

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, July 16, 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, Bill Pfau,
Town Counsel Michael Muller, Zoning Administrator Pam Kenyon

Absent: Meredith McComb and Tom McGurl, Jr.

Chairman Greg Smith opened the meeting at 6:30 pm by asking for corrections to the June 18, 2007 ZBA minutes.

J. Anthony said that on page 2, paragraph 5, sentence 2 should read as follows: ".... J. Anthony said that (1) the LGA suggests buffer plantings and buffer vegetation other than grass, because grass is not very effective in managing or maintaining *stormwater*...."

RESOLUTION

Motion by Jeff Anthony to approve the June 18, 2007 minutes as amended. Seconded by Tony DePace. **All in favor. Motion carried.**

G. Smith let all applicants know that there are only five ZBA members present, so it is each applicant's decision to have the item heard and voted on tonight or to come back next month when more ZBA members are expected to be present.

Note: J. Anthony recused himself from V07-14, as he is a resident of Lagoon Manor.

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 June 2007 meeting at the applicants' request.*

Atty. Stephanie Bitter, representing Robert and Marjorie Lichtenstein, gave an overview and said that (1) the retaining wall is the structure they are seeking the area variances for, (2) the retaining wall is to be incorporated with the construction of the septic, for which they will later be seeking a septic variance from the local Board of Health, (3) the retaining wall is being proposed to ensure the proposed septic system for the site will not encroach on any adjacent lands and to ensure no one will drive on the septic system (to be an advanced Elgin treatment system), (4) based on concerns, they have relocated the retaining wall an additional four ft. from the northern property line, (5) they also

incorporated a lower height on the retaining wall and (6) they do have the support of the Lagoon Manor HOA.

Bob Holmes of Jarrett Martin Engineers, project engineer, said that (1) the primary concern they are addressing is the proposed retaining wall to contain the wastewater treatment system, (2) in working with Town Engineer Tom Nace, the reconfiguration of the design itself is allowing them to improve the setback to the north property line, (3) they have been able to reduce the height of the retaining wall on the north side and (4) the change on the north property line is a material change from what they presented two months ago.

K. Hoopes said that one of the main concerns from the last meeting was the proximity from the north property line, because if maintenance on that northern side is required the applicants will have to trespass on a neighboring property. Bob Holmes agreed and said that increasing the distance from the north property line will mitigate any trespassing. K. Hoopes said that solves that problem.

G. Smith asked if this proposed retaining wall is the same as the one originally proposed. Bob Holmes said that (1) the system has been reconfigured slightly in the actual length of the Elgin units themselves and (2) the Town Engineer convinced him to reduce the size of the overall wastewater system. T. DePace asked if the Town Engineer has signed off and P. Kenyon said yes.

T. DePace asked how far the proposed system is from the neighbor's well and Bob Holmes said (1) they are in excess of the 100 ft. setback and (2) the southwest side of the retaining wall is right at the 100 ft. limit. T. DePace asked if that is 100 ft. away from the leach field and Bob Holmes said yes. B. Pfau asked if it is accurate that it doesn't need additional setback because the well is up gradient to the system and P. Kenyon said yes. However the TB acting as the local BOH will be addressing several issues.

B. Pfau asked if the retaining wall is part of the system and Bob Holmes said (1) no, if he had more room he could construct the system without the retaining wall and (2) the retaining wall is necessary to contain the system in the area they have available to them. B. Pfau said that it looks like the 200 ft. setback to the lake goes through the system. Bob Holmes responded by saying that that is correct and (2) the setback they have went to the 200 ft., but the toe of the fill is a BOH issue they will have to address with the TB as the Local BOH.

T. DePace asked the property width and Bob Holmes said that it is 100 ft. on the west property line. T. DePace asked how the neighbor's well could then be 100 ft. from the system. Bob Holmes said that (1) the neighbor's well is closer to the lake and adjacent and farther to the south, (2) they do have a 100 ft. setback to the retaining wall on the southeast side and (3) in order to help protect the neighbor's well, they also propose a clay barrier along that border.

B. Pfau asked if it is accurate that the applicant is unable to move the proposed system away from the right-of-way enough to build it on the applicant's own property. Bob Holmes replied by saying that the system itself is totally constructed on the Lichtenstein property, but the right-of-way is an easement that encroaches into the Lichtenstein property, so it will be wholly contained on the Lichtenstein property with a one ft. setback from the right-of-way. B. Pfau asked if the retaining wall will be partially located in the right-of-way, but also part of the Lichtenstein property and Bob Holmes said yes, the property line actually extends out in the right-of way and 15 ft. is the edge of the right-of-way.

Correspondence: Read into record in its entirety by Counsel.

- Letter dated 07/13/07 from Lake George Waterkeeper Chris Navitsky – concerns

Counsel said the points made by the Lake George Waterkeeper are relevant in the forum of the TB sitting as Local BOH, but not in the ZBA forum.

T. DePace asked if the proposed system is a Wisconsin mound system. Bob Holmes said that (1) it doesn't quite fit the definition of what is referred to as a Wisconsin mound system, (2) it is a mound system in accordance with the NYSDOH and (3) the one real difference between what is being proposed and a Wisconsin mound system is that the proposed system includes the use of advanced treatment units which will provide the additional treatment for the wastewater system.

B. Pfau said (1) it seems important to him to see some rendition what this would look like from the right-of-way and from the neighbor's property to the right, before moving forward and (2) said he sees no proposal of screening. Bob Holmes said that (1) on the system itself, it will be grass that will be mowed and (2) to the north of the property, they do have the ability to include additional landscaping given the additional area to mask the system. B. Pfau said that (1) he is willing to go along with what the Town Engineer recommends, but it is a big wall—something the Town of Bolton hasn't seen before and (2) he personally would have liked to see the whole thing screened. Bob Holmes said that (1) in order to screen in the right-of-way, they'd need to verify that and (2) he thinks there is some ability to mask it by using cascading vines.

