

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday July 14, 2008
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, William Pfau, Kam Hoopes, Meredith McComb, Jeff Anthony, Zoning Administrator Pamela Kenyon and Counsel Michael Muller.

Absent: Tom McGurl, Jr., and Tony DePace.

The meeting was called to order at 6:33 PM.

G. Smith asked if there were any corrections to the June 16, 2008 minutes.

Motion by Kam Hoopes to accept the June 16, 2008 minutes as written. **Seconded by** Jeff Anthony. **All in Favor. Motion carried.**

1) V08-28 CONERTY, THOMAS & KATHLEEN. To alter a pre-existing non-conforming structure, specifically to construct an approximate 835 sq. ft. family room/deck addition, seek area variance for **1) a deficient front yard setback:** 75 ft. is required from the edge of the right-of-way, 47 ft. is proposed; and **2) to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b).** Section 140.00, Block 1, Lot 56, Zone RL3. Property Location: 210 North Bolton Road. Subject to WCPB review.

Kathleen Conerty stated that she and her husband are requesting an area variance to add a family room to their existing structure. She stated that specifically they would like to add on to the north side of the house in the back where the current deck and outside cellar entranceway is. They would like to put a 20' x 28' family room addition which would enhance the use of their home. She stated that the elevation of the addition would be lower than the current roof and that the addition would not be very visible from the road because of the trees and plantings.

M. McComb stated that in addition to this being a 100 year old house they are somewhat constrained in the location because of the existing tile field and garage. She stated that this seems to be the least obtrusive and most sensible location for the addition. She stated that in comparison to the size of the lot it is quite a minor proposal. G. Smith agreed and stated that it would give the applicants a nice deck off the back for privacy.

Kathleen Conerty stated that they had considered the addition off the front of the house but they really enjoy the back of the house and that is primarily their living space so this location made more sense.

J. Anthony asked if the applicant will be able to keep the arborvitae by the road. Kathleen Conerty replied absolutely and they just added another one on the north side.

W. Pfau commented that the house also pre-dates zoning by about 90 years. G. Smith stated that they will not be disturbing anything with the addition in this location. He commented that he thought it would be a nice addition to their property and that he had no concerns or problems with the application.

There were no comments from the public in attendance. P. Kenyon stated that there was no WC impact and there were letters from Greta Harris and Frank Bergman, who are in favor of the application. Kathleen Conerty stated that she also had a letter from John Shepperd who is also in favor of the application. P. Kenyon requested that the applicant provide it to her so that it could be part of the overall record and file.

RESOLUTION

The Zoning Board of Appeals received an application from Kathleen and Thomas Conerty (V08-28) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; This is not practical since the site has been previously developed with a garage, the house that has been on site for over 100 years, tile field exists and other development on the site is there. This seems to be the only practical place on the property to expand the residence.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this portion of the site is well buffered from neighbors to the north and along the road and the retention of that arborvitae will certainly help in making sure that doesn't happen.

3) The request is not substantial; A 75' setback is required and 62' is requested which 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; Basically this piece of

construction is being proposed in a lawn area and there is nothing significant environmentally that would be affected by this project.

5) The alleged difficulty is not self-created, since this project is being proposed in an area on the site which reasonably looks like the only area to proceed with expense for this house since all the other facilities on site exist such as the tile field, septic tank, house, garages and everything else and feels that this is the only option for the applicants.

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

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

2) V08-29 GATES, WALTER. To convert existing garage into a single family dwelling/garage, **seeks area variance for density:** 2.6 acres is required, 1.75 acres exist. Section 200.07, Block 1, Lot 14, Zone RM1.3. Property location: 52 Fish Point Road. Subject to APA & WCPB review.

Resolutions:

This item was tabled at the applicant's request.

3) V08-31 LeMAIRE, THOMAS & HEIDE. To alter a pre-existing non-conforming single family dwelling, specifically to construct an approximate 1,497 sq. ft. garage/office/breezeway addition, seek area variance for **1) a deficient front yard setback:** 75 ft. is required from the edge of the right-of-way, 60 ft. is proposed from Church Hill Road; and **2)** to alter a pre-existing non-conforming structure in accordance with Section 200-57B (1)(b). Section 156.00, Block 2, Lot 35, Zone RL3. Property Location: 32 Church Hill Road. Subject to WCPB review.

Thomas LeMaire gave a brief explanation and description of the plans presented. He stated that they are looking to have a garage with a home office and storage above and an attached breezeway to the house. He stated that currently they have three bedrooms with one closet in the house and they are looking for more storage. Heide LeMaire stated that the front part of the garage would be for storage and the back part would have the office. Heide LeMaire stated that the breezeway will act as a mudroom so when the kids come home from school they can put their backpacks, coats and shoes somewhere and not clutter the house.

G. Smith stated that they are dealing with another 100 year old house. M. McComb stated that they are also dealing with an unusual wedge-shaped lot. G. Smith stated that the location chosen is the best location especially given the topography of the land. He commented that it was a nice looking addition and they have the room for it. He stated that they are requesting a 60' setback which is not significant off of Church Hill Road and they are within the setback from County Route 11.

