

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, January 22, 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, Kam Hoopes, Meredith McComb, Tom McGurl, Jr., Bill Pfau, Town Counsel Michael Muller, Zoning Administrator Pam Kenyon

Absent: Tony DePace

Chairman Greg Smith opened the meeting at 6:33 pm, and welcomed new ZBA member Jeff Anthony to the board.

G. Smith asked for corrections to the December 18, 2006 ZBA minutes.

Motion by Kam Hoopes to approve the December 18, 2006 minutes as presented. Seconded by Bill Pfau. Four in favor. Two recused, Jeff Anthony and Tom McGurl, as they were not at that meeting. Motion carried.

1) V06-55 MILVANY, HELEN. Represented by Atty. Susan Millington. To demolish and rebuild pre-existing non-conforming single-family dwelling, seeks area variance for deficient setbacks. 1) Front: 30' is required, 9.19' is proposed, and 2) Shoreline: 50' is required, 32' is proposed. Section 186.10, Block 1, Lot 21, Zone RCH5000. Property Location: 23 Sunrise Shores Loop off of Route 9N. Subject to WCPB and APA review.

Atty. Millington gave an overview and said (1) they were denied last month, (2) they submitted revised plans, (3) the applicant bought the property in 1978 and now wishes to make modifications to the camp making it a better structure, (4) the present structure is pre-existing non-confirming, (5) the four foot deck change is to smooth out the strange looking existing deck—the applicant is seeking to improve the look of the structure by making the building more rectangular and (6) the current plan shows a reduction in proposed deck size.

M. McComb asked for clarification of the holding tank and Atty. Millington said that the information was submitted in the packet. M. McComb asked if it is sunk in the ground and Jack Milvany said yes and some blasting or excavation will be needed for the ledge rock, but you won't know until you get in there. M. McComb asked (1) if the holding tank would be at grade and (2) could someone park on top of it and Jack Milvany said yes.

T. McGurl asked for the change in the house size not including the deck and Jack Milvany said the current house size is 802 square feet, so the proposed change is 1,076 square feet. G. Smith asked how many square feet larger the proposed deck is compared to what currently exists and Jack Milvany said it is a 23 square foot difference.

P. Pfau said the applicants were denied last month and have now presented a plan that only moves the proposed deck back one foot from the lake. Atty. Millington said that the deck size has been reduced on the west side. B. Pfau said he sees this as a minor change, his major concern is that the applicants are increasing the building within the 50-foot setback from the lake.

Atty. Millington said that they reduced the size of the deck and she thought at the last meeting the concern was the deck size, not the distance to the lake. K. Hoopes said that (1) he was in favor of the project as it was and the ZBA decided that moving the whole project didn't seem like a very good solution and (2) he was also in favor of it because it is a very old building and bringing it into the 21st century is a good idea.

M. McComb said the ZBA is being asked to grant a variance for a holding tank and P. Kenyon said no, the ZBA will not be judging the septic variance—it would be a matter before the Town Board serving as the local board of health. K. Hoopes said that this proposal is a reduction from the previous proposal, which he voted in favor for the first time around for the aforementioned reasons.

The WCPB determined no County impact.

No correspondence.

From the public, a Sunrise Shores resident speaking as a private citizen, said that (1) based on the numbers shown on the plan, the proposed increase to the existing cottage is 34%--not 25%, (2) the layout of the condominiums in Sunrise Shores is very well thought out, offering the best views and open feeling to as many residents as possible, (3) the vast majority of the residents do not want this project to go forward, (4) the main part of the cottage has been moved four feet closer to the lake, (5) from the patio at the beach they are now looking up at the corner of the existing deck, (6) the residents did not have a chance to look at last month's plan and (7) the Sunrise Shores board asked Mr. Milvany to remove the third bedroom and he verbally agreed.

G. Smith said that the plan the ZBA is looking at does include the third bedroom labeled as an office. Atty. Millington said that the plans dropped off to P. Kenyon should reflect the new plan showing the office taken out.

M. McComb said that (1) as far as neighbors and associations getting together to review plans, she is uncomfortable in that the applicant shouldn't get approval from the association then present something different to the ZBA and (2) she gets 1,800 square feet by multiplying the figures, which includes the deck, because it is part of the footprint. Jack Milvany said that the deck currently stands at 1,672 square feet. M.

McComb asked if the 802 square feet is the current square footage of the camp only and Jack Milvany said that the square footage of the existing camp plus the existing deck is 1,375 square feet, which would be an 18-20% increase overall. Chuck Dagles said he doesn't understand where the figures are coming from because adding the proposed square footage would equate to a percentage of increased square footage approximately 34%.

T. McGurl (1) said that he understands the applicants wanting to re-build for the sake of foundation and leveling all floors so it is permanent, but he doesn't understand why it has to be bigger and closer to the water and (2) asked if the applicant was aware of the size of the cabin when it was purchased and Jack Milvany said yes. K. Hoopes said that the project is a tidying up of the floor plan and Jack Milvany agreed and said it is on a very small piece of property they own there.

Chuck Dagles said that (1) the house is basically the same and there will be a four-foot slice of the cabin on the lakeside, (2) he is against the project because of the equipment that would be in the area for the project and (3) there is a potential for septic damage. K. Hoopes said that he believes the association has specifications for protecting the area during construction. Atty. Millington said they have provided information from an excavation expert on the project. K. Hoopes said the ZBA's position is that they are always happy when an association is in favor of a project, but the ZBA does not take that as a pre-requisite for acceptance, but rather treats each project on its own merit.