K. Hoopes said that (1) a very important point made last time and being made again this time is that the applicants have been patiently waiting for technology to catch up with them, so that something can be done with this property, (2) he is convinced that this proposal is the best effort to get the device in there as best as possible, (3) at this point, for the ZBA to deny it, is in effect rendering the property useless, (4) while he is glad the Town Engineer is involved in this, the ZBA is really only here to address the retaining wall and (5) the ZBA is looking at a retaining wall that is infringing on setbacks that could be holding back pretty much anything—from the ZBA's point of view, the fact that there is a septic device in the middle of it is not important. B. Pfau agreed and asked if it is going to look like cement blocks from new concrete. Bob Holmes answered by saying (1) no, that isn't their intention and (2) they would provide something with a more natural

stone facade. B. Pfau said that perhaps the applicants could pile real stone outside the block to make it look more natural. T. DePace agreed and said that it is a rather large structure. K. Hoopes said that (1) the applicants are not putting this in voluntarily—they have to put this in or they have nothing and (2) as far as looks, it is certainly in the best spot on the property right now.

From the public, Frank McDonald, representing the developer of the project next door and Lagoon Manor, said that at this meeting it hasn't been mentioned that there is an approved potential of a single family home north of that, so the location of this proposed septic system would probably limit the possibility of drilling a well on that property, because of the 100 ft. separation. K. Hoopes asked if that has been subdivided to the north. Frank McDonald said no it is not subdivided, but there is an approved single family location.

From the public, Tim O'Hearn, adjacent property owner, said that (1) he and his wife were not contacted for their input on this project, (2) he would like to question the unusable aspect of this land., (3) he is concerned because he thinks the retaining wall encroaches on the right-of-way and his understanding is that you can't legally build on a right-of-way and (4) some other concerns he has are the visibility or aesthetics of the project because there is a certain value and cosmetic appeal to right-of-ways.

B. Pfau said that (1) a lot of Mr. O'Hearn's concerns will be addressed at the TB and PB level and (2) he is concerned about what it looks like. G. Smith said that the ZBA doesn't know exactly what it is going to look like. Tim O'Hearn said that (1) he doesn't know either, so he can't comment on it and (2) he believes there have been several significant financial offers to purchase the property. K. Hoopes said that (1) his comments on putting it closer to the right-of-way is in terms of at least it is not on the lakefront—it is putting it back on the least impacted corner of the lot and (2) it will be something you see until you become blind to it.

Tim O'Hearn asked if it is necessary that you force something to be built there if the property has value for other purposes. K. Hoopes said that unless it is residential, he doesn't know what other purposes there could be—you can't build an accessory structure without a primary residence. Tim O'Hearn said that (1) in his deed it specifically restricts anything that encroaches more than 15 ft. from the property line, (2) it says that no cottage home or other structure should be built closer than 15 ft. to any lot line except the high water line of the lakeshore and (3) what is the legality of anything being built on the right-of-way. K. Hoopes said that would be a civil issue.

Bob Lichtenstein asked if a well is considered a structure and G. Smith said no. Bob Lichtenstein said that (1) the issue seems to be the replacement of the well which has created the predicament they are in, (2) he has been trying to get to the point that this piece of property is valuable—it is very valuable, (3) they are looking to make the property viable, (4) more importantly it would be better to hook into Lagoon Manor, but it doesn't seem feasible and (5) he's not going away, so somehow they need to come up with something that is reasonable for everyone involved. B. Pfau asked if the applicant

has tried to purchase additional property to make the lot bigger and Bob Lichtenstein said yes, they tried to purchase property from the adjacent property owner, but that was not acceptable, then they tried purchasing property to the west to solve this problem and that too, was not agreeable.

B. Pfau asked how a two-bedroom home would reduce the size of the proposed mound. Bob Holmes said that (1) as far as the length of the Elgin system, they could reduce it by one-third, (2) if they were to reduce the size of the encompassing retaining wall itself, it wouldn't enable him to retain a large amount of the basal area, but he would like to retain as much as possible and (3) in answer to the question, yes, he can reduce it, but it is not a straight lineal reduction from three-bedrooms to two-bedrooms being an automatic one-third reduction in the size of the system. T. DePace asked if the applicants are aware of any deed restrictions like those mentioned by Mr. O'Hearn and Bob Holmes said no, that is not something they are aware of.

K. Hoopes said that (1) at this point, it is the location of this thing that is the most critical and (2) he doesn't think reducing the system by as much as one-third would reduce the visual or physical impact of its positioning by an amount worth sacrificing one-third of the house for. B. Pfau said that he would like a plan showing what the retaining wall would look like including materials to be used and any screening proposed. Bob Holmes said that the sky's the limit as to materials you can use to make it look natural. B. Pfau said that he was expecting the applicant to come in with a plan showing those items he spoke of—something to mitigate the looks of this. K. Hoopes said that the ZBA could put that as a condition of approval and Bob Holmes agreed.

Tim O'Hearn asked if the ZBA could override his deed restriction and Counsel said no. Atty. Bitter said that (1) she is not familiar with any restriction of the sort and (2) Mr. O'Hearn's rock wall is definitely encroaching within the 15 ft. setback, if that was the case. K. Hoopes said that if there is any deed restriction, it supersedes what the ZBA does.

Frank McDonald said that (1) at the last meeting one of the ZBA requirements was that Atty. Bitter contact Mr. Waehner to discuss if there was something that could be worked out to help resolve the situation; was that done? (2) Atty. Bitter said that (1) she did not reach out to Mr. Waehner as they were able to pull the retaining wall back an additional four ft. and (2) the reason she was planning on reaching out is because they didn't have any area to maintain any vegetation and there was a question with the trespass issue, which is why they decided to move forward with the project and make the modification as presented. G. Smith asked if Atty. Bitter actually spoke to Mr. Waehner and Atty. Bitter said no. Tim O'Hearn said that (1) he is the adjacent neighbor and thinks the property is valuable and (2) he doesn't understand why he wasn't contacted. Atty. Bitter responded by saying that the purpose of this proposal is to try to construct a residence.

