

**Town of Bolton**  
**ZONING BOARD OF APPEALS**  
**MINUTES**  
**Monday, November 17, 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:** Co-Chairman William Pfau, Tony DePace, Kam Hoopes, Meredith McComb, Jeff Anthony, John Michaels, Zoning Administrator Pamela Kenyon and Counsel Michael Muller.

**Absent:** Chairman Greg Smith

Meeting was called to order at 6:33 p.m.

Bill Pfau asked if there were any changes or corrections to the October 20, 2008 meeting.

1. Meredith McComb, page 16, 11 lines down, should read, "...the section in RCH5000 special densities is all for commercial uses..."
2. Meredith McComb, page 5, the condition of approval should read, "...it is resolved that the ZBA does hereby approve the variance request as presented with the following condition(s): that the applicant installs a dry well to assist in stormwater remediation."

Motion by Jeff Anthony to approve the minutes as corrected. Seconded by Meredith McComb. John Michaels and Kam Hoopes abstained. **All Others in Favor. Motion Carried.**

**1) V08-47 RIEDINGER, ED & AVEDISIAN, JOYCE.** Represented by Larry Warner. To demolish and rebuild single family dwelling, seek area variance for deficient setbacks. 1) Shoreline. 75' is required, 38' is proposed; 2) Side. 30' is required, a) 11.5' is proposed on the south side; and b) 12' is proposed on the north side. Section 185.19, Block 1, Lot 61, Zone RCL3. Property Location: 9 Lake Side Lane. Subject to WCPB and APA review. This item was tabled at the Oct. 2008 meeting as no one was present to present the application.

Larry Warner stated that they are requesting a number of area variances for a demolition and reconstruction of a seasonal cottage. He stated that there are a couple of minor changes to the application submitted which do not impact the variances requested: 1) the small sitting deck has been removed from the 2<sup>nd</sup> story and has been replaced by small bay window. 2) there are a few other window changes as well; and 3) elimination of the chimney as the applicants have chosen to go with a propane fired fireplace.

He stated that the applicants have retained the services of Jim Hutchins to apply for site variances for a new septic and well on the lot. The existing structure is 38' from the shoreline and they are proposing to tear down the existing building and put on a 9' x 27' deck on the front and then move the balance of the structure back away from the lake so they will not encroach any closer to the shoreline. The sideline setback on the southwest side currently is 11'6" and they are proposing to keep the same exact main structure setback identical. On the northeast side it is currently 19'2" and they are proposing to keep the main structure at 19'2". The changes on the sideline setback is that they are requesting to eliminate the side stairs that are closer to the property line and widen it just for the deck access over the on the northeast side. The main footprint of the existing house is approximately 27' x 27' and they are proposing to make it 27' x 30' essentially adding 3' or approximately 10% of the footprint of

the building to the rear of the proposed structure. The new structure would come back tight to the current parking area and the septic system that will be proposed at the December 2, 2008 TB meeting would be moved to the back of the lot. Currently there is a pipe exposed coming out of the house and into a holding tank. The proposed septic system has been designed by Jim Hutchins who has been working with Town Engineer Tom Nace for a couple of months. He provided Tom Nace's letter in which he recommended that the TB approve the proposed septic system change. He stated that Pam Kenyon indicated that normally applicants would get a septic variance prior to looking at the building. However, initially he was only going to do a renovation on this structure to change it from a seasonal cottage to a year round residence. This proposal came about due to a number of issues including septic, stormwater and electric. Without doing major structural work there was no way to bring the existing building up to the NYS Energy Code. Another issue they were concerned with was the safety of the stairs. He stated that upon examining all of that it became a very significant renovation and it didn't make sense to do that physically or financially for the applicants. This is also the reason why they do not have their septic approval yet. Larry Warner stated that in the event that it is denied on December 2<sup>nd</sup> or by the APA that they would go back to renovating the existing structure without all of the additional lot upgrades. He stated that he feels that this is a lesser project for the good of the applicants, neighbors, the lake and the Town of Bolton.

William Pfau stated that considering that the new building is going on top of their current system here he thinks that it is interesting to note that they have an engineer that says they can relocate the septic on their property. Larry Warner stated that they are taking a holding tank which is located approximately 60-65' and moving a new system to the toe of the hill at about 85 feet and the actual field itself will be 109' from the lake. This would be again be a great benefit to the lake, neighbors and environment as a whole.

Larry Warner stated that the existing crawl space has obvious signs of stormwater issues. This is of concern because this is where all the mechanical and electrical items are for the house. This site also never had any stormwater management plan at all and their proposal includes an engineered stormwater management plan from Jim Hutchins. William Pfau asked if stormwater plan is mandatory for a rebuild. Pam Kenyon replied not if it is less than 1,000 sq. ft of impervious surface. Larry Warner replied that Pam Kenyon indicated that stormwater management would not be mandatory but he and Jim Hutchins have spent several months on the project trying to get it to a point to think of all possible negative impacts on the project and tried to take steps in a positive manner.

Larry Warner stated that another deficiency of the structure is the stairs which are part of the reason for the 3' addition. The rise, run and width of the stairs aren't anywhere near what would be fit for the requirement for new construction. He stated that the stairs currently are very steep and even more concerning are the landings that are approximately 12". He stated that code requires a 3' landing minimum. Given the layout of the existing structure if they were put in a proper stairway with proper landings they will have gone almost the length of the house and there is no room for anything other than the stairs. The 3' addition of the living area to the back of the house to allow them to fit a set of stairs that meets code requirements. The upper bedroom has a ceiling height of 6'10" and the other part coming into play would be the height of the overall building. There is an existing crawl space and they are looking to put in a full basement which will raise the structure up some and with the raising the deficient ceiling height to meet code in the upstairs bedroom will also raise the overall structure height. The new construction will be a little less than 7' higher than the existing. However, they have

taken the existing covered part of the house and moved it farther from the lake by 9'. Looking at either neighbor on each side the heights seem to line up pretty close to what is proposed and will not impede their views and coming up from the south is the access road coming into the subdivision which means there is no building lot directly behind the house. William Pfau stated that basically the applicant is adding 12' onto the house including the deck, maintaining setbacks from the lake, adding 7' in height and there is basically no change in the side yard setback. Larry Warner stated except the set of stairs that they have put on the side next to the vacant 30' lot, used for lake access, before the next house. He stated that it will be just for the width of a set of stairs.

Meredith McComb stated that this is a positive thing and according to Tom Nace's letter it is a big improvement over the existing septic system that is there. She stated that a letter from a neighbor showed concern that their septic field is immediately adjacent to the subdivision road and asked if that will be problematic for drainage problems on that road. The neighbors also asked if there was a berm at the upper edge of the field which could direct water onto the neighbors' property and if so, could that be handled by the stormwater management plan. Larry Warner showed the final engineered set of septic plans. He stated that the proposed septic system is approximately 30' off of the shoulder of the roadway because the ROW, that is part of all the deeds for the subdivision, follows down to the lake. Meredith McComb asked if this is why they cannot move the house back further. Larry Warner replied yes, the septic, driveway and structure stacked up against one another. He stated that the entire site sits low and they intend on raising it up and creating minor grade changes, but will still have all of the stormwater contained within its own property. He stated that Jim Hutchins will be providing an engineered stormwater management plan so that any stormwater created from this project will be staying on this property. He stated that there is about 2' drop in elevation before the septic field starts and he doesn't see any concern especially with all of the pervious material between the berm and the roadway.

Dennis Murphy stated that he lives directly across from this house on Trout Lake. He stated that he feels that the house could be moved back further. He stated that there is a 75' setback and with this rebuild they have the opportunity to move it further back which could further accommodate the aesthetics of the lake. He asked if the 2 sheds will be removed. Larry Warner replied that there is nothing in the plans to do anything with the sheds, but he does know that one will have to be moved out of the way to drill the well. Dennis Murphy requested that the applicants use downward facing lights or softer lighting because the current flood lights shine right through into his house.

Kathy Bozony, Lake George Waterkeeper, stated that she submitted a letter based on the fact that there is a crawl space on this house and now a full basement is proposed creating a 3 story house. She stated that she is wondering if the applicant can take another look at the site to move the house back any further because there is a 75' setback for a reason. She stated that this is RCL3, 3 acre zoning and this is .20 acres or a 8,700 sq. ft. lot and to place a building that close to the water does not allow for enough infiltration space for stormwater. She stated that if the applicants are claiming that there is water coming through the crawl space currently that is showing them that they potentially have a wet site and they need as much land to absorb, infiltrate, treat and clean the water before it goes into the lake. Her one concern is if the absorption field does not get approved the applicant mentioned just renovating the current home instead of re-building and not updating the septic system. At this point the holding tank may or may not be in good shape and so looking at the septic system as a whole right now

would be a very advantageous thing for the lake and the entire Lake George watershed. She also suggested adding a shoreline buffer along the lake to add in stormwater management. William Pfau stated that the applicant has agreed to implement minor stormwater controls on this property which will improve that condition. Meredith McComb agreed and stated that the side stairs will be removed on the west side of the house which will also free up some land for stormwater treatment.

