

**Town of Bolton  
ZONING BOARD OF APPEALS  
MINUTES  
Monday, June 18, 2007  
6:30 p.m.**

SEQR = State Environmental Quality Review  
PB = (Town of Bolton) Planning Board  
WCPB = Warren County Planning Board  
APA = Adirondack Park Agency  
LGPC = Lake George Park Commission  
DEC = Dept of Environmental Conservation

**Present:** Chairman Greg Smith, Jeff Anthony, Tony DePace, Kam Hoopes, Meredith McComb, Tom McGurl, Jr., Bill Pfau, Town Counsel Michael Muller, Zoning Administrator Pam Kenyon

**Absent:** None

Chairman Greg Smith opened the meeting at 6:30 pm by asking for corrections to the May 14, 2007 ZBA minutes.

**RESOLUTION**

Motion by Kam Hoopes to approve the May 14, 2007 minutes as presented. Seconded by Tony DePace. **Six in favor. One recused**, Tom McGurl, Jr. wasn't at that meeting. **Motion carried.**

*Note: Agenda items were heard in the following order: 1-6, 8-10, 12-16, 11, 7, and 17.*

*Note: T. DePace recused himself, as he is an immediate neighbor to the applicant.*

**1) V06-16b ENGLISH, EDWARD.** Represented by Eugene Baker. For the construction of a proposed 26.8 ft. x 32.8 ft. garage with storage, seeks area variance for deficient setbacks. 1) Front; 50 ft. is required, 15 ft. is proposed, and 2) Shoreline; 75 ft. is required from the mean high water mark, 30 ft. is proposed. Section 171.08, Block 1, Lot 12, Zone RCM1.3. Property Location: 18 Braley Point. Subject to WCPB & APA REVIEW. *The WCPB determined no county impact. Note: This item was tabled at the August 2006 meeting pending Town Engineer's review and approval of the stormwater plan.*

Eugene Baker, representing Edward English, gave an overview and said that there are a couple of existing portable garages that will be removed if the variance is granted. M. McComb asked if the garages to be removed are the ones on this site and across the road and Eugene Baker said yes.

B. Pfau asked if the garage is in the center of the available area and Eugene Baker said yes. G. Smith asked how much of the existing parking lot will remain and Eugene Baker said none—it will be removed and be turned back to grass or lawn. K. Hoopes asked about the number of accessory structures on a property and Counsel said the applicant would probably need a variance for more than one garage. P. Kenyon said that her position then and now is that three bays are allowed, so you can have a two-bay garage in

addition to a one-bay garage. Counsel said that the ZBA should stick with P. Kenyon's version, but he did have a discussion on a different file with P. Kenyon and Mitzi Nittmann and they were not clear as to whether there is a cap on accessory structures—there may be a possibility that you may have unlimited accessory structures. K. Hoopes said that it is not open-ended and Counsel agreed. T. McGurl asked if there is something that delineates a bay and P. Kenyon said no. M. McComb said that she hopes the new code addresses bay dimensions.

M. McComb asked about the 100 cubic yards of fill and Eugene Baker said that (1) it is just to level off the spot where the building is going to be and (2) he believes it is a 30 inch difference in grade from front to back. K. Hoopes asked if all of the extra fill would be part of the stormwater management and Eugene Baker said yes. B. Pfau asked if the Town Engineer has approved the project and P. Kenyon said yes.

No comments from public in attendance.

M. McComb said that (1) she believes this is a better location than the initial location right down where the existing portable garage was and (2) she would be happier if the area alongside the stream was going to be tall grasses instead of lawn. Eugene Baker said that it would be some kind of vegetation similar to the gardens the applicant currently has. M. McComb asked if the plantings would be those low to the ground and without fertilizer--low-maintenance and Eugene Baker said yes.

G. Smith asked if there would be any other projects on this property and Eugene Baker said no, not to his knowledge. 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 rock and (2) he suggests the applicants get the brochures from the LGA for reference. M. McComb said that she just read in the Lake George Mirror that a favorite food of geese is fresh re-growth on a manicured lawn and just grasses will keep geese from coming on the property.

No correspondence.

The WCPB determined no County impact.

## RESOLUTION

The Zoning Board of Appeals received an application from Edward English (V06-16b) 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) There will be no undesirable change in neighborhood character or to nearby properties, there have been no objections from the neighbors, it is a garage in a zoned area;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, in that there is a setback from 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, there is a Town-approved stormwater plan in place;
- 5) The alleged difficulty is 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 William Pfau and seconded by Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) The two portable garages are to be permanently removed from the site. Tony DePace recused himself. **All others in favor. Motion Carried.**

*Note: T. DePace rejoined the ZBA in his capacity as ZBA member at this time.*

- 2) **V06-31 KLING, STEVEN.** Represented by Matt Steves of VanDusen & Steves. To replace existing single-family dwelling with a multi-family structure (three apartments), seeks area variance for 1) deficient setbacks, a) Front; 30' is required from the edge of the right-of-way, 22.23' is proposed, and b) Side; a total of 20' is required, 19.19' is proposed, 2) density. 22,500 is required; 5,950.17 exists and is proposed, and 3) parking. 6 spaces required; 4 spaces are proposed.. Section 171.15, Block 1, Lot 63, Zone GB5000. Property Location: 3 Stewart Avenue. *The WCPB determined no county impact with the condition that appropriate stormwater and erosion controls are implemented. Site Plan Review is required for a multi-family structure but has not yet been applied for. This item was tabled at the August 21, 2006 meeting pending further review.*

Matt Steves of VanDusen & Steves, representing Steven Kling, gave an overview and said that (1) the applicant has decided on proposing three apartments for the floor plan, (2) the existing house is approximately the same shape and distance off the road as that proposed, (3) they will be getting rid of the garage on the southwest corner of the property, (4) they propose to get rid of the asphalt driveway to the west side and (5) they are proposing to enter from the front.

M. McComb asked what the access to the upstairs apartment is and Matt Steves said that the upstairs apartment would be accessed by stairs and an elevator. M. McComb asked if this proposes another curb cut from what is currently there and Matt Steves replied by saying that they are relocating the curb cut which is currently on the west side and will be moved more to the east side to allow access to the garage and to create two parking spaces. G. Smith said that the access would be on the Market Place side as opposed to the McDonalds' Apartments on the other side of the property and Matt Steves agreed.

T. McGurl asked the current paved surface to proposed paved surface and Matt Steves said that the existing non-permeable area is 3,552 square feet and 3,412 square feet is proposed.

K. Hoopes said that (1) this is a minor adjustment, (2) the major adjustment is that this is a much more complete plan, which he doesn't see a problem with and (3) the town needs housing and this actually includes some parking with it.

The WCPB determined no County impact with the condition that appropriate stormwater and erosion controls are implemented.

M. McComb asked about the WCPB conditions in regard to if there is ample room for stormwater and erosion measures and Matt Steves replied by saying that (1) they have more room to accommodate the condition, (2) this proposal will create more green space on both the east and west sides and (3) they will use downspouts, dry wells and trenches in their stormwater/erosion controls.

B. Pfau said that (1) this is a pretty clean request and (2) the only large request is the density, which he doesn't see a problem with. G. Smith said that the density already exists.

From the public, Frank McDonald said that (1) they own an adjoining property and (2) while they don't have an objection to the concept, they were interested in how it will affect their property. G. Smith said that it will actually be better than it is currently, because it will be all green space between the applicant's project and the McDonalds' building.

No correspondence.

## RESOLUTION

The Zoning Board of Appeals received an application from Steven Kling (V06-31) for an area variance as described above.

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

and, whereas the Warren County Planning Board determined that there was no County impact with the condition that appropriate stormwater and erosion controls are implemented;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it should be an improvement to those;
- 3) The request is not substantial, the most substantial request is the density, but it is in a GB5000 Zone and the increase in living quarters will not effect an increase in the density;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, stormwater and erosion controls will be implemented;
- 5) The alleged difficulty is not self-created.

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

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

- 3) **V06-38 SMITH, WAYNE.** Seeks 1) Area variance for commercial boat storage involving more than 5,000 sq. ft.; 17,125 sq. ft. is proposed. 2) To discuss/amend

conditions of approval set forth on January 26, 2004, when approving an area variance (V03-55) for commercial boat storage involving 7,000 sq. ft. and an indoor boat maintenance facility visible from the public right-of-way. Section 123.00, Block 2, Lot 59, Zone RL3. Property Location: New Vermont Road, approximately 1 mile east of Alder Brook Rd. (Directly across from 501 New Vermont Rd). *Note: This application is in conjunction with SPR06-41 for commercial boat storage and indoor boat maintenance facility. Favorable recommendation by the Planning Board with the following conditions: The storage of boats is limited to 85; the boat wash area is to be located behind the existing building; minimal indoor boat maintenance only is allowed; and no major repairs or oil changes are allowed.*

Atty. Susan Millington, representing Wayne Smith, gave an overview and said that they received a favorable recommendation from the PB regarding the storage of the 85 boats. Wayne Smith said that (1) he is requesting storage for an additional 50 boats, making a total of 85 boats allowed and (2) he would like to simply wash the boats—there will be no major repairs at that location. He then referenced the maps regarding the boat washing station and clarified the system design. G. Smith asked how many feet of stone is used and Wayne Smith said about 2 feet of stone. G. Smith said that the boat washing station plan looks like it would work well. Wayne Smith said that (1) the only other additional excavation he has planned is a small area to flatten out the slope of the hill (he showed the area on the map), which Mitzi Nittmann told him he didn't need a stormwater plan for and (2) he has already put silt fence in place in addition to putting in three dry wells at the request of the LGPC.

G. Smith asked if the applicant will be safely able to put boats on flat land up there and Wayne Smith said yes.

Wayne Smith said that his intention is to prep the boats at this location then make the deliveries directly to the lake or to the owner's dock, which will save congestion at his lakefront property. G. Smith asked if all boats would be stored inside or behind the Quonset hut—out of site and Wayne Smith said yes.