G. Smith said that (1) the applicant has the option to have the ZBA vote on this, which would require four affirmative votes for granting the variance or it can be kept open to next month with hopefully a full ZBA and (2) he gets the feeling from ZBA members

that they would like to see additional documentation so they know exactly what this would look like in a photo picture when this whole project is completed. K. Hoopes said that he is willing to put it into a motion that if screening is proposed it would be satisfactory to him. Atty. Bitter (1) said they would like to table the matter allowing them to provide a rendering and (2) asked if there is any information on any covenants. Counsel said that the ZBA would also like to have Atty. Bitter's opinion as to whether or not there is a covenant. B. Pfau said that this is the attempt the ZBA is making to make this mound look as natural as possible and K. Hoopes said that a sample of the material would be helpful too.

Now, upon motion duly made by William Pfau and seconded by Tony DePace, the board does hereby table the application pending additional information as follows: 1) deed restrictions that may apply, 2) rendition of the retaining wall, 3) materials to be used and 4) screening if proposed. Jeff Anthony recused himself. **All others in favor. Motion Carried.**

2) **V07-35 MITCHELL, KAREN & EDWARD.** For the construction of a proposed 24 ft. x 24 ft. garage, seek area variance for a deficient shoreline setback; 100 ft. is required, 76 ft. is proposed. Section 124.00, Block 1, Lot 4, Zone LC25. Property Location: 742 New Vermont Road. Subject to WCPB & APA Review.

Karen Mitchell gave an overview and said that (1) they propose to build a 24 ft. X 24 ft. double-car garage next to their house, (2) they have a stream that runs along New Vermont Road that is only 76 ft. from the back of the garage and (3) they don't have any other flat area on the property to put the proposed garage.

G. Smith asked if the existing driveway will lead to the proposed garage and James Palazzo, project contractor, said yes. G. Smith asked if they would have to bring in any fill and James Palazzo said no. B. Pfau asked if stormwater measures will be used to protect the stream and James Palazzo said (1) yes, they will be doing stormwater and (2) the silt fence is up right now. James Palazzo said that it is a very tough lot and the proposed area is the only available area for a garage. G. Smith agreed.

No correspondence.

The WCPB determined no County impact by default approval, no action was taken, as there was no quorum.

No comments of public in attendance.

G. Smith said that he doesn't have a problem with this.

RESOLUTION

The Zoning Board of Appeals received an application from Karen and Edward Mitchell (V07-35) 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 by default approval, no action was taken, as there was no quorum;

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) There will be no undesirable change in neighborhood character or to nearby properties, it is a garage in a residential neighborhood and there have not been any objections from the neighbors;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, it is the only level spot on the lot and still quite a way from the road and the stream;
- 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, silt fences will be used during construction and there will be stormwater measures;
- 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.

- 3) **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. Subject to WCPB & APA Review.

Chet Oliver Jr. gave an overview and said that (1) the existing property was built in the 1950s or 1960s, (2) there is little available living space in the cabin, which was originally built for seasonal use, (3) the only storage they have is under the screen porch, (4) they are in desperate need of living space, (5) they propose to extend the cabin 4 ft. toward the creek, (6) adjoining property owners, the Schiffers, are in favor of the project and they have no problem with the applicants moving closer to the property line, (7) the Association President submitted a letter of approval for this project. Mr. Oliver then referenced the map to further detail the proposal.

B. Pfau asked how much higher the proposed structure will be and Chet Oliver said that according to the covenants and bylaws of the association, the property is looked at by the natural grade. Mr. Oliver then explained by referencing the maps and said that (1) their proposal is to go 17.5 feet off of the natural grade being a total of 22.5 ft. from the ground level up, (2) it will be about 23 ft. from the low side to the peak and (3) both of these measurements meet association requirements. B. Pfau asked how much higher the proposed structure would be and Chet Oliver said approximately 10 ft. B. Pfau asked if anyone's view would be obstructed. Chet Oliver said that (1) there is a vacant lot behind him, (2) there is a home on top of the hill, which is probably a good 50 ft. higher than where he is and (3) he checked with most of his neighbors and nobody has any qualms or problems with the design plans as presented to the ZBA. G. Smith noted the applicant said most of the neighbors, so there may be some that have issues with the plans presented. B. Pfau asked if it would be two full stories and Chet Oliver said yes. B. Pfau asked if that is typical for that area now and Chet Oliver said that (1) most everybody has added onto or done something with their structures and (2) they didn't want to impede on the intermittent stream, which is why they decided it best to go up and only going out 1 ft. on the back side. B. Pfau asked if the proposal would be a total rebuild and Chet Oliver said no.

The WCPB determined no County impact by default approval, no action was taken, as there was no quorum.

Correspondence: P. Kenyon noted that the only correspondence received was that of approval from the president.

From the public, John Englert, adjoining property owner said that (1) he and his wife live directly behind the applicant's property, (2) a couple of years ago about 20% of their water views were interrupted by new construction in front of their house, (3) if the applicant goes up they lose all water view, (4) he has been told by people from Caldwell Banker that this project would reduce the value of their home by \$75,000 and additional proposed work would decrease the value an additional \$25,000 (these areas were pointed out on the map), (5) he doesn't think it is fair and (6) he would like to see the applicants be able to expand, as families do get larger, but not as proposed. He then handed out

pictures for the ZBA members to review and referenced the map to show where his house is in relation to the applicants proposed project.

J. Anthony asked if there are any rules or regulations in the Lagoon Manor HOA saying that you have to maintain somebody else's and John Englert said no.

K. Hoopes said that he would have liked to have had floor plans submitted. G. Smith asked if the applicant considered a single story addition to the existing structure rather than a second story addition and Chet Oliver responded by saying that the architect he spoke with said that with the intermittent stream on the back side of the property, it would be better to go up. K. Hoopes said that he agrees that going up is preferable, but he'd still like to see a floor plan that he can review prior to coming into a ZBA meeting. B. Pfau said that (1) the ZBA has lots of variance requests for expansions in these old cottage communities, (2) typically it is important that expansions not affect the views of any neighbors for starters and (3) he'd hate to support the project if there is a chance of diminishing views happening—there are claims being made.

