

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, January 23, 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 6:30 pm by asking for corrections to the December 19, 2005 ZBA minutes.

K. Hoopes said on page 2, the first item of Other Business, number (2) should read, "... (2) he wants to remind people that that is absolutely not the case and the ZBA takes these decisions very seriously and added that some of the comments made are *very offensive*."

M. McComb said on page 2, paragraph 1, item (2) should read, "... (2) said that she agrees that this (*the recreational building*) looks to be in pretty good condition..."

K. Hoopes said on page 20, sixth paragraph, the second sentence should read, "K. Hoopes said also regarding the changes towards the variance, for this property, it is the *applicant's neighbor who owns the whole Roost...*"

M. McComb said on page 28, last paragraph, the first sentence, should read, "M. McComb said in answering P., Kenyon's question, 20031 is the page number in the code..." and explained that Zoning Sections have hyphens in them and page numbers don't.

Motion by M. McComb to approve the December 19, 2005 minutes as amended. Seconded by M. Murray. **Six in favor** (K. Hoopes, M. McComb, M. McGurl, M. Murray, B. Pfau and G. Smith). **One recused** (T. DePace, as he was not in attendance at the December 19, 2005 meeting). **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) deficient side yard setback, 20 ft. is required a). 19.15 ft. is proposed on the north side. b) 14.59 ft. is proposed on the south side, and 2) deficient shoreline setback; 75 ft. is required from the mean high water mark. 22.36 ft. is proposed. Section 213.09, Block 1, Lot 15. Zone RM1.3. Property Location: 4030 Lakeshore Drive. SUBJECT TO WCPB & APA REVIEW. *Note this item was last heard on 9/19/05, at which time no action taken.*

G. Smith said the new proposal is 18.75' on the south side, 22' from the lake and 15' from the north side.

Matt Steves, representing John Painter, gave an overview of the changes made to the plan since they were last before the ZBA.

G. Smith asked for clarification on exactly what changed from the September 2005 meeting to now and Matt Steves said (1) there is 8' off the southerly side of the house, (2) took off 19.2 ft. on the northeast corner of the house where the existing garage door that faces the lake is, (3) they added 4' to the north side of the house which is in the setback, (4) the garage which was originally at 15' proposed is still at 15' proposed which includes the eaves and (5) the actual garage is about 16.5' from the northerly property line, but they have to include the eaves.

M. McComb asked if the area on the north edge that Matt Steves said is to be removed is being filled in with porch. Matt Steves replied by saying (1) yes, that is correct that there is a porch and (2) it is currently a second-story porch and they are removing the area underneath it, which is currently the garage with the concrete block wall.

M. McComb asked for a comparison of existing square footage versus proposed square footage. Matt Steves said it is an approximate reduction of the house—not including the garage—of 118 square feet. M. McComb replied by saying that the garage needs to be included in the comparison because a building is a building and the garage has a second story on it. John Painter (1) introduced himself, (2) gave his personal history and relationship to the Town of Bolton and said (3) he would answer all of the questions raised by the ZBA through his presentation.

John Painter then gave an overview of the existing building and the proposed and said (1) the existing structure on the lake is a four bedroom and 3.5 bath home, (2) they are asking to build the same four bedroom home on the lake, but modernize it to make the bedrooms more useful, (3) the existing construction is very poorly constructed—the existing house is basically uninhabitable right now—the house is crumbling down and needs to be replaced, (4) the neighbors to both the north (Mr. Martinese) and the south (Mr. Holding) acknowledge the existing house is an eyesore, was never taken care of properly, was built very shabbily and they are both looking very much forward to it being replaced with a quality home, (5) his objective is to build a quality home there—to make a vast improvement on what exists—and be a solid neighbor by fulfilling and meeting the wishes of his neighbors to both the north and the south, (6) the current existing footprint of the entire house is about 3,038 square feet, which includes the decks, (7) the inside of the house is 2,360 square feet, (8) the main lakeside deck is about 192 square feet—which is the deck M. McComb was commenting about, (9) the north side balcony is about 136 square feet, (10) the north side deck is about 110 square feet, (11) the carport is about 240 sq. ft., (12) their objective is to tear the existing house down and replace the existing structure with a well-built, code complying home that meets or exceeds all of Bolton's standards, (13) the proposed home will be a compliment to and enhance the

beauty of the lake and will be well maintained, (14) he would like to be a good neighbor and replace what is currently an eyesore.

John Painter approached the ZBA bench and handed out hard copies of his presentation on the proposal. John Painter then gave his presentation by referring to the handout and said (1) the existing house is currently approximately 25' from the shoreline on a quite steep embankment, (2) he's proposing to eliminate the variance on the south side of the property by completely moving the south side (left side) of the house in 8' which would reduce the size of the house, (3) he's proposing to move 192 square feet of the existing foundation on the lake side which currently has a big garage door on it, (4) he is proposing to add 2' to the back of the house and 4' to the right of the house to increase the size of the proposed kitchen and dining room—the right side edge is still well over 25' from the property line to the north and (5) he's proposing to increase the pitch line of the roof 7' on the highest point and 6' on the right side in order to make room for two dormers that will allow for two small bedrooms upstairs.

M. McComb asked again for the change in square footage including the garage and said (1) the presentation seems to act as though the garage and the third story are not issues and (2) the garage is also within the 75' setback and has a full second story on it. John Painter said the garage does not have a second story—they put rafters in the garage and are simply going to make it a storage space above the rafters by putting plywood and flooring on that—it will be unheated with no livable square footage there. M. McComb replied by saying (1) in Mr. Painter's conceptualization it is unheated space, but it is new space and (2) she is still looking for the change in square footage including the garage and the third story because in looking at it, it looks like one story going to three. John Painter said (1) the garage is 24' X 40', so the three-car garage would be 960 square feet, (2) the garage would be an attached garage, (3) it is very common and logical to have an attached garage, and (4) the neighbor to the north (Mr. Martinese) is in full support of the proposed garage, as well as in improving the structure.

M. McComb said (1) she is sure Mr. Martinese is in favor of improving the structure, but asked if the applicant has any letter from Mr. Martinese stating his support, because when she talked with Mr. Martinese he expressed concerns with houses being built within the 75' setback. K. Hoopes said (1) he talked with Mr. Martinese's son who was fairly emphatic that his folks and he were very much in favor of this project and thought it was very reasonable—in fact his house also is down just on top of the hill of Marion House roadway, (2) all of the houses are lined up there, (3) one thing to look at here is trying to maintain all of the disturbance in the original footprint—there is a notch in the ground there already and moving the house backwards will lead to blasting in the ledge rock back there, (4) the proposed house is an architectural improvement, (5) he feels that a three-car garage is not an outrageous request, especially for a year-round resident and (6) the existing house is in such a condition that it needs to be torn down. G. Smith said there is no question that the house needs to be replaced.

John Painter said (1) no disrespect to the previous owner, but the condition of the existing house is that there are approximately six moorings out on the lake with each mooring

being about 25-30 cinder blocks that need to be cleaned out and taken out of the lake—including the cables that are rusting underneath the water, (2) there is more good than bad coming through this proposal—he fully intends to meet with all of the stormwater drain-off plans that don't exist right now and he fully intends on complying to his neighbor to the south, (3) he spoke with Bernie Martinese twice tonight via phone and Mr. Martinese is in full support of this proposal, (4) he has been in communication with his neighbor to the south (Mr. Holding) who has had some issues and he (John Painter) and his wife have tried to comply with those issues and (5) he is willing to completely comply with all codes of the house—the roof height, the overhangs, the setbacks, etc.

