

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, August 15, 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: Acting Chairman Bill Pfau, Kam Hoopes, Meredith McComb, Tom McGurl, Michael Murray, Zoning Administrator Pam Kenyon, Town Counsel Michael Muller

Absent: Chairman Greg Smith and Tony DePace

Acting Chairman B. Pfau opened the meeting at 6:30 pm by asking for corrections to the July 18, 2005 ZBA minutes.

- K. Hoopes said on page 3, the bottom paragraph should read, "... (5) the expanded seating, especially with all the weather we had this afternoon, that also is not going to happen, for all *intents and purposes*, the applicant does not get expanded seating because it is a completely open deck."
- K. Hoopes said on page 7, the second paragraph, should read, "... (5) the people around the building, not just Congers Point, look at this as peeling the lid off the present day Lily's and that is what they will be with forever and while this in not the applicant's intention, who wants to change the nature of the business *fundamentally*..."
- K. Hoopes said on page 8, the first paragraph should read "... (2) the applicant has talked *about making* the emergency exit..."
- K. Hoopes said on page 9, the second paragraph, sentence 3 should read, "Counsel asked if the applicant will then be increasing *the patronage they are capable of serving* in the establishment..."
- K. Hoopes said on page 12, the sentence at the top after numbers 4 and 5 should read, "The benefit to the applicant of being allowed to go forward with this project *is outweighed* by the potential detriment to the health, safety and welfare of the community."
- K. Hoopes said on page 16, the bottom of paragraph 4 should read, "G. Smith said it is because the bridge is actually a culvert."
- K. Hoopes said on page 16, last paragraph, should read, "... (2) if the leachfield is in the lower section, obviously the garage *would not be able* to meet the setback from the stream and (3) his recommendation would be to *move* the dwelling..."

Motion by M. McComb to approve the July 18, 2005 minutes as amended. **Seconded** by M. Murray. **All in favor. Motion carried.**

The Agenda Items were heard in the following order: 1, 2, 6, 8, 7, 9, 5 and Items 3 and 4 were not heard, because the applications were tabled.

1) V05-39 HELDMAN, WARREN. To allow a 27'8" x 12' storage building to remain, seeks area variance for a deficient side yard setback: 20' is required, 2' is proposed.

Section 171.19, Block 1, Lot 19, Zone RM1.3. Property location: 4871 Lakeshore Drive. Subject to WCPB review.

Warren Heldman gave an overview and said (1) he asked about putting a building in and there was a misunderstanding about the situation, which is how the whole thing started, (2) he put the building in and then was informed he needed permits, but was not told permits were needed at the time he built, (3) he checked with the Town to find out if the building could be done and the Town said it could be done, but somewhere along the line the word “permits” never came up, (4) now he is being told he needs to get a variance and (5) had he known this was required, he would have done it.

B. Pfau asked if P. Kenyon could enlighten the ZBA on this situation and P. Kenyon said the building has been there for over two years and she has no recollection of the original conversations being referenced.

K. Hoopes asked if the applicant has been before the Town Board and Warren Heldman responded by saying yes, about a month ago he appeared before the Town Board. K. Hoopes said (1) this seems to be mostly taken care of, as the Code Enforcement Officer and the Town Board have both looked into it and (2) he is all for it. B. Pfau said apparently the Town Board is comfortable with the reasons for the building being there, so it is good enough for him. P. Kenyon said she believes it is partially because the building has been there so long.

M. McComb said for the record, being surprised that the applicant needed a permit to build within 2’ of his property line is not a big excuse as far as she is concerned and she doesn’t feel it should have been a surprise. Warren Heldman said where he lived in the city, they could build right to the property line, he was unaware of the building setbacks and the motel he is alongside is also over his property line.

P. Kenyon said the WCPB recommended no County impact with the condition that the distance between the two buildings meets the New York State Building Code. B. Pfau said the ZBA decision is going to have to be based on whether to take the building out or not, because there is no place to move the building to. P. Kenyon said the WCPB condition is only a recommendation to the ZBA.

