

**Town of Bolton  
ZONING BOARD OF APPEALS  
MINUTES  
Monday, May 14, 2007  
6:30 p.m.**

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

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

**Absent:** Tom McGurl, Jr.

Chairman Greg Smith opened the meeting at 6:30 pm by asking for corrections to the April 16, 2007 ZBA minutes.

**RESOLUTION**

Motion by Kam Hoopes to approve the April 16, 2007 minutes as presented. Seconded by Bill Pfau. **Four in favor. Two recused**, T. DePace and M. McComb weren't at that meeting. **Motion carried.**

**1) V07-18 VASSELLI, ANTHONY, REVENIS, MARYELLEN.** Represented by Chris Gabriels. In accordance with Section 200-38B, seek area variance for a proposed dock/boathouse with a boathouse width greater than allowed. 30 ft. maximum allowed. 35.6 ft. is proposed. Section 157.00, Block 1, Lot 9, Zone RR10. Property Location: Tongue Mountain. Subject to WCPB Review & APA Review.

Chris Gabriels, representing Anthony Vasselli and Maryellen Revenis, gave an overview and said that (1) the property is on Tongue Mountain and is solely accessible by water, (2) they propose to create a dock system to give them dry areas to access their property and facilitate the uses they anticipate.

M. McComb said that (1) in definitions in Section 200-8 it says "...shoreline lot width is measured along the shoreline as it winds and turns between the boundary lines of a lot..." and (2) there is a deed that says they have 202 feet measured. P. Kenyon referred Meredith to Section 200-38B, wherein it reads in part "width of the lot at the shoreline".

B. Pfau asked if the applicants had to get a variance from the APA for this and Chris Gabriels said no. B. Pfau said that (1) the boathouse is situated in the center of the lot and (2) he doesn't think it will affect the neighbors to the north or south. M. McComb agreed and said that (1) it doesn't invade the sideline setbacks and (2) the neighbors have boathouses as well. G. Smith asked if it would be centered on the lot and Chris Gabriels said yes, more or less.

No correspondence.

The WCPB determined no County impact.

M. McComb said that (1) the applicant is 8 ft. short of having an as-of-right 45-foot boathouse and (2) it is also not the typical location in Bolton Landing because the only access to the house is by the water as opposed to being strictly a recreational addition to a house. B. Pfau said that would establish the need for additional space in the boathouse too.

No comments of public in attendance.

G. Smith said it is a good-looking boathouse and he has no problem with this. M. McComb said that the color of the roof around the deck might be better darker so it is less visible and Chris Gabriels said that he believes the color chosen is a much darker brown. G. Smith asked if the docks will be pressure treated and Chris Gabriels said yes. M. McComb said that the docks exists so pre-existing cribs are setting the basic scale of the structure and Chris Gabriels agreed.

## RESOLUTION

The Zoning Board of Appeals received an application from Anthony Vaselli and Maryellen Ravenis (V07-18) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item #1 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, it has been established that the extra undercover space is necessary considering the location.
- 2) There will be no undesirable change in neighborhood character or to nearby properties.

- 3) The request is not substantial, 5.5 feet where there is 10 more feet of lakefront capable of being 15 feet.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it is just a boathouse.
- 5) The alleged difficulty is not self-created.

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

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

- 2) **V07-19 COSSMAN, PETER & BARBARA.** For a proposed 2 lot subdivision, seek area variance for 1) deficient density. 3.9 acres is required in the parent parcel, 3.51 exists. 2) Lot width. 125 ft is required, 77 ft. is proposed for lot "A". Section 171.11, Block 2, Lot 13.1 Zone RCM1.3. Property Location: 5078 Lake Shore Drive. Subject to WCPB Review & APA Review. *Note: This application is in conjunction with SD07-12.*

Peter Cossman gave an overview and said that (1) the Keisslings have consented to the subdivision being sought, (2) they are seeking a variance due to the undersized nature of the parent parcel, (3) they narrowed the lot down at one point to 75 ft. in width to allow parking, which they are still open to doing, (4) there are two existing residences on the property, (5) they are proposing drawing the line down the center of the property and (6) they are willing to accept the condition of no guest house on the second lot, so there would be no more than three residential units total on the combination of all parcels.

