

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, February 27, 2006
6:30 p.m.**

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

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

Absent: None

Chairman G. Smith opened the meeting at 6:32 pm by asking for corrections to the January 23, 2006 ZBA minutes.

K. Hoopes said on page 16, fourth paragraph, the fifth sentence should read, "K. Hoopes said even if it was, the ZBA would have dealt with it *as we are* right now."

Motion by K. Hoopes to approve the January 23, 2006 minutes as amended. Seconded by T. DePace. **All in favor. Motion carried.**

1) **V05-71 PAINTER, JOHN.** Represented by Matt Steves of VanDusen & Steves. To demolish & rebuild pre-existing non-conforming single family dwelling, seeks area variance for 1) a deficient shoreline setback; 75 ft. is required from the mean high water mark. 36.62 ft. is proposed. Section 213.09, Block 1, Lot 15. Zone RM1.3. Property Location: 4030 Lakeshore Drive. SUBJECT TO APA REVIEW. *Note: this item was tabled at the 1/23/06 meeting pending additional information. The WCPB determined no county impact. The public hearing was kept open.*

Matt Steves of VanDusen & Steves, representing John Painter, gave an overview and said that they made revisions to address the ZBA's previous concerns, specifically, they reduced the size of the house so no variances are required on the side property lines and the house has been moved to the west an additional 12'.

G. Smith asked if it is accurate that the applicant will now only need a shoreline variance for 36.62' and Matt Steves said yes. G. Smith said (1) he feels the applicant will have to blast to put the foundation in anyway, (2) the applicant can become compliant, so he feels the house should be located 75' from the lake, which would mean the applicant wouldn't even need to be here, (3) they have gone through this several times and he is a little bit frustrated with this application now. M. McComb said she agrees with G. Smith.

K. Hoopes said (1) since he was about the only one in favor of this project at the last meeting, he should comment on his reasoning, (2) he believes the ground is disturbed and up-rooted already, so to move it back 75' and blow a hole in the ground just to put a new house there didn't seem like a reasonable solution, (3) he is torn now because moving it

back 12' does disturb new ground close to the lake, then again, it leaves the previously disturbed ground in better shape, (4) he can't imagine environmentally why it is preferable to move the whole thing back, blast a hole which is probably what they are going to have to do 75' from the water, and then the solution mentioned at the last meeting was to back-fill the previous hole then plant it, seed it and possibly fertilize it and pray there isn't a big rain there before everything takes root and (5) he is torn now because if you're going to move it back 12' he is almost inclined to agree that the applicant should then move it back 75', but in thinking about it, that is still dealing with the previous hole.

B. Pfau asked if the applicant will have to blast with this plan and Matt Steves said yes, but not as much as if it were brought completely into compliance. T. McGurl said (1) at the last meeting, he was curious as to why there was no front lawn or why the applicant wanted the house that close to the lake, (2) he thinks an effort has been made to bring the house more into compliance and (3) he agrees with K. Hoopes in that this opens another can of worms, with additional disturbance. B. Pfau asked if silt fences will work with this construction project and Matt Steves said yes.

B. Pfau said (1) he thinks this plan is an improvement and (2) he likes this project better than what is there now. M. McComb said (1) she agrees this proposal is better than what is there now, but she gets stuck on the difference between this and other projects in that if the ZBA had a 75' setback and say well 36' is okay, then why shouldn't that be the case for everyone, (2) the ZBA has people who have serious land constraints, but she thinks of it that if the applicants were twice as far from the lake as they are proposing to be, they would still be 3' from being compliant.

B. Pfau asked how far the neighbor to the north is from the lake. From the public, Bernard Martinese, northerly neighbor, said he is probably 25' to 30' at the most. G. Smith asked how long his house has been there and Bernard Martinese said since 1948. Bernard Martinese said (1) his one concern is that by moving the house further from the lake they are going to need to do some extensive blasting which would be a lot closer to where his house is and (2) where the house is located now, the blasting would be very minimal. B. Pfau said if the house stays where it is it will most likely need blasting anyway and Bernard Martinese said moving it back 75' and putting a big hole in the ground is quite a difference.

M. McComb said there isn't an excavated foundation, but ledge rock underneath. G. Smith said (1) maybe the applicants can come up with a different plan where they wouldn't have to blast as much, (2) the first balancing act for the ZBA is whether the benefit can be achieved by another feasible way and the applicants can—they own from the lake all the way to Route 9N where they can build this house and (3) it will be an undesirable change in the neighborhood, because the applicants are going from this small 1,800 square foot house to something almost double the size, is greater in height and it is going to appear to be on top of the lake.

From the public, Bernard Martinese asked if it is correct that the proposed footprint is smaller than the existing footprint without the garage and M. McComb said (1) no and (2) there are people coming before the ZBA tonight for a variance for their house which is smaller than this project's proposed garage, which she is only bringing up because people keep referring to this project by saying "except the garage". K. Hoopes said that has no bearing on this and T. McGurl agreed and said this project stands on its own. G. Smith said the height is quite substantial.

