

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, April 18, 2016
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, John Whitney, Joy Barcome, John Famosi, Holly Dansbury, Tom McGurl, Jeff Anthony & Alternate Lorraine Lefevre, Zoning Administrator Pamela Kenyon, and Counsel Michael Muller - arrived at 6:30.

Absent:

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

Jason Saris asked if there were any corrections or changes to the March 15, 2016 minutes.

RESOLUTION:

Motion by Holly Dansbury to approve the March 15, 2016 minutes as presented. Seconded by Joy Barcome. Jeff Anthony abstained. All others in Favor. Motion Carried.

1. **V16-10 CURREN, DAVID.** To allow a 14'x16' wood shed to remain in its present location, seeks area variance for a deficient front yard setback. 75' is required, 56' is proposed. Section 199.08, Block 1, Lot 5, Zone RL3. Property Location: 615 Coolidge Hill Road. Subject to WCPS Review.

David Curren presented the following;

- He built a wood shed in order to keep his wood dry.
- He tried to make it fit the property.
- He built it large enough to hold a log truck load of wood which is close to 7 cord.

Jason Saris asked if he was aware that it would require a variance. Mr. Curren stated that he thought he was set back far enough. Jason Saris stated the general location is not the issue, it's that the house does not meet the setbacks. Jason Saris asked if this property had two front setbacks. Zoning Administrator, Pamela Kenyon replied yes.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from David Curren, (V16-10) 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 be achieved by other means feasible to the applicant besides an area variance: This seems reasonable to have a season's supply of wood in a single structure.
 - 2) There will be no undesirable change in the neighborhood character or to nearby properties. It certainly looks better than a big pile of wood in the yard.
 - 3) The request is not substantial; it's within the setback of the current non-conforming house, and is not protruding any further into the setback.
 - 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. There are no water drainage issues.
 - 5) The alleged difficulty is self-created; this is a minimally disruptive solution.
- 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 Whitney and seconded by Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion Carried.**

2. **V16-11 MARANVILLE, JON & MARGARET.** Represented by Curtis Dybas. To demolish existing garage and replace with a single family dwelling on the second floor and garage space on the first floor, seek area variance for 1) Density: 45,000 square feet is required. 12,545 square feet exists. 2) Setbacks: Rear: 15' is required, 2.5' is proposed. Side: 8' minimum is required, 3' is proposed. Section 171.15, Block 3, Lot 31, Zone GB5000. Property Location: 4988 Lake Shore Drive. Subject to WCPS review. Site Plan Review is required for a single family dwelling but had not yet been applied for.

Curt Dybas & Tom Hutchins presented the following:

- This is a 100+ year old garage that has served its purpose and life span.
- It is in great need of repair.
- They would like to remove this old structure and replace it.
- The second floor would be a 2-bedroom rental.
- The footprint will be moved slightly to the west.
- The expansion to the south is for stairs to access the second floor.
- They will be incorporating stormwater for the new building to remediate the new and existing stormwater.

Jason Saris inquired if the stairs would be the only way in and out of the apartment. Mr. Dybas stated this was correct.

Jason Saris asked if this item was subject to A.P.A. review due to it being located in the Hamlet. Zoning Administrator, Pamela Kenyon replied that it was not.

Jason Saris asked if they had looked at moving the building anywhere else on the site. Mr. Dybas cited the parking and circulation on the site as the reason for this placement. Jason Saris asked if they had any dedicated parking spots for the apartment. Mr. Dybas stated they would have one. The Board inquired if that was enough parking for a two-bedroom apartment. Zoning Administrator, Pamela Kenyon stated two spaces were required. Mr. Dybas replied that would be fine he did not see any problem with it. Jason Saris replied it was a requirement of the Ordinance.

John Whitney inquired how many more sq. ft. they were proposing. Mr. Dybas stated 240 sq. ft. would be the additional sq. ft. they were proposing.

Jason Saris asked what note 4 means on the plans. Mr. Dybas stated that there was a discrepancy between the survey and the deed of 10'. After discussing this with the neighbors and surveyors they have concluded that the deed must have been written wrong. In order to have the issue resolved they had to have an agreement between all three parties.

Holly Dansbury asked if the project would need Site Plan Review. Zoning Administrator, Pamela Kenyon replied it would upon approvals from the ZBA.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Jon & Margaret Maranville, (V16-11) 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 any other means feasible to the applicant besides an area variance: Looking at the property, it will need some form of variance due to the required setbacks.

2) There will be no undesirable change in the neighborhood character or to nearby properties. This barn is a historic structure that has been here forever. They are not adding a new structure just replacing what is already there with a smaller structure.