From the public, Jerry Fascubold, Vice President and Director of Sunrise Shores, said that (1) they have deliberated on this project for over a year, (2) they have as much interest in the property as the ZBA does, (3) Jack Milvany has given them several different plans and he has complied in making the changes as requested, (4) the Sunrise Shores board has had a public hearing and has approved the project, (5) Jack Milvany has made this proposal, which is probably a third revision, that the Sunrise Shores board feels is in a reasonable direction of a reasonable house to go there, (6) their concern is that what is proposed is built and (7) the Sunrise Shores board supports the application as presented.

M. McComb asked if the Sunrise Shores board has concerns about the excavation and blasting for the 4,000 gallon holding tank. Jerry Fascubold replied by saying (1) no, they have never had the question of blasting proposed to them—he would be very much concerned if blasting was needed for a 4,000 gallon holding tank and (2) the Sunrise Shores board did not address the excavation. K. Hoopes said that the ZBA is only here for dimensional purposes on the house itself—not the holding tank. M. McComb said that (1) moving this project back nine feet doesn't help anybody and (2) in talking about excavation of 75 feet—the applicants have said for the first time tonight that they are burying a 4,000-gallon tank. G. Smith said the ZBA does not deal with septic system and are not going to discuss the matter—the Town Board acting as the Local Board of Health will review it.

Gerry Fascubold said that (1) the excavation will be between 16-18 inches deep mainly on the corner and (2) the geological survey presented addresses that and they have made sure this project will not have an adverse affect on them.

From the public, David Rockwell, Sunrise Shores Association member, said that (1) his concern is with the excavation and blasting issues, (2) he understands the ZBA does not deal with septic, but they are concerned with blasting and he thinks the potential for that is very real, (3) fixing damage after-the-fact is sometimes not so easy to do, (4) while Jack Milvany has made changes per the association members' requests, they are still concerned with blasting and (5) it is confusing to know exactly which plan they are dealing with at this point in time.

From the public, Beryl Rockwell, adjacent camp owner, presented pictures to the ZBA showing the area and said that (1) the pictures show her concern for the lake and lakefront, (2) the applicant's camp is the youngest camp in the encampment and (3) she is concerned with adding more to an already large camp.

Atty. Millington presented pictures of the area to the ZBA members.

J. Anthony referenced 200-56 (d) regarding expansion and said what bothers him is the last clause and then asked how it would affect this project. Counsel said that (1) this project is not considered a non-conforming use, (2) in 200-56 (a) and (b), what they are struggling with is the issue of the expansion of a pre-existing non-conforming structure, and (3) 200-56 (d) does not apply to the structure category, but it would apply if it were the same application also seeking to expand the non-conforming pre-existing use if the use was non-conforming—it is not—it is in the right place.

From the public, Steve Rockwell, neighboring camp owner, said that (1) they are the closest camp to this project, thus the most effected by potential blasting, which is a great concern to him, (2) he has extensive construction experience and he is very concerned with the blasting for this proposed project—blasting is felt for thousands of yards, (3) he is concerned because their places are built on slopes and the footings are not deep due to the nature of the soil and because of the nature of the original construction, and (4) the item to cover immediate damage is good, but there is concern with hydrological damage years down the road.

B. Pfau asked if there is any action the ZBA could or should take regarding blasting on this project and Counsel replied by saying that (1) the people who blast are professionals—they don't lack insurance—they are hyper concerned with all of the issues raised and (2) the guarantees of blasting are dependent on who the blaster is, but this municipality does not have regulations on that issue right now. B. Pfau asked if it is right for the ZBA to put conditions on blasting and Counsel said that (1) if the question is if it is something that prohibits this project from going forward, the answer is probably not, (2) he thinks that all the ZBA can do in its due diligence is make sure there is a surety bond here that has been offered and in fact it is fact that there is a real surety and (3) the municipality doesn't have regulations on this—the applicant is doing something that is

not required by the code. G. Smith said that there is still a question if blasting will even be needed and Atty. Millington agreed and said that they have decided to go with Steve Britton for blasting because of his reputation.

B. Pfau said that he still feels the revised changes are still too minor given the ZBA concerns at the last meeting—the applicant is requesting an expansion within the 50-foot setback getting closer to Lake George. Jack Milvany said it is a matter of being symmetrical. M. McComb said that (1) people tend to have a best view and tend to gravitate toward that view and (2) the large expansion on the east side of the deck is all new and is probably not going to be all that useful to the owner anyway—it might be a place for compromise. Jack Milvany said that he has made an attempt to move the deck farther away from the beach. M. McComb agreed and asked if the applicants currently utilize the east side. Jack Milvany said yes they use that area now—they currently spend most of their time there and they would be shifting it 90 degrees. G. Smith asked if the applicant would be willing to take 2 feet off that side of the deck and Jack Milvany said yes, if the ZBA would approve the project, he would have no problem taking 2 feet off the side. T. McGurl said he doesn't think something that close to the water needs to grow any—you can solve the construction issue of a foundation and sinking floors, it can be done without getting any bigger.

