

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, October 15, 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 6:30pm by asking for corrections to the September 17, 2007 ZBA minutes.

K. Hoopes said that on page 2 for the Tom Eigo item, he thinks it should be noted that the item was heard after item #4, once Town Counsel arrived, so if anyone searches back in the tape they will know where to find it.

RESOLUTION

Motion by Kam Hoopes to approve the September 17, 2007 ZBA meeting minutes as presented. Seconded by Jeff Anthony. **Five in favor. Two recused**, Tony DePace and Bill Pfau weren't at that meeting. **Motion carried.**

Note: Agenda items were heard in the following order: 1,2, 3, 5, 6, 7 and 4(there was nobody present for item 4, so the ZBA voted at the end of the meeting to table this item). Item 8 was taken off the agenda at the applicant's request.

1) **V07-59 SEIDLER, VINETTE.** Represented by Justin Persons & Ruben Ellsworth. For the construction of a proposed single family dwelling with attached garage. Seeks area variance for deficient setbacks: 1) Front: 75 ft. is required from the edge of the right-of-way, 15 ft. is proposed. 2) Side: 20 ft. is required, 10 ft. is proposed on both sides. Section 171.15, Block 2, Lot 29, Zone RM1.3. Property Location: Horicon Avenue (Valley Woods Road). Subject to WCPB Review.

Vinette Seidler gave an overview and said that she is looking for a front and side setback variance.

G. Smith said he'd like the applicant to also give the reason the applicant didn't put it in the location where she was granted the previous variance and Vinette Seidler said that the reason is because that variance expired. G. Smith said he'd like the applicant to inform the ZBA why she wants to relocate the house from where she got a variance for last time. Vinette Seidler said that the reason is because it is not possible to have a driveway up to that location. G. Smith said he just wanted everyone to know why the applicant is changing the proposed house location. P. Kenyon said that the applicant has worked for quite a few months to get approval, but Town Engineer Tom Nace would not approve the

stormwater plan. G. Smith said that the run-off from that driveway would have been incredible onto Horicon Avenue and P. Kenyon agreed.

Vinette Seidler said that (1) she's exhausted all feasible alternatives to build a single-family residence, as she has done four stormwater plans and revised the house plans, but there is no way to make it work where she had it originally proposed, (2) she is proposing to move the house location down on the lot and in doing so it won't impact the neighborhood in terms of position, size or placement, because all of the lots are comparable, as they are all ¼-acre in size and the houses are similar, (3) she's taken photos of the surrounding houses, which are all of the same scale, style and distance from the street, (4) she proposes an 1,800 square foot arts & crafts cottage (equating to a 1,300 square foot house footprint) that will have cedar siding, fiber cement siding, a shingled roof, and will be of a neutral gray taupe color with white trim, with a garage underneath and (5) the slope of the driveway and the parking problem required she add a garage to the house.

G. Smith asked if 15 ft. off the road is the best the applicant could do without too much digging into the bank behind the house and Vinette Seidler said that (1) yes, the bank is the issue, (2) they are asking for the 15 ft. and (3) if it is necessary to push it back, if they can they will. G. Smith said that he just didn't know with the applicant's engineer, how difficult it would be or why it couldn't be back a little further, as he just wants to make sure the applicant went back as far as she could without getting into major excavation. Vinette Seidler said that there is an area up on the edge that has old stonework that she is trying to preserve, as it has steps going up to the backyard. K. Hoopes said that he has a feeling it is ledge in there.

K. Hoopes asked if the previous variance the ZBA issued was just a back lot line setback and Vinette Seidler said no, it was east side and back. G. Smith agreed. Vinette Seidler said that this variance is for front and side setbacks. K. Hoopes said that he thinks that's why the ZBA was preferable to the previous variance, because it was only encroaching on the school and nobody lives there at night. Vinette Seidler said that the previous proposed house that was approved before was larger, as it had a 2,200 square foot footprint and this new proposed house has a much smaller footprint and is more conforming to the lot size.

G. Smith said the applicant sent the ZBA pictures from the house that used to be there, which is pretty much the same distance off the road that the applicant is proposing. Vinette Seidler said that (1) the old house was actually almost three full stories and much wider than the house she is proposing—she is only proposing 1 ½ stories, so it will nowhere have the visual impact the previous one does and (2) the setbacks put her 60 ft. from the next door neighbors' furthest point and patio, so they won't be very close to them and (3) there is no view from that lot at all and the way the house sits, it sits low enough, so it will not impede the view of the neighboring lot. K. Hoopes asked if they are talking about 15 ft. from the edge of the pavement and Vinette Seidler said yes. M. McComb said that she doesn't think that it is material that the applicant is 60 ft. from the neighbors' house, in that the applicant is not allowed to use the fact that the neighbors have not built out their whole lot to justify the proposed house location. Vinette Seidler agreed and said that she just wanted to point out that the proposed house is positioned so

it won't bother the neighbors. M. McComb said that (1) if the neighbors want to do something else to their land, it is a little encumberate to some extent, (2) she thinks this is a better solution all around given the specific topography on this lot, (3) the applicant has compromised substantially in the size of the house she is proposing from what was approved before, (4) not having to do all the disturbance for the big driveway up there is a plus and (5) it does seem to be a more sensible location for it. M. McComb asked if there would be room for people to walk along the edge of the road there. Vinette Seidler said that it would be no less than there is right now and G. Smith said that it would be the same as it was before.

P. Kenyon said that the Zoning Dept. goes from the edge of the right-of-way. Vinette Seidler said that there is no right-of-way for the front of there that has shown up anywhere, but they will measure wherever they have to for the 15 ft.—that is not an issue. K. Hoopes said that makes a difference and the ZBA needs to know that now. Vinette Seidler said that there is no right-of-way showing up on any of her surveys. G. Smith said that the county right-of-way is 25 ft. from the centerline toward the applicant's lot, so that right-of-way could fall back 10 ft. onto the applicant's piece of property from the center of the road. Vinette Seidler said she'd have to measure it. P. Kenyon said that the applicant might have to go back 10 ft. K. Hoopes said that the ZBA has to have absolutely positive figures before they make any decision tonight. Vinette Seidler said that everything that is turned in is turned in on a survey you have done by a surveyor. Counsel said that it is the apparent edge of the paved road is the right-of-way. Vinette Seidler said that the surveyor's measurement is from the apparent edge of the paved road. K. Hoopes said it needs to be 25 ft. from the middle of the road and that pavement is not 25 ft. G. Smith said that it is 25 ft. from the right-of-way and Counsel said that the question is if Horicon Avenue is a road that is acquired or dedicated. K. Hoopes said that there are times when you measure the 25 ft. from the centerline of the road and then you start from there and measure your 75 ft. Vinette Seidler asked if this is one of those times. G. Smith said technically yes, that is how the town always measures. P. Kenyon said that the measurement has always been 25 ft. from the center line of the road. Vinette Seidler asked if that is from all roads or just state roads. G. Smith and P. Kenyon said that is for all roads. Vinette Seidler said that (1) if that is the case, she has other variances in this town that have been issued where that weren't measured that way—they were measure from the edge of the road and these are recent projects that are currently under construction and (2) she is confused and needs consistent criteria. K. Hoopes said that (1) if variances were granted where measurements were from the edge of the road, that would be improper, so the applicant got away with them then, (2) what the ZBA does is when the applicant gives the ZBA figures, the way it works is that the figures have to be absolute and if at any time after this the applicant finds those figures were wrong, any variance that was issued is no longer any good. Vinette Seidler agreed and said that (1) she understands that and (2) she doesn't know what she should do with this application now. K. Hoopes said that he would suggest the applicant ask that the item be tabled, which means she doesn't have to start the whole process again, and she can go back, get her measurements correct, then make the adjustments for the front lot line or no adjustment if it happens to be the same.

