

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, September 19, 2005
6:30 p.m.**

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

Present: Chairman Greg Smith, Kam Hoopes, Meredith McComb, Tom McGurl, Michael Murray, Code Enforcement Officer Mitzi Nittmann, Town Counsel Michael Muller

Absent: Bill Pfau and Zoning Administrator Pam Kenyon

Chairman G. Smith opened the meeting at 6:34 pm by asking for corrections to the August 15, 2005 ZBA minutes.

M. McComb said on page 6, top paragraph, last sentence should read "...she wonders how you rebuild without run off going down the hill toward the water."

M. McComb said on page 17 the last line of the motion for Agenda Item #8, (V05-50) Kenis & Vicki Sweet, should read "...The benefit to the applicant is *not* outweighed by the potential detriment to the health, safety and welfare of the community."

K. Hoopes said on page 2, the letter in correspondence from Homeplace Corp. should be from *Ted* Caldwell.

K. Hoopes said on page 7, fourth paragraph, last sentence should read "...and probably an architectural disaster, as some of the visual *impact* does get mitigated by different facets of the house."

Motion by M. McComb to approve the August 15, 2005 minutes as amended. Seconded by M. Murray. 4 in favor (K. Hoopes, M. Murray, M. McComb, T. McGurl). 2 Abstained (T. DePace and G. Smith, as they were not in attendance at that meeting.)

Motion carried.

The Agenda Items were heard in the following order: 3, 1 & 2 (heard together), then 4 through 11 in order. Note: T. DePace recused himself from Agenda Items 6 and 7.

1) 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.

Atty. Mark Rehm of Krantz & Rehm LLC, representing Brian Wardles, gave an overview and said (1) they have addressed prior ZBA concerns, (2) the wetlands were flagged, determined less than an acre and non-jurisdictional and they are waiting for a letter from the APA to that effect, (3) the Jim Hutchins, project engineer, submitted the application to DEC regarding the size of the culvert and anticipate DEC approval shortly, (4) the proposed porch shown on the latest plans will be eliminated and the applicant is proposing to screen in a corner of the deck in the original application and (5) they took the sensitivity of the stream into consideration.

Jim Hutchins said for stormwater measures, (1) they graded the proposed driveway, garage and dwelling locations and directed run off to a series of very shallow retention areas and (2) they put in some infiltration trenches.

G. Smith asked for the leechfield location and Jim Hutchins answered by saying (1) the leechfield is in the northeast corner of the lot, (2) the test pit was granule sands and they went to a depth of 60' where no high ground water or bedrock were noted, (3) Zoning Administrator Pam Kenyon was at the test pit, (4) they decided on an Elgin system to minimize pace and (5) they have provided 100' to the existing stream.

G. Smith asked for the new setback distance from the stream to the garage and Mark Rehm said the setback proposed on the plans is 50' from the stream. G. Smith said there was discussion of the applicant moving it closer to South Trout Lake Road and asked why the plan shows a 50' setback from the stream. Atty. Mark Rehm said that issue was discussed previously, but the Zoning Administrator encouraged the applicant to seek what he originally sought. The ZBA asked if the Zoning Administrator gave a reason for that and Brian Wardles said no, she just advised him to ask for what he wanted and to see what he got. G. Smith said it was interesting that the Zoning Administrator didn't have a reason for that. The ZBA agreed that they would rather see the garage closer to the road and farther away from the stream, so have it located 65' from the stream and 50' from the road and Atty. Mark Rehm said that he believes the applicant would be agreeable to that. G. Smith said it would still be 42' from the south property line, so that would not be a problem.

Several ZBA Members agreed that the applicant's idea of screening in part of the deck is a great idea and that this is a better plan. G. Smith asked if the ZBA gives its approval if the applicant would then just be waiting on the state and Atty. Mark Rehm replied by saying that they are waiting for formal letters from the APA and the DEC.

Mitzi Nittmann said she is waiting for a letter from Mary O'Dell of the APA, but based on her field notes, her understanding from the on-site meeting is that the APA determined (1) it was less than an acre of wetlands, (2) there was no connection to anything else, (3) it was non-jurisdictional and (4) Ms. O'Dell made a few comments on where she would prefer to see the culvert other than where it is shown on the plans now, but that basically what the applicant has is fine.

No Correspondence

No public in attendance.

G. Smith said he is happy with the changes the applicant has made and recommends the ZBA have the applicant move the garage as noted above and remove the proposed screened in porch from the plans. M. McComb said that (1) the house is about the size of what would be the legal building lot, so while it is big, it is fine and (2) on the right and left views there is egress noted on the windows on the elevations and asked for clarification. Brian Wardles answered by saying that the bedroom has to have a sense of egress, so it is an egress window sized for a bedroom based upon the requirements of the fire code. G. Smith said means that the window can accommodate a fire escape.

RESOLUTION

The Zoning Board of Appeals received an application from Brian Wardles (V05-42) 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 #1 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, as they are trying to place the house, the garage and the septic system in the most desirable places on this piece of property;
- 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 the applicant has sought the advice from the APA and DEC on several issues;
- 5) The alleged difficulty is not self-created.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the community, as there will be no detriment to the health, safety and welfare of the community.

Now, upon **motion duly made** by M. Murray and seconded by T. McGurl it is resolved that the ZBA does hereby grant approval of the revised application with the following conditions: 1) that the garage is relocated to be 50' from the road and 65' from the streambed; 2) the porch (on the west side of the house) is eliminated from the plan; and 3) letters are received from the APA and DEC indicating these agencies approve of the proposed construction near the wetlands. **All in favor. Motion carried.**

2) V05-43 WARDLES, BRIAN. Represented by Krantz & Rehm LLC. For the construction of a proposed garage, seeks area variance for a deficient shoreline: 75' is required, 50' is proposed. Section 199.07, Block 1, Lot 5.313, Zone RCL3. Property location: north side of South Trout Lake Road approximately 1,800' from Coolidge Hill Road intersection. Subject to APA review.

This item was heard with V05-42.

RESOLUTION

The Zoning Board of Appeals received an application from Brian Wardles (V05-43) 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 #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, as they are trying to place the house, the garage and the septic system in the most desirable places on this piece of property;
- 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 the applicant has sought the advice from the APA and DEC on several issues;
- 5) The alleged difficulty is not self-created.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the community, as there will be no detriment to the health, safety and welfare of the community.

Now, upon **motion duly made** by M. Murray and seconded by T. McGurl it is resolved that the ZBA does hereby grant approval of the revised application with the following conditions: 1) that the garage is relocated to be 50' from the road and 65' from the streambed; 2) the porch (on the west side of the house) is eliminated from the plan; and 3) letters are received from the APA and DEC indicating these agencies approve of the proposed construction near the wetlands. **All in favor. Motion carried.**

3) V05-45 PAINTER, JOHN. Represented by Matt Steves of Van Dusen and Steves Land Surveyors. To demolish and rebuild existing single-family dwelling, seeks area variance for deficient setbacks. 1) shoreline: 75' is required from the mean high water mark, 21.61' is proposed; and 2) side: 20' is required, a) 10.71' is proposed on the south side; and b) 15.15' is proposed on the north side. Property location: 4030 Lakeshore Drive. Section 213.09, Block 1, Lot 15, Zone RM1.3. WCPB determined no County impact with the condition that appropriate stormwater and erosion control measures be implemented and the septic system is compliant. Subject to APA review.

Matt Steves of Van Dusen and Steves Land Surveyors, representing John Painter, gave an overview and said (1) they are proposing to replace the existing home with a new structure on the same footprint and (2) they have addressed the ZBA's concerns by; reducing the overhangs to 18" for the entire building, moving the garage 4' to the south and reduced the balcony on the southeast side to 4'.

M. McComb said (1) she is surprised by this plan considering at last month's meeting Acting Chairman B. Pfau thought the initial plan was a very aggressive first step in negotiations, (2) all the applicant could find to adjust from the total 5500 square feet of the footprint was 1' on a balcony, 4' on the garage and to narrow the eaves on the house and (3) it is a three bay garage with a second-story view of the lake. Matt Steves said he feels the changes made are substantial.

M. McComb asked what the distance is from the silt fence to the steep drop off to Lake George and Matt Steves answered by saying (1) just a few feet, (2) the silt fence will be there during the demolition and construction, (3) once a variance is obtained, before a building permit can be issued, a stormwater plan/report will be submitted to the Zoning Administrator for approval. M. McComb said there are only 4' from the house to the drop-off and Matt Steves said that is correct. G. Smith said (1) there is no doubt that it all

has to be done from the back side of the house because the drop off is straight down to Lake George and (2) it is going to have to be one heck of a silt fence, because it is going to be catching a lot of heavy materials and anything that goes through it will go right into the water.

M. Murray said, as he said last month, he doesn't see why the proposed house couldn't meet the sideline setbacks by cutting off the front to gain some measure of moving back to the lake, while still having a very comfortable home with a very nice view. G. Smith said the proposed dwelling is 21' from Lake George with a 10' south side setback and 15' on the north side.

Matt Steves said the proposed footprint is identical to the current footprint except for the garage. G. Smith said the proposed garage is a new attached addition with second story. M. McComb said (1) the Zoning Ordinance requires a minimal variance, (2) a three-car garage with a second story off set from the pre-existing foot print all within the 75' setback from Lake George doesn't seem minimal at all, (3) she knows there are some difficulties on this lot, but this proposal doesn't seem to meet any of the intentions of the Zoning Ordinance. K. Hoopes said (1) he doesn't think that is fair, (2) the ZBA does make allowances for a house to be rebuilt within a said footprint with review, (3) he believes the ZBA discussed it last time, that disturbing new ground is probably not the environmental friendly thing the ZBA is after, especially considering that moving the dwelling back would require a large amount of blasting since it is solid ledge back there and (4) the ground has already been disturbed, the foundation is there, and the present house has no garage. M. McComb said (1) if the applicant wanted to put the proposed garage in the location of the existing carport on the side of the house away from Lake George, then she would have less of a problem with this proposal and (2) she doesn't see the need for an additional width for the proposed dwelling in that manner that close to Lake George.

