

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, October 17, 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 6:30 pm by asking for corrections to the September 19, 2005 ZBA minutes.

K. Hoopes said on page 2, paragraph 3, number (4) should read "... (4) they decided on an Elgin system to minimize *space*..."

K. Hoopes said on page 6, paragraph 4, second sentence should read "...Matt Steves replied by saying that after he *consulted* with the applicant and the house builder..."

K. Hoopes said on page 21, paragraph 2, first sentence should read "... (2) there is a *range* war going on which is constant on every level."

Regarding application V05-45 John Painter, K. Hoopes said that the ZBA had a diminished Board, M. McComb made a motion to deny the application as presented and the ZBA ended up with a 3-3 tie. He said he feels the ZBA should offer the applicant another motion and asked if the 3-3 tie meant that no motion was carried and if it means that the applicant at that point could table it. Counsel said no action was taken and the applicant could table it. P. Kenyon said the applicant is coming back next month and the application is different. Counsel said he feels the ZBA can wait until the applicant comes back in November.

Regarding application V05-57 Charles Ginkis, K. Hoopes said (1) the ZBA allowed the applicant's variance to raise the house within the setback, however it is not a pre-existing non-conforming single-family dwelling, it is only pre-existing in as much as it exists before this application was made, (2) there was never a variance issued for that house to be there in the first place, (3) there are several routes the ZBA can take, (4) presently all after-the-fact applications go directly to the Town Board for remedial action and since this is 10-15 years old he doesn't know that the Town Board is going to be too harsh on this matter, (5) the Zoning Administrator at the time is now deceased and (6) there is still no variance issued on that property, so without a variance, the owner is going on forever and a day non-compliant, as it doesn't pre-date the Zoning itself.

G. Smith said (1) this was a mistake on behalf of the Zoning Administrator 10 years ago, (2) he feels this should be left as it is and (3) the ZBA tidied up the record by granting the requested variance on September 19, 2005.

P. Kenyon said that (1) the applicant will always have to come back before the ZBA for another variance each time he wants to put a deck on or put on an addition on his house to alter that structure, (2) whether the ZBA says a mistake was made all those years ago and the ZBA is granting the owner a variance for his house to be 60' from the edge of the right-of-way versus the 100', it is not going to have any bearing on what action is going to take place in the future.

Counsel said (1) there is a pre-existing non-conformity that apparently does not have the benefit of a variance approval, (2) by the passage of time and the innocent aspects of this matter—that it is not that anyone is accusing the applicant of fraud, misrepresentation or misunderstanding—it happened, (3) in a perfect world, the ZBA can, with the proper application, approve it but if it is not before the ZBA and the ZBA has proved what it has partially approved, in a matter of speaking the applicant has permission to continue what in a sense is grand-fathered, but is not perfect, and the applicant has his additional approval by variance and (4) when the applicant comes back again, the ZBA can approve it or the ZBA can leave it alone—it is never going to go away. Several ZBA Members agreed that regardless of whoever's fault it is, since it happened so long ago, it should be left as it is and the ZBA shouldn't have to undo it.

K. Hoopes said another example is application V05-59 Tony and Gail DePace, where the applicant was listed as pre-existing non-conforming and the records don't support that. P. Kenyon said that in V05-59, it is a pre-existing non-conforming structure. T. DePace said the barn has been there 25-30 years.

Counsel said his position is that P. Kenyon is entitled to her opinion—but it is her opinion—and G. Smith is entitled to his opinion as Chairman, but for some very fundamental fact finding, things that are held up in a court of law, it would be best if the entire membership of the ZBA heard it and decided it, because it protects the record and creates a platform for which if someone wants to argue it later in another place, they cannot undo those facts.

T. DePace said that (1) his application that was approved last month by the ZBA has to go to the APA now and (2) he would like the ZBA to hear the element of pre-existing aspect of the project next month as he has documentation to that effect. Counsel said once the ZBA has made a decision of what constitutes pre-existing, that will be sound, rational, and upheld in a court of law if necessary.