M. McComb said it's the setbacks it doesn't comply with and John Painter said the only setback that doesn't comply is the setback for the garage and that is 15'. G. Smith said the sides and the front also don't comply—the only setback that complies is the north setback. John Painter said the setback to the south complies and G. Smith said no it doesn't—it is 18.5' and the setback is 20', so it does not comply. M. Murray said there is no reason this house couldn't be designed to meet both side-yard setbacks, as cutting the front lakeside off would bring a gain of 12' from the lake and it would put the applicant in a much more advantageous spot than he is now.

G. Smith asked if this is the second or third time this application has been before the ZBA and John Painter answered by saying that it is the third time. M. Murray said (1) one of the criteria is whether the benefit can be achieved by other means feasible to the applicant and (2) there is land enough and there is room enough to design a house to meet both side-yard setbacks comfortably and the applicant could do the front yard (lakeside) too, which would give the applicant a tremendous gain. John Painter asked if the ZBA means to not use the existing structure and G. Smith said yes.

M. McComb said (1) the applicant is not proposing to use the existing structure and renovate it, (2) according to the code, if you tear down a pre-existing, non-conforming structure, you are supposed to become compliant, which is not always possible at all, but on this lot it is. G. Smith said (1) that the ZBA members tried to explain this the last two times this application was before them and (2) there are lots of ways the applicant can come into compliance a lot more than he has. John Painter said (1) there would be environmental damage and (2) the existing foundation is in place. M. McComb asked if the applicant is going to use the existing foundation, as there is no foundation currently underneath the garage. John Painter said (1) they would use the existing hole and (2) he has had four excavators on site to review the job description and every one of them came up with the same conclusion of that the amount of environmental damage—by taking the existing house or the footprint they are using and move it back up the hill 80' (about 95' including the decks) having to blast out the ledge rock then go back and fill in—would be immense. G. Smith said the comment about blasting is correct.

K. Hoopes said (1) that he agrees totally that this is an existing footprint, but environmentally it is a nightmare just to disturb fresh ground just to move the house away, (2) there has been a house here, it is already disturbed, it is already impervious—in fact the yard behind it is impervious, (3) the proposed house is an improvement

architecturally and the existing house has to come down anyway, (4) you also have to take into account the other houses—at least to the north as there is no house to the south—are all in that line already, so to force the applicant to have to move back would then reduce his view and lake appreciation and pull him back from the lake for reasons he (K. Hoopes) doesn't get except to move the house back away from the edge of the lake, (5) the house is already there, it is not new construction and (6) he doesn't see this as anything but an exercise in trying to conform with the code—all these other things are stupid. M. McComb said (1) on a flat lot she would see more merit to K. Hoopes' view on this and (2) part of the problem is when you look at how close the silt fence is going to be because of that steep drop-off, they are talking about a silt fence with barely room to walk between it and the new house they are going to build. K. Hoopes said that seems like nonsense to him—he was walking very comfortably down there.

Matt Steves said (1) that there is going to be a series of three or four different silt fences—that is just the closest one that is shown and (2) he disagrees that if the site was flat then there would be a reason to move the house back—when you have to move it back into ledge rock, that is a reason not to move it back. M. McComb replied by saying (1) between the house and the lake there is quite a drop-off and (2) she disagrees with the notion that this will not be perceived as new construction when the applicant is tearing down and re-building. K. Hoopes said (1) you can accomplish both things, except you are going to do it twice: you can accomplish disturbing the site to tear this down and move this stuff out of there and then you are going to re-disturb a whole new site on the same parcel right behind it—probably with 100% blasting and if M. McComb thinks that sounds like an environmental loveliness, he is confused.

John Painter said (1) he worked very hard to try to make some changes that were meaningful to the ZBA, (2) he fully intends and wanted to reduce the size of the square footage of the house that they approached the ZBA with earlier in Fall 2005, (3) he wanted to reduce the number of variances they are requesting, (4) his full intention is not to have any variance on the south side of the house—the closest part of the construction will be 20' from the south side property and (5) if the ZBA is looking at some numbers that indicate some difference on the south side, it was not his intention. G. Smith said the measurement on the south side is 18.5'. John Painter said (1) 18.5' was never intended, as he fully intended on slicing 8' of the house away so that he would be a full 20' away from Mr. Holding's property and he would not require any variance whatsoever, thus he would reduce the number of variances from three to two (the existing non-conforming lakeside and the garage side).

From the public, Andrew Holding (owner of the property to the south) said the public notice says the project is to demolish and re-build a pre-existing, non-conforming single-family, but that is not the case—the existing non-conforming structure is going to be completely removed, including its footings and foundations. G. Smith said the ZBA realizes that.

Andrew Holding said (1) in its place a completely new constructed building is proposed to be triple almost quadruple the living space and dramatically increase the ridge lines

because it is a three-story house (although the plan says it is a two-story house) with a clear lower level and (2) the plan view of the lower level is conspicuously missing from the new drawings.

Andrew Holding said that the old application did show a plan view of the lower level and the fact that multiple French doors (sliders) are being put in that lower level makes it obvious to everyone that that is living space and G. Smith said (1) there are five French doors proposed to go in there and (2) of course it is living space.

Andrew Holding said (1) he was in P. Kenyon's office this morning to make sure he had the latest information, but there is evidently new information submitted which none of them—who stand either in favor or in opposition to the project—have been able to review, (2) for the applicant to state that the space in the garage is for camping gear storage and not livable square footage, is hard to believe when the Anderson windows going into the garage cost \$4,774.00, (3) it concerns him gravely that throughout the process of this application there have been errors, omissions and labels that he considers misleading, (4) the application packet states that the alternative to this variance—that of constructing a new residence more westerly to meet the Zoning Code—was not a viable alternative because it would involve substantial earth work and (5) the process involved here will actually involve less disturbance if the house is placed more westerly and the excavation would be the same—Andrew Holding then explained his findings.

Andrew Holding continued and said (1) the details shown in the photos shown several meetings ago show that Leo Stapleton, when he purchased that property from Mr. Holding's mother and built the house with her blessing, did so by not excavating and it shows very clearly in the photos of the basement that all the ledge rock is there—there is no excavation, therefore, the details that are shown in the now not apparent lower-level plans show clearly that there is major excavation and blasting required—you can see the ledge rock and that is why Leo Stapleton didn't disturb it and that is why you didn't have a full lower level, (2) he stated at the last meeting that the difference in elevation between the back and front of the proposed house was 12' and that was just flatly denied by Mr. Steves, a licensed surveyor.

Andrew Holding approached the ZBA bench and handed out pictures to the ZBA members. Andrew Holding said (1) he was asked by the applicant's wife not to go on the property because she was afraid he would get ammunition from her against the project, so he has not been on the property, (2) the photos taken for a previous application show the lake side or westerly elevation and what you see is a standard 7' height garage door, above that are 5 courses of concrete block, above that there is fascia and above that is a deck—that deck may be at first floor level, but it may also be several inches below first floor level, but it is at least 12' 4" from the bottom of the garage door to the deck and (3) the first floor of the existing residence comes out right at soil level. M. Murray said that is true.

Andrew Holding said the elevations are missing from the application and again approached the ZBA bench and handed out elevation drawings. Andrew Holding said (1) the house, as proposed, cannot be built without excavating the entire front yard 5' deep, which means you have the same construction process you would have used up above, going on down below and then in addition to that you need to remove 8,160 cubic feet of stone and soil, simply to accommodate the driveway and the front entry, (2) by the time you take the elevations shown in the drawing and continue that flat up another 6', you are now excavating 11' into soil and bedrock to just get into the garage, which is a violation of the Bolton Code, because you can't do cuts more than 6', (3) the picture being portrayed here as an environmentally friendly project is inaccurate—there is more work and more disturbance to do than what is being talked about for the proposed location and (4) the only drawback is that if the house was built more westerly, the applicant would not have a basement view of Lake George. M. Murray agreed.