Matt Steves presented pictures to the ZBA for discussion of the foundation. M. McComb asked why the garage has to be off set and Matt Steves replied by saying that after he consulted with the applicant and the house builder, he was told moving the garage 4' is the most they could do and all they are willing to do with the garage at this time unless the ZBA doesn't approve the garage in its current proposed configuration.

T. McGurl said (1) it is clear that the house will be pretty substantial one way or the other, (2) with the nature of the lot, the proposed house will be seen from Lake George regardless of if it is moved back further from Lake George and it will not be able to be cut back on this lot, (3) the proposed house is in the same footprint as the original house which is what the ZBA asked for in asking the applicant to slide the garage to the south and (4) regarding the garage, he feels the hardship of having a place to park three cars indoors needs to be discussed further.

Correspondence: Counsel read the following correspondence into the record.

- Letter from the Lake George Association (LGA)—opposed.

K. Hoopes said the (1) ZBA doesn't preclude anybody from building what appears to be a three-story dwelling on Lake George unless it breaks the ZBA's height requirements and (2) if a Town has Zoning Regulations, it is required by law in New York State to provide reasonable relief. G. Smith said that this proposal does not break the ZBA's height requirements and Counsel said K. Hoopes was correct in his second statement regarding reasonable relief.

M. Murray said (1) the ZBA also determined if someone has a non-conforming dwelling they wish to put a dormer on, it would need to come back to the ZBA and (2) this proposed dwelling is a whole second story. K. Hoopes said (1) that is incorrect, as the existing dwelling was built in the 1970's and already has the three stories and (2) the proposed dwelling is a vast improvement architecturally and visually than the existing dwelling, (3) the big increase is the three-car garage with a second story on it and (4) this proposal has been improved from the last meeting regarding the sideline setbacks.

M. McComb said the proposal has been improved, but in her eyes, reducing the eaves has not improved the proposal because now the proposed dwelling looks just like a big square box. Matt Steves said (1) they reduced the eaves and (2) they reduced some of the footprint within the setbacks to Lake George, as they propose the foundation wall being moved 8' back to the west from where the third garage door is. M. McComb said (1) it seems without doing grave damage to the architectural integrity of the house, she thinks that the garage can slide into the juncture next to the front door, (2) the whole proposed garage is within the 75' shoreline setback as new construction and (3) the fact that the proposed garage is beyond the existing footprint isn't mitigating to her eye, as there seems there are alternatives.

K. Hoopes said (1) there are two other dwellings being built in that area where a large amount of blasting was required and only one of those projects needed to come back to the ZBA, (2) if you're going to build a house you are going to have pipes and have it winterized to be year-round, so you will have to have some sort of basement or crawl space on the house and (3) the architects feel moving the garage any further to the south will create architectural damage to the proposed dwelling.

T. McGurl asked how much more would be gained by moving the garage an additional 5' from Lake George and M. McComb answered by saying that it is less intrusive on the view from Lake George in the sense that there is an enormous amount of expansion seen from Lake George now and moving the garage would limit that.

From the public, Andrew Holding, adjacent property owner to the south, said he reviewed the revised plan for proposed construction and believes granting this application would (1) be a violation of the letter of the law on which the Zoning Administrator has granted a denial, (2) represent an obvious disregard for the intent of the Bolton Zoning Ordinance as well, (3) deny neighbors their rights of protection that should be guaranteed under the Zoning Law and (4) violate the intent of the Code to protect Lake George. He added that he feels (1) this proceeding should not be some kind of

negotiation or debate, (2) neither the ZBA, any tax payer or neighbor should need to provide any reason why this project should not go forward, as the Zoning Administrator has already stated the project should not go forward, because it has violates the Bolton Zoning Ordinances, (3) if the applicant wishes the ZBA to overrule the decision of the Zoning Administrator, it becomes the obligation of the applicant to provide some substantial reason for the ZBA to set aside the Code, (4) this application doesn't mention hardships or practical reasons why things have to be built with disregard to the Code, (5) there is no reason why the garage cannot be built within the setbacks, (6) the proposed garage and bonus room are total new construction, which would not only be an intrusion into prescribed sideline setbacks, which violates the adjoining property owners rights, but it would also be within the 75' setback required from Lake George, (7) the ZBA should reject the application, (8) there are discrepancies between the elevation plans as drawn and the topography of the land as it exists and has been confirm on the topographical survey by Van Dusen & Steves and gave details regarding specific measurements, dimensions and elevations, (9) the intent of the law as referenced in the LGA letter is that when something is non-conforming and somebody wants to expand it, shouldn't be expanded by 57%, which is what this plan is close to based upon his calculations of the initial proposal, (10) the ZBA asked the for blasting figures and he has seen nothing in the file and (11) this is a very emotional matter, because if the ZBA allows the proposed three-story dwelling placed on that footprint it will preclude forever the view from where he wants and has a right to build a home in the next 10 years.

K. Hoopes said he has heard nothing about the proposed dwelling will being an environmental danger to Lake George and asked for substantial information and real numbers to back-up this assumption. G. Smith said this is a good chance to put the ZBA's regulations to use in having the proposed dwelling built 75' from Lake George and tuck the garage behind the house. M. McComb said that because this particular lot has the steep high bank so close to the proposed building site that it is more of a threat to Lake George with the run off.

From the public, Kathy Bozony, from the LGA, said (1) she would like to reiterate that she looked at the drawings then at the photographs in the file and it is an entirely different elevation, (2) it is a 6,500 square foot house including the basement area that has large windows that she speculates will be used as living space, (3) it is a very large house to have this close to Lake George and (4) stormwater management is always mitigated to be approved and it will be approved if this house is approved, but that doesn't mean that it is going to work that efficiently.

Matt Steves said (1) he needs to speak with the builder about the elevations, (2) the lakeside to the finished floor on lakeside is 7' not 12' as Mr. Holding stated, so an additional 5' of rock removal doesn't exist, (3) there is some rock removal, but it won't be viable until they get in there and see if it is and (4) moving the house anywhere else on the site will probably require five times the rock excavation than in its current proposed location.

M. McComb said (1) the ZBA is asked to grant sideline variances, (2) there is a 24' wide room and the bedrooms are laid out parallel to the lake, but the garage is off set to protect the view from the mudroom on the ground floor and a hallway on the second floor, which seems excessive to her, (3) the neighbor (Andrew Holding) made a point that if he or anybody wants to pull back their house from the water, they are going to be totally discouraged, (4) the ZBA should plan on, if they grant this application, increasing the size of the house on a pre-existing footprint so close to the lake where everybody else's view is going to be constrained in the future by that placement, (5) if the ZBA horse-trades this back to the applicant, future houses will horse-trade back and adjacent houses look like they will be coming in for renovation if the trend exists and (6) the ZBA needs to look at if it is going to say it's ok for people to buy a small place and put in a much larger house or view it as new construction.

M. McComb asked if the proposed dwelling would affect the neighbors' views and Matt Steves answered by saying that there is a possibility neighbors' views could be reduced and asked what M. McComb's feelings would be at looking specifically at the proposed dwelling without the garage. M. McComb said (1) in recognition in how close it is to the water and how big the increase the applicant would be getting, she thinks the applicant could pull the proposed dwelling in and meet the sideline setback and (2) without the garage, she does think the proposal would be less excessive and (3) if the garage was a one story garage without bonus space above it, as it is labeled on the plans, she might go with it differently.

K. Hoopes asked if the proposed home dwelling be year-round and in need of a garage and Matt Steves said yes. G. Smith said (1) the proposal is quite excessive from what is currently there, especially with it so close to Lake George, (2) there is no reason the applicant can't move this whole project back, tuck it in a little bit and make it within the regulations and (3) no matter what they do, there will be a large amount of blasting with this project and while there aren't current Town regulations on blasting, there should be, because everybody around Lake George is blasting and putting in all of these monstrosities as close to Lake George as they can.

K. Hoopes said the Town Zoning gives people encouragement to tear down old camps and to build a new building right on the old footprint, which is the intent of the zoning. G. Smith said that is why the ZBA is here and it is also here to bring it into compliance more than it is and (2) this is a monstrosity as far as he is concerned—he doesn't like it with or without the garage. M. Murray agreed with G. Smith's final statement.

No County impact, with the condition the appropriate stormwater and erosion control measures be implemented and the septic system compliant.

RESOLUTION

The Zoning Board of Appeals received an application from John Painter (V05-45) for an area variance as described above.

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

and, whereas the Warren County Planning Board determined that there was no County impact, with the condition the appropriate stormwater and erosion control measures be implemented and the septic system compliant;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant can be achieved by other means feasible to the applicant regardless of whether its here or elsewhere, some blasting seems likely to be needed, and encouraging an expansion so close to the Lake on a lot, which has a particularly difficult waterfront as well, doesn't seem to be a good idea;
- 2) The undesirable change in the neighborhood character to nearby properties would be contained in essentially saying adjacent properties will also have to rebuild on pre-existing footprints instead of also moving back when they come in to upgrade;
- 3) The request is substantial, particularly the addition of a 3-bay 2-story garage also largely within the 75' setback;
- 4) The request is likely to have adverse physical or environmental effects because of its proximity to the Lake;
- 5) The alleged difficulty is self-created. There are other places on the lot to locate the house.

The benefit to the applicant does not outweigh the detriment to the health, safety and welfare of the community and the attempts that Bolton is making to enforce their waterfront setback zoning.

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. **3 (M. McComb, M. Murray & G. Smith) in favor. 3 (T. DePace, K. Hoopes and T. McGurl) opposed. Motion did not carry.**

4) V05-52 ROBAK, WALTER & HEIDI. To alter a pre-existing non-conforming structure, seek area variance for 1) deficient front yard setback: 75' is required, 10' is proposed; 2) deficient side yard setback: 20' is required, 15' is proposed; 3) height: 35' is allowed, 36' 6'' exists and 35' 6'' proposed; and 4) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. For the construction of a proposed storage building, seek area variance for 1) deficient front yard setback: 75' required, 23' is proposed; and 2) deficient side yard setback: 20' is required, 5' is proposed. Section 156.00, Block 2, Lot 9, Zone RM1.3. Property location: 116 Federal Hill Road. Subject to WCPB.