K. Hoopes said in talking about a feasible alternative, the ZBA also has to add the word reasonable, which is what the ZBA is here to wrestle with now—just how reasonable that alternative is. B. Pfau said he agrees with K. Hoopes in that the ZBA has seen applications before where the ZBA could have insisted the applicant go back 75', but considered other options. G. Smith said every applicant is different from the other—there are certain circumstances for each applicant—none of them are the same.

K. Hoopes said regarding the expansion of the house, the existing dwelling served its purpose in its day, but these days the value of the land being what it is, people are building year-round structures and attached garages. G. Smith said yes, times are changing—he realizes that. M. Murray said he still feels the proposed structure should be moved back further from the lake. T. DePace said (1) that his opinion is that if the applicant was going to build basically the same size structure on the same footprint, he would have no problem with it, but the applicant is tearing down the existing house and the existing foundation has no use whatsoever to the proposed structure and (2) the applicant has plenty of land and he personally thinks the house would be sitting nicer on the property if it was moved back. M. Murray agreed.

No additional public in attendance.

Correspondence: Read into the record by Counsel.

- Letter from Kathleen Bozony of the Lake George Association dated 02/17/06 addressed to ZBA Chairman Greg Smith—opposed.

B. Pfau said it is important to note that the applicant can fix up the existing house and leave it exactly where it is right now with no stormwater measures.

John Painter said (1) their objective all along has been to genuinely try to improve the property both for the lake and for the neighbors, (2) his northerly neighbor, Mr. Martinese, is in complete support of their project, (3) they are proposing a 7% reduction in the existing foundation, (4) the existing house has a square footage of 2,380 and they propose to increase it to 3,200 square feet in order to simply allow room for two smaller 200 square foot bedrooms in the upstairs level, (5) it is not going from a one-story to a three-story structure—it is going from a Ranch to a couple of dormers in the pitch of the roof, (6) he is concerned because he has genuinely tried to address all of the ZBA's concerns, (7) if there was no blasting at all and they moved the western wall (the footers) back 14', he would in effect reduce the size of the foundation by 14', so there would be

basically a 14' crawl space to the west, they would pin the footers on the ledge rock and not disturb any ledge rock at all—just pick the ledge rock out by jackhammer or heavy equipment and the basement would be half the size it is now, which would preserve any other type of environmental damage by any further blasting, (8) the basement is of no concern to him—they have no intention of finishing huge basements, (9) they simply wanted to make it a more livable house going from an existing four-bedroom house to a proposed four-bedroom house, (10) the garage was an issue last time—they have taken the garage and lowered the roofline about 3' so there is no livable space above the garage, (11) they have reduced the length of the house, eliminating variances and (12) tonight he is offering no blasting to be done and the foundation to the west will be moved back.

B. Pfau asked if that means that the house would remain 36' from the lakefront and John Painter said yes.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-71) John Painter 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 based on the information provided by the applicant and his representative at the meeting;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit can be achieved by other means feasible to the applicant besides an area variance, by moving the house further back, but this proposal is an improvement location wise in that it would be twice as far away from the lake as it is now and the side-yard setbacks have been brought into compliance;
- 2) There will not be an undesirable change in neighborhood character and to nearby properties, there are no objections from the applicants immediate neighbors and it looks to be a residential building;

- 3) The request is somewhat substantial, as there is room to move it back further, but there is an improvement in the proposal;
- 4) There will be no adverse effects or impacts on the physical or environmental conditions in the neighborhood or district, as silt fences will be used during construction and moving the building back will help with run-off problems;
- 5) The alleged difficulty is self-created.

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

Now, upon motion duly made by Bill Pfau and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented. **Three in favor to approve (Kam Hoopes, Tom McGurl and Bill Pfau). Four opposed (Tony DePace, Meredith McComb, Michael Murray and Greg Smith). Motion denied.**

RESOLUTION

The Zoning Board of Appeals received an application from (V05-71) John Painter 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 based on the information provided by the applicant and his representative at the meeting;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit can be achieved by other means feasible to the applicant besides an area variance;
- 2) There would be an undesirable change in neighborhood character and to nearby properties, while the neighbor on one side has no objections, the neighbor on the other side has not yet constructed a house and this would encourage them also to meet setbacks;

- 3) The request is substantial;
- 4) The likelihood of adverse effects or impacts on the physical or environmental conditions in the neighborhood or district of the new construction will be mitigated by meeting the lakefront setback;
- 5) The alleged difficulty is self-created.

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

Now, upon motion duly made by Meredith McComb and seconded by Michael Murray, it is resolved that the ZBA does hereby deny the variance request as presented. **Four in favor to deny (Tony DePace, Meredith McComb, Michael Murray and Greg Smith). Three opposed (Kam Hoopes, Tom McGurl and Bill Pfau). Motion carried.**

- 2) **V05-78 PIEPER, EDWARD.** To alter pre-existing non-conforming structure, specifically to expand existing porch on the East side to 10 ft. by 16 ft. and a 23 ft. by 17.5 ft. addition on the west side. Seeks area variance for; 1) deficient front yard setback; 50 ft. is required, 34.5 ft. is proposed; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 186.18, Block 1, Lot 29. Zone RM1.3. Property Location: 36 Back Road known as Bittersweet Cottage, Rainbow Beach. Subject to WCPW REVIEW.

