

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday May 15, 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

Absent: Tom McGurl Jr.

Chairman G. Smith opened the meeting at 6:36 pm by asking for corrections to the April 25, 2006 ZBA minutes.

1. K. Hoopes said on page 14, third paragraph, he would like to clarify that regarding the senior housing project, he was trying to say that his concern is alleviated a little bit by the eastern exposure to the Town's parking lot, the southern exposure to the public right-of-way, the western exposure to another public right-of-way and the northern exposure to their (the Church's) own parking lot.
2. K. Hoopes said on page 23, the motion for agenda item #9, (V06-15) Jim George, should include, "... (5) The benefit cannot be achieved by the applicant by any means feasible other than an area variance."

P. Kenyon said the Zoning Office checked the tape and Tom McGurl did not add that point when he made that motion. K. Hoopes said he is sure it was meant to be in the motion and asked if it could be added at this time and Counsel said yes. M. McComb said it would be a good thing for the applicant to have a complete record of approval.

3. K. Hoopes said that "quanzahut" is misspelled and should be correctly spelled "Quonset hut" throughout the minutes.

Motion by K. Hoopes to approve the April 25, 2006 minutes as amended. Seconded by B. Pfau. Four in favor (K. Hoopes, M. Murray, B. Pfau and G. Smith). Two recused (M. McComb and T. DePace, as they were not in attendance at that meeting.) Motion carried.

- 1) **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, 44 ft. is proposed. Section 199.04, Block 1, Lot 16, Zone RL3. Property Location: Coolidge Hill Rd. Subject to WCPB REVIEW. *Note: 1) This item was tabled at the 3/23/06 meeting pending additional information 2) Originally 20 ft. was proposed from the edge of the right-of-way.*

Cornelius Burke (BBB Construction) gave an overview and said that this proposal is a scaled down version of the original plan.

M. McComb said that (1) this proposal is very much the sort of adjustment the ZBA is looking for in creating a house that fits the lot rather than asking for a lot of variances to make a house acceptable on the lot and (2) there are still variances required but they are scaled back and seem far more in keeping with the specifics of this lot than the previous design. K. Hoopes said he doesn't see any way you can build anything that would be useful to anybody in meeting all the setbacks and several ZBA members agreed.

G. Smith said (1) in his opinion, the current variances aren't asking for too much when you have houses closer to the road in the same neighborhood, (2) the size of the proposed house is conforming with the size of the lot and (3) he feels this is a good outcome from the original proposal. M. McComb said (1) it seems like a good balance between the code and the applicant's needs and (2) the applicant really made every effort to adjust to the requirements of the code.

Cornelius Burke said they may like to switch the driveway to the other side (the front left side) of the house at the request of the client because the door is on that other side of the house. K. Hoopes said that the only variance the applicant needs from the ZBA is for the setback of the highway and the driveway. G. Smith said that is fine as long as the applicant does not go over the leach field or the tank and Cornelius Burke said the possible new driveway location wouldn't go over either of those.

No correspondence.

No County impact.

No public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from (V06-06) Cornelius Burke (BBB Construction) 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 #1 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 an area variance, the applicant has made adjustments to the proposal to try to make it less non-compliant;
- 2) There will be no undesirable change in neighborhood character or to nearby properties;
- 3) The request is not substantial, within the balance of the code and what is existing on this lot;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, the applicant has made adjustments to the project to try to minimize those and if the applicant does need to put the driveway access on the left side of the house instead of the right that will be acceptable to this board;
- 5) The alleged difficulty is self-created, in that the applicant bought this parcel and wants his house.

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 Mike Murray, it is resolved that the ZBA does hereby approve the variance request as presented. It is noted that the driveway can be relocated to the north side of the single-family dwelling if desired. **All in favor. Motion carried.**

- 2) **V06-17 LUDLOW, PETER & CHANDLER MARYBETH.** To alter pre-existing non-conforming single-family dwelling, specifically to construct a proposed 10 ft. x 20 ft. deck with stairs, 1) Seek area variance for a deficient shoreline setback; 75 ft. is required from the mean high water mark, 32 ft. is proposed, and 2) To alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 185.19, Block 1, Lot 60, Zone RCL3. Property Location: 7 Lake Side Drive. Subject to WCPB and APA REVIEW. This item was tabled at the April meeting at the applicant's request.

Marybeth Chandler gave an overview and said they are proposing a 10 ft. x 20 ft. deck, which would be 32 ft. from the waterline.

M. McComb said that (1) it looks like the stereotypical house walking to the lake and (2) it looks to her like there are at least two times there was a deck and a porch that was enclosed to make more living space and now the applicant is coming back for more. Marybeth Chandler replied by saying (1) there is a porch on the front and the only thing that was ever done was to replace screen with glass to enclose it and (2) the rest of the additions were done over the years.

K. Hoopes asked how long the bushes have been growing there and Marybeth Chandler said her parents bought the property in 1954. M. McComb said it is a (1) small house, and (2) there is a landing and seating area on the steps to the deck. Marybeth Chandler said that would probably be going and M. McComb said (1) there is nothing in the plans presented about that going and (2) the applicant is not asking for a 10 ft. variance, but for a 75 ft. versus 32 ft. setback, G. Smith said 75 ft. is required and the applicants are asking for 32 ft. Marybeth Chandler said (1) the house was built there and (2) nothing in the front has ever been added.

B. Pfau asked if the applicant plans on saving any of the bushes and Marybeth Chandler responded by saying that they are only taking down the ones that would be in the area for the proposed deck. B. Pfau asked if the applicant would be willing to accept that as a condition of approval because he feels it is a very well screened area, and Marybeth Chandler said yes. M. McComb said (1) it is well screened now but won't be if you build on another 10 ft., (2) the applicants have an alternative in building a deck should they place it on the side of the enclosed structure, (3) clearly, whether this applicant did it or the previous person did, there was a porch on that house that people decided to enclose for more living space and more interior space, (4) it is still a porch, but it is a small lot, so the applicant could build to the side.

Marybeth Chandler said if the porch was to the side of the house it would be more visible and G. Smith said that is a good point. K. Hoopes said that (1) the logical place for a porch is out towards the lake, (2) there are no neighbors on either side that could see it if it were in the proposed location, (3) the only place anyone would become aware of the porch is if you were right in front of the house on the lake, (4) he doesn't see it as much of an eyesore being that it is a 10 ft. x 20 ft. deck. B. Pfau said he thinks if it was built on the side of the house it would be more conspicuous, as you would be looking at a larger structure instead of a deck tucked into the house.

M. McComb said (1) there is already a seating area and a deck, (2) looking at what the building looks like as it has advanced in the last hundred years or so, it seems like a house walking to the lake, and (3) the screening that is there now will be erased by this proposal—the applicants could put in more bushes and (4) it is not a 10 ft. variance, but basically a 43 ft. variance going from the 75 ft. required to 32 ft and what the ZBA looks at is not a variance from what an applicant has but a variance from the ordinance.

