

**Town of Bolton**  
**ZONING BOARD OF APPEALS**  
**AGENDA**  
**Monday October 20, 2009**  
**6:30 p.m.**

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

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

**Absent:** none

Meeting was called to order at 6:35 p.m.

Greg Smith asked if there were any changes or corrections to the September 14, 2009 minutes.

**Motion by** Tony DePace to accept the September 14, 2009 minutes as written. **Seconded by** Kam Hoopes. **All Others in Favor. Motion Carried.**

**1) V09-32 KELLY, ANNA MAY.** Represented by Dana Blanchard. In accordance with Section 200-19 (setbacks for cabin colonies), specifically to construct an approximate 15'2" x 12' addition on existing deck, seeks area variance for deficient setbacks. 20' is required between structures. 10' is proposed on the south side, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.19, Block 1, Lot 67, Zone RM1.3. Property Location: 7 Dula Place – cottage 7. Subject to WCPB review.

Dana Blanchard stated that the applicant would like to build a 15' x 12' addition on a pre-existing deck which is part of the original footprint of the cottage. They will be replacing the old deck with this addition. The footprint will remain the same. He stated that this will be an entrance into the main living area and closed off from the rest of the house by sliding glass doors. The area will be insulated but it will not be heated. Anna May Kelly stated that she is seeking this addition to be able to enjoy the outdoors comfortably. She stated that the area gets a lot of sun but is often very buggy. It will be used seasonally but could possibly be used year-round since it is west facing and will receive a lot of sun.

Bill Pfau asked if there were any lot lines for the parcel. Pam Kenyon replied no, all cottages are on one parcel. She stated that the lines were part of a proposed subdivision that was not approved.

John Michaels asked if the HOA approved the addition. Anna May Kelly replied yes. Jeff Anthony asked if this went before the PB. Pam Kenyon replied yes because a condition of their original approval was that all applicants wanting to alter any structure would need to start at the PB first. She stated that the PB recommended approval on this particular application.

Pam Kenyon stated that there was a smaller deck that was added onto this particular structure without any permission or permits. She stated that she talked to the applicant about this and

the applicant is willing to remove this deck but suggested that they may want to add it as a condition of approval. Greg Smith agreed.

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

## **RESOLUTION**

The Zoning Board of Appeals received an application from Anna May Kelly (V09-32) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#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; due to the conditions set forth that there be 10' between the buildings and 10' does not exist at this point.

2) There will be no undesirable change in the neighborhood character or to nearby properties, it is small addition on this house and the neighbors do not seem to have any issues with this project.

3) The request is not substantial; due to the size of the addition.

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 of the lack of room between the buildings.

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 Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition(s): 1) that the deck that was built without a permit is removed.

**All in Favor. Motion Carried.**

**2) V09-26 FROEHLICH, GEORGE & MICHELE.** To alter pre-existing non-conforming structure, specifically to construct a second story guest bedroom above an existing 25' x 23' garage, seek area variance for 1) a deficient side yard setback. 8' is required, 7'6" is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 3, Lot 72, Zone GB5000. Property Location: 7 Allens Way. Subject to WCPB review.

George Froehlich stated that they bought the house in October 2002. The main part of the house was built in the late 1800's as a barn and in 1939 it was converted into a home. In 1985 major upgrades and renovations were done to the building. The master bedroom was added to the rear of the building with a basement and the addition of a two car garage. The main house is small with the master bedroom and a small loft area. The loft area is lacking privacy and is difficult to get to since it is by ladder only. He stated that they had always hoped to use the area above the garage for a guest bedroom.

John Michaels asked if the height of the structure would remain the same. George Froehlich replied yes the original roof line will stay the same but they will be adding two dormers for additional space. He stated that when the garage was built in 1985 it conformed to setbacks but currently the overhangs are included in the measurements and it was not built square to the property line it is deficient 6" in the front corner only.

Kam Hoopes stated that it came to his attention that they granted a variance for the patio. However the patio was not supposed to be connected to the house but it was connected to the house. Bill Pfau asked how the applicant could apply for a new variance when there is a violation on the property. Pam Kenyon stated that they no longer do that, it is the ZBA's choice if they want to send them to the TB or not. George Froehlich stated that 2 years ago he had the contractor represent him at the ZBA meeting. He stated that he knew that the structures were not to be connected. However, the work was completed when he was not present. He stated that he has discussed this with Pam Kenyon and offered to remedy the situation. Kam Hoopes stated that the violation is pretty minor but the contractor should have known better.

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

## **RESOLUTION**

The Zoning Board of Appeals received an application from George and Michele Froehlich (V09-26) 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 is six inches of space lacking.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this change will largely be invisible from neighboring properties.
- 3) The request is not substantial; it is maintaining its footprint, it is going up to make the second story more usable.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, the property was bought as is and this is an improvement on living space on a relatively small house.

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

**3) V09-47 CLARKE, ROSAMOND.** Represented by Jeffrey Tennent. To alter pre-existing non-conforming structure, specifically to construct a proposed deck, stairs and landing, seeks area variance for 1) deficient setbacks. a) Front: 50' is required, 18' 2 1/2" is proposed, b) Side: 30' is required, 19' 4" is proposed, c) Rear: 30' is required, 13' 9 1/2" is proposed, and d) Shore: 75' is required, 42' is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 185.15, Block 1, Lot 26, Zone RCL3. Property Location: 63 Three Oaks Drive. Subject to WCPB and APA review.

***Note: This item was heard last on the agenda***

Jeff Tennent stated that he has made some design changes to the variance request due to the rejection by the APA. He stated that they have reduced the size of the deck; they are only requesting the minimum size to accommodate a table, chairs and a grill with room to move around. The portion of the deck on the front of the house has remained the same. This part of the deck is to address a major safety concern to fill in the large hole between the house and parking area and to provide access to the deck.

Jeff Tennent stated that another change is that they have provided stairs within the deck footprint to access the lower storage/laundry area under the deck. This has pulled the steps back from the side setbacks. Jeff Tennent stated that another change was to provide stairs to access the laundry/storage area on the side of the house per the WC PB request.