M. McComb asked if it is appropriate to bring up the stormwater controls referenced in the letter from the Milvanys. Jack Milvany said that (1) he intends to implement a stormwater remediation system, but it will be dependent upon the plan that goes through, (2) the existing septic system isn't in an ideal location, (3) they want to do this right to improve the current septic system, (4) they will do stormwater remediation to some extent—he understands the issues and (5) if he didn't care he would live with what they have and pollute the lake. K. Hoopes said that (1) the proposed improvements for the septic and the building are positive and (2) the applicants asking for a few more feet of living space is not unreasonable—he is satisfied in what the Sunrise Shores board has gone through in trying to work with the Milvanys on this project.

No correspondence.

The WCPB determined no County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Helen Milvany (V06-55) 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) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, these are all dimensional issues;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it is an improvement architecturally and structurally;
- 3) The request is not substantial, there is some filling of ditches and some added deck in question—the applicants are very much constricted by the lay of the land and the condition of the house as it is;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, again that is as it is presented to the ZBA;
- 5) The alleged difficulty is not self-created; age has had its way with this building.

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

Note: There was no second to the motion for approval of the application for Helen Milvany (V06-55).

RESOLUTION

The Zoning Board of Appeals received an application from Helen Milvany (V06-55) 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 undesirable change in neighborhood character and nearby properties, in the views from the lakefront, the views from other property owners and the increase of the structure within the 50-foot shoreline setback;
- 2) The benefit could be achieved by other means feasible to the applicant besides an area variance, either by not moving the structure closer to the water or by decreasing the deck requested within the 50-foot setback;
- 3) The request is 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 self-created.

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

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

Note: Jeff Anthony recused himself for items #2 and #3 as he is associated with the LA Group.

- 2) **V06-51 VON SCHENK, STEPHEN & CAROLYN.** Represented by Tracey Clothier of the LA Group. For the construction of a proposed single-family dwelling, seek area variance for a deficient front yard setback. 50 ft. is required, 20 ft. is proposed. Section 199.12, Block 1, Lot 18, Zone RL3. Property Location: Coolidge Hill Lane, off Coolidge Hill Rd and being lot 13 of the Lakewinds Subdivision. Subject to WCPB Review.

Tracey Clothier, representing Stephen and Carolyn Von Schenk, gave an overview and said (1) the house is sited on the east side of the cul-de-sac, (2) the variance is for the front setback which is toward the cul-de-sac, (3) there won't be any traffic on the cul-de-sac—it is like a private driveway and (4) she doesn't see any conflicts between the neighbors and this plan.

G. Smith said that (1) pretty much all of the houses in this development have been before the ZBA for a similar variance and (2) it is in a cul-de-sac, is very private and there won't be much traffic.

T. McGurl asked if the north corner of the house could be turned more towards the cul-de-sac in order to pick up additional feet. Tracey Clothier said (1) the house is sited in this area for the solar accessibility and (2) they tried several configurations and this was the best one. G. Smith agreed and said that it is at the end of a cul-de-sac and is not going to affect anyone.

M. McComb said that the height is listed as 32 feet and asked if the basement is included in that because it looks as though it doesn't exist, but then there are windows on the elevation down in the basement. G. Smith said the 32 feet would be from the lowest point. M. McComb said it doesn't show if the height includes the basement. P. Kenyon said the height is from the lowest point to the highest point.

M. McComb said that it is nearly a 3,800 square foot footprint, which is a very big house, but on the other hand they are not doing a separate garage, so that seems to her to have some things to recommend the project go forward. G. Smith said that (1) they are not over-building on this lot—it is a good size lot and an accommodating house to the lot. Tracey Clothier said that it seems like a fair trade seeing the right-of-way is on their property.

M. McComb asked about the trees shown on the clearing plan being cleared on the hillside and slope and P. Kenyon said the area is already cleared. G. Smith said that (1) there is not a lot of tree growth as it is mostly field, (2) it is a very minimal variance and (3) it is a beautiful project that will look nice when it is done.

No public in attendance.

No correspondence.

The WCPB determined no County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Stephen and Carolyn Von Schenk (V06-51) 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 any other means feasible to the applicant besides an area variance, except for making the house smaller;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it is at the end of a cul-de-sac and it is a very private location;
- 3) The request is not substantial, given the amount of land the property owner has and it is a setback from a right-of-way, but it is virtually a private turn around;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, because of the location of the lot;
- 5) The alleged difficulty is not self-created, it came up from building the road in an unusual spot in this subdivision.

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 Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented. Jeff Anthony recused himself. **All others in favor. Motion Carried.**

- 3) **V06-52 ALKIN, LLC.** Represented by Tracey Clothier of the LA Group. For the construction of a proposed 2-story addition, seek area variance to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 171.08, Block 1, Lot 11.1, Zone RCM1.3. Property Location: 28 Braley Point. Subject to WCPB & APA Review.

G. Smith asked if the applicant is in accordance with all zoning as of today. P. Kenyon said she doesn't know if the part of the dock that was supposed to be removed has been. Counsel said (1) he has a note from M. Nittmann that he read into the record regarding a section of dock that was supposed to be taken out on the south dock, which hasn't been done to date, (2) assuming the possibility that M. Nittmann's concern is correct, he would not suggest that the ZBA has to hold up this application here tonight, but that this application will stand on its own merit and the ZBA will consider it, and (3) if it is favorably voted upon, it is conditional upon a Certificate of Compliance may not be

issued by Zoning Administrator P. Kenyon until such time that the applicant is in compliance. G. Smith asked if the application for the variance raised this issue now and P. Kenyon replied by saying (1) she has absolutely no idea, (2) she was not even given a copy of this letter for her file and (3) it is a typical day in the Zoning Office—it is not funny. K. Hoopes said that somebody needs to be talked to about that and G. Smith said he does have a copy of the letter. K. Hoopes said that (1) he did get a head's up on this matter, but didn't pay much attention to it because it wasn't on the agenda, (2) it seems that there was some sort of removal of the dock, some ice damage and replacement of the dock that deals with crowding of the property to the south and (3) it was brought up as a sideline to him to this issue. G. Smith said that as far as the neighbor to the south goes, he spoke with him today and he has no problem with this application. K. Hoopes agreed.