- 3) The request is not substantial; the existing building does not comply with the setbacks and the new building is essentially in the same spot.
 - 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Currently there is no stormwater management on this property and the engineers have come up with solutions to accommodate this stormwater.
 - 5) The alleged difficulty is self-created; the building was here and needs to be replaced so it can meet current standards.
- 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 variance request as presented. **All in favor. Motion Carried.**

3. **V16-12 PARROTTA, RICHIE.** Represented by Eugene Baker. To alter single family dwelling, specifically to place a wood deck over existing concrete wall and add a set of stairs, seeks area variance for 1) a deficient shoreline setback. 75' is required, 37' is proposed; and 2) To alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.08, Block 1, Lot 17, Zone RCM1.3. Property Location: 12 Braley Point Road. Subject to WCPS and APA review.

Eugene Baker presented the following:

- They are just trying to infill a corner of the house that has an existing foundation put in place for an addition and clean up the area.
- They do not want the addition that was approved 8 years ago.
- They will cover it with a deck, change the window to a door and add exterior stairs off the deck.

Jason Saris asked if a variance was issued for the addition. Mr. Baker replied that there was about 8 years ago. Jason Saris stated that they could theoretically still put the addition on if they wanted to since they had already started the work. Zoning Administrator, Pamela Kenyon replied yes if the work had already been started and was still under construction. Mr. Baker stated they did not want to bump the building out any longer they just wanted to cover it with a deck.

John Whitney asked if the proposed 37' setback to the shore was the current concrete wall. Mr. Baker said yes. John Whitney asked if the proposed steps encroached any further on the setback. Mr. Baker replied no.

Gene Baker stated the deck is for a safety issue, the concrete hole needs to be capped. Jason Saris stated that this is a pre-existing, non-conforming structure which is the practical difficulty and this is less substantial than what they can actually do by rights. It is the most practical place for this deck.

Jeff Anthony asked when this was approved for a full addition and if it had been sent to the A.P.A. for review and approvals. Zoning Administrator, Pamela Kenyon said she is assuming that it was, she did not have the file in front of her.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Richie Parrotta, (V16-12) for an area variance as described above.

And, due to notice of the Public Hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning 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 any other means feasible to the applicant besides an area variance: The existing wall and foundation were never completed and this is the only area to put the deck due to safety issues.

2) There will be no undesirable change in the neighborhood character or to nearby properties. This will clean up the appearance of the property.

3) The request is substantial; This application does not increase the previously approved variance which was more substantial.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. It will just be capping an open area.

5) The alleged difficulty is not self-created; The deck addition is going to be used to complete what had begun on a previously approved building on a pre-existing, non-conforming house, which makes this variance necessary.

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 John Whitney, it is resolved that the ZBA does hereby approve variance request as presented. **All in favor. Motion Carried.**

4. **V16-13 SCHEIBER JR., EDMUND.** To alter single family dwelling, specifically to remove a 2'x 4' landing and stairs and replace with a 14' x 21' deck and stairs, seeks area variance for 1) a deficient shoreline setback. 75' is required, 35' is proposed; and 2) to alter non-conforming structure in accordance with Section 200-57B1b. Section 200.18, Block 1, Lot 47, Zone RM1.3. Property Location: 51 Hemlock Point Road. Subject to WCPS and APA review. See V13-19, V03-36 & V00-37 for previous denials and V15-36 for reversal by the APA.

Jason Saris inquired why this was a new application. Zoning Administrator, Pamela Kenyon explained the reason was because the original one was reversed by the A.P.A. Jason Saris asked if he still had his relief from the Town of Bolton. Atty. Muller replied that he did not and he believes the Board should treat it as a new application.

Edmund Scheiber Jr. presented the following:

- He did not realize he was starting all over again and he thought the variance approval still stood and that he was supposed to review the items in the A.P.A. reversal and that is what he is prepared to do.
- The variance he asked for is still the same.
- He went back through the letter he received from the A.P.A and he went through his addendum.

Atty. Muller stated that he would need to establish every possible connection to the facts. This is essential to supplement this record.

Mr. Scheiber read the following into the record.

AREA VARIANCE

As a result of the APA reversal of the Town of Bolton ZBA's approval of my variance request of October 2015, the following discussion addresses the APA's reasons for their reversal.

The following highlighted text is the actual wording of each of the APA's rationale for reversal followed by my responses, my rationale for seeking reconsideration, and requesting that the Town of Bolton ZBA again approve the request for variance and asking the APA to reverse their decision.

1. "... the purpose of minimizing any adverse impact such variance may have on the neighborhood, community or natural resources." Bolton Zoning Code §200-65(CD); *see also* Town Law § 267-b(4).

My initial application stated: "This addition will not create any structural changes that are out of the architectural character or décor with the existing Hemlock Point Assoc. homes as well as those homes with decks in the greater Cotton Point area. The greater Cotton Point peninsula currently has nine (9) decks and/or platforms well within the 75 ft. setback. Additionally, five of the seven homes within the Hemlock Point Association have either decks and/or covered porches; three (3) of which are also within the 75 ft. setback. These three required, and were granted, an area variance. Therefore, it is my position that the addition of a deck to the lake side of my home will be in keeping with the neighborhood and other homes in the community that also have decks that intrude into the setback. All of the homes in the Hemlock Point Association were built (in the 1950 decade) before set back requirements were established and, therefore, have been grandfathered. However, all required variances in order to construct their decks. No natural resources, specifically Lake George, will be impacted as the structure will not cause any harm from such things as runoff from the property. Given the land area under discussion, any runoff will be absorbed by the ground under and around the deck. I believe this rationale is reasonable for any adverse environmental impacts suggested.