K. Hoopes asked if the applicant's house is sold if this would become an accessory structure without a primary structure and P. Kenyon said that she believes it is a separate parcel and because he has gone for a variance and site plan review before the PB, it doesn't make it an accessory, but rather a principal use. M. McComb said that (1) since this is over a 300% variance from allowable amount of boat storage plus a washing facility, she asked P. Kenyon if the animals on the property should be taken into consideration and (2) it seems like there are two fairly intense uses proposed for this one lot. Wayne Smith said that a 10-acre lot in 3-acre zoning could potentially be subdivided into three lots, (2) he is proposing to split it in half where there would be five acres of land basically dedicated to the boat area, (3) the reason he is going for the increase in boat storage is that the opportunity had come up for him to increase the boat storage, (4) he has had the APA and Warren County Soil & Water out—both organizations have approved the project and (5) the boat storage is 91 feet from the property line, which is the brook and the boat washing area would be over 200 feet from the brook, where the

requirements are 100 feet. M. McComb said that she took note of the silt fences and that the applicant is making an attempt to protect from the boat part of the facility, but at the same time there is a pond right behind the chicken house, etc. Atty. Millington said that by way of Warren County Soil & Conservation, the LGPC pressed the boat storage and the animals as well and are asserting jurisdiction because of what M. McComb is saying. M. McComb said that (1) all she has in writing is "...the proximity of the site to the brook increases the prospects that eroded soil will contact protected receiving waters in contravention of water quality..." and (2) asked if the applicant has anything else in writing. Wayne Smith said that the ZBA should have the letter from the APA saying there will be no impact on the brook.

G. Smith asked if a well is planned and Wayne Smith said eventually, yes, if the house is sold. T. McGurl said that (1) it seems that boat storage is less intrusive than a lot of other uses you can use in this zone—it is in the back of the property and (2) the applicant is not building houses or cutting down trees—the land is there anyway and the applicant is getting use out of his land. M. McComb said that this will be in the view of the prime lots of Saddlebrook and Bruce Mowery told her this property is visible from up top of that area. G. Smith disagreed and said that there is no way it is visible from there.

K. Hoopes said that (1) he has been critical of this project in the past, but he has noticed the tidied up nature—the area of the chicken coop is much more cultivated and not quite as gone wild as it was last year, (2) there is grass growing and a lot of the trees along the road have filled in—the screening is getting bigger by the moment and (3) it is a much better looking property this year than it was last year. Wayne Smith said that (1) it will only get better and (2) by this time next year the project should be completely finished, seeded and growing—there should be no open soil at all. G. Smith said that he goes by the area every day of the school year and he has seen a lot of work being done regarding planting, etc.

B. Pfau asked if the applicant has any problem with the conditions the PB recommended and Wayne Smith said (1) no, the boats will be run in the back area of the site for a short period of time—basically he will just put the plugs back in them and run them and (2) if he needs power he plans to use one of the new Honda generators which are very quiet. B. Pfau said that the PB doesn't mention that in the conditions.

M. McComb said that she is concerned with the vagueness of minimally working on a boat and Wayne Smith said that (1) it is absolutely less than what he was granted in the past when he was granted oil changes, which he will not be doing now, (2) it is basically to unwrap them in the spring, give them a quick clean-up, get them ready to go, fire them up and bring them down and (3) any major repair would be brought down to the lakeside facility. M. McComb asked the location of the boat washing station and Wayne Smith pointed it out on the map.

From the public, Frank McDonald said that the house next door is under contract and the new owner will be surprised by the changes and you can see the applicant's property from this house. Wayne Smith said that they can see one of the buildings, but he has planted

evergreens, which will come up in the next year or two and (3) the neighbors control their big pine. M. McComb asked if anyone has made brown or green boat covers for storage and Wayne Smith said (1) no, they only make blue or white—they have been asking for green forever and (2) the only thing you can see is the very end of the boat storage, which he believes is very unobtrusive. G. Smith said that you wouldn't have known that there were 28 or 35 boats back there, because all you see is a few.

From the public, Chris and Renee Jensen, handed out pictures to the ZBA members. Renee Jensen said that (1) the majority of the boats going back and forth go by their house, so it directly affects them, (2) the applicant has been doing all of this before, so this is all basically after-the-fact, (3) the noise and motors are very loud—it echoes throughout their house, (4) it is affecting their daily lives—the constant noise is unbearable and the harassment is too, (5) they didn't have a chance to speak on the after-the-fact issue in 2004 because they weren't listed as the owners of the house, (6) when they purchased their house, there was nothing there except the cows, which weren't the Scottish Highland, but they had no issue with it, (7) there shouldn't be back-ups on such a beautiful road, (8) on Memorial Day a car fell off an embankment on the property—it is dangerous there, (9) she is not asking that the applicant do nothing, but that there are reasonable hours and for the property owners to respect one another, (10) there is no double yellow line or electric there at this time, (11) the water pump at times makes their electric fluctuate, (12) there should be winter and summer screening, (13) this is a growing area with several families and children, (14) the applicant should be able to do what he wants with his property, but the noise alone is unbearable, (15) she asks that everything be specifically planned so they don't fall into a situation again, (16) she has four kids that need to be able to eat, sleep and live—she is living in a situation that is literally unbearable and (17) with all the inaccuracies there are people who will slip through he cracks—it is the ZBA's responsibility to look into this.

G. Smith asked what the working hour regulations are and P. Kenyon said that she believes the regulations are Monday through Saturday 7am to 9pm and Sundays are 9am to 9pm.

Renee Jensen said that there is no noise ordinance. M. McComb said that (1) this is not a commercial zone, (2) when this first started it was to be a little limited thing and it has grown and grown and (3) she can imagine people buying property in a residential-only zone, finding this quite a blow. K. Hoopes said that he doesn't think it is fair to say it has grown and grown. G. Smith said that (1) it has been a farm for 100 years and (2) this is only the second time the applicant has been before the ZBA for expanding the use for what he has already been approved for. G. Smith asked what the applicant proposes for work hours and Wayne Smith said that (1) basically it will be 8am to 5pm for normal marina operations and (2) occasionally he is there in the evening and will bring a trailer home and park it.

Wayne Smith said that he has gone to every agency to get their input on this project. Atty. Millington said that she has been to the site on numerous occasions and there is absolutely no equipment in the Quonset hut or anywhere else on the site. G. Smith said

that there are only some snowmobiles in there and some boats. Wayne Smith asked if he submitted the letter from the Highway Superintendent stating that the New Vermont Road can handle the 85 boats coming through there. P. Kenyon said that she does not recall ever receiving a letter from Highway Superintendent Tim Coon on this matter. Atty. Millington said that she presented the handwritten letter from Highway Superintendent Tim Coon to the PB at the PB meeting last month.

K. Hoopes said that (1) he thinks the noise issues of the past are in the past and there have been some growing pains, (2) it has been his experience that boat storage is second only to cemeteries as far as being fairly quiet neighbors, (3) washing boats is not a screamingly noisy operation, (4) the applicant is not going to be doing any machine tool work, so that shouldn't be an issue—the applicant has a center location for that work down at the lake, (5) the ZBA members have to go by what they have on the agenda and what facts are before them and (6) in the past he has been critical of this operation, but it seems to be getting better and better every time he looks at it.

T. DePace asked if the applicant has any intention of bringing electric in there. Wayne Smith said (1) no, not at this point—there is no power on the property, as he uses a solar charger for his fence and (2) he won't be working in the building in the wintertime, so he won't need power there. T. DePace said that the only problem he has with this is if the applicant is using a generator, because generators make a lot of noise. Wayne Smith said that he can run power there, but the new Honda generators are very quiet. K. Hoopes said that the applicant would be crazy to run his operation on a generator if he didn't have to. Wayne Smith said that (1) using a generator is only in the very short term and (2) if he gets the full operation, his plan is that in three years to have 85 boats and to then run electric there underground at the edge of the road. M. McComb said that (1) the applicant has said he plans to start boats on the site and (2) it is not a commercial area, which is a drawback to her.

B. Pfau asked for clarification of the use and Wayne Smith said that starting up the boats at this location would help with congestion of the lakeside facility. B. Pfau asked if this would be seasonal and Wayne Smith said that it is currently planned for spring and fall, but he would like to be able to use the area to store boats during the summer as well, so it would be like a boat yard, per se, where trailers and boats can be stored. J. Anthony asked if other than spring launch of boats and putting them back in storage in the fall, if the applicant is doing any type of quick launch and Wayne Smith said no, they do not run the operation where they would be putting a boat in then taking out the same day. B. Pfau said that he agrees with T. DePace regarding the generator in lessening the amount of noise coming out of the operation. T. McGurl asked what the power is for and Wayne Smith said that it is basically for the water pump.

Renee Jensen said that (1) the majority of the noise is coming from constantly running and revving of motors and (2) the way the two hills are and the lay of the land affects the noise and fumes running to their property. Wayne Smith said that (1) he does not run boats on the site—he has never started a boat there and (2) the only thing that runs on the site is the truck and the backhoe and bulldozer he was using when he was fixing the road.

T. DePace said that (1) he is a marina owner—they have had the shop on the mountain for over 20 years, he can count on one hand the number of times they have started a motor up there, (2) he understands the neighbors' concerns with the noise of starting boats and (3) asked if the applicant wants to be able to start boats up there. Wayne Smith said that (1) he wants to be able to spring prep the boats, (2) if there any major mechanical repairs that need to be done they will be done at the lakeside facility, (3) he wants to be able to start boats there, run them and wash them in the back and (4) he doesn't think you will even be able to hear it because the location is 900 feet from the road. Atty. Millington said that (1) while it has been pointed out that the zone is residential, if you look at what is allowed in that zone under conditional use, it includes chipping mills, saw mills, metal fabrication shops, car shops, etc.—she would rather have boat storage next to her rather than the other acceptable uses allowed in this zone and (2) the ZBA needs to be aware that there is a continual neighbor dispute going on here. G. Smith said that the ZBA is aware of that. Renee Jensen said that (1) the neighbor dispute has absolutely nothing to do with her concerns, the noise or any of the other issues, (2) the issues she is coming forth with are regarding this marina and what is going on there—she has been forthright and honest from the beginning and has never asked for anything other than that, (3) what is on that property right now is more than a storage unit—there are motors running, (4) these things can be permitted by special permit, but the ZBA should consider that it is an RL3 Zone where these uses can be granted by special use permit and (5) it is not a dispute over neighbor issues, but a community welfare issue.

M. McComb said that this is over a 300% variance beyond the allowable amount of boat storage even with site plan review and Type II Special Use Permit. K. Hoopes said that the applicant also has 10 acres and it is also in an RL3 Zone. M. McComb said that it seems like a lot with the animals and the proposed boat storage facility. G. Smith asked if the running of the boats can be done at the lakeside and Wayne Smith replied by saying that it would be a huge benefit for him to be able to start the boats up there—he is willing to put in a tank if he needs to.

B. Pfau said that (1) he has been in support of the project in concept, but didn't realize the applicant would be running engines on the site on a regular basis and (2) he knows how sound travels and can see how it would be a nuisance. T. DePace said that (1) the applicant is asking for a variance and saying that there will be no oil changes on the property, (2) he (DePace) personally wouldn't want to even start the motor up if he can't do all the work right there and then in the first place and (3) if he (DePace) is prepping a boat to go in the water he has to start the motor up to get it warm then do the oil change—it doesn't make sense to him to start the motor up on the mountain to then bring it down to the lake to do an oil change. Wayne Smith said that he does all of the oil changes in the fall, so when the boat is put away it is ready to go in the spring when the plugs are put in it and it is fired up. G. Smith said that the ZBA is willing to give the applicant what he wants with the exception of running the motors on the site and Wayne Smith agreed.

