

**Town of Bolton**  
**ZONING BOARD OF APPEALS**  
**MINUTES**  
**Monday, March 20, 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, Michael Murray, Bill Pfau, Zoning Administrator Pam Kenyon, Town Counsel Michael Muller, Code Enforcement Officer Mitzi Nittmann

**Absent:** Tom McGurl Jr.

Chairman G. Smith opened the meeting at 6:33 pm by saying the February 27, 2006 ZBA minutes will be voted on at the April 2006 meeting as these minutes are still being reviewed.

**1) VO6-03 SCHADLER, HARVEY.** Represented by Chris Gabriels. To alter existing non-conforming dock, seeks area variance for 1) a deficient side yard setback. 20 ft. is required: 4' is proposed on the south side, and 2) maximum width allowed for the boathouse is 15 ft.: 18 ft. is proposed. Section 156.12, Block 1, Lot 25, Zone RCM1.3. Property Location: 23 Cherry Avenue. **SUBJECT TO WCPB & APA REVIEW.**

This item was postponed at the applicant's request.

**2) V06-04 LINDYBERG, JAN & GENA.** Represented by Chris Gabriels. To alter a pre-existing non-conforming dock, seek area variance for 1) a deficient side yard setback. 20 ft. is required: 11 ft. is proposed, and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 141.00, Block 1, Lot 20, Zone RCL3. Property Location: 5680 Lakeshore Drive, known as Adirondack Motel. **Subject to WCPB & APA REVIEW.**

This item was postponed at the applicant's request.

**3) V06-05 POSTERARO, MARK.** For the construction of a proposed single-family dwelling/garage, seeks area variance for; 1) a deficient rear yard setback. 15 ft. is required: 3 ft. is proposed and 2) deficient density, 40,000 sq. ft. is required: 24,829 exists. Section 171.15, Block 1, Lot 53, Zones GB5000 & RM1.3. Property Location: 20 Stewart Ave. **Subject to WCPB REVIEW. Note SPR is required for a single-family dwelling in the GB5000 zone.**

Mark Posteraro gave an overview and said (1) his garage, business and personal items were destroyed in an October 23, 2005 fire and (2) he is proposing to replace the existing damaged 2-bay garage with a 3-bay garage/single family dwelling above it and to move the building forward to increase the rear yard setback.

G. Smith asked if the rear of the existing garage is 1' from the rear line setback and Mark Posteraro said yes, the proposed garage will be 9' on the right side and 3' on the left side. M. McComb said that is to accommodate how the slope goes down on the property, as that seems like a logical platform for building something there rather than in the middle of the garden. Mark Posteraro said yes, Warren County requires a rear-yard setback of a minimum of 3' and this would enable the fire dept. and other organizations access if necessary. M. McComb said the Town setback is 15'.

M. McComb said the proposal refers to the apartment as a single-family dwelling as well as a garage and asked if the applicant plans to sell the building or rent the apartment. Mark Posteraro said no, it is on one piece of property and it is a rental apartment. M. McComb asked if it is correct that it is a rental apartment and not a single-family dwelling and P. Kenyon said that it is still classified as and has to be treated as a single-family dwelling. Mark Posteraro said it would have a kitchen, which is why it is classified as a single-family dwelling. T. DePace asked if this is a separate piece of property, and Mark Posteraro said no. M. McComb asked if all the upstairs apartments in Bolton are single-family dwellings and P. Kenyon said yes, if they have a kitchen in them they are going to be treated as single-family dwellings.

G. Smith asked if the downstairs of the three-car garage would be used for the applicant's business and Mark Posteraro said yes, for the most part, as he would probably leave one bay to the left side for the tenant's use.

B. Pfau said the only other option for the applicant to increase setbacks is to move the whole building forward toward Stewart Avenue, but he doesn't know what would be gained by doing that.

M. McComb (1) said it is an unusual situation because of the topography of this lot and of the lot behind it, that in some ways it seems it would be less obtrusive where they are proposing instead of lining it up with the main house, plus it gives a little more privacy to both residences and (2) asked if there is any problem having two single family dwellings on one lot. P. Kenyon said (1) there wouldn't be a problem as long as they have the density for it, (2) the Town's definition of apartment is a single dwelling unit within a multiple family or other structure on a lot—so this is a single-family dwelling and (3) if there was no oven and no kitchen sink, it would technically be a guest cottage.

K. Hoopes said (1) the lot is dogleg shaped, (2) the majority of the property is in the GB5000, which encourages businesses of almost all sorts and (3) he thinks it is a good modest change. G. Smith said (1) it is not a huge change and (2) the proposed building is attractive and will look nicer than what exists. M. McComb said given the need for downtown apartments and the support the ZBA has shown to other businesses in the community in encouraging their ability to remain viable, this seems like a good plan. G. Smith said it does fall within the Comprehensive Plan the Town has in place. M. McComb added that it is an unusually large lot in downtown Bolton and in a way it kind of benefits everybody to have a little open space where it is so rare.