M. Murray said (1) he thinks there is another way to solve this, (2) he thinks this proposal is significant, (3) everything that has been built is towards the lake and (4) there are other locations where the applicant could put a deck. M. McComb said (1) a 10 ft. wide deck

is not the minimum possible benefit for the applicant either and (2) a lot of people on the water don't have 10 ft. wide decks. Marybeth Chandler said she thinks the proposed deck is very attractive and that it would improve the appearance of the front of the house. M. McComb said she agrees that it would be a benefit for the applicant, but not necessarily a benefit to the neighborhood.

Marybeth Chandler said (1) she doesn't think going out 10 ft. is very far, (2) it is a rough area there and adding the deck would facilitate getting to and from the lake, (3) they would be changing the steps so they would be coming down the side and then build a stone walk to the water from there, (4) back in the 1950s there was a stone walk to the lake, (5) they felt putting the landing on would make it easier to get to the lake, but that is rotting out and will be replaced with the stone walk, and (6) she thinks the proposed deck would improve the property.

No correspondence.

No County impact.

G. Smith asked if the applicant would leave all the shrubbery there as per the variance if the ZBA grants it and Marybeth Chandler replied by saying yes, they aren't planning on taking anything other than what is in the proposed deck area. M. McComb said that (1) the plants are all within 10 ft. of the house and (2) the ZBA does not have anything indicating that the stairs, the railings, the landing, and the seat, all of which are between the house and the lake are coming down. Marybeth Chandler said they are all coming down. M. McComb said (1) she still feels that there are other alternatives for having a deck, (2) the applicant has a landing in addition to other possibilities and (3) she thinks a 10 ft. x 20 ft. deck is excessive and a big addition within the 75 ft. setback.

G. Smith asked what the width of the house is and Marybeth Chandler answered by saying (1) the front area is probably 40 ft. and (2) the deck would only go the length of the actual porch.

No public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from (V06-17) Peter Ludlow and Marybeth Chandler for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance, that house was long-pre-existing before this plan;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, he doesn't think the nearby properties will even see this thing;
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, considering the age and condition of the house;
- 5) The alleged difficulty is not self-created, it is an improvement on the present stairway/landing combination that is on a pretty slippery slope right now.

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 Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented with the condition that the only hedges to be removed are the 3 within the approved 10' x 20' deck area. Mike Murray and Meredith McComb opposed. **All others in favor. Motion carried.** *Although not a condition of approval, it is noted that the existing deck located between the approved deck and the lake may be removed.*

3) V06-19 MILLER, JOHN. To alter pre-existing non-conforming single-family dwelling, specifically to add an addition, 1)Seeks area variance for a deficient side setback; 20 ft. is required, 5 ft. is proposed and 2) to alter a pre-existing structure in accordance with Section 200-56A. Section 171.19, Block 2, Lot 38, Zone RM1.3. Property Location: 4878 Lake Shore Drive. Subject to WCPB REVIEW.

John Miller gave an overview and said that they propose to tear a section of the existing home down and rebuild it in the same character to match the existing home with modern heat and plumbing in order to provide winterized quarters for the house.

G. Smith asked if the applicant plans to use the same square footage by going up a full second-story and John Miller replied by saying (1) it will have a second floor and (2) the

footprint will not be identical to what is there now, but it will be identical to the fence line where they are asking for the variance because it is basically built almost on the property line.

K. Hoopes asked what the status of the house winterization is and John Miller answered by saying that (1) the house is a winterized home, but it was winterized long ago in a different time, (2) he has been a year-round resident for almost 15 years and has always maintained an apartment because it was impractical to keep the main home open and (3) he feels it would be much more efficient to close that portion of the house down as they do each year and then have another area that would be winterized. K. Hoopes said (1) the oil furnace is a relatively recent addition compared to the age of the house and (2) the insulation is marginal at best. John Miller agreed and said they are planning on making this new portion of the house year-round.

M. McComb said (1) for this application, all the expansion of space is toward the interior of the property, (2) the property is more than twice what would be needed to subdivide without any approvals or any requirements being broached and (3) it seems the epitome of the small variance required to make a wonderful addition to everybody in Bolton Landing to have an under-built property along the lake remain viable. G. Smith agreed and said (1) the section the applicant is looking to rebuild, while it is only 5 ft. from the Wolgins' property, there is not disturbance to them as far as he can see and (2) it can't be seen from the road even unless people were to trespass and drive down into the property. John Miller said the goal is to have it appear as if it had been there forever.

B. Pfau asked if the addition was put on in the 1950s and John Miller said yes, part of it was, but the other structure furthest on the end was free standing and has easily been there 100 years. B. Pfau said if there was a problem with the 5 ft. setback it would have been exposed in the last 100 years at some time or another.

Correspondence: Read into the record by Zoning Administrator Pam Kenyon.

- Letter from Edgar M. Caldwell, VP, Home Place Corp. dated 05/08/06 – no objections.

No County impact.

No public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from (V06-19) John Miller 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 not be achieved by other means feasible to the applicant besides an area variance, he is updating a very old structure in Bolton Landing and making absolutely no further request for variance upon the ordinance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, in fact it will be wonderful for the community if this change allows the applicant to continue occupying this large parcel as a single-family dwelling;
- 3) The request is not substantial, with regard to either the size of the lot or the size of the request—only a very small portion of the addition will be in violation;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, because it is so minor and is basically an updating of a pre-existing condition;
- 5) The alleged difficulty is not self-created, because of those same factors.

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 Mike Murray, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion carried.**

4) V06-20 ALCAN RONALD & CAROL. For the construction of a proposed retaining wall, seek area variance for deficient setbacks. 1) Front: 30 ft. is required from the edge of the private right-of-way, 0 ft is proposed, and 2) Side: 8 ft. minimum is required, 2 ft. is proposed. Section 171.15, Block 2, Lot 45.1, Zone GB5000. Property Location: 4979 Lake Shore Dr. Subject to WCPB REVIEW.

Note: G. Smith recused himself from this item as the applicants are his in-laws.

Ron Alcan gave an overview and said (1) they have an old 1920s fence on the southern side of their property, (2) the fence has collapsed onto their property, (3) the proposal is to replace the wall by giving away 2 ft. of their property to Mrs. Becker (adjoining property owner) and (4) they propose to replace the wall with natural stone looking material wall.

M. McComb asked if the proposed wall would be north of the trees and Ron Alcan said yes. M. McComb said (1) it looks to be a safety issue and (2) it looks like a problem has developed that will only get worse if it is not addressed. M. Murray and M. McComb both agreed that this proposal is a good fix. B. Pfau said that (1) the proposed location of the wall is going to improve the setbacks by 2 ft., (2) it is going to be shorter and (3) there will be a zero ft. setback from the right-of-way that the applicant solely uses. Ron Alcan said that is correct.

No correspondence.

No County impact.

No public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application (V06-20) from Ron and Carol Alcan, for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance;

- 2) There will be no undesirable change in neighborhood character or to nearby properties, the applicants are the only ones who see this mess;
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it will save that whole corner of the wall from falling down;
- 5) The alleged difficulty is not self-created, that wall is very old.

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

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

5) V06-21 SCHWEIKERT, THOMAS & DORIS. For the construction of a proposed single-family dwelling, seek area variance for a deficient front yard setback; 75 ft. required from the edge of the right-of way, approximately 18 ft. is proposed. Section 156.00, Block 2, Lot 11, Zone RM1.3. Property Location: Federal Hill Rd. Subject to WCPB REVIEW.

