

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday – April 20, 2010**

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- Jason Saris, William Pfau, Kam Hoopes, John Michaels, David Ray, Jeff Anthony, Counsel Muller, Zoning Administrator Pamela Kenyon

Absent- Tony DePace

The meeting was called to order at 6:30pm.

Jason Saris asked if there were any changes or corrections to the March 23, 2010 minutes.

With regard to the Costas application, there was a question as to who was the builder of the house. Kam Hoopes stated that the minutes were correct; John Mason is the contractor for the Costas'.

Motion by Kam Hoopes to approve the March 23, 2010 minutes as corrected. **Seconded by** John Michaels. Jeff Anthony abstained. **All Others in Favor. Motion Carried.**

1) V10-11 LaFOUNTAIN, JOY. To alter nonconforming single family dwelling, specifically to construct a breezeway/attached garage, seeks area variance for 1) a deficient front yard setback. 75' is required, 55' is proposed; and 2) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.00, Block 1, Lot 66, Zone RL3. Property Location: 427 Valley Woods Road. Subject to WCPB.

Joy LaFountain stated that her house is a pre-existing non-conforming structure. The structure sits really close to the road like most old farmhouses. The proposal is to construct an attached garage and replace a roof to the 3 season porch which is also attached to the house under one single roof line.

Jason Saris asked if they looked at other feasible alternatives. Joy LaFountain replied yes but none were financially feasible.

Kam Hoopes stated that the applicant is making the addition to the structure away from the right-of-way. He stated that the house is 55' from the roadway but if you look at the addition, it is actually going to be approximately 80' from the road. He stated that he doesn't see any way to be able to build an attached garage and breezeway otherwise. He feels that this is minimum relief necessary.

There were no comments from the public in attendance. Pam Kenyon indicated that there was no correspondence and no Warren County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Joy LaFountain (V10-11) 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; the house is a pre-existing structure that does not meet setbacks and it is the minimum relief necessary.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this project is for an attached garage to an existing residential home.

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, it is a pre-existing non-conforming 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 Bill Pfau and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

2) V10-16 FOUR HORICON AVENUE, LLC. Represented by James Palazzo. To place five tables under existing awnings, seeks area variance for parking. 5 additional spaces required. 1 space exists as previously approved on 3/17/08 (V08-08). Section 171.15, Block 2, Lot 36, Zone GB5000. Property Location: 4973 Lake Shore Drive,

intersection of Horicon Avenue and Route 9N known as Palazzo's Pizza. Subject to WCPB review.

Jim Palazzo stated that he is seeking to put some tables under the awnings outside of his restaurant. He stated that he designed the building based upon inspiration from where he grew up and the shops/cafes in Saratoga. He stated that he has recently spent some time in Italy where every coffee shop and café has outdoor seating. He feels that it provides a nice atmosphere and which is what he would like to do for his place.

Kam Hoopes stated that his only problem is that the plans are not drawn to scale. He stated that when he went down to the site to see how much space there is for these tables and he feels that there really isn't a lot of room there. He is concerned that they will not be able to fit the 5 proposed tables. He could see single tables with only 2 chairs facing one another so that they do not interfere with the sidewalk and pedestrian traffic. Jim Palazzo stated that he is envisioning small round all-weather tables that would be right up against the windows. There was further discussion about the amount of tables that will fit under the awnings.

Jason Saris asked how much area would be required to accommodate the tables with additional room for comfort to move around. Jim Palazzo stated that there are really 2 sidewalks: one closest to the street and the one closer to the building which he replaced when he constructed the building. He stated that if he puts the small tables up to the windows with chairs facing one another it would occupy approximately 3 feet. Jason Saris stated that would leave 8.5' of sidewalk left which should be more than adequate.

John Michaels stated that the variance is for parking. He asked if someone in this situation can just put tables out of the sidewalk at will. Pam Kenyon stated that with additional tables outside it requires a new variance to accommodate those additional seats. John Michaels stated that he understood that, but asked if the applicant decided to remove the same amount of tables from the inside and put them outside would he need to be here for a variance. Pam Kenyon stated that they wouldn't be there for an additional parking variance but she would be checking with each Board member to see if they had any problem with tables being put outside. Counsel Muller stated that there is no rule that prohibits it or any provision in the ordinance that provides the method by which he could get permission.

John Michaels asked if there was a survey showing the property. Jim Palazzo stated that he did not have one with him. However, his property is shown to go to the center of the highway. Counsel Muller stated that he does not dispute that the property does go to the center of the highway. However, it is a military highway and the State presumes 60' down the center, which is 30' on each side. He stated that these tables would be placed in the State right-of-way without permission.