No correspondence.

No County impact.

No public in attendance.

## RESOLUTION

The Zoning Board of Appeals received an application from (V06-05) Mark Posteraro 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 could be achieved by other means feasible to the applicant besides an area variance, but there are drawbacks to relocating it from the suggested location;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it is going to be a nicer looking building and more compliant than the garage it replaces;
- 3) The request is substantial with respect to the ordinance, but not outweighing the benefits of this project;
- 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 to some extent self-created, but it is also replacing a pre-existing non-compliant building that burned with something that is in fact more compliant.

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.**

**4) V06-06 BURKE, CORNELIUS. (BBB CONSTRUCTION).** For the construction of a proposed single-family dwelling, seeks area variance for a deficient front yard setback. 75 ft. is required from the edge of the right-of-way: 20 ft is proposed. Section 199.04, Block 1, Lot 16, Zone RL3. Property Location: Coolidge Hill Rd. Subject to WCPB REVIEW.

*Note: K. Hoopes recused himself from the ZBA for this item.*

Cornelius Burke (BBB Construction) said (1) they are proposing a single-family residence for a client's retirement home which requires a variance for the front yard setback, (2) he thinks they have positioned the proposed home in the best location possible without encroaching on any other setbacks and (3) on Coolidge Hill Road at least 80-90% of the existing homes are as close or closer.

G. Smith said it is a rather shallow lot at 110' 6" and Cornelius Burke agreed and said (1) it is wider than it is deep, (2) if you take into consideration the front and rear setbacks, that is 95' and doesn't leave very much room and (3) it is a modest size home at just shy of 1,600 square feet total and the garage is attached to the home.

M. Murray said that the house is not really conducive to the lot—the applicant can design a house to fit that lot better and to decrease the variance needed. Cornelius Burke said he brought a picture with him of exactly what the home would look like and handed it to the ZBA members. M. McComb said (1) the fact that a lot of the existing homes are close to the road, they have been there for a long time and there is a trend to try to get new construction to be more compliant even if it can't be entirely compliant.

M. Murray said (1) he wasn't implying the applicant could get away with not requiring a variance at all, but that the ZBA is supposed to make the minimal variance for the circumstances and the shape of this house doesn't fit with the shape of this particular lot, (2) this lot was split off by Rolf Gates many years ago—he was planning to sell this and raise some money, but died before he could do anything, but that is how this lot got split off in the first place many years ago and (3) there is a better way to design a house to fit this lot with a lot smaller variance than this is.

M. McComb said it is a little less than 2,400 square foot footprint, including the garage. Cornelius Burke said they turned the garage so the garage door doesn't face the road, so it would fit into the area in a nice way. B. Pfau asked if there are views from the house and Cornelius Burke said no, there is no real directional view.

B. Pfau said (1) he agrees with M. Murray in that the house could be designed to include less of a setback violation, because this is definitely not the minimum variance and (2) considering where the lot is and the neighbors' homes on Coolidge Hill Road aren't really near to this lot, he tends to think that maybe this wouldn't be a problem in this location.

No County impact.

No correspondence.

No public in attendance.

M. McComb asked about neighboring property locations and M. Murray said there isn't a house close by, just an empty lot and there is a house across the road which is the closest neighbor to this location. G. Smith said the neighbor who owns the property behind this location is back off the road 300-400 feet, which is quite a way back. M. Murray said (1) the only nearby houses close to the road are the old Gates place and Patrick's place, which were built a long time ago and (2) all of the current houses are well back from the road.

Cornelius Burke said (1) they are trying to utilize the deepest point of the lot since it widens to the right, so anything you try to position on this lot is going to be difficult and (2) it is just difficult to fit any type of a home on there unless you want some skinny long type of trailer on there—which he doesn't want to do. G. Smith said he understands the applicant's view.

M. McComb said if the applicant moved back 4' there would be more driveway and impervious surface created. G. Smith said he was thinking maybe the house could be moved back further, since there is 24' behind the house which is the step-out from the breakfast room—not the whole house. M. McComb said (1) it is hard when zoning comes in and there are lots of old houses that are going to stay where they exist and (2) when brand new construction on an empty lot comes in, it is hard to get around looking for the minimum variance. Cornelius Burke said (1) it is difficult on this particular piece of property because it definitely requires a setback variance and (2) in most areas the front setback is not 75' as it is on Coolidge Hill Road. G. Smith said (1) it is a scenic corridor, which is what most of the Town is considered and (2) there are very few properties in Town that require 50' setbacks from the front.