Note: G. Smith returned to the ZBA in his capacity as chairman for all remaining agenda items.

Doris Schweikert gave an overview and said that (1) they were previously granted a variance for a house 56 ft. x 45 ft. as they had a substandard lot at that time, (2) they did not build on the lot in 1987 due to other financial obligations, (3) this proposed house is much smaller than the original one for which the variance was granted and does not have an attached garage.

M. McComb said (1) the 1987 variance is completely irrelevant to the ZBA's thoughts today because it only runs for two years and (2) there was a variance granted for this project based on a proposed house of 56 ft. x 25 ft. whereas this proposed house is 58 ft. x 42 ft. G. Smith said the variance the applicants received in 1987 is still good today because the applicants got that variance before the Town changed the zoning to a 2-year expiration and P. Kenyon agreed. M. McComb said (1) that is an interesting point, but the proposed building is nearly within one ft. of the maximum allowable height, (2) it would be the tallest house there and doesn't seem like it would fit into the character of the neighborhood and (3) it is even bigger than the variance granted in 1987.

Tom Schweikert said that (1) regarding the character of the neighborhood, the proposed house is farther back than any other house on the street, (2) they are only lacking 20 ft. to build the proposed house without a variance and (3) the proposed house is not any taller

than the neighboring houses. M. McComb said 25 ft. is still pretty substantial. B. Pfau said that characterizing this structure as a large house is not exactly true and M. McComb replied by saying (1) 25 ft. in height is 100 ft. above the average house size and is still substantial and (2) the square footage of the house including the deck is how the ZBA computes the dimensions of a house. K. Hoopes disagreed and said (1) that is a footprint—you can't say the square footage of a house is such and such and then compare it to the average house. G. Smith said the square footage of the house is 1,600 square feet then the deck is added to that. K. Hoopes said (1) the only variance the applicants are here for is from the edge of the right-of-way to the house and (2) the applicants meet the other setbacks and are not over the height requirements.

G. Smith said it is an undersized lot and asked what the lot size is. Tom Schweikert answered by saying that (1) originally it was 114 ft. across x 199 ft. down Federal Hill, and (2) it is 30 ft. from the property line, 30 ft. from the back and 22 ft. on the side. B. Pfau said the applicant has pushed the proposed house as far from the road as possible.

Correspondence: Read into the record by Counsel.

- Letter from the Richard S. Kimak Family, northerly neighbor, dated 05/12/06 – concerns.

No County impact with the condition that the plans include septic and well locations to confirm compatibility with neighboring properties.

P. Kenyon said she already discussed septic and stormwater with the applicants, which they will address when/if the variance is granted. K. Hoopes said that the stormwater run-off is a very valid point and G. Smith agreed, adding that the applicants will have to deal with that—there is definitely going to be a lot more stormwater run-off when all the trees are cleared out of there. Tom Schweikert said (1) obviously Warren County signed off on it, so they are not concerned with water running down the right of way and (2) if the variance is granted there is a process they will have to go through to address stormwater.

M. McComb said (1) the ZBA had a situation before it not too long ago where the ZBA granted a variance and then it became very difficult to facilitate that, (2) if these applicants were to come in with a plan on how this works so the neighbor doesn't feel like he is going to be stuck in terms of septic and stormwater, (3) this is a lot that would not be created today and (4) she realizes the applicants have a variance from 1987, but that granted variance was for a smaller house. Doris Schweikert said that the house proposed in 1987 was actually larger and Tom Schweikert added that (1) it was within the setbacks, (2) the person M. McComb referenced is not them—it is not their problem the ZBA couldn't take care of that person—they are not those people and they shouldn't be lumped in with them, and (3) they will be putting money into this lot so it complies with every regulation the Town of Bolton wants them to abide by—they will have engineers in there for the septic, stormwater, etc.

Tom Schweikert said the water has been running across the property for a million years and M. McComb said that is true, but it would be the tallest house on the road there. Tom Schweikert said that they are not here for a height variance and G. Smith agreed. M. McComb asked what the square footage of the lot is and Tom Schweikert said a little less than half an acre.

K. Hoopes said he doesn't know what issue M. McComb is referring to that the ZBA had a problem with recently that has any relation to this application at all and M. McComb responded by saying that (1) she is thinking of the house where there was some difference in opinion between the PB and the ZBA on whether stormwater could be accommodated on the lot and (2) she is just saying that in that case there were no plans, the ZBA granted it and it has become problematic to do stormwater and (3) since these applicants are asking for pretty substantial relief from the code, it is not a thing to grant a variance to go ahead and build it first and then see what works out, but rather to have more information so everybody knows what's happening and if it is a good project the ZBA will say great. K. Hoopes said he still doesn't know which project M. McComb is talking about where the ZBA had a problem and M. McComb replied by saying she is referring to Lot #5 on Bluebird Cottages.

T. DePace said that (1) he sees what M. McComb is saying, but if the ZBA gives these applicants a variance, they have to submit the plans for the stormwater and septic to Zoning Administrator P. Kenyon before they get a building permit to do it and G. Smith added that all of that stuff needs to be approved. K. Hoopes agreed. M. McComb said she agrees there is a process, but in the other case, because the ZBA granted variances first and then said it will all be worked out later, the PB got stuck with the fact that those applicants and the engineers couldn't come up with a way to make it work. T. DePace said that plan is dead then and G. Smith agreed and added that then it doesn't work.

M. McComb said she looks at a substandard lot and a proposed house bigger than anything else along the way. T. DePace said that M. McComb keeps bringing up the height of the proposed house being the highest on the street, but it is below what the Town has as a maximum height and M. McComb said that is fair enough. T. DePace asked why this is a matter of discussion and M. McComb replied by saying that it needs other variances and it doesn't seem to be a minimal request. G. Smith said that (1) this application only needs one variance, (2) the applicants can't build a house if they can't deal with stormwater control and (3) part of the test hole is for the septic and also for the stormwater control these days, so they can't build this if they can't handle their own stormwater.

M. McComb asked if parking plans for this lot are included anywhere and Doris Schweikert said yes, it is right on the top of the plot plan. Tom Schweikert said a two-car garage is proposed for the back of the property underneath the house, so the cars won't be visible. Doris Schweikert said (1) the placement of the proposed garage is what leads to the house size being smaller, in that the garage won't be extending from the house as it was proposed in 1987, (2) the 1987 variance was already granted, so as she understands it, the originally proposed house they were granted the variance for in 1987 can still be

built today. G. Smith said that is correct, because the 1987 variance granted is still in effect. Doris Schweikert said (1) they are proposing something smaller now to try to stay within the character of the neighborhood and (2) she thinks this proposed house will enhance the character of the neighborhood.

No public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from (V06-21) Thomas and Doris Schweikert for an area variance as described above.