J. Anthony said that the front property line on the tax map looks like it is consistent with and equal to the right-of-way line on the tax map, anyway, which is not a survey, and if

that is true though, then the 15 ft. is actually being taken from the right-of-way line back and (2) the ZBA doesn't have anything here that can prove this, because the tax map is not a survey. K. Hoopes said that it is a bad map and a bad reference. J. Anthony said that (1) in doing a lot of work on Route 9N, he knows that the right-of-way lines of Route 9N jig and jog as they go, which is probably the same thing probably on these roads and (2) he wouldn't be surprised if these little corners really do exist, but it is not a survey. P. Kenyon said that the ZBA could act on this tonight then P. Kenyon could go measure it herself. G. Smith agreed. J. Anthony said that it could be 15 ft. back from the front property line, if that is what is being asked of the ZBA tonight and G. Smith agreed, saying that is what is being asked of the ZBA. Vinette Seidler then approached the ZBA bench to clarify a survey she had and said that she believes it is a right-of-way line.

M. McComb asked about the box on the west side of the house and Vinette Seidler said that is an 8 ft. by 10 ft. patio. J. Anthony asked if the patio is on grade and Vinette Seidler said yes. M. McComb said that there is a deck in the front corner of the house and Vinette Seidler said that is a teeny tiny little entrance porch. M. McComb said that there is an entrance porch in the front and Vinette Seidler agreed, saying that it wraps around to the side. M. McComb said that to some extent, it does come up as to if there is a better alternative to the applicant's outdoor seating area than 10 ft. from the neighbors and Vinette Seidler said no. G. Smith said that the ground drops off on the other side, so that isn't a good place and it is a much more private area where it is proposed.

B. Pfau asked if the applicant believes it to be true that the house is pushed back as far as it can be from the right-of-way and Vinette Seidler said yes, she does believe it is.

Counsel said that he has a copy of an easement that comes from the Warren County Public Records that on this particular property the Town of Bolton has a sewer line there. Vinette Seidler said that (1) she is aware of that, she has researched it and it does not exist, (2) there is no sewer line, there is no map of the sewer line and there is no need of the sewer line from talking to the Sewer Dept., (3) she needs to resolve that issue by having her attorney draft a letter to the Town of Bolton to please ask them to abandon it, because it is not for anything, as the school goes down the other side and (4) the Sewer Dept. said that they would abandon it as they don't have a need for it and the school sewer goes in the other direction. Counsel said that if the Sewer Dept. abandons it then that is to the applicant's advantage, but right now, it is there. Vinette Seidler said that (1) she had her excavator and the Town of Bolton check for pipes and there are no pipes and there is no need and (2) she attempted to have it mapped, but she guesses the description is so screwy you can't map it. P. Kenyon said that (1) she spoke with Chet Dagles who told her the Sewer Dept. couldn't find any lines in that area and (2) she spoke with Supervisor Gabriels and he told her that any decision that might be made tonight would be contingent on as to whether or not the easement is able to be altered. Counsel said that if it is not needed by the Town of Bolton, and that is a Town of Bolton decision, then certainly the Town of Bolton can abandon it, then the ZBA decides what can best be done with that abandonment. G. Smith said that you would think there wouldn't be one there, simply because there was a house in this same location. Counsel said that G. Smith is right, but he (Counsel) cannot account for other than this matter of record in the deeds record in Bolton. Vinette Seidler said that she found about it in her title work—that is the only place it showed up.

Correspondence:

- Letter dated October 12, 2007 from Atty. Howard I. Krantz, on behalf of neighbors Robert and Erika Orriss - opposed

T. McGurl said that (1) he is stumbling on three variances, as the applicant can put on one side from the neighbors line and 15 ft. from the front, (2) he is not too concerned about the school side, because as it has been said there is nobody there at night, it is a driveway and it is not a residence, (3) the other two variances concern him, as it seems like the 4 ft. patio on the side can be built around the back if the applicant is accessing the backyard anyway and (4) the 15 ft. in front seems closer than a lot of the neighbors—he is still uncomfortable with 15 ft. off the road. M. McComb said that if the trade-off is between blasting into the rock ledge behind it and being 15 ft. from the road, she is not sure the ZBA shouldn't look favorably on this. T. McGurl said that there is also the option of a smaller house. M. McComb agreed and said that there are master baths and suites and this is a three-bedroom house. Vinette Seidler said that it is a story and a half, it is a very reasonably sized house and she can't build a house any smaller there. K. Hoopes and B. Pfau both said they don't think 1,800 sq. ft. is an excessively large house. M. McComb said that it is a 1,400 sq. ft. house. B. Pfau said that (1) it is important to note that the applicant tried to locate the house in a more suitable location on the property and (2) in that particular neighborhood, they do have homes that are or used to be tight to each other, near property lines and fairly close to Horicon Avenue there. T. McGurl asked if in building a new house, if it is a good thing to say that it used to be like that, so they are going to put it like that now. B. Pfau said that (1) it is the reality of the neighborhood right there and (2) he doesn't know that a new building in almost the same exact location of a previous building is going to have an adverse affect physically on that road. K. Hoopes said that if the 15 ft. checks out and is from the right-of-way, he wouldn't have a problem with the garage, because 15 ft. would be big enough to park a car in anyway. G. Smith said that the ZBA knows that it would be at least 15 ft. off the edge of the road.

No comments from public in attendance.

The WCPB determined no County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Vinette Seidler (V07-59) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) There will be no undesirable change in neighborhood character or to nearby properties, this is another residence going into a residential area in a house location where there was a house previously located;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, the applicant had tried to mitigate these setbacks with other plans that didn't work out;
- 3) The request is substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is 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 with the following conditions: 1) The Zoning Administrator is to verify the location of the county right-of-way, to determine that the single family dwelling will be located 15 ft. from same. 2) the sewer easement referred to in deed is to be addressed by all involved parties. Tom McGurl opposed. **All others in favor. Motion Carried.**

- 2) **V07-60 CHAMPAGNE, MARCIA.** To alter pre-existing non-conforming structure. Specifically to construct and an approximate 102 sq. ft. screened porch addition. Seeks area variance for 1) deficient setbacks. a) shoreline: 100 ft. is required from the mean high water mark, 45.6' is proposed; b) front: 50 ft. is required from Rainbow Beach Road, 25.6 ft. is proposed and c) sides: 50 ft. is required, 22 ft. is proposed on the west side and 40.8 ft. is proposed on the east side. 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.18, Block 1, Lot 29, Zone LC45. Property Location: 111 Rainbow Beach Road. Subject to WCPB & APA Review. *Note: This application is in conjunction with SPR07-34 for a land use within 100 ft. of Lake George and a wetland.*

Michael Champagne, representing his wife Marcia Champagne, said that (1) they propose to expand a sun porch on the front of their camp, (2) the reason it can't be put to the left hand side is because there is a driveway there joined to the camp next to it and on the right hand side it gets too close to the camp that is on that side because those neighbors already have a porch and (3) they propose to push the sun porch 4ft. 6 inches towards the road and to take out 4-5 feet out of the existing camp to make it a full 8 ft. by 6 ft. sun porch.

