

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, August 13, 2007
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, Jeff Anthony, Tony DePace, Kam Hoopes, Meredith McComb, Bill Pfau, Town Counsel Michael Muller, Zoning Administrator Pam Kenyon

Absent: Tom McGurl, Jr.

Chairman Greg Smith opened the meeting at 6:30pm by saying that the July 16, 2007 regular ZBA meeting minutes are being reviewed and by asking for corrections to the July 2, 2007 Special ZBA meeting minutes.

K. Hoopes said on page 10, paragraph 1, sentence 6 should read, “...*(2) they are not engineers and what he has seen is that the infiltration basins are the last line of defense against water that may or may not be contaminated and the wetlands...*”

K. Hoopes said that for Mark and Linda Perry (V07-23), the area variance criteria was incorrectly used in the minutes instead of the use variance criteria, so the resolution should read as follows.

RESOLUTION

The Zoning Board of Appeals received an application from Mark and Linda Perry (V07-23) for a use variance as described above.

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

and, whereas the Warren County Planning Board determined that there was no County impact with the stipulation that there is an evaluation of the competent financial information requirement per the use variance application, evaluate the change in neighborhood character in regards to the proposed project, and referral to site plan review if determined to be required.

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) Applicant cannot realize a reasonable return – substantial as shown by competent financial evidence;
- 2) The alleged hardship is unique and does not apply to substantial portion of district or neighborhood;
- 3) The requested variance will not alter essential character of the neighborhood;
- 4) The alleged hardship has not been self-created.

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

Now, upon motion duly made by Jeff Anthony and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented. This approval is based on the written “Resolution of the Town of Bolton Zoning Board of Appeals Perry Use Variance”, received July 2, 2007. Prepared by Jeff Anthony, wherein the criteria for granting a use variance has been met. Meredith McComb absent. All others in favor. Motion Carried.

RESOLUTION

Motion by Kam Hoopes to approve the July 2, 2007 special meeting minutes as amended. Seconded by J. Anthony. **Five in favor. One recused**, M. McComb wasn't at that meeting. **Motion carried.**

Note: ZBA member J. Anthony recused himself from item (V07-14) Robert & Marjorie Lichtenstein.

- 1) **V07-14 LICHTENSTEIN, ROBERT & MARJORIE.** Represented by Jarrett Martin Engineers. For the construction of a proposed retaining wall associated with a septic system, seek area variance for deficient setbacks. a) Front; 50 ft. is required from the edge of the right-of-way, 1 ft. is proposed. b) Side; 30 ft. is required, 5 ft. is proposed. Section 157.05, Block 1, Lot 40, Zone RCL3. Property Location: Brook Hill Drive (behind Lagoon Manor). *The WCPB determined no county impact. This item was tabled at the July 2007 meeting pending additional information.*

Atty. John Lapper, representing Robert and Marjorie Lichtenstein, gave an overview and said that (1) they are seeking area variances for the construction of a retaining wall to construct a leach field on the property and (2) what is at stake is whether this property can be developed because without placing the leach field in the proposed location, a house cannot be built on the site—the location chosen is the farthest from the lake and the farthest from the neighbors' non-conforming well. G. Smith asked for clarification on the “neighbors' non-conforming well” and Atty. Lapper said that on the map originally submitted, in the center of the O'Hearn property, their well is a couple of feet from the property line and septic systems need to be 100 ft. from the well, so the O'Hearns' well should not be placed on the property line, but because the O'Hearns' well is on the

property line, the applicants have to put the leach field all the way in the back corner in order for them to maintain the 100 ft.

Atty. Lapper said that (1) in order to meet the 200 ft. from the lake and the 100 ft. from the neighboring well, the system had to be designed with a retaining wall, (2) the retaining wall runs along the right-of-way, so nobody lives there, (3) it is important to note that the O'Hearns' porch is approximately 1 ft. from the property line and the applicants are only proposing a retaining wall and the house is compliant on this lot and (4) they have addressed the private deed covenants in that there was nothing in this deed that addressed that, so this would be a private matter, not a town zoning matter and their position is that it doesn't apply, because it is not in the deed. Bob Holmes, project engineer, said that the design has not changed to date, so they are just providing the requested additional information regarding landscaping, materials and aesthetics. He then referenced the July 27, 2007 materials submitted to the ZBA and referenced the photographs and renderings giving further details on similar systems he has built in nearby municipalities that utilized a segmental retaining wall system to construct the wastewater system within that, which is what is being proposed on this project.

G. Smith said he was under the impression that the ZBA be getting pictures of what the system would look like on the applicants' piece of property. B. Pfau said that the pictures show 4-5 rows of block and asked if that would be enough for what is being proposed on this property. Bob Holmes said that (1) the walls shown are closer to 3 ft. in height, so there would be two additional, (2) it is correct that the ZBA requested an actual rendering, but they found the rendering they put together in their drafting software wasn't even realistic in appearance, so they felt it was more representative with the pictures. B. Pfau said that it is representative and asked if they have built these before and Bob Holmes said yes. M. McComb asked how tall the proposed retaining wall on this site will be and Bob Holmes said that the maximum height of the retaining wall should be in the neighborhood of 4.5 to 5 ft., which should be the exposed wall height, which will vary. G. Smith said that based on the last meeting, he thought the retaining wall would be in the neighborhood of 3 ft. Bob Holmes replied saying that most of it will be 3 ft. high, but they do have some exposure on the side facing toward the house and a little on the side facing to the north where they will max out at the 4.5 to 5 ft., but most of it will be shorter than that. Bob Holmes then pointed those areas out on the map and said that with the exception of the north side, most of that exposure will be to the interior of the site.

B. Pfau asked if the proposed landscaping for this project will be similar to that in the pictures presented and Bob Holmes said yes. B. Pfau said that he thinks a row of evergreens on the north property line would help hide the base of the structure. M. McComb said she agrees with it in principle, but asked if it gets in the way of maintenance. Atty. Lapper said that they have no problem using the 5 ft. strip for evergreens. M. McComb said that it is a high wall and G. Smith agreed. K. Hoopes said that (1) the maximum height of 4.5 to 5 ft. is in a couple of spots where the terrain has dropped away and (2) towards the right-of-way is one of the shorter walls. Bob Holmes agreed and said that towards the right-of-way the wall will be in the range closer to the 3 to 3.5 ft. height. K. Hoopes said that the varying of the bottom part of the retaining wall mitigates it. Bob Holmes agreed and said that (1) because they are close to the right-of-

way there, there are other vegetative cover they can use to cascade over the wall and (2) the wall itself is not intended to be obtrusive in appearance—they are trying to match what the development could adhere to.

M. McComb asked when the building was purchased and Atty. Lapper said that it was purchased as a building lot in 1971. M. McComb said that (1) it says in the July 16, 2007 ZBA minutes that the applicants will later be seeking a septic variance from the Local Board of Health and (2) she noticed in the application that the applicants checked that it wouldn't require any further permits. K. Hoopes said that it would be subject to all the same permits that all septic systems are. M. McComb said that anytime things don't jive, it makes her want to ask the question. Atty. Lapper said that P. Kenyon determined they needed to come to the ZBA first before going to the TB as the Local Board of Health. P. Kenyon agreed. G. Smith said that (1) he is happy with this, (2) it will look okay and (3) he likes the idea of the evergreens planted on the north side of it toward the property line to the north.

Atty. Ned Trombley, representing southern neighbors Tim and Carlene O'Hearn, (1) said that when Bob Holmes was describing where roughly 5 ft. area would be, it sounded like Bob Holmes thought it wasn't going to be close to the right-of-way, but based on the Bob Holmes' plan they have, it looks like it is close to the right-of-way and (2) asked how far it will be from the right-of-way. Bob Holmes replied by referencing the map to show the areas where the wall would be in the 5 ft. range and said that the retaining wall facing toward the right-of-way, they will be closer to having a wall 3 to 3.5 ft. in height. Atty. Trombley said that it sounds like the area that is going to be 5 ft. is predominantly facing the O'Hearns' residence. Bob Holmes said that there are a considerable number of trees between the O'Hearns' residence providing a buffer in that area, but yes, it is correct that it is in that direction. Atty. Trombley said that if the Lichtensteins were to take trees down in the course of putting his residence up, the buffer being described would no longer exist. Bob Holmes said yes, potentially, but that would be an additional site plan review before the Bolton PB.