Jeff Tennent stated that overall they have tried to lessen the setback requests, address the safety concerns and other issues that existed on the property. He indicated where the new septic system would be installed. He stated that they also are incorporating stormwater control measures.

Jeff Tennent stated that the applicants are seeking to add this deck to be able to enjoy the outdoor living space. He stated that they do not have alternative areas to do this. The front of the house does not have enough room between the structure and the parking area and anywhere else on the property is sloped going down to the lake. He stated that the deck provides the least amount of impact to the area and provides the access to the outdoors.

Jeff Tennent stated that he feels that the deck is pervious material and will allow for the stormwater to run-off and into the ground. He stated that if they were to have a patio it would require cutting into the hillside to create a flat area and landscaping walls, etc which would further impact the land. Kam Hoopes agreed that the deck surface would be considered pervious surface and that the deck also protects the soil below from getting the direct impact of the rain. The deck is at the living area level and does not require staircases or landings. He feels that that this is the minimum relief necessary to allow the applicant to enjoy the outdoors comfortably and safely. He stated that he likes that the stairs have been moved back to lessen the impact on the shoreline.

Kam Hoopes stated that the APA overturned their ruling because they felt that the ZBA did not discuss practical difficulties or unnecessary hardships. Although they are precluded by law from using those criteria anymore, they are virtually, if not literally discussing hardship and practical difficulty by discussing these various things. These are things that impede the owner of this house from enjoying the house, lake and outdoors.

Dennis Murphy stated that there is already a screened in porch on this house. Jeff Tennent stated that he thought the same thing but it is actually part of the house and there are windows in it and it is not closed off from the rest of the house. He stated that the APA questioned why they didn't use that as a screened in porch. Jeff Tennent stated that it is part of the house and indoor space. They did not want to use this area because the house is small already and this is the only floor with living space in the house.

Jeff Anthony stated that the applicant has considered alternatives here and have selected the minimum variance request. Counsel stated that this applicant was charged with seeking the minimum relief necessary to protect their private property rights. He feels the minimum relief has not materially or detrimentally harmed the ordinance or the purpose of the ordinance, which is their balancing test.

Pam Kenyon stated that there is no WC impact.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Rosamond Clarke (V09-47) 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#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; this is a series of setback requirements that require variance. They are dimensional considerations.

2) There will be no undesirable change in the neighborhood character or to nearby properties, All of the homes are in a row with decks of some sort to enjoy outside living.

3) The request is not substantial; this property has very challenging topography. The applicant has shown that this request for lake side deck surface is a minimum for supporting a table, chairs and a grill for outdoor cooking.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; stormwater measures will be taken that mitigate those possibilities.

5) The alleged difficulty is not self-created, in as much that the applicant did not design the lay of the land. In order for the applicant to enjoy their lakeside property they need a flat surface.

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. **John Michaels abstained.**

**All Others in Favor. Motion Carried.**

**4) V09-45 INFANTE, KYLE & BURKHARDT, DIANE.** To alter pre-existing non-conforming structure, specifically to construct a 6'3"x 12' front porch, seek area variance for 1) a deficient front yard setback. 75' is required, 64' is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 185.00, Block 2, Lot 4, Zone RL3. Property Location: 8 Potter Hill Road. Subject to WCPB review.

Kyle Infante stated that they are seeking to put a front porch on the property. This is mainly to keep the snow and ice off of the front steps. He stated that they are building over the existing

steps and the footprint will not extend any further than the existing steps. The only thing that will be increasing is the overhang over the steps.

Greg Smith stated that this is very simple application seeking the minimum relief necessary. Kam Hoopes stated that unfortunately they are dealing with a 75' setback in a scenic corridor. Greg Smith stated that he is setback further than most of the neighbors. Bill Pfau stated that he sees this project as a necessity for safety.

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

## **RESOLUTION**

The Zoning Board of Appeals received an application from Kyle Infante and Diane Burkhardt (V09-45) 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#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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is strictly a porch roof over an existing staircase, which is necessary for safety reasons for snow and ice.
- 3) The request is not substantial; it is the minimum relief necessary.
- 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, as the setbacks are quite severe in the scenic corridor.

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 Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

**5) V09-39 WAGNER, RITA & TIFFANY.** Represented by Heidi Figueroa. To alter pre-existing non-conforming structure, specifically to construct an approximate 36 sq. ft. covered entrance, seeks area variance for 1) a deficient front yard setback. 50' is required, approximately 8' is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.19, Block 1, Lot 57, Zone RM1.3. Property Location: 15 Evergreen Lane. Subject to WCPB review.

Heidi Figueroa stated that they are seeking to cover the entryway from snow and ice. She stated that the previous owners put a metal roof on and the ice was terrible last year. The porch actually collapsed.

Greg Smith stated that this is a necessity for safety on a pre-existing structure.

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

## **RESOLUTION**

The Zoning Board of Appeals received an application from Rita and Tiffany Wagner (V09-39) 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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it will even improve the elevation of the house.
- 3) The request is not substantial; it is a safety issue.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created,

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

Now, upon motion duly made by John Michaels and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

**6) V09-37 O'CONNELL, LAWRENCE & CAROLYN.** For the construction of a proposed 36' x 48' garage/barn, seek area variance for deficient side yard setbacks. 50' is required, 18.75' is proposed on the south side and 10' is proposed on the north side. Section 213.17, Block 1, Lot 5, Zone **LC25 & RCM1.3**. Property Location: 23 Canoe Lane. Subject to WCPB review.

Lawrence O'Connell stated that they are seeking to construct a barn on the back portion of their property. He stated that they are dealing with a long but narrow parcel and therefore cannot meet the side setbacks.

Kam Hoopes asked if the existing barn structure housing some of his equipment will remain. Lawrence O'Connell replied no it is only temporary until the garage/storage building is up.