2. “While the presence of these other non-conforming decks contributes to the character of the neighborhood, their presence alone should not be a rationale for approving additional non-conforming structures.”

It was never my intention to base my request for a variance solely on the fact that there are other decks adjacent to my property and in the greater neighborhood. (Homes that already have existing decks approved by the ZBA and not contested by the APA. It was only my intention to improve on my original variance request and reduce the overall impact by reducing the deck foot print and square footage. My request is for a deck covering 294 sq. ft.; the decks adjacent to my property are 264 and 768 sq. ft. Again, my request is in keeping with the neighborhood. I am only asking to be granted equality and parity with my neighbors with very similar variances.

3. “The applicant's need for the proposed deck is not addressed adequately in the record.”

In my original request for a larger deck (14 ft. x 26 ft.), I was only granted the existing 2 ft. by 4 ft. landing and stairs as a replacement for the stairs-only constructed by my builder. My reason for wishing to replace the landing/stairs with the proposed deck is to afford a level, above ground platform upon which to place a round table/umbrella and four chairs; and, in addition, some casual chairs, benches, planters, a gas grill and the like. Although the yard is reasonably level as noted, I wish to have an elevated, smooth surface so that my furniture will be on a solid surface. I also wish to eliminate the existing platform/stairs in order for me and my wife (in our 70s) to have a safer way to access my yard. I will be making the stairs, which will be facing south, much larger/deeper for safer use. I believe these reasons adequately support my desire for the deck/stairs.

4. “....lacks an adequate discussion of alternatives which would either not require a variance or minimize the shoreline variance requested. For example, the existing porch could be expanded an additional ±24 feet to the southeast corner of the existing dwelling and not encroach further into the shoreline setback than what currently exists. This porch would also not encroach into the 20-foot side yard setback. The record indicates that the applicant wished to avoid affecting the neighbor on that side by expanding the porch there, however, a porch in that location already exists and the side yard setback would be maintained.”

a. First, the referenced “porch” on the south side of the house is only a platform from which to enter and exit the house to the side/front yard or to the driveway. The dimension of 7ft to the south x 12ft to the east/west is certainly not large enough to accommodate the intended purpose of a deck; namely, a place to accommodate a table and chairs, gas grill and other items of furniture. It also does not afford the intended view of the lake due to the interference of the side/closed porch to the north and the pine trees to the east and south.

b. Second; to extend the current front porch “+- 24 ft. to the southeast corner” of the house would be totally impractical for the intended use since the 2 ft. width (toward the lake) would not accommodate any of the furniture items identified above. In addition, the bow window protrudes into the area and would certainly interrupt the space making the expansion practically unusable.

c. Third, as discussed in my original variance request:

- The deck could be placed on the north side of the house; however, there are two difficulties in so doing.

1. The 14' dimension would encroach into the association 20' set-back and to comply, would reduce the 14' dimension to 11'

2. There are no doors on the north side of the house; therefore, no access to the house.

- The deck could be placed on the south side of the house; however, there are two difficulties in so doing.

1. The dimension would encroach on the association 20' set-back and to comply, would reduce the 14' dimension to 6'

2. In addition, the south side of the house faces the north side of the Reickert house and the location of their bedrooms causing the potential for disturbances.

3. Placing the deck on the east side of the house in the suggested configuration with the stairs to the south would minimize the set-back issue as well as the potential for disturbance to the Reickert household.

- The west side of the house includes the garage, no door access to the house and has no view of the lake. Therefore, it is not a practical location.

5. ".....the area between the dwelling and the shoreline is fairly level, but there was no discussion as to why a patio that is flush with the ground could not be constructed instead of the proposed deck. Nor was there discussion in the record as to why the lawn area which currently exists, and is currently used for the purposes of sitting near the lake, is no longer adequate for the applicant's needs."

Granted; the area between the house and shoreline is fairly level; however, it is not level/smooth enough to adequately accommodate patio furniture due to tree roots. In addition, a patio flush with the ground will not eliminate the requirement for a variance in accordance with the Bolton zoning codes/requirements. A variance would, in fact, also be required. A patio if constructed from solid cement, wood, or tiles would impact the need for controlling runoff since the structure would not allow for rain/moisture to penetrate the ground. My proposed deck would allow for rain to penetrate between the decking and be absorbed by the ground beneath. For these reasons, I suggest that a deck makes more sense (is more environmentally sound) than the suggested alternatives and substantially accommodates the control of runoff.

6. "The amount of variance required is significant. The existing dwelling is already non-conforming and, including the existing stairs, intrudes 28 feet into the Town's 75-foot shoreline setback. The addition of the deck would cause further intrusion by 12 feet, increasing the total non-conformance with the setback to over 50 percent."