Tracey Clothier, Sr. Planner of the LA Group, representing Alkin LLC, said she apologizes, but she was not aware of the issue and G. Smith said he is well aware that she is not aware of it, because Counsel and the Zoning Administrator weren't very much aware of it either.

Tracey Clothier gave an overview and said (1) the closest distance to the lake is 72 feet and the requirement is 75 feet, (2) it is a pre-existing non-conforming building, (3) the family is proposing a two-story addition on the back of the camp with adding two bedrooms but taking away one downstairs to accommodate the addition, which equates to a net gain of one bedroom, (4) the proposal will upgrade the property along with upgrading the septic and (5) they are working with the Town of Bolton to come up with an alternative septic design.

G. Smith asked if the main addition is basically where the tree came down on the backside of the house and Tracey Clothier said yes.

Curt Dybas, project architect, said that (1) the existing cabin cannot currently be heated at all, (2) there is an existing breezeway link between the existing house and the proposed 22 by 56 foot addition. B. Pfau asked what the size of the lot is and Curtis Dybas said 1.33 acres. B. Pfau asked what the square footage difference would be and Curtis Dybas said that it would be a net add of 15 feet.

B. Pfau said (1) he agrees that this building just barely, doesn't meet the setback to the lake and (2) all of the construction is taking place outside the setbacks to Lake George and are to the back of the house. Tracey Clothier said that the proposal is consistent with the neighborhood. G. Smith agreed and added that the house has been there for over 80 years.

M. McComb said that (1) part of the septic field is underneath the rock outcropping and (2) she is wondering if there is any way to jigger the field to produce a better outcome. P. Kenyon said that (1) she met with the engineer, (2) she did not approve the proposed location, (3) they are working on coming up with an alternative system and possibly another location, and (4) she is asking the ZBA to not consider looking at this matter at this time.

The WCPB determined no County impact.

No public in attendance.

No correspondence.

G. Smith said (1) he favors this because: it simply is away from the lake, it is behind the house, it won't be any taller than the house already is, and it really needs to be done—that house is older than it looks and (2) he is in favor of the project.

RESOLUTION

The Zoning Board of Appeals received an application from Alkin, LLC (V06-52) 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) There will be no undesirable change in neighborhood character or to nearby properties, there have been no objections from any neighbors;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, because the existing home is a legal non-conforming building;
- 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, the proposed addition will not be within the 75-foot setback to the lake;

- 5) The alleged difficulty is not self-created, the existing building does not meet setbacks.

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

Now, upon motion duly made by Bill Pfau and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented. Jeff Anthony recused himself. **All others in favor. Motion Carried.** *Note: Although not part of the approval, the board did discuss 1 of the conditions set forth by the Planning Board on October 26, 2000, when approving the Boathouse –SPR00-33, and decided the offending portion of the dock must be removed before permits are issued.*

Note: M. McComb recused herself from Item #4 as she is a neighbor and Jeff Anthony resumed his position on the ZBA for all remaining items.

- 4) **V06-53 BLITZER, RONALD & ILENE.** Represented by Mark Boucher. For the construction of a proposed second story addition over existing garage, seek area variance for 1) A deficient front yard setback. 30 ft. is required, 12 ft. is proposed. 2) To alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 171.19, Block 2, Lot 32, Zone GB5000. Property Location: 8 Anchorage Rd. Subject to WCPB Review.

Mark Boucher gave an overview and said (1) they are here because the project is non-conforming, (2) basically nothing on the roadside will change other than the elevation of the roof by about 2 feet and (3) all construction is being done to the back of the garage.

K. Hoopes said that (1) the proposed addition will be virtually impossible to see and (2) he doesn't see anything the least bit offensive about the project. G. Smith agreed and said that another thing he likes is that it is also going from three rooflines to one, which will look much more attractive than what exists today. K. Hoopes said that it will also be easier to maintain.

J. Anthony asked if the trees between this lot and Lot 17 are on this property or the neighbor's property and Mark Boucher said that he believes they are Mr. Blitzer's. J. Anthony said that he agrees with K. Hoopes and G. Smith in that this building would hardly be visible from the street side and most of the addition affects the back yard.

No public in attendance.

No correspondence.

The WCPB determined no County impact.

G. Smith said this is easy, straight forward and an improvement.

RESOLUTION

The Zoning Board of Appeals received an application from Ronald and Ilene Blitzer (V06-53) 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, in fact they probably won't even know it is happening;
- 3) The request is not substantial, there will be a reduction in the multiple rooflines;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it is the movement of a roof that is already placed;
- 5) The alleged difficulty has some self-created aspects to it, but he doesn't see that as a negative aspect.

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. Meredith McComb recused herself. **All others in favor. Motion Carried.**

Note: M. McComb resumed her position on the ZBA for the remaining agenda items.