K. Hoopes said that now the ZBA sends all after-the-fact applicants directly to the Town Board for remedial action. G. Smith said he doesn't call this (V05-57 Charles Ginkis) after-the-fact and K. Hoopes said that doesn't matter—it is after-the-fact according to the Zoning Regulations. G. Smith said it is not—it was a mistake by the Zoning Administrator back at the time when the owner built the place. K. Hoopes said

the people who the ZBA are sending back after-the-fact can raise a complaint that they are not being treated the same and G. Smith replied by saying (1) then let them do it, (2) this (V05-57 Charles Ginkis) is over 10 years old and (3) K. Hoopes is opening a can or worms that the ZBA doesn't need to open.

P. Kenyon said (1) she believes the house in question was built in 1985 and (2) she is not in favor of sending this to the Town Board for a mistake that was made 20 years ago. K. Hoopes asked what the statute of limitations is and Counsel said that it is probably 10 years in the absence of fraud. M. Murray said he doesn't think this applicant attempted any type of fraud and several ZBA Members agreed.

K. Hoopes asked if it was possible for the ZBA to change the record here and now to grant Ginkis an after-the-fact variance and Counsel said (1) no, because it is not on the agenda and (2) before the ZBA gets into this evening's agenda, perhaps a motion should be made on the application of DePace to bring it back for a hearing on the issue of the one element of pre-existing.

T. DePace said that he was present at the September 19, 2005 meeting, which is not reflected.

Motion by M. Murray to approve the September 19, 2005 minutes as amended. Seconded by T. DePace. **6 in favor** (G. Smith, T. DePace, K. Hoopes, M. Murray, M. McComb, T. McGurl). **1 Abstained** (B. Pfau, as he was not in attendance at the September 19, 2005 meeting). **Motion carried.**

Motion by M. McComb to re-hear V05-59 Tony and Gail DePace at the November 2005 meeting to clarify it on the element of pre-existing. Seconded by M. Murray. **6 in favor** (G. Smith, K. Hoopes, M. Murray, M. McComb, B. Pfau, T. McGurl). **1 Recused** (T. DePace). **Motion carried.**

1) V05-60 METZGER, IRVING & MARCIA Represented by Curt Dybas. To demolish and rebuild single-family dwelling, with attached garage. Seeks area variance for a deficient shoreline setback. 75 ft. is required from the mean high-water mark; 29 ft is proposed. Section 186.15, Block 1, Lot 34, Zone RM1.3. Property Location: 193 Homer Point Rd. Subject to WCPB and APA REVIEW.

Curtis Dybas, representing Irving and Marcia Metzger, gave an overview and said that (1) the Metzgers have owned the property since 1985, (2) for a few years they have been talking about removing all the existing structures on the property and building a year-round retirement home, (3) existing on the property is: a four-bedroom residence which was built after WW II; a two-car garage with an efficiency apartment and a front bedroom; a storage facility; and a pump house, (4) the proposal is to remove all of the structures on the parcel, (5) they propose to build a three-bedroom bungalow style year-round home in the footprint of the existing residence, (6) the proposed setbacks will be the same or better than what currently exists, (7) the water source is a well and the septic

is a 2,000 gallon tank and (8) the only tree that would need to be removed is one pine tree next to the existing house.

B. Pfau asked if there is a second-story on the existing structure. Curtis Dybas said there is no second-story on the existing structure and the existing structure has a height of 18'. B. Pfau asked if it is accurate that the applicant is proposing to increase the height 9' and Curtis Dybas said yes.

B. Pfau asked about the existing square footage and Curtis Dybas said (1) the existing lot coverage is 2,991 square feet which includes the garage, the efficiency apartment above the garage and all the area of the residence, but does not include the storage shed or pump house, (2) they are asking for 3,060 square feet which would include the garage and the proposed second-story and (3) the lot size is 26,136 square feet.