Meredith McComb asked what the change in square footage of living space would be. Larry Warner replied, not including the deck, a 10% increase. He agreed that there are legitimate concerns about stormwater but his client has agreed, although they are not required, to have an engineered stormwater management plan. He stated that while they are maintaining the existing setback from the lake they are moving the covered roof section part of the house back 9' from the lake. He stated that they looked at the potential for moving it back even further but they are hindered by the 30' right of way and cannot move the septic back any further. He stated that they will have a one car parking area and then the house. He stated that there is approximately a 4' drop in grade from the road to the parking area so they would be leaving the car to park on a slope short of trying to raise the whole site up a couple of feet to accommodate that. He stated that essentially they are trying to get the house out of the hole.

Counsel read the following letters:

1. James and Kelly Obermayer- who wrote in opposition to the proposed application.
2. Lake George Waterkeeper- which addressed the concerns brought forth above.

Pam Kenyon stated that there was no WC impact.

John Michaels asked why the proposed structure is 12' bigger. Larry Warner stated that to enlarge this structure is to make it a year residence and if he were to just renovate the current structure he could winterize it but not bring it up to current existing NYS Energy Code Requirements short of tearing it down and re-building. The other main deficiency is the existing size and location of the stair system. He stated that 9' of the addition is for the deck and the other 3' will be used to put in a proper set of stairs. He stated that originally the applicants wanted an even larger home with additional porches. He stated that he got the applicants to realistically look at this project and what would fit this lot and neighborhood. He also got them to address stormwater, septic concerns and to create a well for drinking water. Currently the applicants draw water from the lake for domestic water. The well and septic do not have a 200' setback so Jim Hutchins and Tom Nace have required that a UV system be installed to kill the bacteria. He stated that the bedrooms are currently 8'8" x 10' with no closets and they are proposing to take the existing bedrooms and making them larger. He stated that if they were to rebuild the stairs in the existing building they would have to take another 31 sq. ft of floor space to meet code. John Michaels asked if there was anyway to include the stairs into the 9' deck so that they would not need the side yard variance. Larry Warner replied that 9' is relatively small and if they add a 3' wide set of stairs and incorporate it in the deck it leaves the applicant very little room to enjoy the deck. He stated that a 27' x 30' footprint is a fairly small footprint and they are trying to make it realistic for sizes of bedrooms and bathrooms which are all still relatively small.

William Pfau stated that it seems that the applicants have explored their options with expansion on this lot and this proposal is very minimal with regard to height and area.

Jeff Anthony stated that last Friday the APA made some adjustments to their regulations and one of them has to do with shoreline lots. It requires the APA to approve variances for any modifications, expansions or adjustments to pre-existing, non-conforming buildings in the shoreline setbacks of lakes in the Adirondack Park. He stated that they are exempt technically from it because they have a local approved land use ordinance. However, as most of them know almost every one of the applications that they have approved and sent up to the APA in the last 2 years have been overturned. Counsel stated that every one of them has been overturned. Jeff Anthony stated that the applicants are taking a closer look at stormwater management, visual impact, sewage disposal which he applauds but if they approve this variance he can only see that that the action by the APA last Friday has made them more aggressive with these types of actions and asked how they can make this a bullet proof approval. Counsel replied that the ZBA must include all of the criteria specified in the Town Law with ample record that includes all of those elements. He stated that outside of Town Law there are unnecessary hardship and practical difficulties. The Court of Appeals has instructed the ZBA to not consider those terms to be standard upon which the area variance shall be granted. However, they have a dilemma because the APA has instructed them in prior vetoes that they must use those criteria. He stated that he is not sure that they can bullet proof any resolution that goes before the APA but they need to do their best with all of the criteria in Town Law and all deal with the practical difficulty, that the applicant has looked at other alternatives but none are as desirable as proposed. With respect to the hardship he stated that something should be addressed with regard to the constraints that are on this property, such as the size of the lot or the topography because there is no way to change any of that. Kam Hoopes stated that if they start catering everything they do here to the APA and still don't have much faith that it is going to go through anyway, he suggests that they do what Counsel is suggesting. He stated a lot of this has already been established in the record, such as the impractical stairs, but they do not necessarily have to use the terms practical difficulty and hardship. Jeff Anthony stated that he thinks that they have to use the terms for the APA. Counsel agreed. William Pfau asked Pam Kenyon if she lets the applicants know that they have to meet the criteria of the APA. Pam Kenyon replied that she does not talk about practical difficulty or hardship with the applicants because it is not her job to do so. William Pfau was concerned that the applicants would first hear about the APA criteria at the ZBA.

Jeff Anthony stated that the applicant stated that they would be willing to rebuild on the same footprint or to remodel the current home which shows that there are other feasible ways of achieving the goal. Larry Warner corrected him and stated that if they were denied by either the ZBA or APA in light of the new amended regulations that the applicants would resort to remodeling the current home. The applicants are looking at the practicality of putting money into the project and they would not need to go through the septic system or stormwater management plan or need to meet the energy codes, which are positive for the Town, lake and neighbors. Kam Hoopes stated that he almost always looks at these projects favorably because there are so many cabins and cottages that have deteriorated over the years and by improving these structures applicants can also address things that have not been addressed prior such as electric, septic, and stormwater.

Counsel reviewed some of the criticism from the APA from a previous turn-over: 1) Difficulty that was not self-created was unsupportable as the benefit sought to be achieved was personal only and not related to any difficulty inherent in the land itself. Counsel stated that with regard to this project, there are tremendous difficulties in terms of the land, size and topography. 2) The applicant must have satisfactorily demonstrated that there has been exploration of all

feasible alternatives and demonstrate why those feasible alternatives were not practical or did not achieve the applicants objective. Counsel stated that the applicant has demonstrated that there have been some efforts to make plans and consider other alternatives, such as the larger house, but the applicants have been educated on what is obtainable under the Town Code and APA regulations, and therefore the proposed plan was the best feasible alternative. William Pfau stated that he agrees with Kam Hoopes because a lot the variances involve trade-offs and it could very well be that the net result of the trade-off is an improvement to this piece of property and Trout Lake Road. Meredith McComb stated that she believes that they have discussed and shown that the applicant has considered moving the structure back further than proposed but have a very valid reason for not moving it back because of the new septic field which will replace the existing holding tank.

Counsel asked if the benefit that is desired by this applicant can be achieved by any other means feasible. Meredith McComb stated that in constructing a year round house mortgage lenders require a furnace. She stated that given the adaptation in real estate mortgage law to make it feasible for applicants to upgrade houses they will need this extra 3' to create a safe set of stairs, the number of bedrooms is not changing, and a 10% increase in living space seems well within reason. The applicant has established that this is the minimum variance that will allow them to have safe interior stairs. Larry Warner stated that 1/3 of the total added square footage would be utilized by creating a set of stairs that meet code. Kam Hoopes stated that renovating the current house is not a feasible alternative because of safety considerations, such as the stairs and they are re-building the structure to meet code. Counsel agreed and stated that there would be considerable effort and investment that would go into a structure that still does not meet code and Bolton has no desire to foster that scenario.

Counsel asked if the proposal would result in any undesirable change in the neighborhood. Meredith McComb replied that the proposal shows a positive change. She stated that Tom Nace's letter makes clear that this is a big enough improvement on the handling of septic and that the stormwater management proposed is an improvement on what currently exists. Counsel stated that a positive change would result in approving this project in that the applicant will conform to stormwater requirements. He stated that in their motion the applicant would also be required to used downward shielded lighting. John Michaels added that the proposal is also more aesthetically pleasing than what is there now. Kam Hoopes stated that the septic issue and stormwater can be done without any of the other plan. However, moving the foundation back 9' is part of this plan. He stated as a right, the applicant could tear down what is there and get a permit to re-build in kind. Jeff Anthony agreed and stated that as of the APA meeting re-building in the exact location and size has not changed and applicants still have the right to do that.

Counsel asked if the variance request was substantial. Meredith McComb stated that given that 1/3 of the increased living space is devoted to a set of stairs that meets code she would argue no. Counsel stated that another argument is that the 38' proposed from the shoreline is exactly what it is now so they have that as a right. Jeff Anthony stated that in that 38' existing they have a 9' enclosed porch and it will be replaced with an open deck.

Counsel asked the ZBA to explore the adverse effects or impacts on the physical or environmental conditions of the neighborhood and district. He stated that this is where they should be discussing the positive upgrades of the septic and stormwater. Meredith McComb stated that she would argue that changing the orientation away from the west side entrance of

the house and removing those stairs, they are improving the situation by being too close to the property line. The expansion taking place is the least obtrusive and better than what is there now.

Counsel asked if the difficulties that the applicant is facing are self-created. Jeff Anthony replied that they already exist in terms of topography, the size of the lot and the existing structure itself. The applicants are limited to where they can put the structure due to the septic, driveway and right-of-way placement as well as the topography and size of the lot, which they cannot change.

Counsel suggested that they now discuss the practical difficulties. Kam Hoopes asked why their previous discussion does not qualify as defining the practical difficulty and unnecessary hardships. Meredith McComb agreed and stated that if they have a question of getting people to upgrade pre-existing, non-conforming properties there has to be some trade-off in benefit to the applicant and she thinks this project is a good balance for the lake. She is happy that the applicants are addressing stormwater. She stated that ordinarily she has a problem with saying that if an applicant does not have a big enough lot for what they want to do it is a hardship because they could always do less. However, in this specific case the applicant has made the case that what they are proposing is not substantial, it will have a positive impact on the neighborhood, and there are no alternatives that are more desirable. Counsel stated that he would urge them to use the words practical difficulty and hardship but he accepts Kam Hoopes explanation that they have already done an excellent analysis and these are the elements of practical difficulty and hardship.