M. McComb stated that even though altogether the addition is almost 100' long, the fact that the mudroom stays below the eave level of the adjacent structures makes it read visually as two separate structures while still giving the applicants the convenience to have an indoor way to go from their garage to their house. G. Smith agreed.

P. Kenyon stated that there was no WC impact. There were no comments from the public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Thomas and Heide LeMaire (V08-31) for an area variance as described above.

And, due to 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#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; It is a difficult wedge-shaped lot and a pre-existing house that pre-dates the zoning.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a very sensitive design that appears even more modest than the square footage might make one think it would be.

3) The request is not substantial; It is a two car garage but it is located precisely in the middle of the lot and they are doing the best job they can to minimize that.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; assuming there will be careful attention to construction run-off or anything that can be mitigated.

5) The alleged difficulty is self-created, but the benefit to the applicant outweighs that on this application.

The benefit to the applicant is not outweighed by the potential detriment to 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) V08-33 PAINTER, JOHN & JAN. Represented by attorney Jonathan Lapper. In accordance with Section 200-57(B)(2), specifically to demolish and rebuild single family dwelling requiring blasting for the basement area, seek area variance for deficient setbacks. **1) shore:** 75 ft. is required from the mean high water mark, 22.4 ft. is proposed; and **2) side:** 20 ft. is required, 12.27 ft. is proposed on the south side. Section 213.09, Block 1, Lot 15, Zone RM1.3. Property Location: 4030 Lakeshore Drive. Subject to WCPB and APA review.

Jon Lapper and Tom Hutchins represented John and Jan Painter. Jon Lapper stated that he hopes by the end of this presentation that the Board will agree that this is a textbook case for important benefit to the applicant and absolutely no detriment to the neighborhood. He stated that everything that they are talking about with this variance is subsurface and has to do with construction of the basement and whether the applicants have the right to remove ledge rock that is in the basement right now. Jon Lapper stated that the plan is to replace the house in-kind on the exact same foundation location and the exact same height, with a more attractive and modern façade. He stated that the current house has been very heavily damaged because of a moisture problem caused by the exposed bedrock and ledge rock on the site.

Jon Lapper stated that they have a land use permit from Zoning Administrator Pam Kenyon and a building permit from WC to re-construct the house, identical to what is there now as long as the rock stays in the basement. However, the plan proposed to remove the ledge rock in the basement would be considered a vertical expansion (downward) and requires a variance as per the Bolton Code. He stated that this will be imperceptible to the neighbors because it is a question of what goes on underground.

Tom Hutchins explained the site layout and house plans. He stated that all structures will remain the same including the elevations of the home. He explained the re-construction of the home and foundation if the rock was to remain, but he stated that he is concerned with moisture control. He stated that they would like to excavate rock from the western half of the house and construct the same house on a more conventional foundation where they can incorporate some drainage controls and have the slab all at one elevation and minimize the water issues. He continued that they will not be creating living space in the basement or changing the ridge elevation. He stated that he feels that rock excavation will be required on the site regardless because they have a large septic tank and 1,000 gallon pump tank that have to go in just to the west of the house and everywhere he has tested on the site he hasn't been more than 2 feet to ledge rock.

Jon Lapper stated that in terms of the Town's standard of the benefit to the applicant, it would allow the Painters to deal with the moisture problem that exists now and to make sure that it is dealt with in the future. With regard to the neighbors, all changes will be happening underground so that no one will be able to tell. With regard to the APA's standard of practical difficulty, he stated that whoever built the house in the 1960's didn't remove this ledge rock, probably to save some money, and the practical difficulty is that

they have a foundation that is on bedrock now and it creates a moisture problem. This is not self-created and it has to do with the exposed rock. Tom Hutchins provided photos of the damage in the existing basement from the moisture problem.

M. McComb stated that she visited the site today and commented that there are a set of steps down to the basement and could see it being used as a family room at a later time. Tom Hutchins explained the majority of the basement will be used for storage and mechanical items for the home and the other portion could potentially be used for living space, but they are not intending that for now. Jon Lapper stated that they met with P. Kenyon on site to address the issue of living space and it is going to be exactly the same in the basement as what is there now and she had to verify that. P. Kenyon stated to the best of her ability that it is exactly the same house that exists now.

W. Pfau asked if they would still need relief if this were just dirt that they needed to remove. Jon Lapper replied yes because it is about creating more space underground. He continued that it would have stone on the bottom and it would not be living space and it is just to fix the moisture problem. W. Pfau asked if the PB would oversee the blasting. P. Kenyon replied no. Jon Lapper replied that it is not blasting necessarily and it could be jack hammed. K. Hoopes stated that it is not necessarily their concern if it will be living space and they are interested in the vertical movement downward and the Board has to treat it the same as if the applicants were raising the roofline on a non-compliant building.