G. Smith (1) said that with Rainbow Beach, nobody can do anything down there without coming to see the ZBA first and (2) he asked if the applicant has association approval. Michael Champagne said yes. P. Kenyon said the association did approve this proposal. K. Hoopes said that one of the compelling aspects about this particular project is that judging by the fact that there is a big room back in there, this house never really had a screened porch on it. Michael Champagne said that (1) he believes years ago when it was originally built, he thinks there was a sun porch there where the proposed setback is and (2) the camp was purchased in 1961, so they don't know what was there prior to that and if it was re-vamped they don't know when it was. K. Hoopes said that (1) he thinks it is compelling for that reason and the fact that the applicants are taking part of that room to sacrifice it to the screen porch, (2) the applicant is not looking to get the whole porch in either one direction or another, but the applicant is making adjustments within the building as well and (3) he thinks it will make it a much more livable unit with the breeze from the lake in the applicants' faces and the threat from the mosquitoes and the swamp behind the applicants.

The WCPB determined no County impact.

No comments from public in attendance.

No correspondence.

G. Smith said that he doesn't have a problem with it. M. McComb said that (1) it looks to her like the majority of the houses in Rainbow Beach do not have big porches on the front—not that this is an enormous porch, but the scale of everything down there is tiny town, because they are between a wetland and the lake, (2) she is not crazy about it extending to the south and (3) the enclosure on the front of it may be good, but if the reason the applicant can't put it on the side is that it is parking, she doesn't know if the applicant has 4 ft. of parking there to give up without squishing in on the neighbor. K. Hoopes said that one thing about Rainbow Beach is that the property owners don't own the property—they own the house, so Rainbow Beach is just plotted out as the spaces and there are some places that have the houses on them, but not the beachfront. M. McComb said that they are tiny cabins, but it is not like all of the other cabins in the association have a big screen porch on it. G. Smith said that (1) what porches the cabins there do have are small and this one is going to be too and (2) neither neighbor on either side of the applicant has a problem with this proposal. M. McComb said that generally that means the neighbors will be coming in to put on screen porches too. G. Smith said that one never knows. Michael Champagne said that this is the only camp in the association on the lakefront that doesn't have a double porch. K. Hoopes said that you could see in the pictures, the houses that have porches, so he can attest to the fact that they all have

screens along the beach there. B. Pfau said that (1) this is a small porch, (2) it is not a second-story on these homes—it is a small place and they need a little extra room on these things and (3) he thinks it is an appropriate way to add a little space to their camp. G. Smith said that the applicant is not asking for a lot. M. McComb said that (1) it is the around the corner part that concerns her and (2) she would like the deck to stop at the edge of the building. K. Hoopes said that then there would be no porch at all. B. Pfau said that he agrees with M. McComb basically, but it is 4 ft. though, so it is a minor extension. M. McComb said that it is 4 ft., but if there are two properties parking cars here, that is a concern and B. Pfau replied by saying that the association has approved the plan here, so he is sure they have taken the parking situation into consideration. K. Hoopes said that (1) the parking situation is that they put the parking lots between two buildings and (2) there used to be little garages in there. J. Anthony said that if you have 22 ft. from the proposed addition to the property line that is wide enough for two cars to fit, as it is wider than two parking bays in a parking lot. T. McGurl said that it is good how the applicant incorporated the proposed sun porch into part of the house rather than coming all the way out. B. Pfau agreed. M. McComb said that she agrees that is a concession the ZBA usually doesn't see.

RESOLUTION

The Zoning Board of Appeals received an application from Marcia Champagne (V07-60) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, it is a dimensional consideration;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, these houses were all built of a type and they remain that way;
- 3) The request is not substantial, they are talking 4 ft. to one side and 4 ft. out front with a large percentage of this space being taken up on the inside of the house;

- 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 was built before the applicants were even born by a long shot.

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. Meredith McComb opposed. **All others in favor. Motion Carried.**

- 3) **V07-61 TAFT, WILLIAM.** To alter pre-existing non-conforming structure. Specifically to expand existing screened porch by 85 sq. ft. and construct two decks, one being 236 sq. ft. and the other 73 sq. ft. Seeks area variance for 1) deficient setbacks. a) shoreline: 75 ft. is required from the mean high water mark, 38.6 ft. is proposed; b) front: 50 ft. is required, 34 ft. is proposed and c) sides: 30 ft. is required, 10 ft. is proposed on the north side and 18.9 ft. is proposed on the south side. 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b); and 3) lot coverage 15 % allowed, 24 % proposed. Section 185.19, Block 1, Lot 14, Zone RCL3. Property Location: 19 Trout Lake Club Road. Subject to WCPB & APA Review.

William Taft gave an overview and said that they propose to add on to the porch on the lakeshore side by extending the porch on the northeast end of the cabin, to add a corner deck on the northeast corner, and to add a deck on the south side of the building to extend halfway down on the side of the cabin.

Richard Taft, project architect registered in North Carolina, said that (1) this cabin has been passed down through the generations, (2) the applicant and his wife are now retired, so this is their summer home, (3) there is an existing screened-in porch that faces the lake that they propose to extend to the southeast corner, (4) the porch is only 8 ft. wide from the cabin towards the lake, which represents about 85 sq. ft. of space, (5) they propose a sitting area deck on the northeast corner adjacent to the exterior deck, (6) they propose a deck off the south end of the building adjacent on the side of the cabin, in an effort to maintain the line that exists currently that is established by the existing front porch, so nothing would encroach beyond that line, (7) they would be coming 10 ft. off the existing wall and about halfway down the side of the structure with proposed steps to be on the high side, as the property drops off significantly and (8) the purpose of this proposal is to provide some outdoor area that can be usable for cooking and seating areas without disturbing any of the existing terrain.

G. Smith asked the density as the cabins sits on the property right now. M. McComb asked the square footage of the existing camp and Richard Taft said that it is around 900 square feet. M. McComb asked the square footage of the lot and Richard Taft said that is 75 ft. by 110 ft. P. Kenyon said that it is 7,840 sq. ft. G. Smith said that (1) 15% is

allowed and the applicant is asking for 24% and (2) this is a lot of deck the applicant is requesting.

