

**Town of Bolton**  
**ZONING BOARD OF APPEALS**  
**MINUTES**  
**Monday, October 20, 2008**  
**6:30 p.m.**

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

**Present:** Chairman Greg Smith, Tony DePace, Kam Hoopes, William Pfau, Meredith McComb, Jeff Anthony, Zoning Administrator Pamela Kenyon and Counsel Michael Muller.

**Absent:** Tom McGurl, Jr.

Meeting was called to order at 6:36 p.m.

Greg Smith asked if there were any changes or corrections to the September 15, 2008 meeting.

- 1) Kam Hoopes stated that Tom McGurl, Jr. should be included on the absent list.
- 2) Kam Hoopes, pg 5, middle paragraph at the end, regarding his discussion with Kathy Bozony about the difference between human waste and goose waste, he believes that there was no definitive testing done on that but that it is possible to test for human waste.
- 3) Meredith McComb, pg 4, fourth paragraph, she stated that it mentions one letter from Congers Point Association in support of the application but the minutes do not reflect the letter from the neighbor in opposition to the deck that was withdrawn.

Motion by Meredith McComb to accept the minutes as corrected. Seconded by Tony DePace. All in Favor. Motion Carried.

**1) V08-44 COLE, DOUGLAS.** Represented by Matthew DiNisco of Gro Solor. To place approximately 536 square feet of solar panels on existing roof, seeks area variance for 1) a deficient front yard setback. 75' is required, 50' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-57B(1)(b). Section 185.20, Block 1, Lot 8, Zone RCL3. Property Location: 717 Coolidge Hill Road. Subject to WCPB review.

Doug Cole stated that they are installing virtually the same solar panel system as up on Edgecomb at the Smith property, which is a net metering solar panel system. He stated that this system has no batteries or storage, energy is put into the grid and run the meter backwards or run the other way when they use more than they produce. He stated that the panels are flat that are in the same contour of the existing roof.

Kam Hoopes stated that they are only seeing this application because this structure is a pre-existing non-conforming structure. Greg Smith asked how well the system will work on their property. Doug Cole stated that National Grid and NY Cert have approved all of the rebates and they are just waiting for approval so that they can begin to install the system. He stated that there is no Warren County impact and the only detail they are waiting for is a structural review. They have beefed up all of the roof rafters when they built for snow load and they are just getting the sign off on that to get the building permit for the panels. He stated that the panels are only about 2 inches thick and are very light weight. Kam Hoopes stated that he doesn't have any problem with this project. Greg Smith agreed and stated that this is the way the world is going. Doug Cole stated that the reason they were able to do this so well is

because they are at 98% efficiency due to their elevation and there are no trees around the cottage. Kam Hoopes stated that the roof is also facing exactly the right angle all day.

Meredith McComb stated that she is completely in favor of this application. She also noted that although this cottage is non-conforming, it is an improvement of what was there before. She also stated that although this lot is cleared around the cottage, which she is not in favor of for every house on the mountainside overlooking the lake, this lot is advantaged by having that clearing exist for the solar panels to work.

There were no comments from the public in attendance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Douglas Cole (V08-44) 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; it is a pre-existing, non-conforming structure and solar panels have nothing to do with that.

2) There will be no undesirable change in the neighborhood character or to nearby properties, there are no neighbors in sight.

3) The request is not substantial; the solar panels are 2 inches thick.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it will be an improvement in their lives up there.

5) The alleged difficulty is not self-created,

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

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

**2) V08-45 KUPETZ, RONALD SCOTT.** Represented by Gregg Biche. To alter pre-existing non-conforming single family dwelling, specifically to construct an approximate 900 sq. ft. addition, seeks area variance for deficient setbacks. 1) Front. 30' is required, 12' is proposed; 2) Rear. 15' is required, 8' is proposed; 3) Lot coverage. 40% is allowed, 37% is proposed; and 4) to alter a non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 3, Lot 43, Zone GB5000. Property Location: 38 Norowal Road. Subject to WCPB review.

Gregg Biche stated that he was concerned that the front setback variance request was incorrect and that it should be only 25'. Pam Kenyon stated that there is a driveway that is u-shaped and goes half way around the lot. Including the driveway she gets 13' and she deducts 1' for the overhang to get the 12'. Jeff Anthony stated that they have to look at this structure as if it has three front yards because of the driveway.

Gregg Biche stated that the addition will consist of a bedroom, bathroom, living room and a deck. Meredith McComb asked what the existing square footage is. Gregg Biche replied that it is about 900 sq. ft. and the proposed is about 900 sq. ft. with the deck.

Greg Smith asked, calling the side of the cottage facing the lake the front, how much closer to the lake it will be. Gregg Biche stated that it's approximately 12-13' closer to the lake.

Kam Hoopes asked if the heavily dotted lines were sewer lines and if so, what did they plan to do with them. Gregg Biche stated that they are having the lines looked at for their exact location because they are not sure that they are accurately depicted on the plan. If they are where they say they are on the plan, they will have to move the sewer lines because they have no intention on building upon them.

Bill Pfau asked if there would be any change to the existing height of the structure. Gregg Biche stated no, it will be the same as what is there now. Kam Hoopes stated that there is a lot of open space on this property and he is not concerned with overcrowding the lot and it is not going to block the house behind them. Gregg Biche stated that they have a letter from the HOA who are in support and all of the homeowners are aware of the project.

Kam Hoopes asked if there was a mistake on the lot coverage listed on the agenda, because as it is listed, a variance would not be necessary. Pam Kenyon stated that she knew the ZBA would ask the question and she meant to include it but not as a variance. Greg Smith clarified that the applicant is only seeking 3 variances, setbacks for the front and rear and to alter a non-conforming structure.

Meredith McComb asked if they will be renovating the existing structure. Gregg Biche replied that they may be adding a door to access the new bathroom from the existing structure and that would be the extent of renovation.

Pam Kenyon stated that they have the letter from the HOA in support of the application and there was no WC impact.

Meredith McComb asked if there was any plan for minor stormwater to be incorporated into the project. Gregg Biche replied that there is nothing in the plans right now. Meredith

McComb stated that minor stormwater plans would make her more comfortable with this application because it is near the lake and there is no harm in incorporating that. Gregg Biche replied that a dry well could be installed on the left side. Greg Smith asked if the applicant would mind adding that as a condition of approval. Gregg Biche replied no. Bill Pfau stated that he feels that it is important for all of the homeowners to get together on these projects because a lot of these houses around here are being upgraded and expanded and it is a good thing to have done while doing the project. Gregg Biche agreed.