Atty. Trombley said that (1) he doesn't want the ZBA left with the impression that the only reason for the Lichtenstein's proposed system location is because of where the O'Hearns' well is located, (2) if you look at the plan and the line showing the 200 ft. setback from the lake, there really isn't much other spot on the lot where the Lichtensteins can put the system and stay within the lake setback, which he feels is as much if not more of a problem in locating this system than the O'Hearns' well, (3) he thinks the reference to the O'Hearns' well as "non-conforming" is gratuitous and irrelevant at this point and (4) he would like the ZBA to consider the fact that this proposal is really jamming in a system and asking for a lot of significant variances from what the ZBA's normal standards are.

Atty. Bob Randall, representing northern neighbor Brookhill Development, said that (1) one of the criteria for an area variance is how the project will not produce an undesirable change—there are no walls in that area right now and the applicants are talking about building a sizeable unit that has high walls made of stone, (2) the applicants indicated they'd put some foliage around it with some that will drape and if they put some trees in the north it might take care of that, (3) there is about three inches of dirt in an area

(pointed out on the map) before you hit rock and for use variance purposes, he doesn't see where the applicants put landscaping in that area—there is no space to put landscaping there unless it is the landscaping type, (4) this is for a design for the clay water retention unit, which is being used so it has an impermeable member to keep the water, (5) once whatever goes through the sand hits the rock, it is going to be running toward the O'Hearns' well, (6) the APA prefers a septic be 200 ft. from a well, instead of 100 ft., so the applicants are at the minimum, (7) concerns with the design is that the driveway is going to be right next to the wall, so there will be no trees or vegetation in that area, (8) if any trees come out, it is a clear visual issue for the O'Hearns, (9) the driveway going over the water membrane, more than likely, will be causing issues with that water membrane as you are dealing with very thin soil in that location, (10) one of the normal criteria for an area variance is whether a variance is substantial and normally when you get beyond 15-20% it is substantial—in this case the applicants want to go 49 ft. into a 50% area which is a 98% change and definitely substantial, not insubstantial and (10) the environmental issue is an issue for the ZBA to consider because it is the final issue in an area variance in whether there will be an adverse effect on the impact of the physical and environmental conditions in the neighborhood—in this case there are going to be water issues, sewer issues, the 200 ft. setback from the lake is right on the edge of this thing, there is a 100 ft. minimum to the neighbors well, it is on rock and it is a 17% slope—this is not flat—it will be running water once it goes through that retaining system.

M. McComb said that on the plans it looks like there is 3 ft. 6 inches minimum of fill beneath the distribution piping then another amount of fill on top of that, so that would be about 5.5 ft. of fill in the mound and she asked if that addresses any of Atty. Randall's concerns of the potential run-off. Atty. Randall said that (1) the applicants are building up, (2) he thinks there are significant environmental issues here and when it appears that there might be, it often becomes an issue not only to deny the area variance, but to ask for a SEQR review and (3) he is concerned that this isn't a good design, but he is not an engineer to comment on it. K. Hoopes said that the ZBA members are not engineers either. G. Smith said that is a topic for the TB as the Local Board of Health. Atty. Randall said that one of the ZBA requirements for an area variance is if it is going to have environmental impact and he thinks that is a big issue here for the ZBA to address. K. Hoopes said (1) no, the ZBA leaves that to the professional engineers, (2) Bob Holmes is a professional engineer, (3) the Town of Bolton has a professional engineer and the Bolton Town Board acts at the Local Board of Health. G. Smith said (1) that would be up to the TB as the Local Board of Health and (2) the ZBA's main concern is the wall itself and not what is inside of it. K. Hoopes said that (1) as far as the distance from the well, the ZBA only cares about the minimum distance—the 100 ft and (2) the 200 ft. from the lake is also a key item, which is why the proposed system is stuffed up in the corner and not centered in the lot, thereby mitigating one of the two variances the applicants were looking for—not the many variances they are looking for. Atty. Randall said that the variance the applicants are looking for is 49 ft. out of 50 ft., which is substantial. K. Hoopes said that it is a matter of whether or not this property is taxable and usable or not usable or taxable at all. Atty. Randall said that he doesn't know whether anyone else has offered to buy it as it sits and G. Smith said that the ZBA doesn't get in the middle of that either—that isn't any of the ZBA's concern. K. Hoopes said that would be a civil matter.

Atty. Lapper said that (1) they do have a sign-off letter from the Town Engineer in terms of all the design features and (2) regarding the amount of fill, this is a tertiary type of treatment system and the septic is properly being dealt with here and (3) it is not a substantial variance for the reason that they are trying to get the septic as far away from the neighbors' well and the lake, which is what they are accomplishing with this plan. M. McComb said that (1) it is a substantial request that you look favorably upon because there is no other place to put it and (2) the reason that it is so substantial is trying to avoid any possible contamination of the neighbors' well. B. Pfau said that it is one determining factor in a balance of several criteria. Bob Holmes said that it is because of the area that the only area they have available to them, so they are taking the next step to provide this advanced treatment to protect the lake and to protect the neighbors' well. M. McComb pointed out that the applicants are not planning on putting the leach field just on top of what is there, but in fact the applicants have plans to add fill. Bob Holmes agreed.

No additional comments from public in attendance.

No correspondence.

The WCPB determined no County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Robert and Marjorie Lichtenstein (V07-14) 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 #1 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 will be a stone wall that will be screened with re-growth;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, this is the only location on the property that is conceivable for the system and therefore the wall is containing it;

- 3) The request is substantial, numbers-wise, but it is a wall and not a building;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, as it is a wall that will be screened;
- 5) The alleged difficulty is not self-created, it is a building lot that has been in existence since 1971.

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 with the following conditions: 1) The north side of the wall is to be screened with evergreens; and 2) The remainder of the wall is to be screened with some type of cascading vine. Jeff Anthony recused himself. Tony DePace opposed. **All others in favor. Motion Carried.**

- 2) **V07-36 OLIVER JR., CHET & MILLER, JOAN.** To alter pre-existing non-conforming structure. Specifically to increase the footprint and raise the roof, seek 1) area variance for deficient setbacks. a) Front; 50 ft. is required from the edge of the right-of-way, 14 ft. is proposed. b) Side; 15 ft. is required, 10 ft. is proposed. c) Stream; 75 ft. is required, 42 ft. is proposed; and 2) To alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.20, Block 1, Lot 25, Zone RCM1.3. Property Location: 8 Cottage Lane. Default approvals from the WCPB. Subject to APA Review. This item was tabled at the July 2007 meeting pending additional information.

Chet Oliver gave an overview and said that (1) their property is located in Pioneer Village, (2) they would like to make this their primary home, (3) they need more living space as the quarters are currently severely cramped, (4) the setbacks are consistent with the neighborhood, (5) the new septic system location is from the hill upward, (6) they propose to move the back of the cabin back four ft., (7) they will not adversely impact the neighborhood and will fit in to the existing neighborhood with this proposal and (8) many neighbors present are in favor of the request (note: approximately 15 people present raised their hands in favor of the proposal when asked by G. Smith).

G. Smith said that he sat on the adjacent neighbors' deck and if this proposal goes through with going up a second story it will block that neighbors' view. Chet Oliver said (1) that neighbor is only there seasonally to his knowledge and (2) before he bought his home, the neighbor didn't have a view. G. Smith said that the point is if the applicant goes up a second story, he will be taking away what little lake view the neighbor has left. Chet Oliver said that his proposal is within the requirements of the town ordinance and within the covenants of the HOA of Pioneer Village. K. Hoopes disagreed on the lake view saying that the lake view G. Smith is referring to is not an actual view. G. Smith said that it is a small view and it is much more of one when the leaves come off the trees.