J. Anthony said that he would like to see limits on the hours of operation, something like 8am to 5pm or 7:30am to 5pm. G. Smith said that (1) that is what the applicant told them

and that is what he would like as well, as he doesn't see any reason to be working out there after 5pm, (2) the ZBA is requesting Monday through Saturday 8am-5pm and no running of motors up there and (3) that it is understandable that there may be emergency situations where the applicant may have to tow a boat up to the site after the hours of operation. Wayne Smith said that regarding hours of operation he would like to be subject to the current Town ordinances—he can work with not running the boats up there and (3) eliminating the starting of motors would limit the operations. M. McComb said that (1) the applicant is asking for 300% of what is allowed by the ordinance in one thing and (2) the ZBA is asking the applicant to back off a little bit in what is involved in another thing. G. Smith said that backing off on starting motors is a big thing. Wayne Smith said that (1) he really doesn't want to back off regarding starting motors, but he realizes that is what he needs to do to get the variance and (2) to limit his hours of operation is just going to cause trouble, because he will get the neighborhood complaints, for instance if it is 7:30pm and he is to bring three boats up to the property. K. Hoopes said that (1) this is being limited already by the 85 boats and (2) spring and fall are very important times for this type of business—the applicant has a work force he has to pay too.

Renee Jensen said that (1) the applicant said that LGPC said 9am and (2) the applicant is applying for 35 boats from the LGPC, so she asked how that factors in to what the applicant is requesting from the ZBA. G. Smith said that the applicant has already been approved for 35 boats from the ZBA. Renee Jensen said that is the approval from the ZBA, but questioned the application before the LGPC and asked if it was for 35 boats. G. Smith said that is what it is right now, but if the ZBA passes it, then the applicant will have to go before the LGPC for their blessing. P. Kenyon said that (1) she believes the applicant has to get permit from the LGPC for the 35 boats and (2) at the time the applicant got approval for the 35 boats from the Bolton PB and ZBA, no one was aware that he would need to go before the LGPC. Wayne Smith said that if he gets this variance the LGPC is willing to send him back through the process.

G. Smith asked if the Jensens would be satisfied with no motors being run up there and Renee Jensen replied by saying that (1) she would be happy if the applicant could possibly use the one entrance in front of his property and possibly not be passing back and forth in front of theirs and (2) if the applicant worked with the 9am or 10am start times with no work on Sundays, so they can have at least one day. G. Smith said that (1) the ZBA cannot tell the applicant which way to access his property and (2) no running of motors is a huge step, as the noise and fumes wouldn't be a problem for the Jensens and (3) the applicant has to make a living and has to run an operation up there as well. Renee Jensen said that (1) when she tried to explain all of the after-the-fact issues they were pretty much tabled and everything kind of just sat, (2) they are now at the point where everything is being addressed and (3) as long as all agencies are on the same page and handling it, she will be happy, as long as the applicant is respectful and just do the business he proposes, then she has absolutely no issue with that. T. DePace said that (1) he thinks Renee Jensen is asking a lot and (2) for the applicant to agree to not start a motor up there is giving up a lot. Renee Jensen asked if there is some kind of screening for winter. G. Smith said that the applicant already has plantings there. G. Smith said

that he thinks the ZBA should put the condition of no boat motors running on the site. K. Hoopes said that the applicant is able to come back in the future to have that condition lifted. M. McComb said that the neighbors should understand that there would be some site work being done there that will require the running of bulldozers, etc. T. DePace said that when the applicant gets a test tank, he should come back to the ZBA.

No correspondence.

## RESOLUTION

The Zoning Board of Appeals received an application from Wayne Smith (V06-38) 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, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #3 of the agenda.

The Board makes the following conclusions of law:

- 1) There will be no undesirable change in neighborhood character or to nearby properties, it will be an expansion to the operation up there;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 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 project has been presented to and approved by several area environmental boards;
- 5) The alleged difficulty is 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 with the following conditions: 1) Boat motors are not to be started on site. 2) The Town of Bolton noise ordinance must be adhered to. 3) No quick launching is permitted. 4)

The storage of boats is limited to 85. 5) The boat wash area is to be located behind the existing building. 6) Minimal indoor boat maintenance only, is allowed. 7) No major repairs or oil changes are allowed. Meredith McComb opposed. **All others in favor. Motion Carried.**

Now, upon motion duly made by Kam Hoopes and seconded by Tony DePace, it is resolved that the ZBA does hereby rescind the conditions set forth on January 26, 2004, when approving V03-55. Specifically the conditions read as follows: 1) There is to be no water service at the building and, 2) there is to be no electricity at the building. The condition whereby none of the boat storage will be visible from the public right-of-way remains in effect. Meredith McComb opposed. **All others in favor. Motion Carried.**

- 4) **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 April 16, 2007 meeting pending additional information.*

Item tabled at the applicant's request.

- 5) **V07-13 NOLAN, AGNES.** Represented by Atty. Mark Rehm. In accordance with Section 200-37B(b), seeks area variance for the removal of vegetation within 10 ft. from the top of the slope of a drainage way. Section 171.11, Block 1, Lot 54, Zone GB5000. Property Location: Lakeshore Drive adjacent to Lake George Camping Equipment. Subject to WCPB & APA Review. *The WCPB determined no county impact with the condition that appropriate stormwater and erosion control measures are implemented.*

Atty. Mark Rehm, representing Agnes Nolan, gave an overview and said that (1) they have designed a minimally invasive footpath for his applicant to get to Lake George from her property and (2) the applicant is looking for reasonable access to the lake.

K. Hoopes asked if one of the main reasons is to gain ownership and control of the property, which has been neglected for some time and Atty. Rehm said yes.

G. Smith asked what type of walking bridge the applicant is proposing and Atty. Rehm said that they are not set on a type of walking bridge and the metal bridge was what the engineer suggested. B. Pfau asked if any of the walking bridges would be considered structures and P. Kenyon said no, because she believes they are all less than 100 square feet. Atty. Rehm agreed. K. Hoopes said that (1) this piece of property has special requirements and (2) he would be in favor of having some sort of walkway down through there.

J. Anthony asked why the APA jurisdictional determination was made on a map dated March 22, 2007, which has been revised twice since then to what is being presented now. Atty. Rehm said that (1) they had to put the clearing zones on the map they are presenting tonight and (2) they also took the APA recommended footbridges into consideration. J. Anthony said that according to the APA's jurisdictional determination, it says that "...you did not indicate that any walkway or other constructed footpath is proposed..." and (2) it also says that "...if you have reason to believe that any wetlands would be affected by the proposal, you are encouraged to contact the agency to arrange a site visit prior to undertaking the project..." so he believes that since this is activity in the wetland, the applicant has a Class A Regional project with the APA. Atty. Rehm said that they would be happy to have the APA visit the property for a site visit. J. Anthony said that (1) here there is a situation like the ZBA has a couple of months ago where there was a jurisdictional determination made by the APA and it relied on one set of information with one set of conclusions and now the ZBA members have other information in front of them, so he feels the jurisdictional determination is worthless and (2) he thinks the ZBA should start taking heed of that. Atty. Rehm said that if the ZBA does go that route, then he thinks the applicant could at the very least proceed with the cutting of brush to see what needs to be done so the APA could visit. K. Hoopes said that one of the questions he thinks is very pertinent here is just why this is now wetland, because he doesn't believe that in its original state that it was a wetland. J. Anthony said that (1) it doesn't matter who made the wetlands, they are now existing and regulated and they have to live by them and (2) this activity is now also regulated by the Army Corps of Engineers. K. Hoopes said that is above and beyond the ZBA and the ZBA can't guard their interests and shouldn't even try. M. McComb said that (1) what J. Anthony is pointing out is that the APA made a determination that it was not jurisdictional based on information that is different from what the ZBA is getting and (2) she agrees the APA approval is not valid, because it says on page 2, "...you did not indicate that any walkway or any constructed footpath is proposed...". K. Hoopes said that now it is proposed. G. Smith said that it would go back to the APA and they can agree with the ZBA or deny it. J. Anthony said that this variance is in a hamlet and he doesn't believe P. Kenyon sends this to the APA for re-approval. P. Kenyon said that is correct. J. Anthony said that this thing could slip by totally if the ZBA approves it today, it is never required to be sent back to the APA, and the APA will never look at it and never know what is happening, so, by approving this project here, the ZBA is essentially granting the applicant the right to put some objects in wetlands. P. Kenyon said that it wouldn't have to go back to the APA or the LGPC. Atty. Rehm said that (1) they were trying to accommodate some good ideas that they didn't have in their original plan, (2) they voluntarily sent this to the APA for jurisdictional determination and (3) if the ZBA would like them to go back to the APA they are willing to do that. K. Hoopes said that the ZBA could do that by making its variance contingent on APA approval. P. Kenyon said that (1) she believes this project was started early winter last year, (2) it was agreed the project would be put on hold until she could walk the area with Atty. Rehm in the spring so they could evaluate the area, (3) in the meantime, a jurisdictional determination was requested from the APA by the applicant for the original map that was submitted with the original application that was tabled, (4) based on her site visit, which Mitzi Nittmann also was present for, they noticed some areas that were indicative of an existing walking path and she suggested

that instead of clearing everything along the stream, the applicant should utilize those existing areas, clean it up a little bit and where it meanders over the stream, create some type of small foot bridge, which is what the applicant did and (5) her concern was the lakeshore, and as a result of her visit and recommendations the ZBA has revised maps.

T. McGurl asked if there is a proposed dock and Atty. Rehm said that (1) they have not applied for a dock, (2) he doesn't know what they would be able to do at this point and (3) the applicant may put a raft out there, gain access to it and swim out there.