Jason Saris stated that this variance request is consistent with most businesses in the downtown area because most do not meet the parking requirement. John Michaels stated that he is just concerned with limiting the table size for the applicant when the variance is

for parking. Jason Saris agreed and stated that they need to look at whether or not there would be increased traffic flow or parking problems created by allowing the additional 4-5 tables.

Jason Saris asked if there was any correspondence.

Counsel Muller read a letter from Sandi Aldrich who is in opposition to the proposal.

Bill Pfau stated that he personally likes the look and feel of outdoor dining. He doesn't see a problem because the applicant is seeking to do something similar to what the Ryefield has done with having some tables on the sidewalk. Jeff Anthony agreed. He stated that the sidewalk is 11.5' wide and these tables will only be using approximately 3 feet. He stated that 8.5' is more than enough room to move past including handicap accessibility. Jeff Anthony stated that he agrees with the applicant that the look and feel of outdoor dining is enjoyable and provides a nice character to the Town. He stated that there are places in Saratoga that are smaller than this and have less room that provide outdoor dining.

Pam Kenyon asked if the benches will stay where they are now. Jim Palazzo replied that he plans to move the benches further up to Ike's place. Pam Kenyon asked how much further out the tables will extend out than the benches. Jim Palazzo stated that he plans to get the smaller tables which are probably 30" and they will only have the 2 chairs. He stated that the tables will not be as long as the benches but they will be as wide as the benches. Pam Kenyon stated that she does not feel that benches affected the flow of traffic so she does not see this as a problem.

Jeff Anthony asked if the applicant would be agreeable to the condition that the tables would only have 2 chairs and that they would be facing one another. Kam Hoopes asked if the applicant would also agree to decrease the number of tables from 5 to 4.

Jason Saris stated that the consideration of whether or not to allow outside dining is appropriate. However, it is not a problem or issue in the code. He stated that he would like to see some discussion with regard to the appropriateness of the parking variance. John Michaels stated that the applicant did not take away any parking by building this building. He stated that there is no parking in the most of the downtown area and this request is consistent with most other downtown businesses.

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

RESOLUTION

The Zoning Board of Appeals received an application from Four Horicon Avenue, LLC (V10-16) 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 an area variance for car parking.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, rather it would be a positive addition.
- 3) The request is not substantial; considering the conditions imposed.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the awnings will take care of that.
- 5) The alleged difficulty is not self-created, there is a limited situation with parking as do most businesses in the downtown area.

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 with the following condition(s): 1) that there will be single tables with two chairs facing one another and 2) that the number of tables is reduced from 5 to 4 tables. **All in Favor. Motion Carried.**

3) V10-12 RUECKER, HARRY. Represented by Tim Mulchy. **1)** To alter non-conforming structure, specifically to enlarge the patio previously approved on 12/15/09 (V09-63), seeks area variance for deficient setbacks. a) Front: 30' is required in the GB5000 zone. 7' is proposed on the north side (Dula Street Parking Lot) and 7.5' is proposed on the east side (Route 9N); b) Rear: 15' is required in the GB5000 zone. 12.67' is proposed; c) Lot coverage: 40% allowed in the GB5000 zone, 57% is proposed; and d) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). **2)** For the placement of a 500 gallon propane tank, seeks area variance for deficient setbacks. a) Front: 50' is required in the RM1.3 zone, 9'5' is proposed from private right-of-way on west side, b) Rear: 20' is required in the RM1.3 zone. 3.5' is

proposed. Section 171.19, Block 1, Lot 64, Zones GB5000 and RM1.3. Property Location: 4933 Lake Shore Drive. Subject to WCPB review. Patio is after the fact.

Tim Mulchy stated that he hopes that the Town of Bolton and Board members are pleased with how the building is turning out. He explained the changes to the original plan. He stated that originally their designers Eric & Eric had their patio abutted up against the building and he never gave it much thought to that placement. However, when he and the builder went ahead to create the patio they realized the water and snow run-off from the building was going to end up on top of the concrete. This caused them to move the patio out to provide drainage between the patio and building. He stated that they intend to provide landscaping as well as shown on the new plan. Tim Mulchy stated that they also provided a new stair case to replace the old rotten staircase. The original patio design was on several different levels and they decided to rip it all out and replace it at one level.