T. DePace asked the dimensions of the screened in porch and Chet Oliver said that it is 8 ft. X 24 ft. J. Anthony asked when the applicant is looking to begin the project if approved and Chet Oliver said September 2007. J. Anthony said that he would feel more comfortable looking into it further and looking at it from the neighbor's house to see what they would be approving.

From the public, William Nutland, neighboring hotel owner, said that he was at the site today and it is densely forested—there is no lake view there.

From the public, John Gaddy said that (1) he thinks this type of project is like horse-dealing, (2) when first approached at the PB in the Conerty house being raised up, it was going to block the view of the neighbor and when the applicants in that case came back with a new plan, the house turned out beautiful and (3) he thinks they'd like to avoid a situation like Hondah Cottages where people seem to be going higher and higher.

G. Smith said that (1) it is the applicant's option for the ZBA to continue or to table the item to next month, (2) the applicant would need four out of five ZBA member affirmative votes for this to be approved—the feeling he is getting is that is not going to happen, (3) if the ZBA members vote on this and the applicant loses, the applicant will have to start all over, (4) if the ZBA tables it to next month, the PH will be left open and the ZBA can figure out the views and take it from there and (5) he doesn't feel comfortable giving this variance out tonight himself. K. Hoopes said that he'd like to see a floor plan next month. Chet Oliver requested to keep the PH open until the August 2007 ZBA meeting.

RESOLUTION

Now, upon motion duly made by Kam Hoopes and seconded by Tony DePace, the board does hereby table the application pending additional information as follows: the existing

and proposed floor plans to be submitted. **All in favor. Motion Carried.** *Note: Tabling this application will allow the ZBA members to make a site visit to determine if neighbors lake view will be effected.*

- 4) **SALAMONE, KENNETH.** Represented by Bruce Mowery. To demolish and rebuild guest cottage, seek area variance for deficient setbacks. 1) Shoreline; 75 ft. is required, 0 ft. is proposed. 2) Side; 20 ft. is required, 8 ft. is proposed. Section 213.05, Block 1, Lot 6.1, Zone RM1.3. Property Location: 4124 Lakeshore Drive. Subject to WCPB & APA Review. *Note: This item is in conjunction with SPR07-28 for an accessory structure greater than 1,500 sq. ft of floor space.*

Bruce Mowery, representing Kenneth Salamone, gave an overview and said that there is an existing guest cottage that they are proposing to move 10 ft. to the south in order to work on renovating it without having any construction on the neighbor's adjoining property.

Discussion ensued as to the actual distance being requested, with the conclusion being that the applicant would like it to be 10 ft. away at its closest point from the property line. K. Hoopes asked if they are also expanding to a second story and Bruce Mowery said that what they are actually doing is maintaining the walk-in to the existing main form of the cottage right now—it is all open and sitting on stilts—and they would like to close that in so you are creating a closed in lower level. B. Pfau asked if the applicant is proposing a second story and Bruce Mowery said no, there is no second story, they are actually enclosing a lower level that is open right now. B. Pfau asked how much higher this structure is than the existing structure as viewed from the lake and Bruce Mowery said that it is approximately 7 ft. only because of the height of the roofline. B. Pfau asked what would be seen from the lake and Bruce Mowery said that you would see an additional 7 ft. of roofline from the lake. K. Hoopes asked if this will be followed shortly by a restoration of the main house and Bruce Mowery said yes, this will be a place for the owner to live in order to enable them to work on restoring the main home. Bruce Mowery added by saying that they would have to put in the septic system, which would be a pump-up system way up by the road. B. Pfau asked how the view would be looking west from the lake. Bruce Mowery said that it would blend right in, as the ledge itself is above the existing house now. T. DePace asked if the applicants would have to take the kitchen out of the guest cottage after the main house is built and Bruce Mowery said that it is a guest cottage, so it would have to follow the criteria when the main house is done, that criteria for a cottage would apply. P. Kenyon said that this plan is going before the PB too.

B. Pfau said that his only concern is building on the steep slopes in this location and safely building on this steep site. Bruce Mowery said that primarily what you are dealing with for any construction on that site is rock, so there would be either hay bales or siltation fence put around the shoreline anyway.

The WCPB determined no County impact by default approval, no action was taken, as there was no quorum.

No comments of public in attendance.

P. Kenyon asked if the proposed 10 ft. includes the overhangs and Bruce Mowery said yes. Bruce Mowery added that the whole purpose of shifting the house to the south is to make the construction site itself workable without having to deal with going on any of the neighbors' property. K. Hoopes said that from the ZBA point of view, it does reduce an invasion of the setback, virtually doubling it. G. Smith said that (1) it would definitely be an improvement to the property as to what is there now and (2) he thinks it will blend right in with the ledge behind it with the trees on top of it.

RESOLUTION

The Zoning Board of Appeals received an application from Kenneth Salamone (V07-37) 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 by default approval, no action was taken, as there was no quorum;

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, there have been no objections from the neighbors, it will be desirable;
- 3) The request is not substantial, as this is an existing building and it is moving away from the property line;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, all of the various measures will be taken to ensure that is so;

- 5) The alleged difficulty is not self-created, because the cottage is pre-existing and it is moving farther away from the sideline setback.

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. **All in favor. Motion Carried.**

- 5) **V07-38 SPERANZA, MICHAEL & MARY.** Represented by James Palazzo. To alter pre-existing non-conforming structure. Specifically to increase the steps from 6 ft. x 8 ft. to 9 ft. x 11 ft. and to construct an approximate 700 sq. ft. patio, seek area variance for: 1) Deficient setbacks; a) front; 75 ft. is required from the edge of the right-of-way, 5 ft. is proposed. b) side; 20 ft. is required, 10.6 ft. is proposed. c) rear; 20 ft. is required, 15 ft. is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.07, Block 2, Lot 44, Zone RL3. Property Location: 52 Braley Hill Road. Subject to WCPB Review.