Walter Robak gave an overview and said (1) he is proposing to put a small addition on the off the back of the easterly side of the house and cut part of the roof to bring it down approximately 1', (2) he is proposing this addition for an office, not living space or a bathroom, (3) the purpose of the covered porch is to divert water that currently comes down from the existing roof into the entry door area and the foundation, (4) the roofline would come up about 2 1/2' further, (5) he is proposing to put a deck on the southerly side (back) of the house where it will be closer to the woods and which would entail no tree removal and (6) the proposal is also to put a shed in for storage as opposed to a garage.

G. Smith asked how big the piece of property is and Walter Robak said that it is half an acre. T. McGurl said (1) the design is a nice addition to the overall appearance of the house and it fits into the size of the lot and (2) the applicant is 100% correct in that the topography of the lot disables building a shed in the back. M. McComb noted that the property line behind the shed is so close and is actually a narrow strip of land that is not where a house would be situated.

M. McComb asked if the applicant could get down to 35' in height and Walter Robak said no, because he would either have to flatten the roof, which can't be done or fill the back up 6 inches which would result in water running into a back door, so he really can't go much beyond what is shown.

G. Smith asked if the applicant would consider stormwater control on the whole house including putting a retention bed in the ground to collect the water on his own property, because water goes downhill and it will end up in the neighbors' property. Walter Robak answered by saying the only thing is finding where to do it, possibly in front of the house or closer to the road and he wouldn't have a problem doing that. Several ZBA Members agreed that even partial improvement is an improvement.

From the public, Jeffrey Tennant, Town of Bolton resident, said (1) if the ZBA requires the applicant to do stormwater in the back it can only be gravity—no pumping system, because that would be against the requirements of stormwater and (2) the applicant will also have to meet the setbacks for the septic field in the back.

From the public, Thomas Schweikert, neighbor two lots down from the applicant, said (1) he and his wife were originally concerned with the location of this lot in relation to

their place and run off down Federal Hill to their place and (2) in seeing the information presented, he and his wife have no problem with the application as presented.

Mitzi Nittmann said (1) she received a complaint in the Zoning Office about the applicant enclosing the back porch and (2) the elevation drawings show the stairs coming off and two windows and asked for clarification. Walter Robak said you don't need a permit to replace anything existing and Mitzi Nittmann said that is correct. Walter Robak said (1) he got into replacing the rotted railings on the existing porch and found the floor was completely rotted, (2) prior to his owning it, this house was designed, approved, inspected and built with two open walls where all the water that comes in through the porch goes into the basement and (3) when he started putting the floor back together, he wanted to stop the water from entering the basement, so he didn't put up railings, but put up two walls and a door to close it off. Mitzi Nittmann asked if it was an open porch before and Walter Robak said he doesn't believe it originally was an open porch, but was altered to be one and (2) on the open deck, he put the walls up where the railings were on the two sides and finished the siding to match the outside of the house. G. Smith asked what is inside the walls and Walter Robak answered by saying it is still used as a porch. Mitzi Nittmann said the ZBA needs to decide if the applicant altered a non-conforming structure or if the applicant repaired it.

From the public, Richard Kimak, resident of 112 Federal Hill Road and Lake Side Gallery owner, said (1) a lot of what is being presented is not correct as shown by the surveyors, as his house is not a two story house and there is a garage in the back not a framed house, (2) the porch in question has been a porch for the last 11 years he's been here, (3) the side of the property between his and the applicant's property has been washed out and he feels it was because of the previous owners, (4) he would like some assurance that the grading is going to be changed, (5) his piece of property that borders the area for the proposed shed is a right-of-way, but he owns property beyond that which could be used for another purpose, (6) the applicant fails to show on the drawings that he has a garage entrance in the back, so you could get around to the back with a bit of work, creativity, proper drainage improvements, (7) the project has already started in his opinion, (8) a plan for run off is needed and (9) he is concerned with the ZBA granting a variance to encroach on someone's property if it really doesn't need to be, especially when the applicant told him this property will only be a temporary residence.

M. McComb asked if the applicant's stormwater proposal helps and Richard Kimak said if there is a plan for stormwater, he would feel a lot better. G. Smith asked if there is any part of the variance Mr. Kimak doesn't like and Richard Kimak replied by saying (1) he thinks the shed can go someplace else, as there is a large flattened area in the back and (2) he feels the porches that are encroaching on the property lines on the front are totally aesthetic.

Heidi Robak said (1) they are basically year-round residents, (2) having two adults and two children in the house, they have a lot of things, (3) the idea of putting a shed in the

back would create more run off and wash out from creating a driveway going to the back lawn, which is what they are trying to prevent, (4) they are attempting with this proposal to have everything away from their neighbors and destruction of trees and natural properties, which is why they went from a garage to a 5' X 8' storage shed and (5) the house was built in 1980 and she doesn't believe the porch was always an open-porch because their back door is from a Ford trailer and (6) within the first month they were at the residence, all of their things stored in the basement got soaking wet, so Walter Robak tried to reconcile the problem after the June and July storms by putting up walls and a door.

M. McComb said (1) the only thing that could be done is to flip the orientation of the shed, but it doesn't seem the applicant will gain much in mitigating the distance to the neighbor's property line and (2) she agrees the shed as an alternative to the garage is a good idea. K. Hoopes said (1) the proposed location is the most useful for the shed, (2) there seems to be miscommunication in the work to the porch and (3) the whole plan is an improvement.

All ZBA Members agreed that they could make the porch wall part of this application. Walter Robak said (1) originally when he came down to talk about a variance for putting an addition on, he was told that there was no variance or anything needed when it came to anything under 100 square feet and (2) clearly he is not adding anything to the outside. G. Smith said he understands, but the house is already non-conforming, so anything the applicant wants to do within the footprint would require a variance.

Counsel said if the ZBA is looking at a specific implementing stormwater control design, he suggests the ZBA make any variance approval subject to a minor stormwater process, because all of the criteria are set up in the ordinance already, then the Zoning Administrator has to review it and if it passes it works.

No Correspondence

No County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Walter and Heidi Robak (V05-52) 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 #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;
- 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 this will be an improvement aesthetically and physically with the minor stormwater improvements;
- 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, in fact it should be just the opposite and be an improvement;
- 5) The alleged difficulty is not self-created, because the house was built in the 1980s.

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

Now, upon **motion duly made** by K. Hoopes and seconded by M. McComb, it is resolved that the ZBA does hereby grant approval of said project as presented with the condition that it is reviewed by the Zoning Administrator to ensure that it satisfies all requirements for a minor stormwater project. **All in favor. Motion carried.**

5) V05-53 TENNENT, JEFFREY. To amend/clarify previously approved variance (V03-11) to incorporate 1 restaurant, 4 apartments, 3 offices, 1 retail space, where 1 restaurant, 2 apartments, 2 offices and 1 retail space was approved. To alter the approved non-conforming structure, seeks area variance for 1) a deficient front yard setback: 30' is required from the right-of-way on the south side, 17' is proposed (reconfigured handicap ramp); and 2) to alter a non-conforming structure in accordance with Section 200-56A (to reconfigure the handicap ramp and to add a 16' x 18' second story addition on the northwest side of the structure). Section 171.15, Block 2, Lot 51, Zone GB5000. Property location: 5023 Lakeshore Drive. Subject to WCPB review.

Jeffrey Tennent gave an overview and said (1) he is here to clarify and make a couple of changes to the variance that was granted a couple of years ago, (2) the proposed building

is within the same footprint as before, (3) he made a couple of stylistic dormer changes, and (4) he is also proposing to add a second story on an existing porch which will stay below the ridge line and won't be seen from the front of the building.

G. Smith asked if it is primarily the roof line on the back side of the building and Jeffrey Tennent answered by saying (1) yes, but everything is in the same footprint, (2) the original plans approved were for an area to be used as a dentist's office, but that person will not be using that space now, so he is proposing to take that same space and make it into two apartments, (3) the required parking for the proposed change would be the same as the parking originally approved, (4) he and his neighbors already went to the PB to get approval for lot line adjustments to match the use for the driveway to the back, so he actually has a net gain of property and more than he did when the original variance was approved, so he is more compliant now than he was and (5) he agreed at the PB level to put in additional stormwater measures, which will be done shortly in the back where the water is now that is being supplied by an old hand-dug well.

From the public, Agnes Nolan, neighbor to the north, 5025 Lake Shore Drive, said the applicant's new proposal goes right by her property and she does not object.

M. McComb asked about signage and several ZBA Members said that is a PB issue.

M. McComb (1) said she realizes the coverage density is made better by the addition of the new property and (2) asked how going from two to four apartments and from two offices to three offices isn't a substantial where there was only one restaurant. Jeffrey Tennent said (1) his restaurant is much smaller than the original restaurant, (2) he had put down "Professional Offices" on the original application—it wasn't broken down as to how many, (3) on the plans that were approved, it showed three offices from the beginning, even though the paperwork from the Zoning Office listed two offices, (4) the uses are all the same—he is just taking the space allotted for a dentist's office and making it into two apartments. M. McComb said the number of businesses increases the intensity of use and K. Hoopes said that only parking is effected by that. Counsel referenced the Schedule of Use Regulations for GB5000 (page 201-203 of the Zoning Code) regarding density and said that according to the code, (1) general business zones allow seven units per one acre and (2) apartments have to be 7,500 square feet per principal unit, which he doesn't think they are, so the ZBA needs to decide where that takes them.

Counsel asked what the maximum square footage of all the applicant's land holdings are here and Jeffrey Tennent said about 12,000 square feet. Counsel said for every 7,500 square feet of available real estate—dirt—in the first two apartments. K. Hoopes said it is a GB5000 zone, so it is 5,000 square feet and Counsel said (1) the 5,000 square feet is for lot size, (2) added that the applicant is okay for lot size, but the question is how the applicant is going to use his 12,000 square feet and (3) if someone wants to have apartments in a GB5000, 7,500 square feet of area on the lot for each unit is needed. M. McComb said she thinks the original variance granted was very generous in terms of use for the land the applicant has and she is concerned with increasing the use further. Counsel added that (1) the applicant used up his 12,000 square foot budget and more by

the granting of the original variance totaling 35,000 square feet (one restaurant = 5,000 square feet plus two apartments = 15,000 square feet plus two offices = 10,000 square feet plus a retail store = 5,000 square feet) equating to a deviation that is three times what the Zoning Ordinance requires, (2) the applicant is asking for even more relief—55,000 square feet and (3) the square footages determine the applicant's density.