Meredith McComb asked if there was a second story on the addition. Gregg Biche replied no. Meredith McComb stated that she is concerned with the upstairs windows especially since there is no living space up there and creating more light pollution on the lake. Gregg Biche stated that it is just mimicking what is there now to keep it consistent. Kam Hoopes stated that this also adds light during the day and he does not feel that this is a huge concern considering the location of the home in such a busy hub.

There were no comments from the public in attendance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Ronald Scott Kupetz (V08-45) 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; this applicant needs a variance from setback relief because the lot is not large enough.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is an addition onto an existing residence and there are no objections from the other members in the Association.
- 3) The request is not substantial; the addition is staying in the center of the lot.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the applicant has agreed to use minor stormwater regulations on this project.
- 5) The alleged difficulty is self-created, but the benefit outweighs any detriment.

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 William Pfau and seconded by Meredith McComb, 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.

**All in Favor. Motion Carried.**

**3) V08-46 LUND, MARTIN & TINA.** Represented by David Ehmann. To demolish and rebuild boathouse in a different configuration, seeks area variance for 1) a deficient side yard setback. 20' is required, 12' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.15, Block 1, Lot 40, Zone RM1.3. Property Location: 174 Homer Point Road. Subject to WCPB and APA review.

David Ehmann stated that they have received their demolition permit and have torn the old structure down and the new dock is about to be decked at the same exact dimension that it was. They are seeking to raise the deck and level it off and put a railing up. Previously existing from the dock up was 6'8 and 7'8 with the pitch and they are looking to go up to the bottom of the overhang at 9' and the top of the roof at 11' and the railing at 14' which would make it 16' or less from mean high water, within the same exact dimensions that it used to be with the exception of the overhang and the height of the deck. He provided photographs from adjoining properties to show the lack of impact on views.

Kam Hoopes stated that this will be a major improvement over what was previously there. Bill Pfau stated that they previously had a permit to demolish and re-build the same structure. David Ehmann stated that the way the boathouse is permitted it is virtually useless except to cover the boat and they could not get a boat with any radar and the applicant is looking to do what he can under the grandfathered structure. He stated that the LGPC has pictures that showed that the previous structure did have a level deck with a railing at one point after it was grandfathered and it was within the LGPC standards. Kam Hoopes stated that with the previous layout they could not hoist a boat in there either.

Bill Pfau stated that they have a cluster of trees in back and asked if the applicant plans on saving those. David Ehmann replied that the applicant plans on saving those and possibly planting more. He continued that the applicant owns those trees and they block the structure. Kam Hoopes commented that the trees block the neighbors view more than the boathouse will. Meredith McComb stated that adding a deck on a non-conforming boathouse can give a view back into neighboring properties and it changes the neighborhood, but the applicant's neighbor put one in and therefore she has a hard time objecting to this one. David Ehmann stated that there are several trees on the other property line and it would be tough to look off this deck at either house. Meredith McComb stated that she also takes note of the careful planting and landscaping that the applicant is doing to ensure privacy.

Pam Kenyon stated that there was no WC impact. Greg Smith asked if there were any comments from the public in attendance.

Peter White, co-owner of the neighboring property to the north, stated that he is in support of the application and would only request that the trees existing stay or be replaced if necessary.

Meredith McComb commented that it is nice to see someone building a home in this area that meets the setbacks because they have not had to see the project for any other variance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Martin and Tina Lund (V08-46) 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; because of the pre-existing crib that functionally is in the center of his lot even though it does violate setbacks.

2) There will be no undesirable change in the neighborhood character or to nearby properties, it is very much in keeping with what is being built in the neighborhood.

3) The request is not substantial; because the 17' wide width of the structure and the fact that it is replacing a pre-existing grandfathered structure.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it would be more detrimental if they were to tear out the crib docks and straighten it out to comply with the ordinance.

5) The alleged difficulty is not self-created, they are re-building on a pre-existing grandfathered footprint.

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 with the following condition(s): that the trees in existence are to remain or be replaced upon completion of the project. **All in Favor. Motion Carried.**

**4) V08-47 RIEDINGER, ED & AVEDISIAN, JOYCE.** Represented by Larry Warner. To demolish and rebuild single family dwelling, seeks 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.

## **RESOLUTION**

Motion by Meredith McComb, seconded by Kam Hoopes to table the V08-47 Ed Riedinger and Joyce Avedisian application until next month. **All in Favor. Motion Carried.**

**5) V08-10a TWIN BAY VILLAGE. Tamara Chomiak.** Represented by Atty. Matthew Fuller, Matt Steves of VanDusen and Steves, and Daniel Ryan of Vision Engineering. For a proposed 50 unit townhouse project, seeks area variance for **1) deficient density:** 43 acres required, 37.6 acres exists; and **2)** in accordance with Section 200-37B(4) Shoreline Regulations, seeks area variance for deficient shore frontage. 625' of shore frontage is required, 122' exists. Section 186.06, Block 1, Lot 14.1 and Section 186.07, Block 1, Lot 7, Zones RM1.3, RL3 and RCH5000. 4804 Lake Shore Drive. Subject to WCPB review.

*NOTE: This application is in conjunction with SD07-25 and was tabled at the September 15, 2008 ZBA meeting at the Applicant's request. The PB recommended no more than 44 units which would require no variance for deficient density and that the ZBA use the formula that starts with 44 units and for every unit deducted from the proposal the applicant gains a lake access right and if there is no reduction of units no variance should be granted for deficient shore frontage.*

(Note: This application was heard as the 4<sup>th</sup> item on the agenda)

Matt Fuller apologized for their absence at last month's meeting. He stated that they are back with the recommendation from the PB and as they could probably tell from the minutes that they are not happy with the one for one split on decreasing the units for lake access. He stated that it came down to an arbitrary number and many numbers were thrown around at that meeting. He stated that they still feel that they can handle 50 units and the variance request is reasonable. The project is a vast improvement to what currently exists. They are moving the density from the lakeside to the other side. He stated that they have also considered moving things around on the lakeside proposal, but they will get into that as they progress to site plan review. He stated that they are not requesting docks for the lakeside and it would only be used for swimming or maybe a kayaker and they do not think that all possible 200 residents would be using the lake at the same time. Matt Fuller stated that in his experience with HOA's and developments like this on the lake it is not realistic. He stated that they also have other amenities that can share the load of people. Therefore he does not feel that the lakefront request is unreasonable and they don't think it will affect the lake. They feel the proposal they have to work through will be the site plan review with the PB. They have proposed some state of the art stormwater infiltration on the lakeside property and will also deal with buffers and plan to handle these issues at the PB level. As far as the character of the neighborhood and the impact to the lake, they feel that this property can support this project.