Jeff Anthony stated that the practical difficulty is taking the box that the applicants are working with and fit in a set of stairs that meet code, bedrooms that are of a correct size and they cannot fit it in the box. Counsel stated that the APA decisions have stated that the applicants knew the constraints they were under when they purchased the property and they accepted those difficulties. Jeff Anthony stated that unfortunately 50 years ago a lot of lots were created and don't meet the code today. William Pfau asked what if they owned the property prior to the zoning regulations. Counsel stated that it would be more important to determine if the property existed in its configuration prior to any zoning requirements imposed upon it. Meredith McComb stated that they are not adding an extra story unless they count the basement. Larry Warner stated that WC Building Code does not consider the basement as additional living space if over half of it is below grade. Meredith McComb stated then it becomes a matter of bringing the ceiling height to code and making the upstairs bedroom safely accessible. Kam Hoopes asked if this discussion on practical difficulty and hardship is enough to satisfy the APA because they can't fold it into their 5 criteria. Counsel stated that they can but having found that the circumstances as presented by the applicant constitute practical difficulty. Jeff Anthony stated that he feels that they can mention these terms in their motion. Counsel agreed and stated that if it is not in the motion then it is not part of their action. Larry Warner stated that the APA is already somewhat aware of the project indirectly through some meetings he has had with Fred Monroe, Chairman of the Local Governable Review Board, who pointed out many amendments to the APA regulations.

Counsel stated that he wanted to read a portion of the decision handed down by the APA which criticized Kam Hoopes' motion for not addressing a septic plan for new construction. He asked if Kam Hoopes would like to comment on the tasks the ZBA handles with regard to septic issues. Kam Hoopes replied that they are not equipped to deal with septic issues and the

applicants will be faced with much stricter standards with other bodies than the ZBA. What they are charged with handling is the area variance or use variance and if they grant the variance it has no bearing on whether or not they can meet their septic. Counsel agreed and stated that the applicant would be responsible to meet all of the criteria that are imposed by the DOH and if they needed a variance it would be available for consideration by the TB and the ZBA would have no jurisdiction as a matter of law. Kam Hoopes stated that he keeps in communication with the Zoning Office and Pam usually alerts the applicant to possible issues that will need to be looked at by other agencies. He stated that the applicants are working hard to a viable solution to the stormwater and septic placement on a substandard size lot. Meredith McComb stated that they should also not ignore the fact that the applicant has approval by a licensed engineer. She stated that they are not granting the septic variance but as they consider if there will be adverse impacts, they have a letter from a licensed engineer stating that this is an improvement. Kam Hoopes stated that the other impacts that the applicant may have on the environment beyond the area variance should not have a bearing on the approval. Counsel stated that they do have to have some consideration because of the neighbors. One neighbor asked how this would affect the possibility of putting in a well in behind their property and if this is granted he would be dealing with the lack of proper separation. Meredith McComb stated that she would rather have a well near the lake than a septic system.

Counsel read the letter from Linda and Fred Eberlein, neighbors who are opposed to the application.

Meredith McComb stated that if the applicant were to meet the setbacks they would be starting the home at the back of the current structure and have their parking and septic location closer to the lake which is less desirable proposal. Larry Warner stated that the only way to meet setback is to put a field right where the holding tank is now, which would not be practical and would create the need for another variance.

Kathy Bozony, Lake George Waterkeeper, stated that she had three concerns: 1) The plans for the basement included a bedroom, common area, workshop and mechanical room. The first floor is a master bedroom, kitchen, great room, dining room and deck, plus the second floor bedroom in the peak. She stated that the old existing structure was approximately 834 sq. ft and the new proposed structure would be estimated at 1,654 sq. ft and she is not sure how a 10% is what they are looking at. Kam Hoopes stated that their zoning does not support that. Kathy Bozony stated that they have a walk-out bedroom and she wanted the ZBA to have clarification in what they are really talking about in the way of an increase in space. She stated that this is not too big of a house but it is twice as big as what is there. 2) She did not hear a real discussion by the ZBA or the applicant as to why the house could not be moved back further. Kam Hoopes stated that they have been discussing just that for almost an hour and a half. Meredith McComb stated that they could move it back but then they would have to park in front of the house. Kathy Bozony stated that the applicant has other option such as parking under the deck or something. 3) With regard to SD86-13, she found that it states that Lot 1 was not to be built on except for expansion only of the building. She stated both lots were under one owner at the time. Pam Kenyon replied that the applicant attempted to contact the developers and she doesn't believe that anyone has responded. Kathy Bozony stated that she thinks this should be clarified before moving forward. Pam Kenyon replied that he applicant has done their due diligence by trying to contact the developers, and involved an attorney and this issue really doesn't have anything to do with the ZBA. William Pfau asked if the LG Waterkeeper was happy that there will be stormwater plan for this proposed project and there is

a new septic plan because he doesn't hear her mention anything positive about these applications. Kathy Bozony replied that she has stated that they are pleased that the applicants are looking at these issues because it is very critical and she appreciates that the applicant is adding these measures even though they are not required. However, they are taking a very small lot and making almost the entire lot impermeable and the structure is 38' from the lake. William Pfau stated that the consequences in turning this project down may result in none of that happening. Kathy Bozony stated that she spoke again to alert them to the fact that the APA will look at the size difference. Larry Warner explained that the 10% is the increase in the footprint and the crawl space is not calculated. He stated that they are taking inhabitable space and making it habitable but they are taking the square footage of the existing heating and electrical which would be confined in the space and there will be a half bath in the basement. He stated that they are maintaining the same amount of bedrooms but just relocating them.

With regard to the roof pitch, Meredith McComb stated that in the north country if you do not have a sloped roof, you will have problems with snow. Larry Warner stated that was the other hardship that he explained. Winterizing the current structure would require insulation without proper ventilation and configuration of the existing roof lends itself to ice damage. Between having room for the stairs, the roof design and trying to meet the energy code with the structure it is very difficult to do anything that makes any sense at all with the exception of re-building.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Ed Reidinger and Joyce Avedisian (V08-47) 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 an effort to bring an antiquated, out of code, unserviceable building into the 21<sup>st</sup> century,

2) There will be no undesirable change in the neighborhood character or to nearby properties, the front of the house will be drawn back 9 feet from its present location. It will have downward facing and shielded lights, which the applicant has agreed to. There will be fresh siding, paint and fresh everything on the place so that it will no longer be deteriorating and sliding into the lake.

3) The request is not substantial; there is only a 10% increase in living space above ground and a third of that is taken up by putting in a staircase that takes the applicants to the second floor. This staircase meets the code with landings at the top and bottom.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; There will be stormwater measures taken to handle the stormwater. A new septic system has been proposed that will be going along with this project, which has been recommended by the Town Engineer but will need approval from the Town Board and this project cannot move forward without those things, including this variance.

5) The alleged difficulty is not self-created, although it is debatable that this could be self-created, the mitigating factors of age and modern technology of other things brings it into a non-self-created situation because this house needs to be addressed.

Practical difficulty and unnecessary hardships that the applicants are facing due to the lay of this land and this particular house have been amply stated on the record and we rely on those findings.

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 Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition(s): 1) That any outdoor lighting be downward facing and shielded, and 2) Minor stormwater will be required. **All in Favor. Motion Carried.**

Frank McDonald stated that in light of the fact that the Town has an approved land use ordinance and it is the right of property owners to bring a request for a variance, he feels that they are wasting their time with dwelling on the zero or almost zero success rate that they have had so far. He stated that he attends a lot of these meetings and it bothers him because it is a right the individuals have to bring a request for a variance here and yet the ZBA is sitting there looking over both shoulders wondering whether it will be approved by the APA and he doesn't think that is fair to the applicant. Kam Hoopes agreed. William Pfau agreed and stated that the only reason that they are doing this is to aid the applicants so that they are not overturned. Jeff Anthony agreed and stated that this is more of a service to the residents than not discussing it at all. Frank McDonald stated that he has read the proposed APA amendment and if they think it is bad now, it is only going to get worse. Kam Hoopes stated that Counsel has raised a good point that these rulings by the APA have not been challenged in a Court of law by any of the applicants yet. He stated that if they can prove that there is a zero tolerance from any of the agencies that are out there it would definitely qualify as Article 78 material. Meredith McComb stated that there are also swings in this process because when she first joined the PB in 1999 Bolton's code stated that you could keep any non-conforming thing you had but if you wanted to tear down and re-build it had to conform in every way. She stated that they have amended that and there is going to be some push and pull but she appreciated his comment on that. Larry Warner stated that he watched the APA meeting and it was discussed that when opposition came to the amendments the APA stated that it does carry heavy weight when a variance is approved by the local towns. He stated that in the meeting they stated specifically that "if you are talking about that Bolton project this amendment would not be impacted by that because the Town of Bolton has an approved land use plan and that project will not be impacted by this amendment." He stated that what they are saying is that because Bolton has

an approved land use plan with the APA that it weighs heavily on their determination on whether to go forward with the variances. He stated at the meeting they also said that if they submit a variance to the APA it is going through more of a formality to make sure that they have checked all of their bases.