B. Pfau said the site plan shows 24' from the steps and 24' from the foundation and Cornelius Burke replied by saying that is true, because the back lot line is not exactly parallel to the house—it angles. M. McComb said it is tough and asked if the applicant built this same house somewhere else before. Cornelius Burke said he built a similar style house, but this particular home has more aesthetic looks to it, including a less obtrusive garage.

M. McComb said (1) while the applicant is not proposing a second-story, once the footprint is down it is establishing a footprint that is kind of ignoring the front yard setback for any district in Town, let alone a scenic corridor, with a very big first floor and (2) lots of people add a second story to things and then you are at a 5,000 square foot house which doesn't seem appropriate for a particularly skinny lot laid out this way. G. Smith said that if someone wanted to add a second-story in the future, they would have to come back in front of the ZBA to do so. M. McComb said that the ZBA needs to think of what it is creating in going with this proposal.

Cornelius Burke said this is going to be a primary home for a resident—not a seasonal home, if that makes a difference. M. McComb replied by saying (1) it doesn't make a difference to her and (2) what it is now is not necessarily what it will be later, (3) seasonal or year-round isn't something the ZBA considers in granting a variance, (4) it is a GB5000 setback, which is supposed to be 30', (5) it is hard to get around that there is no feasible alternative and (6) it is not a set-up lot in the business district—it is brand new.

Cornelius Burke said it is difficult for him to place anything on that lot to meet the front setback. M. Murray said (1) he doesn't think the front setback can be met and (2) his contention is that when you design something new you look at the lot and put something on there that is realistic and at least try to get as close to a reasonable shape as you can—he doesn't feel that has been done.

G. Smith asked if the applicant said it will be a retirement home and Cornelius Burke said yes, they are going to be the primary owner and want to live here permanently and retire. M. McComb said (1) she has nothing against the applicant's client or people retiring, but the ZBA thinks in terms of houses, not in terms of what comes in, because the ZBA has had an awful lot of people come in with one-story that changes, because their circumstances change—not because they are bad people or anything and (2) it is hard to get around no feasible alternative and granting the minimum possible relief.

Cornelius Burke asked what other feasible alternatives are available and M. McComb said there are a lot of people who design their house for the major outlook to be the long dimension of the house and with this one it is deeper going back than it is facing the road. Cornelius Burke said he understands that and the reason for that is because of the way the garage is incorporated into it. G. Smith said there must be some type of design out there that would possibly spread the house out width wise more and still keep the same type of garage attached to it. Cornelius Burke said there are a million different plans, but this is the one they are proposing.

G. Smith said (1) he thinks the ZBA feels the applicant is asking for a little bit too much and the applicant can do better with the setback on this and (2) the applicant should try to redesign it so it is moved back. M. McComb said she understands there are a lot of constraints on this lot, but there is a lot of room between the proposed design and a trailer.

Cornelius Burke asked what the ZBA would consider a more sufficient setback. M. Murray said (1) the applicant will need a variance regardless of what he does and (2) the applicant's imagination can run wild as far as design of the house and (3) the applicant can get the square footage his client is looking for just by changing the floor plan. Cornelius Burke said his clients like the proposed floor plan and that location in Bolton. G. Smith said (1) that is all fine and good, but he thinks the applicant can come up with something that his clients would be happy with, (2) the applicant could slide it back a bit further to bring the rear setback down to 18' or so and make it wider to get 35-40' on the front setback—but 20' is awful close to the road and (3) if the applicant likes, he can keep the variance open and come back next month with a new plan or he can have the ZBA vote on it tonight, which would require four ZBA members to vote in favor of it for it to pass, which he doesn't personally feel will happen. Cornelius Burke said he would take the ZBA's advice and table the item until next month.

B. Pfau asked what the benefit would be to the applicant in tabling the item and Counsel said tabling this item would leave it on the agenda, where the applicant would re-submit an amended plan, so the applicant doesn't duplicate a fee, etc.—it makes it easier for the applicant.

## RESOLUTION

Now, upon motion duly made by Mike Murray and seconded by Meredith McComb, it is resolved that the ZBA does hereby table the variance request and leave the public hearing open pending additional information. **(Kam Hoopes – recused himself). All others in favor. Motion carried.**

**5) V06-08 BETHON, TOM.** 1)) For the placement of a single-family dwelling constructed in 1980, seeks area variance for a) deficient shoreline setback. 50 ft. required from the mean high water: 48 ft. exists. **Note: The plans submitted at the time were conforming. The deck was not constructed in accordance with the plans.** 2) For the placement of a stone patio on the north end of single-family dwelling built after 1999 (date unknown), seeks area variance for a deficient shoreline setback. 50 ft. is required from the mean high water mark: 39.89 ft. exists. 3) To alter existing deck on north side, built after 1999 (date unknown), seek area variance for a deficient shoreline setback. 50 ft. is required from the mean high water mark: 45 ft. is proposed. 4) To demolish wood retaining wall and replace/extend with stone retaining wall, seeks area variance for deficient shoreline setbacks. 50 ft. is required from the mean high water mark: Approximately 5 ft. exists. Section 171.15, Block 3, Lot 83, Zone GB5000. Property Location: 5 Congers Point North. Subject to WCPB REVIEW.