Jeffrey Tennent said the original variance that was in front of the ZBA and granted by the ZBA lists three offices on the plans and there was a discrepancy in the Zoning Administrator's letter. M. McComb said that the Zoning Administrator determines what is granted based upon the discussions by the ZBA. K. Hoopes said (1) the ZBA can only deal with what it has in front of it, (2) the ZBA has not been alerted by the Zoning Administrator that there is a density problem and (3) he thinks the ZBA should table the item until the Zoning Administrator returns. M. McComb (1) said that would delay the project and (2) asked if the applicant is admitting that he is asking for two more apartments now. Jeffrey Tennent answered by saying (1) yes, basically it comes down to two more apartments and (2) he looks at it as he has a dentist's office taking up the space which can accommodate several dentists and he is taking the exact same space, building, roof and watershed and making it into two apartments. Tom McGurl said (1) the applicant got a great variance approved before and (2) he sees this as the same building with a slightly different use. Further discussion ensued on the topics of density and parking.

Counsel (1) read all of the information regarding application (V03-11) Tennent, Jeffrey from the approved ZBA minutes of April 14, 2003 into the record. G. Smith said the minutes from that meeting show that while the April 14, 2003 Resolution stated two offices, the surrounding discussion of that item referenced three offices very clearly. Jeffrey Tennent said that was the mistake he was talking about.

M. McComb said although she approved the original plan, but this new proposal is an increase and at some point enough is enough. Jeffrey Tennent said (1) this is what he does for a business, (2) this project will be a great asset for the community and (3) he feels he is making a better improvement and he will do it well. G. Smith said (1) the applicant will do a great job, (2) he agrees with the applicant 100% and (3) just north of this piece of property, John MacDonald had a great number of apartments in this area, so it is not new and (4) apartments are needed. Jeffrey Tennent said (1) he is not creating something that is adverse to what is already in the neighborhood, (2) he is in fact solving some issues and problems and (3) he is increasing the tax base. Counsel said the applicant is correct in that one set of plans he and Mitzi Nittmann think are the applicant's final version of plans from the granted variance had at least three offices in the building, so in 2003 verbally the ZBA approved two, but also approved a plan that has three. G. Smith said tonight's variance is to approve three offices.

M. McComb said (1) she thinks that with this much of a variance the ZBA needs to know the plans for the signage, lighting, what it is going to look like and where people would go in and out and (2) she is concerned with overcrowding. Jeffrey Tennent said (1) signing and lighting was already presented and gave details, (2) the signing, lighting and

building will be done in good taste and will look appropriate for what the Town is going toward. G. Smith said that the parking included in this application is a huge plus and is another reason he is in favor of the project.

No Correspondence.

No County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Jeffrey Tennent (V05-53) 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 #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;
- 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 will be a much better looking building;
- 3) The requested variance is not substantial;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district, stormwater measures are already factored into it;
- 5) The alleged difficulty is not self-created, this is a business driven request.

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

Now, upon **motion duly made** by K. Hoopes and seconded by T. DePace, it is resolved that the ZBA does hereby grant approval of said project as presented. **5 in favor. 1 (M. McComb) opposed. Motion carried.**

6) V05-54 BYERS, STEPHEN. Represented by Eugene Baker. To allow a retaining wall to remain, seeks area variance for deficient setbacks: 1) shoreline: 75' is required, a) 0' is proposed from the mean high water mark of Lake George; and b) 30' is proposed from the Trout Pond as described on the site plan; and 2) side: 15' is required, 0' is proposed. Section 171.08, Block 1, Lot 17, Zone RCM1.3. Property location: 12 Braley Point. Subject to WCPB & APA review.

Note: T. DePace recused himself from the ZBA for this item.

Eugene Baker, representing Stephen Byers gave an overview and said (1) they have been before the ZBA for the retaining wall, (2) since then the applicant removed a few sections of rock, (3) if they remove any more rock it will add more problems and (4) the mound and the trees have diverted the water away from the cabin on the neighboring property.

G. Smith said (1) he has kept a close eye on this wall throughout the June storms and the summer, (2) he saw no problems whatsoever when he went to the area after several storms, (3) the Marki's property looked very dry to him, (4) he went to the property during rainstorms and saw no water flowing over or undermining the wall onto the Marki property, (5) taking out 2' and sloping the land back up toward the Byers' house will make it worse off for the Markets than it is now with the wall and (6) he advised the Stephen Byers to come back for a variance on the retaining wall, instead of taking it out, because he feels like the retaining wall is working and the Marki's property is drier than it has been.

M. McComb said it was in the minutes that there was a request for an agreement that a third survey be done as to where the wall is in relation to the property line and Eugene Baker said he didn't think the applicant ever had an agreement. Counsel said (1) it is correct that Mark Schachner, Mr. Byers attorney at the time, said there would be a survey provided to show there was no encroachment and (2) he has asked for that survey many times and has been put off. G. Smith said there are two surveys so far and M. McComb said yes, but they differ. Counsel said (1) there was a smaller survey that was provided by the Markis that show encroachments, (2) the applicant in the earliest stages of this controversy, provided Dennis Dickinson's survey of what was a pre-existing area of some rocks, (3) when that distinction was pointed out that Dickinson's survey was old and not based on current configurations of where the rocks are now piled, Mr. Byers' counsel said they would get a survey of what was actually there, which is a promise of some two years ago.

M. McComb said (1) she thinks the stone wall looks great, but she is really troubled with the fact that there is 1.6' between the wall and the Marki's residence, (2) the wall seems like a hazard down by the water and (3) the fact an independent third survey has not been received is a concern. Stephen Byers said (1) Dennis Dickinson's survey is a valid stamped survey, (2) they tried to have the Marki's engineer work with Dennis Dickinson so that any differences could be worked out and they have consistently refused to do that, (3) the Markis have been doing quite a bit of work on the side of their cottage and no one has had a problem getting in there. M. McComb said (1) it is very mountain goaty to get down that side of the wall from the Byers property, (2) it doesn't seem an ideal situation, (3) she braced herself along the Marki's roof going hand and hand along the wall and (4) the applicant's survey shows 18" there.

K. Hoopes said that (1) everyone knows how they got here with this situation, (2) there was a certain level of alleged miscommunication and misinterpretation and a wall was built, (3) the question is if the ZBA issues a variance to keep the wall because it is an improvement of some kind to both parties or ask to have the wall taken down because it is a negative for all five of the reasons the ZBA balances, (4) he has been told the retaining wall is doing something of a stormwater retention all by itself, (5) he hasn't seen in his several trips down there of the horror stories of walls caving in and (6) at this point he thinks there will be more damage done in asking for the wall to be removed than by granting a variance for the wall to remain. M. McComb said she would agree with K. Hoopes on much of the wall, but the front chunk that comes so close to the Marki property is her concern because the gap between the wall and the barrier it provides right up against the Marki house.

From the public, Tony DePace, resident in the area in question for 24 years, said (1) he was there as a care-taker for the first owners who built the house now owned by the Byers, (2) there was always a wall behind the cabin from the west side of the cabin to the lake along with a fence that was tied up against the cabin and (3) the Marki property used to be saturated, but now it is dry and he presented pictures to the ZBA showing the Marki property taken the same day of the June storm showing the property as being dry.

M. McComb said there seem to be gaps under the rocks visible from the Marki's side. Tony DePace said (1) everybody on the ZBA knows there are litigation problems between the Marki, Byers, English, Steiner, Keeler and himself, (2) the rocks on the ground in the pictures are rocks that were pulled down—he's not pointing fingers, but there is no way rocks fell out on there own, especially with all the rain they have had down there, (3) there is no problem with the retaining wall—no damage has been done to the Marki property by that wall, in fact that property is in better shape than it has ever been in, (4) the Town has allowed walls like this Town-wide and continues to do so with retaining walls, walls for walkways, etc., (5) the Byers' house has had ground water problems for 30 years and put in a sub-pump that diverts the water that used to go into the pond, is going to the front side of the house, (6) there are sprinklers on the Byers property that come on twice a day and there are still no puddles of water down by the Marki's cabin like there have been for years and (7) if the wall is taken down there

will be major problems and it will be worse than its ever been. G. Smith agreed with Tony DePace's final comment.

Tony DePace said there is a picture from the LGA that shows the starting of the wall behind the cabin and there used to be a propane tank sitting right there.

From the public, Patricia Marki, adjacent neighbor, said she doesn't think the pending litigation issues should have any bearing on this issue and doesn't know why Mr. DePace felt the need to bring them up. G. Smith said that they don't have any bearing on this.

Patricia Markey presented pictures to the ZBA and said (1) there was never a rock wall between the properties, (2) there were rocks along the lakefront and the ground gently sloped out away from the lake, (3) the property never had wetness behind the house like it does now—they have Mr. Byers' water problem, (4) water is coming underneath the cabin and pooling in front, which the neighbors wouldn't know unless they were trespassing, (5) the front part of the retaining wall where the wall meets Lake George, the Byers put boulders into the lake and back-filled, so essentially the Byers stole a part of Lake George from the people of New York State, determined by the Army Corps of Engineers, who has jurisdiction over Lake George (she presented the ZBA with a copy of the investigation report), (6) the rocks that are on the ground fell there on their own accord, as they are too large for her to move, (7) their contractor has had increasing difficulty getting back there to replace the footers which were damaged by the blasting the Byers did and still remain unpaid for, (8) there are a number of hardships that have been caused by this wall and the water that is now coming down from the wall, (9) there are issues with the trees, especially since they no longer have a view of the lake from their cabin, (10) it is not better than it was, despite what Mr. DePace says, especially since Mr. DePace has not been on their property for a number years and Mr. Byers has never been on the property, (11) with all due respect, Greg Smith had not been on the property prior to the wall going in, so he doesn't know what it was like before and (12) it was not wet like that before—there is water sitting there and run off.