K. Hoopes said he just wanted to have it noted that there is a difference of opinion on that.

M. McComb said that (1) she didn't find that neighboring cabins by the lakefront went up to second-story buildings and when you put second-stories on the buildings below, the buildings behind have to subsequently put on second-stories too, (2) there are no changes in bedrooms in this proposal, but there is a lot more volume and space in this and (3) while she feels for the applicant in wanting to make a seasonal cabin into a workable year-round house, she is not sure it works in this instance. K. Hoopes said that he disagrees with the argument of following suit that if the lower cabins put up second-stories, so the ones above would need to go up, because this is one of the cabins up above. G. Smith said that a lot of the homes in that area that do have second-stories are much bigger lots than the applicants have. T. DePace said that when most people want to put on an addition they look to put in a screened porch. Chet Oliver agreed and said that including the screen porch they are at 905 or 906 square ft., which is very small. G. Smith said that the applicant might be able to do something with the storage area below the porch. Chet Oliver said beneath the porch is damp and open to the environment. G. Smith said it is a possibility to close it in.

B. Pfau asked if the proposal is for a total rebuild and Chet Oliver said (1) no, they propose to go out about 6 inches from the existing deck, (2) the screen porch will be enclosed with a small deck on that side, (3) the second level will not be a full second level, but 10 ft. in the center with the largest dormer coming off the backside of the residence facing the woods out of the sight of everyone and (4) there will be a smaller, like a doggie dormer on the front. B. Pfau asked if the applicant is saving the first floor from the roofline down and Chet Oliver said yes. T. DePace said that the applicant is going to be tearing the whole house apart doing that and he wants to winterize it. Chet Oliver said that at this point he has no plan to put any heat in, but he just wants to be able to live in the house for 9-10 months per year.

B. Pfau asked if the applicant has enough room for the leach field and to expand toward the back of the lot. P. Kenyon said that the Local BOH granted the applicant a variance. B. Pfau asked how much area there is between the back of the house and the leach field. Chet Oliver replied by saying that (1) the proposed leach field is going to be on the upper part, the north side and (2) his only choice is to go up for which he meets the association covenant requirements as well as the town height requirements.

K. Hoopes asked how long the applicant has been in this house and Chet Oliver said that he purchased the property in 1996. B. Pfau said that he sympathizes with the conditions the applicant is dealing with, but in sitting on the neighbors' porch, this proposal would diminish that lake view. Chet Oliver said that his own window of lake view gets smaller and smaller every year. G. Smith said that (1) if the ZBA lets the applicant put a second-story on the house it would be taking away the neighbors' view, (2) he has a hard time taking away the neighbors' view and (3) the applicant bought a small cabin on a small lot.

M. McComb said that the scale of this in looking at the lake view elevation, it shows ground to peak of roof at 31 ft. 8 inches with the chimney extending a little above that, so

the scale does not strike her as being in line with the other cabins. Chet Oliver said that looking from the waterside there are already three or four existing two-story homes. G. Smith said that the applicant has a smaller lot than many of the others in Pioneer Village. Chet Oliver said that looking at the subdivision map, there are several lots smaller than his. K. Hoopes said that isn't unusual given the date and they are pre-existing houses and you give them the smaller lot because they don't require the extra space.

B. Pfau said that the applicant is also is dealing with the variance request from the stream. Chet Oliver said that it would only be 6 inches more than the existing that was there when he bought it. B. Pfau said that for him the big thing is the second-story.

J. Anthony said that (1) he isn't going to try to re-design the applicant's building, but you don't have to have an absolutely symmetrical roofline on this building as proposed and (2) by maybe re-configuring the north shed of the building and dropping it down a bit, the applicant may be able to preserve the neighbors' view from the back and still get the space the applicant is seeking, but it would not be symmetrical with the building. M. McComb said that the proposed second-floor is one bedroom one bath then it is open below and there is a proposed loft and study, so it is a lot of wasted space. K. Hoopes said that (1) it is just the one corner that is open to the bottom—the applicant doesn't need to tell the ZBA what he's going to be putting in the loft—it is not another bedroom and (2) the applicant is exchanging a house south of here in order to come up here.

Glenn Baumler Association President, said that (1) he and the Pioneer Village Board of Directors have looked at the plans and it is within the association guidelines and covenants, (2) he personally thinks it is a nice looking addition that would modernize the neighborhood and (3) abutting neighbors don't have problems with the addition here. B. Pfau asked how the association would deal with taking away the neighbors' view and Glenn Baumler replied by saying that (1) there is taking a bit of the neighbors' view away, maybe 30% of it, but he doesn't think all of the neighbors' view would be taken and (2) most of the neighbors' view is looking down Cottage Lane and looking over Chet Oliver's roof.

John Engler (representing himself and his wife Bonnie Engler), owner of the property whose view would be blocked, said that (1) he empathizes with the applicant in needing more space, which is why their lot is on the market, (2) he and his wife want to protect the value of their property, particularly while it is listed with a realtor—they have been told that this proposal will devalue their property, (3) they want to try to protect this, as this proposal being approved would probably take another \$25-30K off the value of his home and (4) the applicant does have a lot of support here to go along with the project, but there is no question that this proposal would take the last of their lake view away.

William Nutland said that (1) he wants to contradict the claims by Mr. Engler that he has deprived him of 75% of his lake views, (2) he doesn't have lake views from his property, (3) standing on the edge of the Englers' property now, there is a very a limited amount of filtered light coming from the lake and (4) he thinks it is a positive for Pioneer Village and the Town of Bolton to have the applicants come up here as a full-time residents. K. Hoopes asked if this gentleman had come before the ZBA a couple of times. William Nutland said (1) yes, he was before the ZBA five times and Mr. Engler said that it went

up without his approval, (2) Mr. Engler, as well as all of the other Pioneer Village Board Members was hand-delivered a copy of blue prints, so how Mr. Engler can say that is beyond him and (3) Mr. Engler never came to the meetings to voice any concern about it.

Paul Fazackerly Pioneer Village resident, said that (1) Pioneer Village was subdivided in the 1970s and the new zoning laws made all of them non-conforming have, (2) the changes the varying boards have approved over the years since they have been there have significantly improved what used to be a little village of cabins into a nice neighborhood, (3) they support the applicants' proposal because the height requirements are being met, the plan structure is not out of character with the existing neighborhood, and they think all should be able to improve their properties and build up if it is within the association's bylaws, which all have residents of Pioneer Village have signed-off on. G. Smith asked what the maximum height is in the association and Paul Fazackerly said that (1) it is 70.5 and 24 natural grade, which is in their bylaws and (2) they spent years discussing this and it applies to everyone—just because you are down in front of someone doesn't mean you shouldn't have the opportunity to build to those height restrictions.

Lou Pastanello, neighbor, said that (1) he is in support of the project, (2) the variances requested are minimal from what the applicant has now—it is inches, (3) the applicant took a lot of time and pain-stake to make sure he could conform to the zoning as much as he could and (4) the height restriction has nothing to do with a variance. G. Smith said that when you come in for a variance it is because you do not comply and it is a little bit of give and take. Lou Pastanello said that he is speaking in a public forum and the chairman is letting him speak. G. Smith said (1) yes, he is letting him speak and (2) the ZBA works the way it works—this is the way it has always been done and (3) the ZBA is not changing anything because of Mr. Oliver here because he is blocking the neighbor behind. Lou Pastanello said that (1) he's asking the ZBA to treat the applicant fairly, (2) the height requirements of the association are more stringent than the Town of Bolton's and (3) the applicant is not here for height restrictions, the three variances have nothing to do with that. B. Pfau asked what discussion ensued on the association's discussion of the height restrictions. Lou Pastanello said that (1) in the beginning discussions the HOA wanted one set of rules for the people on the lake and another set for people up the hill and (2) the HOA Board came to the realization that isn't a fair way to rule, so they came up with that height as being fair to all. G. Smith said that the ZBA is not trying to give anybody a hard time—the ZBA just wants to be fair. T. DePace said that it is hard for the ZBA members to tell someone that has a limited view of the lake and that is why he is at that property, then to put something in front of it and block it—this is what the ZBA is dealing with.