Edward Pieper gave an overview and said (1) they are proposing a 16' x 20' addition on the back for a living room with a bedroom above it and (2) they are asking to increase the size of the existing porch on the front of the house.

G. Smith said (1) he sees the applicant has association approval for this project which is a plus and (2) the applicant has submitted copies of other variances that have been applied to different cottages down there. K. Hoopes asked if this is one of the last remaining original floor plans in this location and Edward Pieper said no, he believes there are a few more.

No County impact.

G. Smith said there is no additional correspondence other than the Association's letter of approval for the project.

M. McComb said it looks like the big trees in the back are going to stay based on the map the applicant has drawn. Edward Pieper said there are a couple of tiny ones—2-3" that will be removed, but there is one that is 6-8" that he would like to keep—it doesn't fall within the footprint, so he hopes to keep it.

G. Smith said (1) this doesn't appear to be a big variance, (2) the only part that is not in compliance besides the existing cottage is expanding the front porch, (3) pretty much the 10' x 16' addition off the back is all compliant and (4) he doesn't really have a problem with any of this—it is a decent size lot the applicant has down there.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-78) Edward Pieper for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, these houses were all built at the same time for the same purposes, they all look very similar and they have outlived their usefulness as a summer rental and it needs expansion;
- 3) The request is not substantial, it brings it into the 20th century;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, those cabins were built over 80 years ago.

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

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

3) **V06-01 LEVY, HOWARD.** For the construction of a proposed 4 car garage, seeks area variance to exceed the amount of bays allowed. 3 bays allowed; a total of 5 bays are proposed. Section 171.07, Block 1, Lot 54. Zone RL3. Property Location: 5191 Lakeshore Drive. Subject to WCPW REVIEW. *Note: Site plan review is sought for an accessory structure greater than 1,500 sq. ft.; 1,702 sq. ft. is proposed.*

Howard Levy gave an overview and said he wants to build a garage to house his collectible cars.

P. Kenyon said the applicant did receive site plan review for an accessory structure greater than 1,500 square feet on 02/16/06 by the Planning Board. M. McComb said the data sheet shows 26' x 40', which is 1,040 square feet and Howard Levy said the second story is included to bring it over 1,500 square feet.

B. Pfau asked P. Kenyon to review the Ordinance as to what is allowed and P. Kenyon replied by saying the applicant plans on storing five cars and he is allowed up to three bays. Howard Levy said the variance said three cars on the property and he plans on putting a four-car garage in. K. Hoopes said he always understood the meaning of bays being accessible from the outside doors and T. DePace said that has also been his understanding. P. Kenyon said it is not in the Ordinance. B. Pfau asked if it is correct that the applicant can still request three car bays plus one boat bay under one roof. P. Kenyon said yes, he could if he was going to store a boat and three cars he'd be fine and B. Pfau added that it is no one's business obviously.

T. DePace asked if you could have as many doors as you want and G. Smith said no, you can only have three. P. Kenyon said the applicant is allowed to have up to a three-bay garage to store three cars on his property and he wants to go over that so he has applied for a variance.

K. Hoopes said he doesn't think this is unreasonable, as the applicant is a car collector. T. DePace said he has no problem with the request and G. Smith said it is like glorified two-car garage and it is just deep. K. Hoopes said it looks just like a barn and we have lots of barns around here.

No County impact.

No correspondence.

M. McComb said (1) she thinks this project is mitigated a lot by how big the applicant is planning to build, (2) it is a pretty minimal garage as far as some proposals for garages have been and (3) it seems like the applicant is trying to keep it down to the minimum.

Howard Levy said it is like a very long two-car garage, so the impact would be minimal. G. Smith agreed and said (1) the applicant is very honest as to what he wants to do with it, so there will be no question there and (2) he has no problem with the application.

No public in attendance.

M. McComb asked if it is 20' high and Howard Levy said yes. G. Smith said it is a good-looking building with colors that will match the house—it will look nice.

M. McComb asked if there is a stream running along there, as there is some culvert material and Howard Levy replied by saying (1) there is culvert material there because his neighbor just finished some construction and had left over materials and (2) he was doing a ramp to the back door because the property slopes down north to south, so it would let the water run under the back entrance. Howard Levy said (1) there are no streams running parallel to the property right near the proposed garage site—that it is grass and (2) there is a stream by Route 9.

B. Pfau asked if the existing one-car garage on this property affects this request at all and P. Kenyon said no, the existing garage is actually part of the request. M. McComb said that is one of the bays the applicant is referencing. P. Kenyon said (1) that is correct, (2) she believes the new garage will store four cars and the existing garage will store the fifth one. M. McComb said that the way this is designed, she doesn't think it is going to have any negative impact at all and G. Smith agreed.

RESOLUTION

The Zoning Board of Appeals received an application from (V06-01) Howard Levy for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by other means feasible to the applicant besides an area variance, it is a number of cars and they take up space;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, architecturally it is not an unhandsome building or an eyesore;
- 3) The request is not substantial, the man is a car collector and five cars doesn't seem to be an outrageous amount for a collector;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, the original house and one-car garage is not adequate for the owner.