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

and, whereas the Warren County Planning Board determined that there was no County impact with the condition that the plans include septic and well locations to confirm compatibility with neighboring properties;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) There will be no undesirable change in neighborhood character or to nearby properties, it would be a residential building in a residential area;
- 2) The benefit cannot be achieved by other means feasible to the applicant besides an area variance, as it is a substandard sized lot and you have build the relief from setbacks and it is a moderately sized home;
- 3) The request is not substantial, it is further back from Federal Hill Road than many homes in that area;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, as stormwater measures will be taken;
- 5) The alleged difficulty is not self-created, given the size of the lot.

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

Now, upon motion duly made by Bill Pfau and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented. Meredith McComb opposed. **All others in favor. Motion carried.** *It is noted that the larger single-family dwelling approved under V87-02 remains in affect.*

6) V06-22 MCDONALD, WILLIE BEA. To alter pre-existing non-conforming single family dwelling, specifically to construct a proposed 15 ft. x 4 ft. addition to extend breakfast room, 1) seeks area variance for a deficient side yard setback; 20 ft. is required, 8 ft. is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-56A. Section 171.19, Block 1, Lot 21, Zone RM1.3 Property Location: 4875 Lake Shore Drive. Subject to WCPB REVIEW.

Willie Bea McDonald gave an overview and said (1) the roof over the breakfast room gets hit by the ice and they have repaired the ridge beam several times due to ice breaking it and (2) she is proposing to tear down the existing breakfast room and replace it by extending it 4 ft. from the roofline overhang and 1 ft. on the other side.

M. McComb asked if it is accurate that it is not a 14 ft. expansion but 4 ft. 9 in., so the application should be corrected. G. Smith said yes, it is a 15 ft. x 4 ft. addition.

M. Murray said if it is accurate that if this is done and done right, then this should make the house so the applicants shouldn't have to keep repairing it and Willie Bea McDonald said yes. G. Smith said (1) the applicants are taking up space they are already using, so it's not like they are extending from the house and (2) this is a very, very minimal variance.

M. McComb said (1) Zoning Codes need to take stuff into account which is why the Town has a ZBA and (2) it seems like a great, minor adjustment to things to make this work better for the applicants.

Correspondence: Noted by Zoning Administrator Pam Kenyon.

- Letter from Edgar M. Caldwell, VP, Home Place Corp. dated 05/08/06 – no objections.

No County impact.

No public in attendance.

G. Smith said this is a cut, simple, dry, needed to be done application for which he has no further questions.

RESOLUTION

The Zoning Board of Appeals received an application (V06-22) from Willie Bea McDonald for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item #6 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, this will be virtually invisible;
- 3) The request is not substantial;
- 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 any significant fashion.

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 Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion carried.**

- 6) **V06-23 JUMBO REALTY INC. (Marc Bernstein)**. Represented by Jonas Ing. To alter pre-existing non-conforming structure, specifically to enlarge the deck on cabin 4/5G, 1) seeks area variance for a deficient front yard setback. 75 ft. is required from the right-of-way, 64.7 ft. is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-56A. . Section 185.00, Block 1, Lot 32,

Zones RCL3, LC25 & LC45. Property Location: 429 Trout Lake Road, known as Camp Walden. Subject to WCPB REVIEW.

Jonas Ing, representing Jumbo Realty Inc. (Marc Bernstein) gave an overview and said (1) they propose to enlarge and reconstruct an existing deck and (2) the front of the cabin is not of a large size and faces the road.

G. Smith asked if a lot of deck repairs have been taking place at the location and Jonas Ing said (1) yes, they are under camp renovation and (2) the decks really enhance the outside of the old cabins. G. Smith asked if this property was just purchased a couple of years ago by a new owner and Jonas Ing said yes. G. Smith said the new owner has been doing a nice job fixing this place up and making it look nice. M. McComb said she agreed and added that (1) the Comprehensive Plan says that cabin colonies are a good addition to the lake to bring people to Lake George on an entry level acquaintance with the lake, (2) even if it were a stand alone thing it wouldn't be that substantial being still 65 ft. from the road and (3) if it is going to enhance the operation of the cabin colony, she thinks it is well worth granting the variance to enhance the property as it would be lovely to keep some of these places going if we can.

No correspondence.

No County impact.

No public in attendance.

G. Smith said (1) this is pretty cut and dry, (2) the applicant just wants to keep doing what he has been doing up there, which is fixing the cabins up, building new decks and making it safer for the younger kids to camp up there all summer long, (3) this is a good thing, (4) it is a safety issue and (5) he has no problem with it. M. Murray agreed.

RESOLUTION

The Zoning Board of Appeals received an application (V06-23) from Jumbo Realty Inc. (Marc Bernstein) 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 #7 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit cannot be achieved by other means feasible to the applicant besides an area variance, it is a pre-existing non-conforming structure;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, by adding this deck;
- 3) The request is not substantial, as it is a 10 ft. request for relief;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, because while the camp is certainly intensively developed the Comprehensive Plan identifies cabin colonies as beneficial to Bolton Landing's economic viability;
- 5) The alleged difficulty is not self-created, because it is an addition to a pre-existing structure and the applicant has made a minimal request in this application.

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 Mike Murray, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion carried.**

8) V06-24 SEIDLER, VINETTE. For construction of a proposed single-family dwelling, seeks area variance for deficient setbacks. 1) Rear; 20 ft. is required, 9 ft. is proposed, and 2) Side; 20 ft. is required, 14 ft. is proposed. Section 171.15, Block 2, Lot 29, Zone RM1.3. Property Location: Horicon Ave; west of school driveway. Subject to WCPB REVIEW.

Vinette Seidler gave an overview and said that (1) she proposes to build a new single-family dwelling measuring 1700-1800 square ft. on an existing substandard lot that had previously been developed (there was a house on the lot that was torn down in 1987) and (2) the adjoining neighbors own this lot and are currently selling it and depending on whether or not she gets the variance will determine if she enters into contract on it.

K. Hoopes said (1) he thinks a lot of the relief of the Zoning Regulations falls in the fact that the proposed house is encroaching mostly towards the school parking lot, which shouldn't be a problem, (2) the 14 ft. setback on the other variance request is not a big request, (3) the plans look terrific, (4) to turn that now vacant lot into something is a

useful thing and (5) plus the upper ground to the rear is preferable land to build on—high and flat—which is what the plans show.

B. Pfau asked if the proposed house location is where the original house was and Vinette Seidler said no, the original house was near the neighboring structure, very close to the street and both properties shared a driveway. G. Smith and M. Murray both agreed and added that the original house was down lower. B. Pfau asked what was in the flat area location and G. Smith said it was just brush and the neighbors have been taking care of it since the original house came down.

M. McComb asked what the relationship is between the stonewall at the top of the rise and the property line and Vinette Seidler said the property line is actually behind the stonewall—the pin is behind the existing stonewall. M. McComb said she measures the footprint of the house itself as 43 ft. wide. Vinette Seidler said her measurement of 1,700 square feet is for covered living space—not the total area of the house and B. Pfau said that is what most people calculate. K. Hoopes said there is no density issue here and asked why the concern and M. McComb replied by saying that if the ZBA is going to grant an area variance it is good to know what the size of the house is, because in this case it is not going to be a 1,400-1,700 sq. ft. house. K. Hoopes said it is somewhere between 1,900 and 2,300 square feet give or take a porch, which doesn't include the little tower.