K. Hoopes asked what the ZBA attitude would be if the applicant was asking for any further variances than he is already living under and just wanted to go up a story in the same drip-line and same footprint. G. Smith said that the applicant would still need to be before the ZBA because it is non-conforming. T. DePace said that he'd agree with this whole project if there wasn't someone saying he is going to lose his view of the lake and G. Smith agreed.

M. McComb said that the variance proposed is not a 20% variance. Lou Pastanello said that the front stoop is already there—it is pre-existing—the front variance is literally 6

inches more than the existing stoop. M. McComb said that the ZBA deals with volumes, not in lines on the ground, because people's interaction with their home has to deal with volume and not just lines on the ground, which is not new information here.

Al Zapullo, Pioneer Village resident, said that (1) he built his house 20 years ago and at that time he had a lake view, but he doesn't have that now, (2) if anyone wants to see the lake they can walk down to the association beach and get a beautiful view of the lake and mountains and (3) to him the ZBA is denying progress if they deny the proposal.

No correspondence.

Chet Oliver asked for a postponement to keep the public hearing open to next month.

RESOLUTION

Now, upon motion duly made by Kam Hoopes and seconded by Jeff Anthony, it is resolved that the ZBA does hereby table the application pending the submission of revised plans. **All in favor. Motion Carried.**

Note: ZBA member T. DePace recused himself from item (V07-42) William Lamoureux, because his family owns property surrounding this site.

3) V07-42 LAMOUREUX, WILLIAM. Represented by James Miller. To alter pre-existing non-conforming structure, seeks area variance for deficient setbacks 1) Front: 50 ft. is required from the edge of the right-of-way, 5 ft. is proposed; 2) Side: 20 ft. is required, 19 ft. is proposed; 3) Rear: 20 ft. is required, 18 ft. is proposed; 4) Maximum amount of lot to be occupied is 15%, 19% is proposed; and 5) To alter a pre-existing non-conforming structure in accordance with Section 200-57(1)(b). Section 186.06, Block 1, Lot 7, Zone RM1.3. Property Location: 20 Belle Lodi Lane. Subject to WCPB Review.

James Miller of Northfield Design Architects, representing William Lamoureux, gave an overview and said that (1) there is an existing a-frame that sits on a walk-out basement, (2) for the building itself, they propose constructing the alterations on the existing footprint, (3) the setbacks from the building itself are not changing from the existing setbacks, (4) on the lake side (east side) they propose to extend the existing deck out to a total of 14 ft., which puts them 34 ft. from the property line, (5) it is the works to have the right-of-way running through the property legally taken out of the deed, (6) they meet the 15% density if you take the footprint of the building and if you take the raised deck into consideration that puts them in the 19% density and (7) they propose to basically take off the a-frame section, go up one-story, putting a roof and a second-story loft into that roofline, for which they meet the height requirements.

From the public, Tony DePace said that they sold the applicants and the neighbor 30 ft. of property so somebody could use it for when they wanted to enlarge their houses, septic systems, etc., (2) the 20 ft. right-of-way was put there years ago for a road to go up to their house and when the road was built the road was pulled down further than where the right-of-way is now and (3) as far as they (the DePaces) are concerned there is no right-

of-way in front of the applicant's house, so they (the DePaces) have no concern with that right-of-way at all. G. Smith asked if the proposed front setback is fine where the applicant proposes to build it and Tony DePace said (1) yes, that is fine and whatever they have to do to get that in writing, their attorney will do that and (2) the only concern he has is that the applicants put the proper septic system, stormwater and that under construction the applicant sign-off on or promise to repair the road while the construction is being done.

K. Hoopes asked if the right-of-way measurement is about to change and P. Kenyon said yes. B. Pfau asked if it would still require relief and P. Kenyon said yes, 50 ft. is required. K. Hoopes said that the ZBA could make a condition of approval that the new number for the setback from the right-of-way is adapted from the existing driveway as it is and then they'll re-measure later. G. Smith agreed saying that the ZBA knows it's not going to be any closer. P. Kenyon agreed.

M. McComb asked if the dotted line on the map represents the existing house and James Miller said that represents the eaves. M. McComb asked if there is a map showing an overlay of what exists and what is proposed on the same drawing and James Miller said yes, it is shown on the basement plan. G. Smith asked if the existing foundation would remain the same and James Miller said yes. G. Smith said that the eaves will be longer around the house (about a foot or so) and add the decks to the front. M. McComb asked the change in height from existing to proposed and James Miller said that it would be about 6-7 ft. taller than what is existing—it is a walk-out basement, plus a story, plus a loft. G. Smith said that it is 32 ft. 10 inches, so that's not an issue. M. McComb said that there is a very different setting in this house being backed up to a hill with nobody behind it, but it certainly doesn't have the same impact to make this change as she felt the last one would have. G. Smith said that (1) it will be all earth tone colors and it will blend in with the trees that are going to be behind it and (2) he has no problem with this and no further questions.

No correspondence.

The WCPB determined no County impact.

RESOLUTION

The Zoning Board of Appeals received an application from William Lamoureux (V07-42) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given and 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 #3 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it is probably very true that this will be an improvement to everybody's property values;
- 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.

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 Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented. Upon the event that the right-of-way becomes legally modified causing the setbacks to become more conforming from the edge of the right-of-way, this setback variance approval shall also conform to the modifications. **All in favor. Motion Carried.**

- 4) V07-43 LAMB JR., WALTER & CHERYL.** To alter pre-existing non-conforming structure, seek area variance for 1) deficient setbacks a) Front: 30 ft. is required, 13.6' is proposed from Norowal Road and 5' is proposed from the easement area; and 2) To alter a pre-existing non-conforming structure in accordance with Section 200-57(1)(b). Section 171.15, Block 3, Lot 46, Zone GB5000. Property Location: 41 Norowal Road. Subject to WCPB Review.

Walter Lamb Jr. gave an overview and said that (1) they are requesting a variance to put an addition on a cabin they own and (2) they are proposing to put a 15 ft. addition on the rear side of the cottage and a 13 ft. addition on the eastern side of the cottage in an L-shape in addition as well as a second-story loft with two bedrooms on top.

G. Smith asked that the 5 ft. from the easement on the back corner of the proposed addition be explained. Walter Lamb Jr. said that (1) the lower area has a 10 ft. easement for four lots that used to be behind the cottages, (2) when the subdivision was done in the late 1970's there were 13 lots in the subdivision and when the sale of the Norowal Marina occurred to the BLDC, those four lots in the back (Lots 10, 11, 12 and 13) were assimilated by the BLDC and became part of that property, which took four lots away

from the possibility of having new homes constructed on it, (3) the easement was a walking easement for those four lot owners to go by that property to walk to the beachfront property, but those lots no longer exist, (4) he is not sure if that easement was ever filed, but it is on that property and (5) based on the conservation easement that was put on the Norowal Marina property, there never will be any lots behind. G. Smith said that easement will pretty much never be used by anybody, because there will be no residences back there, so it is pretty much part of the applicants' property. Walter Lamb Jr. agreed. K. Hoopes said that (1) this is just an adjustment to the variance the ZBA already granted because that easement may or may not even exist legally and (2) if the easement does exist in a literal fashion, it can't be used. G. Smith said that it would be the same as it is now.