Tom Bethon gave an overview and said (1) that the house was built in 1980, but he purchased it two years ago, (2) the decks were put on the home when it was originally built, but without the roofs on them at that time and (3) the previous owner added a roofline on the existing decks—so everything was on there when he purchased the house.

M. McComb asked if the decks were on the original plan that was approved the and M. Nittmann replied by saying that (1) the front deck was but the original south side deck covering the manhole was not on the building permit and (2) when the deck covering the manhole was built, it encroached upon the easement for the shoreline and the lakeshore setback.

B. Pfau asked if the applicant has constructed anything on the property and Tom Bethon said yes, there were wooden stairs and a retaining wall put in by a previous owner in 1987 that were deteriorating, so he replaced those retaining walls with stone walls (which he pointed to on the plan).

B. Pfau asked for clarification as to the ZBA's role in the after-the-fact of the previous owner and Counsel said (1) the applicant has paid the penalty so to speak with what were a combination of present sins reviewed by the Town Board and past anomalies that are forgiven by the Town Board, (2) the reason the applicant is here is because he still needs to get the property into compliance and (3) some of these things go back to being problems in 1980 and the ones that he thinks they have tried to narrow down for ZBA relief are the ones specified here, (4) admittedly, there were some discussed between himself and M. Nittmann, some heard by the Town Board and those were considered to be things you can't do anything about—these are the ones that need something in the way of relief and (5) it is substantially true that some of these things have nothing to do with this current owner other than that he has the legacy, but for those that do have something to do with this owner, he has paid the penalty in terms of the financial penalty.

K. Hoopes said (1) this is similar to what the ZBA has faced before, but the ZBA is just trying to get something on the books for future reference, (2) the Town Board has already imposed a civil penalty and (3) it all started when the Town was looking for the manhole which was located under the deck and (4) the ZBA is just going to put a date and stamp on this to say that this is the way it is now for future owners and future construction.

G. Smith said when he was down there this evening, the deck on the west side that goes from the front of the house to the back door has been reduced by the applicant by 3'-4' so it now falls underneath the roof—so it no longer extends past the roofline. Tom Bethon said he made that change because it was rotting under the roof and G. Smith agreed and said (1) the wooden retaining wall that goes from the porch to the shore and the wooden steps are not as obtrusive now—it is an improvement, (2) the house looks 100% better than what was there with the previous owner, (3) sod will be going in and it is almost completed and (4) asked what the applicant wants to do in the back door area by the air conditioning unit. Tom Bethon replied by saying that deck was rotted as well, so he removed it and they will put a stone step there.

M. McComb (1) said she is a little struck by the difference in the approach to this massive amount of retaining walls added as opposed to a previous retaining wall replacement in the same general area of the lake and (2) asked if there is any problem created by building on top of the manhole cover and sewer line. Tom Bethon said that he was told there was a hatch over the manhole there in the past and the sewer department

told him he could put the hatch back in to access the manhole, which he does plan to do once he receives the needed approvals. M. McComb asked if there was also deck on top of the easement and Tom Bethon said yes, it was actually further out, but he took 3' off of it. M. McComb asked if the map presented is accurate and Tom Bethon said yes. M. McComb asked if the hatch will be underneath the deck and Tom Bethon said no, it will be on top of the deck, so when you open the hatch you will be looking right at the manhole cover.

M. Nittmann said that right now with the stonework for the wooden stairs that were replaced, that sewer line and manhole are now totally encompassed with the deck and rock, so the only access to the sewer line would be through the hatch. Tom Bethon said (1) that is what was there before because they had the wooden steps there too and (2) the sewer department told him in November that the hatch would work, but he didn't want to do anything until he got a variance and M. Murray said that is understandable.

T. DePace asked if there is a problem with the stonework on the retaining walls and M. Nittmann replied by saying (1) the big circular retaining wall is within the lakeshore setback with no variance and (2) the retaining wall by the steps is also non-compliant because it doesn't meet the shoreline setback and it goes over the easement. T. DePace asked about the square footage and P. Kenyon said that retaining wall is considered a structure. K. Hoopes asked if the retaining wall was constructed by the present owner and M. Nittmann said (1) yes, part of it was already there and he build new out of stone, but it is all tied to the non-conforming house and (2) both retaining walls are at both ends actually attach to the non-conforming home.