With regard to the density on the mountainside, Matt Fuller stated that they are still under the single family residential numbers and Pam Kenyon made that determination back in January 2008. There have been repeated attacks on that determination by both Boards and Pam Kenyon has stood by her determination. He stated that they have met with Pam Kenyon and Counsel Muller again to review this determination and he provided a letter with regard to the determination of the density. He stated that the statement or attack that they should not be using combined holdings for determination of density is flawed especially on an environmental protection standpoint. They looked at both properties for total acreage to calculate the density and then calculate what they have there currently and the difference is what they are allowed to build.

Kam Hoopes asked how many they would be allowed without a variance. Pam Kenyon replied that if they include the Villa they are allowed 43 additional units. Kam Hoopes stated that his problem with the density situation is that their request for 50 units is the definition of self-created and would not be able to support the application with the balancing act. However, he stated that if they could reduce the proposal to 43 units then he would feel more comfortable in discussing the proposal further. The ZBA is set up to provide relief from overly strict zoning regulations. He stated that the applicant is requesting is a variance they want and not necessarily one that they need. With regard to the waterfront, Kam Hoopes stated that there is an argument to be had there. Looking at it in reverse, if they were doing this project across the road only with 43 units, they would be able to do this without a variance and the zoning regulations are punishing the applicant for having lake frontage. If they did not have that lake front then they would not have to be before the ZBA for the variance. He stated that 122' is a good stretch of lake front and if they look at the Town beaches they aren't much more than 100' wide. They also will not get all of the residents from the very expensive townhouses using the shore at the same time and there are other amenities that the residents can and will use. The cluster of buildings in existence will be cleared out on the lakeside and a great improvement will be done and he feels that there is a good argument to be made for the waterfront variance.

Meredith McComb asked if there is to be deed restrictions for the Villa property prohibiting further subdivision or construction on it. Matt Fuller stated that is something they can talk about if that is necessary but he feels that certainly the density will be used up. Meredith McComb stated that if the density is used up then they will need to put a deed restriction on it for no further subdivision or construction according to Section 200-12 paragraph E. Matt Fuller stated that if it is required then they would comply with it. Meredith McComb stated that looking at this project with regard to Bolton's Comprehensive Plan, page 2-55 reads "prevent conversions to high end housing" as one of the goals. It also says that the Town could also offer incentives to tourist accommodation owners who do not convert their units to expensive seasonal year round housing units. For those accommodations slated for conversion, the Town could provide incentives to owners who provide affordable seasonal rental units. She stated that there might be a way of incorporating those existing cabins to your advantage in this, but not be able to use the density on them. Kam Hoopes stated that the cabins are slated to be removed and aren't part of the agenda. Meredith McComb stated that she is bringing it up because they are seeking a variance and the ZBA is charged with examining the project in full. Kam Hoopes stated that they are only to stick to what is on the agenda. Meredith McComb stated that she is considering this because this is an extremely substantial variance for deficient shoreline. She stated that she sees his point that the applicant is somehow being

penalized for having shorefront, but on the other hand they could split the two parcels and have one house on the waterfront as a right and a lake view subdivision which would also give them substantial return on the land. Jeff Anthony stated that the situation is that they have 122' of lakefront which satisfies the Villa property only and they have no other rights to the lake and essentially asking for a 100% variance. He stated that regardless of the number that is decided on the total units allowed, there aren't going to be traffic cops telling those individuals that they cannot use the lake. He stated that they have to rule on this as if it is true real contractual access. Kam Hoopes stated that all residents will probably not use the lake all at the same time. Jeff Anthony agreed but also said there is no way of controlling who uses it and who doesn't. Tony DePace stated that he has 85 rental boats on his property and he never has more than 75 people on the property at the same time. Meredith McComb stated that she lives in a waterfront association and in much of the summer they have 100% occupancy of the houses and many of the neighbors have family and visitors on their property. She stated that she does not feel that all of these residents will show up all at once either but doesn't think it justifies decreasing density to swap 58 rental units to 50 year round houses based on the argument that not everyone will use it. She stated that the applicant is also using 140 additional units of density for a restaurant and asked if it currently exists. Matt Fuller stated that it is licensed but it is not open right now. Meredith McComb stated that she thought it was a dining room. Matt Fuller stated that it is a licensed as a public restaurant but is not currently used in that way. Meredith McComb stated that is not an increase in density because if the tourist business wanted to develop that aspect of it and then they might talk that this density does exist. Matt Fuller stated that the only reason they got into the maximum number was to compare apples to apples. At the PB level they wanted to know what the maximum possible number as developed that they would have as the residential units. However, they stated that if they were going to use the worst possible scenario then they had to compare it with the worst case possible extreme. Meredith McComb asked what the date of the permit is. Matt Fuller stated that they renew the permit through the Department of Health every year. Kam Hoopes asked what difference it makes. Meredith McComb stated that it is comparing the basic family size of people that may be living in these units as a hypothetical and if they are going to talk worst case, then they have to be prepared to talk about house guests in the summer. Matt Fuller stated that they are not going to have that scenario because they are going to restrict it. They will not allow families to have 7 or 8 cars parked in front of their unit. This would be a HOA thing and it would be enforced. He continued that he agreed with Jeff Anthony in looking at it strictly from a lake access, but he agrees with him only to a certain extent. They need to look at it in the context of what is proposed, this project is in a bay and there are no docks that will be an issue. Kam Hoopes stated that he has yet to hear anyone mention what sort of specific negative impact having all units lake access will have. Jeff Anthony stated that he was just making the point that the applicant is asking for a 100% variance. Meredith McComb stated that the negative impact comes from an amount of new impervious surface on the west parcel, which increases from 3% to 22%. She asked if the 22% included the Villa acreage because part of her resistance to include the Villa acreage, which disappears if they want to remove the structures except for one and put a deeded easement prohibiting further subdivision of that land, then she would release that disagreement. Dan Ryan stated that as defined by the Town of Bolton the maximum lot coverage in the proposed conditions is 4.5%. Meredith McComb stated that in the project manual she took 3% lot coverage on the west side and 22% is what is proposed. Dan Ryan stated that she may be confusing lot coverage with permeability. Dan Ryan stated that lot coverage for the west side is 4.5% under the proposed condition and on the east side lot coverage it will go from 21% existing to 3% proposed. Meredith McComb stated

