

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES –
Monday, December 19, 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 Jr., Michael Murray, Bill Pfau, Zoning Administrator Pam Kenyon, Town Counsel Michael Muller

Absent: Tony DePace

Chairman G. Smith opened the meeting at 6:32 pm by asking for corrections to the November 13, 2005 ZBA minutes.

K. Hoopes said that if the ZBA comes to a positive conclusion on a variance he would like the future motion verbiage to read as follows, "*The benefit to the applicant is not outweighed by the potential detriment to the health, safety and welfare of the community.*"

K. Hoopes said that if the ZBA comes to a positive conclusion on a variance element #4 of the criteria should read in future motions as follows, "...4) *The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district...*" as he has a problem with the term "*by itself*", which should be omitted, since his criteria card does not read that way. M. McComb requested that "*or district*" also be omitted.

Counsel said he thinks K. Hoopes is right on both of the above items and that his (K. Hoopes') expressed concern would be to make sure the minutes accurately reflect each element of that test and maybe for future motions and minutes, if the Recording Secretary had a copy of that card it would be perfect.

K. Hoopes said on page 20, last paragraph, the second sentence should read, "K. Hoopes said (1) the ZBA can't act like engineers and should *not* try to..."

K. Hoopes said on page 23, paragraph 4, the first sentence should read, "K. Hoopes said that (1) *the ZBA co-exists with Zoning Regulations by New York State Law...*"

K. Hoopes said on page 23, last paragraph, in the first sentence item (2) should read, "...(2) the McGurls *are acting within their legal bounds...*"

M. McComb said on page 23, paragraph 1, the last sentence should read, "...so she doesn't find it inappropriate to say that if you are proposing this type of change that this is *not only about 200'* of waterfront."

M. McComb said on page 22, paragraph 2, in the second sentence, item (2) should read, "... (2) said that she agrees that this (*the waterfront lot*) looks to be in pretty good condition..."

Motion by M. Murray to approve the November 13, 2005 minutes as amended. Seconded by M. McComb. **All in favor. Motion carried.**

Other Business:

1. K. Hoopes said (1) he wanted to make a brief comment that as shown in the minutes, some of the correspondence and comments from the November 2005 meeting show that there were comments about various items of possible irregularities that the ZBA has allowed or overlooked, possible cronyism, fast tracking, working in reckless haste, and even down to the ZBA members having prior discussion in amongst themselves as a group and possibly deciding some of these things before the meeting even takes place, (2) he wants to remind people that that is absolutely not the case and the ZBA takes these decisions very seriously and added that some of the comments made are a little defensive. B. Pfau and G. Smith both agreed with K. Hoopes 100%.
2. M. McComb (1) asked for clarification on the Byers project where Counsel had previously said that the applicant has control over his application and (2) asked that if the applicant has been found to be in violation, has sued the ZBA and the judge agreed that changing the configuration did not make it not a wall, then she wants to know how the applicant is in charge of the process at that point, because it seems to her that there would be a lot of people that would be happy to just withdraw their applications.

Counsel said (1) he is not sure that the withdrawal of Mr. Byers' application—which he maintains the applicant still has the right to do—is the end, that is, after the applicant withdrew his application—and he (Counsel) wants to assure the ZBA that he was trying to encourage Mr. Byers to keep his application alive, which he was doing through Mark Schachner—he (Counsel) was told emphatically that no, it is withdrawn and that is that, (2) about a day or two after that, Code Enforcement Officer Mitzi Nittmann contacted him (Counsel) by e-mail to indicate that she had inspected the “thing” that some people call a rock wall and some people call a structure, and noted that although it no longer seemed to be continuous—meaning that it didn't hit that threshold of 100 feet or greater in length—it still seemed to be over two feet and so, in and of itself, whatever the “thing” is it is in violation, (3) after receiving the Code Enforcement Officer's e-mail, Counsel left a message on Mark Schachner's voice mail asking if Mr. Byers' intention was to lower this “thing” because this “thing” still has aspects of enforcement, so it is all well and good that Mr. Byers has a right as an applicant to withdraw his application for a variance—indeed he does—but he has this “thing” out there and this “thing” needs to come into compliance, so what is Mr. Byers going to do about it and (4) at this hour, he does not know the answer to what Mr. Byers' intent is to bring the “thing” into compliance—right now the “thing” is too high. *It is noted that Pam Kenyon sent the e-mail to Mike Muller advising him that the wall is still greater than 2 ft. in height in several areas.*

M. McComb said that the judge seemed to think that it wasn't a matter of the measured base area of the rocks, but that it was putting in five feet of fill itself may be a structure—whatever that edge was, the judge thought it was still a retaining wall.

Counsel said (1) no, he is going to challenge M. McComb on that thinking, because he was there arguing with the judge and (2) the judge actually came out and said that what Mr. Byers interpretation is complete gibberish (a word he used in his written decision), (3) Mr. Byers took the position that you could build anything however long you want and not call it a jurisdictional retaining wall if you put spaces in between the rocks, (4) at the time they were arguing it, Counsel specifically recalled the spaces, based upon what Pam Kenyon said she saw and other affidavits testified to, were a rock or two (6" or 8") and the judge said that was gibberish and Counsel has not seen the wall again—he has tried to stay away from the wall.

M. McComb asked if the spaces are bigger, if it still needs to be ruled whether it is jurisdictional—the judge may say that filter fabric is a bad retaining wall, but it is still a retaining wall—and if that might need to be adjudicated and Counsel said yes, that is possible—it's not over.

1) V05-67 SCHWAB, BERNARD. Represented by Jim Palazzo. To alter pre-existing non-conforming single family dwelling, seeks area variance for 1) deficient front yard setback; 75 ft. is required, from the edge of the right-of-way, 20 ft. is proposed. 2) to alter a non-conforming structure in accordance with section 200.56A. Section 186.14, Block 1, Lot 10. Zone RL3. Property Location: 948 Trout Lake Rd. No County Impact. *Note: This item tabled at the November 2005 meeting.*

Jim Palazzo, representing Bernard Schwab, gave an overview and said that there is a niche in the existing house and they are looking to fill the niche in.

M. McComb said (1) it seems like a minimal addition, (2) the location seems like the only place to put it and (3) it is not a lot where there are any seeming difficulties created for neighbors. G. Smith said the structure will not be any closer to the road than it already is.

G. Smith asked if it is correct that it will be a single-story structure and Jim Palazzo said yes. M. McComb said she did notice that the application said it is for a 20' variance and the map shows 50' to the road. Jim Palazzo said that it is 50' now and they are supposed to have 75', which is where that 20' comes in. G. Smith said 20' is proposed and the structure is located 20' from the road and it is supposed to be 75', so it is already non-conforming. Jim Palazzo said that is correct. M. McComb said then the map measurement is incorrect and Jim Palazzo said yes.

T. McGurl said he drove by the site and it fits right into the houseline. G. Smith asked if it will be the same color and siding and Jim Palazzo said that is correct.

B. Pfau said he is not against this project at all, but it does appear that this will be encroaching closer to the road than what already exists. Jim Palazzo that it will be in-line with the existing house, not encroaching closer to the road and B. Pfau said he understands.

No public in attendance.

No correspondence.

No County impact.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-67) Bernard Schwab 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 #1 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by other means feasible to the applicant, it is a pre-existing non-conforming structure;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, this seems to be designed to be as minimal as possible;
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

- 5) The alleged difficulty is not self-created, it is a pre-existing house and they are squaring off a corner.