Correspondence:

- Letter from Henry Caldwell, Homeplace Corp. – recommends approval

RESOLUTION

The Zoning Board of Appeals received an application from Warren Heldman (V05-39) 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 the application having been referred to the Warren County Planning Board;

and, whereas the Warren County Planning Board determined that there was no County impact with the condition that the distance between the two buildings meets the New York State Building Code;

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.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, taking into consideration the motel and the various other buildings in that area;
- 3) The requested variance is very substantial as variances go, but again, in light of that particular neighborhood, it reduces that somewhat;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, according to the Town Board.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by K. Hoopes 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.**

2) V05-41 LUCIANO, JOE & AMY. Represented by Donna Langan. Seeks area variance for 1) a deficient front yard setback: 50' is required, 37' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-56A. Section 156.00, Block 2, Lot 68, Zone RM1.3. Property location: 7 Bell Point Farm Road. Subject to WCPB review.

Donna Langan, representing Joe and Amy Luciano, gave an overview and said the applicants are talking of extending the roof 6' to cover what already exists of the front porch.

K. Hoopes said (1) it is a very unique porch, (2) it looks all original and (3) he has never seen one that is partially covered and partially uncovered. B. Pfau asked who else uses the right-of-way the applicants are seeking relief from and Donna Langan answered by saying the Englerts are in the property farther down the road on the other side.

No correspondence.

No public in attendance.

No County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Joe and Amy Luciano (V05-41) 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 the application having been referred to the Warren County Planning Board;

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, it is a minor adjustment to a pre-existing non-conforming building;
- 3) The requested variance is not substantial;

- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district, from this minor change to this building;
- 5) The alleged difficulty is not self-created, it is a pre-existing non-conforming building and the applicant is proposing a very minimal change.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by M. McComb 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.

3) V05-42 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.

This item was not heard, as the application was tabled at the applicant's request.

4) V05-43 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.

This item was not heard, as the application was tabled at the applicant's request.

5) V05-45 PAINTER, JOHN. Represented by Matt Steves of Van Dusen and Steves Land Surveyors. To demolish and rebuild existing single-family dwelling, seeks area variance for deficient setbacks. 1) shoreline: 75' is required from the mean high water mark, 21.06' is proposed; and 2) side: 20' is required, a) 10.18' is proposed on the south side; and b) 10.63' is proposed on the north side. Property location: 4030 Lakeshore Drive. Section 213.09, Block 1, Lot 15, Zone RM1.3. Subject to WCPB and APA review.

Matt Steves, representing John Painter, gave an overview and said (1) the existing structure is near the water, (2) the applicant would like to rebuild the current home slightly changing the footprint, (3) the applicants are proposing an addition of a mudroom and an attached garage, (4) the existing structure has a lot of problems with the foundation and moisture, (5) all new stormwater would be incorporated into this plan, (6) there is an existing septic system that will be replaced meeting Town standards and (7) for the proposed house, the setback to the lake does not change and the setback to the south changes slightly.

B. Pfau asked when the house was built and Matt Steves said it was built in 1972. B. Pfau asked how high the proposed house is in comparison to the existing house and John Painter said the proposed height is 34' 11" which is 8' higher than the existing height. M. Murray asked why it can't be moved back away from the lake and K. Hoopes said there is serious ledge rock. Matt Steves said if you moved it back up the slope, substantial blasting would need to occur. M. McComb said (1) by doing so she realizes the applicant would lose the lake view from the upper story, but the applicant is looking at asking to build within the 75' setback and this is a much bigger house than is there now, (2) it is higher, (3) there is a porch/deck on the new proposed house and (4) given that this is so close to the lake, she wonders how you rebuild without going down the hill toward the water.

Matt Steves said (1) on the northeast corner of the existing house, the porch is above a concrete block foundation with a garage door and a porch above it and (2) on the proposed house that foundation comes back to the porch line, so they are removing that portion of the foundation and moving away from the lake.