P. Kenyon asked the ZBA to reference her staff notes as to the easement. M. McComb said that she talked to a neighbor when she was looking at the site who told her they thought that right-of-way was of absolutely of no interest, because there were not going to be houses up here now—it was to four lots that no longer exist. Counsel agreed and said that there is no logical user. P. Kenyon said that 30 ft. is required and the applicant is proposing 13.6 ft. from Norowal and she had down 5 ft. for the easement area, but if the ZBA is not considering the easement area a right-of-way anymore, then the applicant doesn't need it. G. Smith said that the staff notes say the easement is not considered a front yard. M. McComb said that (1) the way she reads it on the map is that the applicant would have 15 ft. on each side, so a total of 30 ft. at the narrowest point of the lot and 22 ft. to the little jog in the lot which would be another side and (2) it looks to her from this map that the only variance needed, except for that easement, would be the front setback. B. Pfau asked if it was part of the Zoning Administrator's investigation to see if the easement is filed and Counsel said that the easement is not filed.

M. McComb asked how many additional bedrooms are proposed. Walter F. Lamb Jr. said that (1) it is currently two bedrooms and they propose two more, making it a total of four bedrooms, (2) their intention is to rent it on a seasonal basis and (3) they are also looking in the future to use this home for themselves if they can't get around well, since all the doorways are wheelchair accessible and all the important living space is on the first floor.

The WCPB determined no County impact.

No comments from public in attendance.

No correspondence.

G. Smith said that (1) he has no problem with the proposal, (2) it will fit into the surrounding neighborhood, (3) it will go along with the residence the applicant has now and (4) the road is existing—all of the cabins have to deal with that road—it is pre-existing and there is no way of changing that.

RESOLUTION

The Zoning Board of Appeals received an application from Walter Lamb Jr. and Cheryl Lamb (V07-43) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given and 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 any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties;
- 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.

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 Jeff Anthony and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented. The easement shown on the map is non-existent, whereby eliminating the need for a 5 ft. setback variance on the west side. **All in favor. Motion Carried.**

- 5) **V07-44 FROEHLICH, GEORGE & MICHELLE.** Represented by Jim Palazzo. To alter pre-existing non-conforming structure. Specifically to construct 2 proposed patios, 1 being 432 sq. ft. and the other being 650 sq. ft. Seek area variance for 1) deficient setbacks, a) Side: 8 ft. minimum is required; 4 ft. is proposed and b) Rear: 15 ft. is required; 4 ft. is proposed. 2) To alter a pre-existing non-conforming structure in accordance with Section 200-57(1)(b). Section 171.15, Block 3, Lot 72, Zone GB5000. Property Location: 7 Allen Alley. Subject to WCPB Review.

Jim Palazzo, representing George and Michelle Froehlich, gave an overview and said that (1) they applicants are proposing putting in a stand patio between the garage and residence, which is approximately 650 square ft. and would be at ground level, then one step down with brick pavers behind the garage.

G. Smith asked if it would just level out the land use between the house and the garage and (2) if the proposed patio would be all encompassed within a stockade fence. James Palazzo said yes. K. Hoopes said that the applicants are surrounded by three commercial properties and if nothing else, this would be a safety issue in that the bricks are crumbling. G. Smith said that it is a minimal request. M. McComb agreed and asked what the curved wall and steps shown between the residence and the garage on the map represent and James Palazzo said that is where he proposes stamp concrete then radius it there with one step going down to the brick pavers. M. McComb asked if the "wall" is 6 inches and James Palazzo said yes, it would be 6-7 inches. B. Pfau said that he understands from P. Kenyon's staff notes that she has concerns with whether a block patio was attached to the house. P. Kenyon asked if the proposed patio will be attached to the house in any way with steps or anything and James Palazzo said no, there would only be one step that goes down from the stamp concrete onto the brick pavement patio, so nothing is going to be attached to the house. P. Kenyon said given that information, the applicants don't need the variance to alter a pre-existing non-conforming. M. McComb asked if the Zoning Administrator's interpretation would be that granting this variance would not create a new footprint as of right for expanding on. P. Kenyon responded by saying that (1) it was important to her because the way the variance is written, once a variance is required, anytime they want to do something with that structure it is also going to require another variance, so as long as it is not going to be attached to the house and they are not going to do anything to the house then it is okay and (2) it is not altering a pre-existing non-conforming because it is not attached. M. McComb said that it also has nothing to do with the footprint of the house to put the patios in.

No comments from public in attendance.

No correspondence.

The WCPB determined no County impact.

RESOLUTION

The Zoning Board of Appeals received an application from George and Michelle Froelich (V07-44) for an area variance as described above, but are eliminating the second part of the variance application as it is not required.

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) There will be no undesirable change in neighborhood character or to nearby properties, as it will not even be visible to them and the applicant has plenty of non-impervious surface on the lot;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, because of the where the patio sits in relation to the property line;
- 3) The request is not substantial, it is at grade and is merely making the land more usable to the applicant and they are not exceeding their amount of impervious surfaces on the lot by adding this;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, the backyard sits adjacent to a pre-existing non-conforming structure.

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 Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented. The patio will not be attached to the single family dwelling, thereby eliminating the variance to alter a non-conforming structure. **All in favor. Motion Carried.**

- 6) V07-45 VISBAL, CHRISTINA.** Represented by Gary Hughes. To alter pre-existing non-conforming structure. Specifically to construct a 22' x 14' addition, seeks area variance for 1) Deficient rear yard setback, 30' is required; 20' is proposed; and 2) To alter a pre-existing non-conforming structure in accordance with Section 200-57(1)(b). Section 185.00, Block 3, Lot 36, Zone: RCL3. Property Location: 17 Bluquill Road. Subject to WCPB.

Gary Hughes, representing Christina Visbal, said that they are requesting permission for a 12 ft. X 20 ft. addition to a house in a subdivision.

B. Pfau asked why this is non-conforming and P. Kenyon said that she believes there are a deck or some stairs on the back that make it so. Gary Hughes said that he believes that

the ordinance just changed from 20 ft. to 30 ft., which forces the house to become non-conforming because the deck is existing.

B. Pfau said that he feels it is a terrific location for an addition on this house as it is away from neighbors and from the lake. K. Hoopes agreed. J. Anthony said you can't see it from anywhere. M. McComb said that it is very minor.

No correspondence.

The WCPB determined no County impact.

No comments from public in attendance.

G. Smith said that (1) it is a very minimal request and (2) it is away from the lake.

RESOLUTION

The Zoning Board of Appeals received an application from Christina Visbal (V07-45) for an area variance as described above.

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

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

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 #6 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it is actually being built away from the lake and away from the neighbors;
- 3) The request is not substantial, it is very insubstantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

5) The alleged difficulty is not self-created.

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

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

7) **V07-46 DONOHUE, BRIAN.** To alter pre-existing non-conforming structure, seeks area variance for 1) Deficient front yard setback. 75' is required from the edge of the right-of-way; 33' is proposed; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-57(1)(b). Section 156.00, Block 1, Lot 59, Zone RL3. Property Location: 459 Valley Woods Road. Subject to WCPB review.

Brian Donohue gave an overview and said that (1) he proposes to remove the existing shed built in 1978, (2) he proposes to add a dining room over the existing deck and the deck would be moved over existing shed roof and (3) the reason he's here is because his house is too close to the road.

K. Hoopes asked if it is an exchange of elements and Brian Donohue said no, he's proposing an 80 ft. addition to his footprint—he'd be covering the deck on the second-floor. G. Smith agreed and said that would be enclosed and where the metal shed roof is would become deck. K. Hoopes said it is minimal. G. Smith agreed saying that (1) the house will look more attractive, (2) the applicant will get what he wants out of it and (3) the applicant is trying to renovate the house and live there at the same time, which is not an easy thing to do. J. Anthony said that what the applicant is doing looks good. M. McComb agreed and said that (1) she thinks it is a well-conceived change of use of some space, (2) very minimal expansion and (3) she has no issues with this proposal.

No comments from public in attendance.

The WCPB determined no County impact.

No correspondence.

G. Smith said that he has no problem with this.

RESOLUTION

The Zoning Board of Appeals received an application from Brian Donohue (V07-46) 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) There will be no undesirable change in neighborhood character or to nearby properties, it will remain a residence;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, because it is a non-conforming structure although legal;
- 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, by adding the 80 square feet;
- 5) The alleged difficulty is not self-created.