M. McComb stated that she wanted to compliment the applicants on the bank stabilization that has been done between the house and waterfront. She stated that there is also an extremely well installed silt fence and bales of hay along the edge and extended her appreciation that they have done this before the construction begins. G. Smith agreed.

M. McComb commented that the applicant has answered a previous question about re-locating the house further back and the application indicates that it would require 5 times as much blasting to do that. Jon Lapper explained that the application that came before the ZBA last time was for an expansion. Since that time the applicants took the ZBA's comments very seriously and decided to come back with the identical house. He stated that as you go up the hill towards the road it is all bed rock. By keeping the house here, there already is a foundation and re-locating up the hill would require extensive blasting. K. Hoopes stated that this is already disturbed ground and he doesn't see anything to be gained environmentally, aesthetically or for the neighbor sake by re-locating to another location.

M. McComb asked if there were garage plans. Jon Lapper stated that it is only a carport and will remain that way for now. M. McComb stated that their application indicates that stormwater retention measures will not be used. She stated that it is not an increase in space and asked if they have any plans for stormwater retention on the new construction. Tom Hutchins replied that he has considered it and at one point had some additional stormwater controls designed into the plan but the problem comes in complying with the Town's stormwater ordinance with regard to separation from bedrock. M. McComb stated that there is a clear place of erosion from what is coming off the roof now and there were also places in the bank with drains coming through that are handling that

water. Tom Hutchins stated that they intend to gutter the house and infiltrate that run-off the best they can. However, as far as a formal stormwater plan it is a very difficult site. Pam Kenyon stated that she agrees with Tom Hutchins. She indicated that they met several times to discuss stormwater controls and there is no way that they can meet the Town's stormwater regulations without a variance. She stated that technically they are exempt because they are rebuilding. G. Smith agreed and stated that he is happy with what they are doing, the ZBA has done a good job with this and feels that they are going to be happy with the project when all is said and done.

William Thomson, neighbor of the applicants, asked how many cubic yards of material will be removed from the site and what kind of structure damage could that do because they are so close to the edge of the lake. He also asked what the ramifications for the neighbors would be and if this application has been brought before either the ZBA or PB before. Tom Hutchins stated that he has not surveyed the underside of the house to accurately ascertain the precise quantity of rock to be removed, but he estimates it to be 130-150 cubic yards. He stated that if they need to blast to remove the rock which can fracture the rock and it would be done in a very controlled manner. William Thomson stated that he is concerned that it could cause fractures in the rock and create stormwater issues. M. McComb stated that is true but if they blast the foundation as a right 75' from the lake, it would be for an entire foundation and not just one corner. Kam Hoopes stated that they are not giving the applicant a variance for the difference between 75' and 22', the house already pre-exists at the 22' and the ZBA allows applicants to repair or replace portions of the structure without having to get a variance. M. McComb stated that the applicant has been before the Board 4 times and has been turned down 4 times. Pam Kenyon clarified that the applicant has been before them for 2 variance applications and denied both times.

Bernie Martinese, neighbor on the north side of the applicants, stated that he is in favor of this application. He feels that this is the least amount of demolition that would have to be done. He stated that the applicants are only taking a portion of the ledge rock which does peel and probably will not require all that much blasting anyway.

M. McComb stated that the applicants are not planning on going upward so none of the neighbors' views will be affected. The applicants have also done a lot of work to stabilize the bank between the house and the lake before construction, which carries a lot of weight in her thinking that this is a better project than asking him to move back and start blasting anew.

Counsel read a letter from Kathleen Bozony, Natural Resource Specialist for the Lake George Waterkeeper, which stated the Lake George Waterkeeper's comments and concerns with regard to the application and requested that the Board leave the public hearing open to allow the ZBA to review the Certificate of Compliance and stormwater management plan relating to the application.

P. Kenyon stated that there was no WC impact.

Kelly Baker stated that she was confused that this applicant was not required to have stormwater management just because the applicant cannot comply with Town standards.

P. Kenyon replied that it is not required because the area where they want to rebuild is already an impervious area. Kelly Baker stated that they just say if they blast and create fractures it could create problems with stormwater. P. Kenyon replied that could very well be, but the applicants are exempt from the stormwater regulations. Jon Lapper stated that the rock there is impervious and the concrete that will be put in its place is also impervious. He explained that they would only need to treat stormwater if there was an increase in impervious surface so it is exempt.

Vasiliki Tekmitchov stated that she is very offended, this is a small community and she cannot believe the behavior of certain people. She stated that Mr. Thomson owns property next to hers and he has permits for a substandard lot that she is sure he would have to blast in time. She stated that she is not an engineer and does not want to get involved in this project but she finds it offensive that Mr. Thomson has permits to build a house on a totally unacceptable lot on Route 9N north of Town and he is objecting to the applicants' project.