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

Now, upon motion duly made by Meredith McComb and seconded by Bill Pfau, it is resolved that the ZBA does hereby approve the variance request as presented. All in favor. Motion carried.

2) V05-72 BUDNER, STEVE; DBA BOLTON GARDEN CENTER. For the placement of a proposed 10 ft. by 18 ft. storage building. Seeks area variance for deficient parking. 34 parking spaces required for the entire parcel; 11 spaces exist. Section 171.19, Block 1, Lot 62, Zone GB5000. Property Location: 4921 Lake Shore Drive. SUBJECT TO WCPB REVIEW.

Steve Budner said that he is proposing to put a 10' x18' shed behind the main building for storage.

G. Smith asked if the shed will be used for storage of goods to be sold and be used as retail space and Steve Budner said yes. M. McComb asked the date of the aerial view of the property that was submitted, as it doesn't show all of the currently existing buildings. K. Hoopes said that the only variance is for parking—not for setbacks or density. B. Pfau asked how many additional parking spaces are required for this addition and P. Kenyon said she thinks two more spaces are required.

B. Pfau said (1) the parking is deficient already, (2) the applicant has already applied for and received parking relief for what is there already and (3) asked if the applicant should only be applying for relief for two additional parking spaces. Counsel said (1) yes, but the overall inventory, the ZBA needs to take into account that the applicant had previously obtained the relief so he is off the mark by "X" amount and (2) B. Pfau is correct that the applicant only needs relief for two more spaces.

B. Pfau asked if the applicant having provided two or more parking spaces between his last request and this request would satisfy what he needs for this expansion and said the applicant is short overall inventory, but the applicant has added two additional spots. Counsel said he thinks that works favorably to the applicant's application, but he feels P. Kenyon did the right thing to present it to the ZBA as the applicant is expanding his retail space, will the ZBA grant the applicant the relief he needs.

M. McComb asked if the applicant will still be able to receive deliveries in the spot in the back and Steve Budner said (1) yes, he believes so, because there is about 14' from the edge of the 10' wide shed to the main building and (2) when they opened up the back and cut the trees down, they added four more spots so people can now park in the back. G. Smith asked if it would all be on Mr. Budner's property and Steve Budner said yes.

G. Smith asked if the proposed shed will look like the picture presented and Steve Budner said yes, except it will be different colors. G. Smith said that in the applicant's favor, Steve Budner does a nice business down there and keeps a nice looking place year-round—no matter what is being sold or what time of year it is—he has never seen it messy since the business has been there.

No public in attendance.

No correspondence.

No County impact.

G. Smith said (1) he has no problem with the applicant adding a storage shed to this piece of property, (2) as the applicant said, he added four more parking spaces instead of two and (3) he is in favor of it. M. McComb said it seems a nice thing to keep the commercial district vital and vibrant—it doesn't seem to be a problem.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-72) Steve Budner dba Bolton Garden Center 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 cannot be achieved by other means feasible to the applicant;
- 2) There will be no undesirable change in neighborhood character or to nearby properties;
- 3) The request is not substantial, it is a parking request and the applicant already has some of the best parking in Town;

- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- 5) The alleged difficulty is not self-created.

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

Now, upon motion duly made by Kam Hoopes and seconded by Meredith McComb, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion carried.**

3) V05-76 LOUGHREN, LAURIE. For the placement of a proposed storage building, seeks area variance for deficient setbacks. 1) Side; 20 ft. is required, 3 ft. is proposed. 2) Rear; 20 ft. is required, 19 ft. is proposed. Section 171.19, Block 1, Lot 24, Zone RM1.3. Property Location: 4877 Lake Shore Drive, known as the Church of St. Sacrement. **SUBJECT TO WCPB REVIEW.**

Laurie Loughren said that they would like to move their 10' X 12' storage shed to the location behind the parish hall, which would be 3' from their own property line.

M. McComb asked for the applicant to show the locations of Route 9N and the church on the map and Laurie Loughren pointed out locations on the map. M. McComb asked if the dumpster and trailer are on the third lot to the left and Laurie Loughren said yes.

G. Smith said he understands the applicant searched all of the property to find the best place to put the shed and Laurie Loughren said yes, they have a big slope of land that goes between the rectory and the parish hall. G. Smith asked if it is correct that it is a needed structure and Laurie Loughren said yes. Fr. Jim Loughren added that they have no storage at all and the variance is really from themselves, because they own all three pieces of property.

T. McGurl said he doesn't see this encroaching on anything and G. Smith agreed and said it is encroaching on the applicants' own property. M. McComb said it is encroaching on the backside, but because of the configuration of the lots, it doesn't block anybody's view or impede in anyway. G. Smith agreed and said it is a nice looking structure—if the picture represents what it looks like.

No public in attendance.

Correspondence:

- Letter from Deanne Rehm—in favor of project.

No County impact.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-76) Laurie Loughren 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 #3 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by other means feasible to the applicant, the applicant is squeezed for room on this lot;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, there have been no objections from any neighbors to this proposal;
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, as this is a small shed;
- 5) The alleged difficulty is not self-created.

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

Now, upon motion duly made by Bill Pfau and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor.**

Motion carried.

4) V05-65 GABRIELS, JANE. Represented by Don Russell. Item 1) For a proposed 2-lot subdivision, seeks area variance for a) deficient lot size. 20,000 square ft. is required; 10,303 square ft. is proposed and b) deficient side yard setback, 8 ft. minimum

required; 4 ft. 11/2 inch is proposed for the cottage on lot 2 and 7.1 ft. is proposed for lot 1.

Item 2) To alter single-family dwelling. Seeks area variance for a deficient side yard setback. 20 ft. total is required. 16 ft. 4 inch total is proposed (based on item #1 of this application & subdivision approval). Section 171.20, Block 1, Lot 2, Zone RCH5000. Property Location: 18 Green Isle Lane. SUBJECT TO WCPB REVIEW.

G. Smith said a letter was received stating that the new proposed square footage is over 20,000 square feet, so there is no longer a need for a variance for density for the lot size, so the reason the applicant is here is just for the variance for the setbacks—not for the lot size.

Don Russell, representing Jane Gabriels, gave an overview and said that (1) the PB vote was split on the original proposal on subdivision, (2) they will go back next month to the PB with the 20,000 square foot proposal, (3) nothing else has changed in the application, and (4) all three properties are owned by the Gabriels family.

G. Smith clarified that all of the setbacks the applicants are required to have are from their own adjacent property lines, which they do own, so it is not on any other piece of property surrounding them that is owned by somebody else.

B. Pfau asked if the new lot continues across the road through where the sheds and garage are and Don Russell said yes it does. B. Pfau asked if the front lot line stays in its original location and M. McComb answered by saying (1) yes, it goes back across the access road and incorporates the two garages on the far side of the road and noted that (2) she thinks this is the first application she has noticed where the applicant says it is a substantial request.

Don Russell said that the parts for the new lot will be taken from the south lot entirely. G. Smith asked if it is all in Lot 11 and Don Russell said yes.

M. McComb said that (1) it occurred to her that the housing site, the plan for the house, is nearly 50% further from the lake (Lake George) than required by the Ordinance and (2) she was on the site and the owner said that the big trees between the proposed addition to the house and the lake are staying.

T. McGurl said (1) this is like the other one where the applicants encroaching on themselves and (2) he doesn't have a problem with the proposal. Don Russell said that they are proposing to expand the existing cottage about 60%-65%, so the proposed total footprint of the building will be about 1,000 square feet.

