

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday September 14, 2009

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, John Michaels , Jeff Anthony, David Ray, Zoning Administrator Pamela Kenyon and Counsel Michael Muller.

Absent: William Pfau

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

Greg Smith asked if there were any changes or corrections to the August 18, 2009 minutes:

Motion by Jeff Anthony to accept the July 14, 2009 minutes as written. **Seconded by** John Michaels. Kam Hoopes and Tony DePace abstained. **All Others in Favor. Motion Carried.**

1) V09-27 MAXIM MANAGEMENT, LLC. Represented by Buzz Lamb. To alter pre-existing non-conforming structure, specifically to construct an approximate 764 sq. ft. addition, seeks area variance for 1) deficient setbacks. a) Front: 30' is required, 10' is proposed, and b) Side: 8' minimum is required, 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 36.2, Zone GB5000. Property Location: 31 Sagamore Road. Subject to WCPB review.

Buzz Lamb stated that he retained this parcel when he sold Norowal Marina in 2005. He is seeking to add an addition to the cottage which would add 2 bedrooms, a bathroom and dining area. He provided drawings of what exists and what is being proposed. The addition would be added to the back side of the existing cottage. This cottage was built in the 30's and his family converted it to a rental cottage in the 50's. It is currently a 1 bedroom/1 bath cottage. The current tenant has been there for 4 years and his family has expanded.

Greg Smith stated that the area of the proposed addition is already cleared other than a few saplings. Buzz Lamb stated that there are no mature trees that will be removed and all of the construction will be internal or off the back of the structure.

Greg Smith asked if they plan to use the same siding and colors. Buzz Lamb replied that they will be using a vinyl siding except the side facing Sagamore Road. They will be retaining the logs from the back and northern sides to use as the siding for the front. The roof will also blend in with the existing roof. He stated that the addition will not be seen from Sagamore Road.

Kam Hoopes asked if any neighbors would be affected by the addition. Buzz Lamb replied that the cottage is surrounded by Norowal Marina property except on the south side which is

Sagamore Road. Greg Smith stated that it is also well screened between the cottage and the parking area for the marina.

Tony DePace asked if the house was winterized. Buzz Lamb replied no, it is a seasonal cottage and it will be built on sona-tubes as well. There will be no insulated basement or foundation.

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 Maxim Management, LLC (V09-27) 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 a setback issue.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is simple expansion of a cabin that has been there since the 1930's.
- 3) The request is substantial; compared to the building that it is adding onto, but it is not substantial in any way that this Board would find meaningful.
- 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 house is a pre-existing non-conforming structure. The cabin has outlived its usefulness as a small cabin.

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

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

2) V09-28 GRIMM, DOLORES. Represented by Attys. Smith & Simon, LLC. To alter pre-existing non-conforming structure, specifically to construct an approximate 133 sq. ft. deck with stairs, seeks area variance for 1) deficient setbacks. a) Front: 50' is required, 7' is proposed, and b) Side: 30' is required, 12' is proposed, c) Lot coverage: 15% allowed, 20% proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 185.20, Block 1, Lot 24, Zone RCL3. Property Location: 60 Millstone Drive. Subject to WCPB review. *Note: After the fact.*

Dan Smith stated that the applicant hired a local builder to put a deck on the house quite a few years ago. It has recently come to the attention of the Zoning Office that she had not received a permit and that a variance was needed.

Dan Smith provided some pictures of the deck. He stated that it is a basic 5' deck off the front of the building. He provided pictures of the current structure. He stated that it is a small deck with nice landscaping. Kam Hoopes stated that the deck looks like it has been in place for quite some time. Dan Smith agreed, but he is not sure how long. John Michaels stated that it would probably look worse without the deck. Kam Hoopes stated that he would consider this as minimum relief. Dan Smith stated that there had to have been something there previously because the entry into the home is a few feet from the ground.

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 Dolores Grimm (V09-28) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#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;

2) There will be no undesirable change in the neighborhood character or to nearby properties, all of the other properties in this neighborhood have similar decks of this size and character.

3) The request is not substantial; it is only a 5' wide deck, merely enough to sit on. Even though the variance sought is substantial, given the circumstance they could justify it.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the deck has been there for a long time and looking at the site and area, it does not show any sign of erosion or any other form of environmental damage. The deck is technically permeable which allows water to flow through and underneath is dirt.

5) The alleged difficulty is not self-created, the applicant put her confidence in a builder to build a deck that conforms with codes doesn't alleviate her from the responsibility of knowing the law. However, she did not act to purposely violate the law.