M. McComb said (1) it is certainly an attractive house and an interesting design that would look good in the neighborhood and (2) it is not a gargantuan house. G. Smith asked what material would be used for the outside of the house and Vinette Seidler said (1) they will not side it with vinyl, but with either real shingles or wood shingles in earth tone colors like taupe or dark gray with cream or white trim and (2) it will fit in with the character of the Town and should enhance that part of Town.

M. McComb asked if the proposed house will be 65 ft. from Horicon Avenue as shown on the drawings and Vinette Seidler responded by saying (1) no, the proposed house will be 75 ft. from Horicon Avenue, (2) what happened is that she had to replace all the drawings and the set M. McComb is referring to should have been pulled out—the ZBA members have two sets of drawings—the large ones are the new correct drawings. M. McComb asked the applicant to state for the record the exact location for the proposed house in regards to Horicon Avenue. Vinette Seidler responded by saying the proposed house will be 75 ft. from Horicon Avenue and G. Smith said that is what the map says. K. Hoopes said whatever the ZBA grants is where the applicant can build regardless if the applicant's drawing is off and Vinette Seidler said she understands.

M. McComb asked if the applicant is on Town water and Vinette Seidler said yes, it is on Town water and sewer, so water and septic is not an issue. M. McComb asked if it is accurate that the only required variance is 9 ft. and G. Smith said 9 ft. from the rear and 14 ft. from the east side.

B. Pfau asked if it would be possible for the applicant to get driveway access to the property from the school parking lot, because it would be a steep drive and Vinette Seidler said (1) she doesn't know—they will figure it out and (2) added that she will not buy the lot if she doesn't get the variance. M. McComb said that she doesn't like granting a variance because someone wants to do a financial transaction basically. Vinette Seidler replied by saying that (1) it's not a financial transaction—she wants to build a house on this lot and the type of house she would like to build requires a variance, (2) she has taken preliminary steps, such as having an engineer out there to check the viability of the driveway and stormwater run-off, test holes for stormwater, etc., and (3) she is going forward on a leap of faith and she has made an educated decision in what can and can't be done and she needs a variance. K. Hoopes said none of that has anything to do with the ZBA.

No correspondence.

No County impact.

M. McComb said (1) she does think it is a good thing the applicants are meeting the setback from the road, (2) she thinks it is a structure that is a nice blend of something special for the applicant and something not totally out of line with the neighborhood, (3) she thinks it is also somewhat of a different situation because it is next to the school and the impact on that driveway is not the same as somebody being right next door in a house there—that all sort of mitigates in favor of the applicant, and (4) it is an unused lot in a general business district that could well- support a home and another family for Bolton Landing.

From the public, Clara Kingsley, President of the Bolton Central School Board, said this project was brought up to the school board at the last board meeting and the school board had no issues with the project.

RESOLUTION

The Zoning Board of Appeals received an application from (V06-24) Vinette Seidler for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) There will be no undesirable change in neighborhood character or to nearby properties, there are no objections from any neighbors;
- 2) The benefit cannot be achieved by other means feasible to the applicant besides an area variance, given the slope and size of the lot;
- 3) The request is not substantial, it does border on the parking area of the school;
- 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 of the size of the lot.

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

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

9) Portable Tents and Garages: To discuss decision set forth by the Zoning Board of Appeals on July 13, 1998 when determining that portable garages and tents are not considered structures.

K. Hoopes said (1) if the minutes of the July 13, 1998 ZBA meeting were an accurate rendering, then there was no motion made and no vote taken and (2) it finishes by saying that "...it was decided upon by the board that tents and portable garages are not considered structures," but there was no official motion or vote to that extent. Counsel said K. Hoopes' point is well taken but rather than try to guess what that was and whether or not that was a motion at the July 13, 1998 ZBA meeting, this would be a determination ab initio which is a Latin term that means "to start all over".

K. Hoopes said (1) he thinks the 1998 decision was made as a semi-casual experiment in allowing temporary structures and now in 2006 it is a crashing failure and it is time to re-examine it, (2) he thinks the ZBA is going to have to grandfather between what happened between July 1998 and whatever the ZBA comes up with tonight. Counsel said there may be some things that pre-exist and the ZBA is not about to undo them and K. Hoopes agreed, (2) if the consensus of the ZBA is that those things that are consistently characterizes as a portable garages which seem to come in fabric and sometimes in structural steel—things you can get in kit form, assemble, then by sheer gravity stay on the ground and not necessarily attach, those thing the ZBA might want to give

consideration as to if those constitute the type of structure the ZBA wants to be regulated by the code and if the answer comes out “yes” then certainly there are provisions in the code that allow them, they just need to meet setbacks or maybe they are site plan review considerations, which would be dependent on the zone they are in and (3) if the ZBA calls them a non-regulated structure or a portable thing the ZBA is not interested in, the Town will get a lot of them. K. Hoopes added they also wouldn’t be there temporarily.

T. DePace asked how the determination happens for what is to be grandfathered and what sort of notification is necessary. Counsel said the lack of a person’s claim and lack of diligence in complying with that doesn’t necessarily divest them of their right. M. McComb (1) said that she thinks Tom McGurl’s letter addressed to the ZBA and received by the Zoning Office on 05/15/06 nails it down by saying that these temporary “things” are in fact structures and (2) read Tom McGurl’s letter in its entirety into the record.

T. DePace asked what would happen if someone is grandfathered for this and wants to move it to another piece of his/her property and Counsel replied that the person would have divested him/herself of his/her grandfather status. T. DePace asked what the situation would be if someone wanted to replace the cover that has rotted over a few years and Counsel said that he guesses that might be a repair.

M. McComb said she thinks Tom McGurl makes a good point that if it was a portable structure you don’t get grandfathered on portable stuff. Counsel said that (1) Tom McGurl makes a good point if you accept the rational notion that all these were intended for were portable and seasonal or semi-permanent—not permanent and (2) he is going to beg the question that someone has one of these that has been permanently placed there.

Counsel said that the ZBA needs to define whether or not these things are structures and M. McComb said that they do seem to be structures. K. Hoopes said (1) this is very similar to the situation where the ZBA just decided a banner is a sign and (2) the ZBA is now deciding that if you build your house out of canvas it is still a house—it doesn’t matter what the materials are, how they are fastened to the ground—a structure is a structure. M. Murray said the ZBA should stick to the thinking of things over 100 square feet.

K. Hoopes said it was mentioned to him that the emotional and sentimental thought was now people can’t put up tents and camp in the front yard. P. Kenyon said she hopes that is not that case and Counsel said nor is it the case if someone has a wedding reception where they set up a tent for the weekend. M. McComb said no, no one is suggesting that be regulated. Counsel said he thinks it is specifically intended to address the notion that perhaps the ZBA wants to regulate these fabric-style portable garages and the metal apparatus that kind of looks like it is up on a skeleton of metal rods.

M. McComb said given the reality that it is a maximum of \$65.00 and coming in an evening to be reviewed versus someone saying he/she already had that there... P. Kenyon said she has been telling people these things are okay based on her interpretation of the July 1998 ruling. K. Hoopes said the ZBA does have jurisdiction in as much as if

they want to do anything to that structure—change it in any way or move it in any way—then the person has to come to the ZBA because its pre-existing non-compliant then they are not pre-existing anymore and G. Smith agreed.