K. Hoopes asked if the existing residence is three-season and Curtis Dybas said yes, but it is winterized. K. Hoopes said that (1) he thinks this is as much a consolidation as it is anything else, which alleviates some of the congestion and sprawl on the lot, (2) the proposal eliminates the 13' setback from the small bay of the garage and apartment altogether, (3) some previous encroachments are reduced and (4) the largest expansion on the main house is on the garage, which doesn't meet the setbacks from Lake George, but is away from most of the violations. G. Smith said they are also proposing to remove the shed and the pump house.

B. Pfau said (1) he does not have a problem with the house location in the original footprint, because it is centrally located on the lot, (2) he does not have a problem with bringing the garage area into the house and (3) he is bothered by the proposed second-story and the increase of the living space within the 75' setback from Lake George. M. McComb said (1) it is a volume change that is not going to have the same impact and will also read as new construction as getting larger within the 75' setback, (2) this lot deserves to have a house on it and there is no legal place for it, but the only alternative is not necessarily a 20' x 30' great room and (3) it is a beautiful home, a large home for a 6/10 acre lot and (4) the consolidation of the garage will add to the impression of volume.

Curtis Dybas said (1) the great room mimics what is in the existing house, (2) they looked at doing a traditional two-story home, but the visual impact was more dramatic than doing the proposed bungalow approach, (3) looking from the north is the only way the house can be seen—it cannot be seen by the sides. B. Pfau asked for clarification of the proposed bungalow approach and Curtis Dybas said (1) that basically the second floor is built into the roof—a story and a half and it is relatively small (500-600 square feet) in comparison to the main floor and (2) the main floor is the living quarters and the second floor consists of an exercise room for their use and two bedrooms for their grown sons when they visit.

T. McGurl referenced photos 10 and 11 and said the proposed style of house designed is better than if it was a traditional second-story, but the proposed 9' height increase and cutting out the large pine tree will make this a much more noticeable home from Lake

George. G. Smith asked what color is proposed for the dwelling and Curtis Dybas answered by saying they will go with earth tones and will not be going with log siding or vinyl, but want something that is maintenance free, which is still to be decided.

M. McComb (1) asked about the 20' x 12' patio with a retractable awning and (1) said that the retractable awning adds another 12' to the width of the proposed dwelling, so the 240 square feet should be factored in, because it will be perceived as a roof. Curtis Dybas said that (1) there is an open terrace on the second-floor that is built into the roof, (2) the patio with the retractable awning is on the main floor and (3) his understanding is that an awning is not considered a permanent structure and if the ZBA so elects, the awning can go away. M. McComb said with the impact of another roof structure broadening the façade there, she sees the covered porch on the side as too much. P. Kenyon said she has never treated retractable awnings as something that would even require a building permit or a variance.

M. McComb said (1) when the ZBA is talking about a 6/10 acre substandard lot that is going to be perceived as increasing, she feels the ZBA can talk about all sorts of things, as there are lots of variances in this application and (2) if the ZBA is contemplating permitting what is basically a new larger house in a non-conforming spot, the ZBA should try to keep it minimal. K. Hoopes said (1) he still thinks 600 additional square feet is pretty minimal and (2) the application doesn't even have to tell the ZBA that there's a 20' x 12' awning—it's not under ZBA jurisdiction. M. McComb asked if given the amount of paving on the site already, if it needs another paved patio and organized area there, or if that is a way to minimize the impact of the proposed project. After further discussion, several ZBA Members agreed that it can't put a condition of no retractable awnings on this property because it is non-jurisdictional and the ZBA can't do that.

M. McComb asked if once it is built, if the 240 square foot paved area for the patio would be considered part of the house footprint and P. Kenyon said yes, for patio purposes. B. Pfau asked if M. McComb's view is that eliminating the patio would be a way to reduce the impact of the proposed dwelling and M. McComb answered by saying (1) yes, there is a flagstone patio by the BBQ pit and (2) she thinks it's the ZBA's job to try to do minimal variances.