James Palazzo, representing Michael and Mary Speranza, gave an overview and said that (1) the applicant has had to use the side entrance to the house—the front entrance is not usable, as it is quite steep and (2) they propose to put a patio on the upper side so the applicant can use the front entrance of his house.

G. Smith asked if the old steps have been torn out and James Palazzo said yes, because they were unsafe—they were literally falling apart and the applicant has two children, so it was better to take them out than the kids getting hurt. G. Smith said that (1) that house has been there for years—it used to be a summertime cabin, (2) not much has been done with this piece of property prior to the applicant purchasing it and (3) since the applicant has bought the property, he has done a lot of work that has all been vast improvements—it is looking better every year.

James Palazzo said that for the front of the house, they propose to put some treated ¾-inch plywood down and stone it with river rock, in addition to putting in a new set of steps and a patio, so they have some usable space there. G. Smith said that it is understandable, as it is steep. J. Anthony asked if there will be landscaping and James Palazzo said yes, if approved all of the landscaping would be put in as presented on the plan.

K. Hoopes said that (1) it looks like the edge of the right-of-way runs right through the corner of house. G. Smith said that the corner of the house is pre-existing—they are measuring from the patio area. Counsel said that the setbacks for new construction are accurate as presented. G. Smith said that he thinks it will be another fine improvement on this piece of property.

No comments of public in attendance.

The WCPB determined no County impact by default approval, no action was taken, as there was no quorum.

RESOLUTION

The Zoning Board of Appeals received an application from Michael and Mary Speranza (V07-38) 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 by default approval, no action was taken, as there was no quorum;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by 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, if anything this will have a beneficial change in the character of the neighborhood by improving the landscape and visual qualities of the neighborhood;
- 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. **All in favor. Motion Carried.**

- 6) **V07-39 SENESE, JIM & ANN MARIE.** Represented by Kevin Kershaw. To alter pre-existing non-conforming structure. Specifically to replace an existing deck with a 22 ft. x 23 ft. addition, and a 12 ft. x 22 ft. deck on the east side, seek area variance for: 1) Deficient front yard setback. 30 ft. is required, 17 ft. minimum is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 3, Lot 77, Zone GB5000. Property Location: 3 Congers Point Way. Subject to WCPB Review.

Kevin Kershaw, representing Jim and Ann Marie Senese, said that (1) they propose to put an addition on their existing home, (2) they would be taking some of the deck off from the front. He referenced the survey map he said he received at 4:00pm today.

P. Kenyon said that she and Kevin Kershaw spoke about having a survey done, but it wasn't available when the agenda was due, so things might change a little bit. K. Hoopes asked if it would be changed on the back from 17 ft. to 18.3 ft. and Kevin Kershaw said yes. Kevin Kershaw said that some of the numbers got larger and G. Smith said that is good. P. Kenyon asked what the front-yard setback is and Kevin Kershaw said that it is 22.7 ft. P. Kenyon said that it looks like the 22.7 ft. goes to the middle of the right-of-way. K. Hoopes asked what the proposed addition is to the right-of-way and Kevin Kershaw said it's about 12 ft. Further discussion ensued about what variances are actually being sought and P. Kenyon said that all that would be required is a variance for 12 ft. for the front-yard setback.

Correspondence: Referenced above, but not read into the record.

- Letter from Congers Point Association – favorable

G. Smith asked if Congers Point Association approved it and P. Kenyon said yes.

B. Pfau said that it seems like there is plenty of room for additions in the front of the house and G. Smith agreed saying that it is all lawn. K. Hoopes asked if it would be on stilts and Kevin Kershaw said no, it would be a full foundation.

The WCPB determined no County impact by default approval, no action was taken, as there was no quorum.

No comments of public in attendance.

G. Smith said that (1) the applicant is basically expanding the setback they already have out a few feet and taking out the other one and (2) he has no problem with the request.

RESOLUTION

The Zoning Board of Appeals received an application from Jim and Ann Marie Senese (V07-39) 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 by default approval, no action was taken, as there was no quorum;

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) There will be no undesirable change in neighborhood character or to nearby properties, it is an addition on an existing home with no objections from the association or the neighbors;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, as the setbacks from the right-of-way cannot be met;
- 3) The request is not substantial, it is one variance request;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it is far away from any waterways and blocking no views;
- 5) The alleged difficulty is probably self-created, because the applicant is choosing to put the addition on.

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 Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor.**

Motion Carried.

- 7) **V07-40 MARIA A. TRAVALLY REVOCABLE LIVING TRUST.** Represented by Augustino Travally. For the placement of a proposed 10 ft. x 20 ft. garage, seeks area variance for deficient setbacks; 1) front; 50 ft. is required from the edge of the private right-of-way, 10 ft. is proposed. 2) Sides; 20 ft. is required, 10 ft. is proposed on both sides. Section 186.15, Block 1, Lot 44, Zone RM1.3. Property Location: 158 Homer Point Road. Subject to WCPB Review.

Augustino Travally, representing Maria A. Travally Revocable Living Trust, gave an overview and said that (1) he'd like a place to store a car for the winter, which necessitates the need for the garage and (2) he's checked with the neighbors and they seem in favor of the project.

G. Smith said that it sounds like a good reason to him. B. Pfau asked if the right-of-way is for the applicant and his neighbor to which Augustino Travally said yes. B. Pfau asked if the applicant needs relief from that because it is a shared driveway and G. Smith said (1) yes, because it is a right-of-way, (2) also the property isn't wide enough for it to fit there and (3) it is going to be up behind the house and screened by the house—it is perfectly centered.

Correspondence: noted by P. Kenyon for the record.

- Letter dated 3/18/07 from John and Nancy Chimento - favorable
- Letter dated 6/19/07 from Stewart Jones - favorable

No comments of public in attendance

The WCPB determined no County impact by default approval, no action was taken, as there was no quorum.

