

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, April 18, 2005
6:30 p.m.**

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

Present: Chairman Greg Smith, Kam Hoopes, Meredith McComb, Tom McGurl, Michael Murray, Bill Pfau, Zoning Administrator Pam Kenyon, Town Counsel Michael Muller

Absent: Tony DePace

G. Smith opened the meeting at 6:37 pm by asking for corrections to the March 21, 2005 ZBA minutes. Motion by K. Hoopes to approve the March 21, 2005 minutes as read. Seconded by M. McComb. All in favor. Motion carried.

1) V05-05 JONES, STEVE. Represented by Chris Gabriels. Seeks use variance to alter existing dock as no primary use exists. Section 141.00, Block 1, Lot 14, Zone RL3. Property Location: Walker Point Lane, Northwest Bay parcel south of Steve Jones' log home - enter driveway just south of gray barn/carriage house. No action was taken by the WCPB. Subject to SEQR. The Planning Board unanimously recommended approval.

Chris Gabriels, representing Steve Jones, gave an overview of the proposed project of modifying a pre-existing structure. The ZBA unanimously decided to change the request from a use variance to an area variance. M. McComb said (1) the proposed project requires being changed to needing an area variance on the grounds that the dock is a pre-existing use of a secondary structure without a primary structure and (2) it is an alteration of a non-conforming structure.

There were no comments from the public.

There was no correspondence.

There was no action taken by the WCPB.

RESOLUTION

The Zoning Board of Appeals received an application from Steve Jones (V05-05) for a use variance as described above. The Board agreed to convert the use variance to an area variance.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding this application;

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than an area variance
- 2) There will be no undesirable change in the neighborhood character to nearby properties
- 3) The requested variance is not substantial
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district), in fact it will serve to preserve more open space on Lake George
- 5) The alleged difficulty is self-created, but it does not outweigh the benefit to the applicant

Now, upon motion duly made by M. McComb and seconded by M. Murray, it is resolved that the ZBA does hereby approve the area variance to alter a pre-existing non-conforming structure as presented. All in favor. Motion carried.

2) V05-06 NICHOLSON, CRAIG. For the construction of a proposed single-family dwelling, seeks area variance for 1) a deficient front yard setback: 50' is required, 14.5' is proposed from the edge of the right-of-way for Millstone Drive; and 2) deficient side yard setback: 30' is required, 17.5' is proposed. Section 185.20, Block 1, Lot 25, Zone RCL3. Property location: .6 miles on left side on Three Oaks Drive. Subject to WCPB review.

Craig Nicholson said; (1) the proposed home is 24' X 38' with a 12' closed in porch making it 50' long, (2) there is a deficient rear yard setback, because it is considered to have two front yards, (3) he measured some front lines of neighboring development homes and none of the homes met the 50' setback, and (4) he is willing to center the house more by crowding the 30' sideline, but he would have to cut a tree out to do that. K. Hoopes said the only neighboring home that would be slightly impacted is the cabin across Three Oaks Drive and Craig Nicholson said (1) that cabin is owned by Andrew Kreek and Patricia Dietrerich, and Andrew Kreek is the same person who is selling him the lot in question and (2) Mr. Kreek has no problem with the placement of the proposed house as presented.

M. Murray said (1) the surface water off Three Oaks Road runs right onto the lot, (2) there is a ditch that runs right down the middle of the lot and (3) he can't be within 100' from someone else's sewer or water systems. Craig Nicholson said (1) he will retain the

water, (2) he will address the ditch in the stormwater plan for the property and (3) his leachfield is proposed to be 140' to the well on the east side and 112' to the well on the west side. B. Pfau asked for information on how this lot size and house size compares to neighboring homes. Craig Nicholson said (1) the home to the north and west of this location is a 36' X 36' house on a smaller lot than his and (2) another home up the road is 24' X 38'.

B. Pfau asked (1) if the house could be moved anywhere on the lot where a variance wouldn't be needed and (2) if Millstone Drive could be used for access to the property. Craig Nicholson said (1) no, a 50' setback on both sides, (2) no, Millstone Drive is a separate community and it is too steep.

B. Pfau said it is an average size lot for the area. M. McComb said it is a good size house for the lot and may be too much house for the size of the lot. Craig Nicholson said they brought the overhangs back to 16" all the way around so the square footage of the house is actually 1403' including the porch.

G. Smith said (1) there is ample room for the septic system on this piece of property and (2) the property would be on the Association's water supply. M. McComb said several letters were written regarding whether or not this would be a seasonal house and G. Smith said it can only be a three-season house, because the Association only provides water for three seasons.

B. Pfau asked what the effect would be if the house was moved up the hill closer to Three Oaks Drive. Craig Nicholson responded by saying it would raise the house. G. Smith was of the opinion that this is the best location for the house.

From the public, Arthur Norelli, a homeowner in and a Board Member of Millstone Association, noted that the Association concerns are; (1) the proposed home being within 4' of Millstone Road, (2) the safety of children playing in the proposed home's front yard area, (3) currently the 50' setback provides an attractive natural tree-line boundary, which if decreased, will have a negative impact on the properties of Millstone Association and (4) constant drainage already exists and if the new drainage is done improperly or gets out of hand, it will add to the existing drainage problems.

Craig Nicholson said he appreciated the Millstone Association's concerns and he said (1) in looking at the plot plan, it is 14.5' to the property line and then another 14.5' to the edge of the road making the setback more than 30' on the southwesterly corner and 29.5' on the southeasterly corner and (2) there are no trees that have to come out on the south side.

The following correspondence was received, copies of which were provided to ZBA Board Members. See letters on file for specifics.

- Letter from Paul Scheeler – opposed

- Letter from Evelyn Rein – opposed
- Letter from Ernest Leskody – opposed
- Letter from Catherine Sheppard – opposed
- Letter from Morrie/Hahn – opposed
- Letter from Delores Grimm – opposed
- Letter from Kenneth Drautz – opposed
- Letter from Fred Boddy, Millstone Homeowners Association President – opposed
- Letter from Ronald Rock, Three Oaks Colony Association President – opposed
- Letter from Kathryn Rock - opposed
- Letter from Josephine Glier – opposed
- Letter from Kathryn Simmons – opposed
- Letter from Patricia and Ross Hamilton – concerns

P. Kenyon said there was no county impact.

M. McComb said the size of the house is determined by 15% coverage, which is the maximum density. She said the house is already at maximum density for the lot size, so Craig Nicholson would have to return to the ZBA for a variance for any additional expansion. G. Smith said the ZBA could make it a condition that the property could never be expanded. Town Counsel said he would not be comfortable with the ZBA saying any applicant cannot come back and petition for relief and that if an applicant has a case, it should be heard.

RESOLUTION

The Zoning Board of Appeals received an application from Craig Nicholson (V05-06) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given;

and, after reviewing the application and supporting documents of the same, and there being public comment regarding this application having been heard;

this Board makes the following findings of fact:

The application of the applicant is as submitted in Item #2 on the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than an area variance

- 2) There will be no undesirable change in the neighborhood character to nearby properties, has not been established, as there are a variety of house styles in that area
- 3) The requested variance is not substantial, as the applicant has made all efforts to reduce the variances to their very minimum
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district), stormwater management will be taken
- 5) The alleged difficulty was not self-created, the lot is pre-existing

Now, upon motion duly made by K. Hoopes and seconded by T. McGurl, it is resolved that the ZBA does hereby grant approval for said project as presented. 5 in favor. 1 (M. McComb) opposed. Motion carried.