M. McComb asked if the front of the property has been completely blocked off by docks from other parcels. Atty. Rehm said that (1) yes, that is a sore subject—out on the water is a whole different issue, (2) They are before the board to clear within 10 ft. of a drainage way, and (3) their intent is not to circumvent anything and they want to be forthright and do things the right way, (4) if approvals are required from other agencies, they will obtain them. K. Hoopes asked if the ZBA can make a decision contingent on APA's approval. Counsel said that (1) yes, if the ZBA is comfortable with that, (2) J. Anthony's rendition is correct in that the requirement in the code before the ZBA grants a variance is that there must be a non-jurisdictional letter, which is a true statement and (3) the non-jurisdictional determination is based on a premise that it has been expanded upon and being that it is in a hamlet if it were approved and this discussion was not being had, there is a strong likelihood that this would never be revisited by the APA—not because anything is being done deviant by the applicant, it is just what occurred in that fashion, (4) the ZBA has to make a decision on whether it wants the applicant to go back and get it all approved by the APA first—that would set a precedent for this ZBA, because previously this ZBA has determined that if anything is subject to APA jurisdiction, then the ZBA granted relief subject to APA approval and (5) this applicant has done everything the Town of Bolton requires to get here. B. Pfau asked if it is law that the applicant needs to get a jurisdictional letter from the APA and Counsel said no, it is not the law, but the Town of Bolton does encourage applicants to get a jurisdictional determination as soon as possible. Atty. Rehm said that it was the intent of the applicant to be on board with the APA. G. Smith said that the ZBA understands that. T. McGurl said that it makes no sense for the applicant to come back before the ZBA.

J. Anthony said that the application is for cutting vegetation and not for building the walkway, so if the ZBA grants the variance it would be for cutting vegetation, not building the walkway. P. Kenyon said that is correct. J. Anthony said that (1) the application is constructing an element in a wetland or adjacent to a wetland, which will require an Army Corps permit and an APA review and (2) it will most likely be a Class A Regional project under APA.

From the public, Atty. Millington asked if the map shows where the mean high water mark is, because according to the Town of Bolton cutting regulations, the cutting restrictions under Section 200-37 say that "...in the case of shorelines of any lakes, ponds, rivers, streams, swamps or wetlands and the shoreline of the Schroon River, the following standards are met: (A) within 35 feet of the mean high water mark, no vegetation may be removed except up to a maximum of 30% of the trees in excess of 6 inches...(B) within 6

feet of the mean high water mark no vegetation may be removed except to a maximum of 30%...". B. Pfau said that the shoreline is what they are permitted off of. Atty. Millington said that (1) she has a map that shows the mean high water mark, which is not the shoreline, (2) somewhere between 30 to 50 feet from the shoreline up is where the mean high water mark is, (3) Dennis Dickinson's letter states that he did all of his calculations within 6 and 35 feet of the shoreline, which is not in the Town's ordinance—the Town's ordinance is within the mean high water mark, (4) the ZBA has no jurisdiction below the mean high water mark regarding cutting—that is the jurisdiction for the State of New York, (5) she recommends the map be redone, so the ZBA knows where the mean high water mark is and where the ZBA's jurisdiction ends and (6) they are in litigation on this property, in that the mean high water mark on the Nolan property is at least 30 feet inland beyond that because of how wet that area is. K. Hoopes said that if the ZBA doesn't have jurisdiction below the mean high water mark then whatever variance the ZBA grants is not worth the paper it is written on. Atty. Millington said that Dennis Dickinson's calculations are not correct. K. Hoopes said that the ZBA's agenda says that the applicant seeks area variance for removal of vegetation within 10 feet from the top of the slope of the drainage way. Atty. Millington said that her point is that she thinks that when P. Kenyon was approached on the cutting on this property all of the cutting has been determined on the basis of faulty calculations. P. Kenyon said that she did speak with Atty. Rehm regarding the specific section of the ordinance Atty. Millington referenced and Atty. Rehm is aware of that section of the ordinance, which she is sure they will abide by. Atty. Rehm agreed and said that (1) they will 100% have to comply with the ordinance and (2) if there are other calculations that need to be done on other parts of it, they have spoke about it, they will have to indicate that to P. Kenyon and they will need to comply with it. P. Kenyon said that she does feel it is important for Atty. Rehm to find out the location of the mean high water mark and Atty. Rehm said he would do that and plot it on the map.

Atty. Millington said that in looking at the SEQR form and if the proposed use will have a minimal impact on the neighborhood or if the project will have a large impact on a large existing body of water, basically you would be basically clearing a wetland here and she then continued to review SEQR items. K. Hoopes said that (1) Atty. Millington is dealing with something now in front of the ZBA that is properly to be done at a later date when you do have your simple matter to deal with here and (2) all the ZBA is faced with tonight is the simple variance, then all the other agencies step forward. Atty. Millington asked that both the APA and NYSDEC be notified that the clearing of wetlands down on the lake is being proposed. M. McComb said that (1) she does note on the cutting plan that it looks to her that it is hard to imagine that as proposed it is going to violate the percentage of cutting within the mean high water mark and (2) she thinks it should go to the APA if it goes through here tonight. Atty. Rehm agreed and said that they want to make sure it is done right.

Mary Owens, neighboring property owner, said that they have a dock in the area of the proposed walkway and asked if the variance would be for cutting only or to also make the walkway and put in a raft or dock. G. Smith said that (1) he does not know about the dock, (2) the only thing the applicant is in front of the ZBA for is to cut the brush and that

is it and (3) the walkway is under 100 square feet, because it is in different sections, so the applicant doesn't need a variance for that. P. Kenyon said that (1) the ZBA has no jurisdiction over the raft and (2) the applicant is not on the agenda for anything other than the cutting of vegetation. Atty. Rehm said that the NYSDEC governs the raft, so they are going to be dealing with them and have to.

From the public, Wayne Smith, representing Lake George Camping Equipment, said that (1) the APA considers disturbance a footprint—the whole thing is wetlands, (2) he would request the ZBA have the APA biologist evaluate the property, which is a free service, before any variances are granted, (3) there is a clear violation with the mean high water mark in the code and there are many more wetlands in there than the ZBA sees and (4) the access to Mrs. Nolan's property cannot be accessed unless it crosses wetlands. Atty. Rehm said that (1) they will let the experts decide what wetlands are and (2) it is not wetlands until someone determines that, but they are willing to have the issue addressed with any agency necessary.

The WCPB determined no County impact with the condition that appropriate stormwater and erosion control measures are implemented.

J. Anthony said that (1) there is wetland vegetation right up to Route 9N and (2) the ZBA will be entertaining a variance later on tonight for constructing a stormwater control device within 100-foot setback of a wetland and he doesn't see how you can do that here. P. Kenyon said that she doesn't think the WCPB is talking about a stormwater control device, because that is not required on this site, (2) she thinks what the WCPB meant is if the applicant is doing any excavation that they protect that area and (3) there is no need for stormwater controls on this. T. McGurl said that there have been times the ZBA has asked the APA to look at it first before making a decision and asked if it is a necessity to make a decision tonight. K. Hoopes said that this comes very close to denying the owner use of their property. Counsel said that (1) as an example, Mr. Simonson had 59 acres of wetland and he could use about half an acre, (2) perhaps the argument could be made, but it is not for the ZBA to speculate here and (3) the very very narrow issue before the ZBA tonight is the removal of vegetation within 10 feet from the top of the slope to the drainage way.

Wayne Smith said that (1) he believes the county's intent was that the water that runs through there is tied to a storm drain that is directly across the street in front of Agnes Nolan's right-of-way and Jeff Tennent's, (2) since the stormwater on Jeff Tennent's project is failing terribly, it builds up from directly across the road, fills the drain there, and comes across the road, (3) because of the run-off with the snow melt there has been such a force in the stream because of where Jeff Tennent's stormwater is going, it actually cut right into their parking area (about 5 feet)—there is a major stormwater flow there when there is any sort of rainfall or snowmelt, so any vegetation removed is going to add to the flow and (4) the ZBA is making a major mistake in granting the variance before the APA and acting agencies come in to review this. G. Smith said that no matter what, the APA will be coming in, as part of the variance is that they will have to. K.

Hoopes said that the ZBA would be asking that the APA and other agencies be notified that there may be an issue.

No correspondence.

## RESOLUTION

The Zoning Board of Appeals received an application from Agnes Nolan (V07-13) for an area variance as described above.

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

and, whereas the Warren County Planning Board determined that there was no County impact with the condition that appropriate stormwater and erosion controls are implemented;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it has not been established;
- 3) The request is not substantial, as presented;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, this will be determined by other agencies, the ZBA is not suited to rule on that;
- 5) The alleged difficulty is not self-created.

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

Now, upon motion duly made by Kam Hoopes and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented with the

following conditions: 1) All permits required from any governmental agency including, but not limited to the Army Corp. of Engineers, Adirondack Park Agency. New York State Department of Environmental Conservation, must be obtained prior to the work being undertaken and 2) Stormwater controls such as silt fence or hay bales must be installed prior to excavation. Tom McGurl opposed. **All others in favor. Motion Carried.**

**6) V07-23 PERRY, MARK & LINDA.** Seek use variance for an agricultural use. Specifically to convert a personal greenhouse into a commercial nursery. Section 156.00, Block1, Lot 13, Zones RM1.3 & RL3. Property Location: 121 Federal Hill Road. Subject to WCPB Review. Subject to SEQ. *Favorable recommendation by the Planning Board. The WCPB determined no county impact with stipulation.*

The WCPB determined no County impact with the condition that there is an evaluation of the competent financial information requirement for the use variance application, evaluate the plans in the neighborhood's character in regards to the proposed project and refer to site plan review if determined to be required.

Mark Perry gave an overview and said that they are only trying to sell plants at that location.

G. Smith said that (1) the ZBA gave the applicant a variance in 2005 for the greenhouse/nursery, which has grown to something much larger than anticipated, (2) people want to come to the site and buy the perennials right there, (3) at the time the ZBA gave the applicant the variance it was so he could self-grow the plants and bring them to other properties to plant them and (4) now the applicant wants to change that so people can come to his property and he can actually be there, sell from there, collect real money and be legal. Mark Perry agreed. T. DePace said that (1) he thinks what the ZBA decided is that people are going to go to the applicant's property look at the plants, say they want plants and have the applicant deliver them and (2) now, people would be able to bring the plants away themselves. Mark Perry agreed.

G. Smith said that (1) several letters were received regarding this project—75% are in favor of the project, (3) the 25% or couple of people in opposition are worried about being downwind of this property and are worried about the quality of the air with fertilizers and so on—to which G. Smith said that there are none, and the quality of the air is going to be improved because there will be even more oxygen coming down there from all of the perennials, (4) he (Smith) doesn't think those who oppose the project realize exactly what the applicant wants to do there and they haven't approached the applicant on what he wants to do there, which is what he (Smith) would have done if he was living next to the applicant, (5) all other neighbors were for the project and (6) there was one other concern with traffic flow, and parking and density are not problems. Counsel asked if any of the ZBA members want all of the correspondence read into their entirety into the record. All ZBA members said it is not necessary, as they have reviewed them. P. Kenyon stated that the following letters were received: Leslie and David Leombruno (in favor), Mitch & Kathy Staynard (concerns), Clayton Roberts (concerns),

Woodshire Estates Board of Directors for Woodshire Estates Corporation (concerns), Bill Bashant (in favor), Art & Nicole Baker (in favor), Rich Kimak (in favor), Trinket and Doug Houghton (in favor), Jim & Cathy Miller (in favor) and Donna & Thomas Ulrich (in favor).