B. Pfau said (1) it appears that Matt Steves hasn't made much of an effort to improve the setback situation on any side of this house, (2) on the south side, what existed was 12.27' and he managed to chop two feet off of that, (3) on the north side, it was 25' existed and most of that was eliminated, (4) with the house itself, which is within 22' of the shoreline on a very, very steep grade with a beautiful view of the lake and plenty of room in the back of the house, the claim can't be made that they are being squeezed on a two-acre lot there and (5) they also can't claim they are being forced to build a small home, because the proposed home is 3,700 square feet.

M. McComb said it is odd to exclude that since it is very visible from the lake. B. Pfau said (1) Matt Steves made comments about give and take, he is assuming this is starting point and in his opinion, a very aggressive starting point and (2) yes, there is ledge under the house, but he does not know what that would do with precluding them from moving the house back away from the lake. Matt Steves said (1) when you are removing the existing structure on a foundation where the excavation has already been done, you really have a minimal allowance of stormwater there, (2) if you were to do excavation behind it and blast there would be ten times the erosion problems you would have then by just using what is there and (3) the ZBA is looking at the garage as a substantial difference.

K. Hoopes said (1) one thing that needs to be taken into account in moving the house around and (2) the land coming up to the back of the house where the driveway is now is relatively level, the land then pitches off a very steep grade down to the lake level, (3) the existing house has already disturbed that bank by blasting and cementing the way into it, (4) moving the house back will disturb a whole new area, so he doesn't see what would be gained by moving the house back, (5) there are some footprint differences and (6) there are some façade differences, but those differences are substantially better. T. McGurl said (1) he would much rather see the house stay where it is for all of the reasons K. Hoopes said and (2) it is a very large façade that will be seen from the lake regardless of how far it is from the lake.

B. Pfau said it seems to him that so much would be gained by the applicant if the part that jets out toward the water from the basement of the existing house was eliminated and became part of the landscape in front of the house. Matt Steves approached the ZBA bench to further clarify.

M. McComb said there are alternatives such as pulling it back and tucking the garage in so the elevation to the lake is not being widened. Matt Steves said (1) they are here to gather information and get ZBA and neighbor concerns and (2) his client wants to do this correctly.

B. Pfau said in his opinion, (1) it would sound good if the applicant could come in claiming there wouldn't be an increase in setback problems, but minimize the height increase on the proposal and (2) that the applicant can find a place to put the garage that won't encroach on the setbacks.

K. Hoopes said (1) the foundations aren't footprints, (2) the applicant needs to decide if he wants to table the application and (3) he personally thinks hacking off the existing porch to bring the front wall back another 4.5'-5' is a total waste of time and probably an architectural disaster, as some of the visual does get mitigated by different facets of the house.

M. McComb said (1) this is a new building that will look like brand new construction within the 75' setback to everybody, (2) she doesn't feel B. Pfau's proposal is excessive and (3) widening the base of the house for a three-bay two-story garage is excessive and doesn't go with granting a minimal variance. M. Murray said he thinks the applicant can gain 12.3' in the front and 11.3' on the side with the garage without really destroying anything of the house.

M. McComb said (1) one thing the applicant has not brought up is that the reason for leaving the footprint substantially the same is because the lot is quite heavily forested along both lot lines, so the view from this property, because of the existing house to the north, is really quite tunnel vision, (2) if you move the house back 75' it will affect the current view of Dome Island and (3) she thinks there is a way for the applicant to become way more compliant.

K. Hoopes said (1) he wants to point out to the applicant that two ZBA Members are absent from this meeting and (2) any further discussion is not doing the applicant or the other ZBA Members any good.