K. Hoopes asked if this has been resolved to the Town Board's satisfaction and Counsel said yes, as far as the alternative remedy this applicant was then instructed to pay a civil penalty and bring the property into compliance, which doesn't necessarily mean you move everything, but the applicant needs to present his case to the ZBA to see if it will grant a variance. K. Hoopes asked if the Town Board would have also been well within its rights to ask the applicant to remove it and Counsel said yes, but they didn't. T. DePace asked why the Town Board wouldn't have gone all the way and made a decision like that and Counsel replied by saying because the applicant has the right to remedy the plan and bring it into compliance on several different levels—one aspect is to make a presentation to the ZBA to see if he qualifies for a variance. T. DePace asked if the applicant would receive a reimbursement of his civil penalty imposed by the Town Board if the ZBA grants the variance request and Counsel said no.

K. Hoopes said the ZBA cannot tell the applicant to take the retaining wall down. M. McComb said in the Cummings case, the Town Board imposed a civil penalty and then sent him to the ZBA and the ZBA had him tear down the bathroom Mr. Cummings had constructed on his boathouse. K. Hoopes said the ZBA doesn't have anyone tear anything off—it just denies the variance. Counsel said (1) the ZBA can deny this variance, but then the applicant is stuck in that the applicant also has the right to proceed to ask a Supreme Court judge perhaps overturn the denial and (2) if when the presentations are over and done with and the ZBA grants the variance, then great, but if

the ZBA doesn't grant the variance, the applicant has to bring it into compliance, which would mean rock for rock and board for board, take it out and (3) the Town Board would ask Town Counsel to do something to get it into compliance—it would not be up to the ZBA.

M. McComb asked if the patio areas within the 50' setback are jurisdictional for the main lakeside view terrace and parts of the secluded terrace as well as parts of the dining terrace. M. Nittmann replied by saying that (1) the house was non-conforming from the start, so everything that has been done to that house was an alteration of a non-conforming structure, so actually every single piece that has been added onto that house is non-conforming because the house was non-conforming from the beginning, (2) as far as setbacks are now, the list is in front of the ZBA as to what is required and what the applicant is asking for and (3) this whole thing is because the house was built non-conforming from the very beginning when it was actually built, so it is altering a non-conforming structure year after year after year.

M. McComb said in part, some of that you can't go back and un-ring a bell. M. Nittmann said yes, but the applicant still needs to bring it into compliance. M. McComb said (1) she understands that, but she would hate to set up a situation where after all these past things there has been a great deal more construction and (2) if the outcome is you pay a \$1,000 civil penalty on a \$1 million house to do whatever you want within the 50' setback, she thinks that opens up a can of worms. K. Hoopes said that is not accurate—it is a misreading of the thing and M. McComb asked how so. K. Hoopes said (1) firstly, M. McComb put a number on it and (2) secondly she is making the assumption that all these things follow one after the other in that everybody is going to want to do it and he doesn't feel that is a fair or accurate reading of the thing.

Counsel said (1) that M. McComb not dwell on her explanation regarding the dollar amounts, as the civil penalty amounts are in the good judgment of the Town Board, so she should leave that one alone and (2) with respect to the effort for Mr. Bethon to try to get this into compliance, he (Counsel) thinks that what is particularly difficult for enforcement is that he (Mr. Bethon) is here trying to get it into compliance and there is a measurable portion of this that you can't hold Mr. Bethon accountable for, yet he is here saying he would appreciate it if he could get this into compliance as it had been built—duly noted that it has not all been built by Mr. Bethon. M. McComb said that's true.

K. Hoopes said (1) this marks the end of the line for this particular collection of building projects, then from here on out the ZBA had put the direction that is exactly where the beginning point is for any future owner—it all starts tonight with the approval and (2) if the ZBA doesn't give approval, he doesn't see where anyone is served.

M. McComb asked when the lakeside terrace was built—if it was the applicant's addition and Tom Bethon approached the ZBA bench and answered by referencing pictures he presented to the ZBA members. M. McComb said (1) she was down there and there is paving and the driveway that exist that are not shown on the plans and (2) it seems like the applicant has added a lot of cover to the ground within the 50' setback in the addition

of terraces all around the house that are non-compliant. Tom Bethon said (1) the dining terrace to the south side of the house was there and was all wood, which was rotted and they replaced with stone and (2) there was a hill with rock that they altered to give an architectural look. M. McComb said there was also vegetation on the hill according to the year 2000 pictures and Tom Bethon said that is correct.

B. Pfau said (1) while he did not attend the meeting where the Town Board made its decision on remedial action for the applicant, he (B. Pfau) feels that if the Town Board felt the applicant was blatantly disregarding code on this particular property, the Town Board could have made the applicant bring it all into compliance before coming before the ZBA and (2) he thinks and would assume that the Town Board investigated what M. McComb is currently asking about. M. McComb said she wouldn't assume.