Kam Hoopes asked if the applicant had considered a lot line adjustment with the larger property that he owns next door because it could alleviate him from needing any variances at all. Lawrence O'Connell stated that he wanted to keep it separate because they will be moving up to the area year round in the near future. Once they move up they plan to either renovate the current house or build a new house on the larger lot and sell the current lot. He stated that the other property is also part of a HOA and he was not sure if he would be allowed to do a lot line adjustment. Kam Hoopes stated that he doesn't see why they wouldn't allow it. The other lot is so narrow and long he feels that the whole neighborhood would benefit from a lot line adjustment regardless of which lot he plans to use for his home. John Michaels agreed.

Kam Hoopes stated that part of their balancing act when approving is determining whether or not the alleged difficulty is self-created or if there are other feasible alternatives. Since he has enough property that may not require a variance it might be a better way to approach this.

There was discussion about the zoning line and what the setbacks are for each zone. It was determined that the front of the house is in the RCM1.3 and the remaining part of the property is in the LC25.

Bill Pfau stated that the applicant is pretty well secluded and screened. He asked the Board how much they would want to see the lot line adjusted. Pam Kenyon stated that they would have to adjust it enough to meet the 50' setbacks. Bill Pfau asked what would be involved for the applicant to have a lot line adjustment. Pam Kenyon stated that she can approve lot line adjustments in the office. She stated that the applicant would get a surveyor and she would review and approve the map. She continued that the applicant would need HOA approval before they can do anything further with a lot line adjustment. Kam Hoopes asked if they could grant the approval with the condition that a lot line adjustment is feasible. John Michaels stated that they could not because they are not sure what variance would be needed.

Pam Kenyon asked how large the other lot was. Lawrence O'Connell replied 5 acres. Pam Kenyon asked if it was all in the LC25 because the minimum lot size is 5 acres. She is

concerned that they may not have enough acreage to take away. John Michaels stated that if the applicant researches this lot line adjustment and finds that it is not a feasible alternative then they could meet the criteria of the balancing act. Counsel stated that they should look at a land swap and lot line adjustment, this way both lots will be in balance and nothing will violate the ordinance. The applicant agreed that it would be best to research a potential lot line adjustment and land swap. Pam Kenyon told the applicant that she could assist him with further questions.

## **RESOLUTION**

**Motion by Kam Hoopes to table application V09-37 pending further information. Seconded by Jeff Anthony. All in Favor. Motion Carried.**

**7) V09-42 PEPPER, JAMES & SALLY.** To alter pre-existing non-conforming structure, specifically to construct a 14'x 18' open sundeck, seek area variance for 1) a deficient shoreline setback. 75' is required, 34' is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.12, Block 1, Lot 28, Zone RCM1.3. Property Location: 35 Cherry Lane. Subject to WCPB and APA review.

Jim Pepper stated that they are seeking to add a sundeck off of their dining room. He stated that the agenda calls for this structure to be 34' from the lake, but when measured it appears to be 39', but he wanted to give it a little leeway and put 37' on the application.

Jim Pepper stated that they are seeking a modest 14' x 18' deck. They are proposing this deck to be on the lakeside of their home that is currently under construction. He stated that their property is at the end of Cherry Lane which is a dead end road. The lot size is just shy of an acre. It is moderately to heavily wooded with a lot of buffer trees to the north and south, which would shield this from the neighbors. He stated that most of the houses on Cherry Lane were built in the 1960's and at that time if there was any setback from the shoreline it was 50'.

Kam Hoopes stated that they have made tremendous strides in improving the property. Bill Pfau asked if the new home was built on the original footprint. Jim Pepper replied yes. Bill Pfau asked what the previous variance was for. Jim Pepper stated that one of the corners of the house was over the setback and the eaves which were approximately 30" over.

Jim Pepper stated that no trees will need to be removed. He stated that back when they did some work on the original house he ended up transplanting 20-30 hemlocks by the lakeshore.

Counsel read the following:

- 1) Email from Linda Schadler in opposition to the proposal.
- 2) Email from Dave and Anne Thomas in opposition to the proposal
- 3) Margaret Schadler in opposition to the proposal.
- 4) Amy E. Steiner in support of the proposal
- 5) Barbara J. Ahern in support of the proposal.

Jim Pepper responded to the letters. He stated that he can understand their concern with setbacks and trying to maintain them at all possible. He also sat on the Zoning Revision

Committee and was one of the advocates of increasing the setback from the lake from 50' to 75' and asked that they not punish him for his own offense. He stated that he is a big believer in heavy screening and buffering. He stated that he would prefer to have a closer setback to the lake with heavy screening than meet the 75' setback with an open lot. He stated that the neighbors who would be most affected are the Steiner and Aherns who are both in support of the project.

Kathy Bozony from the office of the Lake George Waterkeeper stated that she is concerned with the expansion of a non-conforming structure. She stated that lot is .68 acres in a 1.3 acre zone. Variances were previously granted to build a single family dwelling in the required shoreline setback. Bolton Zoning Section 200-37b2 states that the minimum setback on all bodies of water from the mean high water mark of all principal buildings in excess of 1000 sq. ft. shall be 75' in RM1.3. She stated that should be the minimum for the protection of Lake George. She feels that the expansion of the deck could facilitate future expansion of the structure and that they should look to place the deck in a more compliant location. She stated that she would also recommend shoreline buffering especially with the elevation change in the lot.

Jeff Anthony stated that they should prepare to deal with the expectations of the APA. Counsel stated that they should only apply those tests that are appropriate under Town law. However they should have some discussion on the criteria that the APA requires. Kam Hoopes stated that he is concerned that they will not be able to meet the criteria of practical difficulty or unnecessary hardship since the applicants have a full deck on top of the boathouse and there is flat ground in front of the house. John Michaels stated that he thought the same thing but realized that the dining room and kitchen are on the second level which is the main living area for the house.