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

Now, upon motion duly made by 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.

- 8) **V07-47 VANDYCK, KATRINA.** Represented by Mark Roden. To alter pre-existing non-conforming structure. Specifically to construct a 488 sq ft addition, 132 sq. ft. screened porch, and 126 sq. ft. deck, seeks area variance to alter a pre-existing non-conforming structure in accordance with Section 200-57(1)(b). Section 186.14, Block 1, Lot 50, Zone RCH5000. Property location: 4651 Lake Shore Drive. Subject to WCPB review.

Mark Roden, representing Katrina VanDyck, gave an overview and said that (1) they propose to put an addition and some porches off the backside of the house and (2) the reason for the variance is because the existing house, built in the early 1950s, is anywhere from 20 ft. to 30 ft. from the Niagara Mohawk right-of-way.

G. Smith said that there was one change of numbers on this. P. Kenyon agreed and said that Henry Caldwell measured it from the edge of the right-of-way to the porch in the front and it is 19 ft. instead of 29 ft. Mark Roden said that (1) that's the question, (2) the

Route 9 right-of-way straight lines all the curves and the road eases those curves and (3) he scaled the Dickinson drawing for the property line at 29 ft. plus change and (4) if you measured from the house to the center of the road it is about 45 ft., so a 50 ft. right-of-way would leave him with a 20 ft. setback. G. Smith said that would leave the applicant with a legal measurement, which is 25 ft. from the center of the road. P. Kenyon said that (1) that is true in normal cases, but on Route 9 it does vary a bit, (2) they tried calling New York State to determine exactly what the right-of-way is in that area and they told her they'd get back to her, but they haven't to date, (3) from the stone wall, Henry Caldwell said it is 19 ft., so let's go with that. G. Smith said they just need a number to go by.

G. Smith asked if everything proposed is off the back of the house and Mark Roden said yes.

Mark Roden said that (1) they propose to add on a master bedroom, a small bathroom, a mechanical room, laundry, a mudroom entryway, a screen porch and a small outside deck, (2) basically it would be everything you don't get when you buy a small house, which would create a better flow and ease the tightness of raising a family in a small house and (3) everything is one-story.

M. McComb asked if the big hemlock tree would remain and Mark Roden replied by saying yes, they are going to have to do some creative foundation work to bridge over it with spot footings. B. Pfau said this is like the Trout Lake project in that it is away from the road, well screened, a perfect location and a well-thought out plan. Mark Roden said that they spent a lot of effort to make a buffer between the house and the road. G. Smith said that (1) the buffer efforts have worked and (2) there's no one in the back that this will disturb either.

No correspondence.

The WCPB determined no County impact.

No comments from public in attendance.

G. Smith said that (1) this is minimal and (2) it is all behind the house behind Route 9N and it is in its own secluded area, not on top of anybody, so he doesn't have a problem with it at all. P. Kenyon said that she will still try to pursue what the exact right-of-way is with New York State and if the applicants don't need a variance for this as a result of that she will let the ZBA know, because that would affect any use of that structure in the future. B. Pfau asked if the applicants would get the filing fee returned if it is determined the applicants don't need the variance and both the ZBA members and P. Kenyon said yes.

RESOLUTION

The Zoning Board of Appeals received an application from Katrina VanDyck (V07-47) 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 #8 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any 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 additions have been sited as far from the roadway and from any neighbors as possible—it is very secluded;
- 3) The request is not substantial, it is from an existing right-of-way;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, because of its location and because of the nature and small size of the addition;
- 5) The alleged difficulty is not self-created, because of the existence of the Route 9N right-of-way in relation to a house that has been there since the 1950s.

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.**

- 9) **V07-48 RAVEN, HAROLD.** Represented by Matt Steves of VanDusen & Steves. To alter pre-existing non-conforming structure. Specifically to allow an approximate 924 sq. ft. deck to remain, seeks area variance for 1) deficient setbacks, a) Side: 50' is required; 30' is proposed on the south side and 26' is proposed on the north side; b) Shoreline: 100' is required; 0' is proposed; and 2) To alter a pre-existing non-conforming structure in accordance with Section 200-57(1)(b). Section 186.15, Block 1, Lot 9, Zone LC45. Property Location: 68 Treasure Point Road. Subject to WCPB and APA review. Note: Type I Site Plan Review is required for any development within 100' of Lake George but has not yet been applied for.

Matt Steves of VanDusen & Steves, representing Harold Raven, gave an overview and said that (1) the deck was constructed and some site improvements were made, (2) the applicant anticipates making changes to the building in the future by changing the outside facade, among other things and (3) this variance is for the deck the applicant has constructed between the house and the lake.

G. Smith asked if part of the deck was pre-existing where the applicant just re-decked that part and Matt Steves said yes. G. Smith asked what the exact size of that deck was and Matt Steves said about 500 to 600 sq. ft. G. Smith said that (1) you can pretty much see the line of the existing rafters that the applicant put the Tyvek on top of and (2) he has a problem with the other deck the applicant built between there and the lake, especially with the applicant being a contractor, knowing very well he needs a variance to do what he did. K. Hoopes said that there is also seawall. G. Smith agreed and said the applicant also poured gravel in the lake. K. Hoopes said that the ZBA doesn't know where it started and where it ended up and G. Smith agreed. B. Pfau asked if the whole thing was built after-the-fact. G. Smith said that it looked like to him that the main deck in front of the house was pre-existing. P. Kenyon said that (1) the largest deck that is attached to the house was built about 6-7 years ago and (2) the rest was been built without permits, but they don't know when. B. Pfau asked why the TB hasn't been involved like it has been in other after-the-fact cases. Counsel replied by saying that (1) Mr. Raven has an absolute statutory right under town law to apply for the variance—that requires that any enforcement proceedings be stayed and then the developer presents whatever it is he seeks from relief from this board (ZBA). G. Smith said that the ZBA can refer it to the TB for remedial action. Counsel agreed and said that (1) the ZBA has to decide when that is appropriate, (2) for instance, if the ZBA grants the applicant all the relief he seeks, then there is no referral to the TB, (3) if the ZBA denies the applicant all the relief he seeks, the applicant still has the problem of bringing it into conformity and the ZBA still has to make a decision as to whether or not this is something that requires the alternative remedy and (4) somewhere between those two extremes will be that as the action is pending, if the ZBA finds it is appropriate for the matter to be referred to the TB as an alternative remedy for them to consider civil penalty and other enforcement, which may also include bringing it back to the ZBA and also site plan review to bring it into conformity—that is probably the middle ground decision the ZBA has to make tonight. B. Pfau said that he doesn't recall doing it this way before and Counsel said that everyone has a right if they are found to be out of conformity and they seek as as-built approvals, they are avowed to bring the matter to the ZBA. P. Kenyon said that (1) if the ZBA sends it to the TB for some kind of a recommendation, that is fine, but what about the people who don't require a variance that are after-the-fact? and (2) you'd better hope if you get caught you need a variance, otherwise there is a possible civil penalty. Counsel said that (1) P. Kenyon makes a good point and (2) if everything Mr. Raven did was within conformity with the code—no setbacks required, no site plan review mandated—but he built it without a permit is P. Kenyon's example in that never stops at the ZBA or the PB and it may or may not get to the TB. K. Hoopes said (1) that it should get to the TB because that would be an enforcement issue and (2) if anybody builds anything without proper building permits they also should be subject to that. Counsel said in a perfect world they all are. M. McComb said that (1) in this case, the ZBA knows about this one and (2) it breaks the rules by somebody G. Smith says knows better. Counsel

said that if the ZBA wishes to refer it to the TB for the alternative remedy, then certainly the ZBA should do so, but not deny the application and not approve the application, but leave it tabled pending the outcome of the alternative remedy. K. Hoopes said that he would be inclined to table it anyway, because he thinks it is an incomplete application—it doesn't show where the applicant started and where he's finished.