3) V05-07 THE JULIANA MOTEL. For the construction of 2 proposed decks, seeks area variance for 1) deficient side yard setback: 15' is required, 4' is proposed for both; and 2) maximum length allowed is 120', 175' is proposed for Unit 10. In accordance with Section 200-56A, seeks area variance to alter a non-conforming structure. Section 213.17, Block 1, Lot 33, Zone RCM1.3. Property location: 3842 Lakeshore Drive. Subject to WCPB review.

Eric Fahlborg, owner of The Juliana Motel, said (1) he is seeking permission to build two decks, (2) the proposed deck on Unit 10 would be approximately 350' and the proposed deck on Unit 25 would be approximately 550' to the house of their southerly neighbor, the Queens, (3) there is a tree line that separates The Juliana from the Queens property, (4) the proposed decks would be solely for use by the renters of the units to which they are attached and (5) noise will not be a factor.

K. Hoopes said the decks (1) have minimum impact, (2) are hundreds of feet from the shore, (3) visually improve the look of the building and (4) adds to the marketability of Units 10 and 25. B. Pfau said the decks (1) are a nice addition to the property and (2) will minimally affect the neighbors to the south.

From the public, Jeffrey Queen, abutting neighbor to the south, said (1) their home is a summer home which they have been in since 2002, (2) they did extensive due diligence regarding the neighboring establishment being a motel, (3) the Fahlborg's asked for a variance in Fall 2004, for which he and his family had no problem with this deck for the Fahlborg's personal residence, (4) their family has children ranging in age from 1 to 10 and is concerned with their children being exposed to bad renters, who create a difficulty for neighbors, (5) the existing motel buildings that are built in some cases, 24" to the lot line and the proposed decks being less than 4' from the Queens property line act as a sight buffer, (6) the existing decks face north and with

the edition of the proposed decks on the east side, bad renters would be visible and have access to the Queens property, which they do not have now, (7) the deck will be 7' off the ground on the back building and cannot be sight buffered. He respectfully requested the ZBA decline the proposed variances.

K. Hoopes said the Zoning Board exists to provide reasonable relief when zoning regulations become too restrictive. G. Smith asked if the Queens' concern is with the proposed deck on Unit 10 or Unit 25, to which Jeffrey Queen said Unit 10 is the worst, because there is no way to sight buffer it, but that he is objecting to both decks. M. McComb said (1) adding the decks may not be a good idea, (2) the Queens bought their residence prior to the Fahlborg's purchasing The Juliana and (3) there are options other than the proposed decks.

G. Smith asked if the proposed decks could be placed on the front of the buildings and still allow for parking, to which Eric Fahlborg said doing that would not allow for sufficient parking. T. McGurl asked how many people Unit 10 and Unit 25 can accommodate. Eric Fahlborg responded by saying 2 people per unit. G. Smith said the decks could be smaller. Eric Fahlborg noted he is willing to make the decks smaller.

From the public, Jeffrey Queen said (1) if a deck is put on the eastern side of the property it opens his family up to renters they did not have before, (2) the northern sections of the deck could easily be added and still have adequate parking space, and (3) adding the decks will materially effect their use of their property without having to deal with the renters. G. Smith said (1) adding the decks will be a substantial change to the Queens property, (2) Unit 10 will be looking down on the Queen property and (3) the proposed deck for Unit 25 to accommodate 2 people should be smaller. Alea Fahlborg, co-owner of The Juliana, asked if there is any way reducing the size of the decks and planting trees at the same time would help minimize the visual impact from the Queens' side and G. Smith said the trees would have to be 20' tall to block the proposed deck for Unit 10.

From the public, Sue Millington said (1) she visited the site, (2) the decks would be extremely noticeable, (3) there will be an undesirable change in the neighborhood and detriment to nearby properties, (4) the benefit can be sought by the applicant in another way by making the northerly facing decks bigger, (5) the variance request is substantial, (6) the decks will have an adverse effect on the physical or environmental conditions in the neighborhood, (7) it is self-created, (8) they are very large decks for two people per unit and (9) she does not feel either of the decks meets the criteria for the ZBA to approve the variance.

B. Pfau asked if the proposed deck on Unit 10 could be reduced to 10' X 20' and Unit 25 be reduced to 10' X 12'. Eric Fahlborg said he would be agreeable to reducing the deck sizes as suggested.

From the public, Jeffrey Queen said (1) they are not objecting to the size of the decks, but rather the location of the proposed decks on the eastern ends of the property, which will give renters access to the Queens' property, which has never existed and (2) they cannot sight buffer the proposed decks, and (3) he is respectfully requesting the ZBA not grant the variance. M. McComb said (1) changing the size does not materially change the impact of the proposed decks and (2) there is another means available and feasible to the applicant by extending the deck to the front.

There was no correspondence.

The WCPB determined no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from The Juliana Motel (V05-07) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given;

and, after reviewing the application and supporting documents of the same, and there being public comment regarding this application having been heard;

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit may be achieved by another method, but an area variance is the most positive way
- 2) There will be no undesirable change in the neighborhood character to nearby properties, but they must be screened with vegetation
- 3) The requested variance is not substantial, the ZBA has reduced the setbacks from the property line to the south
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district), once the screening is up
- 5) The alleged difficulty was not self-created

Motion by B. Pfau to grant the variances with the condition that the size of the deck on Unit 25 be reduced to 20' x 10', and the deck on Unit 10 be reduced to 10' x 12', both

being pulled back from the property line, and both decks are to be appropriately screened with vegetation. Seconded by K. Hoopes. 3 in favor. 3 (G. Smith, M. Murray and M. McComb) opposed. Motion did not carry.

4) V05-08 STEWART'S SHOPS CORP. Represented by Paul Bulmer and Tim Laskey. To alter existing structure by adding an 8' x 14' addition to the rear of the building, seeks area variance for deficient parking: 34 spaces required, 12 spaces exist, 12 proposed. Section 171.15, Block 3, Lot 24, Zone GB5000. Property location: 5004 Lakeshore Drive. Subject to WCPB review.

Tim Laskey said they would like to add an 18' X 14' freezer to the building by moving the existing inside freezer to the outside and connected by a doorway. He said by adding onto the space outside the store, it will enable them to re-layout the store allowing them to (1) provide better customer flow, (2) open up aisle ways, and (3) help with handicap access.

M. McComb asked if it is a pre-fabricated unit and Tim Laskey answered yes. G. Smith said adding the freezer (1) will not affect the wetlands, (2) it will be well screened and (3) it is the best location for it.

There were no comments from the public.

There was no correspondence.

P. Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from Stewart's Shop Corp. (V05-08) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding this application;

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than an area variance

- 2) There will be no undesirable change in the neighborhood character to nearby properties, as it is a particularly desirable location and it cannot be seen from Route 9N
- 3) The requested variance is not substantial
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district)
- 5) The alleged difficulty is self-created, but it does not outweigh the benefit to the applicant

Now, upon motion duly made by M. McComb and seconded by M. Murray, it is resolved that the ZBA does hereby grant approval for said project as presented. All in favor. Motion carried.