M. McComb asked what Mrs. Marki's solution would be and Patricia Marki answered by saying (1) if the wall had been built 15' behind the property line like it was supposed to have been built, they wouldn't be here today and she wouldn't have an issue with it, (2) she would like to have the applicant have to move the wall back 15' like it should have been, (3) ZBA Members have said before that if the applicant brought the variance to the ZBA originally and didn't just do the work, that the ZBA would probably have not granted a variance to come up and over the property line and (4) the applicant hired a surveyor named Bolster, as shown in the ZBA's minutes, who did find that the wall was over the property line.

K. Hoopes said the Army of Engineers letter is just a handwritten complaint without a case number or an officer's signature. Patricia Marki said it is an ongoing investigation and the ZBA should call them if they don't believe them. K. Hoopes said the Army Corps of Engineers has not weighed in on this complaint or made a determination. M.

McComb said (1) the complaint says the date and time of incident is ongoing, (2) this just says the Army Corps of Engineers received a complaint by Patricia Marki and (3) she doesn't think 15' from the property line is going to happen for the full length of the wall.

K. Hoopes said (1) he disagrees that the litigation going down between all the neighbors down there is not material to this case and (2) there is a rage war going on which is constant on every level. Patricia Marki said (1) it is black and white, yes the applicant violated the ordinance according to Town Code and (2) the applicant should have applied for a variance prior to building the wall. K. Hoopes said (1) he doesn't see a solution on the horizon almost regardless what the ZBA does and (2) it seems there is no good deed left unpunished in the case of Patricia Marki's relationship with everybody down there.

M. McComb said (1) she agrees that there is a lot of stuff going on down there, (2) people with waterfront property seem to care a lot about the part near the lake and the part near their house, (3) she feels having all of the fill dug up and hauled away would be an enormous problem and (4) the very front part of the wall seems maybe a place for remediation where the little slit trench is that the Markis have to deal with now in perpetuity next to the front of their cabin.

G. Smith said that none of the waterfront looked like it did when the picture submitted by Patricia Marki was taken 60 years ago or whenever it was taken. Patricia Marki said the picture referenced was taken in 1998—not 60 years ago. G. Smith said it looks a lot older than that. K. Hoopes said the survey from Dennis Dickinson was done in 1998 and M. McComb said the Dickinson survey doesn't show the wall and was amended at a later date to do just that.

Stephen Byers said (1) when he was in front of the ZBA a couple of years ago there was some confusion, (2) Zoning Administrator Pam Kenyon acknowledged that Ruben Ellsworth and Eugene Baker had come to the Town with the plans to build a rock wall right along the property line there and back-fill it with dirt, (3) Pam Kenyon spoke with Ruben Ellsworth a number of times over the approximate 6 months the wall was in construction and she knew it was right along the property line, (4) at some point, about 6 months or so after the work began, asked Ruben Ellsworth to stop working because the neighbors complained about the wall, (5) he came to the Town at that point of time, (6) Ruben Ellsworth does a lot of work in this Town and doesn't do work without approaching the Town that he is aware of, (7) Ruben Ellsworth certainly did talk to Pam Kenyon, which is reflected in the minutes, so this is not something that was started without first coming to the Town, (8) the work was done to eliminate a water problem that was there—the property was always wet, but is not now, (9) it has rained a lot in the last couple of weeks, his sprinklers are turned off and his grass is wet too, (10) the grass is very green and the shrubs are doing very well right around that cottage which is on ledge rock, (11) the ZBA has it in its records that the Markis complained they blasted every day for six months and also an affidavit from Steve Britton who did the

blasting there which shows there were two small charges on one day, and (12) there wasn't a lot of blasting that was there—the property is dry.

M. McComb said (1) her recollection is that Pam Kenyon was sevérus about the fact that the applicant came and asked to put some landscaping down there and she was adamant that was what she had agreed to and what resulted was a very different project and (2) she doesn't think the applicant should be able to open up his view and close off the Marki's view that desperately down by the water.

Eugene Baker said as long as the applicant breaks up the wall every 50', according to the Zoning Code it wouldn't be considered a structure. M. McComb said this item was litigated and the judge ruled that removing a couple of rocks at the base of the wall does not change the wall. G. Smith said taking out a couple of rocks wouldn't change it, but Eugene Baker is right in that if they literally break up the wall and take 2' out of the wall, they could do that. K. Hoopes said (1) there was a plan that is not before the ZBA tonight to verify this wall by taking out the larger sections, scooping out the area behind it and essentially turning that wall into several sections and (2) with the Town's rain events, that plan wouldn't be a good solution. Eugene Baker said (1) that plan wouldn't be the right plan and (2) there is no water being diverted onto the Marki property.

M. McComb said (1) there is one side to the Marki's house is in a narrow little pit that you can hardly get in there, (2) one of the submitted pictures shows a person standing with his back against the wall and his face in the trees and (3) she asked Patricia Marki if she would be happier if the part of the wall down by the cabin was reconfigured and she wasn't struggling to get in behind her house. Patricia Marki said (1) she would like to see the wall reconfigured for the whole length of the cottage, (2) even where it jogs in a little bit, there is not enough room there and (3) rocks are slowly moving. K. Hoopes said (1) he doubts rocks are moving and (2) there have been engineers who have stated that the rocks are absolutely not budging. Patricia Marki said K. Hoopes doesn't have any recent reports stating that and M. McComb said she hasn't seen any reports to that effect.

Patricia Marki said M. McComb was correct in her reference of Judge Nolan's ruling in that he said calling it four groups of retention rocks were gibberish and read his ruling into the record. K. Hoopes said whether it is gibberish or not, it is the Town Zoning Code and G. Smith said that is what they can't do. M. McComb said (1) the Markis are talking about the applicant creating a wider gap with a deeper channel into his property and that won't help anybody, (2) she thinks if the wall was moved back along the length of the cabin for some reasonable distance and given how close the Marki's property was to the property line to start with, which was itself a huge variance, maybe something like 5' is more reasonable than 10' and (3) something along that front edge of that seems the minimal reasonable fix on this wall.

From the public, Tony DePace asked for clarification of the area M. McComb is speaking about being reconfigured and M. McComb said along the cottage, down by the water and pointed out the area on a picture. Tony DePace said (1) he is confused and asked if M. McComb is looking to have the wall moved back farther onto the Byers' property to

enable the Markis to use the Byers' property to work on their cottage, (2) he thinks that if there are two maps that are both stamped, then the ZBA needs to tell both parties that this is a matter to be handled in civil court and (3) a survey is being called wrong and he can't call it wrong and doesn't think M. McComb can call it wrong either. M. McComb said (1) she is not calling the survey wrong, (2) it is ancient history as to whether the rocks protrude a number of inches over the property line and (3) she is just trying to find something that doesn't leave the Markis living in a hole that wasn't there before. Tony DePace said that he doesn't think M. McComb's reason to have the applicant move the rock, so the Markeys can work on cleaning their windows and giving them property that doesn't belong to them so they can do that is right. M. McComb said the applicant can't maintain his wall and the Markis can't maintain there house. Tony DePace said that the applicant can maintain that wall better now than before.

Counsel said the Warren County Planning Board recommends denial based on the fact that the wall does not appear to be compatible, the wall will have negative impact on Lake George with stormwater, erosion, adjacent neighbors due to stormwater and erosion, as well as zebra mussel habitat. Counsel said there is a possibility there is some confusion from the WCPB regarding the effects to zebra mussel habitat. M. McComb said even with the zebra mussel issue, the WCPB recommended denial and Counsel said that is correct.

Correspondence: Counsel read the following correspondence into the record.

- Letter from the Lake George Association (LGA)—opposed.
- Letter from Pentkowski, Pastore & Freestone on behalf of the Bernard and Patricia Marki—opposed.

Stephen Byers said (1) on February 15, 1988 he made an offer on the house he now owns and was not aware at that time that the basement would be flooded in the spring and summer and (2) the wall was not built without coming to the Town first—they were told by the Town that what they were building didn't need a variance, then the Board decided it did, (3) when they were first asked to break up the wall by the judge, they did so by breaking up 6-8" in the wall, but the judge said that wasn't good enough, so they the came back to the Town to make an official peak line if that's what it takes and (4) the grass is green and the shrubs are growing beautifully on the Marki's property, which wouldn't happen if it was full of water.

K. Hoopes said that (1) this matter has already been before a judge, but it has never gone before the Town Board for remedial action, (2) his personal suggestion is to keep the wall, which in his opinion, is the best of the routes available to the ZBA for both neighbors, (3) he's been down there and the ZBA can't force the Markis to enjoy that dryness, (4) he feels that if the ZBA suggests that the applicant put in the swale situation in there, and if there is a water problem after, that it will need to be addressed then, (5) if there was going to be a remedy before the ZBA to take out 2' sections of the wall, scoop

out the ground around it, landscape it and seed it so the wall then by the ZBA's own definitions would no longer be a retaining wall, (6) he doesn't see that passing a variance here is going to do anything but cause the ZBA trouble, so he thinks maybe the ZBA should make the suggestion that the applicant does what he can to make that wall not a retaining wall. G. Smith said the ZBA can't do that and Counsel said (1) this may be a great remedy if the ZBA had willing participants, but it doesn't, (2) the applicant is clearly entitled to a decision on his application, (3) the decision should be decided on the five points of criteria the ZBA has in if the applicant has succeeded or failed on those points, (4) he wants to make it clear that Tony DePace stepped down from the ZBA, recused himself from consideration and obviously spoke on behalf of the applicant, so he is here present, but not a voter and has every right to speak as a citizen and (5) one ZBA Member is absent this evening and this application has a WCPB denial so it is a super majority where four votes would be required to carry a favorable decision.

M. McComb said (1) she thinks the original suggestion to break up the wall to make it non-jurisdictional came from the ZBA and the applicant in all good faith decided to try that, (2) that was litigated and the judge did not buy that, so whether this new broader section would survive litigation just doesn't seem like a good plan to encourage the applicant and (3) the ZBA doesn't ask the neighbors to design things, but if the Markis feel this would be remedied by moving the wall back in the section in front of their cottage and the applicant would be agreeable to that, she would go with that.