Kathy Bozony, Lake George Waterkeeper, stated that she is concerned that this project is 22' from the lake and it is not requiring any Site Plan Review by the Planning Board. She thinks that Tom Hutchins has done a good job of the engineering of the project but she thinks that some of the stormwater management mitigation that could be done, should be done regardless of the fact that it may not be required. She stated that she knows it is challenging because of the rock but she feels that they should have a discussion about the close proximity to the lake or refer it to the PB for some discussion. M. McComb asked what she suggested for stormwater control. Kathy Bozony stated that she would be happy to discuss some further options with Tom Hutchins or the applicants after the meeting. She stated that she would like to see the Painters be able to build this new house but they need to talk about some of the issues that could improve this project so that the water quality is not derogated. She suggested that they could change some of the driveway into a more permeable surface, which she understands is pre-existing but this site is compromised and eroding into the lake now. She also recommended that if they gutter the roof that they have the water run into some sort of garden area or infiltration so the plant roots can absorb pollutants and nutrients as opposed to letting them run into the lake. M. McComb agreed with Kathy Bozony that rain gardens for the gutters and maybe something other than all lawn between the house and the bank would be great improvements.

Kathy Bozony stated that although she is being told that this is not an enlargement or change in living space it appears that it is. Jan Painter stated that the space will be used as specified on the plans as a basement. Kathy Bozony asked why they are using large windows and French doors for the basement. Jan Painter replied that they are doing this for aesthetics and to make it more attractive. M. McComb stated that currently there is space underneath this structure and there are stairs going down to that level which all pre-exist. She stated that she has a house built into the bank and this proposal is a good energy saver and is a good trade off from having to start and blast a new foundation for the much larger structure that was originally proposed.

John Painter stated that he would like to thank the Lake George Waterkeeper for their great suggestions. He stated that he and his wife are fully committed to the lake and have

been in this area for about 50 years. He stated that they take their suggestions seriously and they will plant lots of vegetation between and around the retaining walls and he would take her recommendations as to what type of vegetation. He stated that they intend to gutter the house so that the water doesn't just flow into the lake.

W. Pfau asked what the applicant will do if their variance request is denied. John Painter replied that they are going to build the house the way it is but they would have to go up the hill further away from the existing foundation to prevent the water that is flowing under the ledge rock into the basement. He stated that the basement is completely soaked and the insulation is falling off the walls and there is mold growing throughout the house. He stated that they would have to go up the hill further and outside the foundation which would require them to remove more rock. G. Smith asked if they would move the home back 75' from the lake. Jon Lapper replied no, but he would put in a French drain up the hill from the house to prevent the water from coming into the basement.

J. Anthony stated that he agrees with Kathy Bozony to have some sort of landscaping to mitigate stormwater between the home and the lake and he feels the applicant has agreed with that as well. He would be willing to support the application if this could be included as a condition to the resolution. He suggested that they request a landscape plan for managing stormwater by way of rain gardens, landscaping, proper installation of nutrient rich soils between the house and the lake be submitted. Jon Lapper stated that they would agree to that condition if the plan could be submitted to the Zoning Administrator rather than going to a public hearing. J. Anthony agreed.

RESOLUTION

The Zoning Board of Appeals received an application from John and Jan Painter (V08-33) for an area variance as described above.

And, due to 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#4 of the agenda.

The Board makes the following conclusions of law:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; The building could be moved back beyond the 75' setback and they could achieve a project with no variances. However, that would require significant blasting of bedrock and disruption of the environment and disruption of environmental

conditions which would probably be more harmful than replacing the building in its existing location.

2) There will be no undesirable change in the neighborhood character or to nearby properties, essentially the character of the property is fixed. The building that is going to replace the existing house is identical in height, bulk and size and probably a lot better looking and feels that it will result in a positive affect to the neighborhood character.

3) The request is not substantial; the building exists there today. The applicant is not asking to move closer to the lake and they can conclude that this is not a substantial request.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; with proper mitigation of an attempt to mitigate stormwater by way of use of plant materials and bio-retention and other types of plantings schemes they will not create an adverse physical condition especially since less rock will be removed under this situation than with moving the house back beyond the setback line.

5) The alleged difficulty is not self-created, the building is there today and it will be in the future.

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

Now, upon motion duly made by Jeff Anthony and seconded by Meredith McComb, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition(s): The applicant submit a landscape plan for the lakeside portion of the property to demonstrate contemporary means of landscaping, stormwater management, bio-retention which will be reviewed by Zoning Administrator Pam Kenyon. **All in Favor. Motion Carried.**

5) V08-10a TWIN BAY VILLAGE. Tamara Chomiak. Represented by Atty. Matthew Fuller, Matt Steves of VanDusen and Steves, and Daniel Ryan of Vision Engineering. For a proposed 50 unit townhouse project, seeks area variance for **1) deficient density:** 43 acres required, 37.6 acres exists; and **2)** in accordance with Section 200-37B(4) Shoreline Regulations, seeks area variance for deficient shore frontage. 645' of shore frontage is required, 122' exists. Section 186.06, Block 1, Lot 14.1 and Section 186.07, Block 1, Lot 7, Zones RM1.3, RL3 and RCH5000. 4804 Lake Shore Drive. Subject to WCPB review. *NOTE: This application is in conjunction with SD07-25 and was tabled 3-17-08 pending additional information.*

