing all trees 6" in diameter and bigger on the plans. They are also reducing the stairs going up to the home. They are also adding shoreline buffer that doesn't exist now. They will be removing a lot of the asphalt too. Mr. Esler said he was trying to balance the project. Part of the guiding principals they are trying to follow is how to accentuate the topography and natural features of the property and still maintain some utility. They are recessing the home 175' away from the lake as opposed to moving it down close. Using the property and at least maintaining what is currently there such as the north deck which has been there for 30 or 40 years. They will be reducing the staircase from 8' to 4'. This property was brought to him to develop and look much like the Capri Village property, but he hopes to have this in his family for generations. In his opinion the overall aesthetics of what they are proposing are an improvement. It is a quantifiable fact that the overall intensity is significantly less and much more green space. The balance or tradeoff is that they are asking to use the useable area that has been used for the last 30 to 40 years and improve upon it. The Boathouse will be on an existing u-shaped dock. They feel that the gives have been a lot more than the takes on this project.

Jason Saris stated that overall, he feels it is a very nice project and refreshing that the applicant is not asking for more and telling the Board they need it to afford the cost of the property. The boathouse is not within this Board's jurisdiction so not part of their conversation. They are here for the expansion of the Rec Building which is not further encroaching the lake and the size of the main family structure. He thinks if they separate the patio it will not require a variance. Mr. Esler said he does not believe the patio and retaining wall were in violation of the spirit and intent of that rule. He would love for the Board to give consideration to keeping its current state. Brendan Murnane asked if they put a gap it would make it more compliant. Mr. Esler said yes. Brendan Murnane said he feels that a 1' gap is really not changing the dynamics of what they are looking at. Jason Saris said he agreed but they needed to be able to answer the questions in the balancing act to grant that relief. Mr. Esler said he could guarantee that there would never be a roof over it. Atty. Muller replied that Brandon Murnane's point was well taken and it was meaningless.

No County Impact

## **RESOLUTION**

The Zoning Board of Appeals received an application from Bonnie View LG, LLC (V21-08) 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.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance. *This stays within the spirit of the building and zoning laws. It is a reduction of density.*
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. *There has been positive feedback and they have taken great measures to create green space and increase vegetation.*
- 3) The request is not substantial. *Separating a deck and creating a small buffer would not really do much good.*
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *They have taken into consideration and improved the septic and stormwater which was nonexistent. This looks like it is a very environmentally friendly project.*
- 5) The alleged difficulty is self-created. *They have removed many obstacles and stayed within the spirit of the land and neighborhood. They could create a buffer but that is not a reason for denial. The practical difficulty is that they are making modifications to pre-existing, non-conforming structures with none of the improvements further encroaching on the shoreline.*

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 Brendan Murnane and seconded by Joy Barcome, it is resolved that the ZBA does hereby approve the variance request as presented. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

- 8. V21-09 Jennifer Hogan and Scott Murphy:** Represented by Tom Jarrett, Jarrett Engineering, PLLC. Seeks area variances for 1) sideline setback 20 feet is required, 19 feet, 6 inches is proposed; 2) height of structure maximum of 35 feet is required, 38 foot 9 inches is proposed; 3) modifications to the pre-existing shoreline patio, seawall, patio wall, construct new handicap ramp and addition of impervious area within the 75 foot shoreline setback, 0 feet is proposed and 4) to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 213.50, Block 1, Lot7.1, Zone RM 1.3; Property Location: 4122 Lake Shore Drive. Subject to APA, WCPS and LWRP review.

Andy Allison and Sara Tuttle of AJA Architecture presented the following:

- This property was purchased last summer, and they would like to do some improvements.
- The lakefront is in disrepair.
- There is an old foundation in the southeast corner.
- There is a hardened paved area going to the lake that they would like to remove.
- He detailed the cabins on the plans.
- There is no stormwater that works on the site and the septic needs to be more compliant.
- He detailed the improvements they would like to make on the plans.
- He walked the Board through the architecture of the camp by the lake on the plans.
- They are proposing a new screened porch and deck on this, which kicks in the height variance.
- The existing guest cottage is quite small and hard to use.
- They are proposing a more contemporary look to this structure.
- He went through the floor plans.

Tom Jarret of Jarret Engineering, PLLC presented the following:

- This was part of the Wide Waters Resort many years ago and was subdivided years ago.
- The foundation, patio and driveway at the waterfront are remnants of the resort and are deteriorating and in disrepair.
- They would like to reestablish the old shoreline and the patio and make it solid.
- They will be building a new wastewater treatment as far away from the lake as possible and it will replace 2 grossly undersized and non-compliant systems.

