

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

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

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

**Absent:** None

Chairman G. Smith opened the meeting at 6:32 pm by asking for corrections to the June 20, 2005 ZBA minutes. K. Hoopes said on page 6, at top of the page, it should read, "K. Hoopes said the only thing he could think the Gallagher letter is referring to as an outdoor shower would be the bathrooms in the two out buildings, but they are fully enclosed."

Motion by M. McComb to approve the June 20, 2005 minutes as amended. Seconded by M. Murray. All in favor. Motion carried.

**1) V05-12 TEKMITCHOV, VASILIKI.** To alter existing structure, specifically to create a second story deck over existing restaurant/bar area to accommodate additional seating, seeks area variance for deficient 1) front yard setback: 30' is required, 25' is proposed from Route 9N; 2) front yard setback: 30' is required, 1' is proposed from Congers Point North; and 3) parking: 46 spaces total required for entire property, including 10 spaces for new deck area, 0 spaces exist, 0 proposed. In accordance with Section 200-56A, seeks area variance to alter a non-conforming structure. Section 171.15, Block 3, Lot 74, Zone GB5000. Property location: 4960 Lakeshore Drive, known as Lily's. The WCPB recommended no County impact with the stipulation that the Town investigate the issues concerning compliance with handicapped access under ADA. This application was tabled last month at the applicant's request.

Atty. Susan Millington, representing Vasiliki Tekmitchov passed out pictures, gave an overview of the project and said (1) the applicant is proposing the placement of a deck around a certain section of the roof of Lily's, so that she may place tables and chairs on the deck, (2) the first purpose is so the applicant may serve more food in a nicer environment, (3) the second purpose is to alleviate the smoking problem which has plagued several local establishments, where patrons must leave the establishment to smoke according to the new State of New York laws, (4) the proposed deck is well within the footprint of the building with the deck being some 17' off of Route 9N then will follow the footprint of the building on the south side going to the back of the building where there will be an exit, (5) the applicant has been a local business owner for many years and has owned this building for many years, (6) with the exception of Ron and Carol Alcan's building in the Town of Bolton, the surrounding buildings are all commercial in nature as is the applicant's building, (7) the applicant currently has a two-

story structure and is proposing to increase the second story, (8) there are many local businesses that have all actually increased the footprint of their buildings so they can get more space for deck areas, (9) this proposal will have a positive effect in that there will be less police enforcement and less people standing on the street drinking in the area, and (10) she does not see there will be an adverse effect on public facilities, (11) she does not think the applicant has any feasible alternatives, other than to do what other property owners have done on Main Street, which is come out more toward the street, but the applicant is proposing to use the building the applicant currently has and build up, (12) although the applicant has a pre-existing non-conforming use, by making these changes, the applicant is not really changing the non-conformity in any way, since the applicant is well within the footprint of the building, (13) there is no major change, because the deck is within the footprint of the building and (14) she thinks the applicant meets all the criteria for a variance.

M. McComb asked for specifications of the existing duct and air conditioning shown on the presented map and Atty. Millington responded by saying that there will be metal roof, so that no smoking of any sort will be affected, then there will be a metal supports for this building and there will be a deck over the top of it and the air conditioning duct will be completely removed. Vasiliki Tekmitchov said (1) the existing air conditioner shown in the large photographs was placed in 1972 as a central air conditioning, which was the latest technology at the time, (2) it is extremely costly to run right now and gives the applicant a lot of problems cosmetically and otherwise and (3) she would like to remove it completely.

M. McComb asked for explanation of the deck and Vasiliki Tekmitchov responded by saying (1) she has a deck on the apartment, which has existed since 1972, (2) the proposed deck will come out to the south in an L-shape and will stop at the existing lines of the upstairs second story, (3) the proposed deck will be totally independent of the architectural structure of the existing building, because she wouldn't want to stop her business to have all this done, (4) she spoke with Glens Falls Steel and the beams are all under consideration, (5) when the air conditioner is removed, for insurance purposes, she will need to put in a sheet metal roof and (6) the steel beams will hold a beautiful wooden deck with screening, plants, flowers, etc. for all of her businesses and this building to be enhanced and improved. Atty. Millington said her understanding is that there will be a sheet metal roof where there is currently a tar paper roof and that there will be wood decking above that.

M. McComb asked where the air conditioning venting will come out and Vasiliki Tekmitchov answered by saying she believes they will bring it out on the base of the building which stands on poured concrete and cement blocks, so possibly in the back of the building where all the utilities currently are.

M. McComb said it used to be a 6' fence around and now is being shown as 5' cross-hatch and asked for clarification. Vasiliki Tekmitchov said this is the proposed fence from Mr. Kershaw to screen the deck so people can look out and from the outside can look in.

B. Pfau said quite a few neighbors in Congers Point have expressed concerns that an open deck on that side of the building will create a noise problem for them, which according to the neighbors, would create an undesirable change in the neighborhood and asked the applicant to address that aspect. Atty. Millington said (1) it would seem like the Zoning Noise Ordinance would be the right way to address that, (2) if the proposed deck does create a problem like that or a problem like that does crop up over a period of time, the Town has noise ordinances that will deal with that, (3) she thinks the undesirable change in the neighborhood has got more to do with the structure itself, which is what she thinks they are doing here as far as a variance is concerned, (4) the Town can certainly change the noise ordinance and shut the applicant down, (5) she was in Town last night and Frederick's had a band that was very loud and that is allowed, and (6) the way she contemplates the statute and the way she contemplates the New York Statutes with regards to this variance is that it has to do with structural changes as opposed to noise ordinances.

M. McComb said (1) when the ZBA evaluates variances, it is not just if the building is going to be safe or not and (2) she doesn't think there is anybody on this Board who's said "Well, if it's a safe building, then we don't have any other concerns." Atty. Millington said she thinks it is a legal question and asked Town Counsel to give an opinion. M. McComb said it seems Atty. Millington is saying that the ZBA has no right to consider any impact on the neighborhood except whether the building is structurally sound and Counsel said he would not say that. Atty. Millington asked if Counsel would say that the noise consideration is to be taken into account with regards to the variance and asked if Counsel sees noise as one of the criteria of an undesirable change in the neighborhood and Counsel answered by saying (1) he would instruct the ZBA that if noise is a factor then noise is to be considered with respect to the application, (2) noise does have an adverse impact on public health or safety and quality of life issues in the neighborhood and the change in the character in the neighborhood and (3) he is not saying that there is a change, but he is just suggesting that that is a viable topic for the ZBA's consideration.