Matt Fuller of Fitzgerald, Morris, Baker and Firth and Dan Ryan of Vision Engineering presented the proposal. Matt Fuller stated that they applied for a variance a few months ago but at that time they had proposed 44 units but they were unsure of the final number of units they were requesting because they had not completed the perc tests and soil samples. He stated that they have done their homework and they are pleased that some of the soils on the hillside are better than expected. With regard to DOH and DEC standards they have found that the property can environmentally and reasonably support 50 units and they are not requesting more than what the property can support. Matt Fuller stated

that as this application moves through Site Plan Review and Subdivision the stormwater will be addressed. He feels that this application is a vast improvement with regard to permeability and density on the lakeside.

M. McComb asked about map C-3 which indicates that there are 28.84 acres on the west side and 1.7 acres on the east side and yet in the calculations there are 35 acres and asked if they were adding the Villa into their calculations. Matt Fuller replied that in response to Pam Kenyon's decision yes it was included. He stated that even though the property subdivided the Villa, for planning purposes they included the entire property for all calculations. Kam Hoopes stated that would be proper. M. McComb stated that they have 25 two dwelling homes, plus a house and 5 cabins. P. Kenyon stated that she doesn't recall stating that they should include that parcel for density and that the Villa property should only be included when calculating shoreline deficiency. She stated they included it for the shoreline calculation because the Villa property has a right-of-way to the shoreline across this property. M. McComb stated that she is referring to the January 28, 2008 letter from Pam Kenyon to Matt Fuller stating that they have 20.8 acres existing in RM 1.3 and 74,178 sq. ft exist in RCH5000 and 15.1 acres in RL3. She asked for clarification of the total acres on the west side because they have a map showing 20.8 acres there and density is being calculated on 35.9 acres there which makes a difference in how big a variance they are asking for. Kam Hoopes stated that if these numbers are inaccurate the variance would be null and void.

In response to M. McComb's comments, Pam Kenyon replied that in her letter to Matt Fuller on January 28, 2008 she based her calculations on Matt Steves' information. M. McComb stated that what she was saying is that the map from Vision Engineering identifies the west side as having a total of 28.64 acres and not 35.9 acres. She stated that it seems that the calculations were based on adding in the Villa property for the shoreline deficiency and Vision Engineering is off by 7 acres. M. McComb asked how many acres the Villa property is. Matt Fuller replied approximately 7 acres. M. McComb stated that it would add up if Matt Steves included that. G. Smith stated that the site area is 28.64 acres. M. McComb agreed and stated that the Villa should not be included for the density on the site area. P. Kenyon stated that she is not including the Villa property for the density. M. McComb stated that Pam Kenyon based her calculations on what she thinks are inaccurate calculations because they include the Villa property. K. Hoopes stated that the numbers all add up and that the calculations are correct because the property is in several zones. M. McComb stated that the applicant seems to have put some effort into this presentation and there is only 28.64 acres that the applicant can find and she is concerned about the accurate density that truly exists for the west side. P. Kenyon stated that she could have helped M. McComb with her questions and concerns better if she had come to her in the office prior to the meeting. M. McComb asked Counsel to review the map for his input. Counsel agreed with M. McComb that map C-3 identifies 28.64 acres and the only way to get more acreage is to include the Villa. He continued that it is necessary to include the Villa for the variance application as it pertains to the shoreline deficiency. M. McComb agreed but stated that it should not be included in the calculations for density. Counsel replied that he agrees but he does not feel that Pam Kenyon intended to say that they were going to start with the Villa and use that as a platform and then calculate more.

Pam Kenyon stated that she cannot answer the question over density without further research. W. Pfau suggested that they table the application. He stated that he agrees with M. McComb that they are wasting time talking about density variance when they don't know what the density is. Matt Fuller stated that it is 35.9 acres. M. McComb stated that they cannot use a subdivided parcel as part of this site. G. Smith agreed. Dan Ryan stated that the plans proposed do not include the Villa's 7 acres. M. McComb stated that the density for 44 townhomes did. Dan Ryan agreed but stated that their request for 50 townhomes does not change regardless of the 7 acres.

P. Kenyon stated that probably this application will be going to the PB in August and in the meantime she can double check figures so this will not hold the applicant up.

M. McComb stated that she wanted to ask the applicant some further questions to help them with their proposal. She asked about the deep test pits that have been done. Dan Ryan indicated the deep test pits on the plans and their results. He stated that the tests were done last fall and early spring of this year. He stated that they had perc tests also done this spring. K. Hoopes stated that he was concerned that they were getting into the PB business and they have a simple agenda that they should stick to especially since they have already discussed tabling the application.