M. McComb said that somebody involved with that property knows when that deck was built and she thinks "we don't know" is not an adequate answer to that. Matt Steves said that (1) he was handed the future plans tonight and was told by P. Kenyon to submit them to the ZBA to show the applicant proposes future improvements to the house. G. Smith said the ZBA won't even entertain that until the other items are resolved. Matt Steves said that (1) he's not trying to be evasive of these questions, he really doesn't know the answers to these questions—he's filling in because the applicant is not available to be here, (2) they were asked to do a survey based on the fact that P. Kenyon called saying that there were some things that were done requiring permitting that wasn't obtained and (3) they did a survey to show everything that exists and it is all refurbished, so as a surveyor, he can't begin to tell the ZBA where the old one was. Counsel said on the possibility that the ZBA may table it for reasons that the ZBA members need more information, also part of the motion might include a referral for alternative remedies, (2) the next step in that process is that the Code Enforcement Officer, Zoning Administrator and Town Counsel informally invite the applicant Harold Raven, representatives Matt Steves and the applicants attorney to meet regarding alternative remedy with the conclusion that in writing they then propose to the TB as the alternative remedy stipulation, followed by they show up at a TB meeting, there is a discussion about the agreement that is manifested in this written piece of paper, and the TB makes a decision, including the possibility of the civil penalty—neither P. Kenyon, M. Nittmann, not Counsel makes a recommendation, they don't get into the money part, but they do make a recommendation on whether or not it is a suitable alternative remedy. G. Smith asked if the applicant would then come back to the ZBA and the ZBA could deny it if it chooses. Counsel said yes, that is a possibility.

J. Anthony asked if the APA has spoken on this yes. P. Kenyon said that (1) if this variance is granted then it goes before the APA and (2) the applicants would require Type I Site Plan Review because of the wetlands and the applicants would definitely need a permit from the APA due to the wetlands.

M. McComb said that in adding up the impervious square footage noted on the map, which doesn't even include a whole lot of gravel, she comes up with 2,223 sq. ft. of asphalt, parking, sidewalk, deck, sidewalk, shed, plus the 600 sq. ft. of house, so she comes up with 33% lot coverage. P. Kenyon said that she disagrees, because she goes by the definition of lot coverage, which says the portion of the lot as covered by buildings and structures, so it certainly wouldn't include the driveway and probably the walkways. M. McComb said that the deck, shed and house should be worth a check in how that adds up.

No comments from public in attendance.

RESOLUTION

Now, upon motion duly made by Kam Hoopes and seconded by Tony DePace, it is resolved that the ZBA does hereby table the application and refer the matter to the Town Board for alternative remedy. **All in favor. Motion Carried.**

10) V07-49 STROMBERG, BILL & LISA. Represented by Jarrett Martin Engineers and Creative Construction. To alter pre-existing non-conforming structure designated as a boathouse, seek area variance for 1) deficient setbacks, a) Side: 30' is required; - 8'8" exists, 9.5' is proposed; b) Shoreline: 75' is required; 0' is proposed; 2) To alter a pre-existing non-conforming structure in accordance with Section 200-57(1)(b), and 3) In accordance with Section 125-10B(2)(d) major stormwater projects, an area variance is also sought for a deficient shoreline setback. 100 ft. is required between an infiltration device and Lake; 77.75' is proposed for the infiltration device servicing the main house. Section 156.00, Block 2, Lots 90.3 & 90.4, Zone RCL3. Property Location: 5496 Lake Shore Drive and being lots 1 & 2 of the Kolvek Subdivision. Subject to WCPB and APA review. *Note: This application is in conjunction with SPR07-31.*

Tom Jarrett of Jarrett Martin Engineers, representing Bill and Lisa Stromberg, gave an overview and said that (1) they propose to build a single-family residence with an attached garage approximately 100 ft. from the shoreline, (2) in the process they plan new access off Route 9N, (3) they would remove a number of sections of the existing driveway and propose a new driveway with stormwater management, (4) there would be stormwater management for the house as well, (5) there will be renovation of an existing recreation building to be made more compliant, (6) they plan to refurbish and re-landscape the existing driveway sections that are going to be removed, as well as aesthetic improvements in landscaping along the waterfront and the new entrance off Route 9N and (7) they propose a new wastewater system for the complex, which would be located in an existing meadow area just below Route 9N on the upper portion of the project site.

Michael Tuck, project architect, said that (1) they have an existing structure located within the 75 ft. required setback along Lake George and there is also an encroachment on the neighboring property, (2) they propose to remove the encroachment and lessen some of the non-conformity with the structure, (3) they propose to remove the shed portion of the building which is beyond the lot line and in so doing, they'd be moving the lower shed portion of roof and re-establishing a more rural character type structure onto this building, (4) they also propose to remove a large area of dock off the front of the structure, reducing it to a much reduced scale with an appended boat dock that comes out to grab about three feet of drab at the end of the boat dock, (5) they would like to entirely remove the existing outbuilding that contains two toilet facilities, relocate one fixture into the recreation building and remove the other one entirely from the site, which would enable them to tie the waste system into the main house by connecting the sewage pump up to the waste treatment at the top of the hill, (6) there is some existing asphalt paving, which creates an unmitigated erosion system—they propose to remove all of that hard surface and unmitigated run-off and replace it with native plantings around the buildings, (7) they would like to abandon the existing outhouse cesspool, (8) there is an existing fuel tank, pump and curbing they want to remove and (9) there are several existing lantern-

type fixtures outside the building—they are proposing to remove them and to replace them with some low level down-lights to illuminate the new entry area into the building.

K. Hoopes asked if the area labeled as “unfinished storage” is going to act as a dry-land boathouse. Michael Tuck said that the purpose to the large storage area is that the boat dock is a removable dock—the owners have expressed concern about any type of bubblers or any sort of system to maintain a dock structure all winter, so that space is being reserved to store the dock in the winter. K. Hoopes said that is a lot of space for a dock. Michael Tuck agreed and said that (1) there will be canoes and kayaks in there too and (2) he wants to be careful about “boat storage” because there isn’t a way of launching a boat given the existing water depth, as it is a large silted area. K. Hoopes said that lots of the boathouses are dry-land boathouses with a ramp where you launch canoes and kayaks—it’s not necessarily one with rails where you’re launching a barge from or something like that. Michael Tuck said that there is an existing overhead door over the structure with a ramp indicated, which they propose to remove and relocate for aesthetic purposes to make it more appealing from the lake, given that there isn’t any intent of hauling. B. Pfau asked if this is a boathouse that requires LGPC to build and P. Kenyon said no. Counsel said that Molly Gallagher of the LGPC on June 15, 2007, in some substance said that it is not jurisdictional as far as the LGPC is concerned and the building in question is above the mean high water mark and is not considered to be a boathouse and therefore is not something the LGPC regulations oversee. B. Pfau said that there is a 20 ft. setback line drawn on the map, but it is 30 ft. that is required.

M. McComb said that she recalls from the original, that if the bathroom in the boathouse was not going to be rebuilt exactly the same, that it was going to have to become compliant. Michael Tuck said that if it was torn it had to be rebuilt compliant. B. Pfau said that it also said that if it was renovated, it must be done so by using the existing footprint, so it has to be torn down and rebuilt or renovated—one of the two. Bill Dean project manager, said that he doesn’t think they are modifying the existing footprint other than to shrink it—they are staying within the footprint, but shrinking it to make it more compliant. G. Smith said they are renovating, but staying within the existing footprint, which is a plus as far as the ZBA is concerned. Bill Dean said that they are removing all of the encroachment then improving the setback. Michael Tuck referenced the map to further clarify the plan. B. Pfau said that new construction is within the original footprint and G. Smith agreed, saying that the applicants can’t expand the footprint. M. McComb said that at the same time, the applicants are talking about swapping out the bathrooms behind it, but according to page 9 of the March 18, 2002 minutes, that was already agreed that those bathrooms were going as a condition of the original subdivision. K. Hoopes said that he fought against leaving this building there in the first place, but it is here along with cabin #2 as a primary residence, but now that it has gotten to this stage, the ZBA is under a brand new stage of negotiation and Counsel said that is correct to a degree. K. Hoopes said that every thing is adjustable by issuance of variances. M. McComb gave an example and said that there is not a bathroom in this building now and she is not comfortable going down the path saying “let’s start putting bathrooms in boathouses”.