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

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

3) V09-29 ENGLERT, JOSEPH. Represented by James Lindgren. To alter pre-existing non-conforming structure, specifically to construct an approximate 385 sq. ft. deck with stairs, seeks area variance for 1) a deficient front yard setback. 75' is required, 7' is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.00, Block 2, Lot 69, Zone RM1.3. Property Location: 16 Bell Point Farm Road. Subject to WCPB review.

James Lindgren stated that the applicant would like to build a deck so that he can have view of Lake George. He is seeking to build the deck over a small building that already exists on the property so it would not change the footprint of the building. It would be a basic deck constructed with pressure treated lumber.

John Michaels stated that he is concerned that the deck will be very visible in the scenic corridor. This is a very different design for this area. James Lindgren stated that the applicants are from the Maryland area and it is probably where they got the design idea from.

Jeff Anthony stated that he drives by this property all of the time. He feels that it is a very nice house that has been tastefully renovated and a nice asset to the community. However, it is already very visible on Route 9N and he is concerned with adding a deck on the top of the structure. Kam Hoopes stated that he would not be opposed to considering a deck on a roof. However, this will be a deck on stilts on top of the roof. He recommended that the applicant considered a design that works with the architecture. Jeff Anthony and John Michaels agreed.

Pam Kenyon stated that WC had the same concerns as well as concerns over vegetation removal.

Greg Smith suggested that the applicant leave the public hearing open and return with a revised plan. James Lindgren agreed that they would leave the public hearing open.

RESOLUTION

Motion by Kam Hoopes and **seconded by** John Michaels to table application V09-29 pending revised elevation drawings. **All in Favor. Motion Carried.**

4) V09-33 SIMONSON, RICHARD & VIVIAN. Represented by McPhillips, Fitzgerald & Cullum, LLP. For the construction of a proposed single family dwelling, seek area variance for 1) a deficient front yard setback. 30' is required, 25' is proposed, and 2) In accordance with Section 125-10B(2)(d), 100' is required between infiltration devices and a wetland, 82.10' is proposed. Section 186.18, Block 1, Lot 31, Zones RCH5000 & LC45. Property Location: Shallow Beach Road. Subject to WCPB review.

Dennis Phillips stated that the applicants are seeking 2 variances; one relating to stormwater and the other relating to a right-of-way, which is on the applicants' property. He stated that this property historically has been captured on a post card, which reflected this area in the 50's and 60's. He wanted to show this photo because he felt that it provided a good over view of where the property is in relation to Huddle Bay and Lake George. He also wanted to note the historical roads on the property; Shallow Beach and the Gatehouse Association. This also shows the land clearing that had taken place on this property.

He provided a current aerial photo of the property denoting the project site and surrounding properties. He stated that the applicants' property is 95% wetlands and 5% upland. The upland portion is 2.97 acres total including the roads coming in. The area proposed for the construction of the single family dwelling is .54 acres. If they receive approval and build the structure they will only be consuming 1% of the open space of this area.

With regard to neighboring properties, Dennis Phillips stated that they have 2 sets of neighbors; the Shallow Beach and Gatehouse neighborhood. He stated that there are very few properties in the Gatehouse subdivision that would have any view of where they propose to build the house. As for the Shallow Beach neighborhood not one of those properties will have any visibility whatsoever of the proposed site. The average lot size for both neighborhoods is .35 acres. They are proposing .54 acres, so they are staying within the character of the neighborhood.

With regard to the aesthetics of the property, Dennis Phillips stated that there seems to be only one property that would see this house, which would be the Golhoffer property. He stated that they studied the property from various angles. He stated that the Golhoffer property mostly overlooks the common area of the Gatehouse common area, which is oriented towards Huddle Bay and a northern view of the lake. He feels that the Golhoffer property does not have an eastern view of the lake. He stated that the Golhoffer property probably sees the commercial property of Melody Manor but looking at the applicants' property they probably see a bunch of trees. He provided pictures that showed the screening that would be in front of the structure which would prevent the Golhoffers from seeing this structure.

Dennis Phillips stated that they are seeking 5' of relief from the setback of the right-of-way. He stated that the right-of-way allows for 10 current land owners from Shallow Beach and 1 land owner from the Gatehouse subdivision to access the lake. This right-of-way is a non-exclusive, which means that the individuals have the right to pass but have no other rights associated with the right-of-way. They cannot park on it, or do anything in the way of

developing the property. Historically the owners of the right-of-ways have done the maintenance and repair on this road. Dennis Phillips stated that some of the homeowners have also done some of the repair by bringing in gravel or scraping the road. He stated that the current owner has not done any maintenance and repair himself. Like most rights-of-way on Lake George, this is mostly seasonal.

