

**The Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, February 28, 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, Tony DePace, Kam Hoopes, Meredith McComb, Tom McGurl, Michael Murray, Bill Pfau, Zoning Administrator Pam Kenyon, Town counsel Michael Muller

G. Smith opened the meeting at 6:39 pm by asking for corrections to the January 2005 ZBA minutes. K. Hoopes asked that on page 11, para 2, regarding the ZBA interpretation of the division of property by a State, County or Town road create separate parcels, should be changed to read "...then it should be considered a separate parcel to be subdivided." M. McComb asked that on page 11, para 3, regarding ZBA interpretation of the division of property by a State, County or Town road create separate parcels, should be changed to read "He used the example of a 20-acre parcel in the LC25 zone having a road going through it, with 12 or 2 acres on one side, and 8 or 18 on the other." Motion by M. McComb to approve the January 24, 2005 ZBA minutes as amended. Seconded by K. Hoopes. All in favor. Motion carried.

1) V04-29a BAER, GEORGE & MARY. (MAYFAIR RESORT). Represented by David Barnes of the LA Group. For a proposed 7-lot subdivision (6 building lots and the remainder being common area), seek area variance for 1) deficient lot size. 20,000 square feet is required for each lot: 16,000 square feet is proposed for lot 6; and 2) deficient shoreline frontage (Section 200-37B4 Minimum shoreline) 185' is required; approximately 50 feet exists. Section 186.14, Block 1, Lot 60, Zone RCH5000. Property Location: 4618 Lake Shore Drive. The WCPB determined no County impact. The Planning Board recommended that Lot 5 be eliminated (reducing the number of lots from 7 to 6), which would allow for more common area and eliminate the variance (for deficient lot size) for Lot 6, as well as eliminate the stormwater issues on Lot 5. The Board recommends that there be deed restrictions similar to those of Bluebird (Cottages Subdivision) project with regard to building site envelopes and that tree-cutting be restricted along the southerly property line as proposed. The Board recommends that there be no tree removal for groundwork to be done between the cul-de-sac and the Lake, which includes replacing the impervious concrete walkway with a pervious surface. The Board recommends approval of the deficient shoreline variance. The Board does not object to the applicants' request to reconfigure the cul-de-sac, lots dimensions and building envelopes of those lots affected by the removal of Lot 5 in order to make Lot 6 compliant.

G. Smith said he spoke with George and Mary Baer this evening and said he had no problem with their plan dated 10/25/04 with the original 7 lots. He added that the PB recommended the Baers eliminate another lot so the Baers don't have a substandard lot.

G. Smith said that he does not feel that one substandard lot is detrimental to the size of the property the Baers have and the Baers will have plenty of common area with keeping that lot. M. McComb said she might agree with G. Smith if there was one lot with waterfront access, but she added the Baers are doing a subdivision that is wildly lacking in waterfront. G. Smith said there is no way around that whether they have 6 lots or 7 lots and he doesn't feel the Baers are asking for too much with 7 lots which is his personal feeling. G. Smith said lot 5 is 300' off the lake shore so, even if they do eliminate one lot up top, it won't affect the lake shore.