From the public, Andrew Holding, property owner to the south, said (1) he has had some conversations with the Painters on this project, (2) the Painters are trying to be compliant, (3) this is a new building going up, (4) the ridge of the roof line is currently 26' high because it runs north-south, but the new roof line ridge is going to be 35' high because it runs east-west, (5) because of the increase in the existing non-conforming setbacks caused by the second-story, it becomes a much larger issue, (6) he is not opposing variances being granted for the setbacks to the lake or his property as long as

they are maintained, (7) he agrees that there is very little effort with this proposal to contain the building and make it as compliant or at least more compliant, (8) the applicant has shown no hardship as to why the proposed garage must be in the proposed location, (9) the grade to the first floor is shown as 9.5', but it has been shown that is a very steep grade--the first floor level in front of the existing structure and grade level in the back is actually in excess of 11' in difference and (10) he suggests the variance for the lake setbacks be granted if they are going to be held to existing setbacks and the continuation and increase of the existing non-conforming second floor be approved, but would request the variance to cut the side-line setback in half be denied and he also requests the ZBA impose the condition on any variance granted that existing lines, conforming setbacks and porches are not allowed to encroach further toward the lake and that no rock removal requiring blasting be performed on the new structure within 75' from the lake.

B. Pfau said it will be important for the ZBA to know if the applicant proposes any blasting.

Correspondence: Counsel read the following correspondence into the record.

- Letter from the LGA addressed to Chairman Smith-- opposed

K. Hoopes asked if the LGA's reference to the 10% was a fair reading of the Bolton Zoning Ordinance and P. Kenyon said no, that applies to a use on the property that is non-conforming.

M. McComb said she would like to see the square footage of both the existing footprint and living space, so the ZBA can compare apples to apples. M. Murray said (1) there is no reason the applicant can't meet the setbacks on both sides and (2) the applicant can easily eliminate two of the three variances, as it is possible to come back with a plan that only requires one variance—for the lakefront. Further individual discussions on this matter ensued between individual ZBA Members.

Motion made by K. Hoopes and **seconded** by M. Murray to table Agenda Item #5 (V05-45) John Painter so the applicant can come back with his best foot forward and for the ZBA to put its full foot forward with all ZBA Members present. **All in favor. Motion carried.**

6) V05-48 ROBERTS, DEAN. To alter pre-existing single-family dwelling, seeks area variance for 1) deficient front yard setbacks: 100' is required from the edge of the right-of-way, a) approximately 30' is proposed from South Trout Lake Road; and b) approximately 18' is proposed from Lamb Hill Road; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 185.00, Block 1, Lot 7, Zone RR5. Property location: 156 Lamb Hill Road. Subject to WCPB review.

Dean Roberts gave an overview and said (1) he is seeking a variance for a deficient setback, (2) he wishes to construct a single-story bedroom on the end of his house and (3) there will be an angle.

K. Hoopes asked why the proposed bedroom would be at an angle and Dean Roberts said for aesthetics. M. Murray said it is quite an old house and was a large farm a long time ago.

B. Pfau said (1) it is a very old house that doesn't meet setbacks now and so the addition obviously is not going to and (2) the only other choice would be to build the addition on the existing deck. K. Hoopes said it is certainly not a density issue.

No correspondence.

No public in attendance.

No County impact with the stipulation that the septic be brought into compliance. P. Kenyon said she reviewed the file and the septic is in compliance for a three-bedroom home, which is what the applicant will have if the proposed variance is approved.

RESOLUTION

The Zoning Board of Appeals received an application from Dean Roberts (V05-48) 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 the application having been referred to the Warren County Planning Board;

and, whereas the Warren County Planning Board determined that there was no County impact with the condition that the septic be brought into compliance, which it is;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property

owners by the granting of this variance, in fact there is quite a bit of land between all of the properties and this is going to be an improvement on the house for the applicant and the neighborhood;

- 3) The requested variance is not substantial, the house is what it is and pre-dates the Town's Zoning by several centuries;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, again as for the same reasons mentioned about the house being 150 years old.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by K. Hoopes 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.