M. McComb said that (1) the applicant says the primary view from this residence is out to the north, (2) she doesn't have a big problem with seeing the applicant wanting to upgrade and add a little to the front of the deck, which would seem in character with the way the other houses are laid out and (3) she does have a problem with the biggest new addition of deck, because that is where the neighbor up the hill has his view going out across the house that way. G. Smith said asking for 5 variances on such a small camp is a lot. T. McGurl said that (1) the front squares off to the small sitting deck, which he could go along with and (2) he is hung up on the side deck—it is huge. Richard Taft said that regarding the neighbor's view this proposal does not obstruct your view of the water. M. McComb said that (1) the applicant's little camp social area is in front of the applicant's camp towards the water and this put a social area in to a new place, which is now not and (2) she doesn't see granting a 50% density increase. K. Hoopes said that (1) there is a lot of new deck, but it is open and not enclosed, (2) he looks at the filling of the niche to the north as favorable, (3) the niche to the south is filled in such a way that it then connects with the larger deck, (4) the two small decks that are being put on the 8 ft. by 9 ft. deck in the northern niche is a useful completion of that jog, (5) the filling of the niche to the south connects the screen porch with the new deck and allows walk around, (6) he doesn't see a problem with moving the social area to the side of the house instead of towards the lake or towards the back, (7) while it may be substantial, but he doesn't see it as being offensive and (8) it does block a view of water from the house up behind, but it is under the hemlock trees and that water is just water. M. McComb said that it is a 30% increase in the size because it is 300 square feet and it is a 900 square foot camp.

B. Pfau asked when the existing porch was added onto the camp and William Taft said that existed initially and it was subsequently screened in. B. Pfau said that (1) he just assumed it was added on, (2) he thinks if the applicant has a lot of new activity that are filling in the corner of the applicant's house facing the lake and the new deck being added within the 75 ft. setback from the lake in addition to the porch and the deck on the north side, is a large request and (3) from the neighbors' property, you would look through whatever sort of railing system the applicant will have—it will be in the neighbors' view, so the neighbors will be looking at deck instead of water there. G. Smith said that he agreed.

Richard Taft said that this summer home will be used as his parents' retirement home so they would like to keep everything at the same level in order to facilitate getting from one area to another. B. Pfau said that if the applicant is looking for a walkway, that would be an alternative if the applicant wanted to put a 4 ft. walkway on that side of the house. Richard Taft said that (1) the applicants are looking for an outdoor area they can use and (2) pretty much the entire property is sloping terrain, with the exception of down by the beach area. M. McComb said that (1) she agrees it is steeply sloping terrain and for that reason she is not sure that it is an ideal end-stage of life retirement home, (2) it is a difficult property, but not everything is suitable for every owner and (3) maybe the expansion toward the lake should be rethought by the applicants in terms of if they don't get the larger deck on the other side.

J. Anthony asked if this is supposed to go to the APA and P. Kenyon said it would if it is approved here. Counsel said that it goes there after the inventory, because the applicants have the right to overturn it. J. Anthony said that he thinks it is low intensity, so it is a 75-ft. setback and this is probably 55-60 ft. from the lake, so the applicant is building a structure over 100 sq. ft. within the setback of the water, which leads him to feeling it is APA jurisdictional. Counsel said that (1) it is APA jurisdictional, (2) the tests the ZBA apply under town law are the mandates here, (3) the APA wants to hear an analysis of the Town's tests, so there needs to be an analysis of practical difficulties and that alternatives have been explored in avoiding these practical difficulties, so that if the ZBA does grant what is sought, there needs to be an analysis of practical difficulties and that alternatives have been explored in avoiding these practical difficulties and (4) if you were to ask him if that was right, then he'd say he doubts it, but that is the APA's present position. B. Pfau asked when the ZBA began addressing this, because he always assumed the ZBA ignored that aspect. Counsel said that the ZBA had an appeal kicked back and the determination was right on the elements and properly decided at the ZBA and the APA overruled it saying that there was no consideration given to practical difficulties. B. Pfau asked if all shoreline variances will require practical difficulty now and Counsel said that all matters that are APA jurisdictional for variances. K. Hoopes said that the ZBA's obligation and duty to the applicant would be to warn them of this sort of thing, but legally, the ZBA members are bound to not ask about practical difficulties or hardships, because the courts have said that is not in the ZBA's purview. Counsel agreed. K. Hoopes said that then the ZBA should give the disclaimer every time they issue a variance that may be APA jurisdictional, but the ZBA's marching orders are very specific. Counsel said that the disclaimer to the applicant would be that he has to find out if it is approved to the ZBA's satisfaction and as long as the applicant is abiding by the ZBA's standards as imposed by Town Law. B. Pfau asked if the applicant is aware of practical difficulty and P. Kenyon said that she doesn't think so. K. Hoopes said that the applicant could enter it into the minutes. M. McComb said that she would say that in this case, the applicant has said that the practical difficulty has to do with the topography of the land, the smallness of the lot, and wishing to keep things on one level. K. Hoopes said that (1) the ZBA just discussed all that stuff and (2) the APA reads it in the ZBA minutes, but they ignore it, because the ZBA doesn't use the words "practical difficulty or hardship" and the ZBA is precluded by law from using that criteria. P. Kenyon said that the lot coverage is about 20%.

The WCPB determined no County impact with the stipulation that stormwater control measures be implemented

No correspondence.

No comments from public in attendance.

Richard Taft asked if the ZBA would be willing to approve the proposal with the new porch and the north deck, but without the large back deck on the south. K. Hoopes said that the applicant would then be proposing to put the two decks planking the screen porch with the stairs coming off the one, but not the large deck going back to the driveway and Richard Taft said yes. B. Pfau said that the applicant would need relief from the staircase on that side also and G. Smith agreed.

K. Hoopes said that he thinks one of these times they will find an applicant who would be willing to challenge the APA and go into a court of law and see who has the correct reading.

RESOLUTION

The Zoning Board of Appeals received an application from William Taft (V07-61) for an area variance, amended from above description.

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

and, whereas the Warren County Planning Board determined that there was no County impact with the stipulation that stormwater measures be 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 #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, because of the location and layout of the existing camp and the topography of the land on which it sits;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, given how the applicant has scaled back his request;
- 3) The request is not substantial, it is filling in two corners of a square;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, because of its minimal nature and hopefully stormwater control or construction remediation measures will be taken;
- 5) The alleged difficulty is self-created, but the benefit to the applicant outweighs that.

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 following conditions: 1) The 326 sq. ft. deck on the south side is to be eliminated. 2) Stairs are to be added directly off the south side of the approved porch, meeting the NYS building code. **All in favor. Motion Carried.**

- 4) **V07-62 WINNIE, DERICK & YVONNE.** Represented by Regina Konet, AIA. To alter pre-existing non-conforming structure. Specifically to enlarge the storage room and existing deck. Seeks area variance for 1) a deficient front yard setback. 50 ft. is required, 8 ft. is proposed; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.20, Block 1, Lot 52, Zone RCM1.3. Property Location: 106 Rock Cove Road. Subject to WCPB Review.

Resolutions:

Now, upon motion duly made by Bill Pfau and seconded by Meredith McComb, it is resolved that the ZBA does hereby table this application as no one was present to present the application. **All in favor. Motion Carried.** *Note: Please take note that the ZBA will not act upon an application if no one present to represent it.*

- 5) **V07-64 DDC PROPERTIES LLC.** Represented by Herbert Koster. For the placement of a proposed 27 ft. x 15 ft. patio. Seeks area variance for lot coverage; 15 % is allowed, 16.7% is proposed. Section 200.14, Block 1, Lot 33, Zone RM1.3. Property Location: 12 Kajen Drive. Subject to WCPB Review.