With regard to the wetlands on the property, Dennis Phillips stated that there is a non-jurisdictional letter from the APA. This was based on 2 site visits by wetland specialist Mark Rooks. Dennis Phillips stated that there are 2 important statements that were made; 1) Mark Rooks reported back to the APA that this project would not have any impact or negative affect on the wetlands and 2) the APA staff had a file on this wetland, because it is a significant and extensive wetland in the Town of Bolton, there is a history of this wetland with the APA, and the agency staff also made the same finding that there would be no adverse impact on this wetland.

With regard to stormwater management, Dennis Phillips stated that Dennis Dickinson prepared that report and plan, which has been reviewed by Tom Nace, who has found it satisfactory. Even though on this site there will be less than 15,000 sq. ft of disturbance, they have bumped into a major stormwater plan due to the nature of the project and the close proximity of the wetlands. He stated that they will be using one site for the house structure and the other site will be used for the wastewater. Dennis Phillips stated that they are able to meet the requirements for major stormwater and they are the only property in the neighborhood that is able to do that.

With regard to alternative building sites, Dennis Phillips stated that they looked at 2 sites on the property. The current site and one behind the cemetery. He stated that they ruled out the site near the cemetery because the proposed site is flat and the cemetery site has an average slope of 24%. The house has been designed for a flat surface. They also chose the current site because the septic is greater than 100' from the wetland, which is more environmentally friendly. It would have been too difficult to place a structure, stormwater and the septic all on one site, which would have required both stormwater and setback variances as well. Dennis Phillips stated that the APA letter of non-jurisdiction only pertains to the current site and they do not have a letter regarding the site by the cemetery. This is a value in terms of saving time and money, which was an important determining factor. Dennis Phillips stated that this would also affect the aesthetics of both the cemetery and house properties. Overall the proposed site is economically superior to the cemetery site because all of the issues raised.

With regard to self created hardship, Dennis Phillips stated that the hardship is created by the fact that environmental and zoning law is evolving and development on this property didn't take place before the law evolved and changed and made things more difficult.

With regard to adverse impacts on the environment, Dennis Phillips stated that they have received a letter from Atty Warner who speaks about this property and what has been done on the property over the years which he claims has created drainage difficulties on the adjoining association property. Dennis Phillips stated that is hard to deal with because beginning in '93 the Gatehouse Association went to the APA and DEC and obtained a permit to dredge Huddle Bay and place the soil on their common area, which created a mound. Then in 2006 the permit was amended to allow for more dredging from the Trout Brook outlet and that soil was also

placed in that mound area. So with regard to the drainage on the common area of the Gate House property, by creating that mound, Dennis Phillips submits that they in effect created a dam and that dam has the effect of backing up water. He stated that they object to having that pinned on the applicants. However, if there is a drainage problem that the Gate House Association has and they can work with them to solve a drainage problem they are willing to do that.

John Michaels asked about the size of the house. Dennis Phillips stated that it will be 2,700 sq. ft. which will occupy less than 8% of the .54 acres. John Michaels asked if the current shed structure would be removed from the property. Dennis Phillips replied yes.

Jeff Anthony stated that he is concerned that the letter from the APA states that Mark Rooks had been on the site April 4, 2004 which is over 5 years ago. He stated that everyone knows that wetland delineation and investigation is only good for 5 year and sometimes only three. He asked if Mark Rooks has seen this site within the past 5 years, because Atty Werner's letter alleges that there has been filling of the wetlands within that time frame. Kam Hoopes stated that he kept Atty Werner's letter in mind when he viewed the site. He stated that he viewed as much of the property as he could and there is nothing that has been dumped there other than a leaf pile. He stated that he also carefully observed the access roads and right-of-way and found no evidence of filling or drainage issues.

Greg Smith asked where the applicants previously proposed to place the house. Melissa Lescault stated that they were before the ZBA a few years ago and they proposed to put the house in the same site. However, the stormwater has been greatly improved.

Counsel read the following letters:

- 1) Paul and Lynn Golhoffer who oppose the proposed application.
- 2) Gary A. Werner, Esq, representing the Gate House Association, who are opposed to the proposed application.

Pam Kenyon stated that there was no WC impact with the condition to confirm at the local level that the alternative locations have been evaluated to minimize impacts on the wetland, provide additional assurance of the septic system operation and stormwater measures.

Greg Smith asked if there were any comments from the public in attendance.