that she was confusing them and the lot coverage is clearly within the limits allowed and wanted to know about permeability. Dan Ryan stated that permeability on the east side is 47% in the existing conditions and they are proposing to go up to 53%. Meredith McComb stated that her point is that although it is an improvement it is only a 6% change on the lakeside portion of it. She stated that on the west side they are going from 3% existing impervious to 22% on 28 acres. Dan Ryan stated that on the west side they are only talking 25 buildings and a road on 28 acres. Meredith McComb asked if the 22% impervious surface proposed for the west side include the 7 acres of the Villa. Dan Ryan replied no, none of the calculations presented on the drawings are including the Villa except for the density requirement. Meredith McComb stated that if the Villa buildings are removed it would improve that. Dan Ryan replied that it would but it is not included in those numbers and if they were to include the Villa that number might go down further to 15% impervious. With regard to impervious surface, Jeff Anthony asked if it includes the access roadway only and buildings or have they allocated driveways and parking as well. Dan Ryan replied that it is including an approximation of a certain footprint size for every building and an average length driveway up to 200'. Jeff Anthony stated that he concerned that the site plan does not show them the driveways or clearing limits. He stated that he doesn't see a grading plan that grades the driveways, parking or buildings into this. Dan Ryan stated that he was correct and that would be addressed at the PB level. He stated to do that now prior to the variance would be a huge design cost because it would involve the entire site. He stated that they have provided adequate drawings to show the feasibility of the project and that the land can support it. Jeff Anthony stated that he is concerned that it doesn't only go into stormwater but it also affects visual impact and he has no way to look at that especially if they are asking for added density on the hillside there is no grading plan, clearing limits and other exact stuff shown there that will tell him what the visual impact of this project will be.

Kam Hoopes stated that the only thing that is most important to him at this time is the shoreline deficiency. He is concerned about permeability on the east side but what he is seeing is that the zoning regulations are geared more towards human activity impacting the water and shoreline and he is still waiting to hear an example of how all the people living on the hillside will affect the 122' of shoreline. Bill Pfau agreed stated that they should be discussing how the lake front will be affected by their variance request. He stated that he wanted to go back to the PB recommendation that the applicant's counsel has called arbitrary, which he cannot argue with. He stated that if they talk about the 122' of lakefront, if the property were double the size then double the amount of townhouses would be suitable for that 122' of lakefront or if it were half the amount of property, half the amount of townhouses would be suitable for that amount of lakefront. So in a certain sense it is an arbitrary number, but he can't think what a better recommendation would be. He stated that they are short by a factor of 5 for the footage of lakefront. He thinks would be a legitimate response to say that they should cut the amount of townhouses in the proposal by a factor of 5. He stated that when he looks at all the arguments the PB's recommendation is wise. Kam Hoopes stated that he is not a fan of sending ZBA business to the PB and vice versa, he does not like doing PB work at the ZBA level. Dan Ryan stated that he agreed with Kam Hoopes in that the real arguments of the actual impact are the legitimate arguments. They feel that they are providing a lot of benefits to the re-development of that site that will improve stormwater, non-conforming setbacks and other improvements which clearly outweigh possible negative impacts of the shoreline deficiency. Kam Hoopes stated that he sees this as an improvement because currently all of the activity is focused on that 122' of lakefront and the proposal is trying to dilute that impact by moving things up on

the mountainside, there are no deeded dock rights and the impact on the lake as far as he can see is almost non-existent. He stated that with the swimming pool, there is a good portion of people that won't even use the lake. He stated that this 122' of lakefront does add to the charm of the homeowners up the hill but he does not see them using it all at the same time. He feels that this proposal will make a much better looking shoreline from both the lake and highway. Bill Pfau stated that he also agrees with Jeff Anthony that this is a large request and a lot of Board members have said that from the beginning. Matt Fuller stated that it comes down to feasibility. He stated that he doesn't ultimately know if the dollars and cents are the controlling factor but that recommendation is a feasibility issue. Kam Hoopes stated that the lack of shorefront is not self-created because 122' is all that they have. Meredith McComb stated what they do have is a cabin colony and to do this re-development is self-created. She stated that he asked what the impact on the lake would be and she would look at the proposed 17 acres of clearing. She stated that Jeff Anthony has stated that 17 acres doesn't tell the whole story. Kam Hoopes stated that would be a PB issue. Jeff Anthony stated that they have a right to review environmental impact because they have to answer that question "are there potential environmental impacts?" and they cannot answer that. Kam Hoopes stated that since this goes for site plan review all of these issues will be coming up again. To discuss every minute detail and to throw unexpected things at the applicant at this phase is unfair and redundant since these items will be reviewed again. He stated that they will need to narrow their focus to what is on their agenda so that the applicant can either stop or move forward. Jeff Anthony stated that at a previous meeting he pointed out that there were no driveways or grading shown on the drawings and he suggested that they go back to the drawing boards, figure out what is on the west side and define and establish their project. He stated that he would like to see a site plan here so that they can better answer if there is a potential environmental impact. He stated that visual impact in his mind is very important as well especially on big hillside projects. Kam Hoopes stated that if they go back to 43 units then the density issue is off the table and they are only discussing the deficient shoreline, which makes their business only on the east side of the road and they have to allow the PB to make the right decisions.