Jim Pepper stated that this deck would not be out of character for the neighborhood. The other homes have decks similar to this and the distance from the lake ranges from 25'-40'. These existing homes had no alternative. The setback was set at 50' and these homes exist where they are, the practical difficulty is that the Town increased the setback to 75'. Jim Pepper stated that they could look at the land in front of the house; however it is one flight down away from the living space which is an unnecessary hardship.

Jeff Anthony stated that it is not the Board's responsibility to come up with the criteria to meet the criteria of meeting the practical difficulty and unnecessary hardship. Jim Pepper stated that the practical difficulty is that this is a pre-existing structure with the setbacks. Jeff Anthony asked what he would consider to be the unnecessary hardship. He stated that they would need to use this language to build their case for the APA. Kam Hoopes stated that he doesn't necessarily feel that it is the lack of language used but rather the invasion of their lake setbacks.

Greg Smith asked what the 1<sup>st</sup> floor will have. Jim Pepper replied that it would be storage, and a roughed in bathroom for now. He stated that eventually he would like to have some social space on that floor but it will not be for sometime given the cost of construction. He stated that even if the basement is finished the main living area is on the second floor.

Greg Smith stated that the applicant has not increased the footprint of the house and the setback will not be any worse than they were before the renovation. The proposed deck is in the center of the property. John Michaels stated that he is concerned that this could be a self-created problem since it was not included in the original plans and it could have been. Jim Pepper stated that if he wanted to come into compliance with the setback and still use the existing footprint he would have to take away from interior floor space.

Bill Pfau stated that they should be discussing the necessity for the size of the proposed deck. Counsel agreed that the applicant should discuss the details of why they are requesting this proposal and what the need for the particular size is. He stated that they should discuss if this is the minimum relief necessary. Jim Pepper stated that he is not sure that 14' is the minimum, however, anything smaller would not allow much space for a table, chairs and grill.

Bill Pfau suggested that anyone looking for relief from a shoreline setback should really read the APA turn-overs to see what the APA is looking for. Tony DePace stated that they are looking for a way to approach the APA and he feels that this should really be the applicant's responsibility. Counsel asked if the Board felt as though the applicant has provided satisfactory information. Jeff Anthony replied no but it could be worked on. He suggested that one way that they could approach the hardship could be from the financial value of the home. Regardless of the reasons they need to come from the applicant.

Jim Pepper stated that he didn't want to approach this from a financial point of view. He stated that would be an obvious reason, but not the true reason for applying for the variance. He stated that they have lived in the house for over 20 years and they are looking for some practical use of the outdoors off the main living area on the second floor. Jeff Anthony stated that he is starting to build his case. John Michaels stated that the applicant designed this house and it has just been built and the floor plan shows patio doors that don't go anywhere. Jim Pepper stated that he could show him a number of houses that have patio doors that don't go anywhere because he likes to use them as windows because they provide the most light. As for the unfinished basement, it will be used to reach the lake, but will not be finished with living space at this time so the main living space will be on the second floor. John Michaels stated that he understands that but it was a choice in how he designed the house. He is not sure it is a way to justify the need; this is a shoreline with a major setback.

Kam Hoopes stated that there are several Board members that are not convinced that they are interested in granting this variance. Additionally they will also have to deal with the APA. He suggested that the applicant table the application to provide further information to the Board addressing the concerns that they have raised as well as what the APA will be looking at. The applicant should be looking to request the minimum deck dimensions and provide the reasons to support such request. Jim Pepper stated that he would have no problem providing more information.

## **RESOLUTION**

**Motion by Kam Hoopes to table application V09-42 pending further information. Seconded by Tony DePace. All in Favor. Motion Carried.**

**8) V09-40 DRIESSEN, TERRY & CHRISTINE.** To alter pre-existing non-conforming structure, specifically to construct a 2 story addition, seeks area variance to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.08, Block 1, Lot 10.1, Zone RCM1.3. Property Location: 33 Braley Point Road. Subject to WCPB review.

Terry Driessen stated that the pre-existing non-conforming aspect is the northern lot line which is within 10' of the line. The addition they are proposing is to the south, so it will not change the non-conformance in anyway. Jeff Anthony asked if the side setbacks will be met. Terry Driessen replied yes.

Kam Hoopes stated that although this is really not increasing the non-conformance they will need to address the previous conditions of approval from the PB. Terry Driessen stated that he believes the intent of the condition was to prevent adding additional structures, like guest houses. He stated that they have a letter from March 23, 2006 which clarifies what is permitted and not permitted for these subdivided lots. Pam Kenyon stated that she believes that the applicant is allowed to expand the structure but not allowed to add an additional structure. Greg Smith read the following from the letter: "No further structures that create additional living space will be added to either lot. After reviewing, this Board determined that it does not apply to demolition and reconstruction of the single family dwelling. The single family dwelling could be made larger provided the amount of bedrooms does not exceed four and at the time of reconstruction any Town of Bolton regulations must be adhered to." Tony DePace stated that he remembers adding the condition and remembers that the intent was for guest houses.

Terry Driessen stated that they do not want to tear down the house, it is very solid construction. The addition will be very complimentary to the existing house. They felt this was less of an impact on the property.

John Michaels asked if there were any alternate building sites. Terry Driessen stated that they looked into alternatives but none of them worked. The alternate site to the south required extensive blasting and the alternative of adding to the front was not viable because the roof structure would not support the addition without taking off the entire roof structure and starting over again.

Bill Pfau stated that although it is a large addition, it is a minor variance request. Kam Hoopes and Greg Smith agreed.

Kathy Bozony Lake George Waterkeeper stated that she is concerned with the condition of approval from the subdivision of these lots. She stated the creation of 2 sub-standard shoreline lots was approved in 1999 with conditions imposed for future construction on the lots. The condition of no additional living space was discussed at the March 2006 meeting and the conclusion was that there is no increase in the number of bedrooms with a maximum of 4 bedrooms of the condition of approved subdivision. The evidence of the existing number of bedrooms has not been submitted with this application and any increase in what currently exists would not be permitted. Although the Waterkeeper does not agree with the ZBA's use of number of bedrooms to define living space, the existing number of bedrooms should be verified and submitted with this application. Four bedrooms, a study and a full basement with recreation room are identified in the new proposed single family dwelling which supports the

potential for additional bedrooms which would be more than what is allowed for this lot. The proposed additional structure is adding approximately 3,500 sq. ft. to the existing 3,300 sq. ft. home which is a significant increase. Per the NYS DOH fact sheet an on-site waste water treatment system evaluation shall be performed and submitted by a licensed designed professional for home alterations resulting in an increase in the number of bedrooms, for complete home replacements, including those resulting in the same number of bedrooms and for alterations resulting in significant increase of waste water generation.