Atty. Millington asked if the ZBA has something it would like the applicant to do as far as noise is concerned and K. Hoopes said (1) the proposed deck as far as he can see it, the applicant lists all of the problems this project will alleviate for the applicant, (2) a change in noise would be an undesirable change to the character of the neighborhood, (3) the proposed deck would be up and over the top of the building, so instead of blocking the street noise from the neighborhood back there, it will be lifted up and curled over the top, (4) the applicant wants to create a year-round restaurant and would need expanded seating to do this, the applicant is having trouble with smoking and drinking and he doesn't see where an open deck helps the applicant at all with a year-round restaurant and (5) the expanded seating, especially with the weather we had this afternoon, that also is not going to happen, for all intensive purposes, the applicant does not get expanded seating because it is a completely open deck. Atty. Millington said the applicant will be placing umbrella tables on the proposed deck, so in the summertime, the applicant will have a great amount of expanded seating.

Vasiliki Teckmitchov said if she has a certain growth in the summer, she can expand her winter business because there would be money aside for payroll and all the things she cannot do now, simply because she does not have the ability to increase the grounds. Atty. Millington said there are many businesses in the Town of Bolton that have recently put on outdoor decks, that they can't use in the winter season, but the season here is a summer season, so the applicant is going to have the ability to have a much nicer place in the summer time where people can eat. K. Hoopes said the other Town businesses didn't put their outside decks on their roofs and Atty. Millington said the applicant has no other choice and the applicant can't move in any other direction. K. Hoopes said (1) the ZBA doesn't really get involved with finances, so the applicant's need to put the deck on so she can afford to do better business, that is something the ZBA avoids like the plague, because there is no guarantee that anything the ZBA does will make her business go better, (2) as far as the expanded outdoor seating at the places Atty. Millington used as examples, those Town of Bolton businesses happen to have the room in front of the restaurant on street level to do that, where this building is fairly unique in Town because it hugs the sidewalk pretty closely (3) as far as the Noise Ordinance taking care of the noise magically, the Town also has open container ordinances and that doesn't take care of that problem magically either, there have been several places that have run a-fowl with that, and (4) he understands being an ex-smoker himself, that the business owner needs to police it so that drinks stay inside and smokers go outside. Atty. Millington said the problem with that is that nobody in their right mind these days is going to leave their drink on the bar and walk outside to have a smoke. K. Hoopes said they do at Frederick's and the Market Place. Atty. Millington said (1) at Frederick's and the Market Place, they can go out on the deck to have a smoke and the problem with the applicant's place is that when you walk out the door you are on the sidewalk, and there is no buffer between the sidewalk and the business, (2) regarding the noise to Congers Point, she has represented quite a few people in Congers Point throughout the years and that is quite buffered, since there are buildings and all types of things between the applicant's place and Congers Point and (3) she wonders where the idea has come from that it would be so incredibly noisy for Congers Point and asked if it is verifiable that there is noise in Congers Point. K. Hoopes said (1) the noise is just one of the factors and should not solely be focused on heavily, (2) he doesn't see where this variance is solving any problem besides possibly allowing smokers to take their drinks up to the roof and (3) he doesn't see this as creating a restaurant in any meaningful way, as you can't be shuffling patrons in and out on hot and humid days when you get spot thunderstorms and (4) he doesn't see where what the ZBA does will be going to fix the problem.

Atty. Millington said (1) she represents at least three businesses in Lake George Village who have no covers on their decks, which are solely umbrella tables and they get a tremendous amount of business, (2) two years ago Mayor Blais was trying to do something about his deck and she actually showed the figures of what he made by having five uncovered umbrella tables out on his deck and it was tremendous, (3) she agrees money is not what needs to be talked about, but the fact that the applicant wants to have an outdoor restaurant upstairs, does not seem any different to her than all the other places in the Town of Bolton that have an outdoor restaurant, but the only thing the ZBA seems

to keep zeroing in on is that it is going to be second story and there is going to be a lot of noise generated by it, (4) she thinks most of the noise is going to be focused toward Main Street and would only be a critical factor with regards to the Congers Point group, since the applicant's business is surrounded by commercial businesses on all other sides and (5) wonders where the noise issue is coming in, as it isn't like it is going to be bothering anybody. K. Hoopes said the people that are going to be living in the houses will be bothered by the noise.

M. McComb said regarding the applicant not having any other choice, (1) she recalls that Cate's Garden used to be two shops and when they wanted to expand the restaurant business, they took over the second shop and dedicated it to the restaurant, (2) the applicant has three businesses running in this building now, so it seems that one of the opportunities for expanding food service would maybe be to use some of the gallery space, (3) this would be the first upstairs bar and it seems to be she has heard nothing from the townspeople that they have a desire to be more like Lake George Village and have upstairs bars and she asked (4) if there are any current density issues on this property. P. Kenyon answered by saying yes, the 5,000 square feet for each commercial business and asked the applicant how many apartments she currently has at the location. Vasiliki Tekmitchov said on the Congers Point side, the Carnese's have built a building by the right-of-way, where a car with a mirror would hit the building. G. Smith said the ZBA asked how many apartments the applicant has on the property and Vasiliki Tekmitchov responded by saying (1) the ZBA should know the periphery before it tells her about noise or anything else, (2) there is a house between Congers Point and her building, which is her property, and a garage, (3) she believes the Zoning Administrator told her she could have two parking spaces on the lake-side of the cottage and there are another four parking spaces, totaling six parking spaces for her tenants, (4) the buffer zone between the proposed deck and Congers Point is at least 1,000 feet and (5) she was also picked up by the sheriff's years ago when The Sagamore had a nightclub where the pool is now, because the noise was reported by Congers Point to be coming from her place and it was coming from The Sagamore and everyone was laughing at the mistake and (6) she has 3 apartments that she rents seasonally only, because if she rents them in the winter, they are devastated and she had to spend \$20,000 from the previous tenants. Atty. Millington said the applicant has three seasonal apartments and three businesses.

T. McGurl asked what the hours of operation would be and Vasiliki Tekmitchov answered by saying (1) she would like very much to tell the ZBA that if she can open early in the day, she has no reason to be there until 2:00 am, (2) right now she has no choice but to stay open later and (3) she cannot open during the day, because no one is going to come and sit in a place that is absolutely not for good weather. Atty. Millington said the applicant contemplates the proposed deck as more of a place to eat, than a place to drink. K. Hoopes said again, it is an uncovered wide open area and Atty. Millington replied by saying (1) again it has umbrella tables and (2) most of the businesses in the area do not have covered decks, but umbrella tables. K. Hoopes said (1) most of the businesses in the area that serve food, as far as he knows, have a substantial covered area and (2) the umbrella table portion of it is just in addition and used Frank's Diner as an example.