Andrew Holding also said (1) he doesn't know of anybody who can really build a roof structure within 11/16", but this is the way this project is being proposed, (2) the concept that an applicant is willing to comply with septic is ludicrous and an insult to the community—the applicant must comply with the septic—it is not giving up anything to replace a defective septic field, (3) they smell the septic from the existing septic field, (4) it is a concern because it is an adjacent property and as a professional, he gets enraged when he sees an application come across the Zoning Officer's desk that clearly shows an illegal septic system and the mislabeling of things, (4) he is also concerned with the statement being used of an "existing hole" where there is no existing hole, but where one certainly will be made within 20' of Lake George—the proposed house should be moved where it belongs and keep the damage away from Lake George—this is not given the variance so the letter of the law can be changed and the intent of the law kept—this variance seeks to go against every bit of the intent of the law of the Bolton Zoning Code and (5) he is asking the ZBA to deny the application in its existing state and offer to the citizens and the neighbors, the protection of the Zoning Code they deserve.

John Painter said (1) much of what Mr. Holding said is complete inaccuracies, (2) you can ask and ask and ask what you can do to be a good neighbor—Mr. Holding sent them (he and his wife) a letter listing six or eight items of which if they complied with he would "have garnered his support" and (3) Mr. Holding was calling his wife several times and swearing on the phone and yelling at his wife. Andrew Holding said that final statement is not true.

John Painter continued and said (1) his wife told Mr. Holding to contact them by e-mail or regular mail only, (2) they have only met Mr. Holding for less than 10 minutes and he just goes on and on with many different comments that are absolutely not true, (3) one of Mr. Holding's e-mails to him says he "wants to also assure you (the Painters) that he looks forward to the completed project to be a tremendous improvement over the current structure as well as the land being used and enjoyed once again", (4) on one hand, Mr. Holding said if the Painters would comply with not exceeding the roof height of 35' and

don't allow the septic tank to be outside the Zoning Code and other items—the issue is that much of what Mr. Holding has said is not true and (5) he wants to make it clear that they fully intend to do whatever they can to build the home as a quality structure with a vast improvement over what is existing there rather than just rebuild the existing structure on the same footprint.

B. Pfau said (1) from a Zoning aspect, the applicant is 22' from the lake and has made no attempt to minimize that aspect of the application, in other words, move it back a little bit, (2) the side yard setback on the north, which the house now meets, no longer meets on the new proposal, (3) the applicant's new proposal adds another approximate 8' in height over what the applicant currently has, which is pushing up against the maximum allowed in Bolton Landing for building height, (4) the applicant's land in front of the house is a very steep piece of land, (5) he thinks it goes with the conditions of environmental impacts that the applicant's construction, which will be construction from the bottom up including excavation, is going to be done within 22' of the lake and he thinks that one can legitimately bring in concerns of the damage to the lake, and (6) as far as the distances to the lake and the side yard setbacks, the applicant has not done much to alleviate those conditions and he thinks the applicant has room to move the proposed structure back some—he isn't looking for 75', but the fact that the applicant hasn't even moved it 1' is tough.

John Painter said the further you move it back the further into the bedrock you are moving it which will take additional breakage, possible blasting and further erosion of the ledge rock as you move it. B. Pfau said he wasn't present for the September 2005 ZBA meeting, but read the minutes and a few ZBA members had discussed maybe even eliminating the front section of the house where the screened porch and the deck is now. M. Murray said that is correct—he suggested that the applicant do that to take 12' off the front of the house in order to get it 12' further from the lake. B. Pfau said the additional height is a large concern considering all of that additional height is within the 75' setback from the lake, which in his experience in the past has been pretty hard to come by with this board and M. Murray and G. Smith agreed.

Correspondence: Read into the record by Counsel.

- Letter from Kathleen Bozony of the Lake George Association—opposed.

No County impact.

G. Smith said the current proposal doesn't look good to the ZBA members. John Painter said without the ZBA trying to design the home, he has made an attempt to reduce the variance on the south side. G. Smith said (1) they have been telling Mr. Steves from day one to reduce this variance and the applicant finally reduced that variance, (2) as far as he and a few of the other ZBA members are concerned, as B. Pfau said, the applicant made no attempt to withdraw from the lake variance of 22' whatsoever, (3) he doesn't blame the applicant from wanting to be there, but part of the process of the ZBA being here these days is that if an applicant can be in compliance, then the applicant should be in

compliance, (4) the ZBA can't justifiably, as far as he is concerned, give a variance for what he applicant is asking for—the applicant has hardly made an attempt to shrink this project down and (5) as B. Pfau was saying also, the height of the house is huge to—the applicant is going from 27' to 34.5'—almost to the max.

T. McGurl Jr. asked for clarification of a picture of the basement. John Painter approached the ZBA bench and gave an explanation.

John Painter said (1) he has a feel for how the ZBA members feel and (2) he thought he was making a significant request and improvement by reducing the variance on the south side. G. Smith said a significant request, yes—an improvement, no. John Painter said (1) if he brought the garage in 5' more on the north side then there would be no variance requests on the north or south sides. M. McComb said (1) except that it is new construction within the 75' setback of the lake and (2) even if the applicant meets the side yard setback, the applicant is still within 75' of the lake with that garage. G. Smith said the applicant has plenty of room to move the house back. M. Murray agreed and said the applicant is expanding a non-conforming structure. G. Smith said the applicant has all kinds of footage behind him to be in compliance and he feels the applicant can do that.

K. Hoopes said (1) that is interesting, because on the one hand the ZBA is saying that the applicant has made no attempt to move in from the sideline setbacks and everything else, but then M. McComb's comment essentially says that this is a zero tolerance situation and that it pretty much doesn't matter how much the applicant gives on the 75' setback and (2) asked if that is the case in that if the applicant met the two sideline setbacks the ZBA would still be dissatisfied with the plan because it is within the 75'. G. Smith said more than likely, yes. K. Hoopes said that is a fair thing to tell the applicant up front. Several ZBA members said they believed the waterfront would be the clincher and that they feel the applicant has been told that. M. Murray said at the first meeting on this project he said that if the applicant wanted to be in a favorable light, he suggested the applicant take 12' off the front to start with away from the lake and they wouldn't do it.

G. Smith said (1) he is at the point now where he feels it should be back 75' from the lake and there is no reason the applicant can't do it, (2) as it says in the codes, whether benefits can be achieved by other means feasible to the applicant—the applicant can do it by other means feasible than being 22' from the lake and be in compliance, (3) there would be a change in the neighborhood, because the height is going to be max out, plus the applicant is building three times what is already there now and (4) the request is substantial—it will be a substantial large house looking from the lake and being so close to the lake.

John Painter said he is trying to improve the structure without having to rebuild the exact structure on the footprint. G. Smith said even if the applicant wanted to rebuild the exact structure on the footprint the applicant would still need a variance. M. McComb said if the applicant is tearing down voluntarily and rebuilding—even on the same footprint—the applicant would need variances to do that. P. Kenyon said it has been changed in that an applicant can demolish and rebuild provided to dimensions are the same you can

rebuild. Counsel said that is correct. T. McGurl Jr. said it has to be identical—window for window. M. Murray said (1) there couldn't be any change in the foundation and the footings either and (2) it is possible, technically, yes. Counsel said (1) it would be a very weird renovation and (2) legally, for the purposes of discussion, it is possible, but it makes no sense otherwise.

M. McComb said in consideration of that the applicant is improving things and the applicant does want to improve things, there may be some give from the 75', but as G. Smith said, it is feasible for the applicant to do it.