Herb Koster, representing (DDC Properties LLC) said that (1) they propose to put a ground level patio out the back of their property to be able to cook outside, as the existing deck is very narrow and small, (2) part of the square footage (162 sq. ft.) shown is already a walkway and (3) 9 ft. by 27 ft. is already legally there.

K. Hoopes asked if that is the blue stones they saw today and Herb Koster said yes. M. McComb asked what the disturbance was on this construction before and Herb Koster said (1) it is over the 15%, as it brings it up to 16.7%, (2) there is no additional disturbance, that was in the clearing of the house project anyway and (3) he is the closest backyard neighbor where this faces and it doesn't offend him at all.

G. Smith said that he has no problem with this, as it is ground level and it is a patio. B. Pfau said that it is a very minor request and it meets setbacks. G. Smith agreed and said that it is pretty cut and dry and simple.

No correspondence.

The WCPB determined no County impact.

No comments from public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from DDC Properties LLC (V07-64) 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 #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, they are talking a dimensional consideration;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, as attested by the closest neighbor;
- 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, nothing has even been presented along those lines;
- 5) The alleged difficulty is somewhat self-created, but not in any way that the ZBA should be worried about.

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.**

- 6) **V07-65 SWEET TONEY LLC.** Represented by Atty.'s Jonathan Lapper & Stefanie DiLallo Bitter. For the construction of a proposed single family dwelling with attached garage. Seeks area variance for 1) deficient side yard setback, 50 ft. is required, 19.9 ft. is proposed on the north side and 20 ft. is proposed on the south side. Section 199.04, Block 1, Lot 34, Zones LC25. Property Location: Clairview

Lane. *Note: Site Plan Review is required for a single family dwelling in the LC25 zone, but has not yet been applied for.*

Atty. Stefanie Bitter, representing Jack Toney and Howard Nadler (Sweet Toney LLC), gave an overview and said that (1) this project has all municipal approvals as well as APA approvals, (2) Lot 3 is 1.10 acres in size, subsequent to the approval of the subdivision, the lot was rezoned to LC25, (3) LC25 requires 50 ft. side setbacks and the lot is approximately 100 ft. in width, (4) the applicant proposes 20.9 ft. setback on the north side and 20 ft. on the south side with the roof overhangs, (5) they have invested a great deal of money in this subdivision and (6) the parcel was originally zoned RL3 when it was originally approved, so the setbacks were taken into consideration when the subdivision was approved in the 1980s/1990s.

K. Hoopes said that he asked P. Kenyon and she was unaware that the zone changed at any time. Atty. Bitter said that (1) when she was reviewing the APA permits that were done, there was a shift in the zoning and (2) there was a lot of common area that was taken into consideration for the HOA, so this could have been considered as a clustered subdivision with the development being utilized on the RL3 parcels with the LC25 being reserved for the HOA. P. Kenyon said that she agrees with that, but she does not know if it was RL3 before that. Atty. Bitter said that when this subdivision was taken into consideration no variances were necessary. P. Kenyon said that the reason is because it was treated as a cluster subdivision, so they made the lots a lot smaller when they created all the green space. M. McComb asked what the proposed house site and size was at that point in time and P. Kenyon said she did not know. B. Pfau said that he is assuming setbacks were not on the original subdivision. Atty. Bitter said (1) no, because if they were they wouldn't need to be here this evening and (2) they understood it from a zoning determination made in 1999 is that if the setbacks were actually depicted on the maps, then the rezoning wouldn't have an impact on it, which is a letter she had from P. Kenyon in 1999. P. Kenyon said that unfortunately last April, they changed all of that when they amended the ordinance. B. Pfau asked what the setbacks were at the time of the subdivision and P. Kenyon said that she could not answer that tonight. K. Hoopes said that the setback requirements of the various zones haven't changed since they were invented. B. Pfau asked if there were building envelopes on the original plans and Atty. Bitter said that there were driveways that came up with a septic noted. M. McComb asked that the proposed septic and well be shown and Atty. Bitter pointed it out on the map. B. Pfau said that apparently the boards that ok'd this subdivision here did not take the setbacks into account apparently and K. Hoopes said that he thinks they did, but they provided some type of relief because of the green space area. P. Kenyon said that in 1982 they applied for a variance for 25 units from an RL3 zone to the LC25 area, so they do know it was in two zones back then.

G. Smith asked what grounds the ZBA gave them the variance for in 2001 and P. Kenyon said on the LC25. G. Smith said that would be the green area and Atty. Bitter replied by saying that it was the same setback, but they reduced what was provided, as back then they were seeking 19.5 ft. setbacks on both sides. K. Hoopes said that in visiting the site, there is a dirt road with stakes and asked if the stakes are the end of the lot. Jack Toney said that this property was bought in 1941 and the back piece was bought in 1985 or 1989 and was added to the subdivision, so he didn't extend the lots, he made it a common area,

so the stakes K. Hoopes saw were the pins as referenced on the map. G. Smith asked if it is correct that when Jack Toney bought that other property that he made it all common area. Jack Toney said that (1) he made it common area and (2) they had the choice of extending it or making it common area and he thought it would be nice to leave it all common area.

B. Pfau asked if the ZBA needs to decide if 20-foot side setbacks on these lots are appropriate. G. Smith said that there are several lots like this there and everybody there is going to be coming before the ZBA.

M. McComb said that (1) she is also concerned with the long driveway with stone fill on the side and (2) while she realizes that is the pretty view out there, it kind of exasperates the impact of the construction. K. Hoopes said that is not part of the ZBA's agenda. M. McComb said that there is a letter in the packet about how these were approved with the condition there not be anything on the ridgeline. K. Hoopes said that there is a big gap at the end of the ridgeline and G. Smith said that it would never be built on. J. Anthony said that (1) this building's finished floor is ground level at 272 and the highest part of the ridge is 274, so it is right on top of the ridge and (2) the building is 35 feet tall and the trees are marginally 35-40 feet tall, so it might not be silhouetted. T. McGurl said that when you look out from the house that is where the topography is dropping off. J. Anthony said that he knows the ZBA shouldn't consider what could happen in the future too extremely here, but there are 10 others like this sitting 50 feet apart. K. Hoopes said that (1) they have been sitting here since 1984 and (2) there is not a huge land grab going on at Clairview just yet. P. Kenyon asked if M. McComb is referring to the 1984 minutes number 10, M. McComb said yes, it seems like it would still be an issue here. K. Hoopes said that there is screening between it and the edge of the ledge and there is screening behind it, so he doesn't think they are talking a silhouetting situation. T. McGurl said that once a house is put in there, there is a potential for silhouetting, because they are definitely right on the edge of the hill. K. Hoopes said that (1) you are at the top of the ridge, but then you go beyond that quite a ways before you get to the edge of the ledge, (2) there may be other places to the south of him that that might come into effect, and to the south of him would be this lot in question and (3) if that is part of their conditions, then they have to live by them. Atty. Bitter agreed and said that (1) they have to go to the PB because this is considered a lake view lot and site plan review is necessary and (2) they are looking more at the side setbacks as opposed to the front and the rear. K. Hoopes said that the ZBA is looking at only the sideline setbacks. J. Anthony said that if you look at the draining plan shown, they are grading on the lakeside of this house to 251, so there would be no trees from the front of this house down to elevation 251—they have to remove them. K. Hoopes said that the ZBA only has to look at the sideline setbacks. P. Kenyon said that (1) they don't have a lot of grading or stormwater done, because they don't want to get into any of that until a variance is granted. (2) This is minor. Atty. Bitter said that (1) right now they are only looking at this one and (2) Sweet Toney LLC owns all of the other lots, so it is not as if they have been individually sold out. M. McComb asked if it still exists in the ordinance that contiguous non-conforming lots owned by the same owner are to be aggregated and P. Kenyon said no, not if it was part of a subdivision that was approved. B. Pfau said that the ZBA should narrow its focus a little more in terms of if whether 20 foot setbacks are appropriate up there and let the PB, through site plan review, deal with the other aspects M. McComb is talking