RESOLUTION

The Zoning Board of Appeals received an application from Maria A. Travally Revocable Living Trust (V07-40) 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 by default approval, no action was taken, as there was no quorum;

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item #7 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, it is a dimensional consideration and the applicant has a whole 30 ft. of leeway;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, from the lake this is screened by the house and from the road it is heavily wooded;
- 3) The request is not substantial, it is just big enough for the one car the applicant wants to store and maybe some other items;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it is a pre-fabricated one-car garage;
- 5) The alleged difficulty is not self-created, because that bad lot probably pre-dates Augustino Travally.

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. **All in favor. Motion Carried.**

8) V07-41 BELL, RAYMOND & ANN MARIE. For the construction of a proposed 23 ft. x 25 ft. addition seek area variance to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.16, Block 1, Lot 13, Zone RCM1.3. Property Location: 54 Bell Point Road. Subject to WCPB Review.

Raymond Bell gave an overview and said that (1) they propose to put a 23 ft. X 25 ft. addition on (included overhangs) and (2) they propose to move the driveway from one side of the house to the other.

G. Smith asked the size of the applicants' lot and Raymond Bell said that it is 140 ft. X 159 ft. B. Pfau asked what part of the structure does not meet setbacks and Raymond Bell said that there is a small overhang in the back, so the rear setback is 18 ft. instead of 20 ft.. P. Kenyon said that it is a result of the new ordinance change. G. Smith said that (1) last year the applicant wouldn't have needed to be here and (2) this is very minimal. B. Pfau asked about the steepness of the drive itself and Raymond Bell said that the first 15 ft. is a little steep, but then it flattens out up top—it is not on a straight hill.

No comments of public in attendance.

The WCPB determined no County impact by default approval, no action was taken, as there was no quorum.

No correspondence.

All ZBA members agreed that this item is cut and dry—as simple as it gets.

RESOLUTION

The Zoning Board of Appeals received an application from Raymond and Ann Marie Bell (V07-41) 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 by default approval, no action was taken, as there was no quorum;

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) There will be no undesirable change in neighborhood character or to nearby properties, it is a garage being added on to a house in a residential area;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, it is needed because the existing structure does not meet current setbacks;
- 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 Bill Pfau and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion Carried.**

- 9) **JACK YATTAW.** In accordance with Section 200-72 of the zoning ordinance, seeks to appeal the Zoning Administrator's determination that the dwelling located at 18 Thunderbird Road is considered a single-family dwelling. This determination is based upon 1 one electrical meter that exists and there being free access throughout the structure. Mr. Yattaw's position is that the dwelling is considered multi-family. Section 213.13, Block 1, Lot 2

Jack Yattaw gave an overview detailing dates and events and said that (1) he and his wife purchased the lot in September 2003 and built their home in 2004, (2) in 2005 they were approached by a person who was renting the basement of the home next door asking if they would be interested in items she had for sale in her garage sale—they were concerned because they had no knowledge of renters next store, since it was a single-family home, (3) the next day he approached Mr. Andrew Rohs (neighboring homeowner) about it and was told it was a friend and that he (Rohs) was renting to and that he (Rohs) was never going to rent anymore because of problems he had with some other tenants, (4) a short time after that he found out a family of four was living at Mr. Rohs' home—he and his wife were concerned about the possibility of Mr. Rohs renting it again and having undesirables living there, (5) on August 15th he found there were people living in the apartment downstairs and upon approaching Mr. Rohs, he was told that Mr. Rohs was renting the downstairs to a family of five and he planned on renting it for two years, (6) on August 22nd he spoke to P. Kenyon and M. Nittmann inquiring if a permit was needed for the renting of the downstairs apartment—he was told by M. Nittmann that Mr. Andrew Rohs would need a special permit to rent the downstairs apartment—no record was found in the file, (8) shortly thereafter the family of five moved in and he called and spoke with M. Nittmann who told him she had to talk to Town Counsel and she would get right back to Mr. Yattaw, (9) the following day M. Nittmann called him and told him she talked to Town Counsel and there was no way Mr. Rohs could have an apartment downstairs unless he went through a Type II Site Plan Review and got a variance and that she'd be writing an inquiry letter to Mr. Rohs, (10) he (Mr. Yattaw) called M. Nittmann on Sept. 1st, 2nd, and 3rd—he finally talked to P. Kenyon who told him he should go through the ZBA and Town of Bolton minutes, which he did—all the way back to 1963 or 1964, (11) problems began next door with garbage being thrown on his property, which prompted him to send a letter to M. Nittmann, Town Counsel and the Town of Bolton Supervisor, (12) shortly thereafter, M. Nittmann called him (Yattaw) and told him she would talk to Mr. Rohs about the situation and she needed to find out about a separate stairway, separate utilities, etc., (13) he called M. Nittmann again, who said she'd talked to Mr. Rohs and she'd try to get a hold of Town Counsel and get back to Mr. Yattaw, (14) in 1995 Mr. Rohs' structure was assessed as a two-family residence, by Ms. Rehm who was the assessor at that time and (15) he was told that perhaps Mr. Rohs was grandfathered in and in speaking with P. Kenyon the following day, he was told by P. Kenyon that there was no such thing in the Town of Bolton as someone being grandfathered in, (16) the following day he spoke with M. Nittmann again—this was the sixth time he communicated with her—and she said she was still waiting to hear from Town Counsel, who wound up being away for three days, this was October 6th.