Stephen Byers said (1) they were originally asked to come back to the ZBA with a plan to break up the wall and to create it to be more clearly not a structure, which is what they did and Eugene Baker brought it to Pam Kenyon and (2) if they go back and attempt to draw that so it doesn't create a water problem he would go back and re-draw that plan and bring it back to the ZBA at the next meeting.

M. McComb asked if the applicant is married to the wall being 1.6' from the Marki property and Stephen Byers answered by saying yes, that is where the wall was when Ruben Ellsworth went to Pam Kenyon, brought her down to the property and showed her what and where they were building. M. McComb said Pam Kenyon said she agreed to landscaping, not a project of this impact down there. Stephen Byers said (1) he would like to come back before the ZBA with another plan to break up those sections so they are clearly independent sections right down to the dirt and that they have a water solution problem in those areas that it would seem to create and (2) he would attempt to keep that rock wall right on the property line or just off on his side of the property line where it has been and was explained to Pam Kenyon.

M. McComb said (1) the applicant can come back with a plan and Pam Kenyon can say it is not jurisdictional anymore and the Markeys can sue Pam Kenyon over that and (2) if it goes to the same judge who saw this before then there may be big litigation. K. Hoopes said that (1) he disagrees, because if the ZBA goes strictly by its definition in its Zoning Regulations, then the ZBA is covered, (2) the ZBA cannot make peace between the neighbors and (3) he suggests the ZBA deny the application. G. Smith said the applicant

can also ask the ZBA to leave this Agenda Item open until next month and Stephen Byers said that is what he'd like to do.

From the public, Dotty Coon, mother of Patricia Marki, said (1) she doesn't live up here on a daily basis, but she does stay up here during the week, (2) the Markis don't like what has happened, (3) Mr. Byers, in the beginning, could have avoided all of this had he not put this particular rock boulder wall on and over the property line, (3) if Mr. Byers would have done what a good neighbor would do and move the wall back 10'-15' there wouldn't have been a problem and nobody would be here, (4) she thinks Mr. Byers could have achieved the same thing with his water problem had he moved the wall back 10', (5) she truly thinks the reason Mr. Byers didn't move the wall back is because it was going to interfere with the addition that he wanted to put on his house, (6) she has gone over a lot of the meeting minutes and found that most of the ZBA members were very much in favor of the Markeys with their comments and each ZBA member had a derogatory comment regarding the wall, (7) after that, things started to escalate and there was always a comment from a ZBA member regarding the war going on down there, which has nothing to do with the wall issue, (8) there is no war—it is a matter of people being kind to one another and using a little bit of good common sense, (9) the Marki's attorney has come in and tried to talk about moving the wall and talked about the violations associated with the wall, (10) she feels the wall should be moved, because there is going to be a lot of dry rot to the Marki cottage and its underpinnings, because no sun gets through to it on that side, (11) the dampness is there and they have witnessed pooling of water where the braces are for the cottage, which has now been filled with rock to absorb the water and (12) water marks are on the wall on the rocks by the lake, which shows the water is getting through.

Counsel said (1) the applicant has the right to control his application, (2) Mr. Byers application here tonight is really the culmination at least for the Town of Bolton as it could be the end of at least one major aspect of all the litigation where the Town has been involved, (3) if the ZBA were to favorably find the application was acceptable, the ZBA and Town of Bolton are done, and while it may be unpleasing for the Markis, they could sue the Town of Bolton, (4) if it is an unacceptable application for a variance, Mr. Byers is done as well, but the ZBA has not precluded Mr. Byers from coming up with his alternative plan where he proposed to give the ZBA a non-jurisdictional wall, (5) his fear for the Town of Bolton is in how much you want to test Judge Nolan and it gets silly with all the litigation and (6) if the applicant comes back next month, it has to be meaningful and on the merits and addressed to the application, because the ZBA's task next month will not be to give the applicant a blessing on what constitutes a non-jurisdictional wall.

Stephen Byers said he wants to come back with alternative plans and Counsel said that the applicant does control his application and wishes to bring further information to the ZBA. K. Hoopes said (1) the applicant does control his application, (2) this evening, the ZBA is a diminished Board and (3) there is a negative WCPB impact that he would like verification on.

Counsel said (1) B. Pfau would be able to vote on this item when it returns, provided he read all the meeting minutes and thoroughly examined the situation and (2) it is proper to accept Mr. Byers' request. M. McComb said that (1) Mr. Byers lost the court case and is in violation currently with zoning and (2) asked for clarification of procedure. Counsel said (1) Mr. Byers technical violation is technically stayed by the operation of Town Law, as there is a provision in Town Law that says if the applicant seeks the relief, unless it is some very special case that has to do with some hazard to public well-being or danger perceived, its stayed, because the applicant has the right to grieve and petition the ZBA for relief.

Motion by M. McComb to table the application until the November 14, 2005 meeting so that the applicant may provide revised drawings, as discussed. Seconded by T. McGurl. **All (5) in favor. Motion carried.**

7) V05-59 DePACE, ANTHONY & GAIL. To alter pre-existing non-conforming guest cottage/garage and convert the guest cottage into a single-family dwelling, seek area variance for 1) a deficient front yard setback: 50' is required from the edge of the right-of-way from Braley Point Road, 5' is proposed; 2) a deficient shoreline setback: 75' is required from the stream, 13' is proposed; 3) deficient density: 2.6 acres required, 2.43 acres exist and is proposed; and 4) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 171.08, Block 1, Lot 11.2, Zone RCM1.3. Property location: 30 Braley Point Road. Subject to WCPB & APA review.

Note: T. DePace recused himself from the ZBA for this item to supply his own application.

Tony DePace gave an overview and said (1) he has an existing barn/guest cottage on his property that has a big room upstairs with three bedrooms, a living room, a bathroom with a shower, to which he would like to add a kitchen, (2) his daughter just graduated from college, is looking to stay in the area and he would like to make the existing structure a residence for her, (3) the building would stay in the same footprint, but he is looking to put a 20' or 18' section on the south side for a carport underneath and (4) there would be an additional entrance added for fire hazards.

M. McComb said this seems like a great application for a subdivision. Tony DePace said (1) he is just shy of the amount of land needed for a subdivision and (2) he is not looking to make two different parcels—he doesn't want to break it up. M. McComb said that (1) if the ZBA allows two single-family dwellings on one lot, which the ZBA hasn't done before, everyone will want to make their cottages into a single-family dwelling and (2) he is so close to having enough land that coming in for an area variance would probably be favorable. Tony DePace said he thought the opposite—that the ZBA wouldn't want him to break up the property again. Several ZBA Members agreed that it doesn't make sense to break it up and it would be better to keep it as one lot. G. Smith said this property is landlocked as well with no lakefront property, so it doesn't make sense to break it up.

M. McComb said (1) there is a natural division of the lot by the road that runs through it and (2) she doesn't know how to get around the fact that everybody has a cottage can turn it into a single-family dwelling. K. Hoopes said (1) that is not the case and (2) M. McComb keeps going to extremes saying that if one person wants something everybody will want it. M. McComb said that while all situations are different, it is a pretty common situation along Lake George that people have a house and a cottage.

Tony DePace said (1) it is very expensive to live here—especially for kids just coming out of college, (2) he is doing this because he wants to keep this property together under one tax number, put his children into the single-family dwelling, (3) there will be no more traffic there, because his daughter has lived in the main house previously and (4) he won't be renting this out to anyone. M. McComb said (1) the variances run with the property not with the person, so the applicant's specific situation is his specific situation and (2) it seems like the applicant can have a compliant lot and a darn near compliant lot and have two single-family dwellings.

Tony DePace said that he could very easily get a surveyor to cut the property up, come to the ZBA for a very small variance and subdivide the property, which would potentially give him the opportunity to build another building on the newly generated lot, but that's not what he wants to do. Several ZBA Members agreed that they don't think anything is gained by dicing things up tinier and tinier and M. McComb said she also agreed with that.

M. McComb asked how the other ZBA Members get around the resistance there has been in just turning cottages into single-family dwellings. K. Hoopes said (1) he doesn't know what resistance M. McComb is talking about and (2) he knows the Zoning Regulations have a certain built-in resistance to it. G. Smith said it is already all pre-existing and K. Hoopes said the kitchen would entail a stove only.

M. McComb asked about the implications of changing the designation of a cottage to a single-family dwelling and Counsel said (1) the ZBA should move ahead, because it really has to be case specific in terms that there are different aspects in different zones and (2) if M. McComb thinks the conversion of a guest cottage to a dwelling is merely the addition of a kitchen, meaning a stove, that starts it.

M. McComb (1) asked if that dwelling would then be able to construct its own guest cottage and (2) said if this would open it up to even more building. Counsel said (1) the two most recent decisions from the APA regarding density issues and in two earlier instances where the Town has offered an approval for the applicant for a deficient density, the APA has come back and over-ruled the Town's decision and (2) the ZBA has the correct jurisdiction and right to exercise its discretion, but should be very prepared for the possibility that the APA for its reasons has the right to jurisdictionally review and over-rule the ZBA's decision. K. Hoopes said (1) the ZBA grants variances of this sort for this very reason, then all the sudden things are for sale and (2) he still feels there is a need to provide reasonable relief.

From the public, Bernard Marki, neighbor to the west, said (1) the previous owners had the structure as a barn only with a workshop—no bathroom or bedrooms and (2) he is not sure if permits were needed or issued for bathrooms and (3) he is concerned with the density issue and how it will effect the stream and Lake George.

G. Smith said it is all pre-existing and M. McComb said people can have a guest house and whether it was a barn previously is not pertinent.

Bernard Marki asked if it is then acceptable to have a primary residence and build a second primary residence on the same lot. G. Smith said that could only happen if the property is subdivided, which is not what the ZBA wants to happen. Counsel said (1) it is narrowly possible that the applicant could have his primary dwelling, convert the guest cottage into a secondary dwelling and add a new guest cottage, by the applicant going through the code, but there would be no allowance for a kitchen in a new guest cottage and (2) the applicant said that is not the plan and may be willing to accept a condition that future owners would require review. K. Hoopes said the present place is non-compliant, so anything else to be done to the property has to come back to the ZBA for review.