Kathy Bozony stated that stormwater management plans should be included with this application. Stormwater management would be a great benefit and without it she feels this application should not be granted approval as the site plan is incomplete. The existing lawn to the lake does not provide adequate water quality protection. A beneficial buffer has been planted on a portion of the shoreline but the large expansive lawn with no buffer with a retaining wall also needs a vegetative shoreline buffer. She also feels that they should restrict the use of fertilizers and pesticides of all lakeshore site plan approvals.

Terry Driessen stated that he has 3 bedrooms currently and will be increasing to 4 bedrooms. John Michaels stated that he thought that any increase in living space would require review of the waste water treatment system. Pam Kenyon stated that anything that goes before the APA will definitely require review, but she has all of the engineering details from the subdivision. Greg Smith asked if the applicant will be doing stormwater management for the property. Terry Driessen replied yes. Jeff Anthony stated that the application indicates that no stormwater management is proposed, so any approval should include the condition that stormwater management is included.

Pam Kenyon stated that the WC PB recommends no County impact with the condition that the septic is compatible with the addition.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Terry and Christine Driessen (V09-40) 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 the condition that the septic system is compatible with the addition;

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# 8 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties,
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created,

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

Now, upon motion duly made by 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 the applicant incorporates stormwater controls. **All in Favor. Motion Carried.**

**9) V09-43 CAREN HOFFMAN-SMITH.** Represented by Schoder Rivers Associates, PC. To demolish and rebuild single family dwelling (existing patio to remain), seeks area variance for 1) a deficient shoreline setback. 75' is required, 50' is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.12, Block 1, Lots 22 & 29, Zone RCM1.3. Property Location: 11 Cherry Avenue. Subject to WCPB and APA review.

Carl Schoder stated that the reason for the application is because the current house is relatively small. The applicants have 3 children and are trying to live within a 1,020 sq. ft. footprint house. Another reason is because the current house is an older house which is not energy efficient. He stated that the applicants are trying to improve this condition and by doing so they are going to alleviate several of the non-conforming conditions that are present with the existing structure.

Carl Schoder stated that the proposed project will mitigate both side line setbacks. With regard to the lakeshore setback, the proposed project would provide for a 50' setback rather than the current 31'. He stated that the 50' does meet the APA's minimum setback. This setback is consistent with other properties on Cherry Lane. He stated that the difficulty in meeting the Town's 75' setback is due to the layout of the land. He stated that moving the house back would result in a steeper driveway and extensive rock removal. This would create an unnecessary hardship in cost and would greatly affect the amount of disturbance to the site.

With regard to waste water, Carl Schoder stated that the existing home has a system on the other side of the road. It was built in 1994 and was designed by him for the previous owner. This system was designed quite conservatively and was designed for a 4 bedroom structure. The house is currently 4 bedrooms and will remain with only 4 bedrooms. They have reviewed the system and they have found good perc rates and they have the amount of waste water treatment capability in the ground. They will continue to utilize this system but they will be installing a new larger septic tank.

With regard to stormwater, Carl Schoder stated that currently it does not exist. They are proposing to take stormwater run-off around the side of the house and collecting it in an underground infiltration system. This would accommodate much of the flow off of the roof the house. The remaining flow from the impervious surfaces would be going into a dry well. The test pits showed that they have suitable soils to support these treatments.

With regard to water supply, Carl Schoder stated that currently this property shares a well with a property to the north. With this project they are planning to build their own well and it will be adequately spaced from the waste water systems.

Carl Schoder stated that they will have to remove some trees for this project but they will all be to the back of the property and not on the lakeshore. They are not anticipating removing any vegetative screening from the sides. The only other project that the applicants will be seeking at a later time will be to improve the boathouse.

Bill Pfau stated that although this meets the APA setbacks of 50' from the shoreline, would the APA be concerned that they are not meeting the Town setbacks. Counsel replied that it could negatively affect this applicant. However the applicant is alleviating some of the hardship by moving the structure further from the lake. Jeff Anthony stated that this area falls into the moderate intensity for the APA.

Counsel read a letter from Linda Schadler who supports the project.

Kathy Bozony Lake George Waterkeeper stated that necessary variance to demolition and reconstruct a single family dwelling on the shoreline of Lake George is an opportunity to become more conforming than what currently exists. Increasing the size of an existing single family dwelling to better accommodate the family's needs should not be at the expense of Lake George and its' water quality. They feel that the proposed 50' setback should not be granted. The applicant has stated that this is an improvement to the existing setback from the lake. That setback was for the existing deck that is being removed. The applicant states that no existing trees will be removed between the shoreline and house and there will be a filtered view which will remain. However, she suggests adding additional shoreline buffering and vegetation. She stated that the finding that the existing 1,000 gallon septic tank is undersized for the proposed new construction may indicate that the existing absorption field may be undersized. They feel that a new on-site waste water treatment system should be designed. The Waterkeeper recognizes that no stormwater management currently exists on this property and would recommend the use of rain gardens. She also feels that they should address the 35' infiltration setback from the lake.

Jeff Anthony asked if they can infiltrate water within 100' from the lake. Pam Kenyon stated that this is a minor stormwater project and they would be allowed. Carl Schoder provided more details as to how the infiltration system would work. He stated that they will be providing the best infiltration they can in the limited space that they have.