K. Hoopes said that (1) the zoning regulations stand up well by themselves, (2) if you could fit a house density wise on the new lot and (3) the density regulations are being met, then he doesn't see any reason to put unnecessary conditions on this.

M. McComb said that (1) the APA jurisdictional determination says that Lot A is 1.10 acres instead of 1.01 acres and it also says that no other land use or development is proposed and yet there is a building area clearly envisioned for Lot A and (2) she questions the significance of the APA letter being inaccurate. Counsel said that he doesn't think the acreage discrepancy is significant, but it is an error. P. Kenyon said that if this variance is granted, a copy of the record will go to the APA.

M. McComb said that (1) in the July 25, 2002 PB minutes, there was a motion made to forward the application to the ZBA with a favorable recommendation with the conditions that there be no further subdivision on proposed Lots 1 and 2, (2) in the ZBA minutes of August 19, 2002 makes note of that recommendation that there be no further subdivision, (3) she recalls a great deal of consideration given to the fact that they were permitting Mr.

Keissling's residence down so close to the water and attaching two structures and the parcel still had a whole lot of docks on it, (4) there isn't density in the original parcel for three lots in it and granting this would be creating two lots less than 1.3 acres, (5) the main residence could also want a garage if it becomes year-round and (6) many garages in town have guest quarters above them.

K. Hoopes said that the motion made was made with no conditions, so there is in effect no condition on this. M. McComb said that there is a condition on the map and K. Hoopes said that it was a condition on the map, which as Counsel said, was essentially almost a handshake deal. G. Smith said that the Keisslings withdrew the condition and P. Kenyon said that is correct and the office does have the withdrawal in writing.

Peter Cossman said that his understanding of the ordinance in terms of the size of the lot is that they would both be conforming area wise. P. Kenyon said that is correct in that minimum lot size is one acre in that zone.

K. Hoopes said that regarding guest space over the garage, the ZBA has to judge each item on its own merit. G. Smith agreed and said that the ZBA can't presume what someone is going to do.

M. McComb said that in favor of the project, it is a lot with such steep areas and the area labeled "building area" on Lot A is flat and has easy access from the road and has its own access possibility from Route 9N. G. Smith said that it will have its own access from Route 9N—it is going to be totally separate and there won't be any deeded right-of-way through the Cossmans driveway to access this lot. M. McComb asked about the site easement and Peter Cossman said that (1) there is a site easement enables them to ensure that the trees that are on the Keissling parcel will not be taller than 20 feet and (2) there is another condition that no trees can be removed from their site and if any trees had to be removed in the future they would have to be replaced.

K. Hoopes said that (1) he made the original motion for the Keisslings and (2) the compelling reason for him being in favor of it was because the property was laid out the way it was with the right-of-way coming down, they turned two of the lots into a single lot, the building was already constructed and docks already in place, so this particular subdivision made sense all by itself, (3) the upper portion wasn't discussed in terms of future subdivision and looking at the plans here and having been to the property, it also lends itself to that particular shape and (4) he doesn't see anything with this proposal that doesn't make it a reasonable subdivision.

M. McComb said that (1) since the cabin seems to go with the main residence, if there was a way to cut this up to make a building site up top and attach it to that rock outcropping it would be better and (2) she doesn't want to see somebody fitting a house in the little cabin slot there. G. Smith said it wouldn't happen—they'd have to come before the ZBA. M. McComb asked how you can get from the tennis courts to the cabin if there is no driveway and Peter Cossman said that there is a pathway that goes from the tennis

court to the cabin so one could gain access by foot, just like the Keisslings had steps going to their residence.

B. Pfau said that the reason he hesitates to support the proposal is because (1) the original subdivision was for a two-lot subdivision with one of the lots large enough to be re-subdivided at some future date, although the parent parcel is not large enough for a three-lot subdivision, one of the resulting parcels would in fact be large enough to re-subdivide into two more lots thereby ending up with three parcels on this lot, (2) he does agree there was no condition set forth on the original hearing and it was discussed, although it does make sense when you consider that one of the remaining parcels was large enough for subdividing further, (3) he thinks it made sense to limit subdividing this parcel into two spots because seven variances were granted for the original subdivision, which he still feels makes sense to him. Peter Cossman said that (1) he thinks that underscores the whole application in that there were no condition, (2) the variances B. Pfau referred to all related to the Keissling lot and (3) the only variance he knows of that relates to his lot is for the tool shed built inches away from the driveway and boundary line of the Keissling property, but that was built at the turn of the century. B. Pfau said that there was no compulsion for the subdivision at that time. Peter Cossman said that this property would be more conforming if the line was drawn as proposed.