G. Smith said he noticed nothing is closer to the lake than what already exists, as it is all back, beside and behind it. Don Russell said the bathroom will extend out about another 10'-15' towards the lake, but they are about 120' from the lake. G. Smith said it is well screened with trees up there.

B. Pfau asked for clarification on the side setback, as the map shows there will be a little over 12' on the side and on the application it says 16'. Don Russell answered by saying that the Ordinance reads a 20' total sideline setbacks, he thinks the 16' comes from the total up there, but you are also only allowed a minimum of 8'—they actually have 4' 1" on one side. P. Kenyon said (1) she has it down as a total—both sides—because in this particular zone you need a total of 20' on both sides, so combined she has 16' 4" and (2) on the agenda she has written down 4' 1½" to that proposed property line and on the map it shows 5' 5" and asked if that is because overhangs were not included. Don Russell said that is correct—the engineer had it from the foundation and he has it from the overhang on his drawing. Counsel asked if what is needed is 4' 1½" and from the remaining or larger house to the soon-to-be-created boundary line what is needed is 7.1'. Don Russell said yes, that is correct.

B. Pfau said he feels this is a small request on that side of the new construction, but he is compelled to ask if the additional three feet is needed on the west. Don Russell said that 4' of that is a covered ramp that sticks out beyond the building. M. McComb asked if it is correct that the proposal is 1,000 square feet including handicap ramps and Don Russell said yes. M. McComb said (1) that is pretty minimal, (2) she has disapproved of contiguous properties, because properties can be sold to other people and she doesn't think that just because one person owns two lots they should be able to overbuild one, but as in the case of the Church just now, that is not a parcel that is very likely to split up and sold and (3) the Gabriels family seems nearly that firmly incorporated (in the community as the Church) with all their kids, so she would tend to be completely accepting of what the applicants say their plans are for the place. Don Russell said that they didn't take any lake frontage in with this lot and it certainly is not the intention to ever sell it or have it leave the family in any way. G. Smith said that it is all land-locked by themselves anyway.

Correspondence: Read into the record by Counsel.

- Fax from Raymond Blessner, Michael Chrys—opposed.

No County impact, with the condition that cross easements be identified on the plans.

From the public, Attorney Stefanie Bitter, representing Mr. Chrys, said (1) the applicant indicated that all of the encroachments are included on the Gabriels property, which she finds difficult to understand, because Mr. Chrys owns the adjacent lot and (2) asked for an explanation.

Don Russell pointed out Atty. Bitter's client's property, the Gabriels' property and the existing cottage they are proposing to expand on the map for clarification.

M. McComb asked which adjacent property is owned by Atty. Bitter's client and Atty. Bitter said it is the big yellow house and showed it on the map. G. Smith said it is the house to the southeast.

Atty. Bitter said that (1) her client's main concern is the precedent this will create, (2) she knows Ms. Gabriels has amended her subdivision application and now has a 20,000+ square foot lot to maintain a deficient lot size, her client is looking at it that deficient lots are now being created even with setback regulations and (3) her client is concerned with the character of the neighborhood in that regard. G. Smith said he understands, but that is no longer the case.

M. McComb said the applicants are no longer creating a substandard lot and asked if that handles Atty. Bitter's client's concern. Atty. Bitter said no, she thinks because of the expansion of the cottage, there will still be a deficiency with regards to the setback even with that newly created lot, although the lot immediately adjacent is not actually increasing its deficiency, that new lot is going to be even more deficient. M. McComb said yes, according to the side setbacks, but it is not deficient in terms of waterfront and it will not be adding new docks and an expanded increase in the waterfront and asked what view will be impeded. Atty. Bitter answered by saying she thinks her client is speaking of all of the neighbors.

K. Hoopes said (1) he thinks Atty. Bitter's client is speaking in terms of setting a precedent with all of these big lots and houses down there possibly starting to be diced up, (2) the one thing the ZBA always has to keep account of is the fact that all variances run with the property and the ZBA is now allowing a new property with new variances after the Zoning Regulations have taken effect—sort of a post-existing non-conforming situation, (3) it does say in the letter that Jane Gabriels will pass this property back into the main estate in her passing, but that does not make the lot go away. M. McComb said that is unless they combine it at that point and K. Hoopes said yes, if they merge it, but that is not likely—it doesn't make any real sense to combine those. G. Smith said the main thing is that another substandard lot is not being created. Atty. Bitter said substandard in size not because of the setbacks, which is the argument her client is trying to make.

M. McComb said that (1) she is glad Atty. Bitter brought up the issues, which are valid ones, but it is just her sense that if you need 4' of relief basically on side setback only to build a 1,000 square foot cottage one-story high that includes the handicap access within it, it is hard for her not to find that that is a very minimal request and (2) it is not a substandard lot and it does not encroach on the lakefront at all.

Don Russell said that if it wasn't for the subdivision of the lot, he could go in tomorrow and get a building permit and build as requested without doing anything.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-65) Jane Gabriels 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 cross easements be identified on the plans;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by other means feasible to the applicant—well, they probably could build a long narrow cottage in the middle of the lot—but this seems to be a very minimal request—it is only 4’ of sideline setback, no waterfront setback or side or rear setback required—it is an unusual property in that it is a family compound that has been in existence for a long time in this Town and there is a long on-going presence in this Town of multi-generations;
- 2) The request is not substantial, 4’ of relief on one sideline setback;
- 3) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, in fact the applicant is demanding that the trees between the house and the water be saved;
- 4) The alleged difficulty is self-created, but the benefit to the applicant outweighs the very minimal negative impact of granting this variance.

T. McGurl said he doesn’t think the way the meeting started with people questioning how the ZBA makes decisions, while he has no question with the project itself, he doesn’t feel that the Gabriels’ length of time they have been in the Town really should be in the motion and K. Hoopes agreed. Counsel said he thinks T. McGurl is correct and he thinks that the project stands on its own because of the limited relief sought and the fact that this is a conforming lot.

M. McComb said she amends her motion to approve it based solely on that it is a minimal request, so delete any language referring to the Gabriels family. Counsel said that is correct—anybody could live there and that is what should be conveyed—it doesn’t matter who lives there and it shouldn’t. T. McGurl said he agrees—it is the project that the ZBA looks at. M. McComb said (1) she went to a training session on being on Zoning Boards and she was told that it is law that you are supposed to take into account if anybody has

come before you and told you anything that turns out not to be true—that you are supposed to factor that in future application requests, so if that is true, she would also say that if somebody has come in and has some history that that is part of the thinking on it. T. McGurl said misrepresenting themselves to a board and simply having longevity in a Town are two different things—judging someone on personality and the fact that they are involved with the community doesn't belong in this discussion. B. Pfau said that comments are made often on community standing—G. Smith said earlier that Steve Budner runs a nice business—but that is not the reason it was voted for. G. Smith said that was a plus for Steve Budner getting the variance, because he does do such a good job. K. Hoopes said the point is that it should not be part of the motion and T. McGurl agreed—you can mention it, but it shouldn't be part of the motion. K. Hoopes agreed that it can be part of the discussion, but it shouldn't be part of the motion. M. McComb said that she withdraws her motion and T. McGurl can make the motion. T. McGurl said he liked M. McComb's motion, but the part about the Gabriels personal involvement in the Town should be omitted. Counsel said that has already been done. T. McGurl said we're set then.