5) V05-09 FARONE, THOMAS. Represented by Steve Moffitt and/or Sue Millington. For the construction of a proposed in-ground swimming pool and patio, seeks area variance for 1) deficient shoreline setback: 75' is required, 35.5' is proposed; and 2) in accordance with Section 200-52 Fence Regulations, a variance is required for a fence in excess of 100 sq ft within the shoreline setback, 608 sq ft of fencing is proposed. Section 213.05, Block 1, Lot 8.1, Zone RM1.3. Property location: 4120 Lakeshore Drive. Subject to WCPB & APA review.

Steve Moffitt, representing Thomas Farone, gave a history on the lot in question and he said they are (1) seeking an area variance, (2) proposing to put a pool in the only level spot available, (3) the proposed pool will be 14' X 28' with a patio around the pool.

M. McComb said (1) 680 square feet of fencing and the pool within the 75' setback is the easy place to put it now and (2) there is additional land behind the house to relocate the pool. Steve Moffitt said there is no way they can get a pool to meet setbacks from the north or the south. K. Hoopes said (1) the proposed location is the best location for the pool from an owner's point of view, (2) the only obvious view from the lake will be the fencing and (3) the pool wouldn't be that visible from the lake.

M. McComb referenced the waterfront usage study generated by people in the Town of Bolton and said there is a need to enforce the 75' setback. B. Pfau said he sees the problem being that the pool is a separate structure between the house and the lake. M. Murray said the pool could be turned to meet the setbacks.

Attorney Sue Millington, for Thomas Farone, said (1) Mr. Schermerhorn, who owns the neighboring lot, is not opposed to the proposed pool in any way, (2) the pool would be completely screened and not visible from the lake and (3) she does not see any undesirable impact on the neighborhood. G. Smith said the fencing will be visible from the lake and felt that it would look pretty offensive.

There were no comments from the public.

There was no correspondence.

P. Kenyon said there was no county impact and if approved, the project will be subject for APA review.

RESOLUTION

The Zoning Board of Appeals received an application from Thomas Farone (V05-09) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding this application;

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could be achieved by means other than an area variance, the proposed pool could be put in back of the house away from the lake
- 2) There will be undesirable change in the neighborhood character to nearby properties, the fencing will be very visible from the lake
- 3) The requested variance is substantial, in that the entire proposal falls in the 75' setback from the lake
- 4) The request will have adverse, or has had adverse, physical and environmental effects (in the neighborhood or district), related to the sight of fencing from the lake
- 5) The alleged difficulty is self-created, and it does outweigh the benefit to the applicant

Now, upon motion duly made by B. Pfau and seconded by M. McComb, it is resolved that the ZBA does hereby deny said project as presented. 5 in favor. 1 (K. Hoopes) opposed. Motion carried.

6) V05-10 DiNAPOLI, JOSEPH. For the construction of a proposed single-family dwelling, seeks area variance for 1) deficient density: 23.40 acres required, 1.92 acres exists; and 2) deficient shore frontage: 306' required, 180' exists. Section 200.10, Block 1, Lot 2, Zone RM1.3. Property location: 4366 Lakeshore Drive. Known as Porter's Cottages. Subject to WCPB & APA review.

Joe DiNapoli, sole owner and proprietor of Porter's Cottages, said (1) he currently operates Porter's Cottages seasonally from June through September or early October, (2) for several years he has been interested in putting a house on the substantial amount of property he has at the lake, (3) the area from the last cottage to the lake is about $\frac{3}{4}$ acre, which is where he is proposing to put a house with a footprint of approximately 1500 square feet, (4) the setbacks are ample, (5) the visual impact to the lake and neighbors is minimal, (6) the size and character of the proposed house is consistent with neighboring houses, and (7) the color of the proposed house will be of colors to blend with the natural landscape surrounding it. He also said over the years he (1) has maintained a tree line down at the lake, so the visual impact from the lake should be minimal, (2) has maintained a substantial amount of trees at the roadway, and (3) the only neighbor who would be impacted by the proposed house is his neighbor to the north, Bill Millington, who is fully in favor with the project. He said he is looking to put the proposed house on the Porter's Cottages property to enable him to operate his business from his home on-site.

G. Smith said (1) the reason Joseph DiNapoli wants to put a house on the Porter's Cottages property is so he can run his business from there on-site, (2) Joseph DiNapoli could turn around and sell the property, then there could be residences built there, and (3) with Joseph DiNapoli building his own home at Porter's Cottages, it keeps another Town of Bolton business alive, keeping up the tourist industry. K. Hoopes agreed and said it is preferable to have owners on-site at these resort businesses. Several other Board Members of the ZBA agreed that this is a good plan.

From the public, Roger Mahieu, southerly neighbor, said (1) he is opposed to the project, (2) is requesting the ZBA postpone a ruling until his attorney can be present, and (3) read from the letter dated April 14, 2005 submitted by Attorney Robert McNally of Stafford, Carr & McNally, P.C. and received by the Town of Bolton Zoning Office on April 14, 2005. See letter on file for specifics.

G. Smith asked where Roger Mahieu's property is in relation to Joe DiNapoli's, to which Roger Mahieu said there is one lot between himself and Joe DiNapoli to the south.

Joe DiNapoli addressed Roger Mahieu's concerns and said (1) they do not launch boats at Porter's Cottages, (2) he has a right to use any of Porter's Cottages amenities for his friends and relatives, (3) Porter's Cottages was in existence since 1954, prior to Roger Mahieu moving into his home in 1988, and (4) he has gotten a pat on the back over the last 10 years that he has been at Porter's Cottages since he has cleaned up the place and the clientele.

From the public, Rolf Ronning said (1) he admires what Joe DiNapoli is doing, (2) what's being asked for is fair and (3) he is strongly in favor of the project.

From the public, Sue Millington said (1) her family has lived on that piece of property for over 40 years, (2) Joe DiNapoli keeps the beachfront in great shape and is careful of which boaters he allows there, and (3) she is in favor of the project.

From the public, Roger Mahieu said he took due diligence prior to purchasing his property, and increasing a non-conforming use to such an extent is beyond all reasoning.

M. McComb said (1) Porter's Cottages is a cabin colony with open space, (2) she understands bending over backwards to protect cabin colonies, and (3) she hopes whoever makes the motion does not say the variance request is not substantial.

The following correspondence was received, copies of which were provided to ZBA Board Members. See letters on file for specifics.

- Letter from Attorney Robert McNally from Stafford, Carr & McNally P.C., representing Richard and Carleen Baright and Roger, Joan and Shane Mahieu – opposed

P. Kenyon said there was no county impact, with the stipulation the septic system is compliant with the number of units and proposed single-family dwelling use.

RESOLUTION

The Zoning Board of Appeals received an application from Joseph DiNapoli (V05-10) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given;

and, after reviewing the application and supporting documents of the same, and there being public comment regarding this application having been heard;

this Board makes the following findings of fact:

The application of the applicant is as submitted in Item #6 on the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than an area variance

- 2) There will be no undesirable change in the neighborhood character to nearby properties, this property is heavily screened from the south and the north
- 3) The requested variance is not substantial, it has not been established in any compelling way
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district), stormwater retention will be in place and the lay of the land is uphill to get to Lake George
- 5) The alleged difficulty is not self-created, Porter's Cottages existed for a long time prior to Joe DiNapoli taking it over, it is time to upgrade it by putting the owner's home on the property

Now, upon motion duly made by K. Hoopes and seconded by T. McGurl, it is resolved that the ZBA does hereby grant approval for said project as presented. 5 in favor. 1 (M. McComb) opposed. Motion carried.