M. McComb said that (1) she agrees with B. Pfau in that there was a lot of talk that there would not be any further subdivision, which did not make it into the minutes or motion, though it did make it onto the map, (2) it seems like there is a beautiful property there with perhaps the potential for another structure on that upper level, but what concerns her is marrying it to the lower level with the narrow space there and that the cabin seems to go with the residence. Peter Cossman said that (1) if that was an issue for the ZBA as a whole, then keeping the cabin with the main house is not a major issue for them one way or another and (2) he thinks the application as it is laid out makes sense in that the footpath going down to the cabin is no more difficult to cross than the very steep steps that access the Keissling residence. M. McComb said that is true.

K. Hoopes asked if the measurement of the lot width is a minimum lot width that can't be narrower than 125 ft. P. Kenyon said that (1) it is supposed to be 125 ft., which is required in that zone and (2) she has to go by where the structure is located. K. Hoopes said that (1) it is another required variance for this and this is addressing the substantial nature of the ZBA's balancing act and (2) it does not come with any kind of circuitous acrobatic method for getting lake access—this is a non-lake access lot. B. Pfau agreed and asked if this lot will have any lake rights. Peter Cossman said that (1) he could envision that or not, as there are so many docks down there—they can accommodate seven boats right now and (2) he could envision wanting to give somebody a dock with the property, but not an exclusive right to use that section of property, which he understands is allowed by the ordinance. Counsel said it is allowed.

M. McComb asked what the marina definition is, because there was a lot of talk of a Class A Marina being prohibited there. P. Kenyon said the definition of a Class A Marina is and (2) the lot shoreline width required for the first lot is 125 ft. in this

particular zone and then additional 10 feet for the contractual access, so the applicant has the shore frontage he needs.

B. Pfau asked if there was a no further subdivision condition that made it on to the last variance then Mr. Cossman could be making the same request with just additionally asking the ZBA to remove that condition and Counsel said yes. B. Pfau said that the ZBA has removed conditions before by the ruling of this ZBA and Counsel said the ZBA may, if the members oppose the condition. B. Pfau said that they have done this in the past and G. Smith agreed.

Correspondence: Read into the record in its entirety by Counsel.

- Letter dated 05/11/07 from Kathy Bozony of the LGA - opposed

The WCPB determined no County impact.

No comments of public in attendance.

M. McComb said that (1) you have a cabin with a driveway to it and to cut that off from the driveway and say you now have to go down the steps, there aren't a lot of people this day and age who want a property accessed that way, (2) it seems there is an alternative that would relieve the need for the minimum lot width and relieve the possibility of the building site as labeled being moved and (3) it seems there is an alternative that would require fewer variances and as was done in the first case, follow the natural contours of the line in segmenting the properties. K. Hoopes said that (1) it is not the ZBA's job to design projects, (2) he doesn't see where there has been an alternative presented in any fashion, (3) there are only two variances being requested, (4) he would agree that the cabin just happens to be there and would agree that probably whoever would be interested in buying this would want to build in the upper part and would want to keep the cabin, but he doesn't see where that factors in. G. Smith said that (1) he doesn't blame the applicant in not wanting a right-of-way through his driveway to that cabin, because the applicant actually parks his cars there and there would be no privacy for the applicant if people were driving by there and (2) there just isn't the width in the driveway or the room for these future land owners. Peter Cossman agreed and said that (1) the house is very large, so there is a parking requirement for that house—he doesn't want to pave or create any more parking areas on the property and (2) when they originally presented this to P. Kenyon some months ago the lot depicted didn't require a variance because it met the minimum width to the end, but when he looked at it he realized they could pick up some additional parking for the main house, so it made sense for them to skinny it down to get more parking. G. Smith said that with the topography of the land there is no way the applicant can add more parking without building a huge retaining wall or blast on the upper side, which just doesn't make sense. M. McComb said that if the applicant did cut it the other way and wanted to put a garage where the cabin is, the applicant would have no problem doing that. Peter Cossman said that if they did cut it the other way they would probably run into an area requirement up above regarding road frontage and overall area and (2) you would be trading one variance for another.