K. Hoopes said the ZBA got into some discussion on Lot 5 and in an effort of fairness, since the ZBA had previously sent the Bluebird Cottages subdivision to the PB for their input, that sending the Baer's plan to the PB wasn't intended to serve as a variance or non-variance, but just to get the input of the PB. K. Hoopes added that unfortunately, the motion that sent the Baer's plan back to the PB raised the possibilities of problems with stormwater management on Lot 5 and all various questions certain ZBA members had on this project. He added that he never had any problem with the Baer's plan. K. Hoopes said sending the Baer's plan back to the PB tainted the PB's approach on the matter, because he said the PB thought the full ZBA sent the Baer's plan back to them with those concerns, but he added the only thing the ZBA can comment on without trying to design a project for an applicant would have been Lot 6 itself. K. Hoopes said the ZBA has nothing it can say about Lot 5, because it is compliant with density issues and Lot 6 is the only one substandard in size, so if the ZBA was going to ask to have one lot be removed, it should be Lot 6. M. McComb said she disagrees because (1) the ZBA is contemplating granting a 300% deficiency in waterfront and (2) saying there is almost enough land for another lot, so we will grant that too. She added the Town seems very concerned with keeping tourist access to the lake, which is vital for the Town. M. McComb said that if the PB concluded there was a stormwater problem and made a recommendation, then the ZBA should not ignore the PB's recommendation or ignore that the waterfront is substandard. G. Smith said the PB recommended approval for the deficient waterfront. He asked M. McComb if they made Lot 6 bigger and removed Lot 7, what would that do for stormwater? He added that Lot 5 will stay in the same location as it is now. Dave Barnes said they never agreed there was any kind of stormwater problem on that lot and feel they can handle it adequately, being the lot is 300' from the lake. T. DePace verified that anything that is to be done to this property is going to have stormwater regulations on all the new houses and lots and there is no up-to-date stormwater there now. G. Smith said that is correct and added that if the approvals are granted, they are going to have to be up-to date on stormwater for each and every house on the property. He added that he feels eliminating Lot 7, which is going to be up closer to the road, is not going to do much for stormwater. M. McComb said it makes it more attractive to the Baers to do this along with anyone else who has a cabin colony and she added that she doesn't see the point in having zoning and then not paying attention to it. K. Hoopes said the variances before the ZBA are for a substandard lot size and a deficient waterfront, not for density. He added that only one parcel containing deficient density is proposed and the total project has plenty of space to allow for the density. G. Smith said it is not overcrowded whatsoever. M. McComb said it only has 50 feet of waterfront, so to say there isn't any impact would be inaccurate. K. Hoopes said he read

the PB report and the PB specifically did not say there was a stormwater problem, he added the PB said eliminating Lot 5 could alleviate possible stormwater issues. K. Hoopes said nothing has been established for stormwater and if the project engineers and architects say they are going to address stormwater, the ZBA has to take them for their word and the Town has Zoning Administrators and Zoning Enforcement Officials to back that up. M. McComb said in looking at the ZBA grounds for granting the variance and (1) the request is certainly substantial for the waterfront variance, and given the fact that this is not a little shy in a hamlet zone that was configured to promote and allow cabin colonies, or what is already a very small lot, (2) it is certainly self-created and (3) it is substantial, and she added that if the PB thought it was a good solution to eliminate Lot 5, she feels it should be changed. M. McComb commented that she feels the remainder of the ZBA have already made up their minds and regardless of what the code says, the remainder of the ZBA thinks this should go through. Zoning Administrator P. Kenyon said even if the ZBA grant this variance and the PB didn't agree with the variance, the PB still has the option to not approve the subdivision.

B. Pfau said he knows George Baer and acknowledges his right to subdivide this piece of property and he added that the last he heard this compromise came out of the PB meeting. He added that at the last ZBA meeting Dave Barnes was ready to proceed for a direct request for the reduced number of lots and thought that was what was going to be presented tonight, not the original proposal. B. Pfau said after reading the PB minutes, he said he concluded (1) nothing can be done about the variance problems at the lake front property and (2) there was something that could be done about the substandard square footage of one of the lots on the property, which could be alleviated by eliminating one of the lots. B. Pfau does not agree wholly with the concept that as of right the Baers have enough land for all their lots if they choose not to provide proposed common area, he said the common area should be excluded from the amount of land available for lots. He said the PB came up with a legitimate compromise that made the whole project better and increased substantially the square footage in the proposed common area by almost three times as much square footage in that lot. B. Pfau said he chooses to take the PB recommendation seriously. M. Murray said when the project was first presented, he said then that it should be reduced from 7 to 6 lots, because they could meet the footage and all of the other problems could be taken care of. He added he still stands by that decision. G. Smith asked if George Baer was in attendance at the PB meeting, to which George Baer responded no. David Barnes said one of the problems is that the Baers were away on vacation, he and the LA Group weren't communicating with them while they were gone, the LA Group went to the PB meeting, the PB findings came back and the LA Group attempted to contact the Baers to tell them the findings. He said the Baers eventually contacted the LA Group days before the deadline to resubmit the zoning plan, so the LA Group had to get something in before the Baers really had time to make a good decision. David Barnes said in retrospect, the LA Group should have tabled the matter, not attended the PB meeting and waited until they met with the Baers for further discussion before attending tonight's meeting. G. Smith said at the last ZBA meeting, the LA Group suggested eliminating Lot 5 and he suggested the LA Group table the matter and contact the Baers, because he knew that was their personal lot and that they did not want to give that up. K. Hoopes agreed and said that the applicant definitely should be at