**2) V08-51 MITCHELL, JON & KATHY.** To alter pre-existing non-conforming single family dwelling, specifically to alter the roofline on the 20.3' x 8.5' rear enclosed porch, seek 1) area variance for a deficient shoreline setback. 75' is required, 73.5' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-57B(1)(b). Section 213.13, Block 1, Lot 3, Zone RCM1.3. Property Location: 49 Coolidge Hill Road. Subject to WCPB and APA.

Jon Mitchell stated that they are taking the previous screened in porch that was enclosed into living space and turn it back into a screened in porch and also to change the pitch of the roof. Currently the roof is very flat and they would like to raise it up to the level of the window dormer on the second floor. Kam Hoopes stated that he understands that the screened in porch was inadequate at all times, with wetness and mildew and the applicants want to open it back up and increase the roof pitch to aid removing excess moisture. He stated that they are only encroaching upon the stream by 1.5'. Pam Kenyon stated that this is also here because they are modifying a pre-existing, non-conforming structure. Meredith McComb stated that this is the definition of minimal request and the benefit to the applicant definitely outweighs any impact. She stated that this is merely maintenance rather than an addition.

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

## **RESOLUTION**

The Zoning Board of Appeals received an application from Jon and Kathy Mitchell (V08-51) 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# 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; without changing the roof pitch the applicants are going to continue to have the same moisture and snow problems they have.

- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is a small, well-screened, miniscule change to an existing condition.
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; there is no increase in the footprint of the house,
- 5) The alleged difficulty is not self-created, it is an existing roof pitch that does not work for the interior space and the applicants are merely making their house more enjoyable and more usable for themselves.

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.**

**3) V08-48 KOLVEK, RICHARD & MARY.** Represented by Daniel Kolvek. To alter pre-existing non-conforming single family dwelling, specifically to construct a 456 sq. ft. rec room on existing deck, seek to alter a non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.00, Block 2, Lot 90.2, Zone RCL3. Property Location: 5510 Lake Shore Drive. Subject to WCPB review.

Dan Kolvek stated that they are looking to add 456 sq. ft. of new living area which is basically on the existing footprint. There is also a 48 sq. ft bath to be put in the existing bedroom. There will be no increase in impervious surface, ceiling height, bedrooms and it is not substantial in size. He described where the addition will be added on the plans provided. Pam Kenyon stated that this is a non-conforming building because of the side yard setback. Dan Kolvek stated that the deficiency is to a lot that his father owns. Meredith McComb stated that although this is a lot that has more structures on it than meet density, it is a very large lot and the renovations that have taken place along the waterfront have been handled very sensitively as far as the screening goes and this applicant has a track record of doing a very nice job.

Counsel read a letter from the Lake George Waterkeeper which raised the following concerns: 1) SPR should be conditioned with any variance approved for construction within 500' of Lake George, 2) the current septic system should be checked to see that it is sized properly. The system should be required to be inspected, certified and updated if necessary to insure proper function, and 3) stormwater management should be required for existing development, care in minimizing the limits of clearing and additions of shoreline buffering.

Kam Hoopes asked how close the structure is to the lake. Dan Kolvek replied 500-600'. With regard to stormwater, he stated that there is no increase in impervious surface and it is already on the existing footprint. With regard to disturbance, he stated that there will be no disturbance.

William Pfau asked what the side yard set back was. Pam Kenyon replied approximately 10' and 30' is required. Kam Hoopes stated that this project is not increasing that in any way.

Meredith McComb asked if the septic was updated when the houses on the water were updated. Dan Kolvek replied that this house has its own holding tank that goes to a field located 100' to the lake and southeast. Meredith McComb asked if the tile field was on an adjacent property. Dan Kolvek replied no it is one large lot.

Kam Hoopes stated that they are just looking at this with regard to the area variance in accordance with Section 200-57 b 1 (b) and he doesn't see anything on this that is the least bit alarming. They are building this on the top of an existing structure and there is no further encroachment to the lake. William Pfau stated that the new construction does meet setbacks.

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

## **RESOLUTION**

The Zoning Board of Appeals received an application from Richard and Mary Kolvek (V08-48) 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; primarily because of the building itself, which is non-compliant, but the non-compliance will not be increased with this project.

2) There will be no undesirable change in the neighborhood character or to nearby properties, it will be an improvement on the aesthetics of the building. There isn't much as far as nearby properties or neighbors.

3) The request is not substantial; the only request is going on the pre-existing, non-conforming structure and the size of the project does not really matter.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it is an impervious structure going on top of an already impervious structure.

5) The alleged difficulty is not significantly 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 Kam Hoopes and seconded by John Michaels, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

**4) V08-50 PARROTTA, ROBERT.** To convert restaurant into 3 tourist accommodations, and create a marina, seeks area variance for deficient 1) density. 17 acres required, 3.02 acres exists; and 2) shoreline. 464' of shoreline required, 184' exists. Section 171.11, Block 2, Lot 12, Zone RCM1.3. Property Location: 5102 Lake Shore Drive. Subject to WCPB and APA review.

Robert Parrotta stated that he doesn't feel that the marina issue should be addressed at this meeting because he already has a Class A marina license and he is only looking to modify that which he doesn't think he needs a variance for. However, the restaurant has been closed and he is looking to convert it into 3 two bedroom seasonal rentals. He provided a plan of how the building will be divided up. He stated that he feels that there is a need for rental units in the Town because more and more are going out of business and he is already in that business on that property. He stated that there will be far less traffic going in and out of the property. They will be going from approximately 1,200 people/week using the restaurant to 126/week using the rentals, which is a substantial decrease in the sewer and water use. He described the sewage system for the building, which was installed in 1995, as indicated on the map provided. He indicated the parking for the units, which is also already in existence. He stated that there will be no changes to the outside of the structure and all changes will occur inside. John Michaels asked if he will be adding any doors. Robert Parrotta replied no, the entries are already in existence and he would just replace the doors with something more modern. He further described the entries for each unit. Meredith McComb asked if the deck will stay as a deck. Robert Parrotta replied yes.

William Pfau asked Pam Kenyon how the density he needs for the proposal compare to the density that he needed for the restaurant. Pam Kenyon replied that each of these units are greater than 300 sq. ft which would require 3 acres for these units and only 1.3 acre for the restaurant.

Tony DePace asked if they would be winterized. Robert Parrotta replied no they will only be rented seasonally from May to October. He stated that they have run this business on this property since 1965 and there has been 15 existing units, so if there was a density problem there should have been one back then. Counsel replied that is why this is pre-existing and non-conforming because it was established before the zoning codes had been established. Kam Hoopes stated that it was an allowed use from a grandfathered standpoint and the seventeen acres is required and the 3.02 acres that exist are somewhat deceptive numbers. Counsel agreed and stated that the applicant has rights that are by virtue of pre-existing densities. Counsel asked Pam Kenyon if the applicant decided to create just one dwelling would he have to come before the ZBA for a variance. Pam Kenyon replied yes because he would be changing the use.

Kam Hoopes asked how many feet are between the restaurant and the lake. Robert Parrotta replied approximately 450-500'. With regard to density, Kam Hoopes stated that footprints exist and it is not a crowded property.

Meredith McComb asked if there was determination for seasonal rentals in the density charts in this zone. Pam Kenyon replied no. Meredith McComb stated that she would call these units apartments which would require less density. Pam Kenyon replied that she determined them to be tourist accommodations.

John Michaels asked why the density was an issue if the marina is not supposed to be part of the application. Robert Parrotta stated that there is an existing marina license and he is just seeking to modify it to allow him to rent boats. Pam Kenyon replied that she feels that he does need a variance. John Michaels asked what the marina license had to do with the tourist accommodations.

Robert Parrotta described the change to the marina permit. He stated that he is seeking a modification in the marina permit to be able to rent boats as well as dock spaces. He provided a copy of the LGPC map of the lakefront which has the exact measurements. He stated that with the 16 dock spaces and 2 moorings he was strictly using the docks for seasonal rental, weekly rental and private use. He stated that he has a Class A marina license. He stated that under the Class A permit you can request to pump gas, store gas, pump out waste, dock boats, rent boats as well as many other things but are all separate applications. He stated that he has only rented dock space for seasonal or weekly use and he is proposing to take six of these dock spaces and rent pontoon boats there. The hours of operation would be from 8:00 am to 5:00 pm, so no lighting is needed and the existing lighting that is there currently would not be changed. They already have the restrooms located at the bottom of the restaurant with 24 hour access. He explained where the seasonal dock space rental parking and boat rental parking would be.