7) V05-11 DRAKE, RICHARD & BARBARA. Represented by Atty Robert McNally. To alter existing non-conforming retaining wall, seek area variance for deficient setbacks: 1) shoreline: 50' is required, 33' is proposed; 2) side: 20' total is required, 2½" proposed; and 3) front: 30' is required, 21.5' is proposed. In accordance with Section 200-56A, seek area variance to alter a non-conforming structure. Section 171.19, Block 2, Lot 7, Zone GB5000. Property location: 20 Congers Point South. Subject to WCPB review. **Note:** after-the-fact.

Richard Drake, representing himself, apologized for appearing after-the-fact and gave an overview/history of the retaining wall in question.

K. Hoopes said (1) this item is after-the-fact, (2) if the wall was in disrepair for over two years, Richard Drake would still need to come to the ZBA to replace the wall (3) Richard Drake would have needed a building permit, which should have alerted him to the fact he may or may not need a variance to proceed with the retaining wall, and (4) the ZBA recently has taken zero tolerance for after-the-fact projects. Richard Drake said he called the Warren County Building Codes Department and was told they do not issue building permits for landscaping retaining walls.

M. McComb said (1) it is established that the wall is not brand new and (2) he is rebuilding on precisely the same footprint. Town Counsel said (1) to whatever extent the retaining wall is greater than the previous existing structure is a new situation, (2) it is a structure and needs to meet setbacks, and (3) Richard Drake could have replaced the retaining wall tie for tie, nothing different, nothing bigger, nothing longer, nothing higher and he wouldn't be here. Richard Drake said the retaining wall is 12"-16" taller than it was in 2000, but not higher than it was when originally built in 1988 and four 8" rotted ties were taken down and five 6" new ties were put up. G. Smith said (1) the neighbors

to the west (Slater) submitted a letter stating that they would like an engineer to look at the retaining wall to see what can be done better to avoid water from coming onto their property and (2) Miss Slater would like the retaining wall to be built from railroad ties as it was originally. M. Murray said if the retaining wall is lowered, it will compound the problem.

P. Kenyon said (1) she visited the site with Town Engineer, Tom Nace in Summer 2004, at the time, there was a soil erosion problem and (2) Richard Drake agreed at that time he would address some of those erosion problems, which he has since done. Richard Drake said (1) he did address erosion problems, (2) he reviewed the stormwater plan with Tom Nace and was told if there were any additional items to address Tom Nace will notify him, and (3) if someone can show him where the water is coming from, he will take care of it. M. McComb said (1) there is no way you can have paved roads on a hill without having run-off, (2) Richard Drake has built a catch basin and tried to fix the retaining wall, and (3) she doesn't feel the item needs to go to the Town Board. G. Smith said Richard Drake may want to stain the wall to blend with the existing wall to make it blend in as a courtesy to his neighbors and Richard Drake said he'd be happy to comply.

From the public, Kathy Spahn, neighbor up the hill from the Drakes, said (1) she has lived there since the late 1970s, (2) the run-off problem has always existed, (3) the water comes off of the paved section and pulls all the mulch out, and (4) the problem with run-off at the end of the road has always been there and has not been created by the addition or deletion of a railroad tie.

The following correspondence was received, copies of which were provided to ZBA Board Members. See letter on file for specifics.

- Letter from Jodi Slater – does not object to the retaining wall, but would like it checked by a professional engineer and would like it made of the same material as the existing wall.

P. Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from Richard & Barbara Drake (V05-11) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given;

and, after reviewing the application and supporting documents of the same, and there being public comment regarding this application having been heard;

this Board makes the following findings of fact:

The application of the applicant is as submitted in Item #7 on the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than having a repaired retaining wall, the changes made seem to have improved a difficult stormwater situation, and the applicant is making every effort to work with the neighbor to make a difficult situation better
- 2) There will be no undesirable change in the neighborhood character to nearby properties
- 3) The requested variance is not substantial, as it is only for a few inches
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district), the applicant tries to mitigate against any such things occurring
- 5) The alleged difficulty is self-created, it was an existing wall, and if the height of new railroad ties is a little bit different than the height of rotted railroad ties, it is not significant

Now, upon motion duly made by M. McComb and seconded by M. Murray, it is resolved that the ZBA does hereby grant approval for said project as presented. 5 in favor. 1 (K. Hoopes) opposed. Motion carried.

8) V05-12 TEKMITCHOV, VASILIKI. To alter existing structure, specifically to create a second story deck over existing bar area to accommodate additional seating, seeks area variance for deficient setbacks: 1) front yard: 30' is required, 25' is proposed from Route 9N; 2) 1' is proposed from Congers Point North; and 3) deficient parking: 46 spaces total required for entire property, including 10 spaces for new deck area, 0 spaces exist, 0 proposed. In accordance with Section 200-56A, seeks area variance to alter a non-conforming structure. Section 171.15, Block 3, Lot 74, Zone GB5000. Property location: 4960 Lakeshore Drive, known as Lilly's. Subject to WCPB review.

Dave Mazzeo, representing the Tekmitchov family, said (1) they provided elevation drawings to the ZBA, (2) the relief being sought is to put a deck with low-level lighting inside, on a one-story roof of the building they have owned since 1968, (3) they are looking to build it in an existing railing system to blend with the current siding of structure, (4) allow ingress and egress of the deck from inside the establishment, (5) there has been a decrease in business in the past couple of years, somewhat due to the newly instituted New York State smoking laws, (6) the Tekmitchov's currently hold a NYS liquor license, (7) the ability to open the establishment earlier in the day to serve more food than having just alcohol has been underutilized in the past 10 years and the Tekmitchov's want to change that and (8) the proposed deck did go in front of the county

and with a favorable response for what the county's jurisdiction level is considering the application.

M. Murray said (1) he doesn't like the idea of a second-story deck on the main street, (2) he doesn't want debris outside the front of the building, (3) things can be dropped or thrown and (4) it can be noisy. K. Hoopes said (1) the concern is not the distance from the street, but the distance into the Congress Point neighborhood, (2) this particular bar is a late night bar, (3) doesn't see the business changing its nature with the addition of a deck, (4) he sympathizes with tavern keepers having to police smokers with the New York State smoking laws, (5) there are 6' barriers on all sides that would mitigate some sound, but it wouldn't solve the problem. Dave Mazzeo said the Tekmitcov's are trying to expand the business during the day, more so than in the evening.

T. McGurl questioned the structural support of the roof and he said not a lot has been addressed to what is going to be done to the roof and the building itself to support the 10 tables on the proposed deck. Dave Mazzeo said (1) the existing roof would not be used for structural dead load or live load and (2) the live and dead load would be accompanied by a structural engineer's report. K. Hoopes asked if the proposed deck would be the only place for people to eat and Dave Mazzeo answered yes, primarily. T. McGurl asked if the deck would be kept open the entire time the business was open and Dave Mazzeo answered yes. B. Pfau recommended the item be referred to the Planning Board.