M. McComb said that (1) if the variance is not approved, there would be more trucks moving stuff to deliver flowers, (2) she agrees that it is a great big piece of property. T. McGurl said that in 2005 the use variance was too close for comfort for the ZBA, but now that the greenhouse is there it seems to be okay, which he is uncomfortable with. M. McComb agreed and said that is why the next time someone wants to do something commercial where it is a residential zone, she is going to be a lot firmer against it, but this is again something where the ZBA started down the path. T. McGurl said that just because you started with this path, doesn't mean you have to continue with it and M. McComb agreed. G. Smith said that he believes most business will be conducted during the months of May and June—pretty much the beginning of the season and Mark Perry agreed.

No comments from public in attendance.

The WCPB determined no County impact.

K. Hoopes said that (1) one thing the ZBA faces with a use variance is that they are built to be virtually unmovable, but not literally, (2) the ZBA members keep bumping their heads against places where it is more attractive to the ZBA members to issue a use variance for community reasons and many different reasons, so the ZBA does, (3) there are cases where somebody has a piece of property where they want to build a boathouse on the shore, but there house is some distance away from it on a separate piece of property and the ZBA finds it more attractive to let them build a separate boathouse as opposed to forcing them to build a house on the property so they can build a boathouse on the property—it is less impactful to do it that way, (4) in this particular issue the land, was farmland—it was either sustenance farming or partially commercial and (5) in creating the zoning regulations some things fell through the cracks.

M. McComb asked if there would be an additional increase in workers and Mark Perry said that he doesn't plan on that at this time, but if business increases it is a possibility. M. McComb asked if there is a potential for run-off of chemicals and Mark Perry said no, they don't use pesticides now and he doesn't plan to in the future. G. Smith said that the applicant's property is very well screened from neighboring properties.

B. Pfau said that (1) he recalls that there were two use variances before this ZBA that were denied, (2) he is not against a retail flower operation in this area, (3) something bad is going to happen with this in the future, (4) he does not know if the applicants are instructed about the criteria that need to be met for a use variance when they come into the Zoning Office, but the applicant has obviously met the conditions for a use variance and (6) someone is going to come in for a retail operation in a residential zone and they are going to look up the minutes of this meeting, sit there and rub their faces in it.

Counsel agreed to B. Pfau's last point. B. Pfau continued by saying that he thinks if the Town is going to allow a retail operation in a residential zone, then they should allow it with site plan review. M. McComb said that the criteria for a use variance are, "...you cannot realize a reasonable return other than by granting this variance, that the alleged hardship is unique and does not apply to a substantial portion of district or neighborhood, that it will not alter the essential character of the neighborhood and that it is not self-created...". B. Pfau said that the applicant even says on his application that it is self-created, so he questions how will the ZBA defend itself. T. McGurl said that (1) there is a large building on New Vermont Road approved for boat maintenance—why wouldn't the applicant come back with the same argument saying that the ZBA granted permission for the building, so the applicant should be allowed to fix boats now and (2) in this case, just because the building is there and the ZBA approved the building to be there, the ZBA approved it on the guise that it wasn't going to be commercial use. Mark Perry said that one of the reasons for the greenhouse location, is that just past there is RL3 which is agricultural, but he would have to cut four acres of trees, so the ZBA preferred to have the greenhouse in its present location instead of cutting. B. Pfau said that (1) the code has been changed on the fly in being forced into use variances and (2) most of the use variances he recalls this ZBA granting is for accessory structures, like adding a dock or something like that.

Counsel said that (1) the reason the ZBA is struggling with this is because it is a struggle, (2) the way to prove that a use variance is appropriate is that the applicant is held to a standard of proving to the ZBA's satisfaction that there are no uses permitted within that zone that are capable of a reasonable return, which is a very tough, stringent standard, which has to be proven by dollars and costs—proof—that there is data presented, (3) regarding the criteria of if the property is unique, in this case, it probably is, (4) looking at the criteria for the requested variance if granted would not falter the potential character of the neighborhood, that also is probably true, (5) regarding if this is self-created, that is a tough one that he doesn't know if the ZBA can get beyond and (6) B. Pfau is right that it will be rubbed into the ZBA's face sooner or later. K. Hoopes said that (1) he thinks the two outlying issues are the financial side and the self-creation side—one way to approach that is that the applicant is in the landscape business, they own that property and that is what they do for a living, so it is not like they are buying into it and starting up a business it is what they already do and (2) the question to the ZBA is it odious to the community to allow the applicant to do that. Counsel said no, he doesn't think it is, because it doesn't change the substantial character in anything in the Town of Bolton or the neighborhood, so on that the ZBA is no firm ground. P. Kenyon said that (1) she believes she referred Mark Perry to the Palazzo application regarding a garage and (2) maybe the ZBA should go through that same list here.

Counsel said that (1) the use variance test also says that it is to be limited and restricted with reasonable consideration of the application and (2) he asked how much of the parcel will be dedicated to the use variance for this commercial activity in the residential zone. Mark Perry said that it would be 2 acres in addition to the greenhouse. Counsel said that (1) this is a lot more difficult—what you have here is a preferred zoning district with a parcel needing density as a permitted use of the taxable family residence and (2) since the

applicant lives at this location, this would be a permitted accessory use with associated with the residential primary use. M. McComb said that if this use is granted by the ZBA, it does not run with the property as far as any commercial use can be put here—it is specifically for this use only. G. Smith agreed.

Counsel asked the size of the greenhouse and Mark Perry said about 1,000 square feet. Counsel asked if the gross square feet of any additional structures used for this business. G. Smith said it would be close to 4,000 square feet with the two barns and the greenhouse. Counsel said that (1) he could get the applicant into a site plan review in that zone, as there is a section on limited retail use that could apply here and (2) he suggests the applicant table the application.

P. Kenyon said that (1) back in 02/17/05 the applicant was on the PB agenda for site plan review for a greenhouse up to 300 square feet in size that was located in the RM1.3 zone and (2) because the applicant was greater than 300 square feet—he was 960 square feet—he was required to apply for an area variance. M. McComb said that she sees permitted used in the RM1.3 Type I uses permitted by special use permit, commercial uses involving more than 10,000 square feet. Counsel agreed and said that he and P. Kenyon have discussed this and have always felt uncomfortable, because notably the Type II does not say what you expect it to say “commercial uses involving less than 10,000 square feet”—it is not there. P. Kenyon said that means they can't apply it. M. McComb said that if you add it all up the applicant has, he will have enough square footage.

Now, upon motion duly made by Kam Hoopes and seconded by Tony DePace, it is resolved that the ZBA does hereby table this application pending Pamela Kenyon, Zoning Administrator's review of the ordinance. **All in favor. Motion Carried.**

*Note: This item was heard last and T. DePace recused himself and stepped down from the ZBA for the following item, as he is the applicant.*

- 7) **V07-24 DEPACE, ANTHONY & GAIL.** To alter pre-existing, non-conforming structure. Specifically to construct a 3 ft. x 8 ft. deck on the west side and allow an 8.6 ft. x 20 ft. covered stairwell to remain. Seek area variance for deficient setbacks 1) shoreline; 75 ft. is required from the stream, 9 ft. is proposed. 2) Front; 50 ft. is required from the edge of the right-of-way on Braley Point Rd, 5 ft. is proposed. 3) To alter a pre-existing, non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.08, Block 1, Lot 11.2, Zone RCM1.3. Property Location: 30 Braley Point Road. Subject to WCPB & APA Review. *Note: This is an amendment to V07-09.*

Anthony DePace gave an overview and said that (1) he proposed an 18-inch deck flower planter off the sliding glass door off the master bedroom, but Warren County said he needs a three-foot deck because there is a door there, which is why he needs the variance and (2) the staircase plans were approved without a roof over it then the builder put the roof on while he was away on vacation—when he came back he was told by Mitzi

Nittmann that it wasn't on the plan, so they are requesting a variance for the covered stairwell, which includes the siding on the stairwell.

T. McGurl asked if the stairs were already there and if the area is getting any bigger. Anthony DePace said that (1) the stairs are there—it is the same footprint, it is just that there will be a roof over the stairs and the one part will have the siding and (2) after going up and down the stairs this past winter, it has to be covered. K. Hoopes said that it should be covered for safety's sake. G. Smith said that deck the applicant wants off the master bedroom is off the west side, so it isn't invading anyone's privacy.

T. McGurl asked if the WCPB gave him any reason for the 36-inch deck and Anthony DePace said no. J. Anthony said that if there is a door there, then in case of a fire somebody can get at least get out on it and slam the door shut until the fire dept. gets there and jump off if necessary.

No comments from public in attendance.

No correspondence.

The WCPB determined no County impact with the condition that stormwater and erosion control measures are implemented.

## RESOLUTION

The Zoning Board of Appeals received an application from Anthony and Gail DePace (V07-24) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

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

- 2) There will be no undesirable change in neighborhood character or to nearby properties;
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created.

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

Now, upon motion duly made by Kam Hoopes and seconded by Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented based upon the same rationale set forth by the ZBA on March 19, 2007 when approving the V07-09. The condition of approval for V07-09 continues to apply and is as follows: The Quonset hut is to be permanently removed from the property. Additionally, stormwater controls are to be implemented and landscaping is to be incorporated between the house and the brook. Tony DePace recused himself. **All others in favor. Motion Carried.**

- 8) **V07-25 OWENS, RODERICK & MARY.** To alter pre-existing non-conforming structure. Specifically to expand an existing deck by adding 8.75' x 6'. Seek area variance for 1) a deficient shoreline setback. 50' is required; 27' is proposed. and 2) to alter a pre-existing, non-conforming structure in accordance with Section 200-57B (1)(b). Section 171.15, Block 3, Lot 7, Zone GB5000. Property Location: 20 Hondah Loop. Subject to WCPB review.

Mary Owens gave an overview and said that they are looking to expand their deck.

G. Smith asked if the applicant only wants to fill in the niche in the corner, make the house look nicer, make a little more room on the deck and the house is already pre-existing non-conforming from years ago when it used to be one of the Hondah Cottages and Mary Owens said yes. J. Anthony asked if it is correct that the applicant wouldn't be going any closer to the lake than it is now and Mary Owens said yes that is correct. G. Smith said that this is a simple formality.

The WCPB determined no County impact.

No comments from public in attendance.

No correspondence.