B. Pfau said that after listening to the other ZBA members' thoughts on this project, (1) he has kind of changed his mind on what he originally thought this project was based on the two requests, (2) he believes the minimum lot width will change when the house is built on the larger part of the lot and (3) the land size for the original parcel is small enough. J. Anthony said that (1) there is a jurisdictional determination from the APA before the ZBA that clearly does not anticipate any new construction, (2) the APA jurisdictional determination was issued based on a series of fact and Fact #5 is that "...Lot A is a non-shoreline lot 1.10 acres in size and it will be improved by the existing cabin and Lot B is 1.16 acres and includes all of the shoreline associated property and is improved by the residence, no further subdivision or other new land use or development is proposed..." and (3) the APA made the jurisdictional determination based on these facts and if there is going to be a new house here, this jurisdictional determination doesn't hold water anymore in his estimation. Counsel agreed. J. Anthony added that the APA made its decision on its facts and once the ZBA entertains a new house on this then the current jurisdictional determination is invalid and the project would be subject to APA review. B. Pfau said that he still feels it is a minor request in that the lot width in looking at the lot as a whole is not that important an aspect considering the size of the lot. G. Smith agreed and said that the cabin happens to be located where it is located and if it were up 100 ft., the ZBA wouldn't be sitting here with that part of this variance. M. McComb said that (1) if there were a driveway to the cabin accessible from proposed Lot A she wouldn't have quite the same concern about it and (2) the town has had provisions necessary for golf carts and things to get down steep lots. K. Hoopes said that (1) it is not up to the ZBA to decide what a future owner might want to approach his cabin—that is getting way beyond the ZBA's scope and (2) if future owners need special consideration down the road they would come back before the ZBA. G. Smith agreed and said that if there wasn't a way to access the cabin then the applicant wouldn't be before the ZBA and (2) that is not for the ZBA to worry about—the applicant is here for the lot width. M. McComb said that is the basis for her objection.

M. McComb asked about the APA jurisdictional question and Counsel said that (1) J. Anthony is correct in that right now it is non-jurisdictional predicated on those facts that are recited in their opinion, (2) if you change one of the facts, when the person came into the office for a certificate of compliance to build a house then he would suggest to the Zoning Administrator that the new applicant would need a non-jurisdictional letter from the APA and (3) right now, the facts presented are assumed no development. B. Pfau said that adding a home to the top of the property wouldn't change the parts the APA is concerned with. Counsel said that (1) he thinks that perhaps the APA really hasn't shaped a clear understanding of this thing, because the APA is always concerned with density as they should be, (2) they are dealing with a density issue here and (3) the APA indicated that based on the facts presented this is non-jurisdictional, which he agrees with, but then if this should be favorably dealt with by the ZBA with the variance, that determination will, from the Zoning Office, go back to the APA. P. Kenyon said that if this variance is granted then these minutes will go to the APA and the APA will make reference to the minutes in their review if there is a proposal for a new house. Counsel agreed and said that it will be brought to the APA's attention that it does involve density

and the ZBA granted it, pending a favorable decision tonight—the APA will deal with it and they can pass on it, leave it alone or they will raise an objection. K. Hoopes said that in some of the APA over turnings of previous variances, it struck him in that maybe they had not read the minutes. M. McComb said that also this determination came very quickly from April 17<sup>th</sup> to April 26<sup>th</sup>. Counsel said that the APA also has the right to rescind its decision. M. McComb asked if it has received PB review and P. Kenyon said it is on the agenda for Thursday night. Counsel said that as a predicate to the PB review, it must be lined up perfectly either with the zoning code or by variance. B. Pfau asked if the PB could approve this before the APA has a chance to overturn it's decision and P. Kenyon said yes, the PB doesn't base their decision upon the APA's decision. Counsel said that the ZBA has some very standards by statute and state law and the APA doesn't.