K. Hoopes said (1) what the applicants are accomplishing is minimal, (2) it is a vast improvement, (3) they lose the garage and the apartment, (4) the bungalow style roof is very unobtrusive, (5) the way the screening works, going up is the best way to go, because you are going up underneath the canopy of the surrounding trees, (6) the visual impact of the downstairs remains virtually the same, (7) the garage is set back where it will not be seen; and (8) asked about stormwater retention. Curtis Dybas said (1) they will address stormwater, but have to find a place for it, (2) the net increase of non-pervious area proposed is less than what currently exists and (3) they have also reduced the amount of driveway, because they cut it back to build the garage into it. M. McComb said that she agrees that the new construction is to the back of the house away from the lake.

B. Pfau said that the 240 square foot block patio is not on the plot plan and it would affect the setbacks, so the numbers are incorrect going west. P. Kenyon said the patio needs to be on the plot plan if it is over 100 square feet, because it is then considered a structure. B. Pfau said that if the ZBA approves the application, it would be without the patio included and Curtis Dybas said that would be fine. K. Hoopes said that since the patio is not listed on the plot plan, it doesn't need to be put as a condition, because it doesn't exist.

No County impact.

Correspondence:

- Letter from the Lake George Association (LGA)—opposed. M. McComb read the letter into the record.

M. McComb asked what would be a better footprint for this proposed project, as it is right in the middle of the lot.

- Letter from Chris Navitsky, Lake George Water Keeper—concerns. Counsel read the letter into the record.

K. Hoopes asked when the house was built and Curtis Dybas said he thinks it was built right after the war, in 1947. K. Hoopes said that would make it pre-existing per Section 256-A. Curtis Dybas said the 1985 certified survey shows all of the structures he is talking about on the map, so he assumes all of the structures are pre-existing 1985. P. Kenyon said Section 265-A does not apply to this application, because this is a demolition, so everything the applicant does has to comply with today's standards and regulations.

B. Pfau said he doesn't understand why the LGWK would request that a condition be put for this project to use current stormwater regulations, as he thought the proposed project would already have to comply. Counsel said (1) the proposed project may be a minor stormwater project, because if the Zoning Administrator's characterization is correct that this project is a blank slate, we start off with a piece of property where the existing improvement is gone and a new project starts and (2) it doesn't make any sense for the ZBA to get involved with a condition of stormwater, because it will happen because it is required. P. Kenyon agreed.

M. McComb said she feels it is a reasonable condition to put on the proposed project because it is new construction. K. Hoopes said putting the condition on this proposed project would be a good idea because it would absolve P. Kenyon from being in a bind with the mathematics and G. Smith agreed.

M. McComb asked if there is a washer and dryer in the existing dwelling and Curtis Dybas said yes, the applicants pump every 3-4 weeks.

From the public, Kathy Bozony of the LGA, said that (1) her concern for the proposed dwelling was the size of the footprint on this small piece of land that is probably mostly rock, (2) she agrees that if a new structure is built on this site the stormwater regulations will be more compliant than they are today, (3) it looks to her that it is going to be entirely new foundation, so if the applicant is going to start from scratch, you could look at the property and stay away from Lake George as much as possible, (4) by taking advantage of what people perceive as building on the existing footprint is okay, really doesn't make it alright, (5) when she reviewed the file, there was no information on what was going to be built there, which is why she inquired in her letter, (6) she would suggest the location of the house be moved back farther from Lake George and (7) there is a big wooded area that butts up against the house and she is unsure of how that section of the house can be built without any trees coming down as proposed.

Curtis Dybas said the only tree that will be removed is the one pine tree as shown. G. Smith said if you walk on-site, there is more space between the house and the wooded areas than the maps show. B. Pfau suggested the ZBA put a condition that only the one tree discussed be allowed to be taken down.

M. McComb said she has been a vehement opponent to increases on pre-existing footprints, but there isn't very far to go back. Kathy Bozony said it is a large house, being 64' x 54'. K. Hoopes said (1) you can't just move houses around like they are toys—to do it, you have to disturb the ground and right now, this ground is disturbed where it is. Kathy Bozony said a whole new foundation has to go in so there would be more land disturbance. K. Hoopes said (1) it is like disturbing scar tissue, where you are still working within the same space where the hole has already been put and (2) there is some peripheral, but it is still preferable in his mind to build on the existing footprint instead of moving the house 10', 12', 15' or whatever the distance is. Several ZBA Members agreed that in this case, building on the existing footprint is the most environmentally advisable way to go and the best solution.