7) V05-49 WHITNEY, RITA. Represented by Bruce Mowery. To alter existing single-family dwelling, seeks area variance for 1) deficient side yard setbacks: 20' is required, a) 4.7' is proposed on the west side; and b) 17' is proposed on the east side; 2) maximum amount of lot to be occupied is 15%, 18% is proposed; and 3) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 171.19, Block 1, Lot 69, Zone RM1.3. Property location: 13 Dula Place. Subject to WCPB review.

Bruce Mowery, representing Rita Whitney, gave an overview and said (1) the Whitneys are in the process of purchasing a house on Dula, (2) the house is currently non-conforming, (3) there is an existing garage to the western side, (4) the Whitneys are also proposing a small shed for storage in the back of the house and (5) they are looking to create a master suite and a garage.

M. McComb said (1) she looks at it as granting an area variance for a two-car garage, (2) there are a lot of people that have one-car garages, (3) she wonders about density variances for the second bay of the garage, which would certainly minimize that and enable the applicants to meet the side yard setbacks on the new construction and (4) it is a 20% density deficiency, which is substantial. B. Pfau said he sees that M. McComb is trying to eliminate the density problem, but doesn't see what is really being gained, as the width of the house itself is around 24' as it is and the proposal is to put a 10' addition to the back of it. M. McComb said this is a neighborhood that has a lot of extra density. B. Pfau asked for current and proposed square footage and Bruce Mowery said they are basically doubling the footprint.

K. Hoopes said his question on the garage is the radius of the turn in trying to get cars down that driveway and then maneuver them in such a way to get them in the garage.

Bruce Mowery said there is 54' to the very closest point of the garage and a very comfortable turnaround area coming out of the garage.

B. Pfau said this is a small lot in a community that has a lot of small lots. M. McComb asked if the crushed stone driveway is considered a permeable surface excluded in the density. Counsel said a crushed stone driveway is considered an impervious surface and P. Kenyon said the Zoning Office does not calculate it in density.

From the public, Susan Volkmann, neighbor, said she is concerned with the rain, snow and stormwater issues because the roof lines overhang their property and Bruce Mowery said the stormwater regulations must be adhered to.

Susan Volkmann asked if they are proposing to change the pitch of the existing garage roof and Bruce Mowery said they are not.

B. Pfau asked if it is possible to knock the existing garage area back a couple more feet from the property line to alleviate some of the problems Susan Volkmann is talking about. Bruce Mowery said anything is possible, but the existing garage is only 11' so if you knock anything off of that, it will be too narrow and become a useless room. B. Pfau said he would be more likely to approve what is proposed in the back if the applicant would bring the existing garage a couple of additional feet off the property line to alleviate the slope problem. K. Hoopes said another thing that would alleviate that would be taking the shed like roof and turn it into a peak roof going in the other direction. Bruce Mowery said it would go to the other direction, but then there would be a problem with dealing with the water as it comes to the center section.

P. Kenyon said because of the new driveway the applicants will be creating more than 1,000 square feet of new impervious surface, thus requiring a stormwater permit. Bruce Mowery said they can formulate a roof line to take care of the specific section where the garage is and so water will be running forward and back into the areas to be diverted, so no water coming off the house would go onto the Volkmann property.

From the public, Don Volkmann said he and Susan Volkmann do not feel it is necessary for the applicants to change the roof line or reduce living space, because it has always been that way and they don't have a problem with it.

No correspondence.

No County impact.

B. Pfau asked if the ZBA wishes to address stormwater in the motion and K. Hoopes answered by saying that it seems to be that is what stormwater regulations require. M. McComb asked if it is correct that the applicant is not responsible for stormwater on the existing, but only on the addition and P. Kenyon said that is correct. Bruce Mowery said the applicants are not opposed to stormwater measures, it is something that should be done.