Vasiliki Tekmitchov (1) said she was the first in the Town of Bolton to use awnings and (2) asked if it would make a difference if she put an awning on top of the proposed deck and G. Smith answered no.

Correspondence: Counsel read the following correspondence into the record.

- Letter dated 04/26/05 from Barabara and Richard Moccia of 8 Congers Point – opposed
- Letter dated 05/09/05 from Sergeant J. White of the Town of Bolton Police Department – opposed
- Letter received by the Zoning Department on 04/28/05 from Harold and Carol McCleery – opposed
- Letter dated 04/25/05 from Kathleen L. Spahn – opposed
- Letter dated 04/19/05 from “a concerned Bolton summer resident”, unsigned – opposed
- Fax received by the Zoning Department on 04/12/05 from Josephine Glier – opposed

Atty. Millington said an unsigned letter is quite prejudicial to present and it doesn't seem proper. Counsel said (1) it is proper to give the unsigned letter its proper weight, which is that it has been received and the Zoning Office needs to acknowledge the receipt of the letter and (2) its proper weight is that it is unsigned. Various ZBA Members agreed that while an unsigned letter needs to be acknowledged, it is important to make it clear that this particular letter was unsigned due to personal reasons.

Atty. Millington responded to the correspondence by saying (1) what these various people think is the applicant's intent and what they project what the applicant's business is going to be, (2) she doesn't feel it is fair that in that what she thinks the ZBA is saying is that it is not going to allow the applicant to increase the size of the building, but shut down the applicant's other businesses, (3) regarding correspondence citing cigarettes being thrown from upstairs decks, this proposed deck is 17 feet off the end of Route 9N, so there won't be any of the referred to New Orleans interplay, (4) regarding the road to Congers Point, it does run down the line and it seems the Congers Point residents are concerned with the “not in my back yard” stance, (5) the ZBA will need to determine the applicant's intent, but she thinks the applicant's intent is to try to change the outlook of this building and to make it nicer and if that is what the ZBA thinks and figures into its decision, that is not her understanding of the law, (6) she would like the ZBA to make a nice clear record of these various points as far as how the ZBA sees this as a negative impact on the neighborhood, ) the applicant, who has been a long-time resident and business owner, owning three businesses in the Town of Bolton, should have the ability to make a change to her building such as this, and (8) she wonders if the ZBA's decision means it will never allow a second-floor deck in the Town of Bolton.

M. McComb said it will make it more likely that the ZBA won't allow second-floor decks, but never say never. G. Smith said if the ZBA allowed this second-floor deck, he sees it as going right down the line for all Town of Bolton businesses, which is something he personally doesn't want to see happen in this Town.

K. Hoopes said (1) he admired the applicant's ambition and the plan is intriguing, but this is like putting the cart before the horse, (2) there is a present known entity with known clientele and hours of operation, where the entity carries with it a reputation, which he is not saying is bad, but it has a reputation as a late-night young person's place, (3) the ZBA is talking about what it knows and sees as being present, what is there now, (4) the present state of the building could use some tender loving care, (5) the people around the building, not just Congers Point, look at this as peeling the lid off the present day Lily's and that is what they will be with forever and while this is not the applicant's intention, who wants to change the nature of the business fundamental, what the ZBA has to do is balance promises and intentions on a limited budget and it is not convinced yet and (6) the ZBA is not saying never, it is just saying that it is not convinced yet.

Atty. Millington asked if it is the opinion of some ZBA Members that if Lily's were to improve and get a better reputation that they would be more willing to listen to that application and K. Hoopes answered by saying, yes, he thinks that there are all kinds of factors in here that are skewing him, anyway, away from accepting this application, part of which is the very temporary nature of the fix. Atty. Millington asked which variance criteria that would apply to and K. Hoopes answered by saying that would be the character of the neighborhood.

M. Murray said (1) the variance goes with the property, not with the person, so it doesn't mean that the applicant wouldn't run it fine, but there is the question of what happens when she leaves where the ZBA is stuck with a variance that goes with the building and the next owner might not be as thoughtful, (2) the applicant's intentions may be fine, but the ZBA has no way of controlling the next person until the ZBA sees something that works and that is viable that people can live with and feel comfortable with and (3) right now to say this is going to be fine as far as the ZBA can see into the future, he cannot honestly say that. Atty. Millington asked if the ZBA's concern with this particular building is with the second-story when it goes on to the next person and M. Murray answered by saying (1) his acquaintance with the building is when Mary Druby owned it, nice lady, ran a nice, neat orderly profitable business, which she kept in control and had established a good reputation for a lot of years, (2) right now, he has the applicant's opinion and word, and while she may be very reputable, which is fine, but the next person might not be.

Atty. Millington asked if there is anything the ZBA could see in regards to this application in the applicant changing or amending it in any way which might make it more amenable to the Town at the moment.

M. McComb said she is concerned with the proposed deck access and asked for details. Atty. Millington said (1) the access will come from within the structure, it will bring you

up to the deck and then there will be an emergency exit out the back, (2) the applicant has talked about is making the emergency exit so you can get out in an emergency, but the proposed deck will not be accessible through the outside, only through the interior of the building. M. McComb asked if the emergency stairs are on the back of the building and Atty. Millington said yes.

Vasiliki Tekmitchov (1) asked if the ZBA is referring to Lily's in the last three years when it is referring to the bad reputation or Player's that was there when she leased the property four years ago, (2) said she does not understand where the bad reputation comes from, (3) they do not have young people, (4) she does not allow anyone to be rowdy or loud and (5) she is there every night. M. McComb said the ZBA is not talking about Lily's or Players, but a reputation of upstairs bars. Vasiliki Tekmitchov said (1) she cannot be responsible for other people's mistakes, (2) John Gaddy, Planning Board Member, told her twice of something she feels is either true or inappropriate, that the Town of Bolton does not like women in business, which is totally prejudicial and (3) she has been in business in the Town of Bolton since 1964, where she ran the salon at The Sagamore for 10 years and she feels hurt.