5) **V06-54 JULIANNA MOTEL.** To alter pre-existing non-conforming motel building, specifically to add a 10 ft. x 16 ft. deck, seeks area variance to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 213.17, Block 1, Lot 33, Zone RCM1.3. Property Location: 3842 Lake Shore Drive. Subject to WCPB REVIEW.

Eric Fahlborg, owner of Juliana, said that (1) the proposed deck is 60 feet wide and 8 feet deep, (2) the concrete work is already there—he just wants to put decking on it and (3) he spoke with the neighbors to the north and south and they don't have any problems with the project.

G. Smith said that it all faces inward and Eric Fahlborg agreed, adding that it is on the roofline. T. McGurl said that he doesn't see this as any different than the decks the applicant has been before the ZBA for previously. M. McComb said that it is also already impervious surface. B. Pfau asked if the previously approved decks have bothered the southern neighbors at all and G. Smith said there was one on the one structure because it was overlooking those neighbors, but this one here won't because it all faces into its own property.

G. Smith said that the applicant is just taking out the old and putting in new and, (2) he doesn't have any problem with the request.

No correspondence.

The WCPB determined no County impact.

No public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Juliana Motel (V06-54) 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 any 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, the new construction is on the interior of the lot and it is also currently impervious surface;
- 3) The request is not substantial, because of these conditions and is also in line with the comprehensive plan of supporting the cabin colonies in Lake George;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it is probably improving the safety of the property and again, it is already impervious surface;
- 5) The alleged difficulty is not self-created.

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

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

6) V06-56 DJMD BOLTON NY, LLC. Represented by Peter Gluck and Partners. For the construction of a proposed recreation building, seeks area variance for overall length greater than allowed. 120 ft. maximum is allowed. 146.20 ft. is proposed. Section 156.20, Block 1, Lot 39, Zone RCM1.3. Property Location: 5274 Lakeshore Drive. Subject to WCPB Review. *Note: This application is in conjunction with SPR06-56.*

Peter Gluck of Peter Gluck and Partners, representing DJMD Bolton NY, LLC, gave an overview and said (1) they are trying to create a series of buildings built into the site with green roofs, (2) they are trying to break up the building facade into one-story buildings and (3) he thinks the idea of zoning is to reduce the facades which this proposal will do.

G. Smith asked the dimension from the front right to the back left which would be exposed from the lake. Peter Gluck said that the height would be about 14 feet and on the other structure it would be about 23 feet. J. Anthony asked if there is usable space behind and Peter Gluck said yes. J. Anthony said that (1) he would consider it one structure and (2) he would consider the length to be 160 feet, not 146 feet, which would be from corner to corner of the building. G. Smith said that it would be 160 feet that you would be seeing from the lake, regardless of the height, which would be massive. Peter Gluck said that (1) he agrees that the distance is long, (2) that is what was approved and

(3) what they are proposing will have much less of an impact than that. Peter Gluck clarified by showing pictures to the ZBA.

T. McGurl said that he likes the design, but feels it could be reduced and still accomplish what the applicants are looking for. B. Pfau asked how the applicants got to the point of changing the project after the PB had already approved a proposal. Peter Gluck said that (1) if the ZBA approves this proposal they would still need to go back to the PB to convince them this new proposal is better and (2) they have gone through this because they think it is better from an architectural and environmental impact point of view. B. Pfau asked if the applicant should go to the PB with this new plan first. K. Hoopes said that he understands this is probably all in a good faith effort, but the ZBA's problem is that (1) the PB has worked real hard on this with the applicant, (2) if the ZBA grants a variance on this it may create a problem for the PB in that they would have to accept what the variance was granted for and (3) since this is the first time the ZBA has seen the project in any form, he feels that he would like the PB's thoughts first before the ZBA makes a decision on the variance. Peter Gluck further clarified the project by referencing the model and said that what they are trying to do is screen it or make it invisible. J. Anthony asked the actual length of the building and P. Kenyon said that it is 146 feet based on placing the overlay on the plans, which is the method the Zoning Department uses to determine building size, whereas J. Anthony is measuring at a different angle. J. Anthony said that (1) he is measuring it parallel to the lake and (2) with his scale it is 160 feet. P. Kenyon said it is 146 feet by hers.

M. McComb asked about the guesthouse and the layout, because she believes it makes it almost look like one long structure. K. Hoopes said that there would be several trees there for screening. G. Smith asked if the guesthouse will also be the same type of building and Peter Gluck said they haven't gotten to fully planning the guesthouse yet.

Further discussion ensued on the actual length of the building. P. Kenyon said that the Zoning Office goes by a square overlay and in doing that it is 146 feet.

M. McComb said that (1) the main house is 119 feet 6 inches, which is also close to requiring a variance, (2) if the new building is going into a second story, there is no reason that this couldn't be subdivided behind it in the future and (3) she would be in favor in it going back to the PB.