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

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

- 4) V06-02 BAKER, ARTHUR.** To alter pre-existing non-conforming structure, specifically to construct a proposed set of stairs and 14 ft. by 10 ft. covered walkway. Seeks area variance for 1) a deficient front yard setback, 30 ft. is required; approximately 5 ft. is proposed. 2) Lot coverage, 40% allowed; 46% proposed. 3) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 171.19, Block 2, Lot 9. Zone GB5000. Property Location: 4934 Lakeshore Drive known as "The House of Scotts". Subject to WCPB REVIEW.

Eugene Baker, representing Arthur Baker, said (1) they are proposing a covered walkway to be used as a second exit from the second-story, (2) the existing front canopy is temporary and encroaches on the side walk, (3) the proposed structure will stop right at the sidewalk and there will be a sign for the business on top of the proposed walkway and (4) they just submitted the application for site plan review on the proposed sign which will be heard next month.

G. Smith asked if there is currently an emergency stairwell from the second-floor and Eugene Baker replied by saying (1) there is a door there now, but nothing was ever put in as far as a stairway and (2) there is a stairway in the front of the building. G. Smith said it is a good idea to have a second emergency exit, especially with people living up there. Eugene Baker said the applicant wants to change the façade of the structure by adding log siding for more of an Adirondack look.

G. Smith said the proposed walkway is a loft configuration and Eugene Baker said yes, (1) they propose to set the posts on the existing walkway and (2) they are looking to take

down the metal frame and put a permanent rather than a temporary structure. G. Smith said that the proposed structure looks like it will be more attractive than the existing temporary structure. M. McComb asked if it is correct that no deck is proposed for the second-floor stairway and Eugene Baker replied by saying no, there will be a wooden platform or walk panel, because it is a roof. G. Smith said that probably insurance-wise he believes it is mandatory this emergency exit be built. M. McComb agreed and said especially over a restaurant.

B. Pfau asked if the existing walkway/cover has been there for a long time and Eugene Baker said yes, but the existing walkway is temporary and has the tarp.

No public in attendance.

No correspondence.

G. Smith said (1) he thinks this will be a nice addition to the front façade of the building—with the log work, it is going to look nice, (2) the back stairs need to be there—they can save somebody's life and (3) it is an improvement.

No County impact.

RESOLUTION

The Zoning Board of Appeals received an application from (V06-02) Arthur Baker for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by other means feasible to the applicant besides an area variance, as far as the stairs and covering a temporary walkway is a beneficial change;

- 2) There will be no undesirable change in neighborhood character or to nearby properties;
- 3) The request is not substantial, it is merely a set of stairs from the upstairs and making what is currently there more attractive and permanent;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and it will be a huge safety benefit to the upstairs;
- 5) The alleged difficulty is not self-created.

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

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

5) I. Robert Wolgin. In accordance with section 200-72 of the zoning ordinance, seeks to appeal the zoning administrator's determination that the banner located at 4877 Lake Shore Drive, Church of the St. Sacrement, is not classified as an advertising sign. Parcel Id# 171.19-1-24. *This item was tabled at the December 2005, ZBA meeting and sent to the Town Board asking that a sign ordinance be adopted that in part deals with banners. On January 3, 2006 the Town Board passed Resolution #32 that the ZBA revisit the appeal and make a determination in the case.*

G. Smith said (1) he wants to make it clear that the reason they (ZBA) are here tonight on this matter is to determine if this "thing" at the Saint Sacrement Church, which has been taken down since the last meeting, is a sign or a banner—not to discuss other signs or banners are around town, but specifically to discuss this particular item and (2) after the ZBA makes its determination, he would like to recommend the Town Board adopt an ordinance for the Town of Bolton on signs including banners, other temporary signs, etc. to cover everything, because all the ZBA has to go by now is the LGPC's sign ordinance that they have in place now, which he recommends the Town Board or the committee it gathers to come up with a sign regulation, uses as a guideline, because he does think it is very important the Town does do this so a situation like this doesn't come before the ZBA again.

K. Hoopes said (1) what the ZBA is facing tonight is, even more so than deciding whether we have banners or signs or whatever, is that they have become painfully aware that the Town is woefully lacking a sign ordinance of any kind, (2) he thinks what the ZBA is going to accomplish tonight no longer really has to do with Ike Wolgin or Henriette's Attic or kayaks or anything else—it has to do with all those things in general—tonight they are going to try to bring out of this, something everybody can look at and everybody gets treated equally by, (3) P. Kenyon has done an amazing job up to

now in juggling this whole thing without any form of guidelines, but that time has come and gone and the Town now needs to come up with an ordinance, (4) the first thing that needs to be done is they need to come up with a definition of a sign and a banner—they need to essentially call a sign a sign and then go with the next step and decide what the temporary schedule is or if it is permanent or fixed and (5) the definition of a sign provided to the ZBA by Counsel says “...any structure or part thereof or any device attached thereto or painted thereon or any material or thing illuminated or otherwise, which displays or includes any numeral, letter, word, model, banner, emblem, light, device, trademark, or other representation used as an announcement, designation, display or advertisement of any person, firm, group, organization, commodity, service, profession or enterprise when placed in such a manner that it provides visual communication to the general public out of doors but not including the following: (a) signs maintained or required to be maintained by law or governmental order, (b) the flag or insignia of any government or governmental agency, (c) the flag of any civic, political, charitable, religious, fraternal or similar organization which is hung on a flagpole or a mast and (d) religious or other seasonal holiday decorations which do not contain commercial lettering or any designs, symbols or other devices.”