Vasiliki Tekmitchov, owner, said (1) she has been in business as a hairstylist in the Town of Bolton since 1964, (2) she inherited the building, which she wants to establish as paying for itself, (3) there were problems that took place at the location prior to 2001 when the establishment was leased and it was not being run by the Tekmitchov family, (4) she has a year-round license for a restaurant/bar, (5) the establishment has been recognized as a restaurant since 1948, (6) she is trying very hard to alter the profile of Lily's into a respectable, year-round food and drink establishment, (7) she wants Lily's to open at 11:00-11:30 am, close earlier and have no live bands, (8) she is looking to add the proposed deck in order to meet the hardship imposed by New York State smoking laws endured by restaurant and bar owners, (9) there will be a 6' capped wall with lighting underneath and (10) there will be one entryway to the deck inside the existing structure, so no one will be on the deck without the knowledge establishment staff. K. Hoopes said he applauds the ambitions, but ZBA needs to wait until change happens.

From the public, Rolf Ronning said (1) he was in Montreal with similar establishments and it could be very charming, (2) he can see the flip side with late night/early morning clientele, (3) if a full-time employee was added to police the deck area, it would help, and (4) the Tekmitchov's have a good thing here.

K. Hoopes said there was a recent situation where the ZBA granted a variance after-the-fact with conditions, where the conditions were not upheld and the ZBA doesn't want that to happen again. M. Murray said the variance goes on forever and while Vasiliki Tekmitchov is very efficient, interested and has credentials, there is no guarantee that future owners will be the same.

M. McComb asked if the access into and out of the proposed deck is only from inside the structure and Dave Mazzeo answered yes. G. Smith said (1) fire code may not authorize access to the proposed deck from inside only, (2) legally they would need to have a secondary exit available at all times, (3) people could get up to the deck area from the outside. Dave Mazzeo said (1) there is also an existing deck adjacent to the proposed deck for fire egress from the upstairs apartment that currently exists on the structure, (2) for security, all alcoholic beverages would be served in plastic or paper cups, and (3) the fire egress would be there and labeled as an emergency exit only.

Bart Tekmitchov said (1) he ran Lily's for three summers, (2) he personally cleaned the place up – both clientele and cosmetically and (3) the preceding reputation of the place has been eradicated consistently through the last three years and should continue to improve indefinitely.

B. Pfau said it is not just a zoning issue and it should be reviewed by the Planning Board. M. McComb said (1) it is a change to the downtown landscape, (2) second-story bars were great in Montreal, but have a different impact in Lake George Village, and (3) she agrees it should go to the Planning Board for review. Vasiliki Tekmitchov said Lily's is being referred to as a bar and should be referred to as a restaurant and bar.

From the public, George Froehlich, homeowner behind the establishment, and Staten Island restaurant owner, regarding the proposed deck, inquired about (1) the size and covering, (2) uses, (3) interior staircase, (4) location of a secondary means of egress, other than the existing wooden staircase that is falling down and can't be used, and (5) hours of operation being to 4:00 am like it always was where noise will carry. Several ZBA members responded and said (1) the proposed deck size is 16' X 57' for ten tables with no roof, (2) the uses are dining, beverage service, smoking, no band, (3) the interior staircase will decrease the internal dining service area by 14', (4) the secondary means of egress will be a set of stairs off the back, and (5) the proposed hours of operation will be opening earlier and closing earlier.

George Froehlich said (1) while the intention is to have the establishment be a restaurant, there are no assurances, as it has been a bar - not a restaurant - in the past, (2) the Tekmitchov's are not the only ones dealing with the New York State smoking laws, and (3) when people have a couple of drinks they get noisy and that noise will carry.

Dave Mazzeo said (1) those were great issues, (2) final engineering is not in place for the proposed deck at this time (i.e. structural member, egress, etc.), (3) the Tekmitchov's already know they have enough room for fire egress off the existing roof as it is, (4) the Tekmitchov's are not opposed to changing the fire egress, (5) the Tekmitchov's are not opposed to having handicap accessibility to the downstairs level, (6) the Tekmitchov's are looking at the hours of operation to be from 11:00 am to 10:00-11:00 pm, to capture where most of the restaurant business, not alcohol consumption on the deck to 4:00 am, so the noise level should not be a factor, (7) the existing roof line is 10' off the existing grade and the Tekmitchov's are looking at adding 1' of structural member to the existing

roof deck to support a roof system for live load and dead load, (8) the Tekmitchov's will have a full solid 6' wall around the entire structure, low lighting and are not opposed to a full-time employee for the deck at all times.

Vasiliki Tekmitchov said (1) if she is to increase the square footage to do business, she will have additional employees, additional help and someone in charge of the whole operation, (2) there is a town noise ordinance in effect that Lily's would comply with, (3) she is trying to do this to provide a bon a fide business, and (4) the Town of Bolton needs more eating establishments, (5) there is a difference between serving food accompanied by alcohol, which is what she wants to do at Lily's rather than strictly serving alcohol, which is what she is not going to do. K. Hoopes said the ZBA is not calling Vasiliki Tekmitchov's character or ambition into question. M. McComb said the ZBA is just looking into the possibilities of what could happen.

From the public, Kathy Spahn, resident of Congress Point, said (1) in reading about the second-story open deck, she thought of New Orleans, not Montreal, (2) this decision will set precedent and the ZBA needs to think about how approval of this project will effect the look of the hamlet of Bolton Landing in the future, (3) there are residential areas on both sides of Main Street, (4) space is becoming an issue - all commercial businesses back up against a residential area, (5) there is a potential for businesses to go up and back, and (6) the fire egress for the proposed deck would be in the back going toward Congress Point North, which is a right-of-way.

From the public, Kathy Spahn read from an e-mail she had received from Carol McCleery, resident of Congress Point, stating concerns with the noise, looks, clientele of Lily's and requested the ZBA nourish and protect Bolton's charming image.

From the public, Kathy Spahn read an e-mail she had received from Robert Mossieur, resident of 8 Congress Point, in objection of the proposed deck referencing several concerns including noise and other items.

Vasiliki Tekmitchov said (1) in 1978 she was in Supreme Court fighting to have Congress Point North open, specifically so any ambulance or fire truck could get through, (2) when Congress Point was built and each person bought a house there, they knew the proximity starting from Cate's to Fredericks, there is a line of total business zoning, and (3) she is asking for ZBA consideration based on the business zoning.

The following correspondence was received, copies of which were provided to ZBA Board Members. See letters on file for specifics.

- Letter from Philip Lamb – concerns with garbage, lighting, parking, noise, etc.
- Letter from Michele Perosi Froehlich – opposed
- Letter from Skip Lower, owner of The Indian Teepee Gift Shop – concerns
- Letter from Mr. Carnese – opposed

Motion by B. Pfau to refer the application to the Planning Board for a recommendation. Seconded by M. Murray. All in favor. Motion carried.

9) V05-13 FARLEY, JAMES & JOAN. Represented by Thomas McGurl. To alter existing single-family dwelling, seek area variance for a deficient front yard setback: 30' is required, 24' is proposed. In accordance with Section 200-56A, seek area variance to alter a non-conforming structure. Section 186.10, Block 1, Lot 19, Zone RCH5000. Property location: 13 Sunrise Shores Loop. Subject to WCPB review.

Tom McGurl recused himself as a Board Member.

Tom McGurl, representing James and Joan Farley, said (1) the Farleys are proposing to add a 9' X 9' living room to extend the existing living room, and (2) off the side of the living room will be a glass door and a 17' X 9' open deck with no roof and a 3' high railing.

G. Smith asked if the Homeowner's Association is in favor of the project and Tom McGurl answered yes.

There were no comments from the public.

There was no correspondence.

P. Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from James & Joan Farley (V05-13) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding this application;

this Board makes the following findings of fact:

The application of the applicant is as submitted in Item #9 on the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than an area variance

- 2) There will be no undesirable change in the neighborhood character to nearby properties, in fact neighbors have expressed approval of the plan
- 3) The requested variance is not substantial
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district), it is a modest increase to a modest dwelling
- 5) The alleged difficulty is not self-created, it is a pre-existing foot print where a little more space is being enclosed, which cannot be achieved in any other way

Now, upon motion duly made by M. McComb and seconded by M. Murray, it is resolved that the ZBA does hereby grant approval for said project as presented. All (5) in favor. Motion carried.

10) V05-14 PARROTTA, ROBERT. To alter a non-conforming structure, specifically to add an 18' x 10' deck. Seeks area variance for a deficient front yard setback: 75' is required from the edge of the right-of-way, 63' is proposed. In accordance with Section 200-56A an area variance is also sought to alter a non-conforming structure. Section 171.11, Block 2, Lot 12, Zone RCM1.3. Property location: 5102 Lakeshore Drive, known as The Contessa. Subject to WCPB review.

Bob Parrotta, sole proprietor of The Contessa since 2000, said he is looking to construct a deck on the east end of the motel building for access from Unit 6.

K. Hoopes said (1) it looks like an improvement and (2) there are no neighbors who would have sight problems with the proposed deck. M. Murray said the deck itself is approximately 150' away from Route 9N. M. McComb asked Bob Parrotta if he would finish the plantings on the adjacent property, which is currently in violation, by June 30, 2005, per plans made with Code Enforcement Officer Mitzi Nittmann, to which Bob Parrotta answered yes.

There were no comments from the public.

There was no correspondence.

P. Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from Robert Parrotta (V05-14) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding this application;

this Board makes the following findings of fact:

The application of the applicant is as submitted in Item #10 on the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than an area variance
- 2) There will be no undesirable change in the neighborhood character to nearby properties
- 3) The requested variance is not substantial, taken into account the whole property versus the request being made
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district)
- 5) The alleged difficulty is not self-created

Now, upon motion duly made by K. Hoopes and seconded by T. McGurl, it is resolved that the ZBA does hereby grant approval for said project as presented. All in favor. Motion carried.

11) V05-15 WATERHOUSE, LAWRENCE. Represented by Thomas Frost of Frost Architecture. For the construction of a proposed 12.10' x 14.2' patio, seeks area variance for a deficient shoreline setback: 75' is required, 71' is proposed. Section 186.07, Block 1, Lot 4, Zone RM1.3. Property location: 4838 Lakeshore Drive. Subject to WCPB & APA review.

Thomas Frost, representing Lawrence Waterhouse, said (1) he is here after-the-fact, (2) the Waterhouses got relief from the house setback requirements, (3) the Waterhouses got relief from the existing patio setback requirements, and (4) at the time the Waterhouses were doing the footings for the approved patio, they decided to do the footings for the current proposed patio in an effort to utilize the work crews while they were there, with the understanding if the proposed patio did not receive ZBA approval, the footings would be covered up, but the project took on a mind of its own.

G. Smith said (1) he visited the site, (2) the measurement is 72' 10" from the corner down to the lakeshore, (3) it looks nice, but it is after-the-fact, and (4) the patio is all done, and (5) gave the applicant a warning to not let a mistake like this happen again.

There were no comments from the public.

There was no correspondence.

P. Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from Lawrence Waterhouse (V05-15) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding this application;

this Board makes the following findings of fact:

The application of the applicant is as submitted in Item #11 on the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than an area variance
- 2) There will be no undesirable change in the neighborhood character to nearby properties
- 3) The requested variance is not substantial, it is a minor, just over 3' relief
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district)
- 5) The alleged difficulty may be self-created, the applicant did chose to put the house in its location

Now, upon motion duly made by B. Pfau and seconded by K. Hoopes, it is resolved that the ZBA does hereby grant approval for said project as presented. 5 in favor. 1 (M. Murray) opposed. Motion carried.

12) V05-16 O'CARROLL, JOHN & KAREN. Represented by James Miller of Northfield Design. To alter existing single-family dwelling, seek area variance for deficient setbacks: 1) shoreline: 75' is required from the mean high water mark, 41' is proposed; 2) sides: 20' is required, 13' is proposed on the south side, 18' is proposed on the north side; and 3) to alter a non-conforming structure in accordance with Section 200-56A. Section 200.18, Block 1, Lot 5, Zone RM1.3. Property location: 4206 Lakeshore Drive. Subject to WCPB & APA review.

Jim Miller, representing John and Karen O'Carroll, said (1) the property is an existing property, (2) the house was built before the current regulations, (3) they are not looking to expand upon footprint, but to make the footprint a bit smaller with the omission of some of the front deck, (4) they are looking to increase the volume of the existing structure by putting a steeper roof pitch on the building to accommodate bedrooms on the upper level, (5) the building will remain as it is currently - a two-story structure, 3 bedroom residence.

M. McComb said (1) pitched roofs are attractive, (2) stormwater measures should be taken and (3) it is good they are staying on the same footprint. Jim Miller said (1) they are not required to do any stormwater measures, (2) there will not be any further change or disturbance to the land and (3) they will be retaining the existing paved surfaces.

M. McComb said (1) she does not see gutters, (2) half of the house is within the 75' setback and (3) if there are any measures to be taken, they would be useful and not be a burden to the applicant during this upgrade. M. McComb asked about the location of the septic, to which Jim Miller showed on the map where the septic is located.

Jim Miller said in order to add stormwater measures, excavation would be needed down by the lake to solve a problem that perhaps doesn't exist and he said it would be more of a disturbance than a remediation.

There were no comments from the public.

There was no correspondence.

P. Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from John and Karen O'Carroll (V05-16) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given;

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

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding this application;

this Board makes the following findings of fact:

The application of the applicant is as submitted in Item #12 on the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than an area variance, the applicant can't go back, because he'd run into the septic system
- 2) There will be no undesirable change in the neighborhood character to nearby properties, it will be a visual improvement over the existing house
- 3) The requested variance is not substantial
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district)
- 5) The alleged difficulty is self-created, but the benefit to the applicant outweighs any negative aspect

Now, upon motion duly made by M. McComb and seconded by M. Murray, it is resolved that the ZBA does hereby grant approval for said project as presented. All in favor. Motion carried.

13) V05-17 DELCZEG & DONOHUE BUILDERS, Inc. To merge 2 parcels and then create a proposed 3-lot subdivision, seek area variance for deficient: 1) lot width: 125' is required, 120.35' is proposed for Lots 2 & 3; and 2) shore frontage: 150' is required, 124' is proposed for Lot 2 and 135' is proposed for Lot 3. Section 213.05, Block 1, Lots 6 & 7, Zone RM1.3. Property location: 4124 Lakeshore Drive, known as Wide Waters Motel. Subject to WCPB review.

Brian Donohue, of Delczeg & Donohue Builders, Inc., said (1) on the variance application, the answer to number 17 should be "no" and the answer to number 18 should be "yes," (2) they are attempting to maximize the best residential use of the property to conform with neighborhood, and (3) the variance is a relatively minor request, (4) they have met density requirements, (5) the proposal conforms with the majority of neighboring properties, (6) the change of use from commercial to residential will benefit the lake, and (7) the ultimate goal is to get the ZBA's approval for the proposed subdivision.