Counsel said (1) in the ZBA's principle building definition, a principle building is defined as any structure which exceeds 1,250 square feet of floor space, (2) a dwelling is different from a principle building and (3) the site in question is in a RCM1.3 Zone and in this zone a guest cottage is listed as a permitted accessory use, which assumes that there is a principle use. Further discussion ensued on this topic.

Correspondence: Counsel read the following correspondence into the record.

- Letter from the Lake George Association (LGA)—opposed.

No County impact with the stipulation that appropriate stormwater and erosion is implemented.

RESOLUTION

The Zoning Board of Appeals received an application from Anthony and Gail DePace (V05-59) for an area variance as described above.

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

and, whereas the Warren County Planning Board determined that there was no County impact with the stipulation that appropriate stormwater and erosion is implemented;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant could be achieved by other means feasible for the applicant to pursue other than an area variance, but that would mean a subdivision which would itself require a variance and would lay both parcels up to more building—this application seems minimal;
- 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;
- 3) The requested variance is not substantial, it is only for 1/3 of the existing structure;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district, because the applicant has agreed to apply minor stormwater review to the additional construction on the project and the applicant agrees that any additional building of a guest cottage on this lot will require a variance;
- 5) The alleged difficulty is self-created, but in this case the benefit to the applicant outweighs any potential negative aspects.

The benefit to the applicant outweighs any 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 grant approval of said project as presented with the following conditions: 1) the applicant conforms to the requirements of a minor stormwater project; and 2) any additional building of a guest cottage on this lot will require a variance. **All (5) in favor. Motion carried.**

8) V05-55 MacEWAN, ROBERT & DEBORAH. Represented by Mark Rehm, Esq. To demolish existing structure and construct a proposed 4-unit townhouse complex, seek area variance for 1) deficient front yard setbacks: 30' is required, a) 13' 6" is proposed from Goodman Avenue; b) 20' is proposed from Cross Street; 2) a deficient rear yard setback: 15' is required, 10' is proposed; 3) a deficient side yard setback, 20' total is required; 1½' is proposed; and 4) deficient density: 80,000 sq ft of land is required, 8,903.2 sq ft exist and is proposed. Section 171.15, Block 1, Lot 74, Zone GB5000. Property location: 22 Goodman Avenue, formerly known as Wilson's Laundry. Subject to WCPB review.

Atty. Mark Rehm, representing Robert and Deborah MacEwan, handed out pictures and stormwater calculations to the ZBA Members and said (1) there is an inaccuracy in number 3 on the description of V05-55 on the agenda in that the 1 ½' is incorrect, because while the side yard set back required is 20', he thinks there is a misprint on the plan, because on one end it is 13' 10 3/6" and on the other side it is 17' 10 3/16" which does not reflect what is on the application, (2) the applicant seeks to convert an existing commercial laundering facility with two apartments into four residential townhouses, encouraging people to move into and have access to the hamlet, (3) WCPB approved the project with a requirement that the applicant comply with stormwater management regulations, (4) for stormwater, 972.20 would be required and the proposed measures will provide for 1,555.8, so it can handle more than would be required by the code and (4) he read a letter dated 09/17/05 from neighbor Dawn Posteraro in favor of the project.

M. Murray asked what the project timeframe is and Robert MacEwan answered by saying that if approval is granted, he would like to start the project in Spring 2006. M. McComb said she thinks this should go to the PB due to the impact of 12 bedrooms and 4 patios so close to the neighbor. Counsel said that the whole project goes to the PB later this week because it is a Type 2 Use permitted by a special use permit and it is in the zone and defined as a multiple family dwelling.

M. McComb (1) asked if it is reasonable for the ZBA to wait to hear what the PB has to say before and (2) said that she knows that in the past the ZBA has granted variances that the PB has felt tied their hands before they looked at something and referenced Rolf Ronning's bridge as an example. K. Hoopes said (1) he thinks the PB is misinterpreting what the ZBA is doing and (2) in that specific bridge example, all the ZBA did was agree and say that in theory a bridge could be built across Indian Brook, but did not say whether it was a good or bad idea. Counsel said (1) he thinks M. McComb's position is that the ZBA table this item so as to not bind the PB to anything, so they are free to develop this site as the applicant proposes, then the applicant will be back based on new configurations, (2) he is not suggesting the PB will come back with new configurations and (3) if the ZBA starts granting the variances, then in a sense, the ZBA has made a commitment that bind the PB in those parameters.

T. DePace asked if the townhouses would be rentals and Atty. Mark Rehm answered by saying no, they will be sold to individual owners. T. DePace said he thinks this would be better for the neighborhood. G. Smith agreed and said this is a year-round thing that is better than rentals.

M. McComb said (1) it is a big project and (2) the PB has a better sense of stormwater and if they are hearing it Thursday, she would like to see what the PB's decision is. Atty. Mark Rehm respectfully asked the ZBA grant the variance so when the applicant goes before the PB they can give the variance status. M. McComb said (1) the ZBA doesn't normally grant a variance the first time it looks at a project, particularly when it is a large variance being requested like this one, (2) she is hoping the PB will come back saying this is a good idea and well-thought out project that the PB feels will fit into the Town

and (3) the PB will be hearing it Thursday and not granting the variance tonight won't hold up the project. K. Hoopes said (1) granting a variance doesn't affect the PB, because they do their planning stuff and the ZBA takes care of zoning, (2) he is uncomfortable asking the PB to make zoning decisions, just as he is uncomfortable with the ZBA making planning decisions. There was further discussion and examples of how the decision to grant or table the variance will bind the PB and the ZBA in the future.

K. Hoopes said the plan is exactly on the footprint that is there. Counsel said that if the applicant has four separate deeded ownerships then between the four separate units there will be 0' setback, so the applicant would need setback relief, but that is not on this evening's agenda. K. Hoopes said if that is the case, then this is an incomplete application, because if the ZBA requires everything from the Zoning Administrator to be on there and it is not. Several ZBA Members agreed they would like to add that item onto this application and Counsel said that the ZBA could do that. M. McComb said (1) this is the first time the ZBA is seeing this and (2) she doesn't see the need to rush into a decision before getting the input of the PB. Atty. Mark Rehm said Counsel is correct in that they would be back for an amendment regarding the 0' setback.

G. Smith asked what the proposed colors are and Atty. Mark Rehm said they will be earth tones and done according to what is requested.

M. McComb asked how the upkeep and maintenance around the building works and Atty. Mark Rehm answered by saying that (1) would be dealt with in a restrictive covenant that will be included and needs to be discussed with the PB and (2) before these items are sold this will need to be answered or the unit won't be sold.

M. McComb (1) said she is concerned about the impact the project would have on the neighbors, specifically with the four patios abutting the adjacent property and (2) asked about the conversion and density. Counsel said (1) there is a public hearing on the special use permit where the neighbors wishes are heard and very relevant, but it is not appropriate at the variance level, (2) this is not a conversion, but knocking down an existing building and coming in with a brand new building, (3) the zone is GB5000 and Zoning Administrator Pam Kenyon has chosen to use 20,000 square feet per principle unit of area available on this lot (each townhouse needs 20,000 square feet), so to build this without seeking density relief, the applicant would need 80,000 square feet of property and (4) the applicant is asking for a lot of density relief.

Atty. Mark Rehm said (1) he encouraged the applicants to discuss the project with the neighbors and they did and (2) the neighbors have been favorable of this project, (3) they are building these to plan and to be sold, so if the purchasers want to make changes, the individual owner would need to come before the ZBA.

No correspondence.

No public in attendance.

No County impact with the comment the applicant follows the guidelines of the Town regarding stormwater management.

Several ZBA Members agreed that it is a good location based on the comprehensive plan, there will be more green area around the property and it is a great thing for the Town of Bolton. T. DePace asked what type of siding will be used and Atty. Mark Rehm said it will be vinyl siding.

RESOLUTION

The Zoning Board of Appeals received an application from Robert and Deborah MacEwan (V05-55) for an area variance as described above.

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

and, whereas the Warren County Planning Board determined that there was no County impact with the comment the applicant follow the guidelines of the Town regarding stormwater management;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant could not 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, the changes will be positive;
- 3) The requested variance is substantial on its own, but it is a reduction of what is currently there and an improvement in regards to the utility of that lot;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district, in fact it will have a reduction of these conditions with stormwater measures taken;
- 5) The alleged difficulty is not self-created, because Wilson's Laundry has pre-existed on that parcel for quite some time.

It should also be added that there will be three new variances folded into the requests made by the applicant, which will be for the 0' setbacks between the four units.

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

Now, upon **motion duly made** by K. Hoopes and seconded by M. Murray, it is resolved that the ZBA does hereby grant approval of said project as amended to include the fact that there is a 0' side setback between each unit. **5 in favor. 1 (M. McComb) opposed. Motion carried.**

9) V05-56 NEMER, ROBERT. Represented by Towne Law Offices, Northern Design and Ken Collette. To demolish and rebuild single-family dwelling, seeks area variance for 1) deficient front yard setbacks: 50' is required; a) 26' is proposed from Lower Brereton Road; and b) 45' is proposed from Middleworth Lane; 2) a deficient side yard setback: 15' is required, 10' is proposed; and 3) to alter a non-conforming structure in accordance with Section 200-56A. Section 213.13, Block 1, Lot 61, Zone RCM1.3. Property location: 36 Lower Brereton Road. Subject to WCPB review.

Atty. Stefanie DiLallo Bitter of Bartlett, Pontiff, Stewart & Rhodes, P.C., representing Robert Nemer, gave an overview and said (1) the applicant is proposing to demolish the existing single-family residence and to re-build the structure using the existing footprint, (2) approximately three years ago, the applicant made the same request for the area variances due to setbacks and the ZBA granted that variance, however the applicant was not ready to build on the property at that time, so the variance lapsed, (3) the setbacks they are requesting are a little bit less than was originally approved three years ago, (4) the proposed dwelling will be in-line with the neighborhood characteristics and (5) she does not believe there has been any verbal or formal written opposition of this project.

G. Smith asked if it is correct that this application is very similar to the original request and if the situation was that the applicant just wasn't ready to build yet and Atty. DiLallo Bitter said yes. G. Smith said the new addition is already non-conforming.