T. McGurl said (1) in the information Counsel provided to the ZBA, for a banner or a pennant it says “...a sign that is painted or displayed on a sheet composed of fabric, vinyl, plastic, paper or other non-rigid material, fastened to the exterior of a building or exterior structure other than a flagpole, but excluding any representing any federal, state or other governmental entity...” and (2) it starts with that it is already a sign to begin with—whether this piece of cloth is a banner or the ZBA wants to stick to just calling it a sign, being a banner still keeps it as being a sign none the less. K. Hoopes agreed and said (1) if they start with the definition that a sign is a sign is a sign and (2) once they get that definition squared away then they can get down to an ordinance that everybody can point to, work with and P. Kenyon, M. Nittmann and the whole department won’t have to get a headache trying to figure out.

M. Murray asked if it is accurate that the ZBA makes it’s determination based on what they have right now in writing in the Zoning Ordinance and Counsel replied by saying (1) there is a great deficiency in the Code, (2) the ZBA is at liberty and is sitting here as a body prepared to exercise sound discretion as to what it believes applies in this particular instance, (3) Ike Wolgin has raised the issue and he believes his position is that the banner is a sign and it is larger than 2’ x 2’, so why isn’t it regulated, (4) he (Counsel) thought P. Kenyon’s answer along the way was that the Town doesn’t regulate banners, so the ZBA needs to come to grips with an interpretation, that is that the ZBA may wish to interpret that anything that has copy on it is a sign, which is one approach, that doesn’t do damage to the Zoning Ordinance, it just clarifies that they consider those signs, (5) somebody has to work on the Zoning Ordinance, and that, he is told, the Town Board has under consideration—but it is neither tonight nor timely, (6) the ZBA has this proposition which is that the banner has a message on it then is it a sign, (7) he provided the ZBA with definitions which he pulled off of the internet which were available from a code publishing company that simply publishes codes for other municipalities—admittedly, those other municipalities and their codes were more definitive and (8) the ZBA’s

interpretation has to be based in logic, be rational and be based on the discussion here this evening—if the ZBA decides that a banner is a sign, then it is regulated.

M. Murray asked if it is proper to make decision on something they don't consider part of the Code to be part of the answer or if they go based on past practices then wait for something before they actually change it. M. McComb said (1) there is reference made in the sign regulation on page 20031 referencing subsection 200-78 of the LGPC's rules, which say sign means and shall include every sign, billboard, mobile sign, pre-standing sign—it is a great long litany of thing and (2) subsection 200-78 Requirement #1 says what things require permits makes reference to the LGPC and part 646 of the Lake George Recreation Zone Regulations.

Ike Wolgin said that he believes that one of the reasons to appeal the Zoning Administrator's determination was that the Bolton Landing Zoning Code for signs—in the absence of having a supplemental ordinance—does refer you and says that signs in the Town of Bolton can only go by the Zoning Book which says you have to be compliant with the LGPC rules. Counsel agreed.

Ike Wolgin said that in the LGPC rules, there is a sign ordinance sub-part 646 and there is also a definition section attached to it, so while there are lots of ordinances and lots of things you could pull from, the thing that would seem most applicable, for the time being, is the one that is already incorporated into Town Law. Counsel said that sounds logical and asked what it says. Ike Wolgin said (1) there are nine references to signs in the Section 645 of the LGPC's rules, (2) the definition of a sign according to the LGPC reads "...sign means and shall include every sign, billboard, mobile sign, pre-standing sign, portable standing sign, wall sign or window sign, illuminated signs and vending machine signs and temporary signs located out of doors and shall include any announcement, declaration, demonstration, device, display, illustration or insignia used to advertise or promote the interest of any business or commercial enterprise when the same is placed so that it is clearly visible to the general public...". Counsel said one step beyond that, Ike Wolgin's argument, that he doesn't take issue with, is that Bolton has incorporated that by reference in Section 200-78 of the Town Zoning Ordinance.

K. Hoopes asked if it is correct that there is no need to even entertain any thoughts of a sign moratorium until the Town gets its ordinance in place since there are definitions to go by and Counsel said the ZBA has a body of definitions that are incorporated by reference. K. Hoopes asked if it is correct that the very simple path tonight is to determine whether or not the banner in question is a sign and Counsel said yes.

T. McGurl asked how big the banner is and M. McComb said 54 square feet. B. Pfau said (1) he agrees with K. Hoopes and G. Smith in that the ZBA is here tonight to determine if this particular piece of cloth is a sign and (2) unfortunately, he thinks what everyone wants to know is whether the Town of Bolton wants to or how the Town wants to or will regulate the banner, which is something that is unknown at this point in time.