In reviewing the Bolton zoning codes, I find no definition of the term "significant." Using the term significant is left to a "subjective" opinion. The 50% increase into the setback, is mathematically correct; however, I do not believe the positioning of the deck can be categorized as significant since there are no regulations that support this determination. From my perspective, the size of the front yard is 100 ft. x 49 ft. or 4900 sq. ft. which is available to accommodate run off. The size of the proposed deck is 14 ft. x 17 ft. or 294 sq. ft. The deck would only impact 6% of the available space; therefore, certainly not significant when taking

into consideration all the “physical or environmental conditions” impact to the lake in terms of runoff; a very important aspect of building any structure close to the lake. Therefore, it is my position that the amount of variance requested is NOT significant.

He submitted the photos of decks in the neighborhood that he had referenced in his packet to the Board.

Jason Saris asked the Board Members if this adequately addresses the concerns. He stated he takes this personally because he knows they all put a lot of hard work in reviewing these applications and they don’t take this lightly when they make a motion and grant a variance. It is a little hard when someone comes back and says they have not considered it enough, when they are sitting at a desk in Ray Brook, not walking around a house on a property in Bolton and looking at the neighboring homes. The fact is they don’t and the ZBA does and the A.P.A. does not have the benefit of that.

John Whitney stated he was surprised when he read the A.P.A. comments because they had considered and addressed these items and they may not have been captured adequately in the minutes. Jason Saris stated that sometime they look at the discussion but more of what is captured in the motion.

Jason Saris asked how much the Board should go over the initial variance again. Atty. Muller stated that he thinks they need to briefly touch on it and Mr. Scheiber’s presentation should be specifically dealt with and discussed amongst the Board Members before they put together a motion. He stated that Mr. Scheiber has made an excellent presentation. There are a couple of points that should be discussed amongst the Board Members so the record is very accurate, so that when it is reviewed by the A.P.A. they have a better feeling that all things necessary to grant a variance for town law and a variance for shoreline setbacks for the A.P.A. have been satisfied. He would like the Board to discuss some of the parameters of what Mr. Scheiber is asking for, he realizes it is the same footprint, that was here before and they had justified it before. Get into the nitty gritty of what is set forth in his variance addendum. There are some very problematic things here. In point #1 “the purpose of minimizing any adverse impact such variance may have on the neighborhood, community or natural resources”, he does not believe anyone has defined what the negative impacts are by reason of what Mr. Scheiber proposes. He has not heard anything bad about this. No one from the neighborhood has objected, as a matter of fact he has letters of support from the neighbors. The one he feels is very problematic is “While the presence of these other non-conforming decks contributes to the character of the neighborhood, their presence alone should not be a rationale for approving additional non-conforming structures.” He agrees with this statement, Mr. Scheiber is not entitled to an approval just because everyone else previously had one. If you look at this specifically to what he wants to achieve you have to take into account that approving this area variance does not create something that is totally out of character with houses that are nearby, this does not dramatically stick out in anyway. This is very comfortable and conforming to the neighborhood character. The reason Mr. Scheiber wants this is because he needs a flat surface. It’s in proper scale to what he wishes to do in terms of attaching it to the house and in relation to the shoreline. It is in scale. It does not change the character of the neighborhood. Jason Saris stated he agrees coupled with the fact

that this Board by their own criteria considered the other homes in the neighborhood, not using them as a rationale for Mr. Scheiber's application, but because it is required of them to consider the other homes in the neighborhood. Atty. Muller agreed and said it is not the reason for approval, it's just a good rationale. Jason Saris stated they probably did not spend much time discussing why someone would want a deck, because it is an allowable use and so obvious. Just about everyone that lives in the Adirondacks has a deck as a way to enjoy the outdoors. Scale wise, not only did the applicant scale it back, but this is a minimal size.

Jason Saris asked the Board's thoughts on the purpose of minimizing any adverse impact such variance may have on the neighborhood, community or natural resources. John Whitney stated it was a wooden deck made from normal materials consistent with deck structures, and the height line and size of the deck is reasonably consistent with the other decks in the neighborhood and barely visible from the water. By having a deck there, it will be less added impervious space because the water will go through the deck surface as opposed to a concrete slab. Jeff Anthony stated there is permeable pavement that would work as an alternative. Jason Saris stated a patio would still need a variance so either way he would still need to come before the Board for the same relief. Tom McGurl stated it would be a little harder to access pervious pavers from the house as you would need stairs to access them. This is more challenging than a deck that you can walk right out on.

Jason Saris asked the Board's thoughts on "while the presence of these other non-conforming decks contributes to the character of the neighborhood, their presence alone should not be a rationale for approving additional non-conforming structures." Holly Dansbury stated they had all considered it and they agreed that it fit with the character of the neighborhood, but that was not the reason for the approval. Jason Saris stated that it was not the reason for approving it, but it was a valid reason for not denying it. John Whitney stated the motion did not by any stretch blame it on the other decks, it does note that there were other decks there, but it is consistent with that, it's not because of it. Jason Saris explained that all of this is supposed to be weighed against the benefit to the applicant and he thinks the benefit to the applicant is utilization of his property to enjoy the outdoors.