Atty. Millington said (1) she does think that some of the ZBA Members do think there is a problem with Lily's and (2) she thinks it has been kind of clear at this meeting that ZBA Members and Congers Point people think that Lily's has some kind of reputation as a late-night bar with wild kids and lots of smoking. G. Smith said (1) that is beside the point and (2) he personally does not like the idea of second-story decks in the Town of Bolton, which is what he is totally against, whether it is this applicant or anybody else.

Vasiliki Tekmitchov said (1) if the ZBA is afraid for future upper story decks, she would ask the ZBA consider the fact that she is the only building within the Town of Bolton that does not have one foot available on the first floor to expand in any capacity, (2) that the fact that everyone else may ask in the future for a second-story deck, even though they already have a first-story deck, should give the ZBA time for more consideration for who really needs a second-story deck, and (3) this is not a frivolous request, but a request of total need meeting the zoning specifications within the footprint of the building and meeting height requirements. G. Smith said the applicant and The Sagamore Pub both have the same set of circumstances regarding expansion space.

K. Hoopes said (1) there is a problem here, as there was a very successful and popular restaurant right where the applicant's building is located, (2) the applicant has already expanded in that footprint by expanding her beauty salon and gallery, (3) the applicant's expansions has forced the restaurant out the back door.

Counsel asked what the benefit is that the applicant could derive from the granting of this variance and Atty. Millington answered by saying the benefit could be an increase in the expansion of the applicant's business within the footprints of the business. Counsel asked what the present size of the applicant's licensed premises is and Atty. Millington answered by saying (1) the applicant has gotten permitted use to go above and (2) 1,750 square feet.

Counsel asked how many patrons/people are allowed to occupy that premises and Vasiliki Tekmitchov said she cannot have more than 99.

Counsel asked what the increased area size of the 1,750 square feet of licensed premises being proposed by the applicant is and Vasiliki Tekmitchov said the proposed area is 17' x 46'. G. Smith said the proposed increased area size is a little over 1,000 square feet. Counsel asked if the applicant is proposing to increase the licensed premises from 1,750 square feet by an additional 1,000 square feet and Vasiliki Tekmitchov said yes. Counsel asked if the applicant will then be increasing the patronage the applicant is then capable of then serving in the establishment or is the applicant suggesting that the ZBA needs to believe that the same people that occupy the 1,750 square feet will now occupy 2,750 square feet and Atty. Millington answered by saying part of it is that you might say the same thing about the Country Diner and the Market Place. Counsel said he is asking specifically about this application and Atty. Millington said (1) these applications have to do with outdoor dining and (2) outdoor dining is quite different from indoor dining.

Counsel asked what the applicant's position is on increasing the licensed premises another 1,000 square feet, which would be going from 1,750 square feet to 2,750 square feet, serving new patrons or none and Atty. Millington said yes, serving new patrons. Counsel asked what the plan is for increased impact on parking and Atty. Millington said there is no plan for that.

Counsel asked what the plan is for the increase of employees regarding the number of new employees and Atty. Millington said there will be new employees. Vasiliki Tekmitchov said she currently has four employees and if the deck is done by spring, she will certainly expect to have six more employees. Counsel asked if there is currently any employee parking or the possibility of employee parking when the number of employees is increased and Vasiliki Tekmitchov answered by saying (1) her tenants are seasonal and all work within walking distance, so they do not have cars, (2) her employees park in the rear of the building, because all of her tenants use bikes, (3) she expects to have these types of tenants from year to year, so the parking would be available for her employees and (4) the employees work in shifts, so as one goes another comes in.

Counsel asked if the applicant proposes to operate this deck the same hours as the bar and Vasiliki Tekmitchov said she proposes to operate the deck, basically as a restaurant and possibly close it at a very early time, 10:00 or 11:00 pm at the latest.

Counsel asked if the applicant has other businesses and occupancies within the same building that that she owns and operates and Vasiliki Tekmitchov answered by saying (1) yes, she has a hair salon since 1967, (2) she has a gift gallery since 2001, (3) Lily's and (4) she has had a liquor license in her name since 1972 and when the liquor license has been in her name, there has never been a violation with the State Liquor Authority. Counsel asked what would be unfeasible about the applicant expanding Lily's into the other occupancies and Atty. Millington answered by saying (1) because they are already existing businesses which the applicant intends to continue to operate and (2) that would

be unfeasible. Counsel said that would be a personal choice and Atty. Millington said (1) that is correct and (2) it would seem unfeasible to shut down an existing business to accommodate expanding another existing business.

Counsel asked what additional measures would be taken regarding additional parking and Atty. Millington answered by saying (1) most of the local businesses when they have expanded, if not all, have had zero parking and (2) with the exception of Frederick's and the Rye Field, she does not believe any local business has parking in the back, but they all park on the street. Several ZBA Members agreed that additional parking is not their immediate or primary concern with this application.

Vasiliki Tekmitchov said she was sent to the WCZB first and that board approved the proposed project with the condition she put in a wheelchair accessible ramp in and asked what she is doing wrong that everyone else is doing okay. G. Smith and M. McComb said it is not the applicant. M. McComb said (1) when the applicant is saying she does not have one square foot to expand anywhere that is a key to her that this property is already built out and (2) the applicant has three businesses already and is asking to expand. Atty. Millington said (1) the problem is that when you look at Foys, the Market Place or the Country Diner, they have expanded out onto the sidewalk, so they probably have zero setbacks and they have zero parking, (2) she doesn't think those places were expanded because they needed more room in order to have a bigger business, but were expanded because people like outside dining and that is one of the reasons applicant is doing this, (3) it doesn't mean your business is too small and you are just trying to make room and (4) there is a real differentiation between indoor and outdoor dining and she would like that on the record.

Counsel said what is key here is that the feasible alternatives question, he doesn't think, was properly addressed by the applicant and it has clearly come down to a personal choice on the applicant's part. Atty. Millington asked if Counsel means the applicant's choice whether is to shut down two existing businesses in order to expand a third one. Counsel said the applicant is free to manage her property in any way she chooses, that is he is concerned and would be very concerned with if the Zoning Ordinance provides the applicant with a reasonable return, but this property is essentially maxed out. Atty. Millington said (1) the applicant already has a second-story structure, (2) all the applicant is talking about is going within the footprint of second-story structure that exists and (3) she would appreciate if the ZBA would really specify in their findings as far as the ZBA determinations on the criteria for the variance. Vasiliki Tekmitchov said (1) it is important for the ZBA to know the reason she does not have one foot to go out from the existing foundation is because when she bought that building, it was already built and (2) she did not build out. Several ZBA Members said that is a good point.