**RESOLUTION**

The Zoning Board of Appeals received an application from Roderick and Mary Owens (V07-25) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties;
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created.

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

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

- 9) **V07-26 GIPSTEIN, BARRY & LEONE.** Represented by Dick Paull. To alter pre-existing structure. Specifically to construct a 14 ft. x 24 ft. addition (excluding overhangs). Seek area variance for a deficient front yard setback. 50 ft. is required; 41.5 ft. is proposed. Section 156.20, Block 1, Lot 64, Zone RCM1.3. Property Location: 96 Juniper Hill Drive. Subject to WCPB Review.

Dick Paull, representing Barry and Leone Gipstein, gave an overview and said that (1) they are asking for a small addition to the existing building, (2) the WCPB determined no County impact, (3), they are proposing to make it more available for handicapped visitors and (4) the proposal will make the home friendlier to live in.

K. Hoopes said that (1) this is similar to one the ZBA just went through, (2) he thinks the applicant meets the requirement from the right-of-way, as 41.5 feet is proposed, (3) there is a steep pitch that pitches off, so they won't invade the right-of-way because it is about an 8 or 10 foot drop, (4) there is no view that is going to be blocked or any impact on the neighborhood from anywhere that he can see and (5) it is tucked away in its own little hollow—this is a case where the benefit to the applicant actually outweighs any detriment to anybody. G. Smith agreed adding that there is no detriment to anybody.

M. McComb said that she would like to know the dimensions including the overhangs and Dick Paull said that the overhang on the front will match the overhang on the two gables, which would be one foot or less. J. Anthony said that he likes that the proposal is to expand to the non-lake side so there will be no affect on the lakefront.

No correspondence.

The WCPB determined no County impact.

No comments from public in attendance.

T. McGurl asked how soon the applicants are looking to proceed and Dick Paull said that the applicants are pretty eager, so they would begin as quickly as they can, they would be using a very small vehicle for digging and there are no trees to be cut.

## RESOLUTION

The Zoning Board of Appeals received an application from Barry and Leone Gipstein (V07-26) 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 #9 of the agenda.

The Board makes the following conclusions of law:

- 1) There will be no undesirable change in the neighborhood character or to nearby properties, there are no objections from any neighbors;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it is quite far away from Lake George;
- 5) The alleged difficulty is not self-created, the home exists there so far from the right-of-way.

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.**

**10) V07-27 GALLO, GLORIA.** Represented by Jim Miller of Northfield Design. To alter pre-existing, non-conforming structure. Specifically to raise the roof and make necessary repairs to the deck. Seeks area variance for 1) a deficient rear yard setback; 15 ft. is required, 5.32 ft. is proposed. 2) To alter a pre-existing, non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 3, Lot 85, Zone GB5000. Property Location: 7 Congers Point North. Subject to WCPB Review.

Jim Miller of Northfield Design, representing Gloria Gallo, gave an overview and said that (1) they propose to remove the existing truss roof and replace it with a new sleeker pitched roof with living space in the new structure, (2) the footprint will not be altered and (3) the overhangs will become less than what currently exists.

Correspondence: G. Smith read the following letter into the record in its entirety.

- **Letter from Conger's Point Association dated June 11, 2007 - opposed**

G. Smith said that if there is a deed that doesn't allow a third story, he (Smith) thinks that there is no need to go any further with this application tonight. Jim Miller said that there are two issues: (1) what they have to do to comply with the Town of Bolton's requirements, which he feels they are fully in compliance with exception of what they are

seeking the variance for and (2) the Conger's Point Association letter is very contradictory in that it says you can't have more than two stories beyond the highest point and they don't—he thinks they comply. T. McGurl said that it looks like three stories to him. G. Smith said that he thinks whatever the legalities of the deed are and the issues with the Conger's Point Association should be hashed out first. M. McComb agreed. G. Smith said that he can't sit here and interpret the deed—he is not qualified to do that.

Jim Miller said that in the deed any construction has to be approved by the Conger's Point Association prior to construction—it doesn't say prior to another board making a ruling on it. G. Smith said that he doesn't feel comfortable moving forward with this. Counsel said that (1) he believes the applicant's interpretation of the deed covenant is absolutely correct, (2) as a ZBA they are not controlled by those covenants as they are private rights, (3) in a matter of speaking, it would be a waste of the ZBA's time tonight because if the ZBA approves it, notably it does not have the HOA approval, it is still a plan dead in the water, so the applicant would be back and (4) the ZBA is not running scared of the covenants in that the ZBA has to make sure that it complies with the covenants before the ZBA acts, but it makes practical sense that if the ZBA approves something here that doesn't have HOA approval, it is coming back. M. McComb said that every single association application she has ever seen has had approval prior to coming to the ZBA. G. Smith said that 98% of the association applications are pre-approved before they come to the ZBA so this mess doesn't start. K. Hoopes said that the ZBA has always made it very carefully so that the ZBA does not follow the association rules, but acts independently as a board. P. Kenyon said that is not the process, because she does not tell anyone she cannot accept an application without HOA approval. Counsel said that (1) a smooth practice would be for an applicant to get everything lined up and all necessary approvals before coming to the ZBA and (2) he agrees on how the applicant is measuring based on the covenant, but P. Kenyon is going by the code. G. Smith said that it looks like three stories to him from the lake.

B. Pfau asked if there is a certain strategy for the applicant to appear before the ZBA first and Jim Miller said no, he didn't know they had to have the approval of the HOA first. G. Smith said that the applicant doesn't need HOA approval first, but it would make life a lot easier for the ZBA. K. Hoopes said that deed covenants are going beyond the HOA and G. Smith agreed and said that he is not fighting the HOA.

Jim Miller said that (1) the bigger picture is that they started this in October—at that time no variance was required at all and (2) it is only within the last month that they needed a variance at all with the advent of the new Town regulations. G. Smith said that (1) he thinks the best thing would be to keep the public hearing open so the applicant can go straighten out the legalities with the association and come back in next month if the association has signed off, and (2) he doesn't feel comfortable with the deed covenants. K. Hoopes said that for the public's benefit, there is no new regulation here and (2) the applicant has a rear yard setback where 15 feet is required and 5.32 feet is being proposed. M. McComb said that she believes the applicant is speaking of the change in the interpretation of the expansion of “up” being made firm in the code. K. Hoopes said

that it became clarified in the code—it was already in the code. P. Kenyon said that the code has changed regarding upward expansion.

Now, upon motion duly made by Kam Hoopes and seconded by Jeff Anthony, it is resolved that the ZBA does hereby table the application pending Association approval (Congers Point). **All in favor. Motion Carried.**

**11) V07-29 O’CARROLL, JOHN & KAREN.** To demolish and rebuild single-family dwelling. Seek area variance for deficient setbacks. 1) Shoreline; 75 ft. is required from the mean high water mark, 41 ft. is proposed. 2) Sides; 20 ft. is required, 12ft. is proposed on the south side and 18 ft. is proposed on the north side. Section 200.18, Block 1, Lot 5, Zone RM1.3. Property Location: 4206 Lakeshore Drive. Subject to WCPB & APA Review. *Note: This is an amendment to V05-16 approved by the ZBA on 4/18/05.*

John O’Carroll gave an overview and said that (1) about two years ago they came before the ZBA for a variance to replace an existing structure, (2) the proposed house would be built on the exact same footprint as the existing house, (3) the height will be within 8 to 10 inches of what the original plan from two years ago and (4) the layout has changed, but they are still proposing a three-bedroom, two-and-a-half bath, which is what exists now.

K. Hoopes said that essentially the difference between the original application granted and this one is aesthetics, (2) the applicant now proposes a log exterior and some design and architectural elements that are different, (3) the construction should be more sound and (4) he doesn’t see a problem with this proposal.

B. Pfau asked if the setbacks are the same as those two years ago and P. Kenyon said yes. B. Pfau asked what the condition was when the ZBA approved the house and P. Kenyon said that (1) for the house itself there was no condition—that variance was granted in 2005 and (2) on July 15, 2005 the applicants came back to enclose an existing deck at which time the ZBA approved the request with the condition that the screened porch remain a screened porch with no windows or heat allowed.” John O’Carroll said that is exactly what they are proposing with this house. M. McComb asked if the variance the applicants got two years ago of any legal validity anymore whatsoever and P. Kenyon said that (1) she has the right to extend it for one year, so she extended it for one year which would be July for the deck and (2) the other variance was April, which has expired. B. Pfau said that the applicants would need a variance regardless and P. Kenyon agreed. Counsel said that whatever the ZBA grants tonight supersedes the restrictions on this property. G. Smith said that he has no problem granting this variance, because it is the same variance the ZBA granted last time, but the applicant will just have all new instead of new and old.

M. McComb said that even though the footprint is staying the same, the height is still going up. John O’Carroll said that this will still be the smallest house on the bay by far.

G. Smith said that he still doesn't see much of a difference from what the ZBA approved two years ago.

The WCPB determined no County impact with the condition that appropriate stormwater and erosion controls measures are implemented.

No correspondence.

No comments from public in attendance.

## RESOLUTION

The Zoning Board of Appeals received an application from John and Karen O'Carroll (V07-29) for an area variance as described above.

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

and, whereas the Warren County Planning Board determined that there was no County impact with the condition that appropriate stormwater and erosion control measures are implemented;

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 #11 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, the only change is in aesthetics and it is new construction;
- 3) The request is not substantial, it will be identical to the previous one the ZBA approved;
- 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 stormwater needs will be implemented;
- 5) The alleged difficulty is not self-created, it is dictated by the location of the house.

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

Now, upon motion duly made by Kam Hoopes and seconded by Jeff Anthony, the ZBA does hereby approve the variance request as presented. Meredith McComb opposed. **All others in favor. Motion Carried.**

**12) V07-28 EIGO, THOMAS.** For the construction of a proposed retaining wall (partially constructed). Seeks area variance for deficient setbacks; 1) side; 20 ft. is required, 10 ft. is proposed. 2) Shoreline; 75 ft. is required, 20 ft. is proposed. Section 213.05, Block 1, Lot 15, Zone RM1.3. Property Location: 15 Marion House Drive. Subject to WCPB & APA Review.

Tom Eigo gave an overview and said that (1) they have property that has an incline and (2) they are looking to put in a retaining wall.