"The applicant's need for the proposed deck is not addressed adequately in the record." John Whitney questioned whether the applicant was required to establish a need. Atty. Muller stated that nowhere in the code or town law does it say that the applicant has to establish need. The need of course is that Mr. Scheiber has a project that needs an area variance, but the area variance he requires does not have a requirement to prove that you need it. He has never seen an applicant have to demonstrate need before they can get the variance that they have otherwise established by the criteria in town law and the code.

John Famosi asked if this was the A.P.A.'s way of stating practical difficulty. Atty. Muller stated this was a good point. Some of the practical difficulties are where the house is situated with relation to the shoreline is not unreasonable. Many people put their replacement homes on the same footprint. Jason Saris stated it was a pre-existing, non-conforming structure and they clearly discussed this with the A.P.A. and they clearly stated that a pre-existing, non-conforming structure qualifies as a practical difficulty with these situations. Atty. Muller

suggested that the need was part of the analysis of other feasible alternatives. Why does he need a deck as opposed to permeable blocks? It is a choice, but it is a good choice the alternatives that would be available to place in the same spot that he would place the elevated deck would magnify a problem that shouldn't be a problem; that is what they will need to step up in and out every time from what is a ground level addition (which would still need a variance) to get into the house. Whereas if it was at the same level you could pass all day long, never stepping off that deck and never having that hardship. This is the most feasible alternative. He needs to accomplish this.

“Lacks an adequate discussion of alternatives which would either not require a variance or minimize the shoreline variance requested. For example, the existing porch could be expanded an additional ±24 feet to the southeast corner of the existing dwelling and not encroach further into the shoreline setback than what currently exists. This porch would also not encroach into the 20-foot side yard setback. The record indicates that the applicant wished to avoid affecting the neighbor on that side by expanding the porch there, however, a porch in that location already exists and the side yard setback would be maintained.” Jason Saris stated it is important to note that any expansion on this house will require a variance. Atty. Muller stated there is a definite distinction between what constitutes a porch and what constitutes a deck, they don't even serve the same purpose. Jason Saris stated that there is no viable alternative that would not require a variance. Atty. Muller said most any which way he goes to extend out this type of amenity will require a variance. Jason Saris stated he did not understand the comment; it is almost as though the person that wrote it doesn't understand the Town's ordinance. John Whitney stated that they did talk about all 4 sides of the house, and setbacks, and the impacts on the neighborhood the last time and this time. Any other proposed location either doesn't make sense from the geometry of a useful deck or from the impact on the setbacks. There is no advantage to any of those other locations. This is a reasonable and relatively small deck. We have discussed all four sides of the house at least three times now. Jason Saris said getting into the house and out of the house also. Joy Barcome stated this would be a safer way to access the yard and the fact that the stairs are wider and deeper and safer should address this question.

“The area between the dwelling and the shoreline is fairly level, but there was no discussion as to why a patio that is flush with the ground could not be constructed instead of the proposed deck. Nor was there discussion in the record as to why the lawn area which currently exists, and is currently used for the purposes of sitting near the lake, is no longer adequate for the applicant's needs.” Jason Saris stated again, even a patio would require a variance. Having the ability to get outside without the need to deal with stairs is another reason. Patios and decks don't get muddy. John Whitney stated a patio created more disruption to a lawn than a deck would. This is a less invasive and less disruptive alternative. Jason Saris agreed and said it was important to note that aesthetically as to whether it is a patio or a deck, the view is not going to be substantially changed from the lake. Putting a deck behind the house does not make the structure look any bigger from the lake as it would if the structure was put on either side of the house, so aesthetically it fits better. Atty. Muller stated that if the applicant were to apply for a patio in the same area of the same size as an alternative, it would still require a variance. A ground level patio, creates an unnecessary hardship for the applicant because the patio and

the deck are no different in the eyes of the Zoning Board. The applicant has picked the better choice. Some of the practical difficulties are in putting this particular deck on that particular house, is that the house is already there, and it would be an exorbitant cost and extremely difficult to move the existing house back. He said the applicant has addressed the A.P.A.'s comment; "Nor was there discussion in the record as to why the lawn area which currently exists, and is currently used for the purposes of sitting near the lake, is no longer adequate for the applicant's needs." Basically he wants a smooth surface, one which is raised above the lawn that he can put and steady furniture and a bbq with access from the house. Jason Saris stated that there is not an alternative that would not require a variance. In the eyes of the Town Ordinance a patio would be treated exactly the same as a deck. The applicant chose a deck so as to allow access without stairs. The applicant has stated they are getting on in years and would prefer not to deal with stairs which is practical. He believes this addresses the fact that this is the only practical place the deck can go.