Meredith McComb stated that she thinks Jeff Anthony is right and they should consider the impact of 17 acres of clearing and that they should not grant such a massive variance as requested. She feels that it could be a smaller, more compact design that would have less impact on the lake. She thinks the leading cause of pollution of Lake George comes from roadway run-off and the difference between plowing and not plowing this road in the winter is substantial and something for them to consider. With regard to visual impact, she agreed with Jeff Anthony that the proposed plan may not show the complete impact in the drawings and it shows clearing from lot line to lot line. Meredith McComb asked Pam Kenyon why there was no variance request for the common building, the swimming pool or the tennis courts none of which appear to meet setbacks. She stated that the common building is 6' from the property line. Dan Ryan stated that she was misinterpreting the drawing because the 6' is the footprint of the roofline with infiltration trenches around the perimeter. Meredith McComb stated that the tennis courts and pool do not meet the setbacks. Dan Ryan stated that the pool is setback 8' but the pavement is 4' from the property line. Meredith McComb stated that is part of the structure and the pool impinges upon the 50' shoreline setback and the tennis court is right up against the lot line. Dan Ryan stated that the drawings depict the approximate sizes of the final proposed pool but if there are additional setbacks they need to meet it is something that can be maneuvered at a later date. Meredith McComb stated that when they first came to the ZBA the

applicant was considering keeping some of the existing cabins to keep lifeguard equipment in and the trade-off on this project was that there was going to be a lot open land on the lakeshore and she does not find what they are proposing now to follow that. They are increasing the permeability by only 6% and they have added a pool on the east side which was open shore and with poured concrete below the water table only 50' from the lake. She is concerned with the calcium content from the concrete leeching through to the lake which can cause zebra mussel hotspots. She stated that they have a pool on the west side and she would recommend that they keep it on the west parcel and they could look into splitting some of the parking areas too. Matt Fuller stated that the those were shown to show the type of amenities would be good. All of these issues have and will come up again with the PB and they can address them at that time. He stated that the PB recommended moving the tennis court up there and that may happen. With regard to keeping some of the existing cabins on the east side they felt it would be a better idea to remove those and they saw they had good room down there to put in some good stormwater infiltration and for a community center. When they were before the Board in March for sketch review it was extremely informal and he said that from the beginning and this Board's mandate was for them to do their homework with perc tests and infiltration on the mountainside and start laying out those plans and that is what they did. Kam Hoopes stated that unfortunately they found that the lots could handle 50 units. Dan Ryan stated that Meredith McComb and Jeff Anthony are saying that they can't identify environmental impacts this project will have but they have provided 28 drawings supporting it, a 500 page report identifying this project in detail and a 300 page stormwater pollution prevention plan that was submitted in June. He stated that the Board has had adequate time to review this and they have adequately satisfied that criteria showing if it is feasible and what the actual impacts are and how are they being mitigated. Bill Pfau stated that he disagrees with Jeff and Meredith and agrees with Kam in respect that they are looking at a variance request for a substandard shoreline and they need to decide what number of townhomes would be suitable to share that amount of lakefront property. He stated any 44 townhouses, if they are feasible and how they are set up across the street are not important for this variance request. Meredith McComb asked what they should be taking into account when they are considering the amount that is appropriate. Bill Pfau stated that he is not taking into account whether those townhouses are capable of being built. Meredith McComb agreed but she is questioning whether or not they will have any impact on the lakefront. She thinks the variances for waterfront increases the number of buildings because the applicant has said it is part of the economic feasibility and she goes back to the comprehensive plan that they have no mandate to dismantle the tourist industry in favor of luxury residences. Bill Pfau disagreed. Kam Hoopes stated that they are not going to keep the applicant from following through with this project just by denying variances. Meredith McComb stated that they would make it less likely that cabin colonies or tourist industry would be dismantled if they don't simply just give the variance. With regard to the comprehensive plan, Dan Ryan stated that in section 8 in the summaries, it says recommend increased density within the hamlet and this project is in the hamlet. The comprehensive plan also says to achieve a more balanced economy with permanent residences, which they are also achieving with this project. 79% residents feel that vacant and deteriorated buildings should be demolished and revitalized and they are accomplishing that as well. Lastly, the hamlet has underutilized parcels targeted for infill for residential and they have accomplished that as well. He stated that if they are going to bring in the comprehensive plan they need to look at all of the recommendations and he feels that they have implemented and utilized a lot of those in this project.

Bill Pfau asked Jeff Anthony if 44 townhomes could be built on the west side in a way that he would feel would be aesthetically pleasing and met every other conditions, would it be enough for him to grant a variance to allow 44 townhouses to share 122' of lakefront. Jeff Anthony stated that no one has proven to him that 44 townhouses can be built on the property and that is his basis that he is thinking of first and is not even looking at the lakefront. He stated that he doesn't really see a problem with the usage of the lakefront by all of the residents but he cannot get a full picture of the visual or environmental impact of the project with 44 units. Bill Pfau stated that they would not be addressing the variance request if they go in that direction. Jeff Anthony stated that it is one of the questions that have to be asked and they always seem to avoid the question. He stated that they cannot keep avoiding it and this Board has the right to ask for an environmental impact statement if they want. Kam Hoopes stated that they seldom avoid the question. Jeff Anthony feels that it is not discussed to the extent that it should be. He is concerned that the grading plan that they have proposed will change pretty dramatically when they get into the project. Bill Pfau stated that he feels that it is appropriate to discuss environmental impacts of this project as it relates to the variance request. Jeff Anthony stated that there is a density request. Bill Pfau stated that he feels that will be withdrawn at some point but if it is not, he is in full agreement with him. Jeff Anthony stated that he is not even sure if 43 units is correct, but that is up to the PB. Meredith McComb stated that the PB said it was up to the ZBA if 43 units was right.

Meredith McComb stated that she would like to talk about calling these units apartments in the RCH section and a townhouse across the road because they do not meet the definition of townhouse that they have in their code. A townhouse according to the code in section 200-8 has 3 units in it. The applicant has called them condo development and that would knock off 6 units from what was granted if they go with calling them apartments on the RCH. Kam Hoopes stated that it is not their job to discuss these things. As ZBA members their specific job is to provide reasonable relief from the zoning regulations with what is presented to them. He stated that they don't have to look beyond it because there are other agencies in place to do these things, such as the APA, DEC, PB and in the case of septic systems there is the TB. What he would look at when answering whether the request will have any adverse physical or environmental effects as presented and so far he doesn't find that it will. Meredith McComb stated that 17 acres will be cleared. Kam Hoopes stated that the PB will be looking at these plans more in depth as the project moves on. Meredith McComb stated that the PB looked at it and requested that they cut it in half. Kam Hoopes stated that he has already stated that the amount of units needs to go back to the allowable number of units based on density and that variance has been taken off their table. Now it is their job to see if the 122' of lakefront will be negatively impacted by the 5 parts of their balancing act and so far nothing has been established to show that. Jeff Anthony stated that he does not know the stats or specifics but there is a health department code for bathing in beach areas with required square footage for both land area and in water area and he has seen none of that stuff prior to this application proving that this beach area can sustain the development and use that they are saying. Kam Hoopes stated that they have a good example with Rogers Park which is overcrowded. Meredith McComb is a public beach and they should not be saying that a public beach is going to become their standard for private development. Kam Hoopes stated that was his point because this is private development and therefore they are automatically limited on that beach to those 43 units. Meredith McComb asked if the PB's recommendation should be completely ignored. Kam Hoopes stated that he has stated that the PB should not be doing the ZBA business. He is not saying that they should ignore it completely and he is the one who made

the motion to send it to the PB but not for advice on the variances and only to look at the project. Jeff Anthony disagreed and stated that they asked for their advisory opinion. Kam Hoopes stated that was not his intention and thought he made that specific in the motion.