B. Pfau noted that the Planning Board recommended denial of this application.

M. McComb said (1) she has a lengthy set of minutes as to why the Planning Board voted against this application, which is part of the record, (2) there was a good deal more to the

Planning Board's decision and (3) women in business was not part of the Planning Board's decision.

No public in attendance.

No County impact, with conditions detailed in the resolution.

## RESOLUTION

The Zoning Board of Appeals received an application from Vasiliki Tekmitchov (V05-12) for area variances 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 stipulation that the Town investigate the issues concerning compliance with handicapped access under ADA;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) Whether the benefit sought by the applicant can be achieved by other means feasible for the applicant, is open to question, there are three businesses operating on this property and the gallery immediately adjacent is something that was given a variance to open not long ago and it seems a feasible alternative to the applicant;
- 2) There certainly seems to be a great deal of concern that there would be an undesirable change in the neighborhood character or to nearby property owners by the granting of this variance, the ZBA has a letter from the Town of Bolton Police Department, the recommendation of the Planning Board and concerns of neighbors and the impact of upstairs noise versus ground-level noise seems to be to the ZBA a valid concern as well as potential of expansion of interaction along that narrow and constricted side access, that is the only access to Congers Point residents;
- 3) The requested variance is substantial on many grounds, on a property that is this built out already, any further expansion would seem to be substantial;

- 4) It is unlikely that there would be adverse environmental effects from this property;
- 5) The alleged difficulty is self-created; as Town Counsel has pointed out, there is a choice in how to allocate the space on this property, the choice to keep the current businesses, one of which is long standing, one of which is quite recent, is a personal choice.

The benefit to the applicant of being allowed to go forward with this project is not outweighed by the potential detriment to the health, safety and welfare of the community.

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

**2) V05-34 ASTRUC, EDITH.** Represented by Atty Robert McNally. For the construction of a proposed 10' x 16' enclosed porch, seeks area variance for 1) a deficient side yard setback: 30' is required, 24' is proposed; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 156.12, Block 1, Lot 1, Zone RCL3. Property location: 7 Indian Brook Drive. Subject to WCPB review.

Atty. Robert McNally, representing Edith Astruc, gave an overview and said (1) the applicant wishes to build a screened porch in addition to her existing home, which would be built to the northeast corner of her existing home, (2) the northeast corner of the proposed porch is going to be 24' from the line and requires 6' relief from the 30' setback, (3) the contractor is Richard Dickson, who will be building the structure, (4) there is a 4' x 6' platform in front of the screened porch, which is needed since Ms. Astruc is wheelchair-bound, as a connector from the porch to the deck that is adjacent to it and (5) the property is screened on the northern property by a fence, so no northern neighbors would be impacted in any significant fashion and (6) it is not on the lake-side, but on the north-side furthest from the neighbors to the south who would be impacted if it was built on the south side.

G. Smith asked if the proposed deck is the same as the deck that was originally built without a variance and needed to be taken down and Atty. McNally answered (1) yes, it is identical and said (2) he was told by the applicant that she had thought the builder was going to get the approvals and he didn't and (3) the applicant paid the appropriate fines, took the appropriate actions and now she is in here to ask for the ZBA's approval. Counsel agreed and said the applicant was very cooperative and called him from out of the country to ask how she could bring the original deck into compliance, paid the penalty immediately.

K. Hoopes said (1) he sees no problem with this application, (2) it is a modest structure that does not block any views and (3) the after-the-fact situation has been remedied at this

point. B. Pfau asked if Ms. Astruc was ordered by the Town Board to remove the deck or if it was voluntarily removed and Counsel answered by saying the Town Board ordered removal and the applicant paid a civil penalty of \$2,000.00.

No public in attendance.

No correspondence.

No County impact.

## RESOLUTION

The Zoning Board of Appeals received an application from Edith Astruc (V05-34) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Board;

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, it is a very modest addition, a covered porch;
- 3) The requested variance is not substantial;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created.

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

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

**3) V05-39 HELDMAN, WARREN.** To allow a 27'8" x 12' storage building to remain, seeks area variance for a deficient side yard setback: 20' is required, 2' is proposed. Section 171.19, Block 1, Lot 19, Zone RM1.3. Property location: 4871 Lakeshore Drive. Subject to WCPB review.

**Motion made** by K. Hoopes and seconded by T. McGurl, to table this item due to the applicant not being present. **All in favor. Motion carried.**

**4) V05-40 ZAGER, JACK & ELLEN.** Represented by Curtis Dybas, Architect. For the construction of a proposed 25½' x 31' garage, seek area variance for a deficient front yard setback: 50' is required, 20' is proposed. Section 186.19, Block 1, Lot 25, Zone RM1.3. Property location: 17 Opera Lane off of Homer Point Road.

G. Smith said (1) the applicants were before the ZBA in January 2005 to alter the single-family dwelling and (2) the applicants thought he was getting a variance for the garage at the same time, but found out they were misunderstood, because the garage was never mentioned at that time.

Curtis Dybas, representing Jack and Ellen Zager, gave an overview and said (1) the applicants are looking to include a garage with their property expansion, (2) the issue before the ZBA is that there is a right-of-way running along the property line that is deeded to that lot sold and part of the Zoning Ordinance says a 50' setback is needed from the right-of-way and (3) the applicants have complied to the Town Zoning Ordinance and provided 20' from the property line.

K. Hoopes said (1) he sees the same compelling evidence for this garage as the ZBA observed for the addition, where the right-of-way the ZBA is honoring is at the end of the road, (2) the applicant has enough property to support the garage, (3) it doesn't stop the right-of-way, it just gets close to it and (4) he thinks it is an improvement.

M. McComb said it is also a minor structure. Curtis Dybas said (1) the application shows a 25 ½ x 31' garage, (2) the actual size of the proposed garage is 22' x 28', (3) the reason for the 28' is because the applicants store their boat there in the winter and (4) the residence has no basement for storage. P. Kenyon said the size of the garage is listed accurately as 25 ½' by 31', which includes the overhangs and Curtis Dybas said he hadn't included the overhangs in his submitted drawings.

No public in attendance.

No correspondence.

## RESOLUTION

The Zoning Board of Appeals received an application from Jack & Ellen Zager (V05-40) for an area variance as described above.