John Michaels asked what variance he was requesting. Pam Kenyon replied that the variance is for the overall density of this parcel. Robert Parrotta stated that he wants to just change the use of the permit. Tony DePace asked if he needs to change use on the marina permit. Robert Parrotta replied no, he just will need modification to the current permit from the PB and the LGPC. William Pfau stated that he thought the density issue was just for the tourist accommodation. Pam Kenyon replied that the density is for all of it. Meredith McComb agreed stating that they have a marina and tourist accommodation and the question would be is it too much. Robert Parrotta replied that they both exist now. Kam Hoopes stated that was his point, there is plenty of parking, there seems to be existing dock space and an existing use that is really similar. William Pfau asked what triggered the shore frontage requirements. Counsel stated that the type of thing that can trigger a shoreline and the density would be the fact that this new development of converting the restaurant into 3 tourist accommodations each exceeding 300 sq. ft. Pam Kenyon stated that it was incorporated because it was like a change of use and she brought all of those into play and each one required additional shorefront. Counsel stated that he is concerned that the change of use is entirely a PB issue because the applicant doesn't need any relief from this Board with regard to the marina because he has the license and he doesn't need any use discussions here because the ZBA is in the business of giving variances for area and use and the applicant is not talking use. Counsel stated that the applicant is properly here to convert the existing restaurant to the tourist accommodations and the code was applied correctly because it was determined that the applicant will need some area to go along with the change. He stated that they also have these rules about how much shoreline they need to have for tourist accommodations. Pam Kenyon stated that if they were to take out the marina aspect of the shoreline requirements the applicant would eliminate 150' from what is required. William Pfau stated that the marina is not their

concern. Meredith McComb disagreed stating that if it is a change in impact of the use it should be. She stated that she is concerned that they are backing Pam Kenyon one month and then questioning her the next. Pam Kenyon replied that the APA will make the final determination anyway and she could go either way. Kam Hoopes agreed with Pam Kenyon's determination in including the marina to be safe. However, he would feel comfortable in passing this on to the PB and APA to deal with. Counsel stated that the applicant still needs relief from the shoreline for the tourist accommodations. Meredith McComb asked if the applicant needs a shoreline variance to add a new rental operation to an existing tourist accommodation. Robert Parrotta stated that there are no buildings on the shorefront and they do not use the shorefront for tourist accommodations whatsoever and they have signs posted prohibiting swimming. Pam Kenyon stated that she was not aware that the guests did not have access to the lake until tonight. Counsel clarified that the applicant has a Class A marina license that is pre-existing and pre-approved and he doesn't need to ask the ZBA for permission to rent boats. The applicant is taking a pre-existing building and converting it to a tourist accommodation and each is over 300 sq. ft. which would require that the minimum lots size for the district which would be 3 acres. The applicant has stated that the tourist accommodations only have access to the lake by use of the dock or renting a boat. Meredith McComb stated that she has no problem with the 3 units and feels that it is a substantial reduction in density from the restaurant use of the facilities on the property. William Pfau stated that they should probably treat them separately. The Board agreed.

William Pfau asked if there were any comments from the public in attendance.

Pete Cossman, neighbor to the south, stated that he thought there would be discussion of the two variances. He stated that he is not concerned with the conversion of the restaurant to tourist accommodations, but he is concerned with the modification of the Class A marina license. William Pfau recommended that he attend the PB meeting on Thursday. With regard to the variance for the tourist accommodation, Pete Cossman stated that he would be concerned if the applicant decided later on to create an association or condominium or long term leases and sell of the individual buildings. William Pfau stated that they cannot put a condition on a resolution prohibiting the applicant from having an association in there because he would have to come back for another variance anyway. Pete Cossman stated that he is unsure of all of the zoning laws in New York, but in New Jersey the ZBA does grant use variances. He stated that he would not be able to attend the PB meeting because he lives 3.5 hours away. Counsel stated that he would really want to be heard by the PB because they have the jurisdiction. Pam Kenyon commented that Thursday would not be a public hearing and it would be up to the PB to decide if there will be a public hearing. Pete Cossman stated that he wanted to make several points with regard to the marina. He is familiar with a special use permit under the ordinance which is done by the PB. He stated that a marina in this zone is not a matter of right and the property owner needs to have a special use permit. He stated that he could not find the criteria are for the issuance of a special use permit. Meredith McComb replied that an applicant would need to go through site plan review. Pete Cossman stated that in terms of the variance, Mr. Parrotta has owned this property for a long period of time and has had 16 dock spaces located on the property but is unsure of how long they have been there. A WC website with aerial photos shows 5 docks in 2001 and currently he has 8, one of which encroaches on his property line. The use that the applicant has put to these docks was for seasonal rental of dock space. The Class A marina permit that he refers to does not currently give him the right to rent boats and he will have to go back to the LGPC to rent boats. He stated that he understood the ordinance to allow the applicant to rent boats or to do many of the other things that the

applicant referred to, but the grandfathered use that he has enjoyed all of these years has been strictly for renting dock space. He stated that the applicant has 8 docks that accommodate 16 boats that encroach on a neighbor's property line and create a very high traffic environment. These slips were used by experienced boaters and now he wants to change that grandfathered use to a completely different use and rent boats to any type of experienced boater in a zone which is substantially residential. He stated that in his opinion this is a change of use. Given the number of docks that the applicant would be non-conforming. He stated that if the applicant did not have those docks currently and wanted to build docks on his property he would be entitled to half the number of docks that he currently has which is 4 docks that would accommodate 8 boats. He stated that it was his opinion that if Mr. Parrotta wants to rent boats he should bring the property into conformity with the zoning ordinance which would allow him docking for 8 boats. He feels that this application is properly before this Board because if he wanted to change his home from a residence to a restaurant, he would have to be before the ZBA to do that. William Pfau stated that he is not disagreeing with him but it is the ZA that makes the determination that he is talking about. Pete Cossman stated that he spoke with Pam Kenyon who stated that she sees this as a change of use, which requires a variance. Kam Hoopes stated that he feels Pam was considering the change of use to be subtle. Counsel stated that the marina pre-dates the ordinance. Robert Parrotta stated that they have been operating as a marina since the 1960's. He continued that the docks also pre-date the ordinance and that a previous variance request was only to lengthen the docks. Counsel stated that that the applicant's marina activity pre-dates the existence of the ordinance. Somewhere along the way he has gotten permits from the LGPC to operate a Class A marina. Robert Parrotta added that according to the LGPC this is a modification to the Class A marina license and not a change of use. Counsel stated that the Town of Bolton has required the applicant to go before the PB because for the first time ever he has some aspect that he is changing in his grandfathered use by renting boats and dock space. Counsel stated that he feels that the ZBA needs only to deal with the conversion of the restaurant to a tourist accommodation because the applicant is not creating a marina. Meredith McComb asked what the modifications are that the LGPC is talking about. Robert Parrotta replied that a Class A permit entitles certain uses such as, renting boats, rent docks, pump gas, store gas pump-out waste and a few other things. He stated that he has no intention of storing or pumping gas, pumping out waste or any of those other items listed under the permit other than renting boats. The modification is to take some of the rental docks and have pontoon boats available for rental. Kam Hoopes stated that it will properly go before the PB and LGPC. Meredith McComb stated that if it is a change in traffic and the property is already over density with the buildings, tourist accommodations dock rentals and then they are going to add an addition public rental aspect to it, then she agrees with Pam Kenyon that it is creating an additional density issue. Counsel replied that the density issue only comes up with the conversion of the restaurant and not by the change in use. Meredith McComb stated that Mr. Cossman's letter make some good points about the impact of this operation on the neighboring residents. Counsel agreed that they were important issues but they should be brought to the PB.

Pete Cossman asked what the difference is between Mr. Parrotta's request and someone creating a marina. Counsel explained that an ordinary request would require the applicant to follow the Town Code and it would have been created by virtue of a site plan presentation with a possible public hearing and any approval would have requirements. This type of marina would also need to have the same review and approval from the LGPC. Mr. Parrotta presents a marina that did not start like that because it pre-dates the ordinance. Pete Cossman stated that this grandfathered condition does not allow him to do anything he wants to on that site.

Counsel agreed and stated that it also doesn't mean that he can change any of it without approval from the PB and LGPC. Pam Kenyon suggested that they decide whether or not the applicant needs a variance for the marina. John Michaels stated that he is looking at Mr. Parrotta's application which is requesting one thing, a variance to convert the restaurant and it does not mention the marina. Pam Kenyon stated that she added the marina in reviewing it. Counsel stated that if Mr. Parrotta did not want to convert the restaurant to tourist accommodations and just wanted to rent boats at his marina he would not have to be here. Pete Cossman stated that if it is a change of use then they have to decide which Board has jurisdiction. He stated that he has no problem if the ZBA is only going to deal the tourist accommodation. However, he would not want this Board to make a judgment on the marina aspect without taking the points that he has made into consideration.

William Pfau stated that they are going to move forward without any action being required for the marina aspect. Counsel suggested that the Mr. Cossman try to attend the PB meeting or send correspondence stating his concerns. Mr. Cossman stated that he would supplement his letter with correcting the non-conforming issue. Meredith McComb suggested that Mr. Cossman also take the deficient setbacks to the LGPC because if a dock does not meet setbacks then no vessel should be berthed at the dock without prior consent of the adjoining land owners.

William Pfau asked if there were any other comments from the public in attendance.

Bill Robinson suggested that the applicant work hard with the LGPC. With regard to the change of use, he stated that if the applicant has a marina and changes it to a residence or asphalt plant then it would be considered a change of use, but if you have a hotdog stand and want to also sell hamburgers they are still a restaurant. He feels that a Class A marina is not a change in use just because they are going to add some rental boats. He stated that the applicant is allowed to increase his business without changing his use.