W. Pfau stated that after the last presentation, the Board felt that this was a rather large number of units for the shoreline regulations and he doesn't feel that they have addressed that issue since the last time. K. Hoopes and J. Anthony agreed. With regard to the area variance being substantial, J. Anthony stated, the applicant addressed the fact that there are more units being requested but there is nothing said about the lakeshore. Dan Ryan replied that when they look at the variance request they have to partially look at what the existing use is. Currently they have 122 feet of linear shore as defined by the Bolton Code and according to the capacity of the motel and cabins it currently accommodates 336 people. The proposed project of 50 units with the average family size of 4 people would be a total of 200 people maximum which is a large reduction in the density in usage from the existing conditions. He continued that this condition would only be an issue during the summer months like it is today. Dan Ryan also pointed out that Bolton currently has two parks with public beaches with approximately 375' of shore and that accommodates 2,100 residents. That is an average of 2" per resident. K. Hoopes stated that he was very much in favor of this project but now that they have added units they are looking to table this item at this time. Dan Ryan stated that they understand that and they would be happy to review with the PB. K. Hoopes stated that he agrees that the assessment that the lake frontage would get less impact because everything on the east side will be removed, the view will be improved on the scenic corridor and it is a trend going in a positive direction.

W. Pfau stated that the Board should take into consideration the trade-off that is going on, but when looking at the numbers it is a huge request. M. McComb stated that she is also concerned because the prior application had the east side with large open space and now there is a 2,000 sq. ft. community center and questioned what the elevations might be. Dan Ryan replied that the last application included some common amenities to be used on the east side parcel. He stated that the only thing that has changed is that they have moved the tennis courts and community center and have added a pool. He stated that the

community center would only be one to one and half stories and both the pool and tennis courts would have perimeter fences for safety. He continued that they are also reducing the impervious surfaces by 4-5% from current conditions and providing an enhanced stormwater plan. This project will completely comply with water quality treatment for DEC. They are proposing retention and bio-retention systems with additional buffering for screening from the neighbors and parking lot. M. McComb stated that it would help their application to show plans for the community center.

J. Anthony stated that he felt that the applicant was on a good track with this proposal but he had a few suggestions. With regard to # 10 on the Environmental Assessment he stated that he has to know that he can answer that question a no, but there is only a grading plan for the west side and no grading plan for all 25 twin units which will affect land, there will be disturbed land for the removal of the current buildings and for new road and driveway. He stated that he would like the applicant to address that. With regard to #16, "Will stormwater retention measures be used?", he stated that the applicant checked no, but he believes they meant to answer yes. Matt Fuller agreed.

Don Russell stated that every old survey he has seen it shows 102' and that is what the applicant pays taxes on. He asked how they got the 122' and what standard or method of measurement do they use to measure. Matt Fuller stated that they went through this the last time and he asked Matt Steves who indicated that he measured linear feet of the lake. P. Kenyon replied that she will double check that measurement as well.

Kathy Bozony, Lake George Waterkeeper, asked if the applicant could look at some low impact development designs and try to incorporate them, such as looking at the existing topography and try to develop the actual layout of the townhomes around the land. She also suggested that they look at putting the tennis court and swimming pool on the west side of the property to create a more permeable surface on the lakeshore with vegetation. Matt Fuller replied that the applicant is committed to protecting the lake but they felt that they didn't want to get too far ahead in their planning. M. McComb stated that the notion of a cluster subdivision on the land that is already cleared, might be a win-win for all, because people want views of the lake and there would be less driveways and disturbance of the land. Matt Fuller stated that they have tried to carefully look at the placement of the townhomes and their idea is to have a look out and not in approach. He stated that he is concerned with clustering because it would remove a wider area of trees which they do not want to do. He stated that he has toured a couple of developments in the area and looked at the roads that are cut into the land with the canopy that carries over the road and that is the kind of look that they are going for.

RESOLUTION

Motion by Kam Hoopes and Seconded by Meredith McComb, to table Twin Bay Village V08-10a application pending additional information and to seek a recommendation from the Planning Board. **All in Favor. Motion Carried.**

6) V08-34 MacEWAN, ROBERT & DEBORAH. To construct a proposed 4-unit townhouse complex, seek area variance for deficient **1) front yard setbacks:** 30' is

required, **a)** 13' 6" is proposed from Goodman Avenue (lot 4); **b)** 20' is proposed from Cross Street (all lots); **2) rear yard setback:** 15' is required, a minimum of 1.5' is proposed (all lots); **3) side yard setback,** 20' total is required; **a)** 10' is proposed for lot 1; **b)** and 0 ft. is proposed from interior lot lines. **4) lot coverage** 40% is allowed, 59% is proposed for 2 & 3; **5) lot size;** 20,000 sq. ft. is required; **a)** 2,614 sq. ft. is proposed on lot 1; **b)** 1,742 is proposed on lots 2 & 3; **c)** 3,049 is proposed for lot 4. **6) lot width;** 50 ft. is required; **a)** 28.24 ft. is proposed for lot 1; **b)** 22 ft. is proposed for lots 2 & 3, **c)** 34.27 is proposed for lot 4. **7) lot depth;** 100 ft. is required; 79.85 is proposed for each lot. Section 171.15, Block 1, Lots 74.1, 74.2, 74.3 and 74.4, Zone GB5000. Property location: 2, 4, 6 & 8 Cross Street, formerly known as Wilson's Laundry. Subject to WCPB review. *NOTE: This variance was previously approved on 9/19/05 and 11/14/05 under V05-55 and V05-68, but never acted upon.*