G. Smith asked if the applicant was unaware a variance was needed. Tom Eigo replied by saying that (1) there was a water pump on the property which they removed, (2) he planned on putting a 2 foot by 50 foot wall (100 square feet) which he thought was the limitation and (3) the retaining wall will basically fade into the land from the front to the back. G. Smith agreed saying it does from the front to the back. Tom Eigo said that (1) when Mitzi Nittmann came by he could have told the mason to peel off the top to make it conform, (2) if you look across from the north you can see the grade go across their property and it is within inches of that amount and (3) if they need to shorten it on the northern side they will, but the mason just didn't want to tear it apart. K. Hoopes said that it is a good area for a retaining wall. G. Smith asked how long the applicant has been building this house. Thomas Eigo said too long—his goal is to finish this as soon as possible, but it won't be in a weekend.

J. Anthony asked the APA status on this and P. Kenyon said that if the ZBA approves it, it would be forwarded to the APA, who hasn't seen it yet. J. Anthony said that (1) even if this is the best case possible, if it is in hamlet or moderate intensity, it is a 50-foot setback by APA requirements, (2) this wall is only 20 feet back, so it is a violation and (3) he has dealt with 25 or 30 of these violations over the last 10 years and the APA will make the applicant take it out—he (Anthony) hasn't won one of them. P. Kenyon said that would be the APA's call, not the ZBA's call. J. Anthony said that the APA's standard is that a structure is anything that is 6 inches or higher with 100 square feet (face square feet or area square feet). Thomas Eigo said that he is planning on bringing the grade up. B. Pfau said that the ZBA should forward it to the APA.

M. McComb asked if the applicant has plans for a patio down there, because she would like to see some buffer there besides lawn along the waterfront. Thomas Eigo said that (1) if he took the wall out it would all be gone, (2) if he puts the wall there it will buffer in front and (3) there would be planting between the retaining wall and the water. K. Hoopes said that the applicant would still have to please the APA, but he doesn't see

anything from the ZBA's point of view giving any reason to take the retaining wall out. G. Smith said that (1) it breaks up the lawn and (2) he sees no problem with this. M. McComb agreed and said that (1) it also reduces erosion potential and reduces the potential for water running down there into the lake and (2) she thinks it is an improvement environmentally.

The WCPB determined no County impact.

No correspondence.

No comments from public in attendance.

## RESOLUTION

The Zoning Board of Appeals received an application from Thomas Eigo (V07-28) 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 #12 of the agenda.

The Board makes the following conclusions of law:

- 1) There will be no undesirable change in neighborhood character or to nearby properties, there are no neighbor objections to the project;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 3) The request is substantial, but it is a retaining wall, which is a structure that would be more detrimental to remove;
- 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, the ZBA does hereby approve the variance request as presented. Jeff Anthony opposed. **All others in favor. Motion Carried.**

**13) V07-30 KLUCK, CARL & NANCY.** To replace a collapsed 14.6 ft. x 26 ft. storage building with a 14 ft. x 24 ft. storage building. Seek area variance for deficient setbacks; 1) Side; 50 ft. is required, 6 ft. is proposed. 2) Rear; 50 ft. is required, 30 ft. is proposed. Section 186.18, Block 1, Lot 1, Zone LC45. Property Location: 32 Shallow Beach Road.

Nancy Kluck gave an overview and said that (1) they keep the boat in the structure and (2) they want to demolish the existing structure and replace it with a 10 X 20 foot building.

G. Smith asked if the applicants are looking for a 10 X 20 foot building instead of a 14 X 24 foot building and Nancy Kluck said yes. G. Smith asked if that would be expanding the setbacks more than what was there before, making it look even better and Nancy Kluck said yes. Nancy Kluck said that (1) they are responsible for cleaning the area up, (2) Garden Time will put in blocks and put the building on that and (3) they are going to get the building in wedge wood blue with brown trim to match the house.

B. Pfau questioned the need for the variance and G. Smith said that if the barn burned down the applicants wouldn't need a variance to put up a smaller barn, but it didn't burn down so the applicants need a variance. P. Kenyon said that the applicants could actually, in accordance with the new code, rebuild it exactly the way it was, but to make it smaller the applicants need a variance. Counsel said that it is any alteration of a pre-existing non-conforming structure. P. Kenyon said that she actually doesn't have this listed to alter a pre-existing non-conforming structure, because she interprets the code whereby if a structure is totally demolished they start right from scratch. G. Smith said that it was totally demolished and P. Kenyon agreed. K. Hoopes said that he doesn't see this as totally demolished, because the remnants remain—totally demolished to him is down and gone. P. Kenyon said that the applicants are replacing it, as they will be taking the existing building down and replacing it, so she can apply this to the code, because that building is falling down. Counsel said that there is a need to be clear on the needed setbacks. G. Smith asked which setback the applicant would be moving further away from and Nancy Kluck said the side setback.

No comments from public in attendance.

No correspondence.

**RESOLUTION**

The Zoning Board of Appeals received an application from Carl and Nancy Kluck (V07-30) 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 #13 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;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, the applicants are replacing a dilapidated building with a new structure;
- 3) The request is not substantial, this building is going to be smaller than the one it is replacing;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, in as much as the old building fell down.

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

Now, upon motion duly made by Kam Hoopes and seconded by Tony DePace, the ZBA does hereby approve the variance request as amended to reduce the size of the storage building to 10 ft. x 20 ft. **All in favor. Motion Carried.**

**14) V07-31 RONNING, ROLF. SADDLE BROOK SUBDIVISION.** In accordance with Section 125-10B(2)(d) major stormwater projects. Seeks area variance for deficient shoreline setbacks. 100 ft. is required between an infiltration device and wetland, 86 ft. is proposed for infiltration device #6. Section 139.00, Block 1, Lot

48.1, Zone RL3. Property Location: 83 High Meadow Farm. Subject to WCPB Review.

Dennis Dickinson, surveyor/engineer of the project, gave an overview and said that (1) he believed that they met all the requirements, but some of the ponds use recharge or infiltration basins, as opposed to micro-pools, (2) in a 25 year storm or greater the water would overflow from the primary treatment facility and run into the overflow basins and when the storm ceased, they would infiltrate the ground to discharge from those separate basins then discharge to the engineer outlets, (3) they have taken the identical ponds they have approval from by the Town Engineer and they have raised them in elevation to assist them with meeting the 2-foot vertical separation by moving them up-slope away from the wetland area and the stream and (4) they switched the location of the Fire Pond and the basin, which has made it that they don't comply totally with the 100-foot setback.

B. Pfau said that only Pond 6 is in front of the ZBA tonight. Dennis Dickinson said that it should be all three ponds. J. Anthony said that the ZBA also has different maps than the one Dennis Dickinson is presenting from. P. Kenyon said that (1) on the application it says that for the requested area variance Section 125-10(B)(2)(b) requires "...infiltration ponds to be 100 feet from the wetlands..." and Pond 6 has only 86 feet of separation and (2) based on what Dennis Dickinson is telling her it is more than one pond. Dennis Dickinson said that is correct.

M. McComb said that (1) the ZBA maps still show the pond and Fire Pond not flipped around and (2) the map Dennis Dickinson is using to present is not the one that the ZBA has to look at. Counsel said that (1) they are trying to quantify the relief sought by the applicant and (2) asked if for Pond 4P that the setback requirement is 100 feet and the applicant can only achieve 86 feet. Dennis Dickinson said that was correct for Pond 4P. Counsel asked if the applicant can quantify the area for Pond 6. Dennis Dickinson said that it would be about 20 or 30 feet. Counsel asked for a more precise measurement in order to determine the relief needed on Pond 6. Dennis Dickinson said that they are going to turn Pond 6 into a non-infiltration pond, so if they do that they won't need any relief on Pond 6, because they are not going to be discharging the groundwater—it is going to be retained. Counsel asked if it would then be no relief sought for Pond 6 and Dennis Dickinson said yes, there would be no variance needed for Pond 6 anymore.

Dennis Dickinson said that Pond 4P and Pond 4 are the same pond, where it is a Pond 4 Complex made up of Pond P4 (self-contained micro-pool), Pond P4I (infiltration pond), Pond 4 and Pond 4P. He further explained by saying that Pond 4 is self-contained and needs no setback, and Pond P4I is an infiltration pond that needs to be 100 feet from a fringe wetland adjoining a stream and it is only 86 feet. J. Anthony said that the map Dennis Dickinson is referencing is not what is in the ZBA members' packets. P. Kenyon asked what maps were handed into her office on Friday in her absence and Rolf Ronning said that he believes those maps represent the changes that the ZBA was anticipating to get tonight. Counsel said that the maps the ZBA is working with tonight are not even asking for the relief specified in the application. T. McGurl said that the whole application and the maps have changed since the ZBA got its packets. Dennis Dickinson

said that (1) they submitted the original maps and after they submitted those they were confronted with the pond issue, so when they revised the ponds they brought new maps to the Zoning Office. Rolf Ronning said that he brought the sets of 45 pages of maps to the Zoning Office on Friday. P. Kenyon said that there is a role of maps in her office that she does not know what they consist of, because she didn't have time to open those maps today, not realizing the applicant has different maps with him tonight than what was submitted to the ZBA with the application. K. Hoopes said that the ZBA wouldn't have gotten the maps in time to do anything proper with them anyway, if they were delivered on Friday that would have been very short notice to change the agenda.

Dennis Dickinson said that they have also moved the infiltration basin on Pond 5 so they no longer need a variance for that. J. Anthony said that the applicant needs the variance on Pond 4. Dennis Dickinson said yes, and the vertical separation on Pond 5. Counsel said that (1) this is not properly noticed, (2) this is not properly specified in the application and (3) each ZBA member does not have the plan being presented here, (4) this application has to be amended for sure and (5) the applicant needs to specify what variances are necessary and substantiate them.

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

**15) V07-32 KENNEDY, ROBERT & THERESA.** To demolish and rebuild a single-family dwelling. Seek area variance for deficient setbacks. 1) 30 ft. is required; a) 22 ft. is proposed from the edge of the right-of-way for Goodman Ave. and b) 4.8 ft. is proposed from the private right-of-way. 2) Side; a total of 20 ft. is required, 3 ft. is proposed. Section 171.15, Block 1, Lot 75, Zone GB5000. Property Location: 20 Goodman Avenue. Subject to WCPB Review.

Dean Kennedy, representing Robert and Theresa Kennedy, gave an overview and said that (1) they propose to tear down the existing building and replace it with a modular home, (2) the current structure has a 20-foot setback and they propose a 22-foot setback for the new structure, (3) to the west there is an existing 3-foot side setback which will remain and to the east the current 7 feet and change setback will become 4 feet 8 inches, (4) they are proposing a tan house with darker shutters that will fit in with neighboring properties.