about. J. Anthony said that (1) the topic being brought up is that if you do this there would be a 20 foot setback here then 20 feet on the next building, so the buildings are 40 ft. apart for 8-11 buildings, (2) in order to build these buildings on the ridge line you have to grade this way and in grading this way, 21 ft. of vertical slope is being cleared here and it has to be cleared in order to get this building here, so you are going to have that across the whole area. K. Hoopes said that this is the first lot they are talking about and for the next one this one will be already be in place and would affect the ZBA's thinking. Jeff Anthony said that he is looking at it aggregately and K. Hoopes said that looking at it aggregately, they are going to need the ZBA's variance every single time. J. Anthony said that if the 40 ft. is picked, the question is if the 40 ft. between houses would be enough. K. Hoopes said that J. Anthony is saying that if the ZBA does it for one it has to do it for all and the ZBA does not have to do that. M. McComb asked on what grounds would you say no to someone else and K. Hoopes said because there is already one there.

M. McComb asked about the SEQR Form included in the packet and said that there are things that are wrong on this form. P. Kenyon said that is what the applicants chose to submit and if there are questions, the ZBA members should be asking the applicant about it. J. Anthony said that technically the ZBA doesn't do SEQR and technically the applicant didn't have to submit the SEQR on an area variance. Counsel agreed. M. McComb said that (1) the fact that other people have to consider the cumulative impact, she thinks J. Anthony is absolutely right to bring it up and (2) it is not a wild jump to say that there could be 10 similar cases. K. Hoopes said that it is a wild jump because the ZBA is the board they are going to have to come before every single time and the ZBA can take these things into account. J. Anthony said that if he's standing on the other side of the fence and looked at this ZBA and the ZBA just approved the variance, there is his basis right there—the ZBA set a precedent. K. Hoopes said that the ZBA only sets precedents if the ZBA agree that they set precedents. G. Smith said that he thinks it needs to go to the PB for a recommendation and leave this public hearing open. Counsel said that if the ZBA is going to make that referral, he'd like the ZBA to raise all the issues and for the PB to have a copy of the ZBA minutes for review. K. Hoopes said that he objects to sending this off with a full list of questions, (2) the ZBA members are the ones that have to decide whether or not a variance is proper and (3) just as he doesn't feel at all qualified to make PB decisions, he doesn't think the PB is qualified to make decisions on the ZBA side. G. Smith said that the PB is not making the ZBA's decision, but the ZBA can get a recommendation from the PB. Atty. Bitter said that in 2001 when Howard Nadler had sought this same variance, it did go to the PB and they did recommend the approval by a vote of 6 to 1. J. Anthony said that (1) it is not just the 20 ft. setback they are just asking for—it is not as if there are going to be trees remaining in that 20 ft. setback, there will be nothing remaining in that 20 ft. setback and (2) it is being constructed on almost to the edges of the property on this property, so he can only assume that the next guy will have the same problem and the next guy will have the same problem, etc. and there will be a strip of vegetation out there that is going to be 500-1,000 ft. long. K. Hoopes said that again, J. Anthony is going by the theory that everybody is going to want to be in about the same spot, but that doesn't mean the ZBA has to let them. Atty. Bitter said that (1) the ZBA has to decide on the side setbacks and (2) the issues being brought up on the other setbacks would be discussed with the PB at site plan review. B. Pfau said that (1) he agrees with the applicant on this point, (2) the ZBA is addressing how its decision affects the side yard setbacks, (3) he agrees with J. Anthony,

but he thinks that should be addressed at another level and (4) he is fine if the ZBA wants to send it to the PB for a recommendation. T. McGurl said that the PB is going to have to look at it as a whole package. K. Hoopes said that (1) another way to address J. Anthony's concerns and everyone's concerns here is if at this point in time the ZBA says that if they let this one go, they'll all have a chance to go, the ZBA then renders this subdivision useless, (2) the ZBA is then saying that they will not even let one go in, because if they let one go in they will all go in, therefore there are 10 lots out here the ZBA is saying don't even bother doing anything with. G. Smith said that he would like to have a reasonable sideline setback number to base them on, so the ZBA has something to go on, because there will be more of these that come before the ZBA. K. Hoopes said that (1) if it is 30 ft. then you have a 40 ft. wide house, which would be trailer-type and (2) what he is saying is that in the future you may have these things staggered in these properties forward and back. G. Smith said you also might not—the ZBA doesn't know. T. DePace said that they may come back next month and the ZBA may make them stagger them. K. Hoopes said that is what the ZBA would do.

T. McGurl asked if there were originally setbacks set up when this was originally approved. P. Kenyon said that on the subdivision itself, not that she knows of. M. McComb asked if it was LC25 at the time and offset by the common area with the understanding that they weren't going to build on the ridgeline in silhouette. J. Anthony said that (1) in previous discussions the ZBA has asked if what an applicant is asking for too big and needs to be scaled back—this building is 60 ft. wide, which is a lot of house and (2) he has a fairly nice house he lives in which is only 36 ft. wide and he has 2,800 sq. ft. of space inside of it. G. Smith said that (1) the applicants have all kinds of room in the back to make the house longer and thinner—just like the Phillips house is next to Rogers Park, it is thin and long and (2) he thinks this the ZBA should send this to the PB for their recommendation, then have it come back to the ZBA in December. K. Hoopes said he'd amend that by saying the ZBA send it to the PB to get their input, but not a recommendation on what the sideline setbacks should be. G. Smith said ok, the PB's input, the ZBA could use that word. M. McComb said that (1) she doesn't have as big a problem as K. Hoopes does with when the PB looks at issues of topography and stormwater and sensibility of a building site, if the PB says this is not a good site, she is happy to take that recommendation and (2) she doesn't know what the ZBA bases granting substantial variances on without that. G. Smith asked if the applicant wants to leave this public hearing open and to come back in December after the applicant visits the PB in November. Atty. Bitter said that they would if it is necessary, but she is not sure that there is any comment from the public at this point. K. Hoopes said that is a good point. G. Smith said that there is no sense to have the applicant have to reapply—the applicant can just come back if the ZBA leaves this open. J. Anthony said that when the ZBA sends this on to the PB, he would like to ask the PB to specifically look at the amount of width of the property that is being affected in terms of tree clearing and grading and take that into consideration, as you almost have 100% of the width of this property cut and graded. K. Hoopes said that (1) he thinks it is part of their (the PB's) usual routine and (2) he doesn't think the ZBA has to give them a wish list for the ZBA. M. McComb said that (1) the ZBA was asked by Counsel to give the PB a wish list and (2) this is not necessarily K. Hoopes' wish list, but it is hers. G. Smith agreed and said it is just things that the ZBA just wants to make sure the PB looks at. K. Hoopes said that (1) the ZBA knows the PB is going to look at these things and (2) what he wants to see is