With regard to the propane tank, Tim Mulchy stated that he provided a letter from his propane company. He stated that he was not aware that this was a Town issue. The original tank was buried under the driveway and was leaking badly. They had to take it out and replace it. He stated that when they bought the building in the fall they had tried to get it removed, but there were problems with that and were delayed in getting it removed and in the meantime it froze in the ground. He stated that the new gas company came in and put in the 500 gallon tank which is what most of the businesses in Town use. He stated that he was made aware that Town only allows two 100 gallon tanks. He stated that he cannot do the smaller tanks because they will not be able to run the furnace and the cooking equipment at the same time.

John Michaels asked if the patio increased in size. Tim Mulchy replied yes, but mostly it has just been redesigned. He stated that he was not looking to add extra seats but it did increase slightly for handicap access and safety concerns. John Michaels asked if they will be planting the area in between the patio and building. Tim Mulchy replied yes. John Michaels asked if they plan to build a fence around the propane tank. Tim Mulchy stated that he has to get some clarification from Pam Kenyon but they would provide some sort of screening. Ideally they would like to fence it in but they do not want to pass the Town threshold and need a variance. They will probably have a combination of fencing and plantings.

Jason Saris asked why the applicant didn't talk to the Zoning Office when they realized that they might need to redesign their plan to aid with stormwater/snow run-off. Tim Mulchy replied that he did not feel that it was necessary because the new design made more sense aesthetically and for safety. Jason Saris stated that it surprises him that they would not go to the Zoning Office since they were aware of the front setback in the previous application. Tim Mulchy stated that most of their variances pertained to the building rather than the sidewalk. At that time the sidewalk was not his main concern with the original application. He stated that with this project they have run into many surprises and they needed to make a decision quickly to keep the project on track.

Bill Pfau asked how much closer this patio will be to the sidewalk in comparison to the original request. Tim Mulchy replied that he was not sure but thought it was approximately 3 feet. Pam Kenyon stated that she had it measured a 5' increase.

Jason Saris asked if there was any correspondence. Pam Kenyon stated that there was no correspondence and no Warren County impact.

John Michaels asked if the after the fact application fee was set in place. Counsel Muller replied no.

Bill Pfau stated that although the after the fact application is irritating, he does not really see this as an issue since they made improvements to the project. Kam Hoopes agreed and that he likes the way the project is moving along but he is offended by the after the fact aspect of this application. Tim Mulchy stated that at the time when the original design was done by the architects he didn't pay much attention to the patio and its location and most of the variances had to do with the building itself. Kam Hoopes stated that it does not excuse the fact that they did not go to the Zoning Office with these changes. He stated that they are a group of professionals who should have known that this type of change would be cause for review. Tim Mulchy stated that was not their intention.

John Michaels stated that the overall project itself is well done. However, he wished that the Town had the after the fact application fee in effect because this would be the perfect place to apply it. Jason Saris stated with something like this a concrete saw would make it compliant. He stated that he was not present when this project was originally proposed, but if it were presented in this form he feels that he would have approved it. Kam Hoopes agreed. Jason Saris stated that there is not some huge benefit gained, other than the aesthetic appearance and something more practical for handling stormwater. Both of which are not something they would want to deny someone. The Board agreed.

RESOLUTION

The Zoning Board of Appeals received an application from Harry Ruecker (V10-12) 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 the minimum relief necessary to be able to achieve this because it is pre-existing at this point.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, the propane tank doesn't seem to be much of a problem and the extension of the new patio closer to 9N won't be an undesirable change. There are no objections from the neighbors.
- 3) The request is not substantial; It might be considered 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 self-created, since it was after the fact.

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 Bill 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.

4) V10-13 PETTINATO, ROBERT. Represented by D.L. Dickinson Associates. To replace existing retaining wall to accommodate a new septic system, seeks area variance for deficient setbacks. 1) Front: 50' is required, 5' is proposed; and 2) Side: 15' is required, 4' is proposed on both sides. Section 156.20, Block 1, Lot 17, Zone RCM1.3. Property Location: 108 Pioneer Village Road.

Dennis Dickinson stated that the applicant owns lot 7 in Pioneer Village. He stated that it has an existing home and he wishes to reconstruct his retaining wall which is collapsing. He stated that when the applicant redoes the wall, he wants to move it so that it is parallel with the house to provide a better parking area. He also plans to make the wall a little longer and taller, with the tallest being 6' with the returns going back down to ground level.

With regard to the septic system, Dennis Dickinson stated that the reputed location of the existing system is under deck and not in good condition. He stated that the applicant is not sure where the tank is and therefore has not had it pumped out. The applicant decided to replace the septic system while putting in the new retaining wall. They are proposing a 1,250 gallon tank with a pump station. He explained that they will be using Purolator systems, which are moss filled plastic boxes that provide tertiary treatment and will then run into a tile field as required.