Melissa Vito stated that she is in protest of the granting of such a large variance to the shoreline setback. She is concerned with the degradation of the lake. She feels that this community needs to do right by the lake, especially in development which creates a permanent

source of pollution if not done with compliance to code. The code has been written to protect the environment and it is the Board's job to be sure that the developers follow this code. She stated that the western shore has already been greatly affected by serious algae blooms. She provided pictures of algae blooms from Boon Bay, which she stated is widely spread along the western shore of Lake George due to the close proximity of the non-conforming structures. She stated that the Board has a duty to deny variances for building within shoreline setbacks as a minimal measure of preventing that much more degradation of the lake from occurring. She stated that the algae blooms present undeniable evidence that the lake is in the process of losing its AA plus special water quality and it is past time that they do their part to bring it back. They should be designing their building projects with the minimal needs and putting the lake first.

Pam Kenyon stated that there was not WC impact.

Jeff Anthony stated that they should also address the practical difficulty and hardship for this application. Counsel agreed since this will be going to the APA for review. Kam Hoopes stated that he objects to that since it is invading the Town's setback and not the APA's requirements. Jeff Anthony stated that he takes exception with that. He understands that they are supposed to follow their own codes but the APA will be applying their 2 measures also. He feels that they should discuss these criteria to best protect the applicant. Kam Hoopes stated that they have tried to anticipate these issues with the APA and so far have not been successful. He is concerned that they would have to have a very long drawn out resolution and even doing so, may not get the approval of the APA. John Michaels stated that he feels that they should address all of the criteria including the APA's but keep it as simple as possible. Counsel agreed that they should be done to protect the applicant. Kam Hoopes stated that he feels that Carl Schoder's presentation should be able to speak for itself. Counsel stated that often times he feels that the APA feels that they did not discuss the possibility of other feasible alternatives. Melissa Vito stated that the people at the APA told her that what they want to see from the Town is to see that the Town's are following their own codes and laws. Carl Schoder stated that they are seeking relief from their 75' setback and he wants to be sure that they are being tested in the appropriate manner and it can only be a benefit to them as far as a review by another agency.

Carl Schoder stated that they are removing 3 structures and replacing it with one. They have moved the house back to 50' from the lake. The alternative sites would require extensive blasting and increased disturbance to the site. They are incorporating stormwater and adding an increased capacity for the septic tank.

Bill Pfau asked if they could reduce the size of the house to better meet the setbacks. Carl Schoder replied that the practical difficulty therein is the size of the house that is needed for this family and a reasonable amount of development consistent with the neighborhood so that they can realize the value of their property. Kam Hoopes stated that alternative sites would provide for much more land disturbance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Caren Hoffman-Smith (V09-43) 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#9 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; removing the three structures and replacing it with one and moving the setback from the lake from 31 feet to 51' is a benefit in itself and there is no other means to accomplish that.

2) There will be no undesirable change in the neighborhood character or to nearby properties, they are going from three structures to one.

3) The request is not substantial; given the fact that this is a single family dwelling with a two-car garage would not be considered excessive by any means.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; these issues have been addressed in the application. Stormwater management will be incorporated into the project. The septic system has been tested and approved for a structure of this size.

5) The alleged difficulty is not self-created, it is a re-build and the setback is actually moving back.

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 John Michaels and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

**10) V09-46 RINALDI, LINDA.** Represented by Ben Rinaldi. For the construction of a proposed single family dwelling, seeks area variance for a deficient front yard setback. 50' is required, 21.8' is proposed. Section 171.07, Block 1, Lot 34, Zone RM1.3. Property Location: 14 Lake View Hill Road. Subject to WCPB review.

Ben Rinaldi stated that the proposed house is approximately 1,260 sq. ft. They tried to seek the minimum relief necessary by designing the smallest house possible. This house will be used as a vacation house. An engineer has designed the plot plan and has incorporated stormwater management. Ben Rinaldi stated that they are actually further back from the setback but the

21.8' is from the ROW owned by the HOA. Jeff Anthony stated that the building from the road edge is 51' so there is considerable amount of ROW along the property.

Greg Smith asked how long they have owned the property. Ben Rinaldi stated for approximately 20 years. Kam Hoopes stated that they received something from the ZBA in 1989. Ben Rinaldi stated that his dad applied and received a variance at that time. Pam Kenyon stated they did not have any elevation drawings from when that variance was granted and she felt that they should come back and re-apply for the variance.

Bill Pfau stated that it is a moderately sized house on a small lot. He feels that the site location seems to be perfect. John Michaels and Greg Smith agreed.

Greg Smith asked where their water supply came from. Ben Rinaldi stated that they have Town water but the HOA handles the pumping to the subdivision.

Kathy Bozony, Lake George Waterkeeper, asked if there will be any special measures taken to cut off a water supply if the septic system should fail. She stated that the plan would indicate that they would need some sort of pump because of the elevation on site. She wanted to know if there will be any safety measures incorporated into the system. Kam Hoopes stated that the TB would be looking at any septic variances. Pam Kenyon stated that she doesn't know if the TB would be looking at it but she would be sure that it would have alarms. Ben Rinaldi stated that the engineer has designed the system to be a gravity system and that is why the house is placed where it is. He stated that the system would be designed as necessary to meet the requirements.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Linda Rinaldi (V09-46) 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#10 of the agenda.

The Board makes the following conclusions of law:

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

- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is a residential building in a residential area.
- 3) The request is not substantial; this is minimum relief necessary to achieve what they want to do on the lot.
- 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 of the size of the lot. The house is located in the center of the lot which makes the setback relief the least possible request.

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 John Michaels, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

**11) V09-41 McPARTLAND, FRANCIS.** Represented by James E. Hutchins, P.E. To demolish and rebuild single family dwelling, seeks area variance for 1) deficient setbacks. a) Front. 50' is required, 7' is proposed on the west side and 35' is proposed on the east side, b) Side: 15' is required, 10' is proposed on the north side and 11' is proposed on the south side, and 2) Lot coverage: 15% allowed, 20% is proposed, Section 156.20, Block 1, Lot 20, Zone RCM1.3. Property Location: 11 Cottage Lane. Subject to WCPB. Jim Hutchins stated that the applicant is looking to replace the existing dwelling. The lot goes between 2 right-of-ways, as do many of the lots in Pioneer Village. There will be new waste water system for the property which has been reviewed by Tom Nace.