B. Pfau asked if people can be notified that they need to come to the Zoning Office to claim their building—they are allowed to keep it—in order to get in on record so the Zoning Office will know if it is old or new and P. Kenyon said yes, that could be done and Zoning Enforcement Office Mitzi Nittmann could also go out and take an inventory.

T. DePace said that for the record he has one of these structures. M. McComb said (1) for the record, there are a lot of people who applied for permits to house their stuff and (2) given the direction of building, development, and the nature of the development in Bolton Landing, she doesn't see why the ZBA wants to bend over backwards to encourage hanging on to this. K. Hoopes said the Town doesn't want to pay for an Article 78 if it doesn't have to. T. DePace said (1) he doesn't like the building either, but he needed an extra storage area and (2) it would be nice if he could come in tomorrow, fill out an application, and say he's going to take it down and put a regular building up, but that is not how the process works. M. McComb said if it puts the land over density then the stuff may need to be stored somewhere else and T. DePace said (1) that he was told it was okay and he has done it and (2) he has a problem with telling someone who has had one of these in their driveway for 10-12 years that they now have to take it down. P. Kenyon said (1) she would be 100% against that and (2) it would be totally unfair. G. Smith agreed.

M. McComb said the ZBA should get some sense of what is there now and say that the ZBA had a period of time when this was okay, but now the ZBA/Town is moving forward. K. Hoopes said that it is up to the applicant to prove what the history of the thing is. G. Smith said when the people come to the Zoning Office with this information, the Zoning Administrator will make the determination if they can get a permit if it meets all the setbacks or if it needs to come before the ZBA because it doesn't.

Counsel said (1) the ZBA needs, so there is a little formality eight years from now in what this ZBA decided, this interpretation in the form of a motion, seconded and a resolution and (2) it is an interpretation and he thinks the question posed is “Are these temporary garages (the portable garages, the fabric buildings, the metal structures) assembled intended for portable placement considered a structure that the ZBA regulates under the Code?”

Several ZBA members asked about certain examples of temporary tents being used for events, camping, gazebos, etc. and discussion on the regulation of these items ensued.

M. McComb said the Town is now moving forward and rewriting the Zoning Code and suggested that maybe the ZBA offers some guidance to the committee that is rewriting the zoning that they make it clear that from here forward, and if there are grand fathered cases or pre-existing things they come in, but that from here forward in the new code they make it clear that anything over 100 square feet that remains for more than a week is a

structure. K. Hoopes said (1) he thinks this ZBA is undoing the July 13, 1998 experiment in portability and temporal things that didn't work, (2) this ZBA is just going back to the Code reading of the Town's Zoning Regulations which says, "...over 60 inches tall or over 100 square feet is a structure..." and (3) the 1998 ruling doesn't even deal with whether or not it is being moved or if it is going to be temporary.

M. McComb asked if the consensus is that this ZBA wants to grandfather everything that is there but regulate it from here forward and all ZBA members said yes. G. Smith said the ZBA has to grandfather what is already pre-existing because people have been told they can have it and P. Kenyon agreed.

Zoning Enforcement Officer Mitzi Nittmann, said (1) that she would like to propose that if the ZBA is going to say temporary structure versus non-temporary as intent for special occasions, weddings, library book sales, etc., that the ZBA somehow puts that in its determination tonight by being really specific and giving a time frame and (2) similarly, she has issues with temporary signs already that are over the square footage of the ZBA's new banner ruling. M. McComb said if it is over 100 square feet then it is a structure and it is jurisdictional and if it is a good idea a person can apply and get permission to have it.

K. Hoopes said for tonight's business, he suggests the ZBA concentrate on undoing the 1998 ruling and then addressing individual temporary items. Counsel said (1) that what the ZBA is saying in the nature of legislative ideas about how long is good, all the ZBA wants to do in this setting is interpret if indeed the interpretation is what the ZBA seeks and that is what sought—temporary garages, tents—are they structures, (2) in terms of the great gray areas about specific things like library book sale tents, it is not in the legislation and if that is the desire of Bolton to go regulate or define those things it will be done—it should be recommended to the committee and (3) tonight, all that is sought here is on whether this is a structure or not.

From the public, Dennis Murphy said (1) he puts his boat under one of these every year and (2) it should be addressed as to if this type of thing, that is open-ended with a cover over it and the sides open, would be regulated. Counsel asked if it is up on stakes with guide wires going down to tent pins and Dennis Murphy said yes. Counsel said that would not get regulated because it is specifically exempt from the Building Code and is not a structure as defined by the Building Code, but these other things that are assembled and were designed for portability and non-permanent application are now being found to be permanent.

Further individual discussions ensued simultaneously.

M. McComb said (1) it has become so complex, (2) some people are using them as temporary structures in a way she doesn't think this ZBA is going to have any problem saying it is fine and (3) other people are using them as ways around the Zoning Ordinance for permanent structures and that, she feels, the ZBA needs to get a handle on.

P. Kenyon said (1) she has no issues with Quonset huts as becoming structures, and (2) she would definitely have an issue with these mosquito netting very portable things with side stakes that go in the ground, for someone to put up almost as if it were a tent, being considered structures. M. McComb said it is appropriate to regulate and if it is the size that determines it she doesn't think the ZBA will have a problem by having the opportunity to give oversight. P. Kenyon said (1) that now the Town has the Zoning Enforcement Officer and herself, they don't always agree on everything and it is going to become very hard for them to determine if something is or is not okay—it is very difficult with two people and the possibility of two different opinions and (2) she is uncomfortable with this tonight—it needs more thought. G. Smith agreed.

K. Hoopes said (1) you can't differentiate between the shape of the thing and (2) what the ZBA is doing here is saying that if it qualifies as a structure and the Zoning Administrator or the Zoning Enforcement Officer doesn't think it is in the spirit of what the ZBA is trying to do, call it a structure, bring it before the ZBA and the ZBA will make the determination. T. DePace agreed and said that Quonset huts are round, but there are the same types of buildings made in a different shape with a peak. Zoning Enforcement Officer Mitzi Nittmann agreed and said that those with the peaks will withstand snow load, so some become permanent.

M. McComb said that if somebody puts a 10 ft. by 20 ft. something or other on their property line blocking her view and changing her view within the waterfront setback, she thinks a property owner has a right to say that should be regulated. Counsel said that as of tonight people are permitted to do that.

K. Hoopes said he just wants to undo the July 13, 1998 ruling and then the Town goes back to what it had before July 13, 1998, which was 10 ft. by 10 ft. is a structure and P. Kenyon and M. Nittmann use their judgments from there.

Counsel asked if a portable garage is a structure and G. Smith said yes. Counsel asked if a cargo container is going to be considered a structure and G. Smith and K. Hoopes said yes. Counsel said there is a need for the ZBA to make a motion to give some direction.