Kathy Bozony, Lake George Waterkeeper, stated that she is not going to speak on the decreased traffic and use of water and sewer reduction, she feels that will be good addition and she supports the additional tourist accommodations. She stated that she also understands the difficulty with the density and substandard lot. However she looks at this as an opportunity to look at the entire project. There is an awful lot of asphalt on the top portion of this property. Whether the request will have an adverse physical or environmental effect, one of the required balancing tests for the applied variance has not been answered by the applicant. The application included a map dated 1989 diagramming the on-site waste water system location for the absorption field. Certification or documentation that the existing system was constructed as indicated on the drawing, is functioning properly and will support all proposed uses should be required. Designed waste water flow should be provided for the marina and the use conversion to tourist accommodations are determined by the adequacy of the existing on-site waste water treatment system. Even though it was updated in 1990, she feels that with any change in use or addition, this should be requested by the Town of Bolton. She also feels that septic systems for units 12, 14 and 15 should also be located on the plans. She stated that a stormwater management plan should be a condition with all approved variances for permitted changes to property, structure and site. The restaurant proposed a three unit tourist accommodations is located at the highest elevation of a steep parcel and should require infiltration devices and vegetative plantings to reduce stormwater flowing directly into Lake George. Algae blooms identified off of this shoreline may substantiate the fact that excess

nutrients are entering the lake from development on the hillside. She stated that she is not pinpointing any of this directly to the Contessa or this property, but she wanted to share with the ZBA some photographs from September off of this shoreline that shows substantial algae growth. There were 15 different diatoms identified. There was some cyanic bacteria, which is non-toxic at this point, but a couple of the algae and diatoms had moderate to high conductivity which shows polluted water. She stated that this property is on a hillside with a lot of stormwater running down off the property. There is a large parking lot next to the marina and with the change of use there could be a potential for more parking necessary for the additional traffic on this property. She really feels that it is important that they condition stormwater management with approval. She stated that they have completed dives in 60 sites all over the lake that are filled with algae blooms. She stated that they need to pinpoint what is causing this, whether it is septic systems and/or stormwater run-off.

Counsel stated that he had letters and asked if they wish for them to be read. William Pfau replied that they did not have to be read.

John Michaels asked if there could be a reduction in the parking lots. Robert Parrotta replied that he would need it for boat renters. He explained how the stormwater runs on his property. He stated that a lot of the stormwater comes from a culvert located across the road from Braley Hill Road. He indicated the catch basins that are currently located on the property which filters the water the best they can currently. He stated that he has no control over that culvert because it was installed by the State and if it didn't go onto his property it would run directly into North Brook. Kathy Bozony stated that she was aware of that but was requesting additional filtration the water before it enters the lake.

John Michaels stated that he looks at this request favorably. This is a change in use and does not require a lot of money going into a redo of the whole site. Additionally, they will have reduced cars and septic use which are both positive. William Pfau agreed and stated that this falls in line with Bolton's Comprehensive Plan to keep these tourist accommodations going in the area and the applicant is trying to do just that.

Counsel read the Warren County PB Impact Statement which indicated that there was no WC Impact with a stipulation. Robert Parrotta stated that since that meeting WC has received most of the information they were seeking with the exception of where the septic systems were located and he plans to get that to them. Meredith McComb stated that she understood that to mean that they were asking for the septic system for the other cottages as well. Kam Hoopes stated that they do not need that because it is not part of the project. Meredith McComb stated that it is the WC PB statement that they are supposed to abide by. Kam Hoopes stated that the key is that there was no WC impact. William Pfau stated that they are not supposed to address the County concerns at this Board. Counsel agreed and stated that they were PB issues.

Counsel stated that this application is dealing with a shoreline lot that has a combination of density and shoreline issues which will be referred to the APA. Kam Hoopes stated that this is not a deficient shoreline setback. Counsel agreed but stated that it is a shoreline variance. William Pfau asked if they should be mentioning something about the restaurant no longer being viable to show practical difficulty. Meredith McComb stated that they are not going to establish that the restaurant is no longer viable, because she assumes that the applicant has decided that this is a better business move in line with his current business. Robert Parrotta stated that he has been in the restaurant business for 45 years and he is looking to put in less

time. Counsel stated that he wanted to prepare Mr. Parrotta for the fact that he could get approval at this level and then have it overturned by the APA. He stated that the APA may feel that there are other feasible alternatives. Robert Parrotta stated that he understood because he could ultimately combine his 2 lots and divide them into four lots and sell them and move. Counsel stated that is not a feasible alternative to the current plan. He gave him the following example: The applicant has 15 cottages which are all over 300 sq. ft, he could take away 3 existing units and convert the restaurant into the 3 units that he seeks, which would be entirely neutral and he would not need a variance. Robert Parrotta replied that would defeat the purpose of raising the income and he might as well not bother changing the restaurant. Counsel stated that the only reason he is bringing this up is because the APA will challenge him on this issue and see if there are other feasible alternative uses that are compatible with the tourist accommodation. Kam Hoopes stated that they do not even know if the APA will challenge this. Jeff Anthony stated that it is a density variance on lakeshore property and the APA is going to nail it. John Michaels stated that he thinks that the applicant has his back up against a wall if he is not able to get this variance that the only feasible alternative would be for it to remain a restaurant whether someone else runs it or not to get his money out of it. He feels that the proposed use is the most feasible and has the least impact overall and they should make that point to the APA.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Robert Parrotta (V08-50) 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; with stipulation

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; it is a density situation. It will be a reduction of the turnover of people and all of things that go along with that.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the building has been around since 1965 and it is virtually going to remain unchanged.

3) The request is not substantial; it is a swap of space, the building will keep the same roof, decks and entries.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; again it is a swap of what was there

before and nothing has been established to say that this will be an increase to adverse physical or environmental effects.

5) The alleged difficulty is not self-created, this is just a shift in business plan with the same building and physical plat.

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 Tony DePace, it is resolved that the ZBA does hereby approve the variance request as amended to eliminate the need for a marina variance. Jeff Anthony abstained.

**All others in Favor. Motion Carried.**

**5) V08-52 GATES, WALTER.** Represented by Atty. Jonathon Lapper. To convert existing garage into a guest cottage/garage, seeks area variance for density: One guest cottage presently exists. 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. *NOTE: This application was originally approved under V08-29 on April 18, 2008 and subsequently denied by the APA.*

William Pfau asked if there have been any changes to the application. Jon Lapper replied that the change is that the cook top has been removed from the plan. They also have a letter from Jack Hall stating that the septic system has been inspected and say that it is adequate for the relocation of the two bedrooms from the main house to the guest cottage.

Jon Lapper read his letter to the ZBA into the record which addresses the APA's review and reversal of the ZBA variance as follows:

“The APA noted that the ZBA decided the variance application on the “balancing test” which is set forth in the Town Law, but did not expressly make “a finding of any ‘practical difficulties or unnecessary hardships to justify a variance of density.’” While we believe that the ZBA recognized the practical difficulties and unnecessary hardships inherent in the alternatives to the proposed property, the purpose of this letter is to review them in more detail so the ZBA can discuss them in considering the revised application.

Please note that the two-burner cook top which was included on the original plans has been removed, and will be replaced with a wet bar/game room area, and will not be a kitchen. This maintains the garage's character as an accessory structure rather than a new principal structure.

As the APA noted in its decision, Mr. Gates would be entitled to expand his existing home or guest cottage, either vertically or laterally, under certain circumstances. However, we believe that the ZBA acknowledged in its findings that adding on to either of those buildings

presents practical difficulties, unnecessary hardships and adverse impacts which make the currently-proposed project preferable.

Both the main house and existing guest house on the property feature vaulted or cathedral ceilings. Adding a second floor to either of the structures not only alters the profile of the structure as it is viewed from Lake George and neighboring properties, but is substantially more costly than the proposed project. Mr. Gates has also been advised that adding a second floor to either structure may impact the architectural and structural integrity of the houses, which presents a practical difficulty in expanding vertically.

Further, a two-story house located on the neighboring property, which is close to both existing houses, and the privacy of both property owners would likely be compromised by adding a second floor to the main house or guest cottage. The hardship to Mr. Gates and his neighbors is entirely unnecessary in light of the availability of the proposed project.

Mr. Gates could also expand his current guest house laterally away from the lake. This expansion would increase the footprint of the guest house, require the disturbance of additional soil on the property, and increase the impervious area on the property. The proposed project only slightly increases the impervious surface area with the addition of a deck, while the entire expansion would represent an increase in impervious area if the guest house is expanded laterally. Further, lateral expansion of this building will have adverse aesthetic impacts, which is an unnecessary hardship not only for Mr. Gates, but his neighbors as well.

Mr. Gates considered the above-mentioned alternatives before seeking an area variance, but decided that the proposed project was the least costly, most aesthetically pleasing alternative which had little or no impact on neighboring properties and the environment.