Mike Elliot, neighbor, stated that the current right-of-way is macadam and dirt. With the proposal the driveway would be torn up for 600-700' to put the sewer pipe in behind the cemetery he requests that they place a substantial bond requirement to protect the other homeowners that use this road. He stated that he has lived on his property since 1977 and the Gate House property has been flooded since then. He stated that it has nothing to do with the dirt piled up, it is a low point. However, he would like to be protected in the event that the project gets cancelled that the road is replaced in kind or with something better. Kam Hoopes asked if they can request the bond or is that something the PB would do. Counsel Muller replied that it could be either.

Gary Werner, Attorney representing the Gate House Association, stated that based on Dennis Phillips' representation of assisting with the stormwater and the willingness to leave all of the

trees to provide for adequate screening of the house they would withdraw their opposition to the project.

Paul Golhoffer, 56 Beckers Drive, provided photos of his property. The pictures showed damage from the excessive flooding in the past few years on both his and the Gate House property. He is concerned that any further development of the applicants' property would only cause further damage. He stated that the current flooding alone has put part of his grass underwater and has caused him to lose trees and vegetation. He stated that this water is not coming from the large dirt mound which was from the dredging. Kam Hoopes asked if he feels the water is coming from the applicants' property. Paul Golhoffer replied that prior to their purchase of the property there used to be culverts under the road, they have since been removed and filled in gravel on the road. Kam Hoopes stated that there were no signs of excavation on the road. Paul Golhoffer stated that he could show him where it is. Mike Elliot stated that there are pipes there but the old pipe was removed. When the pipes were under the road it eliminated 90% of the water. He stated one pipe was removed because they wanted to develop the land. He stated that the pipes worked but they need to have 2 pipes. He stated that they have purchased another pipe but they need to install it. However, he understands the owner's concern because it puts the water on his property.

Paul Golhoffer stated that he is also concerned with the sewer pipe being under the freeze line. He stated that they cannot dig more than 2' without being in water. He stated that the perc and deep pit test holes had to confirm that the water table is only a foot to 18" and he is not sure how they could do 6' pit tests. He is concerned about possible contamination of the wetlands from this disturbance.

Kathy Bozony, Lake George Waterkeeper, stated that this area is flooded because it is a wetland. The APA's recommendation for wetlands is to avoid alteration of the wetland drainage patterns and maintain a buffer. They state "Development activities adjacent to or in close proximity to wetlands should be buffered from the wetlands by a strip of natural undisturbed vegetation. Buffer strips of at least 35' should be maintained between any development and any wetlands." Kathy Bozony stated that the Department of Environmental Conservation also has recommendations for wetlands, "Wetlands meeting the minimum size requirements are afforded a 100' buffer." In the December 2006 ZBA minutes it was stated by the applicant that there were 2 potential building sites. In the January and February 2007 PB minutes the applicant was asked to provide more information and return, which they did not until now. Kathy Bozony stated that in 2000 the applicants had received a letter from the APA rescinding their non-jurisdictional determination and recommended looking at the alternative site. She stated that in December 2006 the ZBA asked the PB for a recommendation before they granted a variance for the stormwater. Although the stormwater seems to be less of a variance request, it is still the same issue.

John Michaels asked if the stormwater report looked at any of the drainage that is currently occurring in and around the property. Dennis Phillips stated that the stormwater is site specific. With regard to flooding issues in the area, Dennis Phillips stated that this has been a record year for rainfall. He stated that the applicants are willing to work on solving the drainage issues. Although they are willing to fix the problem for an adjoining property he does feel that the cost should be shared.

Dennis Phillips stated that this is a brand new project. The Golhoffers are raising issues from the 70's and 90's, times when the applicants didn't even own the property. He stated that these projects involved 2 and 3 lot subdivisions and development inside of the wetland. This project is outside of the wetlands. With regard to the rescinding the non-jurisdictional letter, Dennis Phillips stated that it was not part of the record because he did not feel it was necessary because the APA was beaten severely by the Supreme Court on this issue. That letter of non-jurisdiction was restored by Court Order.

With regard to requesting a bond, Dennis Phillips stated was a valid issue and he would encourage the applicants to address that issue and once the construction has begun that it will be finished in a timely manner.

Paul Golhoffer stated that he wanted to note that both in 70's and 90's there was refusal from this Board and WC due to the wetlands.

Gary Werner stated that he would like to see their engineered plans to fix the drainage issue before any approvals are granted.

Jim Sponsokowski, Shallow Beach Road, stated that he is opposed to the project. He feels that they have not proven any hardship. He stated that they do not have a non-jurisdictional letter for the site behind the cemetery because they didn't inquire about it. Just because the applicants don't want to live next to the cemetery doesn't create the hardship. Jim Sponsokowski stated that the applicants knew the circumstances and issues that went with this property when they bought it. He feels that approval of this project would be extremely detrimental to the wetlands and would be very irresponsible. He suggests that the applicants further investigate the alternative site. He stated that the setback from the right-of-way will create a worsened water situation on the road and he doesn't see anyone addressing it. Kam Hoopes stated that they do not use the terms of hardship anymore. Counsel Muller stated that although they do not use the language Mr. Sponsokowski raises an important point of investigating other alternatives.