RESOLUTION

The Zoning Board of Appeals received an application from Rita Whitney (V05-49) 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 the application having been referred to the Warren County Planning Board;

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance, it is a dimensional situation;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, as stormwater will be addressed;
- 3) The requested variance is not substantial, taking into account this particular location;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district, as stormwater will be addressed;
- 5) The alleged difficulty is not self-created, this property and this house have been what they are for quite some time.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by K. Hoopes 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.**

Bruce Mowery asked if the applicants change the roof line, if that would pose any problem or require the applicants to come back to the ZBA and K. Hoopes said if the footprint stays the same it would be fine. P. Kenyon said if the applicants don't go any higher than it is now, they stay in the exact footprint and as long as the ZBA agrees to it tonight, then she is good with this. The ZBA Members agreed that the applicants can change the roof line and as long as they maintain the footprint and don't go any higher then they are fine.

8) V05-50 SWEET, KENIS & VICKI. For the construction of a proposed single-family dwelling, seek area variance for deficient setbacks: 1) front yard: 75' is required from the edge of the right-of-way, 29' is proposed; and 2) shoreline: 75' is required from the mean high water mark of the stream, approximately 42' is proposed. Section 213.13, Block 1, Lot 2, Zone RCM1.3. Property location: west side of Coolidge Hill Road, approximately 900' from Route 9N intersection. Subject to APA & WCPB review.

Kenis Sweet gave an overview and said (1) he was before the ZBA a couple of months ago, (2) he made a couple of changes; he moved the deck around away from the brook to increase the distance so it wouldn't be as much of an impact and also moved away from the road a little bit and (3) he is convinced it is a buildable lot because; the lot was created in 1967 before the Town Zoning was created, in 1980 the APA approved a single-family dwelling for this lot, it is a residential lot in a residential area, it has been taxed as a residential lot all along, and barring the action that declared it an unusable lot, it should therefore be considered a buildable lot, (4) regarding the septic system and the Town Board acting as the Board of Health; he said the Town Board chose not to make an approval until the ZBA makes its findings, the Town Board is comfortable with the septic system for the following reasons; the quality of engineering and the fact that the engineer over-engineered the septic system, the engineer is using an Elgin system rather than a traditional trench system, even though it is within 100' of the stream the distance from the septic system to where it actually starts to get steep is 50' and the Town Board was following Town Engineer Tom Nace's recommendations of the plans, (5) Edmunds Brook is in great shape and shows no sign of silting or any other type of debris and everything that can be done will be done to take care of any damage that might happen to the brook during construction and during occupancy, (6) regarding ZBA and neighbor concerns on the looks of the lot after construction, the lot is fairly wooded and would definitely not be a clear-cut area and appropriate foliage and the neighborhood character would be maintained and (7) no matter what the property gets used for, any type of structure that goes on the property will eventually need a variance based on the narrow characteristics from the road and the stream, which is why he chose a very small footprint.

B. Pfau asked what it is about this new application that the applicant thinks is going to sway the ZBA Members who voted against the applicant previously that this proposal is much different from the applicant's previous proposal. Kenis Sweet said (1) the difference in the application has to do with the things outside of the foundation of the property, (2) he wants to make a statement that they are willing to work, (3) they have already made the investment in engineering and deposits with contractors for the presented footprint and any other footprint probably wouldn't be much different--literally by a couple of feet in the dimensions from the road to the stream, (4) he chose not to go back and alter those kinds of

plans and have to invest more money, (5) he does not feel he was prepared well enough previously to express his intentions to maintain the integrity of the stream and now he is ready to make that commitment.

B. Pfau said (1) if he were the applicant the question he would have for the ZBA is if this is a buildable lot, (2) if the ZBA is going to lead the applicant to believe his plan is not right for this lot, then the applicant should know that and if no house is going to work on this lot, the applicant should know that too and (3) his point is that he was not comfortable making that decision as the ZBA that this lot, which has been zoned as a residential lot, and if this is not a buildable lot, the owner of this property has a right to that determination so he can stop paying taxes on it and the applicant can get on with his life.