Now, upon motion duly made by Kam Hoopes and seconded by Tony DePace, it is resolved that the ZBA does hereby make the determination that from now on portable garages and other structures, to include storage containers, that qualify as such under the Town of Bolton's Zoning Regulation guidelines are now considered structures in the eyes of the Zoning Regulations in the Town of Bolton and from here on out will be applied by the rules or regulations. **All in favor. Motion carried.**

10) Accessory Structures: To discuss Section 200-14 Schedule of Use Regulations, as it pertains to permitted Accessory Uses. Specifically are the lists found in each zoning schedule all-inclusive?

K. Hoopes said they are absolutely not all-inclusive and are proven to be so by the minutes of the PB and ZBA from 1992.

From the public, Zoning Enforcement Officer Mitzi Nittmann said it was brought up by B. Pfau at a committee meeting on zoning changes earlier in the week as to why the ZBA is making these zoning interpretations and the answer is that it is a Town Law by New York State that the ZBA is the governing Board, even though the members only get paid \$25. B. Pfau said (1) he didn't ask why the ZBA is hearing appeals and (2) his only point is that it is after a determination has been made by the Zoning Administrator when the ZBA takes over, and (3) there is a process for it. Counsel agreed by saying there is a process.

Mitzi Nittmann said the ZBA is the determining factor if she and Zoning Administrator P. Kenyon don't agree on something. B. Pfau said he agrees that if P. Kenyon makes a determination and M. Nittmann doesn't agree with it, then it comes to the ZBA. Counsel said any person who seeks an appeal from P. Kenyon's decision must present it to the ZBA.

Mitzi Nittmann said in the PB minutes of January 23, 1992, the fifth paragraph, Section D it says "...the Planning Board has to exercise their discretion...", so it is not P. Kenyon as the Zoning Administrator who's in this loose of use is not inclusive, this is saying that the PB has the decision. K. Hoopes said that would be reading off the PB side and P. Kenyon said that you really need to go by what the ZBA says. Mitzi Nittmann said regarding accessory structure, (1) also under the ZBA minutes, if you go to 2/17/92 it says the same thing—"...the Planning Board has to exercise the discretion..." M. McComb said it is an example list only and that the Planning Board has to exercise the discretion. Mitzi Nittmann said it is a ZBA decision that the PB is supposed to make the decision whether that goes on the list or not. G. Smith said that was an example that Eric Strackland wrote down. Mitzi Nittmann said that both sets of minutes say the Planning Board—not the Zoning Administrator—and she wants the ZBA to think about that. K. Hoopes said the PB doesn't change anything and (2) it says very carefully back on page 1, "...if the use is not specifically listed in A or B it is not allowed...", which is why you need an appeal to the ZBA.

Mitzi Nittmann (1) said there is an example of a single-family dwelling allowed in all zones, then there are garages, then you have guest cottages—all structures, all defined by their use—so then you have (A) single-family dwellings, (B) single-family dwellings with attached garages, (C) single-family dwelling with detached garages, (D) garages with attached guest cottages—allowed in some zones, not allowed in some zones, (E) guest cottages—allowed in some zones and not allowed in some zones and (2) asked what happens when you have a single-family dwelling with a detached garage with a guest cottage (determined by the definition of a guest cottage) that you now attach to the house with a breezeway—she asked if the use is still allowed.

K. Hoopes said (1) there is the activity and then there is the structure, (2) the activity is the allowable use, so it is the activity that is questioned in this case and (3) if that thing is attached to the building and its activity is really for guest activity and it can be

established as such then it is a guest activity. Mitzi Nittmann said that is what she needed to know and now she needs a motion.

M. McComb said (1) it seems to her that sometimes things get written up in codes because of how they fit and (2) it also seems to her that under permitted accessory uses in every zone, the final thing is accessory structure less than 1,500 square feet of floor space, which is kind of a catch-all—if something seems like a good idea you could be permitted under that. Mitzi Nittmann said then gazebos and sub-type sheds would then be accessory structures.

T. DePace said regarding the example shown, they got a permit to put the breezeway to attach the two so it is a house right now and therefore on that piece of property it is legal for them to have a guest cottage unless when they got the permit for the breezeway there was a stipulation saying the breezeway would be allowed with the condition there is no more guest cottage on this property.

From the public, Jim Pepper said (1) he was on the committee when this topic was revised, (2) the argument for a guest cottage is that the committee was in favor of having guest cottages on a subject piece of property for people with larger homes on the lake so their guest has a place to stay, (3) you could certainly put an attached wing and use that for your guest facility, (4) they allowed guest cottages in all zones at that time, (5) it was an alternate for a house with a guest wing versus a detached place where guests would come and leave without bothering the main house residents, (6) it was decided you couldn't have kitchen facilities in there so it wouldn't be used as an apartment and (7) the example Mitzi Nittmann has given is just creating a bigger house—it is no longer a detached facility, but part of the house.

K. Hoopes said (1) in this example, you have a building with a garage and living quarters that is attached to the house, however, you can only enter and exit it from that structure—not from the house on into the house from the living quarters—that to him says it is a separate entity and made to be separate and to not share facilities with the house.

Jim Pepper said that he doesn't agree that may have been the intent, but the evolution of this it later puts a connected link, so he still feels it is still a single-family house. K. Hoopes said (1) in Mitzi Nittmann's favor on this one, she has a determination to make as to what is really going on versus what it looks like and (2) you can have it under the same shell, like a duplex, this is touching on a gray area, but concentrating on the activity here sort of reveals itself, (3) the activity is that they made it so that you can only enter and exit that separate living quarter without entering or leaving the house and there is no shared connection.

M. McComb said it seems in the Code that guest cottages are permitted everywhere except RCM1.3, LC25, LC45 and GB5000. K. Hoopes (1) said that is something the Zoning Committee is getting into and (2) asked if this is what Mitzi Nittmann needed. Mitzi Nittmann replied by saying that (1) she needs a determination as to whether to write a notice of violation or not, because technically by Code in an LC25 where she

knows one specifically is, a guest cottage is not allowed—it is not a permitted use and (2) she needs to know if the use as presented in her example is allowed. M. McComb asked if it could be permitted under an accessory structure under 1,500 square feet of floor space and both G. Smith and M. Murray said yes.

P. Kenyon (1) read the minutes from PB January 23, 1992 & ZBA, February 17, 1992 into the record, (2) said the reference to the PB being the one with discretion was a statement made by an attorney at the meeting—not a ZBA member—it was just that person’s opinion, (3) she has always gone by the verbiage of the motion on that item which does not include any reference to the PB, (4) it is not the PB that interprets the code—the ZBA interprets the code and (5) it is her responsibility as the Zoning Administrator to determine if it is accessory to the principal and if someone doesn’t agree with her then they appeal her decision, which is the way she has always done it and would like to continue to do it. M. Murray agreed.

K. Hoopes said Mitzi Nittmann has two situations she doesn’t know how to deal with and Mitzi Nittmann said that is correct. P. Kenyon said that (1) actually, she only has one, because she (Kenyon) made the determination already (about a year ago) that one was a guest cottage and allowed and (2) she can’t imagine that that person would now be told they have a violation when she made a decision based on the fact that it is her job to make these decisions. B. Pfau asked why Mitzi Nittmann feels aggrieved by this decision and Mitzi Nittmann replied by saying (1) all of those structures are defined by use—they are all cubicles defined by use—and if that use is not allowed in a certain zone, she has to be able to tell that person it is not allowed in that zone and (2) as the accessory structure comes in here, that particular use—accessory structure—is not allowed in two zones and she has one in that zone, so does she write the man a violation or not? Counsel said that had the applicant accurately presented it, the issue would have been confronted at that time, but it is more as built than as represented.