Dennis Dickinson stated that the applicant is currently sharing a well with the neighbor which is close to his failing sewage system and his neighbor's reputed septic system. He stated that both systems are less than 50' from the current well they share. He stated that

the applicant is moving his system over 100' away from shared well and also plans to drill his own well. The proposed location of the well would be over 100' from the neighbors septic and 138' from his own septic.

Dennis Dickinson stated that they have submitted their plan to Tom Nace who has indicated that he wanted to have some added protection of an ultraviolet treatment as well. Jason Saris stated that it was not necessary to discuss the septic variance because that issue would be addressed at the Town Board level. Dennis Dickinson stated that only reason that he raised this issue was because they were discussing the separation distance to the right-of-ways and property lines.

With regard to visual impact, Bill Pfau stated that the applicant would be the most affected by the view of this wall. Kam Hoopes agreed. He stated that the plan is very ambitious. However, the retaining wall is a definite improvement. Bill Pfau asked if the retaining wall was necessary for the septic system. Dennis Dickinson replied that it was not their original intent to replace the septic but they decide to do so while they were reconstructing the wall. John Michaels stated that he feels that it is a great improvement.

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

RESOLUTION

The Zoning Board of Appeals received an application from Robert Pettinato (V10-13) 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; this is Pioneer Village.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, again this is Pioneer Village and all of the neighboring properties deal with this same problem.

3) The request is not substantial; there is a substantial quality to this but this Pioneer Village where inches matter and the need outweighs the substantiality of the situation.

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

5) The alleged difficulty is not self-created, it is an old rotten wall that needs to be replaced and this replacement is an improvement.

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.**

5) V10-14 DANIELS, JOHN & CONSTANCE. Represented by Hutchins Engineering and Atty. Michael O'Connor. To alter nonconforming single family dwelling, specifically to construct an addition, covered patio, and open patio, seek area variance for 1) Deficient shoreline setback. 75' is required, 51.63' is proposed; 2) Height. 35' is allowed, 36.9' is proposed; and 3) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 213.05, Block 1, Lot 9, Zone RM1.3. Property Location: 4110 Lake Shore Drive. Subject to WCPB and APA review.

Michael O'Connor introduced the applicants, Matt Cifone, the builder and Luke Dobie of Hutchins Engineering. He provided an overview of the project. He stated that although the project proposes many significant changes, the variance requests are minimal. This is a 3.39 acre parcel in an RM1.3 acre zone with 230' of lake frontage. The main structure was built in the 1930's and while there have been some repairs on the original structure; it is in need of some care and the applicants have decided to do a major renovation. Most of the changes will be made to the exterior of the structure. He stated that the proposed changes will not change the interior much or significantly increase the living space; they will be adding 620 sq. ft for the family room.

Mike O'Connor stated that each of the areas that they are seeking variances, with exception of the roof, is a replacement of something that already exists. On the south side of the property there is an existing porch which has 2 levels to it which will be taken off. He stated that the family room is actually going to be 10' further back from the original porch area which will increase their separation distance to the lake.

Mike O'Connor provided more details to the plan. He stated that they are adding 469 sq. ft of permeable area back to the property. He stated that they are also removing 2,000 sq. ft of pavement in the overflow parking area, but they did not calculate this into their stormwater. He stated that they plan to take out the black top area for parking and replace it with a permeable material.

With regard to the roof, Mike O'Connor stated that they are proposing 36'9" which is within the APA code as are all the setbacks. He stated that they are seeking a 1'9" variance for 18' of roof. This will allow them to maintain the same pitch on this roof as on the other roofs. He stated that they explored other alternatives but felt that they would be less aesthetically pleasing. He stated that they do not feel that this will be noticeable and the roof on the pre-existing main structure is actually higher than this.

Mike O'Connor stated that the other variance being sought is for the north end of the house. They are making a significant improvement by removing the patio and walkways. They currently extend into the front yard which is significantly different than what they are proposing. He stated that they will be removing 1,105' of patio and walkways on this end of the property. This is the location of the covered porch.

Jason Saris asked if there was any correspondence. Counsel Muller read the following letters:

- 1) Lake George Waterkeeper with comments and suggestions for shoreline buffering, installation of pervious surface for parking area, increasing the size of the rain garden and replacement of the existing septic tank.
- 2) Robert Millham in opposition.

With regard to Robert Millham's letter, Mike O'Connor stated that he feels that Mr. Millham might be confused about what property this is taking place on. The property that he refers to in his letter mentions that it will directly affect his view. Mike O'Connor stated that the applicants are not even direct neighbors with Mr. Millham. He stated that when standing on the south end of the property you can barely see Mr. Millham's structure. He stated that the shoreline does not come to a point so he does not feel that they will be blocking his view of the lake in any manner. The patio will be added to the front of the house where something already exists. He stated that they will not be changing the footprint in this area so again, they do not feel that they will be blocking anyone's view.