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 #4 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance, this is infringing on a right-of-way;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, it doesn't affect anybody nearby;
- 3) The requested variance is not substantial, it is a very modest garage;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created.

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

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

**5) V05-42 WARDLES, BRIAN.** Represented by Krantz & Rehm LLC. For the construction of a proposed single-family dwelling, seeks area variance for deficient setbacks: 1) shoreline: 75' is required, 50' is proposed; and 2) rear: 30' is required, 22' is proposed. Section 199.07, Block 1, Lot 5.313, Zone RCL3. Property location: north side of South Trout Lake Road approximately 1,800' from Coolidge Hill Road intersection. Subject to APA review.

There was some discussion among ZBA Members on whether the current procedure of having two separate applications for item like this one is warranted, since the ZBA could hear the applicant's presentation and then vote on each item separately. Counsel suggested the ZBA try it with this item and make a determination on how they would like future applications to be handled.

Atty. Mark Rehm, representing Brian Wardles, said he would like to present V05-42 and V05-43 together and the ZBA Members said that would be fine.

Atty. Rehm gave an overview and said (1) the applicants have submitted two variance applications involving a parcel of land located in the RCL3 Zone, which allows for a single-family dwelling and a garage for up to three vehicles as an accessory use, (2) the stream poses a hardship to the applicant, because it dissects the lot and limits the applicant's ability to build, (3) the applicant's want to build a single-family dwelling with an attached two-car garage and (4) the applicant is in the process of working with an engineer in order to provide more detailed plans for site plan review and stormwater management, but the first step is to come before the ZBA.

G. Smith asked how much stormwater and wastewater management has been looked into so far on this property and Atty. Rehm answered by saying initially the applicants are in the process of working with the best suited location for the septic and the well, which will depend on where the ZBA will allow the structures to be placed. G. Smith asked if the stream runs year-round and Brian Wardles answered by saying (1) he has been told it dries up in August, but he has no proof of that and (2) the stream is about 3'-4' wide, varies in width and is about 8-10" deep. Atty. Rehm said it will be crossing the stream and any permits needed by the DEC will be applied for and received. M. McComb said (1) people built things in compliance with stormwater and it still didn't work out with the last storms the Town of Bolton had and (2) an applicant saying he/she will comply with all stormwater management doesn't mean that there is no impact. G. Smith said with the recent storms, nobody's stormwater held up well and M. McComb said some people would propose that you don't build within the buffer zone and that you don't build a bridge between the garage and the house. K. Hoopes said if you have a stream, you've got to build a bridge between the garage and the house. G. Smith said the recent storm was one you get every hundred years and no matter what was done, so you can't take that out on people. B. Pfau asked why the applicant doesn't need a variance to build a bridge and G. Smith said it is because the body of water is actually a culvert and not a stream. M. Murray said (1) to put a leachfield across the stream means sewage would go over the stream, which might not be a good idea and (2) if it could go in the corner, it would relieve his mind a great deal. Atty. Rehm said that is why upon further review it has been looked at for the corner area.

M. McComb asked where the well would be placed and Atty. Rehm showed the ZBA the location on the map. B. Pfau said (1) he understands the applicant has to decide where to put the leachfield first, (2) if the leachfield is in the lower section, obviously the garage would be able to meet the setback from the stream, and (3) his recommendation would be to the dwelling to the other corner away from the stream, he would be more inclined to

relax the rear and side setbacks to get the applicant away from the river/stream more. Atty. Rehm said (1) this is the plan now, but the applicant is flexible and (2) the leachfield will be in the right hand corner, based upon discussions with the engineer. B. Pfau asked if there is any reason why the two-car garage can't meet the setbacks from the stream and Brian Wardles answered by saying it can be moved, but it would be encroaching on the front setback. The ZBA Members were in agreement that they would rather see the applicant invade the scenic corridor than the stream and Atty. Rehm said the applicant is workable with that.

B. Pfau asked when the lot was created and Atty. Rehm answered by saying 2002 and presented the ZBA with a map showing the lot subdivisions approved by the Planning Board on 12/12/03.

From the public, Chris Navitsky, Lake George Waterkeeper, said (1) he submitted a letter of concerns, encouraging keeping the 75' setback along the stream, (2) he referenced numerous studies that talk about the importance of it in relation to the filtration of run-off, cooling of the corridor and the repairing buffer there, (3) he is glad B. Pfau picked up on that there are alternatives, (4) it is very important that the ZBA keep this corridor at a minimum of 75' in the basin, (5) there are alternatives for wastewater and stormwater as well, (6) he walked all the streams and roads after the recent storms and wrote up a report for the Town of Bolton, where he found that within the 75' setback is where you found all the impact to the homes and the roads and (7) this will require an Article XV from the DEC, so he would like that to be a condition if the variance is to be granted.

G. Smith said (1) the deficient shoreline setback for the garage can go to 75' and (2) the setback from Trout Lake Road can go to 50' and Atty. Rehm said the applicant can and will do that. B. Pfau said (1) if the ZBA doesn't know how much room the leachfield is going to take then he does not know far the ZBA goes in moving the house away from the stream and (2) maybe it should be sent back to the Planning Board for further review. G. Smith said (1) the ZBA needs more information on where the leachfield will be in order to determine the house placement, (2) he feels the project is workable, but the ZBA needs more concrete information on locations and (3) suggested that the applicant may want to postpone this until more information is available.

Brian Wardles said he proposes to put the two wings of the house be put on a slab so it creates a larger area for the leachfield to come right up to the house and the center section would just be a basement. K. Hoopes said the ZBA doesn't do septic issues and asked if the plan shown is the applicant's best case scenario and plan the applicant is going with. Brian Wardles responded by saying (1) yes, the leachfield on the plan would not be a traditional leachfield, but some kind of compact system, but then you'd have to run into the stream and (2) it is much easier to put a traditional leachfield in the upper corner. M. McComb said (1) she has been hearing much discussion of the locations, (2) she agrees with getting the house away from the stream and (3) she is less concerned about the adjacent lot line, given the size. K. Hoopes said (1) the problem is that the ZBA does not know what is over there and (2) he didn't look at that property with the idea that the applicant was going to be closer to the lot line or what the other properties are. G. Smith

said that property owner is not aware of the change in the setback either, so it is not right for the ZBA to say make it 15' instead of 22'.