"The amount of variance required is significant. The existing dwelling is already non-conforming and, including the existing stairs, intrudes 28 feet into the Town's 75-foot shoreline setback. The addition of the deck would cause further intrusion by 12 feet, increasing the total non-conformance with the setback to over 50 percent." Jason Saris stated that he believes Mr. Scheiber's reply to this was spot on. John Whitney said it is almost irrelevant whether it is significant or not the issue is unbalanced. Jason Saris and Atty. Muller agreed.

Atty. Muller stated the Board would need to engage in a balancing test when determining whether or not to grant the variance. What is the benefit to Mr. Scheiber if this variance is granted; and weighing it against their consideration of any detriment to health, safety or welfare of the neighborhood? If this area variance was approved would it create an undesirable change to the neighborhood or be a detriment to nearby properties? Holly Dansbury stated that in balancing this, the applicant is requiring a flat level spot for egress to enjoy. This benefit far outweighs any potential detriment to the health and safety of the neighborhood. Tom McGurl stated he does not see any detriment to the neighborhood and there is correspondence from the neighbors in favor of it. The buffer from the water side will not allow it to be seen.

Jason Saris stated there is no option available that will not require a variance. This is the least obtrusive which will also allow him the best utilization of it. Tom McGurl stated it was the only way he was going to achieve his goals. John Whitney stated the flat patio does not allow him the level egress. Jason Saris stated that putting the deck large enough to fit a table and chairs with a bbq any place else on the building you would run into issues with setbacks and access to it due to the interior makeup with the home.

Tom McGurl stated on paper it may look substantial, but when you actually stand on the property, the size of the deck proposed is by no means anything he would consider substantial. The size is in relationship to the scale of the façade of the house.

Jason Saris said the request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Joy Barcome inquired about the question of the lake being impacted by runoff. Atty. Muller stated that Mr. Scheiber has a

natural buffer that he could be required to maintain so it not only screens the view but actually prevents it from being an outwash into the lake.

Atty. Muller stated if this is a self-created difficulty. It is never a type of finding that would preclude the granting of an area variance. In part this is a pre-existing structure that has been replaced on the same footprint and to some degree it is self-created and to a greater degree it is where it was before zoning was in effect. Jason Saris agreed that the house was built there as it would be a tremendous undertaking to build it somewhere else. All the utilities and foundation were already there. People have the right to maintain and rebuild their homes in their non-compliant location which the applicant chose to do.

Jason Saris said the practical difficulty was this was a pre-existing, non-conforming structure. John Whitney stated the applicant has a need for a level egress from the house. Atty. Muller stated that the other feasible alternative that was suggested by the A.P.A. as being a good choice, creates an unnecessary hardship that is difficult and impractical.

Zandy Gabriels from the audience stated level walkways and the use of the interior of one's home are absolutely critical as you get older. He stated that the practical difficulty standards are wrong, they are ancient and have never been changed. He hopes the Board deliberates at some point and possibly suggest to the Town Board and the Adirondack Association of Towns to write Albany to get this standard of practical difficulty changed.

RESOLUTION

The Zoning Board of Appeals received an application from Edmund Scheiber Jr., (V16-13) for an area variance as described above.

And, due to notice of the Public Hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning 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 any other means feasible to the applicant besides an area variance: A variance is required for any option; this is the least obtrusive that will allow the best utilization of the applicant. The benefit is a level egress from the home and a safer way for them to get out of their home. This deck is the only way he will be able to achieve his goals with a level ingress and egress to the home. They have discussed a patio which would require more earth disturbance than a deck along with being more of a hardship to the applicant.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. The Board discussed this extensively and the deck in its location will be barely visible from the lake, and offer no advantage to use a flat patio. There will not be any potential impact from runoff from this deck.
- 3) The request is not substantial; This is a fairly small deck with a relatively minor intrusion to the shoreline setback which is offset with the benefits to the applicant.

- 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 structure a pre-existing, non-conforming structure and a variance would be required for any new structure added. It meets the criteria in balancing these factors.
- 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 Whitney and seconded by Tom McGurl, it is resolved that the ZBA does hereby approve variance request as presented. **All in favor. Motion Carried.**

5. **V16-14 HOME PLACE CORP.** Represented by Susan Lambeth. In accordance with Section 200-52 Fence Regulations, any fence in excess of 100 square feet on lakeshore lots that is within the setback requirements from the lakeshore will require a variance. 480 square feet is proposed within the shoreline setback. Section 186.07, Block 1, Lot 3, Zone RM1.3. Property Location: 12 Bixby Road. Subject to WCPS review.

Susan Lambeth presented the following;

- She passed out photos to the Board.
- They would like to replace an old out of control Arborvitae hedge for privacy from the public beach with a new fence.
- They need a structure to put a no trespassing sign on to keep people from the beach off their property.

Jason Saris asked if they had a lot of people wandering on to the property. Ms. Lambeth replied yes.

Jason Saris asked if the beach was part of their property at one time. Ms. Lambeth replied that it was many years ago.

Tom McGurl asked about the trees that were not growing, and if it would be possible to dig up the trees and put in a better quality soil and replant. Ms. Lambeth stated it would be a construction issue and they need something immediately.