Now, upon motion duly made by Meredith McComb and seconded by Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as amended to eliminate the need for a variance for a deficient lot size. **All in favor. Motion carried.**

5) V05-75 RUSSELL, LESLIE, SPRAGUE, MARY, MCNULTY, CHARLES.

Represented by Don Russell. To alter pre-existing non-conforming dock, (noted as dock 1 on the site plan). Seek area variance for 1) deficient side yard setback; 20 ft. is required. 8 ft. is proposed. 2) To alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 186.07, Block 1, Lot 9, Zone RCH5000. Property Location: 4802 Lake Shore Drive, known as "The Point". SUBJECT TO WCPB & APA REVIEW

Don Russell, representing Leslie Russell, Mary Sprague and Charles McNulty, gave an overview and said (1) the variance request is for a Class A Marina and (2) currently two single finger docks exist which he proposes to connect for the purpose of putting in four docks total—in the eyes of the LGPC, to connect those two docks it is considered one dock, (3) they will actually be losing a boat slip in the space next to Twin Bay and (4) the rest of the plan, which he is not before the ZBA for tonight, is to put in two E-shaped docks on the point to accommodate cabin customers/renters and the boathouse will be solely for his family.

G. Smith asked if they want to reconfigure Dock #1, which is the first dock on the property from what exists to what is shown on the drawing and Don Russell said yes. G. Smith asked how many boat spaces will be added and Don Russell said it will take one away, so instead of six boats there will be five.

B. Pfau asked for an explanation of why a variance is needed given the distance to the property line and Don Russell replied by saying that (1) it is not specified in the

regulations how far you go into the bay—you can either go perpendicular to the shoreline or follow out the property line into the bay and you take the most restrictive of the two, (2) it doesn't specify how far out into the bay you go, so P. Kenyon took the conservative approach, (3) the 93' X 20' box on the drawing shows where he is—20' off the property line and (4) the Zoning doesn't specify how far out you go into the bay.

M. McComb said that the new proposed Docks #3 and #4 are definitely in front of the neighbors' property, but this is quite an individual piece of property, because when you extend the property line out into the water, the applicant runs into his own land, which is not generally what happens when you run a line out into the water.

B. Pfau asked if the docks would be getting longer than what they are now and K. Hoopes said no, they are getting shorter. Don Russell said that is correct, the usable space is shorter.

B. Pfau asked if the applicant thinks this proposal will affect Twin Bay Village's boat situation on their dock closest to the applicant and Don Russell said no, if anything it will give them a little more space with one less boat there. G. Smith said they also won't be sticking out as far and Don Russell said that is correct. M. McComb (1) said that the new docks will stick out directly in front of Twin Bay Village and (2) asked if there is any jurisdictional question on those. M. Murray said (1) Docks #3 and #4 have nothing to do with the ZBA and (2) the ZBA can only consider Dock #1. M. McComb said (1) that Docks #3 and #4 will definitely add people and congestion, (2) the whole project is an expansion and (3) it is very shallow in that area.

G. Smith asked if the applicant wants to rent out five dock spaces and Don Russell said yes, that is correct, right now they have two that are approved Class A Marina slips and they want to make it five total. G. Smith asked if all of the new spaces on the point would be for the customers renting the cabins and Don Russell said yes.

M. McComb asked about the plans for the proposed bathroom facilities and the parking. Don Russell replied by pointing out available parking areas on the map and saying that (1) up to now their existing bathroom has been perfectly adequate for the renters and still is, but the LGPC brought up the question of portable septic and (2) right now their septic system would not meet today's regulations and codes that would be considered, so rather than put any kind of impact with the necessary restrooms, they proposed a compost toilet, which is a self-sufficient system in itself. G. Smith said that type of system is all solar-driven. Don Russell said the LGPC sees him just like it sees Norowal Marina—as a marina, but the only difference is he doesn't sell gas.

M. McComb asked if the rentals would be seasonal or transient and Don Russell said they will be seasonal rentals and added that they have an overall plan to start upgrading The Point, because there is interest to keep it in the family and make it a high-end place to stay. G. Smith said it is good to hear.

M. McComb asked if there is a raft at the boathouse and Don Russell said yes, it is a floating raft that is put out each year—people like to swim out there and sun on it. M. McComb said it seems the area is getting more congested with the addition of docks, people and boats and Don Russell said no, not really, because those using the outer docks have no reason to come into the bay and they are limiting one boat slip there.

From the public, Attorney Matt Fuller of FitzGerald, Morris, Baker, Firth of Glens Falls, representing Twin Bay Village, said that this is a unique situation, but asked what needs to have a variance on this project—it would seem to him if Dock #1 needs a variance, then Docks #3 and #4 should need variances as well, because they encroach on property boundaries. Atty. Fuller asked how many docks are currently licensed for a Class A Marina and Don Russell said two. Atty. Fuller asked if there will be any modification to the two existing docks or if the proposal is to just connect the docks and Don Russell said the proposal is to just connect the docks.

Atty. Fuller said (1) he submitted a letter to the PB and ZBA requesting the applicant move things so as to not encroach on the property line and (2) said they are concerned with the additional swim/floating dock, (3) he feels the difficulty is self-created and (4) he feels the variance should be denied.

M. McComb said the ZBA just got this letter, so if Atty. Fuller has any additional comments he should make them and not assume they all had time to review the lengthy letter.

Correspondence: Read into the record by Atty. Matt Fuller.

- Letter from Atty. Matt Fuller of Fitzgerald, Morris, Baker, Firth of Glens Falls, representing Twin Bay Village—opposed.

Atty. Fuller said it appears that all the docks fall into the same criteria. M. McComb said (1) P. Kenyon disagrees with that, (2) she visited the site and it looks like the view Twin Bay currently has is going to be really severely changed by adding Docks #3 and #4 and (3) she asked if the docks could be moved to the point of The Point. Don Russell said he would prefer not moving the docks down, because the water gets pretty rough down there, even in the summer.

G. Smith asked if P. Kenyon determined Docks #3 and #4 don't need a variance from the ZBA and P. Kenyon said yes. M. McComb asked if it is true that Docks #3 and #4 don't need a variance even though they go over the property line. Counsel asked if M. McComb is referring to the theory of that the projection of the Twin Bay Village property line as it crosses over the property line of The Point—they intersect and M. McComb said it is a unique situation, yes and as constructed, if the point of sideline setbacks is to make good neighbors out of people. Don Russell said the situation is really not so unique—every bay on the lake has the same situation and if you start taking property lines and carrying them out to all kinds of extremes there will be all sorts of problems for everybody. M. McComb said (1) Dock #4 is not in Twin Bay Village's view, because it

is behind the point and (2) if Dock #3 was moved to the far side of Dock #4 it wouldn't impede Twin Bay Village's view and it would maybe make it less of an impact. T. McGurl asked if it is correct that the ZBA is not here for Docks #3 and #4, but only Dock #1. M. McComb said she asked P. Kenyon a question and is waiting for an answer. P. Kenyon asked if Docks #3 and #4 are existing and Don Russell said no, they are Class B proposals—Dock #1 and Dock #2 are existing.