Greg Smith asked if there was any public in attendance that wished to speak on the matter.

Willie Bea McDonald, McDonald Real Estate Professionals, stated that there is a new lovely house next door and there have been some issues in trying to sell it because they are unsure as to what is going to happen on the property next door. She stated that she does not represent these individuals but does know that there have been questions that are unanswered. She stated that if they talk to anyone that lives next to a hotel swimming pool or tennis court it becomes an issue. She suggested that they consider careful placement of the amenities especially when next to private homes. Meredith McComb agreed. She stated that she also can't help noting that originally the community center was one story, then it was one and a half story and now it will meet code which means 35' is possible. At the last meeting the Board asked how tall it would be and the applicant replied it would be one and half stories and would provide plans showing that, but they didn't. She understands that they are in a financial bind to spend endless money on developing specifics when they may not get approval for it but on the other hand this is as close to the property line as possible with a difference between one story and 35' when the existing residence is also pretty close is something they should consider.

Kathy Bozony, LG Waterkeeper, stated that she carefully reviewed the calculation of the density and she sees it quite differently than what has been proposed at 44 units. She stated that Zoning Code 200-40 minimum land area for each individual dwelling unit shall be in the lot area required for the zoning district in which the multiple family dwelling is located. In RCH5000 condominiums require 20,000 sq. ft./principal unit per 200-15 Zoning Schedule of Area Bulk and Height Regulations. Based on zoning within the 30.29 acres, excluding the Villa, it would appear that 18 principle building units would be the maximum allowed and this is different than what the PB discussed. The ZBA on March 17, concluded that the proposed density of 44 townhouse units would exceed the minimum variance necessary for the townhouse project. The current application proposes 50 units with other amenities that were not proposed originally on the 1.65 acres and she is wondering if the ZBA has changed their mind in what they had originally discussed in March. The ZA's staff notes regarding density appears to be incorrectly using apartment classification instead of townhouse/condominiums resulting in an increase in the calculated allowable density. Required area per principle unit in RCH5000 is 20,000 sq.ft. for townhouse/condos, a calculated allowed density of 3 units versus the staff notes which calculated the allowed density of 9 units in that same acreage and that was using 7,500 sq.ft. for apartments. The application is described as a proposed 50 unit townhouse project and this is in the proposed townhouse community site plan DWG C-5 drawings which clearly indicates that each townhouse unit will be a separate parcel. Therefore the proposed use could be in no way considered an apartment and should be considered a townhouse/condo as a principle building. She included some calculations for each of the parcels, one without using the Villa property which was never indicated anywhere in the application that it was part of the application, but she did include it on the second set of calculations. Based on the drawings the building and units are one in the same, they are separate individual entities even though they have a common wall. Without the Villa property she calculates that 18 principle building should be allowed and with the Villa property 22 buildings would be allowed on the 3 lots. She stated that she did include for their reference the

reason why the Villa parcel was pulled out in September 2004 is because the owners wished to subdivide off the existing house from the motel units as a future condition of potentially if the motel area came under a different ownership. She stated that in one case they have decided to pull it off to their benefit and now they propose to put it back on for their benefit. She stated that she agrees with Matt Fuller's analysis of why they would potentially want to combine the units but it doesn't seem to appear that this is anywhere in this application that this should be done. Kathy Bozony stated that based on documents in the Assessor's office the shoreline frontage for tax map 186.07-1-7 is a 100.55' and not 122' as indicated. Also the shoreline acreage is 1.65 acres which is 71,874 sq. ft. and not 1.7 acres which is 74,178 sq. ft. The removal of the 8 cabins, the motel units on the 1.65 acres shorefront parcel was intended to decrease the overall environmental impact on water quality from future development on this sight. In contrast the proposed community center, tennis court and swimming pool 50' from Lake George and 45 parking spaces leaves minimal area for infiltration and treatment of stormwater run-off from the roof, tennis court and parking lots. She recommends re-locating the swimming pool, tennis courts and the majority of parking spaces to the west of Route 9N will increase the total permeable area on the shoreline parcel, enlarge the area for recreational beach usage and optimize natural stormwater infiltration a benefit to Lake George water quality. Designating lawn as the majority of the proposed permeable surface on the shoreline is not an effective method for stormwater infiltration. She suggests deep rooted vegetation filters and absorbs nutrients and pollutants and would be a better alternative. Native plants and used as a vegetative buffer along the shoreline and as proposed in the bio-retention islands within the parking lot should be conditioned by the ZBA. Use of additional permeable surfaces such as porous pavements or something comparable could be incorporated. The new year round townhouses will be creating increased occupancy within units and will easily support extended guest stays. The existing motel is seasonal. Preliminary review of the Town of Bolton's water usage records for a comparable conversion, Blue Bird Cottages, which similarly became single family dwellings, shows that the transition from tourist accommodation to year round homes actually doubles water usage and therefore there is a more intensive use contrary to the applicant's presentation. Limits of clearing for the proposed density will have an adverse impact on environmental conditions. The townhouses are not clustered and the until hillside will be affected by the proposed units with excessive contiguous clearing for townhouse footprints. She encouraged the Board to look at the density calculation because she feel strongly that the 44 units that were presented is not based on Bolton Code as it is written. Bill Pfau asked Counsel if there is a process of appealing the determination of density. Counsel replied yes. He stated that he would like the Board to know that arriving at the density calculations Pam Kenyon was first challenged by what the exact area and in what district and the applicant was required and they fully cooperated with the use of Matt Steves, who is a licensed land surveyor and he came up with exact map showing each district and where it was located with precise calculations as to what area is in each zoning district. He stated that he suggested to Pam Kenyon to tackle it in terms of making the calculations that she feels is accurate. Her interpretation has been questioned several times and she has made the same interpretation and he agrees with it, but it is more important that the ZBA agrees with it. That interpretation was given January 28, 2008 which has had some duration. Although it is true that this Board can challenge that interpretation, the applicant would say that the time to challenge has really come and gone since it was done in January and he would tend to agree with that. Pam Kenyon stated that before she sat down with the applicant she took every section of the ordinance that she thought would apply and made copies of it. She showed all of this information to Counsel. She stated that there are sections in the ordinance that are