the meeting in person to make the decision. He added that the ZBA can only suggest the applicant remove Lot 6, which was the substandard lot. M. McComb said when she looks at whether the benefit can be achieved by other means feasible for the applicant, for instance, they could just have one or two houses with access to the waterfront and carve out the rest of it into 20,000 square foot parcels without lake front access and mediate the waterfront that way. She added people don't have a right to make as much money as possible off their land or we wouldn't have any zoning at all and people could put in a high-rise anywhere they want. M. McComb apologized for being taken aback by the surprise of showing up for the meeting with something different than what the ZBA was presented with in advance.

From the public, John Gaddy, PB member, said B. Pfau summed it up correctly as far as his impressions of what was discussed at the PB meeting. He added that as presented, the PB saw that this was a compatible use very similar to its neighbor Bluebird, but they were concerned with the areas, specifically Lot 5, because of the high level of vegetation it currently has and the fact that with this application asking for a variance for the density, the PB was looking for reduction of one lot, but did not necessarily try to specify which lot, but the PB looked at it as what way would be most affecting or least affecting to Lake George. John Gaddy said Huddle Bay is one of the many milfoil spots in the area that is a high density use now and that any vegetation the PB could keep between the cul-de-sac and the lake would be a positive aspect for this project. He added that he was concerned about the actual width, but then was told that it does fit the actual setbacks and width for a lot within RCH5000. K. Hoopes said the project sponsor had indicated that there would be minimal vegetation loss on the whole project, especially on Lot 5. John Gaddy agreed, but said there was a variance being looked at and the PB wanted to reduce by one lot the whole project and the PB felt this was the most logical way, because (1) it kept a more wooded approach for the common area and (2) reduced any stormwater issues that might develop from the cul-de-sac down to the lake, which would keep the present nature of that land the way it is now. K. Hoopes said the ZBA has to allow applicants the right to maximize the profit of their land if it fits within the zoning guidelines. He added that the ZBA exists as a board to provide relief on those guidelines in places where it might be less than reasonable to hold somebody's feet in the fire and what he needs to see is facts, figures and an establishment that there is a problem before he decides one way or another on various aspects of the plan. John Gaddy responded by saying that the PB understands the ZBA's role, but the PB also looks at (1) the loss of vegetation on the lake front, (2) the rate of development in the Town of Bolton, (3) the fact that this project is a very heavy use along a very small amount of lake front, which all leads up to a high usage of this particular piece of property that has been used for a portion of the year, which will inevitably be used more frequently. K. Hoopes said the portion of the year this piece of property is currently in use is a very intense portion of the year. John Gaddy said from the PB viewpoint, B. Pfau accurately understood what the PB was trying to do with its recommendations to the ZBA. T. DePace said this is a resort property that has 30 units that has no stormwater run-off on it right now and he added that this whole property will be up-to-date with stormwater, there will be possibly 7 houses there, the traffic won't be anywhere near where it gets to in the summer, and the stormwater alone for that piece of property will be up-to-date compared to its neighbors and asked John Gaddy for his

views. John Gaddy responded by saying that the Baers currently have a nice area with no erosion and plenty of vegetation as it is now. G. Smith commented that by the time the Baers are done, there will be more vegetation there than there is currently. John Gaddy said he doesn't agree and added that there is not a project in town that has more vegetation after a project than when it was started. K. Hoopes said that is not accurate and added that some projects in town start out with no plantings and after they are landscaped, they are bringing plantings in. John Gaddy responded by saying that there is soil has existed there for zillions of years and that the natural absorption quality of the soil gets disturbed and rerouted every time it gets played with. He added that the Town of Bolton does a good job with new stormwater regulations, but as the Baers own the property now, he doesn't see a real big impact, but the PB was asked for a recommendation that a lot be eliminated. M. McComb asked for clarification on whether the house closest to the water lies behind the rise or on top of the rise. David Barnes said the house is nestled in a saddle and the road is above it by about 2 feet. M. McComb explained that (1) if the house is on the top of the hill the water would run a particular way and it is narrow and very rocky soil and (2) if the house is behind it the ridge, it is back where the trees are currently, so they would have to cut the trees. K. Hoopes said a clear area exists and the LA Group has said in the pas that there is minimal cutting. He added that there is also a big ledge out there so the water would need to get over that rock and said he doesn't see the need for this to be established prior to making a decision. M. McComb said if there had been a site marked out of where the house is going to be built and it is clear, she may feel differently. K. Hoopes said the ZBA has to believe the applicant's intention. G. Smith said he was at the site and the house site appears to be on top of the hill to him. B. Pfau said his major objection is that once the applicants decide to remove 4,900 square feet for a common area on the lake, which will enhance all the remaining lots, the applicants do not have enough square footage to maintain the minimum lot size on the property. He added that the applicant should remove what they want for square footage, but they must maintain the minimum lot size or a total of enough square footage to accommodate all the lots they want.