Counsel said (1) he spoke with the gentleman who built this house in 1980 and that gentleman has no problem admitting he built it in a place where it shouldn't have been built, but he is not here and not part of these proceedings, (2) if the ZBA could organize this—it is almost a triage, in that there really isn't a great deal of wiggle room on some of these things, (3) perhaps he (Counsel) is going to come as close as he shouldn't in terms of advocating something for an applicant, but the first leg of what is Mr. Bethon's process here this evening is that he just asks for a variance to allow the placement of a single-family dwelling constructed 26 years ago to remain—he would hope that is an easy one. M. McComb agreed. Counsel said (1) the triage works from there and the ZBA needs to analyze them to see what ones they think are acceptable or unacceptable and (2) he (Counsel) was hoping that the first portion of what Mr. Bethon seeks for a variance was one that is worthy of grant as Mr. Bethon has done nothing wrong other than he has become the owner of this house—he is literally an innocent by-stander—it is not something you would even check in title.

M. McComb said (1) there is a lot of un-level ground along the lake on Lake George, (2) she does not feel the same way about currently building a structure of this size, which the retaining terracing, patios, seating areas, secluded terraces, etc. and (3) there is a lot of the land that would be considered part of the footprint if somebody came in with plans for a house—it is that aspect that troubles her with this. Tom Bethon said (1) he uses a landscape architect, (2) he thinks he has dramatically improved the house based on how it had looked and (3) he lost two major trees this summer that fell, but they are trying to put in flowers and plants into the terraces for a neater look. G. Smith asked if that vegetation plan will happen this spring and Tom Bethon said yes.

M. McComb said (1) there is a lot of tidying of nature on the lake that is not always great for drainage or run-off and (2) a lot of landscaping plans can wind up putting a lot more nutrients into the lake unless there is great care taken with the approach to the gardening. K. Hoopes said (1) that none of this has been ascertained that there is an environmental or stormwater problem and none of this has been raised, it is just M. McComb's speculation and (2) the ZBA doesn't know what condition that land was before any of these improvements were made or the house was built in terms of if it was an impervious structure with rocks out there. M. McComb said they have pictures and K. Hoopes said

there are no pictures of what existed there before the house was built. G. Smith said the ZBA just doesn't have all the views from all the pictures.

M. McComb asked if the applicant plans on replacing more of the wood wall beside the dock and Tom Bethon said (1) no, not at all—they are all done with their walls and (2) they replaced the wood one that already existed because it was crumbling. M. McComb asked what the rest of the stone on the property behind the house is for and Tom Bethon replied by saying that is extra material that will be taken out of there when the landscaping is complete. G. Smith asked if the stonework is all done on the property and Tom Bethon said yes.

G. Smith asked if any ZBA members had any problems on the first item listed regarding the placement of the single-family dwelling and M. Murray said no, he doesn't see anything wrong with it.

G. Smith said (1) for the second and third items listed, that is all pre-existing before Mr. Bethon bought the property, (2) he thinks the biggest issue for the ZBA with this project is the fourth item listed regarding demolishing and replacing the retaining wall and (3) asked the applicant if part of the shorter stone wall 5' from the lake was there or if the applicant did all of it. M. Nittmann said that the stonewall the ZBA should be concerned about is the big circular retaining wall that hooks to the deck where the boathouse is and encompasses the entire lakefront, which is the major one the applicant built without a variance. M. McComb asked if the circular stonewall is totally within the 50' setback. M. Nittmann said yes and added that (1) item four of the application regarding demolishing the retaining wall refers to the small wooden retaining wall to the south side of the house that has the little stone patio that is 15' around, (2) the wooden retaining wall hooked to the house and with the stairs were already there so actually, Tom Bethon only added the patio favors in that circular lane—it is the fact that it doesn't meet the shoreline setbacks from the beginning and (3) it is the big circular one that is new and pertains to the applicant.

P. Kenyon asked if a retaining wall was 5 ft. from the mean high water mark. M. Nittmann said yes, but it is off the big circular retaining wall that hooks to that end of the house, which attaches on the northeast quadrant but encompasses the full lakefront—it is actually the southeast corner. P. Kenyon asked if it is correct that the minimum setback is five feet and M. Nittmann said yes.

B. Pfau said in his opinion, (1) the walls are finished, (2) the Town Board has looked at the violations and dealt with it in its own manner, (3) unless the ZBA can come up with some practical solution to this in the lines of having the applicant remove part of the wall, there needs to be some type of insurance that the ZBA would be improving—not wrecking—this property by removing this wall—this is a finished product basically. K. Hoopes said (1) the ZBA doesn't deal with removing anything and (2) the ZBA only deals with approving or denying variances—period.