From the public, Glenn Warren asked if the ZBA could re-state the change of size in the proposed new building versus the existing building and look at 200-56 D. M. McComb said that (1) the 10% number is considered a change in use rather than a square footage matter and (2) it is a 360 square foot change.

Glenn Warren said that if the determination has been made that you are not increasing or changing the existing non-conforming structure, in other words the existing structure is going to be razed and demolished and you are in effect starting from scratch, then it is no longer the structure that is the non-conforming issue, it is now the use. Counsel said it is not a non-conforming use—it is a permitted use.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-60) Irving and Marcia Metzger 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 #1 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance;
- 2) There would be no undesirable change produced in the character of the neighborhood, and there would be no detriment created to nearby property owners by the granting of this variance;
- 3) The requested variance is not substantial, it is 600 square feet for the give and take for trade-off which is acceptable;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district by itself, there is plenty of screening for the visual side and the environmental effects for stormwater retention will be done to the best of its ability;
- 5) The alleged difficulty is not self-created.

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

Now, upon **motion duly made** by K. Hoopes and seconded by T. McGurl, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) The one tree noted on the site plan to be removed is the only tree to be removed. **All in favor. Motion carried.** It is noted that the patio is no longer proposed.

2) V05-62 EMANUELE, JOSEPH. To alter existing single-family dwelling. Seeks Area Variance for **1.)** Deficient front yard setback; 30 ft. is required, 12 ft. is proposed.

2.) Deficient rear yard setback; 15 ft. is required, 81ft. is proposed. 3.) To alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 171.15, Block 3, Lot 4, Zone GB5000. Property Location: 26 Hondah Loop. SUBJECT TO WCPB REVIEW.

Marilyn Emanuele said that once they put up their addition, they felt it wasn't very aesthetic and felt that if they finished off the roof-line and added to that part of the roof that it would look better. G. Smith asked if they are looking for two more bedrooms and Marilyn Emanuele said it would be one room across the back. G. Smith said it wasn't too long ago that the ZBA granted the applicants the other variance and Marilyn Emanuele said it was a year ago.

B. Pfau asked if the applicants had hired an architect a year ago and if they hired an architect now and Marilyn Emanuele answered both questions by saying no. T. McGurl asked if the house is only increasing in height and Marilyn Emanuele said yes.

K. Hoopes said (1) he doesn't see the new plans as being an aesthetic improvement to the house and (2) it presents a really offensive wall to the neighbor to the west and M. McComb agreed. G. Smith asked what the Association's view is and Marilyn Emanuele said (1) she is the president of the Association, (2) the Association didn't approach them until tonight, (3) the Association is not happy with the way it looks now and she believes the Association doesn't want them to put the back on, (4) it is not finished—the deck railing, the trim, etc.—she had to stop for July and August because Association rules are that you are not allowed to work during those two months.

K. Hoopes gave some aesthetic suggestions to the applicants. M. McComb said that this house doesn't go with the other buildings in the Association, (2) other people have added second-stories and they come out looking like homes and (3) continuing to make it bigger, she doesn't think will be perceived as anyone as making an improvement.

B. Pfau asked if the Association By-Laws refer to any timeframes for construction projects and Marilyn Emanuele said no, not that she is aware of.

Several ZBA Members agreed that they would like to see revised drawings and are willing to leave the variance open pending new drawings to be presented at the November 2005 meeting.

No correspondence.

No County impact.

From the public, Sheila Page, adjacent property owner, said (1) she is unhappy with the plans, (2) she is very unhappy with the building as it is now, (3) she hopes the applicants come back with new better plans.