- He explained the wastewater system saying it would be an advanced system.
- The subdivision lot line was right through the existing driveway and in order to make it wholly within this parcel they are moving it.
- They are creating stormwater management for the entire driveway from one end to the other.
- All the parking on the project will be reinforced turf.
- The family needs access for the elderly to the waterfront so they will be refurbishing the old driveway for this.
- The new driveway and drop off area are less impervious than the old building and original driveway.
- He detailed stormwater on the plans.
- The old walls and patio will remain as originally built and just restored.
- The existing house is non-compliant.
- The porch on the front will make the height of the house 38' - 9" due to the grade.
- They do not think this will be any more visible from the lake after they make the improvements.
- The ramp requires a sideline and shoreline setback.
- The existing patio is non-conforming.
- He detailed the new stormwater management on the plans.
- He said there are 6 devices all together that will manage all the stormwater with the exception of the waterfront patio.

Joy Barcome asked for more information on the height variance. Mr. Jarret stated that overall elevation of the peak of the roof was not increasing. They are technically creating more of a height on the structure by installing the porch columns further down the slope, which makes the effective height of the structure 3' higher than it is right now. They are going to hide those columns with a berm and vegetation. The overall functional height of the structure is not changing a bit and fire access will probably be improved on the site due to the looped driveway and improved surface to waterfront. It is the porch columns that is making this variance happen.

Jason Saris asked why a variance is required for redoing the existing patio on the lake. Mr. Jarret replied that it is a pre-existing, non-conforming structure and he listed it because they are reconstructing, restoring and repointing it. Jason Saris stated they were allowed to repair pre-existing, non-conforming structures. Mr. Jarret stated they were not expanding it other than out to the original shoreline. He detailed sheet 13 of the plans and showed where the edge is deteriorating. Jason Saris said he does not believe it needs a variance. Atty. Muller stated that he did not believe they did, they are not altering it, they are just restoring it.

Chris Navitsky questions the statement that it is a simple repointing of the wall. To him it appears that they are extending the wall an additional 3' to 4' out from the existing patio. Mr. Jarret said it is going out to original shoreline from a 2003 survey. They have not extended it past that. They are applying to go back to the original shoreline, and this is subject to a joint application to the APA, Army Corps of Engineers, DEC and OGS and they will weigh in on this. Mr. Navitsky said it is their opinion that the shoreline now is what the shoreline is. They

shouldn't be hardening the shoreline. This seems to be happening on several of the applications tonight. There is an extensive area for gathering down there. The seawalls don't stabilize a shoreline, vegetation does. They want to make sure that the conditions of the 2005 approval are upheld. The overall goal should be that the project complies with policies of the LWRP. Mr. Jarret stated that the patio has been there more than 20 years and has just deteriorated. There is no intent to encroach on the shoreline any more than it was, and they will have to live whatever decision by the other agencies decide on. It is not really a seawall; it is a patio that exists now about 6" above the mean high water. It is certainly not a wall and does not violate the standards of these agencies. They have not removed any shoreline vegetation and they are proposing to add vegetation. With regard to removal of mature vegetation on the site, they will only need to remove 1 very sad, deteriorated tree.

Atty Muller stated that the applicant has stated the patio at the shoreline was a restoration and did not require a variance, but Mr. Navitsky states that it does require one. Mr. Jarret showed the shoreline depicted on the original subdivision maps.

No County Impact

## **RESOLUTION**

The Zoning Board of Appeals received an application from Jennifer Hogan and Scott Murphy (V21-09) for an area variance as described above.

And, due to notice of the Public Hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning 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.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance. *These are non-conforming structures that they are modifying and improving. They are simply modifying the existing structures.*
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. *They are improving the structures and adding improved wastewater and stormwater.*
- 3) The request is not substantial. *The height variance is just due to the pillars and the roofline stays the same.*
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *They are improving the property and the structures.*
- 5) The alleged difficulty is not self-created. *They are working with pre-existing, non-conforming structures.*

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 Holly Dansbury and seconded by Jim Senese, it is resolved that the ZBA does hereby approve the variance request as presented with the note that this motion excludes the variance request for the patio at the lakeshore as it is just a restoration to a pre-existing structure to a pre-existing shoreline. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

- 9. V21-10 4934 Lake Shore Drive LLC, N. Somma:** Represented by The Environmental Design Partnership. Seeks variances for 1) building front setback 30 feet required, 13.5 feet is proposed; 2) north building side yard 8 feet is required, 1 foot is proposed, 3) south building side yard 12 feet is required, 0.5 foot is proposed, 4) maximum lot occupied 40% is required, 50% is proposed, 5) parking spaces 55 spaces are required, 9 are proposed and 6) to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 171.19, Block 2, Lot 9, Zone RM 1.3; Property Location: 4934 Lake Shore Drive. Subject to WCPS and LWRP review.