M. McComb asked for the applicant to give the ZBA more information on the APA's 1980 approval for a single-family dwelling and Kenis Sweet said it was a very small dwelling that the APA approved. M. Murray said the APA approved a two-bedroom dwelling and the applicant is proposing a three-bedroom, three bath dwelling. M. McComb said (1) when variances are granted, they are to be minimal, (2) the proposed 1,100 square foot ground floor is not a minimal design and (3) she feels for the applicant having done the engineering drawings, but the ZBA can't say if the plans were done before the approval was gotten, then the ZBA would ignore the Zoning Code in the stream corridor. Kenis Sweet said (1) his interpretation of the APA's 1980 ruling has a lot to do with the septic issue, (2) the proposed Elgin system is designed specifically for a unique situation like this, and takes care of the issue the APA came up with in restricting it to a two-bedroom dwelling on this lot.

K. Hoopes said (1) at this point he thinks we are partway towards answering the question on whether or not this is a buildable lot, (2) this is not the forum for that, but the fact that the applicant can get an admissible septic system here is half the way towards making this a buildable lot and (3) this Board doesn't deal with septic issues. M. Murray said the neighbors' septic is right next to the fence, so there are two septic systems that are literally going to be right tight to each other, which is another consideration.

P. Kenyon said the Town Board acting as the Board of Health did not want to act on the septic variance until the applicant got a variance for the house. K. Hoopes said it doesn't matter, if the Town Board thought it was going in a favorable direction then it's going in a favorable direction.

K. Hoopes said (1) the ZBA does exist to provide reasonable relief from zoning regulations that work out in an awkward fashion, (2) if the ZBA can find a reasonable solution to things it will, (3) the ZBA had an awful lot of concerns when the applicant was before it last, the applicant came back having moved an 8' overhanging deck, which really wasn't one of the ZBA's main concerns, as it's not that part of the footprint that the ZBA is concerned with, (4) the applicant is also talking about the stream bed being in good condition after the June 13th storm and the June 13th storm did not affect this part of town where this lot is located and (5) if the applicant were to go to some of the other stream

corridors that were very much affected, he might have seen where his proposed house might not be there due to the steep banks close to the stream.

M. Murray gave a history of this lot and said (1) in 1943 Edmunds Brook overflowed Route 9N and went over the top of the wall, (2) much of the property the applicant is trying to buy, many, many feet of this was eroded at that time and this property had a landing down by the brook before that flood took place, (3) huge amounts of dirt were washed away at that time, (4) it doesn't happen very often, but when it happens, it tears it away and if the bank is eroded away, the value of the property is gone. K. Hoopes said since June 13th, the focus is not protecting the environment from us, but us from the environment.

K. Hoopes said he doesn't want to encourage the applicant to pursue this much farther, because he feels 42' from that bank in that location is not nearly enough. B. Pfau said he doesn't disagree, but also asked if it is accurate that practically speaking the ZBA is not going to grant the applicant a variance to build a house anywhere on this lot. T. McGurl said (1) he thinks the applicant did a great job with the sewer system, aside from the fact that he is bumping up against the neighbors' lawn, (2) yes, technically the house does fit on the lot, (3) he thinks it is a very substantial variance, (4) even if the applicant reduced the size of the dwelling to a mobile home, making it narrower and narrower, what kind of lot would the applicant have if he'd fall down a cliff walking out his back door and (5) he does not think it is a reasonable lot to put a house on.

B. Pfau said if the ZBA can't help the applicant plan a house on this lot then maybe the Planning Board can help the applicant plan a house on this lot. K. Hoopes said (1) at this point the ZBA is beyond its purview as a board and (2) this lot is not owned by the applicant but by Jim and Janet Davies and if the Davies have an issue on whether or not they are going to get their value out of this they should approach the appropriate party and asked Counsel who that would be. Counsel said if the record owner felt this is not a building lot, they would petition in a grievance and ask that their assessment be lowered, if it's a non-buildable lot, which would need to be presented to the Special Grievance Board for the Town of Bolton on the last Tuesday of May.

B. Pfau asked if this would be determined to be a non-buildable lot because the ZBA would not grant this variance and Counsel answered by saying yes, this would be one of the factors at this point.

Correspondence: Counsel read the following correspondence into the record.