T. DePace asked that if hypothetically speaking you have a house with a detached garage in a zone and upstairs in the garage you decide to sheet rock and put a couch and TV, does that become a guest house and Mitzi Nittmann answered by saying that by definition of guest cottage, that is what she goes by, so if it has a living room, a bathroom, a dining area—no kitchen—and a bedroom then it is qualified as a guest house. T. DePace said he understands that, but asked what a room with a couch, a table and a TV it is fine.

M. McComb said she thinks it is something for the rewrite committee to address that a guest cottage is not permitted in land conservation, but an amusement device facility, which some people could consider a sheet rock room with a couch in it to be, is and then in the Town’s 510 rural residential a guest cottage is permitted in RL3, but then again in commercial low density it is, residential industrial low density it is not and then again we get down to the residential medium density and a guest cottage is again permitted.

T. DePace said, now it has been decided that the TV and couch are allowed and the person decides to add a bathroom, so he is already in the wrong right there so Mitzi

Nittmann could take care of it that way and P. Kenyon agreed. T. DePace said the person should have been cited for putting in a bathroom without a permit.

Mitzi Nittmann asked what she does now when the Zoning Administrator allows someone else to do the same thing and T. DePace said just like here, it is a different situation. P. Kenyon said the definition of an accessory to a structure reads "...any structure or portion of a main structure customarily incidental and subordinate to a principal land use or development including a guest cottage or any other structure in excess of 100 square feet not for rent or hire that is incidental and subordinate to and associated with a single-family dwelling...", (2) she has to make this determination every single day to determine if this is associated with the use and associated with the single-family dwelling and (3) she would like to continue making those decisions. G. Smith said that P. Kenyon needs to continue doing that. K. Hoopes said he doesn't understand how it is not included in the list when you have allowable uses in these various zones—a guest cottage is pretty well defined—it is not a gray area.

Counsel said (1) he is going to give the ZBA some insight into the tools that a lawyer has to work with in explaining what the ZBA had interpreted, but the Zoning Administrator had decided and what the Zoning Enforcement Officer wants to enforce—it is simply that when you look at these sections in the Code, can you have a rational and reasonable construction of the language, (2) he can accept the notion that when the Zoning Administrator reads the Code in its proper context, she comes up with a determination and it is rationally based and reasonably determined and she comes up with "Result A" and then along comes the Zoning Enforcement Officer—and it is probably about as close as you can come to a scenario of the same set of facts, but a different piece of property at a later date—and she too rationally and reasonably reads the construction of the language and comes up with her conclusion which happens to be "Result B", (3) if he found himself in a court of law trying to justify the enforcement of that section with a Supreme Court Judge, he would rightly tell Counsel that Bolton is wrong—not because it is Bolton and not because Bolton has a lousy Ordinance—it is just that in New York State Law whenever there is an ambiguity (ex. if it suffers in its language, if it can be constructed into other reasonable conclusions, etc.), then the winner is the landowner—the applicant, that is you cannot do anything with the Zoning Ordinance but strictly construe it—you cannot imply or expand it by innuendo or make some suggestions, and (4) when you have "Reasonable Construction A" and "Reasonable Construction B" what you have is a Code that has failed to be strictly construed, it is not capable of being construed without ambiguity, so the winner is the applicant, and (5) having said that, the last thing he would want to do is get involved on behalf of Bolton with Pam Kenyon's construction which was a reasonable one that he accepts where she said to a previous landowner about a year ago that it looks good and everything you did is fine and then take Mitzi Nittmann's construction which happens also to be reasonable and rational but quite different from Pam Kenyon's and offer that to a judge and say we are enforcing that against homeowner #2, because in addition to the reasonable construction and the obvious ambiguity, you have to have equal application of the law—you can't go like thunder and lightning after one and not the other.

K. Hoopes said these things cancel each other out and M. McComb disagreed. Counsel said (1) he thinks it just raises the issue, (2) he thought the most productive thing going on here is that M. McComb was getting very close to a motion which basically said it has been interpreted and for the time being the interpretation is that Pam Kenyon is the Zoning Administrator who makes determinations and Mitzi Nittmann wants to challenge that interpretation, but somebody on the ZBA needs to say "...here is our answer right now...", and (3) maybe the answer if he could encourage the ZBA is "for the time being: because this is one of those sticky wickets that lays in the Town's Ordinance and if the Town's Ordinance is being revised they ought to deal with that.

T. DePace said he thinks Mitzi Nittmann has to just bite the bullet and let the guy have his guest cottage. G. Smith said they should go with Pam Kenyon's determination and stick with it. M. McComb said she hears again and again on this board that the ZBA doesn't create precedents when it grants variances—that it is an individual case assessment. Counsel said the ZBA is creating precedents because the ZBA is interpreting, making policy. M. McComb said the ZBA is interpreting and making the Code and Counsel said that is correct.

Counsel said he has to admit and he really hopes that this is an interim interpretation that definitely addresses the need to get some concrete clearly understood language in the new Code. M. McComb said that if there is a reason for allowing guest cottages in medium sized properties but not large or small ones, which seems to be what the ZBA has on its schedules right now, that would be a nice thing to clarify in rewriting the Code. G. Smith agreed.

Counsel said the ZBA needs to take a path so the Zoning Administrator and the Zoning Enforcement Officer are not going in two directions. P. Kenyon said it is a struggle in the Zoning Office to constantly be doing this—almost weekly with differences of opinion and Mitzi Nittmann agreed.

Counsel said (1) the ZBA should be encouraged to know that where Mitzi Nittmann has focused in on a violator is not necessarily forgiven just by the ZBA saying tonight that it is going to go with Pam Kenyon's interpretation and let it be until it is figured out in the new Code as to what it ought to be and (2) this alleged violator has other problems with misrepresentation. T. DePace said (1) that he only said that because he thinks it would be the right thing to do and (2) he is not saying the other guy is right, but it is going to cost the Town money to fight this other guy and it is going to be a losing situation. Counsel agreed and said it doesn't have a great deal of success in it.

Mitzi Nittmann said her main concern is that this is a use that is not allowed and she needs to determine whether that use stays in that instance or not. M. McComb said (1) she is thrilled that somebody is reading very carefully and paying attention to the words in the Code and bringing up notions where there is ambiguity and (2) for the time being, in the interest to fairness to people who have been given rulings and to Pam Kenyon's position, the motion should be to continue what she is doing while they are working this out in the context of redrafting this. G. Smith said the ZBA just needs to make a motion

to keep doing what she is doing and P. Kenyon added that it also needs to say that the list is not an all-inclusive list.

Counsel said that in the absence of a motion, the Zoning Administrator should continue doing what she is doing. K. Hoopes said no motion is needed here because it is an interpretation.

Meeting adjourned at 9:11 pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
05/29/06