K. Hoopes said (1) the applicant is here for one variance—for the 29' dock, which is now going to go down to 26', (2) these are pre-existing docks—this is falling into the category of rebuilding and reconfiguring an existing non-conforming structure. (3) this would be similar to tearing down your cabin and rebuilding it right within the same footprint, (4) the LGPC looks favorable if you have the dock crib you get grand-fathered and (5) as far as extending that line, the ZBA has to have a limit—this is the only variance the applicant is here for. M. McComb said (1) this comes up all the time, (2) when she tries to decide to grant a variance, she is going to look at the project that is presented and (3) she is discussing what the impact of this is. K. Hoopes said (1) what M. McComb is doing is kind of hi-jacking the rest of the project and (2) the only thing to discuss here is the impact of that dock that needs the variance.

P. Kenyon said Docks #3 and #4 do not require a variance. M. McComb asked if it is because Docks #3 and #4 are 20' from the sideline of this property. Counsel said (1) it is a clear question that has no clear answer, because if they do extend Twin Bay Village's property boundary line as if it were an extension across land, eventually it intersects with the applicant's land, which would be an impossibility in terms of prohibiting and (2) he doesn't see the setback violation there, but he does see the argument.

Don Russell said (1) setbacks were created, in his opinion, so people weren't encroaching on each other, (2) the 20' setbacks were set so there was enough room for boats to maneuver between dock slips and (3) the reason he drew the radius on the map is to show that they have 45' right now.

M. McComb referenced another letter from Twin Bay that said they had no objections in 2002 for The Point Motel to operate as a Class A Marina as long as there would be no changes occurring and it should operate as in the past years. Don Russell asked who they (Twin Bay) are to tell him how to operate and M. McComb said (1) there are a lot of people who care about their views of Lake George and (2) Dock #3 seems like it would impede. Don Russell said (1) Twin Bay Village has three 125' docks in 93' of lakefront and (2) Twin Bay won't even see his docks through their own boats. K. Hoopes said (1) in looking at the pictures the neighbors took themselves of the view, the dock is only approximately 2' above the high water mark, so a boat in the proposed slips would only block a view of the immediate waters behind it—not the scenic outlook on Clay Island or any other scenery, (2) to ask about putting the docks around to the southeast is asking to put them in harm's way and now you're talking about a safety issue, because now you're getting into the shipping channel (heavily trafficked area) and (3) that is a suitable argument, but this is not in front of the ZBA now and is not really any of the ZBA's business.

M. McComb said she is sorry she raised the question. Counsel said (1) it doesn't have a clear answer, (2) he had explained to P. Kenyon that he thinks you have to basically temper the rule that is being applied here with its effective impact and that is you look at the length of that dock for instance that is at Twin Bay Village and you take the length of that dock and you give that consideration by what does it need in terms of side setback, (3) he thinks that has been accurately done on Don Russell's map—he shows a 93' extension, a hypothetical 20' back—that's all you can do, because if you take the logical extreme of the argument, which is just extend those perpendicular lines of Twin Bay out into infinity, that is not a practical application and (4) there are bodies of cases that talk about taking a perpendicular line and extending it out into the center of the body of the water, but that's not going to happen here either. M. McComb said it is a unique configuration of land and that is why she brought it up.

M. Murray said that (1) the applicant is reducing the number of boats in a heavy boat traffic and shallow water area by one, which is a step in the right direction—it is an improvement and (2) Docks #3 and #4 are not the ZBA's jurisdiction. B. Pfau said there are other boards that will be appropriate to address Docks #3 and #4—he doesn't believe it is for the ZBA. G. Smith agreed and said Docks #3 and #4 are in APA and LGPC jurisdictions.

Warren County Planning Board recommends approval with the condition that the applicant receive all necessary permits.

M. McComb asked who else the applicants need permits from and P. Kenyon answered by saying (1) the LGPC, (2) the Town, (3) they have already gotten approval for the marina from the PB and (4) it is subject to the APA. Don Russell they need to get permits from the Army Corps of Engineers too. M. McComb asked if the Class A Marina permit was before the ZBA and G. Smith said (1) no, just the portion of Dock #1, which is the Class A dock and (2) the LGPC does the permit for the Class A Marina—not the ZBA.

Counsel said (1) where Atty. Fuller cited Section 200-56A and also the agenda specifies Section 200-56A, the applicant seeks a variance from that—the ZBA can certainly grant a variance to change/reconfigure something that is pre-existing and non-conforming—that is one of the ZBA's tasks, (2) then the ZBA needs to go through the criteria and make its determination, (3) if the request is substantial, he feels percentage alone is not the whole criteria—the ZBA needs to look at it as to the whole aspect as to what is being done here, (4) the ZBA needs to explore criteria number 4, figure out what Twin Bay Village had to say about it negatively and weigh that against what Don Russell has said positively and (5) he never heard anyone bring up if the alleged difficulty was self-created and the difficulty is created in part by where the dock is situated on Twin Bay—had that dock been properly situated in its proper setback, the ZBA might not be dealing with the setback issue that Don Russell has and he is not suggesting the ZBA has any latitude to tell Twin Bay to move their dock—he is just saying that is all part of the formula on what led this down to a need for a variance, so it is clearly not self-created.

G. Smith said (1) the ZBA is here for the sole purpose of Dock #1, (2) as Don Russell said, he gave too much information, so to speak, (3) Docks #3 and #4, he thinks from the overall picture, is Twin Bay's biggest problem, because that is something they will be looking at from their view, (4) the reason the ZBA is here is to reconfigure Dock #1—in length it will be 4' shorter and it will be connected as one F-shaped dock and it will have one less boat docked at it—that is the main reason the ZBA is here this evening and that is what the ZBA members need to keep their minds on.

M. McComb asked if it is correct that the ZBA's decision will have no impact on whether permits will be granted by the appropriate agencies for Docks #3 and #4. G. Smith said (1) that is correct—the ZBA has to overlook Docks #3 and #4 because they have nothing to do with this application in front of the ZBA and (2) what it boils down to is for the applicants to get a variance from the ZBA for Dock #1 to have five rental spaces instead of six for their Class A Marina permit which they want to get through the LGPC.

Don Russell said all he is looking for is a connection of the two docks to a pre-existing non-conforming structure. G. Smith said that is correct—he just wants everybody to understand exactly why the applicant is here for this variance and that everybody understands that Docks #3 and #4 may look like a lot on this map, but it has nothing to do with the ZBA tonight, which is what he wants everybody to understand—the ZBA is here for the sole purpose of Dock #1 to be reconfigured.

M. McComb asked if there were six boats on Dock #1 last year and Don Russell said yes.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-75) Leslie Russell, Mary Sprague and Charles McNulty 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 recommends approval with the condition that the applicant receive all necessary permits;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by other means feasible to the applicant, this is a pre-existing non-conforming dock—it is already there—not new construction;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, because it is the same old docks that were there—from what he has seen from the drawings it will be a better looking dock and will be 3’-4’ shorter and the number of boats will be reduced by one;
- 3) The request is not substantial, because it is going away from previous non-conformance;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, also because it is the same dock only being reconfigured;
- 5) The alleged difficulty is not self-created, because these docks are already in place.

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

Now, upon motion duly made by Kam Hoopes and seconded by Meredith McComb, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion carried.**

6) V05-77 NASTASI, WILLIAM. Represented by Bill Oehler. For the construction of a proposed single-family dwelling. Seeks area variance for deficient side yard setbacks. 50 ft is required. a) 40 ft. is proposed on the north side, b) 29 ft. 6 inch is proposed on the south side. Section 186.00, Block 1, Lot 6.3. Zones LC25 & RL3. Property Location: Long View Lane. *Note: See V05-03 for previous approvals granted on 2/28/05.*

Bill Oehler, representing William Nastasi, gave an overview and said that (1) the proposal is for 8’ 1” on the corner of the house for a screen porch and (2) this is almost the same exact layout of the originally proposed house layout.