Holly Dansbury asked what the fence would be made of and look like. Ms. Lambeth said it was PVC and she detailed it on a photo.

Holly Dansbury asked if they would be tearing out all of the existing hedge. Ms. Lambeth replied yes, they would try to plant some vines to try to cover it up. The hedge is not working to keep people from wandering over to their property.

Tom McGurl asked if it was conceivable to plant hedges in front of the fence on the lake side to break it up. Ms. Lambeth replied that would be fine if they could get it to grow there.

Jason Saris asked whose fence was on the other side. Ms. Lambeth replied the Miller's, and it has been there for a very long time. Jason Saris stated it probably pre-dates requiring a variance.

John Whitney asked if Bixby Road was lined by a fence currently. Ms. Lambeth replied yes there is a stockade fence right down to the end and a split rail fence on the other side. There is a fence on both sides to 9N.

Jason Saris asked if they would be replacing the existing stockade fence. Ms. Lambeth replied no, they just wanted to replace the hedge with a fence. Jason Saris asked if this new fence would start where the stockade fence ends. Ms. Lambeth replied yes, right at the edge of the beach to 80' to the south.

Tom McGurl asked if they would be amiable to a different style fence. Ms. Lambeth asked what he had in mind. Tom McGurl stated it was 6' high with lattice on the top versus a split rail fence and it would look like a wall. Ms. Lambeth stated there would be bushes and things that were already planted around that. Tom McGurl said so this is both for their privacy and to keep wanderers off the property. Ms. Lambeth replied, exactly.

John Whitney asked where are the people going now. He asked if they were climbing through the shrubs. Ms. Lambeth detailed on the photos where they were coming from. John Whitney stated he did not understand how the fence would stop them. Ms. Lambeth stated a solid structure would allow them to put up private property signs. Tom McGurl inquired about using sign posts. Ms. Lambeth stated that they had tried this. Ms. Lambeth stated this would make it look better too, it is the same solid wall as what is there.

Jason Saris stated that most people are trying to cut down the trees, as opposed to adding more privacy.

Tom McGurl stated he can understand the need for it, but it would help to have plantings so that it was not one solid wall. Jeff Anthony stated that he agreed, it would need shrubs in front of it to bust it up on the lakeside. Jason Saris inquired if they meant on the lakeside. Jeff Anthony replied yes. Holly Dansbury said that Ms. Lambeth said nothing grows there. Jason Saris stated he was sure she could get something to grow that would break up the fence, which is different.

John Whitney stated that the existing shrubs seems very densely screened, and he could not see through it. Ms. Lambeth stated it was 15' wide so you could not see through the hedge as it exists now. John Whitney said the fence that was chosen seems prison like, versus the natural shrubs that are there now. Ms. Lambeth detailed the picture and stated that if you try to contain the hedge that is there, you would not have anything and would be able to see through it. The other point is that they would not be able to put up a private property sign.

Holly Dansbury stated that there must be alternative ways to put up signs. Ms. Lambeth stated they have tried. Jason Saris stated that you can put a sign up but a fence is way more effective.

People do not always pay attention to signs. Ms. Lambeth stated that the beach gets a lot of traffic in the summer.

John Whitney stated the fence seems almost prison like as opposed to the existing shrubs.

Jason Saris stated he believes that there is plantings that will work in that environment with the fence to break it up and hide it. Ms. Lambeth stated that was what they were planning to do, they do not want to look at a fence either, but for now the plan is to get the fence in and then put in the plantings on both sides. Jeff Anthony stated the only way for the Board to understand this is to have a planting plan in front of them.

John Whitney stated that he is concerned that this is a really substantial request. Jason Saris stated that the Board has had fences going down to the lake but usually they are on the side, but they have very few private properties adjacent to a town beach requiring the fence to be wrapped around the front. John Whitney stated he was trying to understand this amount of disruption on the shoreline. John Famosi stated this was a unique situation and this is probably the only practical way to keep people from trespassing. Tom McGurl stated he understands the need, but he agrees with Jeff Anthony, and would like to see a planting plan so the Board can visualize what the fence will look like. Ms. Lambeth stated that the Arborvitae has encroached on the property and they really don't know what they have there until they take it down. Ms. Lambeth stated the fence would be well behind the seawall so there would be plenty of room for plantings.

Joy Barcome asked what the effect on the lake would be if they took out all the shrubs. Ms. Lambeth stated they would be planting some stuff right back. John Whitney stated he thinks they should come back with a planting plan as he is very concerned with the disturbance. Jeff Anthony stated he would also like to see the erosion controls shown on a drawing during and after the construction phase as they were working so close to the lake.

Jason Saris asked the Board exactly what they were looking for from the applicant. Jeff Anthony stated he would like the center line of the fence shown on the plan, along with the proposed plantings shown and named on both sides of the fence. He would like to see stabilization plans for erosion control during construction and final stabilization with soils. He would also like a cut of the fence and a visual simulation from the lake so the Board to see what it looked like. John Whitney stated his main concern would be that the least intrusive solution be proposed.