Paul Golhoffer stated that the zoning for the property is LC45, which requires a frontage setback of 50'. Pam Kenyon stated that the property is located in 2 zones; RCH5000 and LC45. RCH5000 where the house is being proposed only requires a 30' setback, which was taken from the right-of-way.

Greg Smith suggested that they send this to the PB for their review and recommendation regarding the roadwork (bonding) and the drainage engineering. Kam Hoopes stated that he would rather approve it first and send it. Jeff Anthony disagreed and stated that he would prefer to hear from the PB first and a clearer definition of the APA's reaction to this project. Counsel stated that the Zoning Office has been advised that the APA is not involved and they will not be notified.

RESOLUTION

The Zoning Board of Appeals received an application from Richard and Vivian Simonson (V09-33) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#4 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; they are dimensional considerations.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this should be very well screened and should continue to improve in the future.
- 3) The request is not substantial; there are 2 variances on a very interesting piece of property and they have been reduced in a fairly significant way since it was first presented.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; because of all the stormwater measures being taken this particular project will be under a very large microscope.
- 5) The alleged difficulty is self-created, but the unique layout of 2 pieces of high ground property with 50 acres of wetlands surrounding it this solution seems to be one of the best ones available to the applicant and for the neighborhood.

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, it is resolved that the ZBA does hereby approve the variance request as presented with the condition that it be sent to the PB for their recommendations on the possibility of requiring a bond for the road and further review of the stormwater engineering for the drainage of the road and project site.

The above resolution did not receive a second. The following was presented:

Motion by Jeff Anthony, seconded by Tony DePace to table V09-33 and request a recommendation from the PB first on everything that Kam Hoopes suggested in the above motion; to see the engineering, negotiations between neighbors and to see the resolutions to the problems that have been brought up tonight prior to making their decision. All in Favor. Motion Carried.

5) V09-35 FOY, EDWARD. CATE'S CAFÉ. Seeks area variance for deficient parking. 68 seats exist with 3 employees. 90 seats and 3 employees are proposed. 24 spaces required. 8

spaces exist. Section 171.15, Block 3, Lot 91, Zone GB5000. Property Location 4950 Lake Shore Drive. Subject to WCPB review. See V08-57 for prior approvals. *After the fact.*

Buddy Foy stated that the last time he appeared for the variance he miscalculated the amount of seating. He did not take the outside seating into consideration. He stated that he has since submitted an application for more than he needs. The Board agreed that the addition to Cate's looks great and they did not feel that the outside seating was an issue. Greg Smith stated that most of the business on Main Street deal with this same issue and very few people have parking of their own.

Pam Kenyon stated that there was no WC impact with the condition that the applicant provide a revised site plan labeling each of the buildings to be used for the café, parking arrangements on site and other site plan details to clarify the project. Buddy Foy stated that he has already taken care of this issue.

RESOLUTION

The Zoning Board of Appeals received an application from Edward Foy (V09-35) 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; parking is something that this Town will be up against forever. This is a matter of a lack of spaces for cars.

2) There will be no undesirable change in the neighborhood character or to nearby properties,

3) The request is not substantial; the seating is there it is just a matter of whether or not they can utilize it.

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 self-created, but they are glad they did it.

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.**

6) DANIGER, DANIEL. In accordance with Section 200-72 of the zoning ordinance, seeks to appeal the Zoning Administrator's decision, whereby determining that the occasional dropping off of dogs at 75 Coolidge Hill Road that are then transported to North Creek to the "Mutt and Lab Recue" facility, is not classified as a kennel and therefore no violation exists. Section 213.13, Block 1, Lot 7, Zone RCM1.3.

Dan Daniger stated that both he and Norm Finkle, 70 Coolidge Hill Road, have reported to the Zoning Office, a consistent and regular occurrence of drop offs of dogs on Sundays and late evening throughout the months of April and May 2009. He stated that the owners had 3 dogs of their own and an occasional rescue dog on the premises. However these personal dogs were not registered in the Towns of Bolton, Johnsbury or Chester. He stated that he videotaped one of the dogs running at large. This dog is posted on their website, as not suitable for adoption with children or cats, both of which are on his property. He stated that his son was trying to return another loose dog when he was snapped at. He stated that he told the Zoning Office that many of the dogs offered by this entity online were located in documented pictures taken in the residence and on the premises of 75 Coolidge Hill Road.