B. Pfau asked if the 40’ on the north side is the same as the original proposal and Bill Oehler replied by saying (1) yes, the lot itself is a good size lot and the way it is set up you literally have some of the house set in this lot and (2) the applicant changed the house material itself to real hand-crafted logs. G. Smith asked if the only difference between this proposal and the last one is the south side changing from 37’ to 29’ and Bill Oehler said yes.

G. Smith asked if the ZBA can amend its earlier variance granted (V05-03) on this same property for the same reasons back in February and Counsel said yes, for the same reasons, then the ZBA can amend it.

M. McComb said that this is an LC25 and RL3 and asked what the scalloped lines shown on the map are. P. Kenyon said the scalloped lines are the applicant's clearing limits. M. McComb asked if the whole area would be completely cleared and Bill Oehler said no, William Nastasi wants to keep as many trees as possible. M. McComb said it is a huge proposed house, being 5,400 ground floor square feet (including the garage), 35' high and 105' long. Bill Oehler said no, it is not really huge—it includes a garage, which is within the setbacks. M. McComb asked which zone the majority of the lot is in and P. Kenyon said the majority is in LC25.

B. Pfau said (1) it is helpful to consider the alternatives also—the applicant could build a slightly smaller house, bring it forward to the lake and make their setback requirements and he doesn't think any of ZBA members would want that and (2) the lot is kind of pie-shaped, so the fact that the applicant is keeping it back away from the clearing that overlooks the lake is a good thing. G. Smith said he thinks the ZBA listed that same point last February as well and he believes that was one of the granting factors—because the applicant is keeping it back. M. McComb said (1) that is a good point, (2) a lot of impact will depend on the cutting plan and (3) the vast minority is in LC3, but the applicant is not seeking relief for having a substandard lot size. P. Kenyon said (1) the applicant got subdivision approval to do a lot line adjustment in 2003 and (2) this was actually a smaller lot and the applicant made it bigger in 2003.

No public in attendance.

No correspondence.

G. Smith said he feels the case of that the ZBA did grant this variance in February and there is little change from February to now. K. Hoopes said also regarding the changes towards the variance, for this property, the applicant owns the whole roost and is not likely to offend him or his in any time in the near future. G. Smith said the ZBA can just amend V05-03 to this variance.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-77) William Nastasi to amend (V05-03) 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 the application;

this Board makes the same finding set forth when approving V05-03:

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 cannot be achieved by means other than an area variance;
- 2) There is no undesirable change produced to the character of the neighborhood or detriment to nearby properties, the house design is a handsome design and should fit right in;
- 3) The requested variance is not substantial, especially taken into account how close they are to another zone, which they wouldn't even need the variances for if they were totally in it;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created in as much as ascertaining the zoning lines took a while to establish, and things were already subdivided and under way.

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

Now, upon motion duly made by Kam Hoopes and seconded by Bill Pfau, it is resolved that the ZBA does hereby approve the variance request as presented. Meredith McComb Opposed. **All others in favor. Motion carried.**

7) V05-74 PARROTTA, ROBERT. For the construction of a proposed 44 ft. x 8 ft. deck and a 15 ft. x 10 ft. deck. Seeks area variance to alter a pre-existing non-conforming structure in accordance with section 200-56A of the zoning ordinance. Section 171.11, Block 2, Lot 12, Zone RCM1.3. Property Location: 5102 Lake Shore Drive, known as the Contessa. **SUBJECT TO WCPB REVIEW.**

Robert Parrotta gave an overview and said (1) this application is to build two decks on a pre-existing non-conforming building and (2) it is 67' from the right-of-way of Route 9N, which is the problem, because it is supposed to be 75', (3) the first proposed deck is 44' long, to be located between the staircases of the motel building (from staircase to staircase), 8' out with a height of 3' 8" on the east side and 3' 3" on the other end and (4) they will use pressure treated lumber on both decks and (5) the second proposed deck is on the west side of the building to be extended out 10' X 15' wide with a height of 2' 6" on the east side to 2' 1" on the west side, which is all below road level, so if you looked from the road you would look right over it—you won't even see it.

G. Smith said (1) you can't see any of it from the road, (2) it faces the applicant's own property as opposed to the property to the south, which is good, (3) it is hidden behind the restaurant—you can't see it, (4) it is in conformity with what the applicant has been doing down there, which is adding decks and re-doing the units to make it nicer and (5) it is pretty basic as far as he is concerned. B. Pfau said it is important to note that all new construction does meet setbacks from the road and from the neighbors' property to the south.

M. McComb asked what the status is of the violation on the adjacent property and Robert Parrotta said he thinks it has been taken care of. Counsel said that (1) he can guarantee M. McComb that Code Enforcement Officer Mitzi Nittmann told him the violation is all taken care of—he is in compliance and (2) Chris Navitsky brought that up too, saying that "...the ZBA should ensure that all violations issued on this specific lot have been satisfactorily addressed before any variance application is considered. There has been concern regarding the impacts from this site, which has not been properly stabilized. Currently it is not possible to determine if this site is properly stabilized due to snow cover..." and (3) Mitzi Nittmann did state to him (Counsel) in the enforcement aspect that it is in compliance.

M. McComb said she thinks these are a pretty minimal way to improve tourist access and make the business more of a going concern.

Correspondence: Counsel read the following correspondence into the record.

- Letter from Lake George Waterkeeper, Chris Navitsky—comments (as addressed above).
- Letter from Ann and Joe Funaro—opposed.

M. McComb said she would agree with the Funaro's sentiment, but she thinks in this case that the location of the proposed docks being in the interior of Mr. Parrotta's property would tend to minimize any negative impact on the neighbor.

No public in attendance.

No County impact.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-75) Robert Parrotta 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 cannot be achieved by other means feasible to the applicant, it is a pre-existing non-conforming building;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, these decks are not particularly large or highly elevated in a way that would bring them into conflict with neighborhood character or to nearby properties;
- 3) The request is not substantial, all new construction is compliant—it is merely being attached to a pre-existing building that requires the variance;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it will improve the commercial property which is something the ZBA and the Comprehensive Plan seeks to do in this Town;
- 5) The alleged difficulty is not self-created.

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

Now, upon motion duly made by Meredith McComb and seconded by Mike Murray, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion carried.**

8) V05-79 STEVENSON, ROBERT. Represented by Tony Morehouse. To demolish, rebuild and alter pre-existing non-conforming structure by extending the roof line over existing deck. Seeks area variance for 1) a deficient front yard setback; 75 ft. is required, 16.6 ft. is proposed. 2) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. 3) in accordance with Section 200-19 distance between structures: 16.2 ft. required between this structure & the structure to the west. Approximately 6.10 ft. is proposed. 16.5 ft. is required between this structure and the structure to the east; 13.5 ft. is proposed. Section 200.14, Block 1, Lot 2, Zone RM1.3.

Property Location: 89 Cotton Point Rd., cabin # 13 of The Grove. SUBJECT TO WCPB REVIEW. *Note: After the fact. See notice of violation dated 11/09/05.*

Tony Morehouse, representing Robert Stevenson, gave an overview and said (1) he is here for a variance for something that he has already done and (2) he constructed the roof, then went to the Zoning Office, so he did things backwards.