Mary Baer, property owner, said regarding owning a motel and having trees they have beautiful big trees on their property that they would love to keep, but when you go down to the lake, it needs to be thinned a little, because there are too many trees there. She added that there was a situation where a tree limb fell on someone's car on the property and they would not have been paid by insurance for that if they hadn't been trimming the trees. Mary Baer said you cannot keep all those trees in that little bit of space and not think they are going to fall down because there is no soil. Mary Baer added that they have owned and operated the motel for 25 years and they want to make the 7-lot subdivision and sell the lots as they come along. She added that maybe they should get a lawyer or something, because, as K. Hoopes said, they are entitled to make their money. She said they are not building any 10-foot story apartment on the property, they are not doing any damage, they have kept that property very well, they have put all their money in that property and this is their retirement.

Rolf Ronning, from the public, said he is a neighbor and good friend of the Baers, and that he knows the property well. He added the shorefront is used much more now than it

would be with 7 residences. He said there is a nice forested area and you will see nothing from the lake any differently, if the 7 lots are approved, than what is there now. Rolf Ronning said the Baers have run a very good operation there and as a neighbor of the property, it would be a benefit to the Town of Bolton, to see 7 well-built European chalets, it would add character and value and he is in favor of approval of the 7 lots.

G. Smith agreed that the Baers have run a beautiful place and that creating 7 lots will not be detrimental to the property whatsoever. M. McComb said she doesn't think the Baers will trash the place or do a bad job or that they have done a bad job. She added that in-line with the comprehensive plan and the concerns of the Town of Bolton as a whole, granting 7 lots instead of the 6 lots is short-sighted and the ZBA is just setting itself up as being a starting point and applicants should always go for more regardless of what they are capable of constructing. M. McComb said it is a big trade-off to have that little waterfront and it is not unreasonable to grant 6 lots instead of 7 lots.

T. McGurl said if Lot 6 is a deficient lot, it seems that from the PB's view and the view of some members of the ZBA, Lot 5 is the problem, removing the additional lot is not going to solve the problem or get Lot 5 out of there. G. Smith said Lot 5 will stay where it is, it meets the setbacks and it is where the Baer's home is going to be, so eliminating Lot 6 will not do anything different for Lot 5 and he added that he feels the Baers are entitled to 7 lots.

M. McComb said there are only 6 dock spaces for 7 houses. George Baer, property owner, said the common situation in Florida in the intracoastal, there are 200 apartments and 10 dock spaces, and it needs to be worked out by either selling 10 with the dock spaces and 190 without. K. Hoopes said it is the same situation at the Sagamore. George Baer added that the number of lots has nothing to do with it.

RESOLUTION

The Zoning Board of Appeals received an application from George and Mary Baer (Mayfair Resort) (V04-29a) for an area variance as described above, but revised to the plan dated 10/25/04.

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 public comment regarding the application having been heard;

this Board makes the following findings of fact:

The application of the applicant is as submitted on the agenda revised to the plan dated 10/25/04.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than an area variance for a 50 feet lake front and the size of the substandard sized lot is one of square footage, but not one of density to the whole project
- 2) There will be no undesirable change in the neighborhood character to nearby properties, this is a trend we're seeing on both sides of the lake
- 3) The requested variance is not substantial
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district), nothing has been established that says there will be a physical or environmental detriment by the building of this subdivision and all stormwater measures will be taken.
- 5) The alleged difficulty was not self-created.