Rob MacEwan stated that they were requesting to renew the variance as it was approved back in 2005. M. McComb asked if they had all of their State approvals. Rob MacEwan replied yes but it took a while. G. Smith stated that is the reason why this variance has expired. Pam Kenyon extended it one year and now it has expired because it has taken the applicants all this time to get all of their approvals from all the necessary agencies. W. Pfau stated that unless there is any major changes in the project from the Board or from the public, there shouldn't be any changes in the vote either. Kam Hoopes stated that he was in favor before and is still in favor of the application. G. Smith agreed. M. McComb stated that she was against it before because she felt they were not asking all of the questions, but if they now have all of their State approvals she is in favor of the application.

There were no comments from the public in attendance. Counsel recommended that the resolution incorporate those minutes, discussions and considerations from V05-55 heard on 9-19-05 and V05-68 heard on 11-14-05.

RESOLUTION

The Zoning Board of Appeals received an application from Robert and Deborah MacEwan (V08-34) for an area variance as described above.

And, due to 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#6 of the agenda.

The Board makes the following conclusions of law:

Bolton Zoning Board of Appeals Minutes
July 14, 2008

- 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 the neighborhood character or to nearby properties,
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created,

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

Now, upon motion duly made by Meredith McComb and seconded by Kam Hoopes, it is resolved that based upon the findings of fact, discussions and considerations from the minutes of September 19, 2005 for V05-55 and November 14, 2005 for V05-68 the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

7) V08-32 TEKMITCHOV, VASILIKI. For a proposed 2 lot subdivision, seeks area variance for deficient **1) parking:** 34 spaces are required for lot B, 5 spaces exist; **2) side yard setback:** A total of 20' is required, 0' is proposed for lot B; **3) density:** a) 12,000 sq. ft. is required for lots B, 5,329 sq. ft. is proposed; b) 14,000 sq. ft. is required for lot A, 2,515 sq. ft. is proposed; **4) lot coverage:** 40% is allowed, a) 66% is proposed for lot A, and b) 69% is proposed for lot B; **and 5)** As a condition of approval set forth by the ZBA on March 13, 2000 when approving the re-establishment of a commercial space, ZBA approval is required for any change. Section 171.15, Block 3, Lot 74, Zone GB5000. Subject to WCPB review. Property Location: 4960 Lakeshore Drive. *Note: This application is in conjunction with SD08-03.*

Dennis Dickinson described the property briefly. He stated that there are three buildings on the property, the businesses on Main Street, a garage behind the business and an apartment building behind the garage. He stated that the applicant is looking to subdivide the apartment building from the business. Nothing is changing on this property and she will have the ability to sell one or both of these properties. With regard to the variances needed, he stated that almost all businesses or parcels in Town along Main Street, cannot meet the Town's parking requirements. He stated that they are in a GB5000 zone and if he sets the division line close to the garage they have 5,330 sq. ft. for the front lot and the apartment lot would then be 2,500 sq. ft. M. McComb questioned the division line for the parcel because it did not match what Dennis Dickinson was describing. Dennis Dickinson replied that either way they were not going to meet any of the requirements. He stated that the division line was placed next to the garage to create some parking spaces. The applicant has room for 3 vehicles in the garage and at least 2 additional vehicles for the front lot. Dennis Dickinson stated that there are a total of 5 spaces, 4 viable parking spaces in between the garage and apartment and one on southeast corner for the back lot. P. Kenyon stated that she needs to know exactly where the property line would be proposed. Dennis Dickinson stated that he has it one foot off of the garage.

W. Pfau asked how many apartments exist. Vasiliki Tekmitchov replied that there are two apartments. M. McComb asked if they could clarify the end of the property line. Dennis Dickinson indicated the property line on the map. W. Pfau asked if they would describe the proposal as subdividing a residence from a commercial building. Dennis stated that he sees it more as someone buying it and using one part and renting the other. Vasiliki Tekmitchov stated that regardless if the property is for sale or not, she is seeking this subdivision for relief on insurance for a mixed use property because of the liquor license.

M. McComb asked if the beam protruding from the garage is structural. Dennis Dickinson replied that the beam has no structure value and it could be removed. W. Pfau asked if this application would go before the PB. Dennis Dickinson replied yes as a minor subdivision. W. Pfau stated that they have dealt with this type of request quite a bit recently and although this is a large request, there is a decent reason for the request considering the liquor license.