M. McComb asked if the proposed house height is 23 feet 5 inches and Dean Kennedy said yes.

B. Pfau asked about the right-of-way and Dean Kennedy said that the right-of-way was adjusted previously. P. Kenyon said that was part of a variance that was granted for a subdivision and G. Smith agreed. B. Pfau asked if it is a right-of-way to the back of the lot and P. Kenyon said yes, it is to the Sellers lot. M. McComb said that the proposed lot line adjustment is left over from Rolf Ronning's adjustment and Dean Kennedy agreed. B. Pfau asked if it is a walking or driving right-of-way and Dean Kennedy said that he

thinks you could probably get a car through it now, but you couldn't get a truck through there right now. P. Kenyon said that she doesn't remember it being a walking right-of-way and G. Smith agreed. T. McGurl said that he remembers comments that it was too small to use for anything other than to get access.

K. Hoopes said that the dash line on the plot plan is the old property line and Dean Kennedy agreed. K. Hoopes said that line has been adjusted to run parallel with the right-of-way. Dean Kennedy said that the thin line represents the proposed house.

M. McComb said that she would like to know what the two sideline setbacks are and Counsel said that it is 4.8 feet from one side and 3 feet from the other side. M. McComb said that the agenda should read 7 feet 8 inches is proposed. Dean Kennedy said that they are looking to get bigger on the east side—the west will stay the same. The ZBA members said that there are discrepancies with the sideline setbacks. J. Anthony said that the proposed house measures 30 feet wide, but the architectural drawing calls it 27 feet 6 inches for the foundation, so that is the difference. G. Smith said it must be 18-inch eaves on either side of the house that are not included here. P. Kenyon said that there are two front yards on this property and since they only have one side, they are proposing 3 feet. M. McComb said that the MacEwan parcels to the west are set up to have patios and it won't be a case of another building abutting there, in addition, it is not like it is going to be a big house.

M. McComb asked about how the house will be constructed and Dean Kennedy said that it is a modular home that would be put in place by a crane. G. Smith said that (1) it is going to look a lot more attractive than what is there now and (2) the existing building definitely needs to be replaced. M. McComb said that it is in scale with the neighborhood.

No correspondence.

The WCPB determined no County impact.

No comments from public in attendance.

## RESOLUTION

The Zoning Board of Appeals received an application from Robert and Theresa Kennedy (V07-32) 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 #15 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it has been established that it is an improvement from what is there;
- 3) The request is not substantial, considering its location;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, in as much as the house and lot are pre-existing.

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, the ZBA does hereby approve the variance request as presented. **All in favor. Motion Carried.**

**16) V07-33 SISCA, FRANCIS.** For the placement of a proposed 20 ft. x 12 ft. storage building with a 10 ft. x 6 ft. entrance (excluding overhangs). Seeks area variance for a deficient rear yard setback. 30 ft. is required; 21.6 ft. is proposed. Section 157.05, Block 1, Lot 4, Zone RCL3. Property Location: 39 Horicon Lane. Subject to WCPB Review.

Francis Sisca gave an overview and said that (1) he proposes to build a garden house on his property and (2) he feels he has chosen a site that would be result in the least impact and would only require cutting one tree about 8 inches around.

G. Smith asked the purpose of this structure and Francis Sisca said that (1) it would be for space and (2) it would be a playroom for the kids without any sleeping quarter, water or plumbing at this time, but it will have electric.

P. Kenyon said that she thought the proposed building was to be a storage building. ZBA members agreed. P. Kenyon asked if it is correct that the proposed building is going to be a children's playhouse and Francis Sisca said yes, and it will also be for storage in the

winter. J. Anthony asked if the building would be heated or insulated and Francis Sisca said that (1) he hasn't decided yet, but he would like to have it insulated at some point and (2) the structure as it comes from the factory is not insulated. G. Smith said that it sounds like it is going to become a guest cottage.

From the public, Skip Kneeshaw, representing the southerly neighbors (the Mackeys and Jackmans), said that (1) their major concern is that it doesn't become a full cottage for the house because they share a septic system that happens to be on the Mackey/Jackman property, (2) as sleeping space increases it has impacts on the septic system, so they are concerned for the security of that system, as it is in a fragile area, (3) this cottage is uphill of that, and while there is no stormwater plan required since it is less than 1,000 square feet, there still may be some water run-off from there and (4) they are concerned with about groundwater being re-diverted to an access road if there is an access road plan.

K. Hoopes said the ZBA doesn't do anything with septic, but that is something the concerned neighbors would have recourse on, because it would be a Local Board of Health issue with the Town Board. Skip Kneeshaw said that they are concerned about it becoming an overflow or a guest cottage per se, which would increase the density of use of that area. K. Hoopes said that would require it to be plumbed and right now there is no plumbing plan for it of any kind. Skip Kneeshaw said that (1) if it becomes an overflow building then those occupants would use the facilities in the main house, (2) if it is a bunkhouse without plumbing, it becomes an additional bedroom for the property and (3) if it was strictly a building for storage, he doesn't think there are any objections. K. Hoopes said that it is a building that is only being occupied by people who are already part of the family occupying the main building.

B. Pfau asked how it would change the application if the applicant proposed to put a bedroom there and P. Kenyon said that she would be more concerned with that. Francis Sisca said that (1) regarding the overflow of the cottage and the run-off, in the early 1980s the septic system was designed when the houses were built to accommodate two single-family homes, (2) since then the amount of water that has come out of the faucets and toilets has reduced, because they have changed the toilets in the house, so the amount of gallons of water going into the system is actually less from their house and (3) the Mackeys house is a different story where there is a separate apartment in the house and a garage with an apartment above it, so the Mackeys may have concerns, but it may be from the additional taxing the Mackeys are putting on the septic system—not from his four kids under 11-years-old.

M. McComb asked if the ZBA has any way of preventing the applicant from putting a guest cottage and K. Hoopes said that the ZBA would if it was going to be a guest cottage, because P. Kenyon would address it as such.

Francis Sisca said that as far as the water run-off is concerned, any water coming off the mountain is coming back down to his property, because the neighbors' property is pitched towards his property and as a result he spent over \$4,000 last year putting in a water drainage system on his property line to account for all of the run-off from the

neighbors' property as well as his. Skip Kneeshaw said that (1) he acknowledges that the stormwater in the parking area has been greatly relieved by the applicant's efforts and (2) he is more concerned about clearing of vegetation because the proposed site for the cottage is up-hill from the septic system. Francis Sisca said that it is actually to the north. Skip Kneeshaw said that it is to the north and slightly up-hill. B. Pfau said that it is mostly cleared where the applicant proposed to build. Skip Kneeshaw agreed and said that (1) it is also all ledge rock and (2) a further consideration is that outside the scope of this application they have already heard that the existing house is small for the size of the family living there—he wouldn't want the applicants to limit their own ability in making the house larger by putting a permanent structure, if they wanted to relocate their septic system to their own property. K. Hoopes again said that the ZBA can't get involved in septic.

P. Kenyon said that it is pretty steep getting up to the proposed building area and G. Smith agreed. P. Kenyon asked if the building is coming as a kit and Francis Sisca said yes, it is a pre-fabricated kit. P. Kenyon asked what the plan is for getting the materials to the building site and Francis Sisca said that it is disassembled, so they would carry it through the woods. G. Smith said that it is about 30 feet up-hill to the building site. Francis Sisca said that he would prefer not to move the proposed building site, because that would require having to cut down an additional five large pines and then actually have it on the ledge as opposed to the flat area where he proposes it be built.

M. McComb asked if there is a big elevation change between the site of the storage/playhouse and the main house and Francis Sisca said that it is probably 20 feet. M. McComb said that she also likes the proposed location because it may be visible across the top of the house, but it is not going out to the side and filling in the side to side.

The WCPB determined no County impact.

No correspondence.

## RESOLUTION

The Zoning Board of Appeals received an application from Francis Sisca (V07-33) 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 #16 of the agenda.

The Board makes the following conclusions of law:

- 1) There will be no undesirable change in neighborhood character or to nearby properties, it would be a storage building on a residential property;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, the applicant is caught between the right-of-way and the rear property line;
- 3) The request is not substantial, or very noticeable;
- 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, the ZBA does hereby approve the variance request as presented. **All in favor. Motion Carried.**

**17) 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.**

This item was tabled to the July 2007 ZBA meeting pending additional information.

#### **Other Business:**

Rolf Ronning said that (1) he is in a bit of a bind legally with Saddlebrook, (2) apparently there was an error and Dennis Dickinson and his staff filed the wrong maps with the Town of Bolton, which they will have done tomorrow correctly with all the right maps for the variance and (3) he is asking as a personal favor if there is any way the ZBA could have a special meeting on the matter, as he has a bunch of people ready to sue him and a month is going to be a problem and (4) he is also going to ask the PB to hold a special meeting on the matter as well.

G. Smith said that it is up to the ZBA members. Rolf Ronning said that (1) P. Kenyon has said that it doesn't have to go back to the WCPB and (2) the maps can be filed correctly tomorrow. M. McComb said that she'd like the PB's recommendation. Counsel said that (1) a recommendation is not final and (2) in the end, Rolf Ronning

needs an approval of the PB on a plan that works and the PB may not give Rolf Ronning that final approval if the plan requires a variance be required, because those variances must be in place, (3) what he thinks they are discussing is if Rolf Ronning were to submit papers that actually and accurately depict what he needs, then on Thursday the PB could look at them, review them and if the ZBA requires, make a recommendation to the ZBA that these fit, these are good, these are the types of things they'd want to see if the ZBA is going to grant the variance—that is the business of the ZBA special meeting or the next regular ZBA meeting and (4) it is very important to do it by the numbers.

G. Smith said that the PB could ultimately say that they approve of it if the ZBA approves it at a special meeting and Counsel said that all the PB is going to have to approve a variance in place when. K. Hoopes said that the PB is going to approve their side of it assuming the ZBA is going to be giving a variance—without the ZBA's variance anything the PB does is null and void. G. Smith said no, not null and void. Counsel said that (1) perfection requires that the PB approve the plan and purports 100% that the stormwater and erosion control regulations and (2) the PB can't do that unless a variance is in place. J. Anthony asked if Town Engineer Tom Nace has approved the stormwater and Counsel said no, while Tom Nace did complete what he thought the task was, the task was not accurate. Rolf Ronning said that (1) there were eight items on Tom Nace's letter, five of which they addressed and the other three they planned on addressing the other three and (2) he is asking if it is possible for a special ZBA meeting on the matter in 10-12 days.

The ZBA members agreed to hold a special meeting to address Saddlebrook on 07/02/07 at 6:30pm. P. Kenyon said that (1) proper notification to neighbors along with a legal notice have to be done and (2) she is requesting all correct information from Rolf Ronning tomorrow. Rolf Ronning agreed.

Meeting adjourned at 11:20 pm.

Respectfully submitted by,  
Jennifer Torebka  
Recording Secretary  
06/28/07