what the project looks like when it comes back from the PB, as they may modify the project from their own requests. G. Smith said the ZBA would find out. K. Hoopes said that he hates stacking the deck and M. McComb replied by saying that (1) she is not stacking any deck—she is letting the applicant know where her concerns lie and if they turn out to be not a problem, that is in everybody’s benefit and (2) the length of the driveway and the location out towards where the land falls away are concerns of hers and she thinks, in fairness to the applicant, she should make that evident now.

Resolutions:

Now, upon motion duly made by Jeff Anthony and seconded by Tom McGurl, it is resolved that the ZBA does hereby table this application and forward same to the Planning Board for their input. **All in favor. Motion Carried.**

- 7) **V07-66 HARRY WOLKIN TRUST (Linda Queen).** Represented by Chris Gabriels. In accordance with Section 200-52, seeks area variance to place a 6 ft. stockade fence within the shoreline setback. 100 sq. ft. is allowed, 450 sq. ft. is proposed. Section 213.17, Block 1, Lot 34, Zone RCM1.3. Property Location: 3832 Lakeshore Drive. Subject to WCPB & APA Review.

Chris Gabriels said that the Queens are proposing a privacy fence along the northern property line.

G. Smith said that it is pretty well screened between their property and the house next door, with the hedgerow and all the trees they have down there. Chris Gabriels agreed and said that (1) that benefit of screening is the Queens desire to keep some sort of buffer zone there, (2) the problem is that the Queens are not using it right now, nor is the Juliana using their motel units right now and when you go down in the summertime, that screening is not as effective as the Queens would like it to be, (3) currently there is a fence from the woodshed area to the single story rental unit, (4) the single story rental unit is 3 ft. off the property line with another stockade fence in-between, (5) both the Queens and the Juliana have a fairly narrow property, (6) the Juliana is a 24-30 unit motel and several of the Juliana units are for double occupancy, some are for four people per unit and others for six people per unit, (7) there are going to be some obvious conflicts of interest here where you have a private owner who would like a little privacy in using his lakefront area and you have 50-100 people in the Juliana Motel Unit trying to use their portion of it and (8) the stockade fence was seen as a reasonable way to not limit his usage, but to create an increased privacy between the two conflicting properties and their usages.

J. Anthony asked if the fence stops at the lakeshore or if it goes out onto the dock and Chris Gabriels said that the ZBA is charged with looking at the dock as it goes to the lakeshore. J. Anthony asked if there is going to be fence on the dock out into the water and Chris Gabriels said that would be the PB’s preview to review that. P. Kenyon said that the applicants are proposing a (1) fence along the north property line and (2) they are also proposing a 6 ft. by 23 ft. fence on the dock. The fence on the dock will be

measured from the mean high mark. Counsel said that the Zoning Administrator's interpretation is correct.

K. Hoopes said that his concerns are that (1) while he can understand offering relief from an owner from various zoning restrictions, the property is for sale, so the ZBA is looking at the applicant probably not even being there after the variance is granted and (2) it is a six foot fence that hardly blocks a view or anything along that motel line and in some cases it is down behind a berm which is six feet high itself, so it hardly does anything, (3) when you get down to the lakeshore and invasion of the 75 ft. setback from the lake, now he really starts to find it offensive, because now they are running the risk of pigeon-holing these properties and he doesn't believe the ZBA sets precedents here, but he doesn't like the look of modesty fences of any kind in any situation—it looks lousy and (4) part of the zoning regulations are taking aesthetic concerns into account and a lot of what this place looks like is what the ZBA is charged to protect. G. Smith said that (1) on top of that, the topography of the land is like the Queens property is much higher than the Juliana Motel's is and (2) so if the Queens walk to the edge of the property line, he is looking down on the Juliana—they can't look up on his lawn and all they can see from their lawn is the one unit that has the deck on the end of it if they look out a window from inside the cottage, which would be over the top of the 6 ft. fence anyway. K. Hoopes said that is assuming the ZBA knows where the fence is going to go, because the Queens' property is higher, but the property line in some cases is lower. G. Smith said that he is assuming it is going to go where the existing green fence is currently.

T. McGurl said that (1) when the ZBA revisited this before between these two properties, he's guessing the Juliana has been there as long as if not before the Queens, (2) the Queens bought a house next to a motel—it is not the Juliana's fault that the Queens happen to have a motel next to them and (3) he doesn't see how this is going to help given the topography. M. McComb said that it seems that (1) there is pretty good screening in the areas higher up from the arborvitaes there and (2) it would seem to her that arborvitaes continuing down might provide better screening and not require a variance. Chris Gabriels said that (1) the Queens currently have two properties in Bolton up for sale, (2) the Queens are not sure which property they will chose to live on in Bolton, as it is a family group and they are currently debating which property they find most advantageous for the majority, (3) the Queens are exercising their right to improve the property which they presently own and (4) there has been no objection that he is aware of, of any of the fencing thus far in place, so he doesn't think any of the pre-existing stockade fencing is in question—he hasn't heard of those complaints. G. Smith said that those sections that are already pre-existing you could hardly see without really looking for them, because they are pretty well screened behind the screens as well and K. Hoopes said that the ZBA is only looking within 75 ft. of the shoreline, so the applicant can put a fence all the way down to the 75 ft. point. Chris Gabriels said that (1) the other objective of the privacy fence is to create a definable area/line between a very public property and a private property, which the Queens have not been as successful as they'd like to be in having that line defined, (2) there have been people using the beach, docks, and properties coming in from the motel were not respectful in that demarcation between the properties and (3) the Queens also suggested that some of the usage down in the beach area was not conducive to their family in that the people enjoying this area would

like to carry on and have more adult fun than was probably appropriate for the Queens' young sons to be a party to.

M. McComb asked about the vegetative screening that seems to be working well higher up and asked if that is an option for down near the water. Chris Gabriels said that (1) the vegetative screening is a mutual process in the top area, but is not in the bottom area—the Juliana has taken advantage of cutting everything right to the neighbors' property line, (2) there is some vegetation that is mostly on the Queens' property and (3) the argument still is that the Queens would like to create a demarcation between a public property and a private property. M. McComb asked if Chris Gabriels is suggesting that there were trespass concerns while the Queens were in residence there in the summer and Chris Gabriels said yes. M. McComb said that when she had bought her house it had been on the market for a couple of years and there had been some neighbor creeping, but when they moved in they said this was there lot and it stopped. Chris Gabriels said that in that case it is only two sets of neighbors M. McComb is dealing with. M. McComb agreed and said that her neighbors are a stable group, not a rental group. Chris Gabriels said that in her case the density levels would be about 1/3 of the density levels using the Juliana area. M. McComb agreed. B. Pfau said that (1) when the ZBA discusses building within the setback of the lake, the ZBA generally speaks about the aesthetics from the lake itself (2) from his point of view, he can't think of anything uglier than a stockade fence that goes down to the lake, especially where there are other options, like for evergreens to be planted within that 75 ft. and (3) the applicants do have other options that would denote the property line.