## RESOLUTION

The Zoning Board of Appeals received an application from Peter and Barbara Cossman (V07-19) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item #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, there is a motel on one side and a residence on the other side, it is a fairly mixed bag in there;
- 3) The request is not substantial, the cabin just happens to be down in the narrow end of the lot which meets at a 77 ft. width, a few feet up and it would be well within the guidelines;



- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, nothing has been established to that effect;
- 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. Jeff Anthony & Meredith McComb opposed. **All others in favor. Motion Carried.**

- 3) **V07-20 GOFFREDO, LAWRENCE.** To alter a pre-existing non-conforming structure, specifically to allow an 8 ft. x 4.7 ft. deck and stairs to remain, seeks area variance for 1) a deficient front yard setback. 75 ft. is required, 0 ft. is proposed. 2) To alter a pre-existing, non-conforming structure in accordance with Section 200-56A. Section 139.00, Block 1, Lot 34, Zone RL3. Property Location: 184 New Vermont Road.

Lawrence Goffredo gave an overview and said that (1) when he purchased the home in 1992 it was over 100 years old and in 1995 he decided to make some improvements as the roof was leaking and the sub flooring was rotting, (2) they decided to put a new door on in an attempt to alleviate the water problem, which was unsuccessful so they then put a small roof on which did solve the problem, but he never applied for the variance for that roof, (3) he was notified by the Zoning Office in January that he was in violation of not applying for a variance and they also advised him that when the tax assessor when to the site to reassess the beautification of the building, there was nothing on the assessor's map as far as having a front or side deck on there—the original listing showed both the side and front decks on it, (4) he was guilty of not applying for a variance to put a roof on and he made the deck go over the property line, (5) a civil penalty in the amount of \$250 was imposed by the TB which he paid and (6) he is here for a variance and hopes to keep the roof on.

G. Smith asked if it would be within the boundary of the pre-existing deck and Lawrence Goffredo said yes, he would be going out to the Town line.

Lawrence Goffredo said that it was unintended to violate the law. G. Smith asked where the contractor was from. Lawrence Goffredo said that the contractor is from Glens Falls and he (the contractor) didn't know better and was under the assumption that he (Goffredo) was within his boundary to put a roof over the deck.

K. Hoopes said that (1) in looking at the pictures he feels the ZBA would have been inclined to allow this and grant a variance on this situation if for no other reason, for safety's sake, (2) a sloping tin roof over the front door in the middle of winter is a scary thing, (3) he thinks since the fine was set at \$250, that tells him something too in that he

feels the TB did not see this as an egregious violation of impropriety. G. Smith said that it does make the aesthetics of the home look much nicer. J. Anthony agreed and said that he has no problem with this.

G. Smith said that (1) he knows the applicant did rebuild the whole front porch and (2) he has no problem with the location of the front steps and sees no reason for the applicant to have to move them to the side, pull up shrub and replant things either. Counsel said that (1) the applicant has a great plan and the ZBA shouldn't change it and (2) the applicant has taken the step off the right-of-way. P. Kenyon said he is currently in the right-of-way. Lawrence Goffredo said that he plans on removing the steps in the front and putting the steps on the side. Counsel said that (1) Mr. Goffredo worked very well with the Zoning Administrator, the Code Enforcement Officer and Town Counsel to put this together and (2) he wants to assure the ZBA that these are the best feasible alternatives.

Lawrence Goffredo said that he plans on no further expansion. G. Smith said (1) next time the applicant wants to nail any board up outside the residence he should come see the Zoning Administrator and (2) he agrees with K. Hoopes in that more than likely the ZBA would have given the applicant the variance to fix this problem, so he doesn't have a problem with it.

No correspondence.

No comments of public in attendance.

## RESOLUTION

The Zoning Board of Appeals received an application from Lawrence Goffredo (V07-20) 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 there being no public comment regarding the application;

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

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

- 2) There will be no undesirable change in neighborhood character or to nearby properties, there have been nothing but improvements to the appearance of this home;
- 3) The request is not substantial, the applicant has come up with a plan to move the steps off the public right-of-way;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, in fact it will make this residence safer and more usable for its owner;
- 5) The alleged difficulty is not self-created, the house has been there for 100 years and sits where it sits and the front steps are going to encroach on the setback.

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

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

- 4) **V07-21 PANAGLON, ANGELO & PAT, dba Franks Snack Bar.** To alter a pre-existing non-conforming structure, specifically to extend an existing deck, seek area variance for 1) deficient front yard setback. 30 ft. is required. a) 0 ft. is proposed from existing private right-of-way, and b) 24 ft. is proposed from Route 9N right-of-way. 2) To alter a pre-existing, non-conforming structure in accordance with Section 200-56A. Section 171.19, Block 2, Lot 1, Zone GB5000. Property Location: 4944 Lakeshore Drive. Subject to WCPB Review.