M. McComb asked if there were any easements for the property. Dennis Dickinson replied that there are 2 sewer easements and an easement across the gravel driveway as a right-of-way to this property. G. Smith asked if this was the only way to this property. Dennis Dickinson replied yes. Vasiliki Tekmitchov replied that they can also go around from the other Congers Point entrance. Fred Ormsby replied that the applicant does not have the right to use the other entrance for Congers Point to reach her property. Vasiliki Tekmitchov felt that she does have the right. Kam Hoopes replied that this is a civil matter and will not be handled by the ZBA.

P. Kenyon provided a correction to the numbers for density since she had misunderstood that this was 1 three bedroom house and not two apartments.

Counsel read the following letters;

1. Received on July 14, 2008 by the Planning and Zoning Code Enforcement Office, but is dated June 1, 1998 from Rehm and Stafford with regard to the boundary line issue. This letter also included an attachment enclosing a survey map.
2. Kathleen Spawn in opposition to the application.

Greg Smith stated that if the property is sold, it would have to be re-surveyed. Dennis Dickinson replied that it has been re-surveyed, but the corners have not been set yet. W. Pfau stated that the proposal does include providing at least 4 parking spaces for the apartments. M. McComb stated that the 5th parking space does have a large rock in the middle of it.

Dan Carnese, closest neighbor to the east of the parcel, stated that their subdivision owns the right-of-way to this parcel. He stated that their subdivision works because there is no parking in the roadway which provides easy ingress and egress to all properties, especially for emergency services. He stated that they have had problems through the years when the subject property was rented. He stated that the plans indicate parking lots but in reality it is just space for parking and it is not provided. He stated that when the residents of these apartments park they rarely leave the roadway clear. He stated that he is very concerned that the applicant is presenting that there is parking available when in

reality there is only space for parking and it is not available. He asked what the ZBA could do to ensure the safety of those individuals living in these apartments and the residences in Congers Point with regard to emergency services. He feels allowing this subdivision will only make the parking problem worse and more dangerous. He asked if the approval could be conditional with money held in escrow so that if the parking spaces are not made available the money could be used to fix the situation. K. Hoopes stated that they are basing their opinion on what the surveyor has provided and those spaces are there and they cannot do anything if the residents are not using them properly. G. Smith stated that if someone buys it, lives in one and rents the other the parking situation might get better but he doesn't see it getting any worse. K. Hoopes also stated that they could have the offenders towed. G. Smith agreed. Dan Carnese clarified that the residents cannot use this parking even if they wanted to because there are rocks and other obstacles in the way. W. Pfau asked if the Board would like to add the condition that the applicant must make those spaces usable. K. Hoopes stated that he is under the impression that it would be part of their variance because they are displayed as spaces and if there is a stump and rock in there it has to be removed.

Vasiliki Tekmitchov stated that currently she has 6 tenants and she allows 1 car per apartment for a total of 2 cars. She stated that she could strip the land so that all parking was available but stated that it did not matter for the current situation. She stated that Mr. Carnese has a shed where the stake is to the right-of-way and they have made her land narrower toward Hugh Wilson's side. She stated that she has kept very quiet but she feels the need to speak up so she will not be taken advantage of. She stated that Mr. Carnese told one of her tenants that he could never use the beach because of his skin color. She stated that she has the right-of-way to the beach on her deed and asked if Mr. Carnese was prejudice. G. Smith stated that this has nothing to do with this application. Dan Carnese responded that her allegations were completely untrue.

Kam Hoopes stated that if they were to approve this application, he feels that it is an unspoken condition that these parking spaces have to be available parking spaces and cleared of debris. Dan Carnese agreed with that approach and asked if there was anyway that they could enforce that. K. Hoopes stated that he could always have the Code Enforcement Officer verify if the applicant is in compliance with the variance approval. M. McComb agreed and stated that if the residents park in the right-of-way then he should call the police.

RESOLUTION

The Zoning Board of Appeals received an application from Vasiliki Tekmitchov (V08-32) for an area variance as described above.

And, due to 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#7 of the agenda.

The Board makes the following conclusions of law:

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

2) There will be no undesirable change in the neighborhood character or to nearby properties, nothing different is going to happen, except the parking spaces will be cleared, the buildings remain the same, and it is minor subdivision. Everything will pretty much look the same and hopefully it will start looking better,

3) The request is somewhat substantial; but the applicant is in the GB5000 zone and substantial is the coin of the realm and parking is at premium and this proposal has merit that overrides the substantiality.

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 these properties have been sliced and diced prior to any zoning and this will relieve the applicant from a certain burden.

The benefit to the applicant is not outweighed by the potential detriment to 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 with the following condition(s): 1) The parking spaces shown on the plans be cleared of any and all debris and able to be parked in; and 2) That the iron beam protruding from the garage be removed. **All in Favor. Motion Carried.**

Meeting was adjourned at 8:55 p.m.
Minutes submitted by K. MacEwan