T. DePace interrupted and said that he thinks the ZBA gets the gist of the situation and asked what the ZBA is being asked here. P. Kenyon said that Mr. Yattaw is appealing her decision whereby Mr. Rohs' structure is a single family residence. T. DePace asked how many years it has been assessed as a multi-dwelling and Jack Yattaw said that he was told since 1995. P. Kenyon said that (1) they need to go by the code and not the assessor, (2) there are three aspects to go by--M. Nittmann went and took pictures—it comes down to what the Town's definitions of "a family," "a single family dwelling," etc. and (3) in looking at it, it takes you back to a single family dwelling. B. Pfau said that (1) the disagreement is that P. Kenyon is saying that it is a single family dwelling and it is being used as a single family dwelling and (2) Mr. Yattaw is saying it is being used as a multi-family dwelling. P. Kenyon said that is correct. Counsel said that there is a subtlety here—he totally agrees with P. Kenyon—the subtlety is that two families can reside in a single family dwelling. K. Hoopes said that (1) they went over this before and (2) they were very loathe to, try to define what a family is in the modern age. Counsel responded by saying that (1) the struggle early on up to 5 years ago was the proposal in Bolton by some new troubadours that they would like to take some apartment dwellings and "pack" people in them—people who were summer help—and they went over it, consulted with the APA and checked the Town of Bolton definitions, (2) there is very precise law in NYS where some of the issues that they have to delicately balance are the economic units—meaning how many people live like a family, what are the meter situations for the building, are there accessibility to a barriers within a structure, taking it all in a very comprehensive approach to Mr. Yattaw's complaint, (3) he has no challenge with Mr. Yattaw that he is probably absolutely correct that there are people who are not related to the record owner of the property who occupies spaces in that person's home, (4) that nevertheless, by NYS law does not make it a multi-family dwelling or a two-family dwelling and not by the Town of Bolton definitions, as well, (5) in free interchange non-barriers within the facility, the fact that there is one meter, is substantially controlling, (6) the assessment issue is an awkward collateral confusing aspect that neither makes nor breaks the case for the owner—that is just confusing—they are just back to current law, (7) when Mr. Yattaw says that there was some explanation offered by someone in Bolton that the use could be grandfathered, a use is not grandfathered in this setting and (8) the one and only issue is that P. Kenyon in applying code as it defines single-family dwellings and the advice he gave her based on NYS case law is simply that if they can find barriers within the dwelling so that there are separate spaces and the argument starts to be successful in that it is more than a single-family dwelling with more than one meter, the argument is successful in that it is more than a single-family dwelling—those facts are not present here. B. Pfau asked if it is correct that Mr. Yattaw wants P. Kenyon to consider this a multi-family dwelling which would make it illegal at this point and Counsel said yes, but under current NYS law they can't and under current code definitions it does not add up to that.

Mr. Yattaw handed out items to the ZBA and said that the Town of Bolton definition of multi-family dwelling, is exactly what Mr. Rohs has done. G. Smith said that this is not separate—it is considered one house and K. Hoopes said that they are also all on one meter. Mr. Yattaw said that multi means more than one and there are two families there.

K. Hoopes said that they understand why the ZBA's hands are bound by this thing because the legal and zoning. Mr. Yattaw gave the definition of "single-family". K. Hoopes said it says "one family or household", which doesn't mean they have to be genetically related. G. Smith asked what the next thing Mr. Yattaw could do and P. Kenyon said that it is a deed covenant, that they can't have a multi-family structure and Counsel said that Mr. Yattaw has the private right to sue on this contract to enforce the covenant. P. Kenyon said that Mr. Yattaw could also go to the TB. G. Smith said that the ZBA can't override the Town Code. K. Hoopes asked if it is a civil matter at this point and Counsel said yes—it always has been.

Mr. Yattaw said that Mr. Rohs is renting it and he can't rent it unless he rents the whole building, but there are two families living there at the same time. G. Smith said that Mr. Yattaw's course of action would be to take Mr. Rohs to court. Mr. Yattaw said that (1) being retired for 10 years, he doesn't have the money to do that as he has already spent it on legal fees and (2) what he doesn't comprehend is that he was told that Mr. Rohs had to have a special variance, which he doesn't have.

P. Kenyon said that if this was considered a multi-family or two-family dwelling, it would have required a variance and it would have required site plan review for a multi-family dwelling, but that it not the case here—it is her position that this is a single-family dwelling based on what has already been stated. Counsel said that (1) in many instances and many codes, they find the issue is where the people are related, but separate economic units, (2) then there are experiences where a lot of this law has grown out of is in the middle 1980s through the 1990s where the State of NY closed many of the institutions for the developmentally disabled and mentally retarded and moved these people into single-family residential districts—these are unrelated people, yet they would take a house and convert it to 6, 8, 10 bedrooms, put a swimming pool out there and a parking area and these people were not being considered the traditional or DNA family, but they were certainly defined by NYS law as a family, (3) then cases began to construe for alternate or different lifestyles where some people were family and others just worked in the same place (an example would be Chinese restaurants where they get a single-family residence and pack 20 people in there for the season), (4) they rely very, very heavily on case law construction, their code language, but they looked at the structure, which is defined in the NYS housing code, (5) when there is one utility bill, it is considered a single-family residence and (6) Mr. Yattaw's complaint is well-founded and simple, that is that if there is a covenant within his deed restrictions that says these are single-family residences, he thinks Mr. Yattaw raises a very valid challenge in that context and venue, but not pounding away on the code. G. Smith asked if Counsel could provide the applicant with legal advice as to what he should do. Counsel said that Mr. Yattaw's remedy is not in the code. K. Hoopes said that this type of scenario is not so recent, as there are other examples like people renting space in houses, servants, babysitters living in houses, etc. P. Kenyon said that the Town of Bolton definition of family is very lenient and was adopted on 04/06/04. Counsel said that comes out of a court of appeals case in NYS that required the Town of Bolton change it.

G. Smith said that he is sorry the ZBA can't do anything for Mr. Yattaw and he certainly feels for him in the situation he is in. Mr. Yattaw said that (1) he thinks the ZBA is setting a precedent and G. Smith said that the ZBA is not setting a precedent—it is the Bolton Code and that is what they are obtained to go by. Mr. Yattaw said that (1) it doesn't seem right, (2) he had to call the police because the teenagers next door, and Mr. Rohs was there were pointing a gun at him and his wife and their house and (3) the neighbors are vomiting and depositing trash all the time in his yard. G. Smith and K. Hoopes said those are all matters for civil court. P. Kenyon said that those matters could be reported to the police. Mr. Yattaw said that these items have been reported and the police have been there. G. Smith said that the police record would be helpful for Mr. Yattaw in a civil court as well.