Now, upon **motion duly made** by K. Hoopes and seconded by T. DePace, regarding the plans dated 10/25/04 showing with 7 lots instead of 6, to grant the revised area variance for one deficient lot; where 20,000 feet is required and 16,000 feet is proposed for Lot 6 and to approve the variance for the minimum shoreline of 50 feet exists and 50 feet will be sufficient. **3 in favor (T. DePace, K. Hoopes and G. Smith) and 4 opposed (M. McComb, T. McGurl, M. Murray, and B. Pfau). Motion denied.**

RESOLUTION

The Zoning Board of Appeals received an application from George and Mary Baer (Mayfair Resort) for an area variance as described above, for the plan dated 02/14/05.

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 public comment regarding the application having been heard;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #1 on the agenda for the plan dated 02/14/05.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than an area variance, there is only 50 feet of lakeshore property that exists there which cannot be increased

- 2) There will be no undesirable change in the neighborhood character to nearby properties
- 3) The requested variance is not substantial, the minimum request is being considered at this time by eliminating one lot as shown on the map dated 02/14/05
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district)
- 5) The alleged difficulty was not self-created, as the 50' lake front width cannot be increased

Now, upon **motion duly made** by B. Pfau and seconded by M. McComb, it is resolved that the ZBA does hereby grant approval for said project as presented, for the revised plan dated February 14, 2005, with the condition that the recommendation of the PB are incorporated into the plan. **All in favor. Motion carried.**

2) V05-01 PERRY, MARK & LINDA. Represented by Barry Kincaid. Seek area variance for a proposed greenhouse. The maximum square footage allowed though Type II Site Plan Review in the RM1.3 zone is 300 square feet. 960 square feet is proposed. Section 156.00, Block 1, Lot 13, Zones RM1.3 and RL3. Property Location: 121 Federal Hill Road. Subject to WCPB review.

Barry Kincaid said the area variance request is to put up a greenhouse, no tree clearing is needed, but the area variance is needed because the area the Perry's have decided to put the greenhouse doesn't meet the zone requirements. G. Smith asked if the greenhouse would be located where it was previously. Barry Kincaid said it would be located where the other one was torn down. G. Smith asked if the applicant's realize that if the area variance is approved, that there will be no commercial business run from the greenhouse. Barry Kincaid said G. Smith is correct and added that the applicant is aware that there will be no commercial business run from the greenhouse, other than a customer of his, if Mr. Perry is doing a landscape job, just to pick out the colors of flowers, but not to put up a sign and run a business out of the greenhouse. Barry Kincaid said the purpose of the greenhouse is strictly for Mr. Perry to grow his own and store his own product. Zoning Administrator P. Kenyon said she was not under the impression that anyone was going to be going to the greenhouse to do anything. Barry Kincaid said nobody is going to the greenhouse to buy flowers, but to not allow a customer from a landscaping job Mr. Perry is on, not to come pick out a color seemed unreasonable. K. Hoopes asked Counsel how close they are dancing around a use variance. Counsel said too close. K. Hoopes said there can be no business out of the greenhouse. Barry Kincaid said that Mr. Perry runs a home landscaping business. K. Hoopes said he is aware of that, but if Mr. Perry operates the greenhouse for profit, he is operating a business on the property, which is too close for comfort for the ZBA. G. Smith said Mr. Perry will have to take samples to the job or

bring photos there for people to pick from. Barry Kincaid said if that's what Mr. Perry has to do, that's what he'll have to do. K. Hoopes said he is under the impression it is not a matter of who is visiting the greenhouse, the ZBA might talk about whether or not operating a greenhouse there is a commercial use. Barry Kincaid asked even if the greenhouse is just for storage. M. McComb said it may be an indication that this doesn't seem to be a grotesquely large greenhouse, yet it is three times the size that is permitted by the zoning. Counsel said you can certainly have a privately used greenhouse up to 300 square feet, and if size were the only consideration, by asking for a bigger one, Barry Kincaid is properly here for an area variance, that in this case, size matters. Counsel said if the applicant is going to add to the greenhouse in terms of use by the owner inviting customers to come even to his 300 square foot greenhouse, it is prohibited by this zone since it would commercial use, which is not allowed. Counsel said he doesn't think the applicant would want to go for a use variance, because there is a tremendous amount of burden on part of the applicant to get one of those. Barry Kincaid said that's fine. Counsel added that they would want to absolutely steer clear, but honestly steer clear from it, that is that if they need a 960 square foot greenhouse, chances are they are going to be able to establish the area variance criteria. Counsel cautioned Barry Kincaid by saying then don't mislead the applicant in a sense that the applicant thinks this is ok, this is fine, and he'll have his customers come there. Barry Kincaid said he is not trying to mislead Mr. Perry at all and that he is just trying to make sure everything is out. Counsel said Barry Kincaid needs to make sure Mr. Perry understands. Barry Kincaid said he will make it specifically clear that there are no customers allowed there. G. Smith said the ZBA has a letter from Doug Houghton saying that he does not have a problem with the Perrys having a greenhouse on the property. G. Smith asked if there was any other correspondence, to which P. Kenyon said there was no county impact. There was no public in attendance to speak on this item. M. McComb said she is not sure of her feeling on this item, as she visited the site and it is going to be the view of the house on the hill (Miller's) that is in question. G. Smith said the barn will hide the greenhouse. B. Pfau said it is very well screened where it is.