J. Anthony said that the drawings (site plan and architectural drawing) don't seem to be in synch and asked if there is a problem with the two drawings. Peter Gluck said he doesn't see how there would be a discrepancy. J. Anthony said he would like to know what the ZBA is granting a variance for first to quantify it, so he knows just how big "big" is. Peter Gluck said that it doesn't sound like the ZBA is going to be granting a variance. G. Smith said the ZBA just needs its facts and Peter Gluck agreed. T. McGurl said that (1) he doesn't understand why the applicants can't knock 26 feet off a structure this large which is luxury space and (2) he really likes the modern design, but it is large—it has impact. Peter Gluck said that it is luxury space, but it is space all of which is programmed. B. Pfau said that (1) the applicant is welcome to request whatever he wants

and (2) he would like to hear the PB's recommendations first. K. Hoopes said that he's not asking the PB to issue a variance on this, but he would like to see how this jives with what they think the applicant's intent is based on previous discussions with the PB. G. Smith said that the PB has been looking at this project for 10 months and there is nothing like this project in this town—this is the first time the ZBA is seeing this. J. Anthony said this is nothing like what is on the lake currently and there are five criteria the ZBA needs to look at to approve a variance, one of which is self-imposed hardship—creating a program because one “wants” is self-imposed. B. Pfau said that the PB has approved something very similar to this plan that doesn't need a variance. M. McComb said that maybe this is an improvement according to the applicants, but both buildings are in the 75-foot setback and they do somewhat line up.

Peter Gluck said that (1) they did a great deal of work to make the project better based on all zoning and planning concerns and they may just go back to what was originally approved and (2) they do projects like this all over the country and can understand the hesitancy of the ZBA in trying to understand the concept of something it has never seen before. G. Smith said that (1) this is something that hasn't happened here yet, (2) the ZBA hasn't seen the project that the PB already approved and (3) the ZBA has to listen to all of the people who live here too regarding how this project would look from the lake.

J. Anthony said that (1) in looking at this project in context to the shoreline of Lake George, you should realize that out of the 440 feet of it here you only have 83 feet of it without some form of building showing on the lake or facing the lake, (2) he thinks what has to be looked at by the PB is visual impact, architectural design and color and (3) this is going to be an eye catcher on Lake George—the idea is to not have something stick out from the lake. M. McComb said that (1) there is potential for screening, but the ZBA also needs to look at the future whether someone would want to use the screening and (2) she is glad to refer it back to the PB.

RESOLUTION

Now, upon motion duly made by Kam Hoopes, to keep the public hearing open and table the application pending a recommendation from the Planning Board. Seconded by Jeff Anthony. **All in favor. Motion carried.**

- 7) V06-57 SCHADLER, HARVEY.** Represented by Jeff Provost of the Dock Doctors. To replace existing dock with a proposed “U” shaped dock/boathouse, seeks area variance for a boathouse width greater than allowed. 15 ft. maximum allowed, 18 ft. is proposed. Section 156.12, Block 1, Lot 25, Zone RCM1.3. Property Location: 23 Cherry Avenue. Subject to WCPB and APA Review.

Jeff Provost of the Dock Doctors, representing Harvey Schadler, gave an overview and said (1) they have received their permit from the LGPC for the dock, (2) they are proposing to remove the existing non-conforming dock and replace it with single u-shaped dock and (3) they are three inches shy for an 18-foot structure.

K. Hoopes said that answers the question on whether the request is substantial—the 3 inches that the applicant lacks in order to go to the next step up is a compelling argument. G. Smith said the applicant isn't asking for a lot. B. Pfau asked who determines lake frontage and P. Kenyon said, in this case, the survey does. K. Hoopes said that he thinks the re-orienting of the dock is an improvement. Jeff Provost said the proposed dock would make it more symmetrical with the neighboring docks. M. McComb said that the proposed dock is also a standard stick-built dock—not giant logs—so she thinks it is a minor request.

The WCPB determined no County impact.

No correspondence.

No public in attendance.

G. Smith said he has no problem with it—it is quite minimal.

RESOLUTION

The Zoning Board of Appeals received an application from Harvey Schadler (V06-57) 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 not affect the neighbors;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, the applicant is 3 inches short of lakeshore;
- 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, in fact there will be an improvement in the dock;
- 5) The alleged difficulty is self-created, but 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) **V07-01 PARAS, RONALD & HULDA.** To place a proposed 8'x 20' sunroom on existing deck, seek area variance for a deficient front yard setback. 50' is required, 31' is proposed. Section 171.07, Block 1, Lot 44, Zone RL3. Property Location: 58 Lake View Hill Road.

Ronald Paras, owner, said that he is requesting a variance to place an 8 foot by 20 foot sunroom on his existing porch.

G. Smith asked if it is proposed for the location right in front of the sliding glass doors and Ron Paras said yes. T. McGurl asked if the proposed porch would have a new roofline rather than continuing the existing roofline and Ronald Paras said yes. J. Anthony asked if the addition would be lower and narrower than the existing building and Ronald Paras said yes. M. McComb asked if the applicant would still have access to the deck and Ronald Paras said yes, on both sides. M. McComb said that she likes the project because the applicant isn't completely erasing the existing deck—he is using part of it for sunroom and part of it for deck. J. Anthony said that he doesn't see an affect on any neighbors, as it wouldn't be very visible.

K. Hoopes asked what zone they are in to determine the 50-foot setback and P. Kenyon replied by saying that the applicants are in the RL3 Zone and are not in a scenic corridor so the setback requirement from the right-of-way is 50 feet. M. McComb said that it is not getting any closer to the right-of-way than what already exists and G. Smith agreed.

T. McGurl asked why the applicants wouldn't be extending it out to the edges of the house and Ronald Paras said the reason is because they need to have the correct slope to fit under the existing roofline.

Correspondence: read into record by Counsel.