With regard to Chris Navitsky's letter, Mike O'Connor stated that he has spoken with Chris a couple of times. He stated that they did some research with regard to some of the questions and concerns that he had and feel that the research answered some of the issues. The Waterkeeper indicated that they felt that shoreline buffering would be necessary due to substantial expansion of impervious cover. Mike O'Connor stated that the addition is 469' total but the Waterkeeper has not taken into consideration the removal of the paved parking area surface. In addition, he is not sure if they would be able to do a typical shoreline buffer due to the soils on the site. He stated that there is very little soil cover on the front of the lot. There are 6 huge trees to the south end of this property and they would be concerned with adding anything significant that might affect the root structure of these trees. To the north end, there is a small retaining wall. He stated that the applicants are willing to do whatever they can do and their plans do indicate that they would like to provide plantings along the face of the house. He stated that the plan only shows minimal plantings and they anticipate having additional plantings. Mike

O'Connor stated that they have not agreed to add a shoreline buffering. However, they do plan to provide landscaping that they have just discussed, they will leave the trees already in existence and they also plan to divert some water before it even gets down to the lake.

With regard to the Waterkeeper's comments about the parking area being replaced with similar impervious material, Mike O'Connor stated that they feel that there is a difference between piece stone and hard blacktop. He stated that plan to use a pervious material and they have many options available.

With regard to the comment that the rain gardens are undersized, Mike O'Connor replied that if they were to do something with a less pervious surface the rain garden is properly sized. He stated that the southern rain garden was not necessary based on the calculations of stormwater and it was thrown in as a plus because they had the room but it was not required.

With regard to an undersized septic tank, Mike O'Connor stated that they looked at the 1998 septic permit. He stated that there were two 1,000 gallon tanks put there in series, which is compliant.

Mike O'Connor recapped the application requests. He stated that he does not feel that the requests are substantial. Given the existing location of the house, they really didn't have any feasible alternatives. They do not feel that they will have any negative impact on neighboring properties or the environment. They feel that they are making improvements to the environment and character of the property.

Jeff Anthony stated that he likes the proposal. He finds the architectural solutions very nice and feels that it will be more aesthetically pleasing. He also likes that the applicants are moving the deck back further from the lake. He stated if they needed to address Chris Navitsky's concerns, the septic tank issue is gone. With regard to stormwater and buffering, he suggested that they could please the Waterkeeper by taking out the paving surface altogether and just use something porous. He stated that they can achieve that in many ways and that there are many materials that would protect the area for overflow parking, but would be totally pervious. He feels that if they could do something like that, Chris Navitsky's other concerns should really diminish.

John Michaels agreed with Jeff Anthony. He likes that the deck has been moved back. He feels that these changes will definitely improve the aesthetics of the property. However, he stated that he does agree that he would like to see some plantings to the north of the trees before the retaining wall if possible.

Mike O'Connor stated that he would not have a problem with replacing the parking surface with something pervious. However, he wants to be sure that his clients have some options are not locked into one particular material. The applicants want to be sure that all aspects are architecturally fit with what they are doing with the rest of the house.

Jason Saris stated that most of what is being proposed is pleasing to him. He stated that the roof height, as viewed from the lake, will not be that noticeable because the road and property rise up behind it. He feels that it is more important to maintain the pitch for the roof. Jason Saris stated that the house is pre-existing and the things that are being requested are not inconsistent with single family dwellings being used in the manner that this will be used. These are quite reasonable requests. These are things that most people have and they would not require a variance if the house was built back a little further from the lake. With regard to plantings, Jason Saris stated that this is a large project and he is sure that these planting plans will develop as time goes on. He understands the Board's concerns but feels that the applicant is willing to do whatever can be done to handle the water as it heads to the lake. Mike O'Connor stated that the applicants would be agreeable to the condition that a permeable surface would be used for the parking area.

Bill Pfau stated that from a variance aspect they are taking a large house and increasing the roof line on both ends of the house along the shoreline. Although it is offset by the removal of the deck on the front of the house, he does not like that they are increasing the height.

Kam Hoopes stated that the height variance has been set for firefighting purposes. This being on the lakeside of the house, if they were to have to fight a fire they house would probably be destroyed at that point anyway. He feels that the architectural improvements will make the building more aesthetically pleasing. With regard to plantings along the shoreline, Kam Hoopes stated that he feels that it is too steep and has minimal soil to maintain any buffering. He feels that the applicant could use other means to divert the water. He stated that these proposed changes are not a further encroachment on the lake and he likes that they have removed the deck.