Jason stated the fence needs to be more accurately depicted on the plan and plantings named and shown on a plan for both sides of the fence along with the mitigating measures that will be taken during construction and the same for post construction. Jeff Anthony suggested using native plants for the plantings.

Now, upon motion duly made by Holly Dansbury and seconded by Tom McGurl, it is resolved that the ZBA does hereby table the request as presented for additional information. **All in favor. Motion Carried.**

V16-15 O'KEEFE, ROBERT (The Huddle Restaurant). Represented by Al Stern. To alter non-conforming structure, specifically to add a 22'7"x 35' addition to the restaurant, seeks area variance for 1) Setbacks: Front: 30' is required, 5.4' is proposed from Route 9N, and 4.2' is proposed from the easement/right-of-way on the north side; 2) 40% lot coverage is allowed, 53.3% is proposed; 3) Parking: A total of 43 spaces is required (41 spaces for the restaurant and 2 spaces for the single family dwelling), 5 spaces are proposed; and 4) to alter non-conforming structure in accordance with Section 200-57B1b. Section 171.15, Block 1, Lot 59, Zone GB5000. Property Location: 4947 Lake Shore Drive. Subject to WCPS review. See SPR16-08 associated with this project.

Al Stern of AR Stern Architects presented the following:

- They are basically seeking relief for area, parking and the setback.
- Currently it is a pre-existing, non-conforming structure.
- The proposed structure is approximately 720 sq. ft.
- The setback required from the road is 30'. This is currently only set back 5.5'.
- The planter currently abuts the property line.
- They would remove this planter to gain 5' of public area.
- Currently they have 8 parking spaces and they will be taking 3 away for the structure.
- Very few businesses in town have the required amount of parking spaces.
- This is a great venue for the Town.
- They will be improving the stormwater management.
- They will have gutters that will collect the water and store it in an underground containment system to be disbursed over time.

Jason Saris asked if any other alternatives were considered to this design. Mr. O'Keefe stated he did look at other alternatives and to conform to what would look better, they felt the broader picture from the road would make the appearance of the building look nicer. This makes the most sense due to the style of the building and it makes more sense to move it to the front of the building near the main fare. They would require a variance any place that they put the addition because it was a non-conforming structure. Mr. Stern replied that there are not a lot of alternatives and this was about the only place to put it while maintaining the character and improves the street scape.

Jason Saris asked how many more tables there would be. Mr. Stern replied 40 more seats.

Jason Saris asked if they planned on keeping the existing tables on the side of the building. Mr. O'Keefe replied that they were.

Jason Saris stated he preferred this to the awnings that are removed every winter season.

Mr. Stern stated this was a timber frame structure.

Bryan Allen stated one of his concerns is the parking in town. By adding an additional 40 seats you have the potential for more people looking for parking spaces while at the same time

diminishing the existing parking. He believes this will set a precedent in town and should be considered.

Mr. Stern stated that a town with a parking problem is a good thing, it means more people are coming into it. All towns are challenged with this. The Town is addressing this with a new lot.

Tom McGurl asked how many parking spaces they would be losing. Mr. Stern replied 3

Jason Saris asked how many businesses in town were compliant with parking. Zoning Administrator Pamela Kenyon replied she did not know off the top of her head. John Whitney stated that there was not many. Jason Saris stated that when he first joined the Board it was explained to him that the reason the ordinance required the steep amount of parking for the number of tables was for places outside of town, because there was no off street parking available to them. In town there are parking alternatives. The whole business community in the hamlet in general, do not have the required parking.

John Whitney stated he thinks it a great thing to see a business in Town expanding, and he believes it is a nice looking structure.

Tom McGurl asked if they would now need an expansion in the back end of the building to expand the kitchen to accommodate the 40 new seats. Mr. O'Keefe stated they had plenty of room in the back within the walls of the building for any expansion.

Jason Saris asked if there were future plans for expansion. Mr. O'Keefe stated not at this particular time, he may look for more space within the 4 existing walls. He did not plan to push any of the walls out.

RESOLUTION

The Zoning Board of Appeals received an application from Robert O'Keefe, (V16-15) for an area variance as described above.

And, due to notice of the Public Hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning 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 any other means feasible to the applicant besides an area variance: the site is very small and any sort of expansion would require some sort of an area variance.

2) There will be no undesirable change in the neighborhood character or to nearby properties. The building design is compatible to the existing restaurant structure and is within the hamlet area which is a densely developed hamlet area.

- 3) The request is substantial; but there is no other place to expand on the site.
 - 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. This will be positive effect with the newly implemented storm water controls. It should be noted that expansions like this are encouraged within the hamlet by the A.P.A. as opposed to moving them outside the hamlet area.
 - 5) The alleged difficulty is self-created; the need to expand is self-created however there are not very many choices where they can expand on the site and the applicant is pretty much boxed in here.
- 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 John Whitney, it is resolved that the ZBA does hereby approve variance request as presented. **All in favor. Motion Carried.**

The meeting was adjourned at 8:29.

Minutes respectfully submitted by Kate Persons