P. Kenyon said that (1) she thinks the two conditions the ZBA has to be concerned about with the “boat building” as it is designated as approved as part of the subdivision are (this was read from the actual approval letter), “...if the boat building is torn down then it

must be built in compliance with zoning regulations and if the boat building is renovated it must be done so using the existing footprint...”, so the applicants are in the footprint and are making the footprint smaller, so they are actually abiding by that ruling. G. Smith said that they are in compliance with what the ZBA previously decided can be done.

P. Kenyon (1) said that the one condition that concerned her in the variance that was granted was that the boathouse was designated a boathouse on Lot 1 because the ZBA didn't want them to have another boathouse, so this was supposed to be the boathouse and (2) asked if the applicants are proposing to build another boathouse if this becomes the recreation building. Michael Tuck said that they are not. K. Hoopes asked how much lake frontage the lot has and Michael Tuck said 338 ft. K. Hoopes said that the applicants could apply for a boathouse as an addition to this, but it makes no sense because the water is only about 6 inches deep. Tom Jarrett said that they have no plan to do that, which is why they are proposing the dock.

B. Pfau said that in the 2002 minutes, Atty. Millington stated numerous times about the real property laws that are occupied for more than 10 years and asked if that was ever pursued. P. Kenyon said that the applicants are pulling it back off the encroachment. B. Pfau asked about Atty. Millington's claim that if it is occupied for more than 10 years then lay claim to the property. Counsel said that it is a fair statement of the law as it exists, but it doesn't relate to these facts—that is not a concern anymore.

K. Hoopes said that (1) in the beginning when the whole subdivision was coming down, he was real critical of a whole bunch of aspects of it, (2) one of his concerns has been greatly massaged at this point by the combination of the two lots, as part of his complaint was that they were going to be leaving this great big eyesore down by the water—at this point the two lots have been merged and this has become a smaller element of his complaint and (3) there is no sense of him continuing his complaint because it was passed. G. Smith said that the applicants have a right to keep that and they are going to rebuild that and make it look nice.

Correspondence: Read into the record by Counsel.

Letter from Richard and Mary Kolvek, adjoining property owners—favorable

K. Hoopes said that he also takes note that besides cabin #2, the removal of all the other stuff that was built so temporarily, there was no footprint left at all. M. McComb asked if P. Kenyon's concerns with the bathroom and the wet bar proposed in the boathouse still exist. P. Kenyon said yes, she still has problems with the bathroom and wet bar that close. K. Hoopes said that the restriction of not having bathrooms in boathouses is for boathouses that are wholly over water. Tom Jarrett said that this is just a non-compliant land based structure. K. Hoopes said that there are houses that are this close to the lake that have several bathrooms and such, so he doesn't have a problem. Tom Jarrett said that their proposal is to convey the waste from that bathroom directly back to the new system which is back by Route 9N.

P. Kenyon said that Town Engineer Tom Nace signed-off on this project and G. Smith said that's a plus.

The WCPB determined no County impact.

P. Kenyon said that the stormwater pertains to the main house—not the recreation building.

M. McComb said that (1) she found something in support of the position that this is not a boathouse, (2) Herb Koster quoted in PB minutes that it was never used as a traditional boathouse—that it was a storage house and he felt at the time that it should not be considered a boathouse. K. Hoopes said he doesn't need support on that because it is totally on dry land and G. Smith agreed. M. McComb said that there was discussion that not all boathouses are and that there were boathouses that had to be pulled out of the water and up into the boathouse. K. Hoopes said that there are differences between the boathouses over the water and a building that is just very close to the water's edge that happens to have something to do with boats. M. McComb agreed, but said that if somebody came in saying they wanted to build a guest cottage or an accessory structure with a 0 ft. setback from the water, she doesn't think that would go over very big. G. Smith said it depends on the circumstances, but the ZBA can't sit here and compare. Counsel said that as stated, the ZBA takes these on a case-by-case basis. Tom Jarrett said that they are making this building better.

Tom Jarrett said that regarding the site plan, (1) they propose a new driveway with significant stormwater for the entire length of the driveway, (2) from Route 9N to the existing meadow will have retention basins, the next section of road will have a stormwater management system in the woodland just above the house, the lower section of driveway will have a stormwater system at the bend and the apron in front of the garage and house will be infiltrated in front of the house and (3) rather than ignore the run-off from the roof or build stormwater systems on either side of the house which would require more tree clearing and land disturbance, they would rather do it in front of the house where there is already the disturbance from the house constructions.

K. Hoopes said that he's always maintained that the infiltration from roof run-off is essentially nearly pure rain water that you're going to want to do it downhill if you can, which is being proposed here. Tom Jarrett said that they have worked with Town Engineer Tom Nace and he has signed-off on it. G. Smith said that it makes sense they want to locate it where the lot is already cleared, as opposed to north of the house—taking out more trees just to have that doesn't make a lot of sense. J. Anthony said that it is a good proposal that makes a lot of sense. G. Smith agreed saying that he also agrees that it is just natural rain run-off that would be put into the ground instead of the lake, so it makes sense to him to do it this way. K. Hoopes said that you have to do it downhill and there is a hill there. Tom Jarrett said that it is a little softer slope in that location than it is on the sides and K. Hoopes agreed.

G. Smith said that another nice thing about this whole project is that the applicants bought both lots and are putting one house on it, as opposed to both lots being sold and both sides wanting houses of this substantial size on it—this is a nice trade-off as far as

he is concerned. K. Hoopes agreed and said that it seems to him that in the previous approval of this subdivision it also had a shared driveway, which is gone. G. Smith said that the applicants are breaking the driveway up so when you look at the piece of property from the lake it is not going to be one slough of trees right down to the lake—it is going to be swerved and you won't even know it, so it will look much less intrusive and you won't even notice it from the lake. M. McComb asked if the two lots have been combined. Tom Jarrett said that they are in the process—they are going to the PB to ask for a subdivision to combine the two lots.

K. Hoopes asked what the jog in the driveway part is way down and Tom Jarrett said that it is a long driveway with two pull-offs to allow cars to pull-off and by-pass each other. M. McComb said that she is sure the Fire Dept. is happy with that.

M. McComb asked the square footage of the house and Michael Tucker said 8,500 sq. ft. M. McComb asked the square footage on the recreation building and Michael Tucker said that the existing is 2,023 sq. ft. and proposed 1,697 sq. ft.

G. Smith asked if it would just be a walkway from the house down to the recreation building, as opposed to a driveway. Tom Jarrett said yes, they are removing all the asphalt.

No comments from public in attendance.

G. Smith said that (1) he likes it and (2) he thinks it is great the applicants are taking both lots and will be putting everything into one and save all the trees and keep the lake much more natural up there.

Michael Tucker said that (1) M. McComb was commenting on the length of the existing structure and the length of the house and (2) for PB purposes, they are going to be proposing select pruning, but there are two layers of trees that exist before they even get to the house site, so they have taken the liberty and cleared as much as they can or would want to and (3) very little of the main house would be visible from the lake given the 100 ft. setback and the two layers of trees that would remain. Tom Jarrett said that there will also be other trees going in.

RESOLUTION

The Zoning Board of Appeals received an application from Bill and Lisa Stromberg (V07-49) 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;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #10 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, has been proven not to be the case;
- 3) The request is not substantial, the boathouse is a boat building—a pre-existing structure that will actually be getting smaller in size and making less of an impact;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, stormwater measures are going to be taken and drainage, the driveway and all that will ameliorate any adverse physical or environmental effects;
- 5) The alleged difficulty is not self-created.

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

Now, upon motion duly made by 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.**

Meeting adjourned at 9:23pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary

08/20/07