- Letter from Josephine Y. Cristy, neighbor, dated 01/17/07 - in favor of the project.

From the public, Doug Houghton, bordering neighbor, said his only concern is in the supports and asked if they will be able to handle the weight of the proposed sunroom.

Ronald Paras replied by saying that the contract calls for the deck to be totally re-supported to support that weight. G. Smith asked if the deck will have extra supports added and Ronald Paras said yes.

G. Smith said he has no problem with the proposal—it would be a good addition to the applicants' house.

The WCPB determined no County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Ronald and Hulda Paras (V07-01) 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, 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) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, he is merely enclosing a portion of a pre-existing non-conforming structure;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, the neighbors seem to think it will be an improvement to the property;
- 3) The request is not substantial, there is absolutely no increase in non-compliance by granting 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, because the applicant is working within his pre-existing non-compliant footprint.

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

Other Business:

1. G. Smith said that (1) at the recent workshop meeting on 01/18/07 there was a discussion on land clearing and they made a motion to the Town Board for them to pretty much state who is in charge of the Zoning Office and who administers the code and (2) they made a motion to that effect, which needs to be made in this public hearing.

Counsel said that (1) if it is the sense of this board that they want to move forward on a decision made at a workshop, the ZBA can make a recommendation to the Town Board, (2) within the context of the current code, there are two positions—one of Zoning Administrator and over the last two years, one of Code Enforcement Officer—they are, as a matter of the code, equal and there are circumstances where opinions are opposite, (3) if the ZBA wishes the Town Board to do something about it, that recommendation would need to be made by the ZBA making a motion, (4) whatever was manifested at the workshop doesn't have any bearing or traction on that—a motion for recommendation needs to be made if that is what the ZBA desires and (5) he believes that Lisa Nagles, a consultant for the municipality, has a plan that she is working on in relation to this matter.

K. Hoopes said there were two issues they made motions on at the workshop, however, they were extracurricular for the ZBA and until they get an appeal they can't have a hearing on, he doesn't think the ZBA should make a motion.

Counsel said that it is not an interpretation—it is in the code that the two positions are equal, but to whatever extent it is not working, that would need to be addressed. G. Smith said that it is obvious tonight that it's not working as seen in the Alkin matter where Counsel was given a letter that P. Kenyon knew nothing about. Counsel said that if the ZBA has some recommendation to the Town Board, it is best dealt with by manifesting it on the ZBA's record in this board's minutes. K. Hoopes said (1) ELAN is working on it and (2) just to say publicly that the ZBA is in favor of doing something is fine, but he is not prepared to vote on this matter. B. Pfau said (1) he agrees with K. Hoopes and (2) that he thinks what is going on in the Zoning Office is affecting the board.

G. Smith said that (1) he thinks the ZBA should make a motion, because simply, the Town Board has been putting this off long enough, (2) the Town Board asked the ZBA to come to an interpretation and (3) what needs to happen is that the Town Board has to say who is in charge in the office and who is going to make the decisions on what the final outcome is as to somebody getting shut down or not or who is right or this is right or this should be interpreted that way—one person in the office needs to do that and that is what that finally came down to and that is the recommendation the ZBA wanted to take to the whole Town Board as one—to state who is going to be in charge. B. Pfau said he agrees

that it should come from the workshop meeting. P. Kenyon said that she was told today that the Town Board didn't ask for the ZBA's input on this matter.

Counsel said that (1) in all fairness to the process, he thinks the Town Board has acted judiciously and quickly to put Lisa Nagles on it—he truly believes she has a recommendation and (2) he believes he has a meeting with Lisa Nagles tomorrow.

From the public, Willie B. McDonald said that having Lisa Nagles putting that plan in place is 8-9 months away and there are issues now that need to be addressed. K. Hoopes said that (1) this was a special task handed to Lisa Nagles in addition to the current zoning project and (2) he thinks that it won't be the same wait as the zoning code revisions. P. Kenyon said she believes it is part of the overall plan, but she thinks a recommendation will be made before that. Counsel agreed and said that he doesn't believe it is on the slow boat, but he does believe it is going to be in the Zoning Code.

2. Counsel said that he was hoping the ZBA can go forward on what is a disturbance. G. Smith replied by saying that what they came down to is that if you cut down a tree it isn't disturbance, but if the ground where the tree sat, the stumps sit and that ground sits gets disturbed, then that is a disturbance.

K. Hoopes said that (1) at the workshop meeting it was discussed that the code currently lists disturbance in two different ways and (2) he made a motion at that meeting to break the disturbance into two parts: (A) simple tree clearing is not a disturbance in and of itself if you don't remove the stumps and (B) if after you clear there is heavy traffic in the area and you disturb the soil, beat up the ground, bury the soil and rock, it is then a disturbance. M. McComb said that (1) while that seems like a rational approach for logging and clearing, there is also disturbance for figuring out whether or not stormwater remediation measures will come in and (2) it seems to be important to her for the construction process to be included in disturbance, as this came up in the Simonson application.

K. Hoopes said that (1) his motion is based on the Zoning Regulations as they are presently written, (2) right now there are regulations on the book and (3) they are essentially being asked to make an interpretation on what they have now—not items like removing canopies, which would be addressed in the future code regulations. M. McComb asked if that would mean that if you are cutting a tree under 6 inches than it is not disturbance. K. Hoopes said there are two parts based on the current code: cutting a tree is not a disturbance until you remove a stump or the soil around the stump or if you bare soil and rock.