Counsel said (1) once the ZBA decided if this banner is a sign, then he certainly knows how the Town should regulate it and (2) this is a very unusual controversy, as most municipalities have the definitions on the books and even in the absence of definitions, there is a book throughout the industry or trade, so to speak to go by, (3) he thinks Ike's point, which is an important point, is that we know where to look for the definition—it can be found in the LGPC's Rules and Regulations—it has been adopted by this municipality and has been approved by the APA as part of the Town of Bolton's adopted land use code and (4) the issue tonight is that P. Kenyon's interpretation as Zoning Administrator is that she doesn't regulate banners and Ike Wolgin takes the position that she should because it is a sign.

P. Kenyon said (1) they have always been aware that the LGPC is referenced in the Code. (2) they have always been aware that and have been told by the LGPC that their regulations were unenforceable and (3) this something that has been ongoing for years.

T. McGurl asked if it is correct that if the ZBA views this particular "thing" as a sign, then banners really no longer exist and Counsel replied by saying (1) they are regulated, for instance, folks can petition the ZBA for a variance from the requirement, so if the church chose after a determination of that indeed a banner is a sign, they could put a 2' x 2' in or they could come up and prove their need for a variance and it might be granted—many, many times the ZBA has had people present why they need a sign bigger than 2' x 2'. P. Kenyon said that would be site plan review by the Planning Board. Counsel said yes, it is entirely possible that a sign can be approved in Bolton that is greater than 2' x 2'.

P. Kenyon said she wants to be clear that tonight they are only discussing this particular banner and not any other remaining banners in town. G. Smith agreed and said (1) he is going to call this specific thing a banner, because his feeling is that a banner is a strip of cloth on which a sign is painted, so now they are talking about a banner with a sign painted on it, so we've got a sign on a banner, (2) in the summertime in Bolton Landing and other towns around here, summer businesses put up banners advertising things that they have—he personally doesn't—Tops and Grand Union does, Stewart's does, the Sagamore does for their job fair—there are all different types of what he calls banners that are put up in the summertime around here and (3) he personally has to call this a banner at this point in time, because if he doesn't and the ZBA does regulate that this is a sign, then in a couple of months, P. Kenyon will be pulling the hair out of her head telling all these people they need to come get site plan review for the banner they are hanging up. K. Hoopes said it is not the ZBA's concern and G. Smith replied by saying he understands that, but that is part of the can of worms that the ZBA is going to open up here and he thinks that between now and the time when it does get busy, the Town Board can get a committee together to adopt a sign ordinance that covers banners and other different types of temporary signs that people put up in town.

M. McComb said in getting back to this specific thing, the difference between the Sagamore Job Fair sign that goes up for a couple of days or an advertising flyer or an Americade banner, is the more permanent nature of this thing. G. Smith said the

Chamber puts up a banner south of the Algonquin restaurant advertising the Arts & Crafts shows which stays up all summer—he considers that an advertisement banner.

K. Hoopes said (1) none of this gets affected, because if the ZBA just calls that “thing” a sign—all the ZBA is doing is saying it is a sign and it allows itself to be regulated in one form or another—the ZBA is not outlawing it or saying that Henriette’s Attic can’t advertise or do what they are doing, it just means they get some oversight to it and get a definition, (2) he does think the level of permanence does come into play here as hanging a sign up saying you are open for business and taking it in at night probably won’t be regulated, (3) in driving up and down the Bolton Road, he is starting to see construction signs, real estate signs, etc. which are all starting to grow bigger than that 2’ x 2’ sign. G. Smith said these are all things that are going to fall underneath this category when a sign ordinance gets written up.

K. Hoopes said tonight the ZBA is here to determine if this is a sign or a banner. M. McComb said that banners are mentioned in sub-part. 646 of the LGPC Ordinance. Ike Wolgin said that a banner is not defined or actually being allowed, but it is referenced and G. Smith said that is another loophole. M. McComb said (1) it does include it and it also makes reference to signs in excess of 48 square feet in area not being permitted and (2) she thinks this particular thing is a sign.

B. Pfau said that regardless of the results of the ZBA’s vote, the Town Board is responsible for determining whether or/and how they want to limit or regulate these banner/signs. P. Kenyon said (1) there is an existing committee that she is a part of that is dealing with revisions to the Town’s Zoning Ordinance and at their very first meeting one of her biggest concerns was to get a sign ordinance in place and (2) it is going to be addressed, but it will take at least a year to get an ordinance in place—not two to three months like the ZBA is looking at and Counsel agreed on this timeframe.

B. Pfau asked what P. Kenyon would like to see happen and P. Kenyon replied by saying that she is concerned about how they will address the Girl Scout cookie sales, Americade, craft fairs, thank you banners and other banners that have her concerned right now. B. Pfau said the Town has never addressed this because it is hard. M. McComb said (1) sometimes something kicks you over the edge and this has, (2) she looks at thank you banners which are nice when they are put up, but then the people go away and the banners get weathered, it is not a good addition to the downtown area, (3) all of the regulations Counsel provided to the ZBA have a time limit for banners that go up regarding Girl Scout sales, craft fairs, etc. and (4) she thinks it is really hard to say that this particular “thing” is not a sign.