Angelo Panaglon gave an overview and said that (1) it was in the contract to rebuild the deck that the contractor would get any needed variances or permits, which the contractor told him he didn't need any, but he believes there was some lack of communication between the contractor and the Town Hall, (2) nothing has changed about the structure itself except that it extends 6 ft. out towards Route 9N and (3) nothing else has changed with the structure except it is all new wood and new railings.

J. Anthony asked if the L-shaped fence by the street is new and Angelo Panaglon said yes, it is new. G. Smith (1) said that it used to be pavement on the other side of the fence, which is now deck and (2) asked if the reason in doing that was to make the deck bigger for more seating. Angelo Panaglon said that his understanding is that there were originally 10 tables there then the previous owners took two away because the kitchen couldn't handle it, but they decided to make it 10 tables again. B. Pfau asked if what was under the new part of the deck was just walking area and not parking. G. Smith said it wasn't part of the parking lot, it was just pavement. Angelo Panaglon said that it was just blacktop—a walking surface and they kept the fences in the same spot, they just made them a different style so there would be no chance of anyone falling through. G. Smith

said that now the deck goes up to the fence. T. DePace asked if it is correct that the fence that was there before is in the same place now, except that there is wood decking up to it rather than black top and Angelo Panaglon said yes. K. Hoopes said that (1) if the ZBA were looking at this for the first time as a plan and not a completed project, he thinks the ZBA would have been favorable of, (2) that particular area in downtown and it being a GB5000 lot, the key element is that the ZBA wants to protect parking spaces, so if no parking spaces are affected in the creation of this thing they are half way there and (4) the applicant still has the same number of parking spaces.

M. McComb said that she likes the L-shaped addition because people stand there waiting for ice cream at night and it clearly makes a safer location for patrons waiting there or sitting on the bench instead of having it be unclear on whether a car could just pull in there. P. Kenyon said that she had no issue with that portion of the railing with the fences and it is not even part of this application. G. Smith said that as far as he is concerned the deck actually looks nicer now than it did before.

M. McComb said that she knows it has come up before that the ZBA can't do anything to contractors who misrepresent conversations with the Zoning Administrators. Counsel said that (1) you can bring the contractors in under alternative remedies, (2) the reason this application is here and the ZBA doesn't have a precedent alternative remedy or any enforcement, is that this applicant as a matter-of-statutory-right bring his application for the variance, which stays all proceedings and (3) in talks with the office, he said that this applicant should bring his application to the ZBA for a variance and let the ZBA decide.

G. Smith said that the contractor said he spoke with Counsel and P. Kenyon and was told he didn't need a variance. T. DePace said he doesn't see why the applicant needs any variance if he only came out 6 ft. over the black top and G. Smith said it is necessary because he expanded the existing deck. M. McComb said that (1) she thinks that Mr. Panaglon was acting in good faith and relying on what the contractor told him and (2) her only beef is with the contractor misrepresenting conversations he has had with Town Counsel and the Zoning Administrator. Counsel said that he never had any conversations with this contractor, contrary to the claims the contractor has made. P. Kenyon said that (1) she had several conversations with the contractor and he was prepared to apply for a variance and she was waiting for a revised site plan and (2) unfortunately, when she saw the work being done early this spring, she should have gone right there and she didn't, as she thought they were replacing the existing deck, per the contractor.

G. Smith said that (1) it did just go over black top and didn't expand over the property behind it and (2) the parking is still the same.

The WCPB determined no County impact with the condition that appropriate approvals are received and that the new portion of the deck is not within the private right-of-way.

P. Kenyon asked if the new portion of the deck is within the private right-of-way and Angelo Panaglon said no, the easement didn't change at all.

From the public, Rick Gage, owner of Performance Marine the southerly neighbor, said that they have no problem with it, it looks good and it has no effect on them.

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

## RESOLUTION

The Zoning Board of Appeals received an application from Angelo and Pat Panaglon (V07-21) 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 approvals are received and that the new portion of the deck is not within the private right-of-way;

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 #4 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 negative remarks from the neighbors;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, because the building and deck themselves do not meet setbacks;
- 3) The request is not substantial, it was just replacing a section of black top;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created.