Motion by B. Pfau to table the application until next month so the applicant can provide revised drawings and discuss his proposal with Hondah Cottage Assoc. Seconded by M. Murray. **All in favor. Motion carried.**

3) V05-63 SMITH, STUART. To alter existing single-family dwelling. Seeks Area Variance for **1.)** Deficient front yard setback. 75 ft. is required from the edge of the right-of-way; 51.5 ft. is proposed. **2.)** Deficient side yard setback. 30 ft. is required; 22.2 ft is proposed, and **3.)** To alter a pre-existing, non-conforming structure in accordance with Section 200-56A. Section 185.00, Block 1, Lot 42, Zone RCL3. Property Location: 555 Trout Lake Rd. **SUBJECT TO WCPB REVIEW.**

Note: G. Smith recused himself from the ZBA for this item and B. Pfau took on role of Acting Chairman.

Stuart Smith gave an overview by pointing out his proposal on the map and said (1) he is proposing to add natural cedar shakes and maroon windows and green trim, (2) he is proposing to add a second-story with a screened-in porch and (3) he is proposing to put on an additional screened-in porch on the first floor.

M. McComb asked what will happen to the existing garage and Stuart Smith said that (1) the existing garage will stay, as shown as the plot plan, to be used for storage and (2) he is putting in an attached two-car garage. B. Pfau asked if the lot by the existing garage is vacant and Stuart Smith said yes. M. McComb asked for the dimensions of the proposed garage and Stuart Smith said it is 26' x 26'.

T. McGurl said (1) he thinks the proposal is a considerable improvement, (2) the proposed garage will be tucked behind the building, (3) he thinks that adding square footage is very well done, (4) there will never be a neighbor to the screened porch side and it is impossible to build on, so it is not an issue and (5) he likes that the applicant is not crunching back into the woods, but using the lot and what is already there to speak of. B. Pfau agreed and said that he thinks considering that the applicant is using the house that exists, where it exists, the encroachment and setbacks are minor.

M. McComb asked if the second-floor is only the master bedroom and Stuart Smith said yes.

No public comment.

No correspondence.

No County impact.

P. Kenyon said this application was ruled non-jurisdictional by the APA.

M. McComb asked what the width of the façade facing the lake is and Stuart Smith said it is approximately 76' on the lake side.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-63) Stuart Smith 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 #3 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 applicant is reusing an existing non-conforming footprint;
- 2) There would be no undesirable change produced in the character of the neighborhood, and there would be no detriment created to nearby property owners by the granting of this variance, it will be a desirable change to bring this house into a little more modern design and siding and colors;
- 3) The requested variance is not substantial, the additional garage is situated behind the home and there seems to have been an attempt to keep the additions minimal and minimally invasive to other neighbors;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district by itself;
- 5) The alleged difficulty is self-created in terms of the additional space, but the applicant has done a good job in re-designing an existing home for his needs and the needs of the neighborhood.

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

Now, upon **motion duly made** by M. McComb and seconded by T. McGurl, it is resolved that the ZBA does hereby approve the variance request as presented. G. Smith recused himself. **All others in favor. Motion carried.**

4) V05-64 SENDROWITZ, EVA MARIE. Represented by Charles Ligon. To alter existing single-family dwelling by roofing over a portion of existing deck and adding stairs. Seeks area variance for **1.)** Deficient shorefront setback. 75 ft. is required; 40 ft. is proposed. **2.)** Deficient side yard setbacks. 30 ft. is required; **a.)** 16 ft. is proposed on the north side. **b.)** 20 ft. is proposed on the south side. **3.)** To alter a pre-existing structure in accordance with 200-56A. Section 185.19, Block 1, Lot 66, Zone RCL3. Property Location: 15 Lakeside Lane. **SUBJECT TO WCPB & APA REVIEW**

Note: G. Smith returned to the ZBA in his capacity as Chairman.

Charles Ligon, representing Eve Marie Sendrowitz, gave an overview and said (1) this is an existing deck that the applicant is looking to cover with a 2' overhang, (2) the lake side setbacks would be the only setbacks to change and they would be 2' shorter than what they are now and (3) the total height of the structure is not changing.