Regarding technical points, Carl Schoder, of Schoder Rivers Associates, said (1) three lots are to be created, (2) lots 2 and 3, the southerly lots, will have a lot width of 120.35'

as opposed to the 125' required by the district, (3) the northernmost lot will have adequate shoreline distance for the development, (4) the shoreline distance of the center lot will be 124' and for the southerly lot will be 135', as opposed to the 150' required by the district, (5) all hatched buildings, 6 cottages, a garage, the existing residence, one cottage to the east, and one cottage on lot 3 would be removed, (6) one cottage, the main building, and the boathouse all on lot 1 would be retained, (7) one log cabin, to be converted into a cottage, and the main building on lot 3 would be retained, (8) the plan is to abandon the 8 existing septic systems, and (9) some existing pavement will also be removed. Carl Schoder also gave details on access to the property.

K. Hoopes asked if there is only one well casing on the whole property and Carl Schoder said (1) the intention is that for each of the 3 new lots, potable wells will be drilled and (2) the current well, which services the whole property, would be capped off and abandoned.

B. Pfau asked if the currently existing lots are run as one commercial property including all buildings being rental units. Carl Schoder responded by saying he believes both lots are run as one commercial property under Wide Waters and that all buildings are rentals.

B. Pfau asked why there are no setback variances required for the buildings and P. Kenyon said (1) the big house is pre-existing and (2) the buildings will need to meet interior setbacks, which they do.

M. McComb referenced T&R Lakeside, and said (1) the general outline of the project is a good one, (2) they need to observe the building footprints maintaining the 75' lakefront setbacks, and (3) she is concerned the applicant would come back in the future to expand from a 0' setback from the lake. Brian Donohue said (1) any plan to change the 0' setback would have to be approved by the ZBA, (2) the topography on lot 1 is very steep with ledges, so there is no other location for that house, and (3) on lot 3, the building already exists, so to take it out would be the decision of the buyer. B. Pfau said (1) it is surprising the developer would want to keep the buildings closest to the lakefront and (2) suggests the application be reviewed by the Planning Board. M. McComb said (1) the reduction in permeable surface is great, (2) there is much to clean up, (3) it is creating two new substandard waterfront lots and it is not irrational to expect some trade-off for that.

From the public, Attorney John Lapper, representing the Rich and Beth Schermerhorn, neighbors two lots to the south, said (1) the Schermerhorns feel very strongly on the application, (2) they would like to see the property developed, (3) the building on lot 3 is one of the biggest eyesores on Lake George and is built right on the property line. He continued that the variance is very significant, in that if the ZBA grants the variance, (1) the precedent would be that the applicant would be allowed to keep three buildings that are non-compliant for the 75' setback, and (2) the applicant would still get another lot out of it. In closing, Atty. John Lapper said the Schermerhorns would like to compromise and see a condition imposed that requires the cinder block building be removed.

K. Hoopes said it is not even in the realm of rationality that anybody that's going to come along and pay the price that that lot is going to go for is going to want to fix up the cinder block building. Atty. John Lapper said the owners to the south (Farone) did try to shield the sight of the cinder block building with plantings. M. McComb said now is the only time the ZBA has to say that building has to go.

From the public, Attorney Kieran Nigro, representing the Farones, immediate southern neighbors, said (1) this is the ZBA's opportunity to force the clean-up of the property, (2) the cinder block building is the worst looking building on Lake George, (3) no reason was presented by the applicant for retaining the cinder block building, (4) it doesn't seem to fit into the plan and re-design, (5) the cinder block building cuts a significant part of the Farone's view out, (6) the cinder block building cannot be avoided by the Farones.

From the public, Melissa Vito, property owner three lots up, said (1) would like trees to remain, (2) if three lots are made, there will be more buildings than ever, more swimming pools and more septic, (3) if the applicant could hold it to two parcels, it might save trees and some of the landscape, (4) it is already overbuilt on Boon Bay, and (5) the bedrock is right at the surface, so the lots aren't even good for building.

Melissa Vito continued saying the zoning regulations are firmly in place and asked the ZBA (1) to hold down the number of unscreened houses on the lakeshore, where the character of the landscape is forested, (2) limit houses, roads, septic systems, garages and swimming pools that can be put on this land, (3) use its authority to hold the density of building and occupancy to what the law states should be the limits, (4) to do what it can to limit the amount of trees to be destroyed and prevent the loss of Adirondack landscape as seen from the land and the water, (5) one of the most important tasks of the ZBA in addition to seeing to the issues of public safety and stormwater run-off, is to preserve the character of the land itself, and (6) denying the application for a variance to put in three non-conforming lots where there are only two legal ones, is clearly a good way to help hold down the overbuilding occurring in this space.

Hugh Roberts, as an agent for developer Brian Donohue, said regarding the requested variances, he did a study using the tax maps, examining the properties from Boon Bay just down to the Lake George Club. He said regarding how they conform to the existing zoning, (1) essentially 70% of the properties in the area have what the applicant is seeking and are non-conforming to zoning regulation, (2) the developers recognize the cinder block building at the south corner as an eyesore and the developers look forward to working with the neighbors and the Town of Bolton to change and/or remove the building, and (3) this is a magnificent piece of real estate with a magnificent opportunity for the developer to go in and create a magnificent situation that would be an aesthetic and environmental credit to this community and to Lake George. He said he is asking the ZBA to not ask for a determination on the motel/boathouse structure (cinder block

building), but to let the marketplace and other Boards deal with it in proper sequence and at the proper time.

From the public, Rolf Ronning said he is in favor of the variance for the proposed three lot subdivision and recommends the demolition of the building on the south lot.

Brian Donohue said (1) their preference is to save the footprint, (2) the structure was there before the neighbors acquired their parcels to the south and blasted in order to place their own house, (3) renovating this property would not require blasting, and (4) the site plan review would dictate what can and cannot be done to the property and how the developers will upgrade it, (5) he agrees the building is ugly, but the footprint is very valuable, and the building was put there for a reason, (6) if the building must go, they will concede, but his preference is for the Planning Board to decide that.

The ZBA Members unanimously agreed the cinderblock building has to go. M. McComb said the only reason there needs to be insufficient water frontage is to preserve the house on lot 1. B. Pfau said it is important to note that the applicants do have sufficient lakefront for all three lots. K. Hoopes said (1) even maintaining the footprint is so far out of compliance and (2) encourages maintaining and saving the main house on lot 1.

There was no correspondence.

Motion by B. Pfau to refer the application to the Planning Board for a recommendation. Seconded by K. Hoopes. All in favor. Motion carried.

14) V05-20 NICHOLS, DAN & ELLEN (Blue Water Manor). To alter existing non-conforming structure (The Blue Moose Tavern), specifically to construct a sub-grade service kitchen. Seek area variance for deficient setbacks: 1) lakeshore: 75' is required from the mean high water mark, 44' is proposed; 2) side: 20' is required, 6' is proposed; 3) to alter a non-conforming structure in accordance with Section 200-56A. Section 200.06, Block 1, Lot 19.1, Zone RM1.3. Property location: 4436 Lakeshore Drive. Subject to WCPB & APA review.

Dan Nichols, from Blue Water Manor, said they are looking to move the existing kitchen that is located down on the lake house when you come up the stairs to the back of the building on a sub-grade level, because of the exits and the existing location just being a bad location. He said the reasons for the move are (1) delivery aspects, (2) better ventilation, (3) to create an entrance for guests from the lower deck, (4) employee safety, (5) the existing kitchen would be eliminated completely, and (6) the new kitchen would not be visible from the lake.