M. McComb said (1) if the ZBA denies it, it has to be torn down to be compliant and (2) she agrees with B. Pfau, but she does want to make a big deal about this because she hates to get into a situation where somebody's idea of tidying up Lake George winds up being rubber stamped. G. Smith said (1) every situation that is in front of the ZBA is different, (2) he agrees with B. Pfau in that if the ZBA denies the variance, someone will make the applicant take it apart and it will be in worse shape than it currently is—it does look rather attractive currently, (3) the applicant is caught in the middle of everything as a lot of things were done before he even purchased the property, (4) the worst thing the applicant did was the one particular retaining wall by the boathouse.

M. Murray asked (1) who would be accountable for repairs if the applicant puts in a hatchway to the sewer cover and the land needs to ever be dug up or repaired and (2) if that should be a stipulation if the ZBA grants the variance that the owner would have to repair or replace his property as needed in the future if the sewer line or manhole has to be dug up or repaired. Counsel said it is true that the owner would be accountable or responsible for paying for repairs to his own property in the event the sewer line/manhole ever needed to be worked on. M. Murray said from this point on, the ZBA needs to make sure that if this does need to be repaired, improved or replaced for some reason, that the Town would have a right to do this and the owner would have to then fix his own property. Counsel agreed that is a very appropriate condition and an excellent idea. K. Hoopes said (1) he thinks a lot of this has been dealt with on the deed level and (2) the Town needs to be able to get at these things. M. Murray said what he is getting at is that now that the property has been improved even further than when the original deed was drawn, there is a greater responsibility because the cost of this situation is greater than the original situation which was wood, because now you may have to disrupt stone, etc. to get to the sewer line—so the ZBA should address this in order to eliminate a legal entanglement down the road. Counsel said he recommends the ZBA does put this in the motion as a condition so it is on record. K. Hoopes said it is a good idea, because everything the ZBA is trying to accomplish here is putting a 2006 date on it, so the future boards can look at it and say this has been dealt with. M. McComb said if this means if there is a problem with the sewer line that requires the Town to get under there, the owner of the property would have to pay for the repairs to the property. M. Murray agreed—yes repairs to the owner's property—no the sewer line—would be paid for by the owner, because the ZBA and Town have no way of knowing how much would have to be disturbed and Tom Bethon agreed.

No public in attendance.

No County impact.

No correspondence.

## RESOLUTION

The Zoning Board of Appeals received an application from (V06-08) Tom Bethon for area variances as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item #5 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by other means feasible to the applicant besides area variances;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it has not been established there will be any undesirable changes aesthetically or physically;
- 3) The request has a substantial element to it, but not so much as to sway this ZBA to not grant this variance;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, that the ZBA can foresee at this time;
- 5) The alleged difficulty does have its self-created aspects to it, but again, not enough to outweigh the detriment to the neighborhood or the public in general.

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 with the following conditions. 1). The owner of title is responsible for work or cost incurred to personal property should repairs be necessary for the sewer main. 2). The sewer main is to be accessible at all times. ( **Meredith McComb – opposed**). **All others in favor.**  
**Motion carried.**

Other Business:

P. Kenyon (1) read her memo addressed to the ZBA members dated March 20, 2006 regarding (Edward and Molly Tonero - Conditions of Approval) into the record and (2) asked the ZBA members if the conditions of approval on the two-lot subdivision approved by the ZBA on 01/28/99 and conditions of approval on the variance granted 02/16/99 would apply to this situation.

G. Smith said (1) when they got their variance from this board, a condition of the variance was that they couldn't build another house on the property to add more bedrooms and (2) it is very simple—they just want to know if they can tear the old house down and build a new one not exceeding four bedrooms and he has no problem with it.

P. Kenyon said they also want to make the house larger. G. Smith agreed and said they want to make the house larger, but it can't have more than four bedrooms and the house will be conforming. P. Kenyon said the guesthouse was already discussed at another meeting, so there is no question on that.

P. Kenyon said the condition says "...no further structures..." so to her that means they can't build another structure on the property, but it doesn't mean they can't tear down the existing house and re-build it. G. Smith said (1) that is correct, (2) in the new house they want to build, they want to tear down the old one, build the new one and it will be conforming and it cannot exceed four bedrooms—it's as simple as that and he doesn't have a problem with it.

M. McComb said she doesn't know if she has a problem with it or not, as (1) this is the first time the ZBA is hearing of this, (2) there is no map and (3) this is one of the two parcels and she is not clear as to which parcel it is or where the existing house is that they may want to tear down or enlarge. P. Kenyon brought the map up to the ZBA bench to clarify the lots and asked what difference it makes where the existing house is if the new house conforms. M. McComb said she finds it unusual to do an end-run around the process. P. Kenyon said she doesn't think anyone is doing an end-run and (2) she just sat down with the Tonero's this morning and it was a question that she (Kenyon) had for the ZBA.