M. Murray said the applicant was in recently for a variance and Charles Ligon said that variance was to make three sections of roof into one level. B. Pfau asked if that project was completed and Charles Ligon answered by saying his part of doing the framing and the roof itself is completed, but the applicant got a different contractor for the siding and the paving.

B. Pfau asked if this is an open-porch roof and Charles Ligon responded by saying (1) yes, it is uncovered now, (2) the applicant said she will have it screened in, (3) there is a 32" high wall going around the porch and (4) one side 7' x 16' of the porch will remain open and uncovered.

M. McComb said that regarding the existing and proposed drawings, the northerly view shows 20' of deck, (2) what exists is shown as 20' and (3) she was on-site and measured it, so it is a 12' section of board so it is 12' of deck, not 20' as shown. Charles Ligon said (1) the deck is 12' plus the landing, so the deck is 16' off the building plus the additional 4' of landing that is there now and (2) the existing deck is 16' x 30' or 16' x 32'. M. McComb said she disagrees, because she measured it and the deck is 12', because there is one length of the board.

T. McGurl said (1) he was on site and this house screams of walking its way towards Trout Lake, (2) the deck measurement is debatable, based on where people measured from, (3) now there is a roof over the porch, (4) now it is going to be screened in, which is not shown on this map, (5) who's to say that in a year there won't be a request for glass windows on this porch making it into a three-season home requiring a porch on that as well, (6) this is a very small lot, (7) it is getting closer and closer to Trout Lake with no buffer zone, (8) this porch is in very close proximity to Trout Lake and is basically hanging on the water and (9) adding a roof over the porch is just adding more exposure

from the waterfront. Charles Ligon asked if the ZBA could put on a condition of not enclosing the porch, but just leaving it screened-in and M. McComb said that doesn't seem to work. T. McGurl said his main concern is the roof and the visual impact from the lake.

K. Hoopes said (1) he is concerned in the effect of the porch on the neighbors on either side by limiting their angled views. Charles Ligon said that the houses are at the same levels. K. Hoopes said that the neighbors sit at the same level, but they also sit in a straight line, so neighbors' views will be affected by the proposed location of this porch. Charles Ligon asked if any of the neighbors complained and M. McComb said (1) it is not required for the neighbors to complain or say there is no problem with a proposal and (2) the ZBA has to think of not just of the current owner and who is there now.

M. Murray said when you go toward Trout Lake, it becomes a significant change. T. McGurl said that (1) if it was just a question of the applicant taking the existing eave on the house and extending it, he would be favorable, but adding all of that roof structure in there on that side of the house, facing the water is going too far. G. Smith said that is a lot of roof and it would be a large impact looking at it from the lake.

No public in attendance.

No correspondence.

No County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Eva Marie Sendrowitz (V05-64) 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 #4 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant could not be achieved by other means feasible for the applicant to pursue other than an area variance, but that does not outweigh the other issues the ZBA Members balance;
- 2) There would be an undesirable change produced in the character of the neighborhood, and there would be detriment created to nearby property owners by the granting of this variance, from limiting neighbors' views and encouraging others to expand their houses closer to the lake to restore the view that they've lost;
- 3) The requested variance is substantial, given size of the lot and it being basically a 20' roof;
- 4) It is unlikely that the request would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district by itself, but in the cumulative notion of houses walking to the lake, it does have a negative environmental effect;
- 5) The alleged difficulty is self-created, and is an attempt to expand further a recently granted variance.

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

Now, upon **motion duly made** by M. McComb and seconded by M. Murray, it is resolved that the ZBA does hereby deny said project as presented. **6 in favor. 1 (B. Pfau) opposed. Motion carried.**

5) V05-66 MESSINEO, ARTHUR & NATALIE. Represented by Donald Russell. To alter existing single-family dwelling. Seek area variance for **1.)** Deficient side yard setback. 20 ft. is required; 15 ft. is proposed. **2.)** To alter a pre-existing structure in accordance with Section 200-56A. Section 156.00, Block 2, Lot 61, Zone RL3 & LC25. Property Location: 36 Hill Top Lane.