Dan Daniger stated that according to the code a kennel is considered an establishment where dogs are housed, groomed, boarded, breed, trained or sold. He stated that he and Norm Finkle have witnessed a "sale" or distribution of this entity within the Town of Bolton. He stated that doctors or customers were picking up the dogs on numerous occasions. He and his neighbor have witnessed paperwork and adoption fees exchanged. Per the code, commercial activity is defined as any activity involving the sale, rental, distribution of goods, services or commodities, either retail or wholesale. He feels that this entity meets this standard and would require site plan review.

Dan Daniger stated that he is concerned because the entity has not kept the dogs from running at large or controlled barking/noise issues. He stated that this entity is being run on a .52 acre lot in a non-conforming neighborhood. He stated that the Code states that kennels should require 50' from the property line and 200' from any shoreline.

Kam Hoopes asked how long the building has been vacant. Dan Daniger stated that this property is rented out weekly or monthly but it has been vacated since mid-August. Kam Hoopes stated that it seems that the individuals running the entity have not resided there since June. Dan Daniger stated he was correct. Kam Hoopes asked why he was appealing the decision now since the problem has resolved itself. Dan Daniger stated that he is not sure that it has because the entity could return again. Kam Hoopes stated that he is not sure what he wants them to do since it is not an ongoing situation currently. John Michaels agreed that it would have to be occurring in order for them to make an inspection of the property to appeal the determination.

Dan Daniger stated that he understands that he needed to be before the Board back in April or May but it has taken some time to get the determination and then to compile all of his information.

The Board determined that since the issue is no longer occurring at property located at 75 Coolidge Hill Road they could not act further. They recommended that if these incidences should occur again that the applicant should bring this to their attention so that they may review it.

(Note: This item was heard last on the agenda)

7) V09-18 CLARKE, ROSAMOND. Represented by Jeffrey Tennent, To alter pre-existing non-conforming structure, specifically to construct a proposed deck and enclose a lower level, 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, 41' 5 1/2" 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. *Partially after the fact. Note: This item was approved by the ZBA on July 14, 2009. The APA reversed the portion pertaining to the deck without prejudice. The applicants seek discussion with respect to the APA's reversal.*

Jeff Tennent presented the ZBA with new plans. He stated that based on the APA's letter he made some revisions that are acceptable to the homeowners. The new proposal shows a reduction of the deck size. He stated that they also clarified a few issues from the WCPB and added access stairs into the side door for the storage under house.

Kam Hoopes stated that they have not been given the opportunity to review this new proposal which would constitute an incomplete application. Counsel Muller stated that the APA shot down all of the hard work that the ZBA did and they basically said don't be upset with them because they will revisit it if they would like. However, if the applicant is providing a new plan it will have to be renoticed. Counsel asked when the new plan came about. Jeff Tennent replied that he came up with it in the last few days. Counsel stated that Pam Kenyon has not had the opportunity to notice anyone that might be interested in what you seek for a variance.

Kam Hoopes stated that they can talk about the APA overturning their variance and work with it. Counsel stated that the APA charges the ZBA with nominally following the balancing test. That is unfair criticism of this Board since they are required to follow the balancing test and they did. However, the APA is still looking for words and things that can be substantiated. Counsel stated that whatever relief is being sought he will need to explain why it is the minimum relief necessary.

Counsel stated that the APA asked why a deck of this size was necessary. He stated that the applicant will need to explain why without adding any personal benefits. In this situation the topography and layout of the property does not allow for much outdoor use. There is also a safety concern with the front steps. These are all things that should be included in the explanation. Counsel stated that they also need to address whether or not it is a self-created difficulty and whether or not there are alternatives to this deck. Counsel stated that the APA also was concerned that the approval did not include that the approval was contingent upon

approval from the local BOH. This was understood by the ZBA when approving such a project but it was not put into writing.

Jeff Tennent stated that he did look at that but he had to clarify some issues with the WCPB as well. Greg Smith stated that he feels as though they should keep the deck the same size. The reason the deck is 2/3 of the way around the house is for safety in the front of the house and to be able to access the house from the outside. He stated that the topography of the land does not allow for enjoyment of the outside, therefore a deck is necessary. Jeff Tennent stated that they moved the deck to this location so that it would not interfere with the septic or well. The interior space is small and having a deck would allow for better enjoyment of the property.

Jeff Tennent stated that this deck is only large enough for a grill, table and few chairs. Jeff Anthony suggested that the applicant draw a template of the deck with some proposed furniture to show that the deck is not excessive in size. Kam Hoopes asked if they should deal with this tonight. Counsel stated that they have to. Jeff Tennent stated that it would go back to the APA and they would have 30 days to respond.