G. Smith asked if Mr. Morehouse went down to rebuild this place and it fell down on him and Tony Morehouse said yes. G. Smith asked if the structure fell down because the foundation was so bad under it and Tony Morehouse replied by saying (1) the whole building was vacant for 11 years, (2) Mr. Stevenson contacted him and asked him to renovate the building, (3) he went down and jacked up the building and it folded up, (4) he notified Mr. Stevenson of the situation and Mr. Stevenson asked if he could build a new one, (4) Tony Morehouse drew a sketch, mailed it to Mr. Stevenson, got permission from Mr. Stevenson to build it and (5) Tony Morehouse built it before going to the Zoning Office.

G. Smith asked if Mr. Morehouse re-built the structure to the same exact size footprint to what exists there now, with the only exception being that a roof was added to the front porch and Tony Morehouse said yes. G. Smith asked if Mr. Morehouse didn't feel he needed a permit since he was building it to the same size and Tony Morehouse said that (1) years ago when he was building up in this area, the Building Inspector would come down, look at it and let him know if it was ok to build—the structures in the grove at that time weren't permanent houses, but temporary structures and they were like tents and (2) he thought it was still ok to build that way.

M. McComb asked what the location of the cantilevered 5' X 6' section is and Tony Morehouse said (1) that is as you are facing the building—on the left hand side and (2) it was on the old building and housed a hot water heater. M. McComb asked what the benefit is to cantilevering the hot water heater and Tony Morehouse said (1) it gives more space inside the building, because the buildings are so small and (2) most every camp in that location has an outside water heater. M. McComb agreed and said keeping it off the ground keeps it from rotting.

B. Pfau asked if the Town Board took any remedial action on this item and P. Kenyon said yes, a \$1,000.00 civil penalty was imposed.

M. Murray said the only difference the ZBA is really looking at is the roof on the porch and G. Smith said (1) yes, a roof over the front porch as opposed to no roof over the porch, (2) it is toward the roadside and is not affecting any neighbors or view, (3) it is all brand new structure now and (4) this is the way it has been down there for a long time now—this is the way it has been and the way it is going to stay.

M. McComb said that this is a bigger structure than the others down there and K. Hoopes said he thinks it just looks that way because it is closer to the road. Tony Morehouse said

that all of the structures in The Grove vary in heights and sizes—none of them are the same.

B. Pfau said (1) this is the same footprint as it was before, (2) the Town Board took remedial action and the applicant paid for rebuilding without permits and (3) since the ZBA probably would have granted relief to build on the same footprint anyway, he doesn't see any problem here. M. McComb agreed.

No public in attendance.

No correspondence.

No County impact.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-79) Robert Stevenson 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 #8 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by other means feasible to the applicant;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, they are all sort of a happy little family down there;
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it is the same footprint;

- 5) The alleged difficulty is not self-created, unless you talk about years of absence or neglect as being self-created.

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

Now, upon motion duly made by Kam Hoopes and seconded by Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion carried.**

9) I. Robert Wolgin. In accordance with section 200-72 of the zoning ordinance, seeks to appeal the zoning administrator's determination that the banner located at 4877 Lake Shore Drive, Church of the St. Sacrement, is not classified as an advertising sign. Parcel Id# 171.19-1-24

I. Robert Wolgin (Ike Wolgin) said (1) he seeks to appeal the Zoning Administrator's determination on the thrift shop sign, which doesn't have a permit, (2) there are three signs on the church property, (3) the thrift shop sign is pretty large and he approached the church to see if something could be done about it, (4) he was told by the Zoning Office that it doesn't have a permit and that it is classified as a "banner", (5) the Zoning Code does not provide a definition of a "banner", (6) he believes this is a sign, because it advertises a commercial operation of sales items in a shop—not the church or its hours, (7) the Zoning Code only presents sign regulations as requiring any advertising sign over 4 square feet to go to site plan review and there is a reference in the building permit section that says if you are going to erect (to hang or affix) a sign that you need a permit to do that, (8) according to the LGPC regulations, the thrift shop sign classifies as a "sign"—not a "banner"—and he is trying to find out why the Town has classified it as a "banner" and (10) this thing seems to appear to be a "sign" and now has been classified as something else that doesn't exist under the Town's Zoning Code.

K. Hoopes asked if the first thing Mr. Wolgin is interested in is that this thing is too big and Ike Wolgin replied by saying (1) he is one of the few people who see it and he knows the church has a thrift shop there—he finds it large and offensive and (2) the second issue was that when he asked if it was a "sign" and told it was a "banner", then there is an issue with the sign regulations in the Town. G. Smith said there is not doubt that there is an issue with sign regulations.

Ike Wolgin said (1) he would like to see the Town have a comprehensive sign code that would either include or exclude the item in question, (2) he doesn't think it is a good position for him to have to take an adversarial thatch against his neighbor in this venue and ask the ZBA to make an ad hoc decision about what is a "banner" and what is a "sign", but that is what they are here doing, (3) if this is a banner and banners are excluded, then any business could make as large a sign/banner that is wanted—the only difference with this is that it is not actually affixed to a piece of wood, polyethylene or polypropylene, but to fabric, (4) if this is the case, his Lake George Kayak Co. sign could

equally grow and be anything they wanted—unregulated, (5) personally he is offended by the size of the sign and asked Fr. Jim if they could come to some resolution and was told the church committee wouldn't take any of his suggestions, (6) the church committee said they didn't want to run afoul with the Town—clearly they knew they needed a permit for their other signage and (7) he feels there is clearly a problem with the regulation.

K. Hoopes said (1) the ZBA has discussed this before, (2) banners is one place where local businesses are allowed to do some unusual advertising (ex. weekly specials) where they don't have to come before boards and plan a zillion months in advance, which is why he believes this is left somewhat flexible and (2) he agrees with Mr. Wolgin in that it is a big banner and it sticks out.

B. Pfau asked how P. Kenyon came about her determination and P. Kenyon said (1) based on past decisions, (2) the Town has never regulated banners, (3) she doesn't remember any banner coming for site plan review if it is over 4 square feet and (4) she was part of a committee, when she first became the Zoning Administrator, to come up with a sign ordinance—she remembers taking it to the PB and it was shot down by the PB—she doesn't know if it ever got to the TB. B. Pfau asked if the Town ever got a sign ordinance and P. Kenyon said no.

M. Murray said (1) other towns allow banners where they are made of flexible material and a “sign” is a permanent or rigid background where information is lettered or placed on it in such a way as to be firm and rigid, (2) banners are usually considered to be a temporary item and (3) for example, several other Towns use banners for the Christmas season and they are treated as a temporary item and as long as they are taken down at least once a year, they leave them in that consideration—that isn't what the Town of Bolton has to do, but it is something to consider. P. Kenyon said this particular banner will be coming down, because the thrift store will be closing for the winter.

T. McGurl said (1) he thinks this is a slippery slope, (2) businesses put up Americade signs up for that time of year, the school has hung large banners on the fence by the sports field for different sports activities, etc., and (3) if this one is going to be regulated then when a sign is hung up for the school sports teams that is going to be an issue as well. M. McComb said (1) maybe yes, maybe no, (2) maybe this is different because it is a commercial space, (3) she knew of the gift shop by the sign under the church sign—not by this one and (4) her observations are that when she saw the sign/banner in question, she agrees that it is overwhelming and it looks and acts like a sign and while it is not painted directly on the wooden frame provided by the walkway, that walkway acts as a framed sign.