RESOLUTION

Now, upon motion duly made by Jeff Anthony and seconded by Tony DePace, it is resolved that the ZBA does hereby uphold the Zoning Administrator's interpretation, whereby the dwelling located at 18 Thunderbird Road is considered a single-family dwelling, due to the fact that there is free access throughout the structure, and only one electrical meter exists. **All in favor. Motion Carried.**

10) Pamela Kenyon, Zoning Administrator seeks interpretation as it pertains to density for time-shares. For density purposes, 7,500 sq. ft. per principal unit is applied. The same density that is applied to apartments.

P. Kenyon said that (1) this is the result of her conversations with two developers regarding property in the GB5000 Zone—their intent was to maybe develop a piece of property as timeshares, (2) they (developers and Kenyon) didn't really have anything specific to go by, which is why she is seeking ZBA interpretation. P. Kenyon said that she provided the ZBA with a three-page synopsis and then she explained that document. P. Kenyon said that (1) according to the Zoning Schedule, residential detached units require 20,000 sq. ft. per principle building, condominiums and cooperatives require 20,000 sq. ft. for the entire building, apartments require 7,500 sq. ft. per unit, (2) in Section 200-40(A) it says that "...multi-family dwellings is as follows: the minimum land that is necessary for individual dwelling units shall be a minimum of land area required by the Zoning Administrator...", but she couldn't refer to that section because she had to go right back to GB5000, (3) said that she went through all the definitions, came up with a definition of "condominium" and "cooperative" and how they were referenced as shown above, (4) she considers a multi-family dwelling any apartment which is purported back to the 7,500 sq. ft. and any apartment, townhouse, condominium or similar building including a conversion of an existing single-family dwelling designed to occupy a separate dwelling unit sharing by more than one family, any such building between two or more separate dwelling units used on a timesharing basis and (5) as she read through the Zoning Schedule, it made the most sense to her that as she picked up timeshare in the same definition of dwelling multi-family where she found "apartment" she would go to 7,500 sq. ft.

K. Hoopes said that looks logical to him. P. Kenyon continued saying that (1) the other item she highlighted was a principle building in part only, which means—each dwelling unit of a lawful family dwelling including separate dwelling units used as timeshares...constitutes one principle building...”, which brings her back to timesharing which she found in multi-family under “apartment” which lead her to the 7,500 sq. ft. and (2) when she dissected the ordinance, she came up with timeshare density in the GB5000 being 7,500 sq. ft. per unit.

J. Anthony said that (1) he researched this by going to the zoning law and found the exception just as P. Kenyon did—residential detached 20,000 sq. ft., condominium property 20,000 sq. ft. and apartment 7,500 sq. ft., (2) there are definition problems in that “timeshare”, “cooperative” and “condominium” are really forms of ownership—not types of structures, so they are not physical structures and don’t relate to the physical appearance of the building, (4) his approach would be that until the Zoning Administrator has an application that comes in, the Zoning Administrator has to keep all of the three categories open and pigeon-hole the project into one of those categories to fit one of those square foot requirements, and (5) he thinks the trick to this is that you can’t pick one and apply it to all timeshares.

P. Kenyon said that she didn't think she could apply “condominium,” because that definition is partly “...a building or group of buildings in which dwelling units are all individual...” Counsel said that (1) Jeff Anthony is correct in that “condominiums”, “cooperatives” and “timeshares” are forms of ownership and (2) if you try to bring in some structural aspect it is a “quartet”. Jeff Anthony said that the Zoning Administrator would need to determine what the structure is. Counsel said that physically it was a structure that had common walls, some common amenities, sharing shoreline amenities, but multiple users, so it would be timeshares.

K. Hoopes said that they should be talking about square footage requirements—not methods of ownership or rental. Counsel said that (1) there is an awful lot of confusion in this particular topic, which Bolton is not adequately prepared for in the current code and (2) he doesn’t know where the new code is on this issue. P. Kenyon said that (1) when they met with Lisa Nagle, they discussed “timeshares” since Bolton doesn’t really have anything specific in its code and (2) Lisa Nagle had just done the ordinance for the Village of Lake George where they dealt with this—she asked if this could be done in Bolton and was told there is a difference between doing it in a “village” as opposed to a “town”. Counsel agreed and said (1) that Bolton has had several developers come to see the Zoning Administrator and they have asked the same question, (2) there was an inquiry a few years ago if what was being proposed as a “hotel” was actually “timeshares”, (3) Bolton is simply not in sync with what development ideas are coming forward and (4) Zoning Administrator P. Kenyon, rightly so, is struggling with this—he can’t take issue with how she is analyzing it, but they have to get back to “what is a timeshare?”. K. Hoopes said that it is a bad term to use as a definition for building and Counsel agreed, saying that it is a bad term to use as a development aspect—it is an ownership aspect. K. Hoopes said that if they are in a commercial GB5000 Zone and it is

an allowable use and the question should be what the units are to be used for. T. DePace said that it is not something the Zoning Administrator has to make a decision on right then and there. Counsel said that, a gentleman interested in developing came in and asked a very valid question that requires an accurate answer because they are about to lay out a proposal on a contract to this seller on how to develop that parcel—obviously the maximum potential for development determines what this property is worth.

J. Anthony said that this might be a determination P. Kenyon has to go to the ZBA with rather than making the interpretation herself. P. Kenyon said that she is comfortable with sending it right to the ZBA. Counsel said that (1) the Zoning Administrator can do that and the ZBA would make the interpretation and (2) he thinks it is important for the Zoning Administrator to have a procedure like that because this is loaded in that it has pros and cons, perhaps supporters and opponents—it can just be done by the Zoning Administrator. J. Anthony said that (1) if they went with this process, then the developer would have a legal basis for a determination having been made by a board—they can take that to the bank then and at least know what arena they are playing in. Further discussion ensued on definitions.

Meeting 9:02 pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary

07/23/07