P. Kenyon said she is concerned with questions she’ll receive tomorrow based on the ZBA’s decision on this item tonight and asked if the ZBA is only addressing this particular sign tonight. G. Smith said no, it has to apply to all of them and Counsel agreed. T. McGurl asked if it is accurate that if tonight the ZBA views this particular “thing” is a sign, when spring comes, can others put their banners up while the ordinance process in being undertaken. Counsel said that if the ZBA views this “thing” as a sign,

then it has to be no greater than 2' x 2' or get approval. T. McGurl asked if that would include anything else in town that would be larger than 2' x 2' and not requiring a permit and Counsel said yes. T. McGurl said that is a slippery slope.

K. Hoopes asked about the possibility of grand-fathering things that are existing before this meeting takes place and then they apply for their site plan review and they are allowed to continue until such time. G. Smith said no. Counsel said (1) sign regulation is a little unique and there are a lot of cases that impose a requirement upon municipalities when you want to govern and take signs down or start to regulate pre-existing signs—in that there is an important property right and in many cases municipalities have to amortize or pro-rate their enforcement on the signs and (2) you can't just say on February 27th the ZBA decided that these are now signs and they must be taken down or go for site plan review—there are consequences and one of the consequences might be that the municipality owes money—municipalities do pay money for signs to come down. K. Hoopes said this would be a decision for the Town Board and Counsel said yes. Counsel also said (1) at this level the ZBA needs to make a decision, (2) if the ZBA decides this is indeed a banner that has a message so it is a sign, they know where to go forward in terms of Zoning Administration and will work with compliance with all others, (3) if the ZBA decides that a banner is certainly not a sign regardless of the message or the size, then he assumes that would mean any business can freely put up as many signs that they want because the ZBA has defined a banner as not being a sign—just make it flop in the wind and you can put up as many as you want. K. Hoopes said he doesn't think the last example is not the way they want to go.

T. McGurl asked if it would be possible to keep the status quo until an ordinance is in place that defines a banner and a sign. Counsel said (1) status quo in municipal and governmental language is called moratorium, (2) it is not the ZBA's task to do that—it would be a decision of the Town Board and (3) the ZBA certainly by making a decision here tonight will set ample precedent and there must be some reaction to it.

M. McComb said regarding the LGPC's regulation of 48 square feet for a sign, the Henriette's Attic display is larger than that so it is non-compliant and Counsel said that is if the ZBA determines it is a sign. K. Hoopes said the ZBA is here to make a determination and asked if a resolution is needed and Counsel said yes. M. McComb asked if the ZBA needs to determine if all banners are signs and G. Smith said yes, if the ZBA determines this banner is a sign, then anything over 2' x 2' will need to come for site plan review. Counsel said that is correct and added that then he and P. Kenyon would know how to enforce it with respect to this particular church and this particular sign, as well as all others within the municipality.

M. McComb asked about banners that are taken in each night or as an example, temporary signs that are not to exceed 60 days per calendar year and Counsel said (1) those were samples of other municipalities and how they have chosen to regulate what Bolton has yet to regulate, (2) there can be in a comprehensive zoning ordinance—that does not exist today and probably won't exist for another year or so in this town—temporary signs, banners, things that inflate and things that don't necessarily get

construed as signs (ex. company names in gardens, etc.)—municipal control of signs, but right now, in Bolton if it is 2' x 2' and has a message on it, then it is probably a sign, (3) admittedly, there are many things in Bolton that are greater than 2' x 2' which were obtained through site plan review—that is the awkward process that Bolton presently has and (4) it is entirely possible that if the ZBA decides tonight that indeed a banner is a sign, that the church should proceed by site plan review to see if they can succeed in still allowing their larger than 2' x 2' sign to exist—if they make the case they'll get it and if they can't make the case they shouldn't get it.

M. McComb said it seems the town has gotten away with it for years because there hasn't been such a big banner left up for so long. B. Pfau said (1) this is why he recommended this question go to the Town Board to get something in writing, (2) the ZBA is doing so much more than making a determination here—they are all talking about writing code here, which should be handled at the Town Board and (3) he thinks it is very telling that there is no definition for sign or banner in the Town of Bolton's ordinance—because it couldn't be figured out and nobody wanted to attack it because it is hard.

From the public, Maryann Urch asked (1) if it is correct that P. Kenyon has already set a precedent by not regulating banners and G. Smith said yes.

Maryann Urch asked that if the ZBA changes the definition of the church's banner to a sign tonight, then the ZBA would be singling the church out and G. Smith replied by saying that the ZBA is not singling anybody out, it is just that no one has come in front of the ZBA before with this question—it just happens to be the church. K. Hoopes said (1) he thinks the mistake being made here is that the Henriette's Attic banner lives or dies by what the ZBA does here tonight, which is not the case and (2) Henriette's Attic banner might be regulated from now on—which doesn't mean you can't have it—you just have to do what people do for other things and go before the Planning Board. M. McComb said (1) some things do evolve, (2) when zoning goes in some people make determinations and there are enough tricky things to interpret that some things that have never been an issue before flow along without causing any problem, (3) now in looking at it the ZBA finds support in the code for the notion that something this large with the lettering on it is in fact a sign according to what they have and that maybe they need to regulate these now and (4) certainly what applies to Henriette's Gift Shop sign will apply to others.