We believe the ZBA also acknowledged the practical difficulties of each of these alternatives in its prior review, and that the revised application and revised plans address all of the APA's concerns. We respectfully request that the Zoning Board of Appeals consider this revised application for an area variance in the context of both the Town standard and the additional standard applicable to the APA's review, this is, whether "practical difficulties or unnecessary hardships" justify this variance."

Jon Lapper pointed out on the site plan that there is a portion of the existing house that falls outside of the 75' shoreline setback and mostly all of the guest house falls outside of the 75' shoreline setback. He stated that for reasons stated above in his letter, the proposal to use the existing garage to add a second story and small deck is because it is furthest from the lake it has the least impact on the neighbors and it is the most sensitive plan. He stated that although this was all discussed at the previous meeting it was not discussed in terms of practical difficulties and was easy to be overturned by the APA. He asked that the Board ratify the

discussion and resolution with respect to the Town standards along with the APA standards and criteria of practical difficulty and unnecessary hardships in expanding the existing main house or guest house even though both could be done without a variance, but just wouldn't be preferable.

Kam Hoopes addressed some of the items in the APA's reversal:

- 1) "The ZBA did not discuss 'practical difficulties or unnecessary hardships'." He stated that they do discuss these terms in the other forms and that is what they are here for.
- 2) "The Town of Bolton defines a guest cottage as an accessory use structure designed and used to provide sleeping accommodations for guests of residents without fee. Such structures may include bathroom, but shall not include kitchen or kitchen facilities. A refrigerator, kitchen sink, two burner cook-top which are depicted, which constitute kitchen facilities." He asked if the Town's definition of kitchen proper is essentially an oven. Pam Kenyon replied that is what the ZBA has decided to use as the definition of a kitchen. Counsel stated that hot plates and microwaves have always been okay. He stated that this application no longer has that issue of controversy anymore because the cook top has been removed. Jon Lapper stated that they would also be willing to make that a condition of approval. Kam Hoopes continued that the APA has suggested that there is ample room in the kitchen for the inclusion of a microwave oven or other appliances commonly found in the kitchen. Counsel stated that they should reflect on the record that the ZBA has previously permitted and made interpretations that state that microwaves in a guest cottage does not create a second primary dwelling. Kam Hoopes stated that the APA is saying just the ample space is cause for alarm.
- 3) "The proposed project does not meet either the Town or APA criteria for a guest cottage and thus would be considered a new principal dwelling requiring a density variance." He stated that the APA then concludes that the ZBA approved a second family dwelling, which they did not. This is the removal of 2 bedrooms from the main building to go over the garage. John Michaels stated that he is having difficult in approving an application that says that the property is limited to one single family dwelling with no restriction on the number of guest houses. He cannot see this Board approving any application that interprets the Town zoning that says that you can have a single family dwelling but there is no restriction on the number of guest houses. He feels as far as that goes, the application should be re-submitted. Kam Hoopes stated that he agrees that it is a very misleading statement but they do not allow unlimited accessory structures. John Michaels stated that the APA presumes one accessory structure per single family dwelling and trying to establish hardship for a second guest house is going to be a real challenge. Kam Hoopes stated that the ZBA reasoning is that the applicant is taking the 2 bedrooms out of the main dwelling. Jon Lapper explained that this part of the application refers to the deed covenants and not to the Town Law.
- 4) "There was nothing addressed in this variance to prevent the applicant from constructing an additional garage structure and turning the existing garage space below the proposed guest cottage completely into living space. This is what the applicant originally did when they bought the property." Kam Hoopes stated that again the APA is concluding that there is nothing to prevent the applicant from doing this. He disagreed stating that there are zoning regulations and there are restrictions on that.
- 5) "The conclusion of the Board that the difficulty was not self-created is unsupportable as the benefit sought to be achieved is personal only and not related to any difficulty inherent in the land itself." Kam Hoopes stated that they did cover that by addressing that the proposal would keep the structures screened from the neighbors and the water, the land is an awkward shaped piece and these multiple dwellings have appeared to take advantage of the topography and layout of that particular lot. Kam Hoopes read the following from the APA letter: "With very

few exceptions the Court decision prior to 1992 consistently rejected personal convenience as a basis for variance of the land use regulations.” Kam Hoopes stated that they are not talking about land use. Counsel stated that it would not be appropriate to grant a variance for a personal hardship, but that was not the case in this application. Kam Hoopes agreed and stated that they granted the variance because it was the most practical.

Counsel stated that the challenge is that Jon Lapper has asked that the ZBA review the application in terms of the Town criteria as well as APA criteria. He stated that he feels that the ZBA did a great job in discussing the application previously with regard to Town criteria but were deficient with respect to the APA’s expectations of practical difficulty and unnecessary hardship. He agreed with Kam Hoopes’ argument that all of what they have discussed in the Town criteria comprehensively cover practical difficulties and unnecessary hardships. However, he does not believe that the APA accepts that argument and feels that they will need to fill those definitions with some findings.

6) The APA complains that the ZBA did not contemplate the minimum variance “Guests cannot be continued to be accommodated in the main house without any need for construction. This would be the minimum variance necessary as it would not require any variance.” “No discussion was made about additions to the current main house either vertically or laterally for the desired additional gathering space which also might not require a variance.” Kam Hoopes stated that they have covered that. The main house is closer to the lake than the garage. Jon Lapper agreed that this was discussed at the prior meeting. He stated that it can be done without a variance but it would be less beneficial to the neighborhood. Kam Hoopes asked how it could be done without a variance. Meredith McComb stated that it is a pre-existing house and currently would still need a variance. Jon Lapper stated that it could be added to the guest house. Meredith McComb stated that part of the guest house is non-conforming and therefore would require a variance.

7) “The Board did not require the review of the existing septic system by a licensed engineer before their variance decision.” Kam Hoopes stated that he would like to point out to the APA that is not what they do. Jon Lapper stated that he has submitted a letter from a licensed plumber who has inspected it. He stated that it is the same number of bedrooms and it is an existing modern system.

William Pfau stated that the APA recommended conditions of approval require that no additional accessory buildings be built on this lot. Jon Lapper agreed that would be acceptable. He stated that shoreline vegetation was mentioned as well in the APA letter and the applicant is agreeable to the condition that there would be no shoreline disturbance, which was never intended in the first place. Meredith McComb stated that although their previous discussion took note of the well screened shoreline she agrees that they should add it as a condition of approval.

Meredith McComb stated that she did not realize how extensive the interior was going to be with 2 bathrooms, washer/dryer and wet bar. Jon Lapper stated that all of that would be allowed in the main house and it is not a density issue in terms of making this structure bigger, just where they put it.

William Pfau asked if there were any comments from the public in attendance.

Kathy Bozony, Lake George Waterkeeper, was pleased that the septic system has been certified. She stated that they don't usually add washer and dryers to it but it really is an issue. She stated that she knows that Mr. Gates has agreed to the condition of adding minor stormwater for the new impervious surface, she would request that the Board keep that as a condition of approval. Jon Lapper stated that they are adding a very small impervious area for the deck which is outside of the 100' from the lake. He stated that this would be a minor stormwater project and so they added infiltration for the impervious surfaces near the guest house and would agree to that condition.

Kam Hoopes asked how much the proposed square footage is and what would be allowable total square footage if the applicant was to tear down all of the buildings and rebuild. Jon Lapper stated that the existing garage is 833 sq. ft. Kam Hoopes stated that if they at that to the main house which is approximately 1,700 and the existing guest cottage which is 1,200 sq. ft. which would mean a total floor space of 3,750 sq. ft proposed. He stated that the lot could support approximately 11,350 sq. ft., which is three times what they are currently proposing. He stated that the current proposal may be an over expansion in the number of buildings but not an over expansion of one home. He stated that by right the applicant could tear down all of the structures and build a 11,350 sq. ft. house. Jon Lapper added that most applicants would want to be closer to the lake and here they are adding the addition as far away as they can. Meredith McComb asked Counsel if he agreed because in doing so this could create more disturbance. Counsel agreed that a much larger home could be built than the total accumulated habitable space that is under consideration with the existing house, guest cottage and proposed guest cottage. Kam Hoopes stated that was one of their main points of the previous resolution was that taking 2 bedrooms away from the house was not an addition of living quarters it was just an exchange.

Counsel asked Jon Lapper if there needed to be any change to the previous resolution. Jon Lapper replied that they will need to add the conditions that there was not to be a cook top or oven, no additional structures on the site, shoreline vegetation will not be disturbed and that there will be stormwater infiltration for new impervious surfaces. Counsel stated that they will also need to address practical difficulty and unnecessary hardship.

John Michaels stated that the biggest hurdle is proving the unnecessary hardship in having a second guest house. Meredith McComb stated that the use of the space which is being converted but the space is not disappearing. Jon Lapper stated that the number of bedrooms are not increasing. Counsel stated that they can go around and around on this but this is considered a second guest house. Jon Lapper provided plans as to how the main house will be changing. John Michaels stated that they may want to be careful in using the argument that the applicant could build a much larger structure on this lot because if they were to re-build it could meet all setbacks. Kam Hoopes stated that he was just trying to show that the lot could support that large of a home. John Michaels stated that they need to be careful of what they ask for because someone could look at that as an alternative. Kam Hoopes stated that the argument would be that they are not disturbing new ground because the garage already exists and this would be going on top of it, they would not be disturbing any trees or ground. Jon Lapper stated that he agreed that ordinarily you would not want to encourage the 5 structures but in this case it is softer than what they could do as a right without a variance. John Michaels stated that he does not see anything that they can do as a right on that lot without a variance. Jon Lapper stated that they could as long as they start 75' back.