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

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

5) **V07-22 VILLANTI, JOSEPH & KATHLEEN.** For the construction of a proposed 28 ft. x 34 ft. garage with storage above, seek area variance for a deficient front yard setback. 100 ft. is required. 43' is proposed. Section 139.00, Block 1, Lot 19, Zones RR10 & LC25. Property Location: 161 New Vermont Road.

Eugene Baker, representing Joseph Villanti, gave an overview and said that (1) they propose a 28 X 34 ft. two-car garage with above storage, (2) the above area would be solely for storage—there would be no living quarters and (3) this is the only feasible place they can plot the garage because there is no overhead easement powelines that go between the house and the road.

G. Smith asked the lot size and Joseph Villanti said that it is just under one acre. M. McComb said that (1) in speaking with Mr. Villanti at the lot, he also pointed out to her that some other areas have his leach field, which precludes him from putting the garage there and (2) it seems to her a logical location for the building. Eugene Baker said that (1) Mr. Villanti wants to minimize the cutting up there and doesn't want to encroach too much with the cutting in between the road and the garage and (2) it was the most logical spot to put it on the property. G. Smith said there isn't much clearing to be done there either to put the building up. G. Smith asked if what is between the proposed garage site and the road would stay and Joseph Villanti said yes. G. Smith said that he understands where the applicant needs this, as with an A-frame there is no storage and there is no basement either. M. McComb said that it is also an oddly shaped lot that constrains some possibilities.

B. Pfau asked what year New Vermont Road became a scenic corridor and P. Kenyon said that it was before 1989. G. Smith said that he believes it was in the late 1970s.

No correspondence.

From the public, John Gaddy said that (1) the fact that in the process of a variance where someone is asking for some relief from some sort of conditions, he would ask to see if he could make a pitch for the maintenance of the dark sky in the area and in the future ask for any of the outside lighting to be shielded to protect what we have of a night sky here—no tot diminish any need for safety, but to be able to reduce glare and keep any elements out of eye-shot and keeping light down where it is supposed to be used and not trespassing onto neighbors or anything else like that and (2) he doesn't know if there is any exterior lighting on this project, but he was just seeing if he might be able to make a pitch to the ZBA for this project and any further project where exterior lighting comes in. T. DePace said that he thinks it would be great. B. Pfau asked if it would be something to address in the new code. John Gaddy said that (1) he is already addressing it in that forum and (2) so many opportunities come up here that the ZBA is seeing that they don't see at the PB. B. Pfau said that he doesn't disagree, but he doesn't know what he is

suggesting. K. Hoopes said that the ZBA has to stick pretty carefully to its agenda and until it becomes an agenda item it is hard to insert it. G. Smith said that (1) you can insert it as part of the balancing act as far as giving a variance and (2) it could be made as a condition of this project and future projects down the road by requesting downward facing shielded lighting.

From the public, Frank McDonald said that (1) he has a serious problem with what John Gaddy just said for one reason only—he doesn't have a problem with the dark sky, but the way it is applied to an applicant is a serious violation of morality or something else, because when there is a feeling that there is going to be an application approved and an applicant is standing here and John Gaddy lays that on them, he thinks it is totally unfair and it is damn near like blackmail, because the poor who is already nervous feels as if he doesn't say yes, then he won't get approval and (2) you should consider how it is delivered.

John Gaddy said that (1) his feeling at this point, and not to spotlight Mr. Villanti, but just use the ZBA, he believes it is not an extra additional expense to pre-plan lighting and (2) if someone is thinking about doing lights, he is opposed to having indiscriminate lighting going out there, but he doesn't think this is keeping someone hostage, as there are thousands of light fixtures available on the market—it is not a specialty item, it is an easy thing to do.