RESOLUTION

The Zoning Board of Appeals received an application from Mark and Linda Perry (V05-01) for an area variance as described above.

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than an area variance, because the zoning there limits the greenhouse to 300 square feet
- 2) There will be no undesirable change in the neighborhood character to nearby properties, there are no objections from any neighbors
- 3) The requested variance is not substantial
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district), the greenhouse will be well screened by existing buildings on the property
- 5) The alleged difficulty was not self-created

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

3) V05-02 DATELLO, JOSEPH & LUCILLE. Represented by Greg Bonath. For the construction of a proposed single-family dwelling, seek area variance for 1) Deficient front yard setback. 50 feet is required from the edge of the right-of-way: 28.6' is proposed; 2) Deficient side yard setbacks. 20' is required: 12' is proposed on the north side and 13'2" is proposed on the south side; 3) Lot coverage: 15% is allowed: 21% is proposed. Section 171.15, Block 1, Lot 46, Zone RM1.3. Property Location: Adjacent north of 11 Brook Street. Subject to WCPB review.

Greg Bonath gave an overview and said that they have reduced the size of the three-bedroom ranch as much as possible adding that it was originally a two-car garage that was changed to a one-car garage and they need a variance for the front and two sides. He added that they centered the house on the lot side-to-side, the wetlands checked out fine, he checked with the Town for water and sewer hook-ups and there is no problem as it is right in front of the house.

K. Hoopes asked if they are crowding the front of the street setback because of the slope of the land. Greg Bonath said they are trying to get to the high ground and added that there is about 3 feet at most of pitch in 30 feet width of the house. He added that this would enable to make the house fit in with the others around it. G. Smith said the house will fit in with the rest of the properties around it, it is a moderate sized, single-story house and it will look nice. P. Kenyon said there was no county impact. There was no public in attendance to speak on this item. G. Smith said there was nothing in writing for or against the project.

RESOLUTION

The Zoning Board of Appeals received an application from Joseph and Lucille Datello (V05-02) for an area variance as described above.

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than an area variance, because it is a pre-existing small lot and the applicant has made every effort to minimize the project and the required variances
- 2) There will be no undesirable change in the neighborhood character to nearby properties, it will be very much in character with the neighborhood
- 3) The requested variance is not substantial
- 4) The request will have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district), as the applicant indicates stormwater retention measures will be used
- 5) The alleged difficulty was not self-created, it is a result of a small in-town lot

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.**

4) V05-03 VEDER, ROBERT & MONA LISA. Represented by Rolf Ronning. For the construction of a proposed single-family dwelling, seek area variance for deficient side yard setbacks. 50 feet is required: 37.7' is proposed on the south side and 40' is proposed on the north side. Section 186.00, Block 1, Lot 6.3, Zones RL3 & LC25. Property Location: Long View Lane.