conflicting with one another, but upon completing her research and sorting of the ordinance and how it applies she truly stands by her decision. Counsel stated that with regard to the ambiguities of the code, he instructed her to determine those ambiguities favorable to the applicant. Meredith McComb stated that one reason that it is subject to looking at is because Pam Kenyon was originally told that the Villa property was part of the calculation and then they got maps showing that it was not part of the developed project and was proposed to continue that parcel separately. The applicant has changed that now, which is their right to combine them if the owner wants to give up those existing easements for the Villa property. Meredith McComb stated that she realizes that there is that ambiguity clause and she feels that Pam Kenyon did an excellent job of documenting precisely what her reasoning was in this, but the section in RCH5000 special densities is all for commercial areas and that is where the apartment comes from. In 200-16 special density calculations in RCH and that has the apartment 7,500 sq. ft figure. It seems to her the types of dwellings addressed there are all commercial, rentals or single family dwelling and this is none of those. Pam Kenyon stated that RCH5000 is actually residential commercial hamlet area. Meredith McComb stated that this section lists special considerations there and if what is proposed is not what is dealt with in these special considerations maybe they should just use the regular schedule 200-14 and 15 which have condominium cooperatives. In the project manual the applicant has included the applicability of realty subdivision law to condominiums and she notes that what is proposed does meet the Town's definition in 200-8 of the condominium or multiple family dwelling. She feels that it should be 20,000 sq. ft per principle unit in the RCH5000 district.

Kam Hoopes stated that he gets frustrated when he gets a laundry list of issues from Meredith McComb and Kathy Bozony, LG Waterkeeper and he wonders if maybe there is no satisfaction of these lists and if he were the applicant he would start to wonder if he was meeting with an immovable object. Matt Fuller stated that he agrees with Counsel Muller's interpretation and the purpose of his letter was to address these things. The reason for the 60 day statute of limitations is for finality, especially in talking about the expense that applicants put in to this point let alone moving forward. The applicants need some sort of assurance that the determination that the ZA makes is going to be subject to some support. He stated that you have to have some standing here and that they cannot just show up at a meeting and start attacking Pam Kenyon's decision and if there is to be an appeal it has to be done within 60 days. Even if it is done a reasonable time after that, as Kam Hoopes stated, they have been dealing with this for months and the list is getting bigger. The shorefront has been questioned at 5 meetings prior and was again challenged tonight. Matt Steves has unequivocally said that it is his determination that they have 122' and they have to rely on that. Relying on tax maps, as any real estate practitioner would tell you, is dangerous. He understands that there is a discrepancy in the length but they have a survey now and he is willing to bet that the Town picks that up in the next assessing season. Meredith McComb stated that she agrees tax maps should not be used to question a surveyors figures on the acreage and the way they calculate the lakefront as it winds and turns is accurate. With regard to amount of beach for the residents use, the tie line is 100' and the 122' comes from measuring from the mean high water mark 10' into the shore and around and 10' back out. With regard to the 60 days to appeal the determination, the ZBA didn't see this application within the 60 days. Matt Fuller stated that if this project didn't need a variance and all they needed was a building permit and there is still a 60 day statute in which to challenge any zoning issues. Meredith McComb stated that the first time this issue became apparent was when the Villa acreage was included. Pam did her calculations accurately, although she does disagree with the determination of the use of

apartment for determining square footage, but she if that is the call and Counsel says that is to be resolved in favor of the applicant then she is okay with that, but the applicant submitted maps that had 28 acres and Pam based her calculation of 35 acres which included the Villa property and that is something that they should be able to challenge. Kam Hoopes stated that he is starting to get suspicious and feels that the project has fallen out of favor and it is not going to pass under any circumstance. Meredith McComb stated what has fallen out of favor is that the project keeps getting bigger and bigger with the addition of the amenities. Kam Hoopes stated that they were all there the first time. He stated that her appetite for answers on these things is insatiable. Meredith McComb stated that this is a big project and this Town has a lot of these projects going on and she feels that it is appropriate to look closely at these large projects in order for her to complete her balancing act.

Dennis Murphy stated that has been a member of the community for about 8 years and he has frequently come to these meetings. He feels what is happening with the Board tonight is embarrassing and they are starting to lose their direction. He stated that the applicant has come before them for a variance which is a compromise. Right now they now that there is value in eliminating seasonal cabin colonies and they are losing bed tax money by going to year-round residences. There is an impact in infrastructure and maybe infrastructure to the school. He thinks the ZBA needs to re-group and take into account that a variance is issued in necessity and not for luxury and not to line someone's pocket. He stated that they need to look to see if they can reach a compromise to reduce something to be more within the lines of what the rules and regulations are, then that is what they should be doing.

Kathy Bozony, LG Waterkeeper, stated that she did not see in January 2008 the fact that 44 units was the defined density that they all needed to agree to. Staff notes of August 21, 2008 do a calculation showing 44 units and in August 2008 the PB discussed 44 units and late September the applicant was not present at the ZBA meeting to discuss this and she does not know if the 60 days statute lies anywhere. She stated that she is not against this project, she would love to see the project happen but she is looking at the amount of density and the amount of clearing that is being calculated as if this is the way it is zoned. In 200-15 the minimum lot size for is 1 acre for 1.3 and 3 acre zoning. In 200-14 it shows the density calculation is 1.3 acres/principle building or 3 acres/principal building and she does not see how 35 units can exist on 20.64 acres, as well as the 9 units for the shoreline using the 1.65 divided by 7,500 sq. ft. She stated that although she is not a standing of this, she requested that the ZBA takes a good look at the density calculations. Kam Hoopes stated that whenever he has a question about the agenda he goes and talks to Pam Kenyon and gets her ruling on it and understand her logic in arriving at her decision. He stated that both Meredith McComb and Kathy Bozony are choosing now to challenge the decision and it is not the appropriate place and they have passed their 60 days to challenge. Pam Kenyon stated that they actually only have 30 days to challenge her determination. Kathy Bozony asked when the 30 days started from. Pam Kenyon stated that she stands by her decision with the density and she will not debate it anymore. The time has passed for anyone to appeal her decision and it is a done deal. Kathy Bozony stated that the whole problem with this project is the density.