There were no comments from the public in attendance. There was no Warren County impact.

RESOLUTION

The Zoning Board of Appeals received an application from John and Constance Daniels (V10-14) 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, this will be an improvement. Removal of the deck that is so much closer to the lake will actually improve the area.

3) The request is not substantial; this is only an increase of 600 sq. ft of living space and less than that of permeable space. This is 3.5 acres of land with 230' of lakefront.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and conditions have been imposed to mitigate any potential impact.

5) The alleged difficulty is not self-created, it has been a structure in existence for some time.

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 with the following condition(s): 1) that a permeable surface is used for the overflow parking area and 2) that some plantings or vegetation is added to the north of existing trees along the shoreline where possible and without disturbing the existing trees. **All in Favor. Motion Carried.**

6) V10-15 O'REILLY, JAMES; BEGGS, GREGORY; LOKOS, RON & BROOKHILL DEVELOPMENT (Lagoon Manor). Represented by Frank McDonald. In accordance with Section 200-93A (other regulation applicable to Planned Unit Developments), seek area variance to expand 4 decks on building 700. Section: 157.05, Block 1, Lots 88.35, 88.36, 88.37 & 88.38. Zone: PUD. Property Location: 36, 38, 40 and 42 Lagoon Manor Drive. Subject to ZBA, PB, TB, WCPB & APA review. Subject to SEQR.

Frank McDonald stated that the applicants are seeking a variance to the PUD for the 700 building. He stated that the original decks were designed with an irregularly shaped deck with a post in the middle of it so that they could not put a table and chairs on it. Frank McDonald stated that he was here before the Board with the same request for the owners of the 600 building. He stated that those decks turned out nicely and are much more aesthetically pleasing and more in line with the overall development.

Frank McDonald stated that he has already gone to the APA and received an amendment to the permit. He provided a sketch of the construction of the deck.

Kam Hoopes stated that this is strictly a PUD amendment and he does not see any issue with the change that would affect the PUD. He stated that this proposal is consistent with Lagoon Manor doing business as Lagoon Manor. He stated that no neighbors will be affected by it. It is consistent with the architecture. It is an improvement to the current deck. Bill Pfau asked if these were the same size decks that were put on building 600. Frank McDonald replied yes.

There were no comments from the public in attendance. Pam Kenyon stated that there was no correspondence and no Warren County impact.

RESOLUTION

Motion by Kam Hoopes to make a favorable recommendation to the TB for the application of James O'Reilly, Gregory Beggs, Ron Lokos and Brookhill Development V10-15 for a PUD amendment that would allow for an area variance as described above. **Seconded by** John Michaels. **All in Favor. Motion Carried.**

7) FUND FOR LAKE GEORGE & LAKE GEORGE WATERKEEPER.

Represented by Thomas A. Ulasewicz, Esq. To discuss Atty. Thomas Ulasewicz's letter dated March 25, 2010 RE: Oberer Subdivision (Application No. SD06-05)/ZBA – Petition for Appeal. Section 171.00, Block 1, Lot 6, Zone LC25. Property Location: Edgecomb Pond Road.

This item was tabled at the applicant's request.

8) ALEXANDER GABRIELS III. In accordance with Section 200-72 of the zoning ordinance, seek to appeal the Zoning Administrator's interpretation of Section 150-6F(1) whereby determining that upon closure of a public hearing held on December 17, 2009, the Town of Bolton Planning Board failed to act by a resolution with a majority vote for approval or disapproval within a code specified time period (45 days) on application SD06-05, Oberer, Ernest (application for subdivision of tax map parcel 171.00-1-6); Upon the expiration of 45 days subsequent to December 17, 2009, the Zoning Administrator certified in writing that the Planning Board's failure to "take action" constituting approval by default, was acknowledged. Section 171.00, Block 1, Lot 6, Zone LC25. Property Location: Edgecomb Pond Road.

Kam Hoopes responded to Zandy Gabriels' questions in his letter. He stated that when the PB came up with a hung jury, it becomes a case of no board action which is substantiated by all of the minutes and correspondence including the letter from Andrew Cuomo letter. With regard to the question of whether default approval actually exists in a formal way, Kam Hoopes stated that in 267-A of Town Law it states that upon the expiration of 62 days of the PB having taken requisite an applicant may demand from the Town Clerk a certificate setting forth the date of submission of the preliminary or final

plat and the fact that the PB failed to act within the prescribed period of time, default approval of preliminary plat enables the applicant to apply for final plat approval, default approval of a final plat enables and applicant to file the plat with the certificate of default approval in the County Clerk's Office. Counsel Muller agreed that is the excerpt from the NYS Town law that exists today. However, Bolton has tightened the amount of time to 45 days. He stated that the applicant is properly here before the ZBA to challenge the decision.