T. McGurl Jr. said (1) to each his own and he is not trying to design the applicant's project, but in looking at the distance from the lake he doesn't know why the applicant would want to be that incredibly close to the lake, (2) he is not making a judgment call or passing a decision on that, but it would just seem that in the design of the house, aside from maybe having to do some additional blasting, the applicant would be better off with a larger front area spread out in front of the house, (3) it is a beautiful home that the applicant has designed, but he is dropping a very large home right at the edge of the water and he can't see how the applicant is going to get a benefit from that and (4) he thinks if the ZBA saw some movement backwards, the ZBA would be more flexible on it, but the applicant would have at least a front lawn—the applicant has a steep bank there that's going to be coming right out the applicant's doors.

John Painter asked if it is accurate that if they demolish the existing structure, clean up the ledge rock to put in appropriate footers and proper drainage and put in a poured foundation then he can rebuild on the foundation the exact house to utilize the views up and down the lake. G. Smith said it depends what the applicant's term is as to cleaning up the ledge rock. John Painter asked if that means he can't even remove the ledge rock to put the footers down and G. Smith said this is the first time the applicant has mentioned having to remove ledge rock. K. Hoopes said he feels that would be a decision the Zoning Administrator would have to make and the ZBA shouldn't be speculating at this point and G. Smith agreed. Counsel said to avoid the speculation, if the hypothetical in the applicant's mind involves neither expansion nor enlargement, then the answer would be hypothetically, yes.

John Painter asked if he wanted to gather the support of the ZBA in an effort to move forward with this project and try to get some closure, if he reduced the variances on the north side so the garage was in 20' and he reduced the house size on the south side and moved it in 8'-9' so there is no variance needed on the north or south sides and moved the lakeside back a certain amount if they could then build the structure. K. Hoopes said that the ZBA can't comment on that. G. Smith said he can't say the ZBA would or wouldn't—it all depends on what the applicant wants to do, how much he is going to trim it down and how much he is going to go back—he honestly can't tell the applicant that.

John Painter asked for ZBA input on if without a vote tonight, if he goes back and makes some meaningful changes to where it would be smaller and maybe no loft on the garage. K. Hoopes asked if the applicant is asking the ZBA to table this application tonight and

John Painter said yes, he is asking to table this application tonight so he can get some guidance from the ZBA so he can make some meaningful changes and come back to present a new proposal to the ZBA in a month or two so that he would gather some support from the ZBA members.

B. Pfau said (1) this has happened before here and he remembers the statement Counsel made regarding this type of request; and (2) he doesn't know how the guidance aspect practically would work. Counsel said (1) that is correct and (2) he has also said that the applicant of course controls their application and that is if Mr. Painter wishes to table his application and he is going to come back with a revised plan seeking variances for the same project that are different from tonight's request, he certainly has the opportunity to do that, and (3) the strategy he would advise the ZBA members here is not to offer answers to what they speculate might be the direction they would like to go. G. Smith said if the applicant would like a motion from the ZBA to leave this public hearing open for him to come back in a month or two, the ZBA will oblige. John Painter said he would like that.

Now, upon motion duly made by Meredith McComb and seconded by Mike Murray to table the application and leave the public hearing open allowing the applicant time to revise his plans. **All in favor. Motion carried.**

2) V05-80 BYERS, STEPHEN. Represented by Eugene Baker. To demolish and rebuild existing single-family dwelling, seeks area variance for a deficient shoreline setback; 75' is required from the mean high water mark of the stream; 23 ft. is proposed. Section 171.08, Block 1, Lot 14. Zone RCM1.3. Property Location: 10 Braley Point. SUBJECT TO WCPB REVIEW & APA REVIEW. *See V04-28 for previous approvals.*

Tony DePace stepped down from the ZBA bench and recused himself from this item.

Eugene Baker, representing Stephen Byers, gave an overview and said (1) there was no accurate map showing the stream on the northerly side of the property line, but the stream is now shown, (2) they are proposing the center dormer being a little larger just to make it more aesthetic to match the cabin and (3) there is a little second floor deck proposed on the north side to be put on one of the bedrooms.

G. Smith asked if it is accurate that other than the stream not being plotted, if this is the same plan the ZBA previously approved and Eugene Baker said yes the stream wasn't plotted on the original map.

G. Smith asked if 10' further away and Eugene Baker said yes. G. Smith asked if the proposal is almost doubling the setback from the stream—what exists now to what is proposed and Eugene Baker said yes.

M. McComb asked what the difference in the size of the house is and Eugene Baker said the square footage is only about 200 square feet more from what exists already because they have more decks and covered porches around than the original house does.

B. Pfau asked if it is accurate that the new proposed structure is going to be 10' further away from the stream than what exists now and Eugene Baker said yes. B. Pfau asked about the possibility of moving the entire structure further away from the stream and Eugene Baker said if you move it over the septic system is there and you need to be 20' from that, which is why the placement is as shown, because of the septic field. M. McComb asked if there is any wiggle room there and asked if they are still in the tear down stage of this project. Eugene Baker said the project is on hold, the house was given the Fire Department to practice in, so that is why there is a lot of demolition to it and then other people have been scavenging materials they can build with.

B. Pfau asked if they are using the same foundation and Eugene Baker said no, it is an old barn—the house now sits square on the property with the road, the floors are weak inside the house and the original structure was an old carriage house/barn.

B. Pfau said it is important to note that this new construction is going to be 10' further away than what exists there now. G. Smith added that it can't go any further over because of the new septic field that has been put in place. M. Murray asked if the septic will definitely handle everything that is there and Eugene Baker said yes.

M. McComb asked the disposition of what the situation is with the rock wall and Counsel said (1) he believes it is unresolved, (2) that rock wall seems to change frequently in terms of its length and what parts are not connected and its height, (3) from recollection, he would say about six weeks ago both Zoning Administrator P. Kenyon and Code Enforcement Officer M. Nittmann both alerted him to the fact that the six weeks ago version of that rock wall—of course on a different site—was now large separations which seemed to comply with the requirement of the judge's comment, (4) M. Nittmann asked him (Counsel) to alert Mr. Byers to her rendition that it was still in violation—he thinks there was an actual measurement and portion of the retaining wall—or whatever the thing is out there—was higher than 2' in elevation and he did, at that time, call Mark Schachner's office and was only able to leave a voice message and (5) he followed up about three weeks later with a letter to Mr. Byers and has not heard anything about it.

P. Kenyon said she and Counsel discussed it last Thursday night and decided it was time to cite Mr. Byers for a violation since they hadn't heard from them, which she asked M. Nittmann to do and Counsel said that is true.

Counsel said (1) this issue has nothing to do with this project and (2) if you look at 200-84 in the Code, when you have violations, common owner, but the violations are site specific, you cannot hold that same individual accountable—he is not talking about common sense here, but about what the Bolton Code provides in talking about site specific violation. M. McComb asked if that is a change and Counsel said no. K. Hoopes said the ZBA discussed this same type of situation with Parrotta and M.

McComb said when the ZBA did talk about Parrotta, Counsel said the ZBA could in its discretion, wish to have other violations by an applicant cleared up before granting further variances. G. Smith said that is only on the same piece of property. Counsel said he won't go all the way back to Mr. Parrotta's case, but he thought that again, it was in the common sense category where you could ask the applicant, but you cannot impose it him—you cannot—he wants to be clear about it—they are site specific.

Correspondence: Read into the record by Counsel.

- Letter from Kathleen Bozony of the Lake George Association—concerns.