Donald Russell, representing Arthur and Natalie Messineo, gave an overview and said (1) the applicant wants to re-side his house, put on a new roof, do some internal remodeling, (2) the applicant wants to expand the existing screen porch out 5' on the north side to make a three-season porch out of it and (3) the applicant was trying to buy a strip of land on the north side from Mr. Hiser, the adjacent property owner to the north, and while that transaction has not taken place, his understanding is that Mr. Hiser doesn't have a problem with this proposal.

B. Pfau asked when the house was built and Donald Russell answered by saying that (1) the house was built in 1984, (2) the house met setbacks at that time and (3) the existing house meets the 20' setbacks now.

All ZBA Members agreed that this is a very minor variance and that this is a very unusual shaped lot.

No correspondence.

No public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-66) Arthur and Natalie Messineo 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 the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #5 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 house meets setbacks now, so any expansion on either side would necessitate a variance;
- 2) There would be no undesirable change produced in the character of the neighborhood, and there would be no detriment created to nearby property owners by the granting of this variance, there are no objections from the neighbors;
- 3) The requested variance is not substantial, it is minor;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district by itself, being a increase in the screened-in porch;
- 5) The alleged difficulty is not self-created, as there is no room for the expansion of the house.

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

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

Addendum to agenda

6) Pamela Kenyon – Zoning Administrator seeks interpretation of “Recycling Plant” as defined in “The Latest Illustrated Book of Development Definitions”, which reads as follows: *A facility in which recyclables such as newspaper, magazines, books and other paper products; glass; metal cans; and other products, are recycled, reprocessed, and treated to return such products to a condition in which they may be used again in new products.*

Is a use variance required as it pertains to Glenn Warren’s desire to use recycled materials to construct logging roads?

K. Hoopes said that (1) the use that Glenn Warren is trying to support with his recycling plan is an allowable use—it is an agricultural use and it is a forestry timber-harvesting operation, (2) in looking at the recycling plant, it may be a PB issue for input on noise issues and things of that nature, (3) as far as the theory of using such a piece of equipment on his property for what Glenn Warren has stated his use is, K. Hoopes looks at it as operating the same as someone operating a chipper or a cement mixer on their property and (4) if it is to be used only for Glenn Warren’s end use, then he doesn’t feel a use variance is needed.

B. Pfau asked what would be recycled and P. Kenyon answered by saying Glenn Warren’s plan is to take recycled materials and put them onto the logging roads. K. Hoopes said his understanding is that Glenn Warren is taking a variety of items, reducing them and taking the reduced material and putting it into some type of sleeve that makes these logging roads maintenance free.

B. Pfau asked if P. Kenyon made a determination and P. Kenyon said no, she is asking for an interpretation. B. Pfau asked if P. Kenyon should make a determination then if the applicant doesn’t like her determination, the applicant would have to file an appeal to the ZBA and Counsel said that sounds quite correct. P. Kenyon said she has a right to ask for an interpretation.

G. Smith said he feels that if this is something that Glenn Warren is allowed to do, he does it on his own property and uses it for his own use and doesn’t sell the material or give it away to people then he is okay to go. M. Murray said his feeling is that Glenn Warren is not preparing something to be shipped or to be sold. Counsel said that if that is the sense of the ZBA, then it needs to be put in a motion, seconded and voted upon.

T. McGurl asked if P. Kenyon is principally asking the ZBA whether or not what Glenn Warren is proposing constitutes an actual recycling center based on the two definitions she provided. P. Kenyon said everyone is in agreement that it is a recycling center, so if Glenn Warren was going to create a recycling center at this site and sell those recycled

materials, then she would definitely say Glenn Warren needs a use variance, but because he is going to use the materials for his own use, she wasn't quite sure.

Now, upon **motion duly made** by K. Hoopes and seconded by T. McGurl, It is resolved that the ZBA does hereby determine that a recycling plant would not require a use variance if it supports an allowable use, and is for the owners own use. (Nothing commercial). **M. McComb abstained. All others in favor. Motion carried.**

Meeting adjourned at 8:26 pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
11/01/05