Zandy Gabriels stated that he is only present challenging a procedural matter. He stated that he takes no issue with the application itself, and is just seeking to see if this law was properly applied in this case. He is not sure if this provision should be applied in the case of stalemates. He does not feel that the Town law was designed or intended to act as a stalemate breaker, but rather it was established to be sure that the Town was diligent in processing any application in a timely manner.

Zandy Gabriels stated that historically, this has only been used once before in Town. He stated that 20-30 years ago there was a case that arose where the application never made its way to the ZBA or PB and so a default approval was allowed.

Zandy Gabriels stated that someone tonight indicated that if it is not in the code they don't have to worry about it. He stated that they have not worried about stalemates or hung juries ever before because they have always been able to reach a decision for or against an application. He stated that this is the first time they have had a hung jury and he feels that it is extremely important that they get it right and important for the community to understand what will happen the next time that this occurs.

Zandy Gabriels stated that the Town has tried to do its best to not go this route. After a stalemate decision back in December 2008, the PB tried to look into having alternates so that this applicant and future applicants would always have a full Board to hear their application in an attempt to prevent future stalemates. He stated that he is not sure if the addition of an alternate would have prevented a stalemate or not, but it was an option taken. The applicant agreed with delaying the decision to find a proper way to resolve the issue because the applicant and the Town did not want to rely upon 150-8F1 a year ago. They wanted to find a better way that everyone could understand.

Zandy Gabriels stated that the Town was not able to find any applicants that were interested in serving on the ZBA or PB. Therefore that avenue was no longer pursued and in December 2009 the PB voted again and came up with no decision.

Zandy Gabriels stated that in the provision 150-F it says that the Town has to take an action. He is suggesting that the PB has not taken final action. The provision of the code says that the PB can approve, approve with conditions or deny. The next sentence says that they have to have an act. He suggests that the PB has acted, however, it resulted in a stalemate and therefore have failed to come to a final act. He feels that the absence of that word, invalidates the application, in which the Zoning Administrator issued the appeal. He stated that lawmakers could have put that word in the code to make it very

clear; that the action of a stalemate was in fact a final action, but they did not and he feels that that they did not intend to use this provision as a mechanism for a hung jury. Zandy Gabriels stated that was the determination that he was seeking from the ZBA tonight.

Kam Hoopes stated that he feels that 2 votes took place, with one vote having both an approval and deny resolution, which all turned out with no Board action. He stated that they have 45 days to give an applicant a straight answer. He stated that this is an extremely rare event. Zandy Gabriels agreed that it is unique and in doing research on this there is not much case law on this question. Counsel Muller agreed.

John Michaels stated that he is not sure how other municipalities would apply this provision. He feels that there probably is not a lot of case law on this not because it has not come up before, but rather because that it has not been litigated. He stated that he feels that the legislative intent of that provision is to keep applications going in a timely manner. He is not sure that it would be used in terms of answering the final outcome of a stalemate.

Jason Saris stated that typically this could still be before the PB in the hopes that there is some movement or compromise by the applicant or someone on the Board to get a vote with an outcome. Kam Hoopes stated that it is the intent of the law to provide timely decisions and they cannot keep the clock ticking to get a better result next time.

Counsel Muller stated that in the interest in trying to get a vote on the merits of the application, they did try to keep the time ticking. After the first no Board action, with the cooperation of the applicant, they signed a waiver and stopped the clock from running from the close of the public hearing. He stated that the Town then sought to have alternates placed on the Board which was not successful.

Jason Saris stated that this provision is from Town Law. Counsel Muller replied yes it is, but it has been incorporated into the Zoning Code as part of the subdivision regulations.

Bill Pfau asked why this would not be considered a denial. Counsel Muller explained that no action and denial are 2 different things. He stated that it takes 4 votes either way and when they get those 4 votes it is considered action. If they can only get 3 votes either way it is no action. Bill Pfau stated that he would consider it a non-approval. Counsel Muller stated that it did not get approved, but no resolution carried the weight in terms of denial. There was no denial or approval. When these types of situations arise they go to NYS statutes and law to resolve the matter. In this case went to the Attorney General. In his opinion, that they still have to work with the 7 members and have to work with the majority which is 4. If they cannot get the 4 then they have no action. Once they have accepted that, no action is a decision a clock starts to tick and they have to act or do something. He stated that he feels that they had those frank discussions at the PB level. He even encouraged them to try a denial, but it did not work.