P. Kenyon said that M. Nittmann hasn't cited the applicant for any violations on his property. M. McComb asked if the top of page 20079 and 200-83 the sentence "...in addition the Town Board in its absolute discretion may prohibit the violator from making any required application for such period of time as determined by the Town Board so as to allow the violator to implement the terms to the Board's order of remediation..." is applicable here and Counsel said no, it does not—it is site specific. M. McComb asked where it says it is site specific and Counsel said (1) page 20080 section 200-84, Suspension of Administrative Review, which talks about suspension of application processing may remain in effect pending final resolution of enforcement action and (2) it talks about specific to this site. M. McComb said maybe there has been a revision to this that she is unaware of and Counsel said there has been within the last year and a half.

No County impact based on the information provided by the applicant's representative at the meeting.

P. Kenyon asked about additional information submitted to Warren County and Eugene Baker said (1) the only thing the County was worried about was the construction going on the back half of the property as the County had photos—which was that a building was built and a new septic was put in, (2) in December 2005 when he came to get the Certificate of Compliance, M. Nittmann inspected the site and determined there was zero disturbance, so he was able to get the certificate, (3) the County was worried about what was in another building, which is another bedroom, (4) there was a septic that was re-done to today's standards and there are four septic tanks and a pumping station in here to make code and (5) usually the County recommends going to Water & Soil for stormwater, but the County could see the stormwater was in place and had no comments or recommendations on that.

M. McComb asked how many car spaces are in the garage/guest house and Eugene Baker said the new one is a one car garage with storage. M. McComb said she thinks 47' is quite a relief from the stream setback and given the fact the applicant didn't know where the stream was. Eugene Baker said (1) that the map that was provided only had the stream going to the culvert and (2) the stream had to be plotted to make sure they were within the 100' setback from the stream for the septic system—so that is how the map with the stream got plotted.

M. McComb said (1) if the garage isn't on the side of the house as proposed, it moves away from the stream, so there are other ways and options and (2) she understands an incomplete map was presented to the ZBA before, but that doesn't seem to override that it is half the distance to the stream that the applicant already got a 40% variance from the setback—it is half of what the applicant said it was before. G. Smith said (1) no, it wasn't 43' before, it was 43' to the culvert underneath the road, (2) right now what exists is 13' from the garage now of the house that is sitting there to the stream and (3) the applicant is proposing 23'+ instead of the existing 13'. Eugene Baker said the 47' from the front corner to the culvert and G. Smith said that number doesn't mean anything. B. Pfau asked if it was less than that to the stream when the ZBA first approved it and Eugene Baker said (1) yes, it was 13' and (2) the existing house there now to the shed roof is 13' 6" to the brook. G. Smith said the new proposal is 23'+.

P. Kenyon asked about Eugene Baker's comments when he went for the Certificate of Compliance regarding the bad storm last that changed the course of the stream. Eugene Baker said (1) the stream used to come more straight, but it has in-filled with those storms, so it has been coming more toward the property there making a sharper bend, (2) the brook has a big "s" in it because the force of the brook trying to come around and it is just going where nature wants it to go. M. McComb said granted that is the way nature is going to have the stream go and asked if it is prudent to ignore that. Eugene Baker said (1) he will move the building over within 20' of the septic system and (2) they can move it more away from the brook—probably 10'. P. Kenyon asked if that would affect the front setbacks and Eugene Baker said that would bring it closer to the road around the front and the right-of-way. B. Pfau said if the applicant is willing to move it further away from the brook, he thinks that is a solution maybe everyone could live with, because he would rather see it further away from the brook and that would make it another 20' away from the brook than it is now. G. Smith said it would be 32' from the right-of-way instead of 42'. M. McComb said then the applicant would be doing everything they can to bring it into compliance.

P. Kenyon asked if that is going to make it so they need a variance from the front, because that would need to be addressed tonight too. B. Pfau said he thinks the ZBA did just address it. K. Hoopes said essentially, the ZBA is approving a brand new variance and Counsel agreed. P. Kenyon asked for the measurement from the proposed structure to the right-of way and said that 50' is required. Eugene Baker said he wants it to be 32' from the right-of-way. M. Murray said that would enable the applicant to pick up the other 10' on the other end and G. Smith said that would make it 33' on the other end instead of 23'. P. Kenyon said her concern is the septic and she has to make sure it is still 20' away from the septic. M. McComb asked if it is an existing foundation the applicant is re-using and Eugene Baker said no, it is an old barn, so there is no foundation there.

From the public, Kathy Bozony of the Lake George Association, said (1) she appreciates the fact that the Byers are willing to move their house 10', but what is being looked at is a 75' with a potential meandering stream that has already been recognized, (2) there is plenty of space in the back to keep it away further, (3) she is wondering if the septic was drawn to look that large or if what is shown is what actually exists, (4) she

appreciates the applicant's attempt to negotiate and move 10' further from the stream, but there is a 75' variance setback in the Town of Bolton on streams and this is a very critical stream going into Lake George and ten more feet is not really going to make a lot of difference, and (5) she needs the ZBA to really look at this regarding the available land behind the proposed house location and the applicant could redesign the house to make it more compliant.

From the public, Chris Navitsky, Lake George Waterkeeper, gave an overview of a letter he submitted and said (1) the requested variance will result in impacts environmentally to the stream, (2) a minimum of a 75' buffer should be provided for the impacts to the stream as proven by studies done by the USDA and the Forest Service, (3) the Lake George Park Commission has recognized the need for the stream corridors by initiating their Watershed Protection Plan for stream corridor protection, (4) the applicant has already impacted this stream corridor greatly through unpermitted construction activities, (5) portions of the stream have been enclosed without a permit twice; (a) once last February and he contacted the NYSDEC, where the NYSDEC recognized it was a stream and it would need a permit and (b) in the storms in June, that work was washed away into the lake and NYSDEC said the applicant would need a permit, but that was not obtained and the NYSDEC closed the stream again, which has increased the existing delta in the lake, (6) the applicants have installed a catch basin with a pipe directly discharging in this stream without any permits from the Town of Bolton, which demonstrates that this stream corridor has been impacted greatly and the ZBA should not look favorably at increasing impacts to the corridor, (7) this is a 23' setback requested to the stream—which is a 70% variance—which is substantial, (8) it appears it could be easy to obtain the benefits of relocating the house, (9) the septic location should be brought up and finalized and the survey should be provided and (10) the variance is self-created.

M. McComb asked for clarification of the maps she has and the proposed house sizes. Eugene Baker approached the ZBA bench to clarify the maps and proposed house. M. McComb suggested the applicant move the garage location to behind the house and said where the garage is poking out now is where the stream is coming closest to it. Eugene Baker said (1) it would still be somewhere around the 23' feet—maybe 25' if you twist it, (2) the existing garage is only 13' from the brook with no stormwater and (3) new construction has to go through stormwater, so it is adding to the habitat to Lake George—it is not detrimental to the lake. G. Smith asked if it is accurate that they can go from 13' to 33' now with a front yard variance of 32'. M. McComb asked if the ZBA needs the actual drawing before it says 32' or if it would be apples to apples. P. Kenyon said she and Counsel just measured it out and the applicant would be fine moving the house to give the 32' on the front and to meet with the septic requirement.

From the public, Kathy Bozony of the Lake George Association, asked for clarification on what structure is 13' from the stream. M. McComb said the carport is 13' from the stream. Eugene Baker further explained the distances by referencing the map.

Kathy Bozony said (1) she has not looked at the site for months, but has reviewed the drawings, (2) it is going to be an attached garage as part of the home that is 33' from the stream and (3) in reality, there is a 75' variance and there is room on the land to put the house so it is conforming. Eugene Baker showed on the map where the pump station and the septic tanks are located.

Kathy Bozony asked if when the leachfield was planned, if it was just assumed that a variance would be granted with the house there and G. Smith said the applicant had a variance for that which was approved.