J. Anthony asked if there is any intent to marry it to the stormwater regulations of up to 5,000 square feet you don't get your permit. Counsel said that (1) it usually comes to him and P. Kenyon after-the-fact when someone has cut and it is usually in the nature of a contractor or homeowner, trying to evaluate what they have in terms of building sites, etc., also they then hire individuals who as a profession maintain property and they are hired to perhaps, improve or maintain the view, and in the aftermath of that—truly in the

aftermath—it has been cut, someone has reported to the Code Enforcement Officer that there is a problem and the Code Enforcement Officer goes to the site and at that particular point we are not clear as to what we have until of course they have some clarification, (2) the confusion is in the neighborhood of that it got cut—and that is a disturbance, because that constitutes an alteration of the land or “clear cutting”, (3) they have actually had engineers and soil scientists and the LGPC look at it and they cover the board in terms of what their perspective is and they seem to speak from their own constituency as to what they’re interested in and (4) he has been told by Mike White of the LGPC, and he is paraphrasing, that cutting any tree down is disturbance because those few trees cumulatively in the Lake George basin actually hold more water within them than the lake itself. P. Kenyon said that he told her the total opposite—that when you take out a stump, that is land disturbance. Counsel agreed and said that (1) he is good with whatever the ZBA tells them and they will hold the line and uniformly apply it, but they really need it on these minutes.

K. Hoopes said that (1) he agrees with John Gaddy that there is a lot more to a tree’s function in holding the water other than its root system and (2) there is definitely room for improvement.

From the public, John Gaddy asked if clearing a 100 by 100 foot section would not be considered disturbance. G. Smith said as it is written now, that is correct. P. Kenyon said that it wouldn’t be considered disturbance. M. McComb said that (1) she is in agreement in cutting things over 6 inches 4 feet above the ground, but there is a lot of disturbance that goes on in connection with construction and (2) she is not comfortable with that if you did not remove the stump of the 6 inch diameter tree, you haven’t disturbed the soil. K. Hoopes said that is covered by traffic after-the-fact. M. McComb said that it doesn’t need to be in conjunction with cutting 6-inch trees—disturbance occurs when you disturb it and G. Smith agreed.

T. McGurl asked if that means that if a logging operation goes in and selectively removes trees and leaves tree limbs all over wouldn’t be considered disturbance and K. Hoopes said no, that would be logging, (2) disturbance definition is pretty much as it relates to stormwater run off as he recalls, (3) what they have in the definition of disturbance is cutting trees without removing stumps as non-disturbing and baring the soil and rock and (4) it is only in relation to the zoning regulations that are currently in the book—you can’t add to it at this point.

J. Anthony asked if it would be considered disturbance if it were under 5,000 square feet and P. Kenyon said no, that is not disturbance—that is always the way she has always interpreted it. Counsel said that they have no problems with thresholds, just a problem with defining the activity. M. McComb asked if as it goes from 5,000 to 15,000 square feet is just a minor stormwater and P. Kenyon said that over 15,000 square feet is a major.

John Gaddy said if a person is given a major clearing permit and the person doesn't remove the trees they have cut down, then would that be land disturbance. G. Smith said

that would be for P. Kenyon to determine. P. Kenyon said no, it wouldn't be disturbance according to her.

RESOLUTION

Now, upon motion duly made by Kam Hoopes and seconded by Tom McGurl it is resolved that the ZBA does hereby define disturbance as simple tree clearing without removing a stump is not disturbance, however, simple tree clearing if you don't remove the stumps, but then heavily traffic the area baring soil and rocks, then it becomes a disturbance, which is in relation to stormwater. **All in favor. Motion carried.**

3. Counsel said that 200-56 (b) regarding that any non-conforming structure may be built to the specifications of the pre-existing non-conforming, he wants to know if it is okay per this ZBA, that if there is a figure of a foot or below that the ZBA is okay with and also what is the threshold beyond which the ZBA wants people to come before them and used a solar panel example for reference.

K. Hoopes asked if the ZBA could have some time to think about this because this is the first time this matter has come before the ZBA. M. McComb said that her initial reaction is that P. Kenyon ruled in the past that any alteration to a pre-existing non-conforming structure comes before the ZBA, which has been the way the ZBA has always dealt with it—she doesn't know that it comes up so often that the ZBA should change that process. K. Hoopes said he would like to digest this matter and get back to Counsel and P. Kenyon on what the ZBA feels in this matter. The rest of the ZBA members agreed to think about this issue and revisit it at a later date.

4. P. Kenyon said that regarding the Alkin situation, the ZBA members were given information, Town Counsel was given information and she was not given any information, but it is her file and this is totally unacceptable to her.

G. Smith, B. Pfau and K. Hoopes all agreed that P. Kenyon has a valid complaint and they are with her 100%. G. Smith added that it is ridiculous which is why the Town Board has to do something and do it today—not six months from now.

B. Pfau asked if there is anything the ZBA can do about this and Counsel said he doesn't think the ZBA should go there, he thinks the ZBA should stick to its code and stick to its Zoning interpretation.

P. Kenyon said she just wanted it on the record that she had no prior knowledge of this information and that if she had, she would have notified the applicant of the information like she does for all applicants, because she doesn't want applicants to be blindsided.

B. Pfau said that the ZBA has the option to ignore information given to them at the last minute.

Meeting adjourned at 9:27 pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
01/31/07