Correspondence:

- Letter dated October 8, 2007 from Erik Fahlberg of the Juliana - opposed
- Letter received October 15, 2007 from Andrew Queen - request for additional fencing

The WCPB determined no county impact.

M. McComb said that (1) it just seems to her that vegetative hedge down there can be taller than 6 ft., which doesn't get into the fence structure, (2) nobody comes walking through the hedge on her property, because the hedge does grow into a barrier if you let the trees grow together that way and (3) it might work better for the Queens and not require a variance. K. Hoopes said that he doesn't think the Queens are very susceptible to that argument there. G. Smith said that they are probably not. K. Hoopes said that the Queens were against Erik Fahlberg of the Juliana, building a second-floor deck because they were afraid people were going to be looking at them. G. Smith said that it is an alternative that the Queens could do without needing a variance. K. Hoopes said that (1) it is not an argument he finds compelling, (2) he doesn't think the fence is the least bit of interest to them at the ZBA and (3) if the Queens are afraid of invading hoards they need more documentation on that than just their say so.

From the public, Erik Fahlberg, owner of the Juliana, handed out photos of the vegetation taken today (October 15, 2007) to the ZBA members and said that (1) the Queens have already built a fence in the middle of the property, to which they (the Fahlbergs) didn't

object, (2) down by the water within the 75 ft. from the shoreline—there is a law there for a reason and he hopes the ZBA understands the 75 ft. setback is there for a reason, (3) the proposed 6 ft. fence on a dock where the water is 2-3 ft. high which would equate to an 8-9 ft. fence, (4) he runs a tight ship at his establishment where when guests check in they have to sign-in and read all the rules, which includes not disturbing the neighbors and no excess noise over 10pm, so it is not allowed, (5) he feels the proposed fence does impact upon the nature's scenic and aesthetic elements on these properties, (6) the lake view should be for everyone to enjoy—this fence would significantly block the southerly view from the Juliana beach and deter their returning guests, (7) this proposal would threaten their business and the overall value of their property, (8) they are concerned that setting a precedent of allowing waterfront residents to wall-in their properties would be a detriment to the whole community, (9) a wall down to the sand, especially out to the dock would also be a major detriment, (10) allowing this wall to detriment their property and business, so the Queens can sell their property seems especially unfair and unjust and (11) the Queens bought their property well-knowing there was a resort next to them and (12) in the application, it says it is a screen, but it is not, it is a wall.

M. McComb asked who owns the steps leading towards the Juliana and Erik Fahlberg said that it is the Queens beach. M. McComb asked that the line be pointed out on the picture and Erik Fahlberg approached the ZBA bench to clarify.

T. McGurl said that if the wall were to go all the way down and on the fence itself, then the Queens would separate themselves from the beach. K. Hoopes said that the docks angle away from the property line, so it would be jogged away from the property line somehow and they would have to put a gate in for the stairs to get to their own beach—it's pretty ugly. M. McComb said that coming down straight to the edge of the property with a fence, the stairs go down to Queens beach on the north side of the dock. Chris Gabriels said that in this discussion here, they should be limiting themselves to that portion of the proposal that is within the 75 ft. setback. M. McComb said that (1) she is trying to figure out where the beach is and (2) it is her understanding that there are docks and on the north side of the docks the Queens have beach. Chris Gabriels agreed. M. McComb said that (1) that is what the steps are down there for and what the Queens are looking for is to make a clear barrier between their property and the Juliana there, (2) they will not get into dock screening which is in the middle of the Queen property, or in from their property line, because it is not before the ZBA now and (3) she is trying to think about a 6 ft. fence on the beach there. Chris Gabriels said that (1) they hadn't really decided and (2) the ZBA's discussion would be from high water mark towards shore. M. McComb said that she's guessing that is across that beach and Chris Gabriels said that that would not do a lot on that beach even if they wanted to go to the beach—the high water mark wouldn't extend very far down that beach, he would guess a foot, if that, from high water mark. K Hoopes asked if the stairs are under water then. Chris Gabriels said (1) yes, the stairs are below high water mark and (2) he knows it doesn't make sense to the ZBA because the ZBA's high water mark is as high as it gets in the summertime, but the high water mark is a specific determination and it is higher than what it normally gets in the summertime. T. DePace asked where the fence would be on the photo that Chris Gabriels handed out and Chris Gabriels approached the ZBA bench to clarify.

No additional comments from public in attendance.

G. Smith said that (1) his feelings on this is that a stockade fence would not look very good aesthetically from the properties on either side, (2) he thinks the Queens should consider alternatives, like high shrubs they can plant without having to be before the ZBA and (3) there are other ways the Queens can accomplish what they want without being before the ZBA as far as he is looking at it. B. Pfau and J. Anthony agreed. K. Hoopes said that there is a great big hemlock there that the Queens would have to hack their way through just to put the fence in. M. McComb said that she can see wanting some delineation on the beach between the motel and the Queens' property and she noticed at the moment there is a sign on the steps leading down saying private property. G. Smith said that (1) Eric Fahlberg tells all his guests to leave the neighbors be and it is the best he can do and (2) plus Eric Fahlberg has a swim line on the property line, so he thinks there are other ways the Queens can achieve what they want without having to be in front of the ZBA. Chris Gabriels said that (1) according to the Queens, the neighbors are respectful—it is the tenants which are evidently not and (2) evidently the tenants sign things and Eric Fahlberg tries his best to enforce it, but evidently it is not as successful as either one would like. G. Smith said that maybe Eric Fahlberg could try a little harder. K. Hoopes said that is anecdotal evidence at this point and the ZBA is hearing that as a sidelight, "oh, by the way, we have had some guests wandering in..." to which Eric Fahlberg does not know of. M. McComb said that she could see some barrier on the beach between the two properties, but this proposed fence goes too far.

Chris Gabriels said that he would like the application to be deferred to next month in order to give the Queens an opportunity to speak.

Resolutions:

Now, upon motion duly made by Bill Pfau and seconded by Tony DePace, it is resolved that the ZBA does hereby table this application at the applicants' representative's request. **All in favor. Motion Carried.**

- 8) **BOYD, RICHARD.** Represented by Atty. Cindy Lunsford of Jones Ferradino. In accordance with Section 200-72 of the zoning ordinance, seeks to appeal the Zoning Administrator's determination that site plan review is not required to convert existing single-family dwelling located at 835 Trout Lake Road into a guest cottage. Section 186.00, Block 1, Lot 49, Zone RL3

This item was tabled by the applicant until the November meeting.

Meeting adjourned at 8:45pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary

10/15/07