Jeff Tennent stated that he thought of an alternative if necessary. Counsel stated that they need to determine whether or not it is a feasible alternative.

Pam Kenyon stated that they also have to deal with the steps for the storage area. Jeff Tennent stated that WC wanted to see some steps there. Pam Kenyon stated that this would constitute a material change which will require notice to the neighbors. Kam Hoopes stated that the applicant can take all of what they have done tonight and incorporate it into the new plan next month.

Kathy Bozony, Lake George Waterkeeper, stated that she does not have any issues with the size of the deck, however, one of the issues that was not addressed from the letter is that "It is also a concern that although the ZBA did condition the variance upon the recommendation to the TB that their consideration of the septic variance should include stormwater agreement, no such condition was placed on the area variance." She stated that the APA also mentioned the imperviousness of the deck. She stated that she agrees that there are slats and holes, but generally there is no vegetation under the deck so there may not be enough vegetation to infiltrate the water.

Jeff Tennent stated that the deck does get quite a bit of sunlight under the deck, so there is quite a bit of vegetation. Counsel stated that it was never neglected by Bolton that this particular project doesn't require a major stormwater review. However, the whole process is not being skipped. The Zoning Administrator reviews the minor stormwater project. He stated that it is not that they did not do it, it is that it did not happen yet, it is going to happen. Jeff Tennent stated that he spoke with Tom Jarrett and they are waiting to get their septic permit and until they produce a stormwater facility that they will put in around the septic. Pam Kenyon stated that she also talked with Tom Jarrett, who indicated that although stormwater was not a condition he would provide a stormwater plan.

RESOLUTION

Motion by Kam Hoopes, seconded by Tony DePace to table application V09-18 pending further information. **All in Favor. Motion Carried.**

Pam Kenyon stated that the plans presented tonight provide for a material change. Therefore this would not be a continuation of the current variance application but would require a new variance application. Counsel Muller agreed and stated that any material change to the application would warrant a new application.

Kam Hoopes withdrew his motion for application V09-18.

8) V08-32 TEKMITCHOV, VASILIKI. Seeks to discuss conditions of approval set forth by the ZBA on July 14, 2008 and August 18, 2008 when approving the following variance. For a proposed 2 lot subdivision, seeks area variance for deficient 1) parking: 34 spaces are required for lot B, 5 spaces exist; 2) side yard setback: A total of 20' is required, 0' is proposed for lot B; 3) density: a) 12,000 sq. ft. is required for lots B, 5,329 sq. ft. is proposed; b) 20,000 sq. ft. is required for lot A, 2,515 sq. ft. is proposed; 4) lot coverage: 40% is allowed, a) 66% is proposed for lot A, and b) 69% is proposed for lot B; and 5) As a condition of approval set forth by the ZBA on March 13, 2000 when approving the re-establishment of a commercial space, ZBA approval is required for any change. Section 171.15, Block 3, Lot 74, Zone GB5000. Subject to WCPB review. Property Location: 4960 Lake Shore Drive. The conditions read as follows: 1) The parking spaces shown on the plans be cleared of any and all debris and be able to be parked in; 2) The iron beam protruding from the garage be removed, and 3) The number of required parking spaces is reduced from 10 to 7 and become usable.

The applicant was not present at the meeting. Counsel Muller indicated that the applicant is seeking discuss the previous variance because she does not want to comply with the conditions placed upon it. He stated that there is no format to discuss it. He stated that if she wants to make a change it requires another variance.

Greg Smith asked if they could make a recommendation to that effect without her being present. Counsel replied yes.

There was discussion of how much time should be allotted for the applicant to come into compliance. Pam Kenyon stated that she would give her 30 days.

Some Congers Point residents raised some continuing issues and concerns regarding the right-of-way. The ZBA recommended that they need to call the police in the cases of civil matters.

RESOLUTION

Motion by Kam Hoopes, seconded by Tony DePace to prohibit such changes to the conditions of approval, to require that the applicant complies with the conditions of approval for V08-32 by October 15, 2009 to prevent enforcement action and to require that a new variance application be submitted for any changes to the conditions of approval. **All in Favor. Motion Carried.**

9) V09-34 LAVENDER, JOHN. For the construction of a proposed garage, seeks area variance for a deficient rear yard setback. 20' is required, 3' is proposed. Section 171.10, Block 1, Lot 7, Zone RL3. Property Location: 19 Skyline Drive.

John Lavender stated that he has lived in Town for almost 28 years and he does not have a garage near his home. Due to the topography of the land there is only one location to build the garage and it is about 150' from his front door. The 2 car garage with a drive through will not be seen by any neighbors or have any detrimental effect on the neighborhood or nearby properties.