Bill Robinson suggested that they add a walkway in between the buildings and it considered one building. Kam Hoopes stated that will be add to the square footage and would still be with the APA because the house is within 75' of the shore.

John Michaels stated that at the last meeting Jeff Anthony stated that the APA only allows one guest cottage per lot in the Adirondack Park and they will review this application with respect to the intensity of use and asked if that has changed. Counsel replied that it hasn't changed and he found it interesting that the APA has claimed that they have allowed a second primary dwelling which is more than they needed to answer. He stated that the argument that allows the Town to keep doing what they are doing is because the APA has blessed this ordinance as an approved land use ordinance. Counsel stated that they will need to their best to address the application on all levels of the Town Law requirements and on practical difficulties and unnecessary hardships. Kam Hoopes stated that he is not sure how to wrap them into the resolution.

Counsel asked how big the existing guest cottage is. Jon Lapper replied 1,200 sq. ft. Counsel stated that the limitation in the Town of Bolton for a guest cottage cannot be larger than 1,500 sq. ft. A practical difficulty is that the available habitable space that comes out of the main house cannot be satisfied by a mere 300 sq. ft. added to the existing cottage, therefore creating the need for a variance again. Meredith McComb asked Counsel if they run into the problem by adding 833 sq. ft. of guest house to the already existing 1,200 sq. ft guest house and exceeding the allowed 1,500 sq. ft. Counsel replied no that 2 guest houses do not inventory into 1 guest house over 1,500 sq. ft.

Meredith McComb stated that she is concerned with the 2 full baths and laundry room that are now part of the plan. When she looked at this originally there were no details as to the interior plans. She feels that this is not a one for one trade-off with what currently exists in the main house. Jon Lapper stated that his best argument would be that 5 bedrooms on a 1.75 acre lot is not overtaxing the lot and adding all of the same things to the main house would be more impervious surface and disturbance. They felt that adding to the second story of the garage farther from the lake would be less impact. John Michaels stated that his problem is with the standard that they are being held to with only one guest cottage per single family dwelling. He stated that there are a lot of people that would like a second guest house and he feels that this would set a very big precedent. Kam Hoopes stated that they do not set precedent here and each application are all looked at on a case by case basis. John Michaels stated that they will need to evaluate the project using similar criteria. Kam Hoopes stated that they give them all consideration. John Michaels stated that there are a lot of structures on that property and he thinks that they cannot say that the applicant was not able to enjoy their property. He stated that the first guest house should have been over the garage to begin with and feels it is a great spot for a guest house. He stated that the gazebo could also be sleeping quarters as well. Kam Hoopes stated that this property was the first one to be built on when subdivided. It was an attractive point but an awkward building spot given the lot lines. John Michaels stated that he feels that the APA amendments that are expected soon are basically saying that if they as the ZBA don't do their jobs they will take their jobs away from them. He feels that if they continue to press the APA on these issues they will keep taking their jobs away even more. Jon Lapper stated that this is truly a unique situation and ordinarily you would not want to put in a third structure with living space, but it is furthest from the lake and does not affect any neighbors or view and it is a lot less impact than doing something else by consolidating either of the 2 building closer to the lake bigger.

Jeff Anthony stated that he will abstain from the vote because no matter how hard they try to make these things work, in the long run they know it will be over-turned. Kam Hoopes asked how he felt with the rightness of the application. Jeff Anthony replied that he thinks it is an okay idea, but knows that it will be coming back. Kam Hoopes stated that they have to do their part with what tools they have and ignore the APA because they don't think that the APA's standards are better than theirs. He stated that if they thought that the APA's standards were better than theirs then they would have adopted them. Meredith McComb stated that she agrees with Kam Hoopes and they need to vote regardless of the possible outcome with the APA. William Pfau agreed and stated that they also will not learn anything from the process if this doesn't go back to the APA.

Counsel carefully reviewed each aspect of Town criteria with the ZBA.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Walter Gates (V08-52) 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# 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; adding onto the main house which is closer to the lakeshore than the proposed project and would require a setback variance, which is not an improvement but rather an exchange of variance. This also is not as desirable to add onto the house because it encroaches the lakeshore and affects shoreline screening. Tearing down all of the current structures and building a new structure would not be economically feasible. It would also not be environmentally feasible with unnecessary increased disturbance of the land. Therefore it has been determined that all other alternatives to the applicant would still require a variance and would be less desirable than the plan presented.

2) There will be no undesirable change in the neighborhood character or to nearby properties, adding onto the main house or guest house would make it more visible to nearby properties and from the lake and would create unnecessary economic loss and disturbance.

3) The request is not substantial; because it is an exchange of habitable space and existing bedrooms. It is an increase in square footage of habitable space but not an increase in impervious surface. The garage already exists, it is just an upward expansion of that footprint. This proposal represents 3,750 sq. ft, an increase of 833 sq. ft., which is approximately one

third of the allowed square footage that is available for occupation by the applicant on that particular lot. These three buildings exist currently on the property and there is no change from the outside of the structures, just a change of the habitable space inside. The topography of the land lends itself to this.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; these footprints already exist. The applicant has agreed to the addition of adding stormwater mitigation for the new construction. With the addition of a bathroom and laundry room the septic has been inspected and certified by a licensed plumber.

5) The alleged difficulty is not self-created, because of the topography of the land. The applicant inherited these buildings when he purchased the property. Where the alleged difficult is self-created is that the applicant wants to improve his living quarters. This is the minimum variance that can be granted; they have examined all other possibilities and they all represent more impact.

Other practical difficulties are that by considering feasible alternatives it was found that they all require other or additional variances. The available habitable space that comes out of the main house could not be satisfied by adding to the existing guest cottage and adding to the structure closest to the lakeshore is impractical financially and increases disturbance and impervious surface. Therefore this request is the best possible plan with the minimum relief necessary and an avoidance of having to start all over.

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 Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition(s): 1) The shoreline vegetation will not be disturbed; 2) No cook top stove or oven will be in the guest cottage; 3) No additional structures will be allowed to be built on this property; and 4) Minor stormwater infiltration will be required for all new impervious surfaces. John Michaels and Meredith McComb opposed. **All others in Favor. Motion Carried.**

**6) V08-49 KAUFFMAN, THOMAS.** Represented by Bill Robinson. To alter 2 pre-existing non-conforming single family dwellings, specifically to construct a deck, connecting the two, seeks area variance for 1) deficient front yard setbacks. 30' is required, a) 28' is proposed from Sagamore Road; and b) 14' is proposed from the private right-of-way; and 2) to alter non-conforming structures in accordance with Section 200-57B(1)(b). Section 171.16, Block 1, Lot 2, Zone GB5000. Property Location: 39 Sagamore Road. Subject to WCPB review.

Bill Robinson stated that he would like to build a deck/handicap access for the applicants. Meredith McComb stated that she was confused that it was handicap access with stairs. Bill Robinson stated that the applicant has a bad ankle. If you were to visit the property currently entrance into both cottages is to park behind the cottages and walk down a steep 4' of elevation and then go up 4' of stairs into each cottage. With the proposal a deck will be located between the 2 cottages and the driveway will come off all on one level and will stay on that level across the decks and into the cottages. The south cottage would have no steps and the north cottage would have 23" of rise to enter the cottage. The area of the deck that they will use to sit on towards the east would be away from all of the setbacks but the back part that goes into the 30'

setback goes which is 30' from the width of the right of way is the flat area where they would want the deck. He stated that these cottages pre-date the setbacks. The new deck is farther away from the used area than the cottages are. William Pfau stated that the proposed deck does not worsen the setback situation. Bill Robinson stated that nothing can be done to these cottages because of the setbacks. Kam Hoopes stated that this is a great solution for the applicant given awkward terrain. He stated that his also makes this visually appealing by connecting the buildings and make them look as if they were one. Meredith McComb disagreed stating that although they were connecting the two buildings visually they will remain distinct and not look like one building. However, regardless of aesthetics the 2 buildings together do not exceed or even come close to exceeding the maximum length. She stated that whether this remains for this specific family gathering together or not it provides an advantage to have a level space to gather on, on the same level as the structure which does not exist now. Bill Robinson stated that this property will stay in the family for a long time to come.

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

Bill Robinson stated that he included 3 letters from neighbors with the application and they are all in support of the application.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Thomas Kauffman (V08-49) 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:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; there is no other way to connect these buildings and provide an easier access to the pre-existing steep slope that has made it difficult for the applicants to enjoy their property.

2) There will be no undesirable change in the neighborhood character or to nearby properties, it is a visually, very minimal addition and the buildings screen it from either direction.

3) The request is not substantial; in floor area, height or visual impact.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; because it is merely a connecting deck and better access to existing properties.

5) The alleged difficulty is not self-created, the terrain is steep which makes it difficult for the applicants to enjoy their property and this is a minimal variance request that will alleviate that problem for them.

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.**

Meeting was adjourned at 11:00 PM.  
Minutes submitted by K. MacEwan