G. Smith said the ZBA granted a variance for the stairs on the north side of the structure last year and they have not yet been put up. G. Smith asked if this proposed variance is granted, if the stairs would no longer be needed and Dan Nichols said yes, the stairs would not be put up if the variance before the Board is granted.

From the public, Attorney Mark Rehm, Representing Judith Resnick and Dennis Curtis and Rashi and Ruth Fein, who live on two parcels to the south, said he would like the letters submitted to become part of the record. He said Judith Resnick and Dennis Curtis (1) believe there could be an undesirable change in the neighborhood with increased boat traffic and noise, (2) are concerned with drainage, sewage, gray water, and stormwater management, (3) are concerned with the kitchen in relation to size and use, (4) ask if the current kitchen could be used, (5) it is a substantial variance, and (6) it is self-created as the owners knew what they were buying.

K. Hoopes said the ZBA does not deal with the issue of stormwater, and (2) if Atty. Mark Rehm's clients did due diligence on this matter, his clients would have answers to these questions. Atty. Mark Rehm said (1) that is not true, (2) his clients sought the information last week, but they did not have enough opportunity to put it together.

G. Smith said (1) the existing kitchen is a hardship, (2) the proposed kitchen will be a vast improvement on all levels and in a better location by all means, (3) the existing setback is 0' and the proposed kitchen would be a 44' setback, and (4) all of the pipes would now be underground and not visible.

The following correspondence was received on Dan & Ellen Nichols (Blue Water Manor) V05-20 and copies were provided to ZBA Board Members. See letters on file for specifics.

- Letter from Judith Resnick and Dennis Curtis – opposed, without additional information being provided
- Letter from Bernice and Jack Breslau – opposed
- Letter from Rashi and Ruth Fein – opposed, with same concerns as Judith Resnick and Dennis Curtis

P. Kenyon said there was no county impact.

RESOLUTION

The Zoning Board of Appeals received an application from Dan and Ellen Nichols (Blue Water Manor) (V05-20) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given;

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

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

this Board makes the following findings of fact:

The application of the applicant is as submitted in Item #14 on the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than an area variance
- 2) There will be no undesirable change in the neighborhood character to nearby properties, it is a desirable change
- 3) The requested variance is not substantial, it is leaning away from previous non-conformities
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district)
- 5) The alleged difficulty is not self-created, it is something the applicant is trying to “un-create”

Now, upon motion duly made by K. Hoopes and seconded by M. McComb, it is resolved that the ZBA does hereby grant approval for said project as presented. All in favor. Motion carried.

15) V05-18 WARDLES, BRIAN. Represented by Krantz & Rehm LLC. For the construction of a proposed single-family dwelling, seeks area variance for deficient setbacks: 1) shoreline: 75’ is required, 50’ is proposed; and 2) rear: 30’ is required, 22’ is proposed. Section 199.07, Block 1, Lot 5.313, Zone RCL3. Property location: north side of South Trout Lake Road approximately 1,800’ from Coolidge Hill Road intersection. Subject to APA review.

Application Wardles V05-18 was withdrawn by Attorney Mark Rehm, representing Brian Wardles.

16) V05-21 WARDLES, BRIAN. Represented by Krantz & Rehm LLC. For the construction of a proposed garage, seeks area variance for a deficient shoreline: 75’ is required, 50’ is proposed. Section 199.07, Block 1, Lot 5.313, Zone RCL3. Property location: north side of South Trout Lake Road approximately 1,800’ from Coolidge Hill Road intersection. Subject to APA review.

Application Wardles V05-21 was withdrawn by Attorney Mark Rehm, representing Brian Wardles.

17) PAMELA KENYON. Zoning Administrator. Seeks interpretation of food store as it relates to a snack bar. This request is in conjunction with Item #18, V05-19 BARCIA

Agenda Item #17 was heard in conjunction with Agenda Item #18 as seen below.

18) V05-19 BARCIA, VINCENT. Represented by Lynn Gollhofer. Seeks use variance to convert existing snack bar associated with the motel into a food store. Section 200.00, Block 1, Lot 14, Zone RM1.3. Property location: 4375 Lakeshore Drive known as Peace Pipe Cottages. Subject to SEQR. Subject to WCPB review.

Lynn Gollhofer, representing Vincent Barcia, said the applicant (1) currently runs a year-round grocery, (2) the store has been a year-round retail store for over 20 years, (3) is requesting to maintain the pre-existing general store, (4) is requesting the permission to continue using this as a convenience store with the inclusion of a counter for sliced deli meats, (5) there is no change to the structure, (6) there is ample parking, and (7) the neighbors have been notified and they are all in favor of the additional usage.

K. Hoopes said (1) the nature of that building is unique, (2) the space lends itself to retail sales, (3) anything the ZBA can allow the applicants to do to remain viable business is a good, positive thing, (4) the parking is ample.

P. Kenyon said (1) she made the determination that the applicant may need a use variance and (2) requested feed-back from the ZBA (Agenda Item #17). G. Smith said (1) the applicant does not need to be here, (2) there have been many different operations of business in that building, and (3) if they want to sell deli meat, that would be determined by the issuance of a permit by the New York State Health Department.

There were no comments from the public.

The following correspondence was received, copies of which were provided to ZBA Board Members. See letters on file for specifics.

- Letter from Rashi and Ruth Fein – opposed, suggest postponing this item pending additional information
- Letter from Judith Resnick and Dennis Curtis – opposed, same concerns as Feins
- Letter from Bernice and Joel Breslau – opposed

In reference to the letter submitted by the Breslaus, M. McComb said (1) this establishment has been open to the public for a long time and (2) the ZBA considered the Breslau letter, but it is not representative of what is actually being proposed.

Based upon the past history of the parcel, M. McComb moved, seconded by M. Murray, to determine that a use variance was not required to incorporate a meat counter in the existing snack bar/retail area. All in favor. Motion carried.

19) MITZI NITTMANN. Code Enforcement Officer. Seeks interpretation of Section 200-8 Definitions. LAND USE or DEVELOPMENT or USE – **Any** construction or other **activity which materially changes** the use or **appearance of land** or a structure or the intensity of the use of land or structure. An emphasis should be placed on the bold/italicized portions shown.

Mitzi Nittmann, Bolton Zoning Enforcement Officer, said she needs to know if the ZBA considers a single culvert replaced by five culverts and a fill a material change or appearance of land.

B. Pfau said this is a decision to be made by the Zoning Administrator. P. Kenyon said she made the decision and M. Nittmann does not agree with that decision. Counsel said there is a difference of opinion within the Zoning Office.

K. Hoopes said (1) if any construction or any activity which changes (modified by saying material change) the use or appearance of land or a structure of the intensity of the use of land or structure and (2) M. Nittmann needs to make a decision.

M. Nittmann said there will be other instances and she needs to know the ZBA's position, so she can make future decisions. M. McComb said she would like more things looked at rather than less.

P. Kenyon said (1) she made a decision on this ruling and (2) what was proposed was done and she had no problem with it, then M. Nittmann came to her saying it was not ok. B. Pfau said (1) P. Kenyon is the one who makes the decision and (2) M. Nittmann should go with that decision. M. McComb said if there is a particular decision P. Kenyon makes that M. Nittmann doesn't agree with, M. Nittmann should appeal if she feels strongly about a case.

Meeting adjourned at 12:02 am.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
05/02/05