Frances McPartland stated that initially he thought that they could just do an addition. However, after inspection of the current log home they found that adding onto the existing home would not be feasible or safe. He provided pictures of the deterioration of the structure. He stated that the lot coverage allows for 15% and the proposed structure is under 15%. However, the overhangs will exceed the 15% coverage. He stated that he has most of the support from the surrounding neighbors and he has a letter from the HOA president in support of the project.

Frances McPartland stated that they placed the cabin so it would not block anyone's view of the lake. The proposed structure will enhance the neighborhood character. The upgraded septic system will prevent any future problems. The proposed structure will fit well into the neighborhood character. They will only be coming a few feet closer to the property lines. They are adding approximately 340 sq. ft.

John Michaels likes that they are keeping the expansion and structure to one floor. This will provide some additional space without blocking any of the neighbors' views. He stated that his only concerns were the HOA approval and the septic which have both been addressed. With regard to the septic, Jim Hutchins stated that Tom Nace has reviewed it but it will need to go before the TB for approval.

Counsel read the letter from Pioneer Village HOA in support of the project.

Chet Oliver, neighbor of applicant, stated that this project will be an improvement to the Association and he has no problems with the application

Paul Fazackerley, Pioneer Village property owner since 1976, stated that what the ZBA has been doing down there has significantly helped the chop job that they had in terms of lot lines. Their work has made Pioneer Village a significantly better place in terms of septic and the impact on the lake and community. He stated that he is in full support of this project.

Glen Baumler, HOA president, stated that the proposed project will improve the character of the neighborhood. He is in full support of the project.

Kam Hoopes stated that these applications are sometimes misleading because the existing structures are already invading with regard to setbacks. He stated that this structure is already invading the setbacks and it is awkwardly placed on the lot. This is not much more substantial than what already exists on the lot now. Greg Smith agreed.

Jeff Anthony asked if any stormwater will be worked into the plan. Jim Hutchins replied that they have not yet but they will.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Frances McPartland (V09-41) 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#11 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; these are all dimensional issues.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, contrary to that it should be an improvement to the entire neighborhood.
- 3) The request is substantial; all requests in Pioneer Village have a certain substantial nature to them. It is a happy tight neighborhood down there and this is an improvement and not much of a change to the already non-compliant setbacks existing on the present cabin, which is in desperate need of removal.

- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; from the ZBA standpoint. The Town Engineer will be addressing the stormwater and septic.
- 5) The alleged difficulty is not self-created, the cabin is very old.

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.**

**12) V09-44 SALAMONE, KEN.** Represented by Bruce Mowery. For the construction of a proposed single family dwelling with attached garage, seeks area variance for 1) Height. 35' is allowed, 39' 5 1/2" is proposed and, 2) a deficient shoreline setback. 75' is required. 15' 4" is proposed. For the construction of proposed retaining walls/stairs, seeks area variance for a deficient shoreline setback. 75' is required, 0' is proposed. Section 213.05, Block 1, Lot 6.1, Zone RM1.3. Property Location: 4124 Lake Shore Drive. Subject to WCPB and APA review.

Bruce Mowery stated that this is the last phase of the project on this site. The original house was demolished last year because it was in such disrepair. The main house was engineered when the other structures were being constructed on the property. He provided pictures of the original house. He stated that they designed the house to work within the original footprint. They will not be exceeding beyond any component of what was there originally. They also lowered the house from 41' 4" to 39' 5.25". The new septic system was installed for the guest house and was designed to accommodate the proposed house with 4 bedrooms. He stated that the original house had 8-9 bedrooms.

Bill Pfau asked if the applicant has maintained the rights to build this house. Bruce Mowery replied yes. Pam Kenyon stated that the applicant has 2 years to rebuild exactly as it was. Bill Pfau stated that this falls outside of a regular re-build because he needs a variance. Pam Kenyon stated that he would have to build exactly what was there to not need any variances. Bill Pfau asked if the applicant maintained any rights. Pam Kenyon replied he has no rights because they are not building the exact same house. Bill Pfau stated that it could be an option for the applicant. Counsel replied that it is an option. Kam Hoopes understands his concern but feels that the applicant is staying within the footprint and that should be taken into their consideration. Bill Pfau stated that he is bringing up this "as a right" question is because this will be going to the APA and Bruce Mowery has yet to bring up building within the shoreline restrictions. Pam Kenyon read from the code with regard to rebuilding in kind. There was further discussion as to whether or not this falls into the category of building "as of right".

Kam Hoopes stated that he was pleased to see that the site was prepared well for construction and he appreciated all of the stormwater measures that were taken.

Bruce Mowery stated that he wanted to address the existing stone retaining wall which is on the shore. He stated that it is between the house and guest cottage. They want to revise the area and steps and bring it back from the shoreline and create a decent walk-able set of stairs.

Greg Smith asked if they could lower the height of the structure. Bruce Mowery replied no. They already lowered the pitch of the building quite a bit. Kam Hoopes stated that the height is less than it was previously. He also stated that he understands Greg Smith's concern because of fire fighting; however the highest part of the structure is closest to the lake but the majority of the house is very accessible.

Kam Hoopes asked what the exterior will look like. Bruce Mowery stated that it have a similar finish as the guest house and storage building with cedar siding and shingles and stone.