T. DePace said (1) he always thought a banner advertised things like a weekend special, for example, July Fourth or Labor Day Weekend and (2) if this banner is not a sign—which he believes it is—then he thinks next spring there will be a bunch of restaurants, hotels and marinas putting 15' x 15' banners up which is not what they want in town. Maryann Urch said she understands that and understands the Town Board has to change the Zoning Law. T. DePace said he thinks it should also be understood that if this banner was only up Fourth of July and Labor Day Weekends, then they probably wouldn't be here now. Maryann Urch asks where it says that and G. Smith said it doesn't—that is why they are where they are at now. M. McComb said (1) it is the church's

announcement of a business that is fixed to that railing that has brought the issue up and (2) it looks and acts as permanent sign.

Maryann Urch asked if there is any reason the church wouldn't be grand-fathered in at this point and G. Smith said nobody would be because it is not anything that is permanent and it is not anything that is already up—it is a temporary sign. K. Hoopes said (1) you have to have some faith that they are not all idiots and that they will come up with something workable, fair and equitable to everyone, (2) what the ZBA does here is just determine that a sign is a sign, which will trigger the effect of creating an ordinance that everyone can read and understand and (3) the church shouldn't feel singled out.

G. Smith agreed and said (1) he understands how the church could feel singled out, because the church just happens to be the subject of why they are sitting here, but it could be anybody—it just happens to be the church, (2) the church is not being singled out by any means and (3) even if the ZBA determines what is down there is a sign, it doesn't mean the church can't put it back up in the spring, it just means they'd have to go before the Planning Board for site plan review. T. McGurl asked if that means every other business would as well and G. Smith said absolutely. M. McComb said she doesn't want the church to be wedded to this particular thing or feel persecuted because it is not that at all.

From the public, John Gaddy said in looking at the comprehensive plan they bring up the point that 79% of the people feel that there should be enforced regulation for consistent signage in town—he feels the town should be more restrictive regarding banners and vending machines; he referenced pages 211 and 213 of the comprehensive plan and he added that it seems as so this is something that has been going on in this town for a long time—it is not just this particular sign.

From the public, Jim Urch said (1) it really is a temporary banner—that is all it is, (2) they used the banner a couple of year's ago for different events and has now been re-used as a banner for Henriette's Attic and (3) there are many banners that are up all summer. G. Smith said the definition of a banner given to him by Jim Urch says "...a banner is a strip of cloth on which a sign is painted..." and Jim Urch agreed and said it is a banner though.

B. Pfau said if the ZBA determined tonight that it is not a sign, he thinks eventually by the time a committee gets done with a sign ordinance it will be and G. Smith agreed.

From the public, Milo Barlow said (1) Mr. Wolgin has a right to bring up the issue and (2) his concern is that everybody be treated equally and (3) if the ZBA determines tonight that the church can't use its sign then he would assume that every existing sign or banner in Bolton will be taken down tomorrow morning. G. Smith said anything that is like a banner—a cloth sign that is not a permanent fixture—yes. Milo Barlow said he assumes anything considered a banner that is hanging out there today would have to be removed and G. Smith said (1) yes, that is correct, (2) it will happen—it won't happen overnight, but it will happen and (3) the ZBA is not saying the church can't put its sign back up, but

in order to do so if the ZBA determines that this is a sign, the church could go before the Planning Board for site plan review to get permission to put it back up—that is how it is going to work from now on if this is considered a sign.

From the public, Kathy Spahn asked if as of tomorrow the vending machines are no longer allowed because they are larger than the four square feet. M. McComb said there is one big difference she sees between this sign and the vending machine in that in the LGPC Ordinance it says larger than 48 square feet and Henriette's Attic sign is 54 square feet. Counsel said the Town of Bolton sign regulations are 2' x 2'. M. McComb asked if it would be the signage on the machine—not the machine size and Counsel said that is a very good question and it may be the subject of another interpretation, but staying on task let's talk of this banner and if it is a sign.

From the public, Henry Caldwell, Planning Board member, said (1) he thinks this banner should be called a sign and it should go to the Planning Board for approval, (2) the Planning Board, as a condition of approval, can say a sign is temporary and can put a time limit for how long the sign can be up, which may be one way to regulate it and (3) the church came to the Planning Board for approval of its permanent sign. Counsel agreed that the Planning Board can put conditions as noted. K. Hoopes said (1) he thinks it is a level of permanence where the banner came in and (2) there needs to be a schedule.

Now, upon motion duly made Kam Hoopes and seconded by Tom McGurl, it is resolved that the ZBA does hereby determine that the banner located at 4877 Lakeshore Drive for Henriette's Attic thrift store is considered an advertising sign, thus requiring Type II Site Plan Review and a certificate of compliance. **All in favor. Motion carried.**

Meeting adjourned at 8:15 pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
03/10/06