K. Hoopes said that (1) the problem he has with this is that everything they do at this board has to be defensible, (2) if for instance, hypothetical "Applicant Z" comes along, it has to be part of the agenda or compelling enough for the ZBA to make it a condition of it, but the ZBA now has to ask if it is defensible and (3) the ZBA would be extending beyond its authority to make the condition of limiting lighting and asked how the ZBA would answer to it. John Gaddy said that (1) his answer would be that if a value can be put on water quality, the erosion of stream banks or air quality, then this is something that has come along the way that can also have a value placed on it and (2) he can sincerely say that as you start to drive around you will see good evidences of lighting and poor evidences of lighting. K. Hoopes said that he understands, but that is a better function for the PB—it is a terrible function for the ZBA. G. Smith and M. McComb disagreed. John Gaddy said that he thought the PB and ZBA were working on the same team. K. Hoopes said (1) they are, but from two different angles (2) the PB is a case of give here and take there—a little horse trading and (3) essentially the ZBA's job is to break the law, so the ZBA has to be very careful as to which law they are going to be approaching on this thing and what kind of relief they will be allowing. Counsel said that (1) K. Hoopes is right, but 200-65(c) says that "...the ZBA shall in granting both a use variance and an area variance have the authority to impose such reasonable conditions and restrictions as are directly related to the project..." (2) John Gaddy makes a valid point as a proponent of dark sky and downward lighting and while the ZBA can make its reasonable instructions and minimize adverse impacts and grant the variance, but notably Bolton doesn't have any specific standards within its code regarding lighting and (3) in a manner of speaking, the ZBA has a launching pad for its procedure, but doesn't have the criteria on which to

enforce it and it would be wonderful if that new code that is coming had some specifications to that. P. Kenyon said it does.

John Gaddy said that he is here to address the ZBA, not to pick on Mr. Villanti, but just to bring up an issue so they are all keeping this in mind along the way. M. McComb said that she is very much in agreement with it—she thinks the closer people’s houses get and it is easier if people plan this in rather than deal with it after-the-fact that it is causing a problem. B. Pfau said that he doesn't see a problem with it and G. Smith agreed. Eugene Baker said that as soon as it is in the zoning law it has to be enforced or complied with, so when that time comes, that would be the time it would be instated. M. McComb said that it is a suggestion and an opportunity to be a good neighbor. G. Smith agreed. B. Pfau said that he doesn't see any reason not to minimize the lighting along the road, especially on a building that doesn't meet setbacks. G. Smith agreed.

K. Hoopes said that in looking at the plan, he doesn't see any other feasible location for the building site other than what is proposed and G. Smith agreed.

## RESOLUTION

The Zoning Board of Appeals received an application from Joseph and Kathleen Villanti (V07-22) 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 #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, there are problems with the shape of the lot and with overhead power line easements and the current location of the leach field and the topography make this the best spot for it;
- 2) There will be no undesirable change in neighborhood character or to nearby properties;
- 3) The request is substantial, but within the context of the property it certainly does not preclude it being prudent to grant it;



- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, there is good flat land to build it there;
- 5) The alleged difficulty is not self-created, the lot constrains the possibility of alternative placement.

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

Now, upon motion duly made by Meredith McComb and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented with the condition that exterior lighting must be downward facing and shielded with low wattage bulbs used. Kam Hoopes opposed. **All others in favor. Motion Carried.**

There was discussion on whether or not the lighting should be a request or a condition. M. McComb said that she would say the lighting that is downward facing and shielded with low wattage bulbs used should be a condition because it is close to the road and has impact because of that and it also certainly doesn't need to preclude the owner from having the lighting he needs for safety. B. Pfau agreed. Joseph Villanti said that while he is environmentally sensitive and will consider the lighting, but he feels the ZBA has no case law to go by. B. Pfau said that the ZBA has put these conditions on others before and G. Smith said that the ZBA can make these conditions as well as colors of buildings and roofs, which are all part of the balancing act. K. Hoopes said that he takes issue with this because he feels the ZBA is stepping out of its bounds and these things should be saved for projects where it is really important, because these things are questionable legally and (3) there is nothing in this project that has come up saying light is going to be an issue. G. Smith said that (1) he doesn't feel it is fair to do it in every case and the ZBA doesn't and (2) he doesn't think it is personally fair to start out with Mr. Villanti. M. McComb said that in defense of her motion, this is not the first time the ZBA has made the request. Counsel said that the PB does a lot of it, but the ZBA can also make it a condition.

- 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.

Item to be heard at the June 2007 ZBA meeting.

Meeting adjourned at 8:06 pm.

Respectfully submitted by,  
Jennifer Torebka  
Recording Secretary  
05/21/07