Greg Smith stated that they have a few letters. John Lavender stated that one letter is from Kristine and Michael Kaye who are opposed to the project. However their property is located on Potter Hill Road. Greg Smith stated that the border that they are talking about is now owned by the Land Conservancy. He stated that when he was up on the site, he forgot what little space is there to construct something. He stated that this site is the only viable place on the property. He stated that this will not be seen from the neighbors nor will it be seen from the lake. Greg Smith stated that he is not sure why Kristine Kaye was even notified. Kam Hoopes stated that her father used to own the Land Conservancy property, so maybe she is still on the mailing list for that.

Counsel read the following letters:

- 1) Gerald Tolchin, who requested that the application was table so that he could view the details of the project.
- 2) Kristine and Michael Kaye, who opposed the project.

With regard to the letter from Gerald Tolchin, John Lavender stated that he reached out to Gerry before even coming before the ZBA and invited him over to see the site. He stated that he wished that he had taken him up on the invitation because he would probably feel differently.

John Lavender stated that in the ice and snow he really needs a garage. He proposes to build a garage that will blend in with the rest of property and no one will see it.

Pam Kenyon stated that there was no WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from John Lavender (V09-34) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, the applicant is pretty much the neighborhood.
- 3) The request is substantial; there is a substantial element to the application because it very close to the lot line. However, that lot line is now out of private hands and into the control of the LG Land Conservancy which probably has no interest in developing it. Therefore there will be no neighbors.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it is a simple 2 car garage with a pass through.
- 5) The alleged difficulty is self-created, because when you purchase a mountain top you limit yourself to where you can put things, but that is not a concern for this Board.

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.**

10) V09-30 POWIS, RODNEY & GIANFAGNA, CHARLES. Represented by George Seabury. To alter pre-existing non-conforming structure, specifically to construct an approximate 265 sq. ft. screened porch/covered porch plus stairs, seek area variance for 1) deficient side yard setbacks. 20' is required, 16' is proposed on the north side and 6' is proposed on the south side, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 1, Lot 47, Zone RM1.3. Property Location: 11 Brook Street. Subject to WCPB review. To be heard in conjunction with item #11 V09-31.

11) V09-31 POWIS, RODNEY & GIANFAGNA, CHARLES. Represented by George Seabury. To alter pre-existing non-conforming structure, specifically to convert an approximate 66 sq. ft. screened porch into a dining area, seek area variance for 1) a deficient side yard setback. 20' is required, 8 ½' is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 1, Lot 47, Zone RM1.3. Property Location: 11 Brook Street. Subject to WCPB review. To be heard in conjunction with item #10 V09-30.

Charles Gianfagna stated that both his family and Rodney Powis' family purchased this house in July. They are excited about the neighborhood and community. He stated that the charm that is here is very important to them. With V09-31 they are seeking to have a dining room adjacent to the kitchen. Presently they have to walk through the living room to get to the dining room. The idea to extend into the porch seemed natural and they are not expanding the footprint of the house to do it. By doing this they do not see any direct impact on the community since it is extending into the porch, the house would be finished and siding would be the same.

Charles Gianfagna stated that the second project (V09-30) is to add some additional outdoor living space to the back of the house. This will not only provide a screened in area to possibly view the lake but it also architecturally makes it more pleasing. He stated that the house has some Victorian elements and this porch being set up as a gazebo adds a little more character to the neighborhood.

John Michaels stated that he feels that both additions would be a welcome addition to the house and the community. Greg Smith agreed. He stated that they also will not be interfering with any of the neighbors.

Pam Kenyon asked for some clarification of the dining room project. She stated that the applicants stated that they would not be changing the footprint of the house and asked if they still intended on raising the ceiling. Charles Gianfagna replied that they will be raising the ceiling to maintain the 8' height throughout the house which will require them to raise the roof approximately 1 ½ feet. It was agreed upon by Pam Kenyon and the Board, that if no dimensional changes are made, then a variance would not be required to convert a screened porch into living space.

Pam Kenyon stated that there was no WC impact.

Counsel read a letter from Andrea and Owen Maranville in support of the project.

RESOLUTION

The Zoning Board of Appeals received an application from Rodney Powis and Charles Gianfagna (V09-30 and 31) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#10 and 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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it will actually improve the character by carrying the Victorian theme through the project.
- 3) The request is not substantial; in consideration of the size of the footprint and size of the house
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, it was purchased in July by the applicants and the house is a non-conforming, pre-existing structure.

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

The meeting was adjourned at 9:45pm.