Kathy Bozony said on the site plans she saw, she did see a stream drawn in March of 2004 that was approved in August of 2004 and she saw the same stream but in a different location drawn, so those original maps in 2004 did have a stream on them. Eugene Baker said (1) they only drew it on the map presented to P. Kenyon that he presented to the ZBA last year and it only went up to show the stream, (2) when they went to get the septic approvals P. Kenyon said everything had to be plotted to get the separation from the brook to the septic field and (3) when that was plotted on the map is when P. Kenyon noticed the stream location that needed to be shown.

Kathy Bozony said then to get a variance application an applicant just has to omit some of the details so it goes through. G. Smith said no, that is not how it happened. Kathy Bozony said in August 2004 if the stream wasn't there then that would be the case. G. Smith said the whole stream wasn't shown on the map but that wasn't a planned thing, (2) when the computer printed it up, somehow part of it was missing. K. Hoopes said even if it was, the ZBA would have dealt with it right now. G. Smith said that is why the applicant is back here—because the stream was missing out of the plan somewhere along the line. K. Hoopes said (1) there has been a house there for a long, long time, (2) there is no tree or brush removal and there will be no change with what is going on with that stream. M. Murray said stormwater retention will be taken care of now and G. Smith said plus there is stormwater on the whole property now. Kathy Bozony said she agrees it will definitely be an improvement over the old and the new septic is good. G. Smith said now they will be going from 13' from the stream to 33'.

Kathy Bozony said she is not sure what the garage/guest cottage was approved as and Eugene Baker said it is a 1,500 square foot accessory structure. Kathy Bozony said in looking at the site she sees a lot of room for not granting the variance and not even negotiating to 32'—she thinks it is very close to the stream and in light of the fact the stream is moving all the time it is only going to move closer and closer to the house. K. Hoopes said that is not a good assumption and Kathy Bozony said Eugene Baker is the one who suggested that the stream is moving and is always pushing that direction.

K. Hoopes said the Town of Bolton had a very, very unique storm event on June 13, 2005. Kathy Bozony said the Town has unique storm events all the time and G. Smith said not like that.

M. Murray said (1) you can't ignore the other part of the tanks having to be installed to meet a code so that the septic system meets all the present standards with a surplus, in other words there is lee-way in the system and they don't want to do anything to disrupt that—that is priority one and (2) the applicants put them that way so nothing would happen to them and so the Town wouldn't have a septic problem next to the lake. Kathy Bozony said it is still a very big footprint for being next to the stream. M. Murray said he still doesn't want anything to happen to the septic system and Kathy Bozony said she doesn't either, she thinks it is very important.

M. McComb asked if there is any possibility of cutting down on the porches to pull it over a little and Eugene Baker said he thinks then you are ruining the architecture of the building. G. Smith agreed and said (1) the ZBA has already approved this once, (2) the ZBA has made a huge change even by moving it over 10' and (3) he doesn't think the ZBA needs to nickel and dime this house down—he thinks the ZBA has done a pretty good job already tonight. M. Murray said (1) a whole series of problems are being solved—not just one and (2) you have to look at everything the applicant is dealing with—the applicant is dealing with situations they never had to deal with before, because all the stormwater has to be taken care of and all of the septic has been totally modernized. G. Smith said (1) stormwater is going to be taken care of and (2) this is a huge improvement on the whole piece of property. T. McGurl Jr. said that regarding coming away from the stream, he looks at it as there is a carport there already and he doesn't see what the side of a garage, which the structure is already there to begin with, is going to harm anything and the applicant is going to move it. M. Murray agreed.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-80) Stephen Byers 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's 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 #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, there is limited real estate to move around on and have maximized the available wiggle room;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, undesirable change has not been established, this is the rebuilding of an old house that will probably be an improvement architecturally and aesthetically and the wastewater and stormwater management will be an improvement;
- 3) The request is not substantial, in lieu of the fact there was a garage there for many, many years only 13' from the stream and this is moving away from the stream;
- 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, in as much as the house was bought where it was and this is an improvement on the situation.

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 Tom McGurl, it is resolved that the ZBA does hereby approve the variance request with the condition that the single-family dwelling be moved 10 ft. to the south so that 33 ft. is maintained from the stream and 40 ft. is maintained from the right of way. In no case can the relocation encroach on the required 20 ft. setback to the leach field. Meredith McComb against. Tony DePace recused himself. **All others in favor. Motion carried.**

3) V05-73 VANBUSKIRK, KEITH. Represented by Attys. Jonathan Lapper & Stephanie DiLallo Bitter. Item #1) To alter pre-existing non-conforming structure on lot 1. Seeks area variance for deficient setbacks 1) shoreline 75 ft. is required from the mean high water; 10 ft. is proposed. 2) Side 20 ft. is required; 18 ft. is proposed. 3) To alter a pre-existing non-conforming structure in accordance with section 200-56A.

Item #2) To alter pre-existing non-conforming structure on lot 3. 1) Seeks area variance for deficient side yard setbacks: 20 ft. is required; 7 ft. is proposed and 2) To alter a pre-existing, non-conforming structure in accordance with section 200-56A. Section 213.05, Block 1, Lots 6 & 7. Zone RM1.3. Property Location: 4124 Lakeshore Drive. **SUBJECT TO WCPB REVIEW & APA REVIEW.**

Tony DePace returned to the ZBA bench for this and the remainder of the agenda items.

Attorney Stephanie DiLallo Bitter, representing Keith Van Buskirk, gave an overview for Item #1 and said (1) in November 2005 the applicant did obtain PB approval to subdivide the property into three separate parcels and showed the parcels and the proposed structures on the map, (2) the applicant is proposing to renovate the existing house and boathouse on Lot 1, (3) the applicant is proposing to close in a portion of the porch located on the left side (looking from the lake) and to rebuild the stairs and walkway as the fittings exist located on the right side (looking from the lake), (4) the project is essentially being done to restore the historical design of the actual house, (5) new construction is being proposed on Lot 2, which is not before the ZBA tonight and (6) on Lot 3, the applicant is proposing to maintain the log cabin but to place an addition on the north side which is approximately 1,200 square feet in size.

M. McComb asked that the applicant deal with each item individually. Atty. DiLallo Bitter said (1) on Lot 1 they are looking for a shoreline setback relief, where 75' is required, but this is an existing house and the renovations proposed are to restore the house as it sits on the footprint, (2) the side setback is on the south with a 20' requirement and 18' proposed, essentially that is non-conforming as it already exists today and (3) the alteration of a pre-existing structure is the last request.

G. Smith asked which variances the ZBA already granted and P. Kenyon said lot sizes and deficient shoreline variances were granted.

M. McComb asked for the change in square footage and the height and Atty. DiLallo Bitter said there is no change. M. McComb asked if this would be on a pre-existing footprint and G. Smith said (1) yes, and they are only looking to put a staircase on either side of the front porch and (2) the only other change is the boathouse—to flatten the roof out and put a deck on top of it, but it is going to be an improvement. M. Murray said the proposed change to the boathouse is an improvement. P. Kenyon said the boathouse is not part of this application and G. Smith said he knows, but he was just clarifying what might look different.

M. McComb said (1) the other difference she sees between this application and the other one that makes her look favorably on this is just looking on the lot that gets very steep and unbuildable right behind where the house site is and (2) it just seems like a pre-existing thing that is not being expanded, but actually just renovated. M. Murray said it is being made modern and safe, which is what you want. Several ZBA members agreed that they think it is a great thing. G. Smith said another good thing is that all the trees are going to remain around that house.

B. Pfau asked if the proposed stairs are encroaching more on the lake than what exists there now and Atty. DiLallo Bitter said no, she doesn't believe so and referenced the elevation drawings.