Atty. Rehm said if the applicant is required to come back for an alternative variance, they would be forced to come back by the Planning Board and would comply with that. G. Smith asked if it is accurate that (1) the applicant wants to keep the house where it is proposed, (2) the leachfield will be moved to where the well is on the map, (3) the well is going to be moved to the south end of the house and (4) the garage would be 75' from the stream, 50' from Trout Lake Road and 22' from the side yard setback and Atty. Rehm said that is correct. There was additional discussion among ZBA Members on the leachfield, house and well placement. B. Pfau (1) said he'd personally like more information on why the applicant can't put the leachfield in the south corner and (2) asked what the problem is with pumping it across the stream. Several ZBA Members agreed that they like the placement of the leachfield so it doesn't cross the stream, as crossing the stream would be dangerous. Brian Wardles said (1) he drew in the leachfield, not realizing across the stream was wetlands, which limits the leachfield area in the lower left front and (2) the leachfield can still be put there, but it would need to be a compact system.

M. McComb (1) asked if a test pit was dug for the other well site, (2) said moving the leachfield up top is a great idea and (3) said she agrees with B. Pfau that it would be a good idea to get more information. Atty. Rehm said the applicant is looking for the variance so they can go to the engineer with a workable plan. B. Pfau said (1) the leachfield should be sited on the drawing to ensure that the house is backed up as far as it needs to be backed up, (2) the garage should be sited on the drawings to show the 75' and 50' setbacks and (3) the APA will require the same information he is requesting.

G. Smith asked if the applicant has any problem coming back next month with more information and Atty. Rehm answered by saying (1) they have no problem coming back with the requested information, but if more money is going to be put into engineering and design, they would like to have some level of comfort that it is worth spending the money there, because it is a costly venture. G. Smith said it is worth spending the money, because if the applicant can come back and show the ZBA that it is going to work, he doesn't feel the ZBA will have a problem granting the variance. B. Pfau said even if the ZBA grants the variance, the APA can deny it and Atty. Rehm said (1) he is aware of that and (2) he will have the requested information to the Zoning Office a week before the next ZBA meeting in August.

**Motion made by M. McComb and seconded by M. Murray to table this application V05-42 and V05-43 pending additional information on the location of the leachfield, house and garage and information on stormwater. All in favor. Motion carried.**

**6) V05-43 WARDLES, BRIAN.** Represented by Krantz & Rehm LLC. For the construction of a proposed garage, seeks area variance for a deficient shoreline: 75' is required, 50' is proposed. Section 199.07, Block 1, Lot 5.313, Zone RCL3. Property

location: north side of South Trout Lake Road approximately 1,800' from Coolidge Hill Road intersection. Subject to APA review.

See V05-42 for details and ruling.

**7) V05-44 HUDD, HARRY.** Represented by Fred Branch. For the construction of a proposed 44' x 19' deck with stairs, seeks area variance for 1) a deficient side yard setback: 30' is required, 21.8' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-56A. Section 185.00, Block 1, Lot 47, Zone RCL3. Property location: 579 Trout Lake Road. Subject to WCPB review.

Harry Hudd gave an overview of the project and said he is proposing to construct a 44' x 19' deck.

B. Pfau asked how long the house has been there and M. Murray said since the late 1930's. T. McGurl said (1) whoever did the landscaping did a real good job to clean up the area, (2) it is well-screened on the neighbors side, (3) as a deck itself, it certainly seems alright, but his only concern is somewhere down the line this project comes back to the ZBA with the request to screen the deck in. Harry Hudd said (1) he doesn't believe it could be screened in with the way the house is now and (2) it could be done, but it's not feasible. G. Smith said the applicant is not infringing on the neighbors, because the proposed deck is all toward the applicant's own property, so it is a good thing.

No public in attendance.

No correspondence.

No County impact.

## RESOLUTION

The Zoning Board of Appeals received an application from Harry Hudd (V05-44) 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 #7 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance, the building itself does not meet side yard setbacks;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, because the property is well-screened and there are no objections from the neighbors;
- 3) The requested variance is not substantial;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, again, the house does not meet setbacks and the deck itself should be on the side of the house facing the woods.

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

Now, upon **motion duly made** by B. Pfau 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.**

**8) V05-45 PAINTER, JOHN.** Represented by Matt Steves of Van Dusen and Steves Land Surveyors. To demolish and rebuild existing single-family dwelling, seeks area variance for deficient setbacks. 1) Shoreline: 75' is required from the mean high water mark, 23.30' exist and is proposed; and 2) side: 20' is required, a) 12.29' exists and is proposed on the south side and b) 12.75' is proposed on the north side. Property Location: 4030 Lakeshore Drive. Section 213.09, Block 1, Lot 15, Zone RM1.3. Subject to WCPB and APA review.

This item was not heard, as the applicant postponed until next month.

**9) V05-46 O'CARROLL, JOHN & KAREN.** To enclose existing 26.6' x 21' deck, seek area variance for 1) a deficient shoreline setback: 75' is required from the mean high water mark, 32' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-56A. Section 200.18, Block 1, Lot 5, Zone RM1.3. Property location: 4206 Lakeshore Drive. Subject to APA & WCPB review. NOTE: A variance was granted for the above-noted deck on 10/21/85 with the following conditions: 1) the

existing path shall be the route of the new stairs and walkway; and 2) the deck shall never be enclosed.

Karen O'Carroll gave an overview and said (1) the deck has been there for over 20 years and (2) in reviewing the 1985 conditions, she needs clarification.

M. McComb said (1) there is a tendency to put a deck on a house, enclose it, then to come before the ZBA and say the enclosed area was part of the original footprint and now a deck is needed, (2) this was an addition on the lake-side within the 75' setback, which is called "walking your house to the lake," and (3) the condition was placed on this property that if the applicant gets the additional deck, then the applicant is done moving towards the lake. K. Hoopes said the 1985 minutes referenced are cut and dry and don't give details as to the discussion about the reason for the condition. B. Pfau said the ZBA can assume the wisdom of the 1985 Board's decision.

K. Hoopes said (1) one of the other compelling issues is that this house was just issued variances to pretty much totally rebuild this house, (2) under these circumstances, it is almost a whole new plan and (3) this is not a case where this house is going to stay there, the porch is going to be enclosed, then another porch put onto it, because there is a flat roof boathouse right off of there, which he would consider a deck, in the event that the applicant came before the ZBA for another deck and (4) the house that is going to be rebuilt in the same footprint is an improvement.

M. McComb said (1) she sat on the Planning Board and (2) for every application that comes up like this one, the basis of the discussion is "walking your house to the lake" and she doesn't see any reason not to assume that that wasn't what they were thinking in 1985.