M. Murray asked if the applicant's timetable is to start as soon as possible and Atty. DiLallo Bitter said yes.

M. McComb said (1) it is nice to see that the deck is planned to be built outside of the 75' setback, (2) there are stormwater measures planned for infiltration trenches and (3) it is an enormous house, but the compliances and additions are not making it less compliant.

No correspondence.

No public in attendance.

No County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Robert Nemer (V05-56) 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 #9 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, as any other location would involve more blasting and not reusing the current foundation;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, as the house is in line with other properties in the area and should be a visual improvement as far as the renovation goes;
- 3) The requested variance is not substantial, because most of the variances are pre-existing and none of them involve the 75' setback from Lake George;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district, in fact the result of the new construction and planning for it will probably be more stormwater retention on the property;
- 5) The alleged difficulty is not self-created, because the pre-existing non-compliant footprint is being incorporated into the house and every effort has been made to avoid the lakefront setback.

The benefit to the applicant outweighs any 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 grant approval of said project as presented. **All in favor. Motion carried.**

10) V05-57 GIKNIS, CHARLES. Represented by Anton Cooper. To alter pre-existing non-conforming single-family dwelling, specifically to raise the structure 4', seeks area variance for 1) a deficient front yard setback: 100' is required, 60' is proposed; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 185.00, Block 1, Lot 4, Zone RR5. Property location: 38 South Trout Lake Road.

Anton Cooper, builder for the project, representing Charles Giknis, gave an overview and said that he intends to lift the building up basically in its same track so there is a full basement underneath.

M. McComb asked if excavation will be required and Anton Cooper answered by saying that no excavation is needed, because they will be cutting the building loose from where it sits and lifting it straight up.

G. Smith asked if this project is solely for the purpose of putting in a full basement and Anton Cooper said yes. M. Murray asked what is under the building now and Anton Cooper replied by saying that he only has a crawl space there now that he can't even stand up in.

M. Murray asked if the applicant is planning on doing this right away and Anton Cooper said yes, as soon he can before winter. G. Smith said that the application is pretty cut and dry.

No correspondence.

No public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Charles Giknis (V05-57) 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 #10 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;
- 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, what is done will probably not even be noticeable;
- 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, because it is a result of the scenic corridor and it is a minor project.

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

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

11) V05-58 LAKE GEORGE LAND CONSERVANCY, INC. Represented by Jeff Anthony of the LA Group. To alter pre-existing non-conforming structure, seeks area variance for 1) a deficient shoreline setback: 50' is required from the mean high water mark of Dula Pond, 14' is proposed; 2) a deficient front yard setback: 30' is required, 28' is proposed; and 3) to alter pre-existing non-conforming structure in accordance with Section 200-56A. Also to discuss condition of approval for V92-25 (for the creation of two substandard parcels). The condition reads as follows: "*There is to be no commercial parking on the 6,615 square foot area.*" (parcel Section 171.19, Block 1, Lot 53.12). The LGLC is proposing to utilize this area for parking. Section 171.19, Block 1, Lot 54 & 53.12, Zones GB5000 & RM1.3. Property location: 4905 Lakeshore Drive. Subject to WCPB review.

Lynn Schumann, Executive Director of the LGLC gave a history of the LGLC and said (1) the organization is here on Lake George to protect water quality by preserving the land that surrounds Lake George, (2) they are a land trust, (3) the organization has been operating on Lake George since 1988 and in Bolton Landing since 1996 and (4) in recognizing the Town of Bolton would not infringe on retail opportunities to the Town by using retail space, they are proposing to use the building at 4905 Lakeshore Drive.

M. McComb asked if it is a conflict of interest if she is a contributor to LGLC and Counsel said no, he would say M. McComb has an indirect conflict unless her contribution was so large or so great, but that doesn't apply here.

Jeff Anthony of the LA Group gave an overview of the project by showing items on the plans and said (1) the building currently has some non-conforming conditions, (2) they are proposing to renovate the existing building, (3) the only option they have is to expand the building to the south for the LGLC's need for office space and a conference center, (4) the property will be used primarily in the daytime, (5) he requests the ZBA rescind the no parking restriction in the RM1.3 part of the property, (7) they will be adding more buffering than what currently exists and will also be putting in downward shielded lighting, (6) the LGLC is very environmentally conscious and will manage all stormwater on site for new constructions regardless of whether it is required or not and (7) the Zoning Administrator, Pam Kenyon, determined the use of the proposed building would be an office use and the applicant will not need to go for site plan review.

M. McComb said (1) her recollection on the parking restriction is that the density on the property was used twice—for a house across the street and for constructing the existing building, not because it was a bar and (2) this was a plan of Rolf Ronning's and when he sold the land he retained all rights to use it even though it was sold.

Jeff Anthony said (1) the entire front part of the property is currently paved, (2) there is a property line that is part of a NYSDOT right-of-way and (3) they have spoken with the Warrensburg District Engineer and they are favorable to the idea of moving some of the paving and defining a distinctive drive for the building. G. Smith said the plan looks good.

M. McComb said (1) it seems the deed restriction being lifted is key to the whole project, because without it, it greatly restricts the applicant's ability to configure the parking as proposed, which seems to work well with the project, (2) although variances run with the land and not with the applicant, one hopes that this is a pretty long-term solution for the LGLC and not temporary quarters that are going to be passed on to another use and (3) in her opinion, it seems a worthwhile time to grant relief of the deed restriction.

K. Hoopes said there may be legal ramifications in the ZBA granting relief of a deed restriction.

From the public, Henry Caldwell, LGLC Board Member, said (1) he was at the PB when this issue was brought up, (2) as he recalls, the neighbors did not want that parking lot used for commercial purposes because of the bar being open to 4:00 am, (3) the only person that was allowed to use it was the owner of the building, so Jeff Tennent could park there and (4) if the deed restriction is left on, the question is if all of the people who own the building can use it.

K. Hoopes said that would mean the people of the LGLC could use the parking because they own the building. Henry Caldwell said he would like to see the deed restriction

lifted, but he thinks if the building changed hands, it would require some site plan review.

K. Hoopes said (1) he is interested in the legality, because as favorable as the ZBA may feel toward the LGLC, the ZBA has to respect the wishes of previous Boards, (2) there was a reason for the deed restriction and he wants to make sure there is no reason the ZBA can't lift the restriction.

Henry Caldwell said if this came to the PB, he would personally vote on it to have the restriction lifted with the condition that if the property changed hands it would come back for review. M. McComb said that if the deed restriction is lifted that runs with the property not with the owner and it can't be brought back. G. Smith agreed and said it is part of the variance.

Lynn Schumann said (1) based on the LGLC's conversations with Pam Kenyon, her understanding is that the deed restriction was placed on the building as a commercial building, but the LGLC would be utilizing the building for an office and (2) she thinks Henry Caldwell's point is that if the building were to change hands and change use back to commercial, then it would need to go back to the ZBA regarding the deed restriction.

M. McComb said she believes the situation was more complex than if the use is for a commercial property and G. Smith said the ZBA would need to find out the legalities on that.

From the public, Arthur Franz, Bolton resident, said (1) he has an interest in this project and would like it to succeed, (2) he was involved in the case before the ZBA regarding the parking that existed at that time, (3) given that this project will be removing some parking and limiting it into the section on the small lot, he believes the amount of parking would be less than exists now and (4) he would not be adverse to lifting the deed restriction provided that no additional parking ever be allowed on that property beyond the parking shown on the LGLC's proposal.

From the public, Tony Franz, said (1) that her recollection is that the restriction was put on the mylar and (2) the restriction says that there should be no commercial parking and (3) the proposed use is an office use for a non-profit organization, so the question is if the deed restriction even needs to be lifted, or if it just wouldn't apply to the LGLC because of its office use.

Counsel said that (1) the ZBA is free to make the interpretation that says that the office parking for the not-for-profit owner (their employees, guests, invitees, etc.) does not violate prohibition that there should be no commercial parking on the 6,650 square footed area and (2) that would leave the deed restriction in place and state the LGLC is not in violation because they are not using it for commercial purposes. All ZBA Members agreed that Counsel's suggestion is both good and legally binding.

G. Smith asked if the proposed addition is solely for conferences and Lynn Schumann said (1) it is a conference room that should accommodate 20-24 in a board setting (it can be re-configured for an auditorium setting), but they are also intending it to be a community room with a separate entrance for utilization by the community when the LGLC is not using it or in non-office hours and (2) the LGLC's goal is to create an investment in the community and be good for the community.

Correspondence:

- Verbal concerns presented to Mitzi Nittmann from Heritage Village—concerns with parking.

No County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Lake George Land Conservancy (V05-58) for an area variance as described above noting that parking for not-for-profit office utilization is not the prohibited commercial parking so this application needs no variance for that issue and that the prohibition against commercial parking remains in force for any future owner.

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 #11 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, they are working with the pre-existing non-conforming building;
- 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 it is anticipated that this will be a desirable change;

- 3) The requested variance is not substantial, given the fact the increase in building on the lot is to the interior of the lot and does not increase non-compliance;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district, as many aspects of the reconfiguration will minimize the impact of the property on the surrounding Town and also it will be available in the evening hours for Town functions—details to be worked out with the LGLC;
- 5) The alleged difficulty is not self-created, it is a pre-existing non-conforming property that is being very sensitively reconfigured to have minimal adverse impact.

The benefit to the applicant outweighs any 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 determine the following: 1) with regard to the motion for V92-25 which reads “*There is to be no commercial parking on the 6,615 square foot area,*” the Board determines that parking for not-for-profit office utilization is not the prohibited commercial parking referred to therein, and so this application, with regard to this issue, requires no variance. The prohibition against commercial parking remains in force for any future owner; 2) The Board approves the variance request as presented. **All in favor. Motion carried.**

K. Hoopes said that T. DePace brought up a good point in their sidebar conversation that if the LGLC does rent out the conference center then that might constitute a commercial use and Lynn Schumann replied by saying the LGLC’s intention is to offer the room for community use, not to rent it.

Meeting adjourned at 12:20 am.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
10/11/05