Jason Saris and Jeff Anthony recused themselves.

Holly Dansbury asked if they could be replacing a non-conforming structure if the structure was gone. Atty. Muller explained that the applicant had the right to rebuild on her exact footprint. This is an expansion with what have been the vested footprint.

Gavin Villaume, R.L.A. of Environmental Design Partnership presented the following:

- He presented the site plan to the Board.
- He said this is just a conceptual site plan.
- The only structure on the parcel is the small rental structure on the northeast corner.
- They will be removing this and incorporating the rental into the new building.
- This will free up a little more area in the back of the building for the service area parking and green space in the back of the property.
- The new footprint will be slightly different than original footprint.
- The building will be approximately 15,560 sq. ft.
- Approximately 5,400 sq. ft would be for the restaurant.
- There would be about 1,300 sq. ft. of basement for mechanical and storage.
- They are proposing 9 rental units on the second floor.
- They require a front yard setback which is the same as what they had before the fire.
- He detailed the plans to the Board.
- The rear of the parcel would incorporate 9 parking spaces which previously had 3.
- There would be a small trash enclosure along with an outdoor patio.
- There would be additional greenspace added to the north of the property and a small entrance.
- They will be incorporating stormwater management in the green space and underneath the pavement in the rear if needed.

- He detailed the setback variances.
- He that they would require a density variance and a parking variance.
- They will have enough parking for the 9 rental units in the back.

Holly Dansbury asked if there would be patios on the second story. Mr. Villaume replied yes.

Joy Barcome inquired if there were 9 rental units. Mr. Villaume stated there were.

Holly Dansbury said that they would typically have a condition that not storage or grilling be allowed on the second story patios. Ms. Somma stated that she agreed with this and it would be in the rental contract.

Atty. Lapper spoke on behalf of adjacent property owner to the south and rear sides, Frank Parillo owner of BLM Marina. He said Mr. Parillo was very surprised when he received the notice for this project because this neighbor, Ms. Somma had not approached him to discuss this. This is a major expansion along his driveway, which is the only access to BLM Marina for all of the cars and boats. There is no possibility that this new deck which is a big expansion can be constructed without construction vehicles on his site, which she has no right to do. He does not understand how you could build to the property line if you don't have any right to access the site for construction or maintenance from the neighbor's property. Another concern is the service entrance to the kitchen which would require the use of Mr. Parillo's property to service this which she has no legal right to. There is also no legal right to the 9 cars traveling over driveway to the parking area depicted in the back. If the applicant wants to rebuild in kind, Mr. Parillo has no concern with that. This will be a major problem for the neighborhood, which she has no right to. Mr. Villaume respect the concerns of the adjoining neighbor and they are aware of the fact that they are within inches or feet of the property line. These are preliminary plans that can be modified to accommodate any concerns of the residents during construction or in the final design. However, these concerns are not related to the variances asked for.

Brendan Murnane asked if they were actually extending the footprint of the patio further into the neighboring driveway. He thought they were staying with original footprint of the building. Mr. Villaume stated they were staying within the original footprint and it has stayed with in the 6" footprint from the property line. Atty. Lapper stated this was untrue. The whole property is being extended down the whole BLM Marina driveway. The whole porch was not there before. Ms. Somma stated this was untrue. Mr. Villaume stated they have a survey showing it was there. Atty. Lapper stated that it did not have a roof structure. He said it would be impossible to construct it without a construction easement from Mr. Parillo. If they grant the variance for her to build on the property line, she does not have the ability to build on the property line. Holly Dansbury asked if it could be built from her property in the back. Atty. Lapper asked how they proposed to get construction vehicles there without traveling over Mr. Parillo's property. Mr. Villaume stated there was no question that they would need to access that driveway in order to build the driveway. Mr. Munter said they would of course meet with Mr. Parillo and work out a detailed construction schedule, so things were understood of events and timing. It was there understanding that the building was similarly close, if not nearly the same to the property line as before. They intended to get in touch with all neighbors and the

town to make sure everything was done safely. They are building in a tight setting which will need cooperation and coordination on many levels. Ms. Somma said she did a major renovation this summer and before she did anything, she contacted the town and Mr. Parillo when she needed to block part of his driveway. That should say something right there. When he told her to move, she moved. She does disagree with Atty. Lapper about the footprint of the side porch. She stated that the porch has been there, and it had a roof over it. She has had lodging upstairs as well as the apartments in the back. She is not asking to put in more people, as a matter of fact she shrank the restaurant down a little bit. It is the same type of use in one building. As for the parking lot in the back, she has owned this building for 16 years and her propane tanks and dumpsters were out there along with her boat which is there now. Not once did she hear from Mr. Parillo telling her not to use this driveway. His only problem was when people parked in his parking spots, which she usually had no control over. She is more shocked than he, that he is putting up stink about this now. Atty. Lapper stated that Mr. Parillo has no concerns with replacing the structure in kind, but this is a major expansion and if the Board approves this, which Ms. Somma's builder has gone on record stating that it could not be constructed without going on Mr. Parillo's property, she will have no right to build it. This item should be tabled so they could investigate this.