K. Hoopes said (1) this is a case where it is drawing attention to itself and (2) if people aren't careful, the Town may end up with banner regulations, which not what he thinks it wants. Ike Wolgin said (1) he doesn't think there is anything particularly wrong with banner regulations—if you have regulations that allow things and people know what the parameters are and (2) if the Town decides it is acceptable for banners to be allowed within certain reasonable parameters then that would be fine, but in the absence of getting

around to doing that and having specific regulations of what are and are not signs, you will endlessly be here.

M. McComb said (1) she also thinks about the people who have come in for the regulation of signs, that if they could simply hang a big banner instead of following the rules (there has been a trend for signage for stores), (2) if the purpose is to have people know there is a thrift shop and know where it is, the sign you can read from the road and pointing a small sign from the church sign on how to get there might let people see where to get there and may have much less of an impact as far as this particular case goes and (3) she doesn't think there shouldn't be any banners in Town, but the Americade banners come down.

G. Smith said the banner in question is up for seven months. K. Hoopes said the banner in Queensbury at Quaker and Bay Roads is eternally evolving, but it is always there. M. McComb said yes, but she just as soon not see Bolton become that way. K. Hoopes said he thinks it would be profitable for the ZBA to discuss dimensional regulations.

B. Pfau asked what the ZBA is supposed to be doing in this situation and Counsel answered by saying that the ZBA is supposed to decide if it is a "sign" that comes under the requirements of the Code regulations. M. Murray said he doesn't feel it should be classified as a sign, because signs permanent and made out of substance like wood that is not flexible, whereas banners are usually soft and flexible that don't hold up in a year-round context in the weather. M. McComb said that if you put a banner on a wooden frame, then it is more permanent. K. Hoopes agreed and said if it is secured to wood it is crossing borders.

M. McComb said the effect is something to look at, because if the effect is to encourage people, rather than a sign which is regulated, to just affix a piece of cloth with the information with the expectation they can do any size, any color, anywhere and take it down once a year for a day, she doesn't think that is a good way to go. G. Smith agreed.

P. Kenyon asked where M. McComb found the definition of a sign in the Zoning Ordinance, because she doesn't believe they have a definition of a "sign" in the Zoning Code. Ike Wolgin said (1) there is not a definition of a "sign" in the definition section of the Bolton Zoning Code, (2) in absence of that, if you go to Building Permit Requirements" it says that no structure, sign or dock shall be erected, (3) the closest thing you can get to is a reference to "sign regulations of the Lake George Park Commission" because it refers to the Bolton Sign Code—which doesn't exist and (4) he went to the Lake George Park Commission Sign Regulations and under a variety of scenarios, this (thrift shop sign) is a "sign."

M. McComb said in answering P. Kenyon's question, 200-31 is the page number in the code where she got that site plan review is required for all advertising signs over 4' in size, which doesn't define a "sign", but it says what a sign does, which is advertise, which would tend to make her think this is an advertising sign. P. Kenyon said (1) she was wondering if M. McComb found a definition of a "sign" that she was unable to find,

but there was no actual definition found and (2) she totally agrees that the proposed sign ordinance needs to be looked at again and make some decisions on it.

B. Pfau said (1) he feels the ZBA doesn't have anything really clear and concrete to make a decision on and (2) he recommends that the TB get a committee together to make a decision on what the Town, with citizen input, and decide if the Town wants banners/signs whatever you want to call them, to be an acceptable form of advertising and (3) it shouldn't be up to the ZBA to write this kind of Code. Counsel agreed and said (1) he doesn't want the ZBA to write the code, (2) certainly Mr. Wolgin has raised an interesting issue that does deserve an answer, and perhaps one of the answers is that the ZBA needs to table it to lead the charge to get the TB to write a sign ordinance and (3) Bolton doesn't really have a sign ordinance—it does regulate signs by the nature of their size, but it doesn't regulate signs, (4) he listened to a lot of the issues raised and they are re-occurring issues in municipalities, (5) they are balancing and struggling with issues as to what constitutes commercial speech and what is not commercial speech—the media is the message, that is the fact that it is on something that flops in the wind and could be temporary is not the factor that distinguishes whether it is or is not a sign and Counsel then cited several examples of what constitutes signs in other municipalities he has worked in.

Counsel added that (1) he thinks Ike Wolgin's question is one that really focuses very clearly on the fact that Bolton's Ordinance is substantially silent as to what a sign is, so if the ZBA wishes to be prepared, as perhaps it should, it needs to tackle it in a larger sense, because it is entirely true that any business that comes in tomorrow to the Zoning Administrator and asks for a large banner—something that flaps in the wind—and they want to advertise a product or a service, they have a clear blank check to do that, (2) the same banner that flops in the wind and doesn't look permanent or could be permanently attached to a piece of wood, watch carefully if it was non-commercial speech, because you can never regulate that (ex.. if it was a political comment of something about the church having Sunday school), (3) to regulate that, a lot of the municipalities have decided that they will regulate it by not prohibiting banners, but limit them to a duration—small fee, 30 days—that takes care of Americade, etc. and (4) he urges the ZBA to take this important question, lead the charge and get the TB to start thinking about it—more importantly, the TB is thinking about an overall change on the Town's whole code as they have hired a consultant to do that and this is an important part of that process.

M. McComb said in this case the banner is coming down anyway for the winter season after Christmas. Ike Wolgin said (1) he is not asking for a decision tonight, but is willing to hopefully have something happen in terms of a regulation to either apply or not apply to this by Spring to this particular item and (2) in the absence of a Town Ordinance coming that is applicable to this case to which this can be gauged, he will be back before the ZBA.

G. Smith said the ZBA will recommend to the TB to get a regulation in place for signs and try to get some sort of resolution for this particular case by Spring. Counsel said he thinks part of the ZBA motion ought to be to encourage the proper process begin to create a Sign Ordinance for the Town of Bolton.

Milo Barlow, Church Warden and Board Member, said (1) they don't want to irritate their neighbors, (2) Mr. Wolgin came to the church and made some suggestions, but didn't want to take any of the Church's recommendations, (3) a banner is not a sign according to Webster's Dictionary and what they have is a banner—held to the walkway by a rope, (5) Mr. Wolgin is the only one that has complained about the banner, (6) the banner did it's job with sales increasing 50% after it was put up, (7) one of the reasons the banner was put in it's current location was to make sure people who were coming were directed to the Thrift Shop upstairs—not to irritate the meal site staff downstairs, (8) Mr. Wolgin asked the Church to change the direction of the sign from east to west, but that would hide the view of the Church, (9) the Church offered to down-size the sign and change it to earthy colors, but not change the location and suggested Mr. Wolgin pay for it, but Mr. Wolgin didn't want to do that and (10) until the Church can make enough money to make the changes or until Mr. Wolgin wants to donate to the cause, that is where they are and (11) the banner is coming down for the winter.

M. McComb said when the TB takes this up anyone with information to contribute will be welcome to give input. P. Kenyon said there is a draft sign ordinance that has been done for five years and fell to the wayside that can be resurrected.

Ike Wolgin said, for the record, some of the suggestions the Church made were not going to solve his issues and he did offer to pay for it.

Now, upon motion duly made by Kam Hoopes and seconded by Bill Pfau, it is resolved that the ZBA does hereby table the appeal, and recommend to the Town Board that a sign ordinance be adopted, that in part deals with banners. A springtime deadline is set. **All in favor. Motion carried.**

Meeting adjourned at 9:13 pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
01/02/06