Kam Hoopes stated that there are 4 bays on the storage/garage building up by Route 9N and the house is proposing to have 2 bays. He is concerned that they may need to have a variance for more than 3 bays/single family dwelling. Pam Kenyon asked what the bays were used for. Bruce Mowery stated that the 2 bays on the garage attached to the main structure will house vehicles. The structure by the road has 4 lower bays for storage and 2 bays on the upper level. Pam Kenyon stated that would constitute 4 bays which would require a variance. Kam Hoopes stated that he doesn't have a problem with the amount of bays or the necessary variance that is required, but he does feel that it should be addressed. Counsel stated that the variance for the bays will have to be addressed separately from tonight because it was not noticed as part of the application and the public needs to be notified. Kam Hoopes stated that they could address next month. Pam Kenyon stated that the applicant could contact her to tell her what the uses are she could make a determination of whether or not they need a variance for the bays.

Don Engles, northern neighbor, stated that he feels that the proposed house is considerably larger in square footage than the original. He asked if the porch area was now being incorporated into the main house structure. Bruce Mowery replied yes. Don Engles asked if it would be considered part of the old structure. He asked if there will be any blasting required on the site. Bruce Mowery replied that he does not think so. Don Engles stated that he is concerned with the lack of setback from the lake. He stated that he doesn't want this to feel like Miami Beach or Fort Lauderdale.

Kathy Bozony, Lake George Waterkeeper, stated Bolton Zoning Code 200-56a states that a non-conforming structure may not be altered, enlarged or extended. The application states that the house to be built on existing footprints but it does not appear to be consistent with the pre-existing structure. Survey plans and house locations are available on the Town records of the Wide Water Subdivision SD05-23 approved by the PB on 11/17/05 for a variance application on the previous structure granted by this Board on 1/20/06. Since this proposal is an expansion of an existing structure the applicant should be required to construct the new structure with the required setbacks for the maximum protection of Lake George.

Kathy Bozony stated that the on-site waste water treatment system must be certified to treat the waste water and remodeled cottage. The applicant should verify the conditions places on the subdivision will be adhered to. A detailed tree survey including a list of trees to remain and those to be removed as part of the subdivision approval. The PB placed a condition on the subdivision that no tree removal is to be conducted. This condition is important for water quality production and must be certified.

Kathy Bozony stated that she did notice some patio area near the shoreline and she would suggest some sort of shoreline buffering.

With regard to degrading property values if they do not build these large homes close to the lake, Kathy Bozony stated doesn't mean anything in comparison with what is happening with the water quality. She feels that the value of homes is being compromised due to the water quality.

Melissa Vito agreed with Kathy Bozony regarding water quality. She stated that she cannot understand why there is so much discussion about thing on this property that will not affect the water quality and so little discussion on what will be very detrimental to the water quality. She stated that there is no possible way that the stormwater from this property can be treated in 15 feet. She stated that the close proximity of these large developed homes, huge grass lawns and the use of fertilizers and pesticides have been extremely detrimental to the lake. She stated that there is already a serious problem with algae blooms in Boon Bay and allowing this project would only exasperate the situation.

Tony DePace stated that the original house was over 100 years old and in great disrepair. He asked if she would have liked to see that house remain with the existing septic system that was failing. Melissa Vito agrees that proper septic systems need to be put in but they should also be requiring the proper setbacks. She stated that the setbacks are not only to protect the view but also the water quality. John Michaels stated that the applicant has a right to rebuild on the lake. Melissa Vito replied that they do have the right to re-build but there are laws that say that he needs to be 75' back from the lake. John Michaels stated that the applicant has 2 years to rebuild the house. Melissa Vito stated that he is not building the house exactly the way it was. John Michaels stated that he can. Melissa Vito asked if the applicant was going to rebuild it exactly the way it was. Kam Hoopes stated that even if the applicant was building it exactly the way it was she would still be there making these comments.

Kam Hoopes stated that he feels that the ZBA has made great strides in trying to improve development in the community. Responsible development that is environmentally conscious. Melissa Vito stated that she thinks that their improvements are inadequate to what they need. Greg Smith stated that the applicant will also be incorporating stormwater to the site which did not previously exist. Melissa Vito asked if there will be shoreline buffering. She is concerned that there isn't enough room to provide for adequate buffering. Greg Smith stated that they cannot tell people that they can't fertilize their lawns. He stated that they know they shouldn't but they cannot prevent that from occurring. Melissa Vito stated that they could require that they move it back to comply with the setback. She stated that the entire property is non-conforming since the original subdivision. She stated that it should have never been 3 lots.

John Michaels stated that they cannot take away the applicant's property rights. He has the right to rebuild within 2 years of demolition of the original house. He stated that the variances needed are due to the changes in the architectural design. He stated that they cannot take away that property right they can only make sure that they do a good job with what they do.

Bruce Mowery stated that regardless whether or not the house was rebuilt in its entirety in its exact way that it was originally or whether is was rebuilt within the footprint the stormwater is still the same. Melissa Vito stated that if they really cared about Lake George they would want

to make real improvements to the project. Jeff Anthony asked if they will be addressing stormwater. Bruce Mowery replied that they do whatever they can to improve stormwater for any project. He stated that they added stormwater for the guest cottage and they will do whatever they can with the main house as well. John Michaels asked if they could submit a stormwater plan for the project. Bruce Mowery replied yes.

Jeff Anthony asked Counsel if he felt that the height of the structure would be an issue with the APA. He stated that their restriction is 40', the proposed height is 39' 5" and the Town's limit is 35 feet. Counsel stated that he does not feel that they would take issue with the height, but rather the shoreline setback.

Pam Kenyon stated that there was no WC impact with the condition that the plans include stormwater and sediment control measures.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Ken Salamone (V09-44) 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 with the condition that the plans include stormwater and sediment control measures;

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#12 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; these are all dimensional considerations.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties; This is not a replacement in kind but rather in virtue. This house will be sitting in exactly the same place where a house sat for 130 years.
- 3) The request is not substantial; because it will be sitting where the previous substantial size home sat previously.
- 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 and sediment control measures taken. There will be improved septic and water system.
- 5) The alleged difficulty is not self-created, this property was purchased by the applicant and the house was unserviceable. The new house is being put within the previous building envelope.

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 the applicant complies with stormwater and sediment control regulations.  
**All in Favor. Motion Carried.**

The meeting was adjourned at 9:58pm.