Rolf Ronning said the Veders own three lots on Long View Lane, and instead of what they thought were 25 foot setbacks, a portion of this land is in 25 acre zoning, which would require 50 foot setbacks. He added that it was brought to the PB, who recommended the matter for the setbacks be brought before the ZBA. Rolf Ronning said instead of the 50 foot setbacks, they are looking for 37.7 feet on one side and 40 feet on the other side, otherwise without a variance, the house would be long and narrow. M. McComb said in looking at the floor plan, there are other ways of configuring the house than with the proposed plan and doesn't see what the hardship would be in designing a house that would fit on this land. Rolf Ronning said the hardship is that the house would not look balanced in regard to the other houses in the area, and that Mr. Veder wanted to set the house back on the lot so it is not in everyone's face and he also put his garage to the back. Rolf Ronning said a house on an expensive lake view lot in a community where you have other large homes, 68 feet is not an unreasonable width for a house. K. Hoopes said because the subdivision has been approved, they gained some acreage, they gained some width by reconfiguring the pre-approved subdivision, which was 100 feet wide and they widened it in such a way that they went to the neighboring driveway. B. Pfau said considering the neighborhood and considering the size of the homes, the variance request is not unreasonable. P. Kenyon said when the PB approved the lot line adjustments, the PB recommended to the ZBA that they approve the variances for the deficient setbacks on this lot. Rolf Ronning said initially this lot was only 110 feet wide, so the house would have been 10 feet wide, then Mr. Veder came by and reconfigured the lot to meet the setbacks and make it wider and better. He added nobody ever knew that part of this lot was in 25 acre zoning, it was assumed it was in 3 acre zoning like the rest of the property. Rolf Ronning said it was always assumed that this was an ordinary building lot with 20-30 foot setbacks rather than the 50 foot setbacks, and it came to everyone's attention when the new buyer wanted to get site plan review for the home prior to closing. K. Hoopes said that is a valid point, but unfortunately they are only a matter of feet away from the LC25 zone requiring a 50 foot setback. John Gaddy, PB member, said that at the PB meeting, at the time this was originally approved, the actual line dividing the LC25 and the LC3 was not even know, it was undefined, and then it developed and caused the difficulty. He added the PB believed the configuration was an improvement upon the lot size and there was a lack of accurate information on where the line was between the LC3 and the LC25.

M. McComb said there was no floor plan for the upstairs. Rolf Ronning said he didn't realize they needed a floor plan for a setback, the footprint of the house on the map is the footprint to be built which will include a kitchen. There was no public in attendance to speak on this item.

RESOLUTION

The Zoning Board of Appeals received an application from Robert and Mona Lisa Veder (V05-03) for an area variance as described above.

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by means other than an area variance,
- 2) There will be no undesirable change in the neighborhood character to nearby properties, 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 have no adverse, or has had no adverse, physical and environmental effects (in the neighborhood or district)
- 5) The alleged difficulty was not self-created, in as much as ascertaining the zoning lines took a while to establish and things were already subdivided and underway

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.**

5) KINCAID, BARRY. Seeks an interpretation/definition for “selective tree-cutting” as it relates to the dimension of a tree outlined in the most current ordinances.

K. Hoopes said he spoke with P. Kenyon on the matter and contacted the wetland manager at Finch Pruyn, who said the definition of selective cutting from a professional point of view is problematic, where it is a type of exploitation cutting, taking the larger trees and leaving the smaller trees, which begs for high grading. He added that “selective thinning” is a removal of dominant stem, just the large trunk diameter, that have exceeded diameter limits as described, leaving behind thinner trees of equal growth, form and condition. K. Hoopes said there is a new guide coming out titled “The Municipal Officials Guide to Forestry” which can be found at [://www.newyorkforest.org](http://www.newyorkforest.org), which may aid the ZBA with definitions they need.

G. Smith asked for clarification that the Town of Bolton definition of tree is “6 inches in diameter at a height of four feet,” anything above is a tree and anything from there down is considered shrubbery? P. Kenyon said those are the definitions for clear cutting and timber harvesting. G. Smith asked if selective cutting would fall under tree harvesting. M. McComb said not necessarily, because they could have different aims. She added that when she was a PB member, a situation came up where a developer could cut certain vegetation, and asked P. Kenyon if the idea in Mohican Heights is to let the PB have oversight to the vegetation there. P. Kenyon said that was her thinking, but she has been directed by the Town of Bolton to remove that from the PB agenda at this time, because the lot that was in question was in Section I of the Mohican Heights subdivision and the selective tree cutting condition was done in Section II. Counsel said this discussion does not reference a particular situation, but is a matter of general definition of selective tree cutting.