B. Pfau asked if the north side of the balcony where 10' is proposed and the partial balcony is proposed, if that the distance from the lake as it exists now and Atty. DiLallo Bitter said yes, it is the same footing. K. Hoopes said the stone pilings are still there.

B. Pfau asked if the side yard setbacks on the south are being maintained as is and Atty. DiLallo Bitter said yes.

G. Smith said (1) the bottom of the stairs are going to encroach closer to the lake maybe about 2' if they come down by the pillar, so it is very minimal, (2) on the left side of the house the proposal is to go back up toward the property and not toward the lake.

Correspondence: Read into the record by Counsel.

- Letter from Kathleen Bozony of the Lake George Association—concerns.
- Letter from Chris Navitsky, Lake George Waterkeeper—concerns.

No County impact.

G. Smith said (1) he is pleased to say that none of the trees whatsoever between the residences and the shorefront will be removed—they are all going to be kept where they are at including the big white pine and birch referenced in the LGA correspondence and (2) it is attractive with all the trees and it will help with stormwater run-off.

B. Pfau asked how the time schedule works for the demolition of structures per the ZBA's conditions on the original subdivision. Atty. DiLallo Bitter said as soon as the approvals are completed, the applicant is planning on starting demolition. P. Kenyon said any conditions on the subdivision for the variance will be handled through the Zoning Office. M. McComb said they have seen it before where applicants state buildings will be removed, then the first project is building the new buildings, so the demolition is sometimes lower priority. K. Hoopes said he doesn't think that unless it is a safety hazard, that he ZBA needs to get involved with the schedule of construction. G. Smith agreed and said (1) that right now the ZBA will stick with Lot 1 and get through the house part of this and (2) he thinks it is wonderful what they want to do, there is no increase in the size whatsoever and to see this brought back to a life is going to be beautiful down there.

No public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from (V05-73) Keith Van Buskirk 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 (Part #1 for Lot 1) of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by other means feasible to the applicant, the lot and the pre-existing footprint seem to suggest this is a great place to replace what is there;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, because the applicant proposes to simply renovate what is pre-existing on the same footprint to the same height;
- 3) The request is substantial compared to the code, but the specifics of this case outweigh that;
- 4) The request probably will have some adverse effects or impacts on the physical or environmental conditions in the neighborhood or district, but at the same time it is reclaiming a historic structure in Bolton and it is a project designed to be completely within the pre-existing footprint;
- 5) The alleged difficulty is not self-created, because of that they are working with what is there and not proposing expansion.

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 to alter the pre-existing single-family dwelling on lot 1 as presented. **All in favor. Motion carried.**

G. Smith said the ZBA will now address Lot 3, which is listed as Item #2 for this agenda item.

Atty. DiLallo Bitter said (1) they are proposing to maintain the log cabin that exists there today and to add an approximate 1,200 square foot addition onto the side which is not non-conforming, (2) the side that the variance is requested for is the southern side and it maintains a 7' setback where a 20' setback is required, (3) they are also seeking a

variance for altering a pre-existing non-conforming structure, (4) they feel the proposed modifications will help them maintain an already existing structure to update it and to give it some site improvements making it more aesthetically pleasing, but not to actually create a much larger structure, which was originally proposed in the subdivision, (5) while the ZBA may consider demolition of the structure as an alternative, there is really not a need as the integrity of the structure is such that it doesn't need to be demolished at this time and (6) they don't feel the degree of change is substantial due to the fact that the side in which the non-conforming exists is not the side being expanded or enlarged.

G. Smith said he agrees with the last statement. K. Hoopes said (1) it looks solid and dry and (2) he likes the suggestion of tearing up the pavement down to the lake. G. Smith agreed.

B. Pfau asked for clarification on the 7' measurement and P. Kenyon said that the 7' is from the south property line. G. Smith said that the 7' is because of the angle.

M. McComb asked how far it is from the lake and Atty. DiLallo Bitter said it is just past the 75' mark.

B. Pfau asked what part of the new construction doesn't meet the setbacks and Atty. DiLallo Bitter said the proposed new construction is all going to be to the north. B. Pfau asked if the sideline setbacks meet the required setbacks and Atty. DiLallo Bitter said yes, they will be maintaining the 7' setback that already exists. B. Pfau asked if all new construction will meet setbacks and Atty. DiLallo Bitter said yes.

M. McComb said in looking at the whole proposal, she is not sure why the ZBA isn't looking at the house on Lot 2 and asked if that meets all setbacks too. Atty. DiLallo Bitter replied by saying that is going to meet all setbacks as well. M. McComb said that even though Lot 2 is not before the ZBA today, she still sees kind of a row of houses being constructed, but if the one in the middle meets all setbacks, then there is not much to say about it. T. McGurl Jr. said (1) that much like the ZBA said with the other house, he would much rather see the applicant stay with working with the existing log cabin and building with what he has, rather than tearing the thing down and moving it up the hill to break up the line, because that would make more of a problem and (2) the applicant already has something to work with.

P. Kenyon said (1) site plan review is required for the addition on Lot 3 and Lot 2, which the applicant has not applied for yet and (2) the cut-off date for submission was today. Atty. DiLallo Bitter said she is aware of that information.

No public in attendance.

M. McComb asked if it is new septic systems going in at the top of the lots and Atty. DiLallo Bitter said yes and they will be before the Town Board in February for the variances that are necessary.

No County impact

RESOLUTION

The Zoning Board of Appeals received an application from (V05-73) Keith Van Buskirk 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 (Part #2 for Lot 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 other than a variance, as the existing structure does not meet setbacks and therefore all the conditions for this building will need a variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, these will be residential homes in what is now a residential area with one primary house per lot;
- 3) The request is not substantial, as all new construction does meet setbacks;
- 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, because again, that structure does not meet setbacks.

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 to alter the pre-existing non-conforming structure on lot 3 as presented with the condition that the pavement

between the single-family dwelling and the lake be removed. **All in favor. Motion carried.**

4) RANDALL, NORMAN & MARILYN. In accordance with Section 200-72 of the zoning ordinance, seeks to Appeal the Planning Office's determination that the fence/dog pen located on that parcel designated as 186.15-1-41, 168 Homer Point Road is considered a structure thus requiring a certificate of compliance. A Fence is defined in the zoning ordinance as "An artificial structure designed to or which in fact, does divide, enclose or screen a parcel of land or portion thereof. A structure is defined as follows: Any object constructed, installed or placed on the land to facilitate land use and development or subdivision of land, such as buildings, sheds, single-family dwellings, mobile homes, signs, tanks, fences and poles, and any fixtures, additions and alterations thereto. Construction must be more than six inches above grade or in excess of 100 square feet to be considered a structure. Landscaping features shall not constitute structures. See also Section 200-78 Building Permits.

Marilyn Randall gave an overview and said (1) they have been breeding, raising and exhibiting Boston Terriers for about 30 years, (2) they are spending more time up here now and come up with more than one dog, (3) they decided they needed to find a way to be good neighbors and to still have their dogs with them, (4) they looked at several options, including electrical fences, and they thought about a portable fence to be located over the septic system in order to be away from the neighbors and so no trees would have to come down, (5) the Adirondack Fence Company felt they didn't need a permit because there are no footings—it can be picked up and moved, (6) they brought in dirt and grass, which they put over it and they plan on planting some arboreta and rhodies alongside the one side of it and (7) they didn't know they were supposed to get a permit, but they did start one the end of November, which is in the Zoning Office.