Karen O'Carroll said (1) they are near the lake, (2) they like to sit on their deck, but the insects have been ferocious this year, so they can't sit out on the deck, which is one reason, (3) the other reason is that Chelka Lodge is a commercial property, which they knew when they purchased the property, however, what they did not realize is that every morning Chelka serves breakfast to their guests in literally an eagle's view to their deck, so it is a privacy issue, (4) they are not looking to expand the footprint. G. Smith asked if the applicants are just looking to put a roof on the deck and screen it in without any windows and Karen O'Carroll said that is correct, it will be a screened in porch, that is it.

M. McComb said the screen isn't really going to help the privacy or the noise from Chelka Lodge issue and Karen O'Carroll responded by saying (1) there is no noise issue and (2) screens would help with privacy. B. Pfau said some sort of hedger of some sort might help out with the privacy problem and K. Hoopes said the hedge situation has a problem, because the house is on high ground.

Karen O'Carroll said (1) they spoke to the neighbors to the north, who have no issue with it at all, in fact, they wouldn't even be impacted, because it is well screened to the north and (2) none of the other neighbors have an issue with the proposal.

G. Smith said if it is just going to be screen and no walls or windows, he can appreciate why the applicant would want a screened-in porch so the applicant can sit out there and enjoy the lake.

B. Pfau and M. McComb both said they feel uncomfortable overriding the conditions that were put on this project. K. Hoopes said (1) the reason he is not uncomfortable overriding the 1985 conditions, if those were the intentions, is that this house is about to be totally torn down and rebuilt, so that sort of changes the complexion of everything and (2) he finds it compelling that the fact the applicants do have a deck on their boathouse, he doesn't feel the ZBA will run into a "walking your house to the lake" situation here.

M. McComb said (1) if the applicants are doing new construction, they could come up with another screen porch area without enclosing this and still leave a deck on it and (2) time after time the ZBA has had one person who wants a screen porch and then the next person wants a deck, (3) this project has already gone through that and if new construction is being done, she asked why the applicant doesn't build the desired screened porch in the existing footprint. G. Smith said it would be difficult putting a roof over the top of the deck as it stands now. M. McComb said if the applicant is doing new construction in the 75' setback, she doesn't see why the ZBA should overturn an earlier condition and B. Pfau said it is a large request. K. Hoopes said (1) the applicants are doing it within the same footprint and (2) all the ZBA is allowing is to put a roof over it. T. McGurl said (1) there is considerable improvement with the plans to the house and (2) he would rather see it closed in and see that from the lake.

Karen O'Carroll said they were on the lake and there are several homes with screened in decks in their neighborhood and M. McComb replied by saying (1) sure there are, (2) it is the eternal trial of zoning to try to move forward and (3) the applicant is doing essentially new construction, so the applicant's only alternative is not to enclose more space closer to the lake in the 75' setback. Karen O'Carroll asked if M. McComb walked the site and M. McComb said yes. G. Smith said it is not a very large deck, it is quite small actually. P. Kenyon said the proposed deck size is 12' x 27'.

From the public, Dennis Murphy asked if the ZBA could put a stipulation that no windows be allowed. G. Smith said that's a good thought. B. Pfau said obviously the conditions aren't real conditional.

M. McComb said it just seems there is an alternative location for a screened porch and Karen O'Carroll said there isn't and approached the ZBA bench to discuss submitted pictures.

K. Hoopes said there was a previous condition on the approval to build this deck in 1985, that that deck not be screened in, but it is his contention that the 1985 porch isn't being screened in, since this project is being totally redone and this is being reconsidered in 2005.

No correspondence.

No County impact.

## RESOLUTION

The Zoning Board of Appeals received an application from John & Karen O'Carroll (V05-46) 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 #9 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, because the new architecture and fresh construction of the new house will be an improvement;
- 3) The requested variance is not substantial, a 12' x 27' deck is not substantial, especially considering the whole project and the footprint is not moving any closer to being non-compliant as far as being closer to the lake;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, the applicants bought the house and are trying to improve it.

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

Now, upon **motion duly made** by K. Hoopes and seconded by T. McGurl, it is resolved that the ZBA does hereby grant approval for said project as presented with the condition that this screened-in porch always remains a screened-in porch and never to have windows or heat. **Five in favor. Two opposed (M. McComb and B. Pfau). Motion carried.**

**10) V05-47 FLYNN, JOHN.** Represented by Thomas Ramsay, Sr. To alter existing single-family dwelling, seeks area variance for 1) a deficient side yard setback: 20' is required, 11' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-56A. Section 171.07, Block 2, Lot 50, Zone RM1.3. Property location: 3 Braley Lane.

Thomas Ramsay, Sr. representing John Flynn, gave an overview of the project and said (1) the applicant wants to close in the carport on the north side and (2) there is a deck on the front.

M. McComb said while the applicant is enclosing in a carport, it is being made into a garage, so it is remaining the same use and just making a more year-round dwelling out of it. Tom Ramsay said (1) it is the same use and (2) gave details to the front deck. K. Hoopes asked if the second-story is presently a screened porch with a deck on top with the underneath on stilts and Tom Ramsay said that is correct.

B. Pfau asked if there was any correspondence with the neighbor on that side of the house (the north) and Tom Ramsay answered by saying no. G. Smith said the applicant is not expanding, but closing in the carport, which will actually be more favorable to the neighborhood.

From the public, Vasiliki Tekmitchov, Braley Hill property owner, said she has no objections to this project.

No correspondence.

## RESOLUTION

The Zoning Board of Appeals received an application from John Flynn (V05-47) for an area variance as described above.

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 #10 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance, because the applicant is dealing with a pre-existing non-conforming structure and this seems a very minor adjustment to the project;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, in fact, perhaps turning a carport into a garage will be an improvement on the situation and the part of the proposal on the front of the building does not seem likely to have an impact;
- 3) The requested variance is not substantial;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district, as it is basically sticking with the current situation plus the addition of the deck area;
- 5) The alleged difficulty is not self-created, it is non-compliant now and any change requires an application for a variance.

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

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

Other Business:

P. Kenyon asked if the ZBA Members want to have each structure on its own application or if they want one application for several structures. After further discussion, the ZBA Members concluded that P. Kenyon should have discretion to make that decision.

Meeting adjourned at 8:55 pm.

Respectfully submitted by,  
Jennifer Torebka  
Recording Secretary  
08/03/05