Greg Smith stated that the applicant is asking for 50 units but 44 units is allowed and asked if the applicant has a happy medium that they would be willing to compromise on. Matt Fuller stated that it would be 44 units which would be 22 buildings, but to do that takes a density variance of 1. Kam Hoopes suggested that they not increase up a unit but rather decrease so

that they have 21 buildings because they have an uphill battle just with the lakefront deficiency. Matt Fuller agreed. Jeff Anthony stated that they sent this to the PB for an advisory opinion and they got it and now they seem to be ignoring it. He stated that if we believe in the wisdom of our other Boards, APA and DEC so that we won't have to make these tough decisions, that they should respect the PB's opinion. Bill Pfau asked what the PB said when the applicant told them that it was not feasible to knock any numbers off of this project. Matt Fuller stated that by the time they got to that it was after a discussion that they just went through and it seemed that they didn't want to hear it. Bill Pfau stated that he is having a problem with their feasibility story that is just coming up now. He stated that it would have meant a lot more if they said that right in the beginning and he doesn't recall reading it in the PB minutes. Matt Fuller stated that he thought that they did talk about that especially when they started talking about gaining 1 lake access for every 1 unit removed from the project. Bill Pfau asked if a lower number is feasible. Matt Fuller stated that the 50 units came up out of the environmental tests. Bill Pfau asked if they were saying that financially they need to have 44 units to make the project work. Matt Fuller replied yes because they are that high with these costs. Bill Pfau stated that if that were the case it should have been brought up by now because it has lost its power at this point. Matt Fuller stated that when they did their field work it should that the land could handle 50 units environmentally and on the impact of the neighborhood. From the standpoint of the imposition of the zoning versus the variance request, what is the impact to the neighborhood that they are talking about here. If it is feasible and reasonable that this works, whether the applicant is going to make \$10 or \$10 million, if it doesn't impact the neighborhood to such a degree that the design phase and things can't deal with those issues then he thinks the applicant has the right to ask for that. Kam Hoopes stated that they have the right to ask but the Board is precluded to saying yes. Jeff Anthony stated that they are basing that conclusion on one environmental factor of sewage disposal and they have avoided some of the ones that he has talked about. Matt Fuller stated that it was not their intent to ignore his comments but financially how could they deal with it since they are unsure of whether or not the project will move forward. Kam Hoopes stated that if the applicant cannot reduce to 21 building units then he is not interested in making any motion to accept it. Greg Smith asked if the applicant understood their suggestion. Matt Fuller stated that the ZBA is requesting them to withdraw the density variance and ask solely for the deficient shoreline. Counsel explained that the recommendation of the PB is that for every unit deducted from the proposal the applicant gained a lake access right and if there is no reduction of units then no variance should be granted for deficient shorefront. He stated that they were hoping to reduce the number of units by half and all units then would receive lake access. Matt Fuller stated that from their standpoint that is a denial of the lakefront variance because they cannot do that. Meredith McComb stated that they have the right to do a lake view development and sell the lot on the water for a house, which is probably worth more than the cabin colony at this point.

Kam Hoopes asked if the applicant would be willing to reduce to 21 buildings with 42 units. Matt Fuller stated that the ZBA can consider the application amended in that regard and to withdraw the density variance and to solely seek the lake front variance. Kam Hoopes stated that if they will have no more than 43 livable dwellings then he would be willing to make the motion.

Jeff Anthony asked if this application would be going to the APA. Counsel replied that he believes it does because a portion of the property is located outside of the hamlet and legally Pam Kenyon is obligated to notify the APA for this variance. The question is has there been

adequate discussion and that always seems to be the problem and where they have had their troubles. They usually are denied because they have not adequately discussed unnecessary hardship and practical difficulties which notably are two tests that they are prohibited to applying.

Counsel asked if they wanted to include in their motion that some of the amenities not be on the shoreline parcel. Greg Smith stated that he would like to see the pool and tennis courts located on the west side. Kam Hoopes stated that he cannot add that to his motion because he did not look at the project with that in mind and he does not know what is available on the other side and this can be discussed during site plan review at the PB level.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Twin Bay Village (V08-10a) for an area variance as described above and amended to reflect that the applicant is proposing a total of 44 total units allowed on the property and is seeking the area variance for deficient shore frontage in accordance with Section 200-37B(4) Shoreline Regulations.

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; there is 122' there, that is all they have to work with and they cannot make more.

2) There will be no undesirable change in the neighborhood character or to nearby properties, on the contrary this will be an improvement on the property that is there now.

3) The request is substantial; as far as the percentage of variance that they are allowing but does not believe that will have a negative impact on the neighborhood.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

5) The alleged difficulty is not self-created, because the 122' of lakefront is what it is.

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 amended variance request as presented. Jeff Anthony,

Meredith McComb and William Pfau opposed. Greg Smith, Kam Hoopes and Tony DePace in Favor. No Board Action.

Counsel stated that a deadlock does not mean that the application passed but it does allow for another motion to be made. Greg Smith stated that hopefully they will have seven members next month but he is not sure what would change someone's mind here tonight. Bill Pfau stated that at this point that he personally would follow the recommendation of the PB. Jeff Anthony agreed and he stated that he also thinks that they are going to get the same message back from the APA if they were to approve it. Pam Kenyon stated that someone else can make another motion. Matt Fuller requested that the ZBA not make another motion. Meredith McComb stated that the applicant could return with another iteration of their request. Matt Fuller stated that he thinks he got his answer and that there is nothing that they can change that would change their minds. He stated that it is deemed a denial and he asked that Pam Kenyon still send a notice to the APA. Pam Kenyon replied that she only sends notification to the APA if the variance gets approved. Counsel stated that Pam Kenyon was correct and suggested that they submit a jurisdictional inquiry. Matt Fuller stated that he has already talked to the APA.

Meeting was adjourned at 8:43 p.m.

Minutes submitted by K. MacEwan