G. Smith asked if the temporary fence will be there for some time and Marilyn Randall said yes, although they are getting out of the dog business. G. Smith said it is very simple—all the Randalls have to do is get a Certificate of Compliance for this through the Zoning Office and it is a done deal—they don't need a variance. Counsel said (1) the Randalls are not challenging it, (2) it kind of comes backwards in that the Randalls are willing participants in what started out with the Code Enforcement Officer's rendition of "where's your permit for the fence" and then the question was then presented to the Town Board and he can guarantee that the Town Board looked at it and said it might not be a fence which is why it got dropped in the ZBA's lap and (3) the ZBA is supposed to decide whether it is or is not a fence.

G. Smith said (1) this is ridiculous and (2) as far as he is concerned it is a fence, so the Randalls get a permit for it and it is a done deal. B. Pfau asked if the Town Board is appealing and Counsel said no, the Town Board said let the ZBA tell us if it is or it is not a fence. B. Pfau said someone is appealing P. Kenyon's decision and P. Kenyon said right, that is what was decided at the Town Board meeting, that the Randall's were going to appeal her decision that it was a fence. Counsel said that is how it gets here.

T. McGurl Jr. said this seems like a no-brainer—this is a fence, the Randalls made a mistake and didn't get a permit and probably didn't know they needed one. G. Smith said (1) he is going to call it a fence, (2) he told a member of the Town Board that the Town Board is wasting the ZBA's time and (3) this is something simple that you and I could decide upon and deal with it and it's over with.

Counsel said it just needs an interpretation so they know where the ZBA wants it to be. G. Smith said it is a fence. T. McGurl Jr. agreed and said just get a permit and it's all done. P. Kenyon said no, the Randalls now need to go back before the Town Board to see if they are going to have a civil penalty imposed. Counsel said (1) that is true—that is the procedure and (2) once the ZBA makes its determination, if the ZBA says it is a fence, then he does have a recommendation for the Town Board, which is to just let the Randalls bring it into compliance. Several ZBA members agreed that they don't want the Randalls to be drawn into a fine or something like that—just the need to have them bring it into compliance. Counsel said the ZBA can't be informal about it—they need to make a motion.

Now, upon motion duly made by Kam Hoopes and seconded by Tom McGurl, it is resolved that the ZBA does hereby determine that the portable kennel is considered a fence, and recommends to the Town Board that no civil penalty be imposed and that the applicant apply for the required certificate of compliance. **All in favor. Motion carried.**

5) McCOMB, MEREDITH. To discuss “Interpretation” of mix zone density requirements. See Meredith's letter dated 11/22/05 for specifics.

M. McComb said she looks at all the different places in the Code that talk about it and she doesn't see why the number of buildings in the LC25 section of a mixed zone subdivision and thinks that if you divide the number of acres by the number of houses, you should at least get 25 and in RCL3 if you divide the number of acres you have by the number of houses you should get three unless you apply for a variance. G. Smith said it can also be possible if you have a big green zone.

M. McComb said (1) that if you have a variance, just simple math on it if you look at the Code, on page 20031 it says “...where an applicant owns contiguous parcels of land which are located in more than one zoning district, the total number of principal buildings allowable on such parcel may be distributed among such districts provided that no lot is created which is smaller in area than the smallest lot permitted pursuant to 20-15 in this chapter and the schedules attached thereto in any of the districts involved...” and (2) you could work at that until you say if you got LC25 land adjacent to RCL3 land that you can apply the requirements of RCL3 to building lots in the LC25 section. P. Kenyon said that is transferring density and M. McComb asked if that is not allowed. P. Kenyon said it is very much allowed as long as you are not in different APA zones and Counsel said that is correct.

M. McComb asked under what part of the Code is that allowed and Counsel said the very part she is reading. M. McComb asked about Part B that says “...the total number of

principal buildings permitted for the entire parcel is not exceeded...” and Counsel said that is a limit. M. McComb said if it is accurate that what is being said is that as long as LC25 is hooked up to the land conservation area and you piggyback it on RCL3 land then all the requirements for setbacks and density disappear. Counsel said no, just talking about reconfiguring so that you do not create any extra lot and you do not create any new principal buildings, but other than that you’ll be allowed to work within the same budget of what would have been available totally within each zone. M. McComb said, but in each zone and Counsel said comprehensively.

M. McComb asked if you have five lots in LC25 with five buildings proposed for LC25 do you need 125 acres in LC25 or not and Counsel asked if the hypothetical is now attached to RCL3. M. McComb said if you have it attached to RCL3, does that mean you if you have 25 acres in LC25 then you can build seven houses on it and Counsel said maybe00you’d have to show him the size of the lesser zone (the RCL3) then the greater zone and then cumulatively P. Kenyon would look at it and say well, the maximum density on the hypothetical is 12 and then she starts to allow the developer to budget those 12 on that parcel comprehensively creating no additional principal dwellings and creating no additional lots.

M. McComb asked if you have 30 acres in RCL3, which would give you 10 lots and 25 acres in LC25 which would give you 1 lot, then you would have 11 lots wherever you want them on the entire parcel and P. Kenyon said as long as you can transfer those densities. M. McComb asked what the conditions are under which you can or cannot transfer densities and Counsel said 200-23, not changing any setbacks, not creating any principal dwellings, not creating any extra lot and never where it involves an Adirondack Park Agency land use boundary.

M. McComb asked about minimum lot sizes and Counsel said minimum lot sizes are going to be able to shift within the concept of this whole subdivision based on the fact that you are moving your available densities around. M. McComb asked how moving densities for principal structures get around minimum lot size and Counsel said no lot created is smaller in area than the smallest lot permitted pursuant to the chapter. P. Kenyon said section 200-16C which was just put in the Ordinance in October 2005 explains it. Counsel read 200-16C into the record.

M. McComb said (1) this is not talking about in multiple areas, (2) she gets the concept of minimum lot sizes are permitted, (3) minimum size lots are permitted in any area as long as you have got the overall density for it, but she doesn’t see how that says you can transfer it across lines and (4) if the minimum lot size is in conformity with all other requirements of the Code and the principal building units does not exceed the overall density requirements of the designated zone as if the land were subdivided in conforming lots says to her that you can’t have smaller lots than the minimum size in each zone. P. Kenyon said it says right there that parcels located in more than one zone, it says you can go, they just have to be the minimum lot size. M. McComb asked if that is in any zone and Counsel said no, it has to be contiguous and it can’t be on an APA land use boundary.

M. McComb said special density regulations in certain districts seems to her to say in no event shall the number of principal buildings exceed that which is permitted by the district regulations and that would seem to go against it. Counsel said (1) they totally agree with that—it does not create any additional principal building—it does not and (2) in M. McComb's example in getting 10 out of the RCL3 and one out of the LC25, notice they held the line—it was 11.

P. Kenyon said (1) that is the first thing you always do when somebody wants to subdivide—you determine how many acres they have, what zones they are in and then you determine based on the amount of acreage in each zone the number of lots the person can have and (2) then if the person wants to transfer densities, you go to this section of the ordinance and you start to look at the minimum lot sizes and you look to see if it is in different APA zones, which will give you the answer as to whether or not you can start transferring densities. Counsel said a different APA zone will cancel this process out and P. Kenyon said (1) instantly—totally and (2) then there is also the cluster provision which is treated a little differently and that all has to be in residential areas. Counsel said that is a little more confusing and weaker and P. Kenyon said a lot more information is required for the cluster provision.

M. McComb said she is confused on how you can have a lot smaller than five acres in an LC25 and Counsel said you can, because in the hypothetical M. McComb is using, it is an LC25 contiguous in RCL3 and you can shift your densities around within the one tax map number and you are going to take a minimum lot size—one acre from RCL3—and park it somewhere up on LC25. Further individual discussions ensued on this matter among ZBA members. P. Kenyon said the PB is going to make determinations if the wetlands are such, if it is too steep, etc.—it is not like a person can just carte blanche do it—it has to go through the PB.

Meeting adjourned at 9:23 pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
02/02/06