- E-mail and fax from Rodney and Christine Klami, 59 Coolidge Hill Road – opposed

No County impact.

B. Pfau said he wants to reiterate that personally, he would like to see this go to the Planning Board for their comments regarding the lot's buildability. M. Murray said he thinks it is up to the owner of the land to do that, not a potential buyer and it should be

done the right way. B. Pfau said he thinks it is up to the applicant. M. McComb said all the ZBA can do is rule on what is in front of them and Counsel agreed.

RESOLUTION

The Zoning Board of Appeals received an application from Kenis Sweet (V05-50) 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 the application having been referred to the Warren County Planning Board;

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item #8 of the agenda.

The Board makes the following conclusions of law:

- 1) Whether the benefit sought by the applicant can be achieved by other means feasible for the applicant on this particular lot, is itself open to question, certainly the house could be much smaller than it is;
- 2) There is likely to be undesirable change in the neighborhood character or to nearby property owners by the granting of this variance, because the steep contours of the slope, the difficulty of having to site the leachfield virtually on the neighbors' property line and the small size of the lot in conjunction with its topography makes it a very difficult if not impossible building site;
- 3) The requested variance is substantial, in terms of setbacks from Edmunds Brook and from the road;
- 4) The request is likely to have adverse physical and environmental effects, because of the proximity of other people's wells and septic in addition to the problems on this particular property being so small and so steep;
- 5) The alleged difficulty is not self-created in that it is an extremely small lot, but given that the applicant has not bought the lot yet, if you go ahead and buy a lot that is too small then she would say it is self-created.

The benefit to the applicant is outweighed by the potential detriment to the health, safety and welfare of the community.

Now, upon **motion duly made** by M. McComb and seconded by M. Murray, it is resolved that the ZBA does hereby deny said project as presented. **4 in favor. 1 (B. Pfau) opposed. Motion carried.**

9) V05-51 LEMAIRE, THOMAS & HEIDE. To alter a pre-existing single-family dwelling, seeks area variance for 1) deficient front yard setback: 75' is required from the edge of the right-of-way, approximately 40' is proposed from Church Hill Road; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 156.00, Block 2, Lot 35, Zone RL3. Property location: 32 Church Hill Road. Subject to WCPB.

Tom Lemaire gave an overview and said (1) it is a pre-existing porch, (2) they want to change the roof line to wrap around the pre-existing non-conforming structure and (3) it is 58' from the property line and at the closest end it is possibly 40', but the property line goes with Church Hill Road.

K. Hoopes said the original measurement is in the applicants' favor, but the applicants have to go perpendicular to that. M. McComb said (1) the house is perfectly centered on the lot, (2) the applicants can't become any more compliant with this and (3) it seems to be a minor addition sited to be as unoffensive to everybody as possible. M. Murray agreed and said it is a very old house. K. Hoopes said (1) the applicants are obviously restoring something that needed a little bit of work, (2) he has no problem with this and (3) the applicants have already dealt with the Code Enforcement Officer.

No correspondence.

No public in attendance.

No County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Thomas and Heide Lemaire (V05-51) 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 the application having been referred to the Warren County Planning Board;

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item #8 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance, it is a minor addition to a pre-existing non-conforming structure and seems as minimal as possible;
- 2) There will be no undesirable change in the neighborhood character or to nearby property owners by the granting of this variance, for this minimal addition and in fact the applicants are rehabbing a property that was sort of in need of a fixer upper;
- 3) The requested variance is not substantial;
- 4) The request will not have adverse physical and environmental effects, it is just a porch being added to a pre-existing house;
- 5) The alleged difficulty is not self-created, it is an angled, oddly-shaped lot and this is a minor proposal.

The benefit to the applicant outweighs the potential detriment to the health, safety and welfare of the community.

Now, upon **motion duly made** by M. McComb 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.

Meeting adjourned at 8:39 pm.

Respectfully submitted by,

Jennifer Torebka
Recording Secretary

09/01/05