Brent Tardif of 6 Anchorage Road spoke in support of the project and did not find that the major renovation the previous summer impaired their use of the marina in any way.

Atty. Muller said that this plan has to be something that can come to fruition. He does not want the Board to think they have an application they can deal with. The major constraint is the ability to build without Mr. Parillo's consent to use his driveway access. Maybe this can be worked out, but it has not been as of tonight. More importantly, and fundamental to this project Ms. Somma has a proposal for 9 occupancies in the new structure. We all know there are tremendous parking constraints in that zoning district. She makes no provision for parking for persons in the restaurant. This is certainly characteristic of business after business in the hamlet area. Where this Board needs to hold the line is the rentals. These people will be coming by car and will need parking spaces and this plan has 9 parking spaces, unfortunately there is no legal way for them to get to the parking spaces. They may need to redesign the project as it is incomplete as proposed and the Zoning Board cannot impose this on other people.

Brendan Murnane suggested that the applicant table this application to until this can be worked out. Atty. Muller agreed and said he thought the application was a little premature.

Ms. Somma stated that they would like to table the application.

### **No County Impact**

### **RESOLUTION**

Now, upon motion duly made by Brendan Murnane and seconded by Joy Barcome, it is resolved that the ZBA does hereby table the variance request at the applicant's request. **All in favor. Motion Carried.**

## **10. REQUEST FOR ZONING CODE INTERPRETATION**

### **Tax Map Parcel 186.10-1-5**

Richard C. Miller and Linda E. Miller owners of a Single Family Residence at 4701 Lake Shore Drive, 1.91 acres in the RL 3 zoning district propose to convert an existing one story, two-stall garage into an antique store with frontage on Lakeshore Drive. The RL 3 Zoning District provides by Site Plan Review:

*“(subparagraph) 5. The following home occupations are intended for the home occupant and must be judged by the Planning Board to be incidental to the residential use:*

- a) Offices including doctor, dentist, lawyer architect, engineer, surveyor, occupying up to 500 sq. ft.*
- b) Real estate office, beautician, up to 500 sq. ft.*
- c) Mail order business, computer related business, up to 500 sq. ft.”*

The owners’ plan is to convert an existing garage less than 500 sq. ft. to a use involving the sale of antiques. The owners’ business selling antiques is substantially over the Internet in a variety of outlets such as eBay, Craig’s list, Facebook marketplace, etc.), however, retail customers would be welcome to the location to pick up their purchases in person or to shop when present. The mail order sale of antiques is the predominant business activity planned by the occupants of the Single Family Residence.

Atty. Muller stated that this was his inquiry to the Board because he asked the Director of Zoning and Planning to sit this one out as it was a direct conflict. He explained that he had thought this project would require an area variance, but the garage is under 500 sq. ft. and does not need it. This Board needs to determine if this was a mail order business. The owner plans to use this for the sale of antiques, principally the sale of antiques primarily over the internet through eBay, Craigs List, Facebook Marketplace, etc. and it would have the possibility that it would have a retail customer show up to pick it up and/or look around to do a retail purchase. Jason Saris stated that many of the online outlets were inconceivable when this ordinance was written and he would think that they need to look at the spirit of what is intended here, which is basically businesses that have low impact. The mail order aspect of this is clearly allowed and unless the language in the ordinance is updated as quickly as things change in a commercial and cyber world, it will require interpretation. He certainly thinks the business as described and the intensity fit in with these definitions. Brendan Murnane agreed and stated Covid-19 also has created a lot more of this with people working from home and we need to start preparing for this. Jeff Anthony stated that he agreed and said it was a low impact business, traffic wise. The mail order business is allowed and some of the allowable uses are more of an impact. Holly Dansbury agreed. She asked if it required any provision for parking. Jeff Anthony stated that is the purview of the Planning Board. Atty. Muller stated it would need to go to the Planning Board for site plan review.

**RESOLUTION**

Now, upon motion duly made by Holly Dansbury and seconded by Joy Barcome, that this application fits in the zoning for home occupation and is to be sent to the Planning Board for site plan review. **All in favor. Motion Carried.**

The meeting was adjourned at 10:25PM.

Minutes respectfully submitted by Kate Persons