Rolf Ronning, from the public, said parts of the zoning ordinance says you cannot remove any vegetation within six feet of the lake, his lawn and other people’s lawn go right up to the lake, so according to the current wording, everybody on the lake is violating the ordinance by cutting their lawn. G. Smith said they ZBA is not discussing vegetation, just selective tree cutting. Rolf Ronning said there are several definitions that need to be reviewed and suggested the ZBA have a meeting, which he’d be happy to attend, to further discuss these definitions and come up with something everyone can understand and abide by. K. Hoopes again referenced a new guide coming out titled “The Municipal Officials Guide to Forestry” which can be found at [://www.newyorkforest.org](http://www.newyorkforest.org), which may have the definitions the ZBA needs.

John Gaddy, PB member, said the PB had apologized to Mr. Pike and Mr. Kincaid for the length of this discussion. He added there are several things that need to be discussed, including: (1) how and when to implement the master plan that is over 18 months old and (2) how to re-vegetate areas that have been extensively cleared. John Gaddy said he agreed with P. Kenyon in asking for a definition and he said that he believes in the comprehensive plan, page 9 in the executive summary, they are asking to review the Town’s current vegetative clearing regulations, and he said a problem the PB has is finding a way to re-vegetate an area that has been extensively cleared, in regard to erosion and run-off issues. M. Murray said the Town of Bolton at one time was totally clear-cut and it has re-vegetated itself. John Gaddy referenced the comprehensive plan: (1) Sec. 2-43 regarding protecting the resources of the Town of Bolton and all of the communities surrounding Lake George, and (2) Sec. 3 of the Implementation regarding the suggestion of reviewing the current vegetative cutting restrictions. He added that development should be allowed and encouraged, but it should be trying to maintain a long-term environmental quality to the area.

K. Hoopes said forestry is a science and there are certain definitions and ways to approach this, which would do the PB and ZBA jobs for them by taking NYS accepted forestry methods and definitions and using them. John Gaddy said it is the town’s obligation to maintain the hillsides, cut down on erosion and water quality problems that

arise from excessive vegetation and he added that it would be ridiculous to have a ban on clearing, but that there should be an effort made to re-vegetate. K. Hoopes said some areas have a zero tolerance for cutting, and he added that the best form of forest management is for it to be in private hands. M. Murray said you could take a forest, where it is all pine and there have been several instances in the Town of Bolton where people have gone in and lumbered according to the NYS lumbering guidelines and the pines that have been left are so thin and so tall that they get sunburned the trees died. He added they'd have been better off to clear-cut the property and start over and it would have been better off for the Town of Bolton and the people if they'd been allowed to do that.

M. McComb said there is a difference between people with developments where they want to sell lots, is to try to approach the notion of selective cutting, where the developer wants to show his lot and cuts a certain area for a view, then a person comes in to build his house and wants a different area, so you wind up with double cutting on the lot, which is what happened at Indian Summit.

Barry Kincaid reminded the ZBA that the matter at hand is a definition of selective tree cutting in general, and as a tree contractor, he is trying to abide by every zoning ordinance the Town of Bolton has, but with the issue he just ran into with Mohican Heights taking him about three months to solve, because of a phrase being turned in from "selective tree cutting" to "all vegetation". He added what needs to be determined is what "selective tree cutting" means. G. Smith said the ZBA will need to have a meeting with the PB, someone like Rolf Ronning and someone from NYS and suggested it be worked upon in a workshop. Barry Kincaid said he would like to have himself and his forester take part in the workshop. P. Kenyon said she will still continue to address "selective tree cutting" as she did in the case of Mohican Heights and she will be very conservative. G. Smith said that she should remain conservative until they come up with something else. Rolf Ronning said he agrees with Barry Kincaid in having the same issue with P. Kenyon taking an interpretation of the ordinance that isn't there and he added it has been vague and ambiguous for 20 years, it's time to get something done and he'd be willing to take part in the workshop. P. Kenyon said she does not interpret anything that is not in the ordinance. Dennis Murphy, from the public, said the DEC and NYS Forester should be included, and he said everyone has a different interpretation of forestry and cutting. K. Hoopes said it is not entirely open to interpretation, as there are given standards of forestry. G. Smith said the matter is tabled and needs a workshop meeting with the PB, ZBA and invited guests which will be scheduled.

6) To discuss the April meeting scheduled for the 18th, as it conflicts with school vacation. The ZBA unanimously agreed to keep the April meeting scheduled for the 18th, as the only member to be absent will be T. DePace.

Meeting adjourned at 8:27 pm.

Respectfully submitted by,

Jennifer Torebka
Recording Secretary
03/11/05