B. Pfau asked if P. Kenyon thought this had already been addressed and P. Kenyon replied by saying she totally thought they addressed it already, but these people just want some reassurance. K. Hoopes said P. Kenyon wants the reassurance and P. Kenyon said no, the Torenos want the assurance. K. Hoopes asked P. Kenyon if she is confident that this is within the spirit of the code and P. Kenyon said yes. G. Smith said agreed and said he didn't think it was a big deal to take five minutes to hear this.

M. McComb said the lot is 100' wide and asked if it means they will meet setbacks or they will meet setbacks without a variance. G. Smith said it will meet setbacks. T. DePace asked if the existing house meets setbacks. M. McComb said no and P. Kenyon said she doesn't think so. T. DePace asked if the potential buyers understand they may have a problem when they decide to go build their house and that they are giving

something up now that they may need later. K. Hoopes asked what they are giving up and T. DePace said the existing house doesn't meet setbacks and they are guaranteeing that the new house they build will meet setbacks. P. Kenyon said that even if it didn't meet setbacks they could apply for a variance. T. DePace said he understands that and he has no problem with it, but the way the wording is now, if the house there does not meet setbacks and the ZBA are going to approve it, they are saying they will meet setbacks.

P. Kenyon said the new house may not meet setbacks, but it comes down to what the condition really meant. M. McComb said (1) the condition was put on because the board was creating two new substandard lots and (2) because the people asking to create two new substandard waterfront lots—which was a huge deal for this board to do—at the time said "...we want this forever and we are going to live right here and we're happy with the size house we have..." (3) now the ZBA is essentially erasing it and (4) their building envelope is not a really palatial building envelope if they are going to meet setbacks, but if the ZBA is going to erase that condition and say "no increase without getting a variance for it," that is a very different ballgame than the original proposal.

K. Hoopes said (1) M. McComb often says the ZBA's job is to reduce the number of variances that exist and (2) here the ZBA has a prime example of where one variance is going to go away and for it to come back it would have to come back before this board. T. DePace said that (1) the recommendations presented from the previous minutes are recommendations he had the ZBA put on because he didn't want to see another structure and (2) he thinks the recommendations in the minutes don't accurately reflect what the ZBA really intended.

P. Kenyon said her only question is if the condition applies to the existing single-family dwelling being torn down and re-built. T. DePace said his recommendation was for adding another structure and G. Smith agreed saying that if you tear down the old house and build a new one in compliance, then it is fine with him.

P. Kenyon asked if the ZBA thinks a variance is needed to completely tear down a structure and re-build it on the same footprint and M. McComb said no. K. Hoopes said it would depend on the Town code and asked if it is non-conforming at this point. G. Smith said to re-build it you would need a variance unless you do it right away. K. Hoopes said the ZBA only issues variances for things created—not for things taken away. M. McComb said not necessarily and referenced McCauley's restaurant as an example. G. Smith said in that case, he wasn't tearing down the whole thing—just part of it.

P. Kenyon said (1) that wasn't her question, (2) her question was if you were going to totally demolish it and not rebuild it does it require a variance to demolish. G. Smith, T. DePace and M. Murray said they would say no variance would be needed in that case.

M. McComb asked if the ZBA was all set with basically erasing the condition put on the original subdivision and G. Smith said they aren't erasing the condition. M. McComb said (1) if they can get an original subdivision and they could not increase the living space, the ZBA is now saying you can increase it unless you come in for a variance if you

don't want to meet setbacks and (2) she has no problem if they are going to accept that any new construction is going to be completely compliant with setbacks, that is fine with her, but if they are going to be able to come in for variances then it is a different story.

G. Smith said the ZBA wouldn't be here if they want to tear the house down and build a new one and come in for a variance to make it bigger or whatever and not comply with the setbacks.

P. Kenyon said the condition says "...no further construction that creates additional living space will be added to either lot" which in her opinion means a new building. T. DePace said that is the way he meant it. K. Hoopes said he agrees and also doesn't think it means they can't build a larger house for additional living space, but it means additional to the house that was there. T. DePace said that is correct—that is exactly what he meant. G. Smith said they are taking one away and building a new one—it is very simple. T. DePace said he didn't want each of those new lots to build an additional two more guest cottages.

G. Smith said if they want to tear down the main house that is conforming and the old one isn't that is wonderful. M. McComb said she couldn't agree more, it is just that it was a big condition on the original one that seems to be kind of going away.

Meeting adjourned at 8:04 pm.

Respectfully submitted by,  
Jennifer Torebka  
Recording Secretary  
03/30/06