Counsel Muller explained more of the history of how this decision came about. He stated that one of the other awkward things about this application is that he and Pam Kenyon allowed this subdivision application to proceed purely on the terms of how to divide the land without the stormwater because it would have been costly to plan and possibly wasted if the applicant were to get a denial. He stated that at the applicant's request and the PB acceptance they agreed to split the application and have just an approval on the subdivision only. Now with the stalemate and 45 days were expired, the applicant would be allowed a certificate which was a default approval of the subdivision. However, it is still subject to stormwater.

Counsel Muller stated that the applicant has 3 lots on file at the Warren County Clerk's Office. He stated that it is yet to be determined if they will be able to sell any of those lots because they will need to do their stormwater. He stated that if and when this comes before the PB for stormwater he will encourage the Board to make a decision based on the merits and to not apply needless conditions to the stormwater to make up for the default approval of the subdivision.

Counsel Muller stated that Zandy Gabriels has properly come before this Board to challenge the procedure of this matter and it is appropriate to have a decision. He stated the Waterkeeper is also trying several different directions and is trying to challenge Pam Kenyon saying that she didn't actually make an interpretation. He stated that he has sat down with the Waterkeeper and their Counsel and urged them to get over the Oberer application and ask these same important questions in a generic fashion. He stated that he thought they had an agreement that would achieve that, but they still came back with the same questions for the Oberer application. He stated that they have not been able to find common ground and that would be the reason for item 7 on the agenda which will not be heard tonight. However, it will come back to them again in a different form of a challenge.

Jason Saris asked if the task at hand was to determine whether or not the Town Law was properly applied in the manner in which it was used. Counsel Muller replied that the applicant is challenging the Zoning Administrator action in applying this section and whether or not it was the correct interpretation of the provision. Counsel Muller read the Section 150-8F.

John Michaels stated that if this default subdivision was not granted the applicant could file an Article 78 and it would have to be decided in a court of law. Counsel Muller agreed.

Counsel Muller stated that if the Zoning Administrator was unsure of what to do she could also consult the New York Planning Federation guidelines for Planning and Zoning Board members and Zoning Administrators. In it states that a Board cannot officially convene or meet unless there is a quorum present, and the same number, or majority of the whole is needed in order to take any action. He stated that it also states that if a majority is not achieved, it does not result in disapproval, it is simply no action.

Zandy Gabriels stated that this was brought to them because this was due to 2 recusals for valid reasons.

Kam Hoopes explained how Finch Pryun approaches this type of situation. He stated that there are 5 Trustees, who are 50% of the voting stock. They then go into the shareholders meeting where the proxies are read and they elect the Board of Directors for the following year. There were 5 Trustees and one Trustee was not able to vote due to illness. He wanted to pass his vote onto another Trustee but the Chairman did not allow such action. This left the company rudderless with serious business to attend to. One of the Trustees realized the gravity of the situation and changed his vote so that they had a clear path going into the shareholders meeting. Kam Hoopes feels that the PB squandered that opportunity twice. They did not see the seriousness of this and no one wanted to give up their vote. Zandy Gabriels disagreed and defended the PB members' votes. He stated that it was a very serious question and each of the 5 members had very personal reasons for taking their own vote and were unable to persuade the other members.

Jeff Anthony stated that he follows the New York Planning Federation guidelines and has done so since he was in school in 1966.

Rolf Ronning agreed with Counsel Muller, Jeff Anthony and Kam Hoopes and feels that the Town has done all that they could do. However, he feels that they should address the issue in the event that this should happen again. He suggested that the Town appoint 2 alternates in the event. Jason Saris stated that having sat on the TB, the law was changed to allow for alternates and it was advertised, but there were no applicants to try to appoint.

Counsel Muller stated that they may want to hear the applicant's procedural position on the matter.

Mike Hill, on behalf of Ernest Oberer, stated that the question that Zandy Gabriels is asking is whether or not the work of the PB constitutes action. He stated that they provided a letter to the ZBA which lays out the issue. He stated that Mr. Gabriels is questioning whether or not the work that the PB did constitutes action on the application. He stated that it is their position that no action and that the applicant is subject to subdivision approval by means of a certificate issued by the Zoning Administrator and Town Clerk. He stated that their letter includes case law by which this was decision was based on. He stated that the NYS law is very clear, he fully endorses the text read by Counsel Muller from the Planning Federation which is consistent with the letter they submitted and the case law on this issue. Mike Hill stated that he is requesting that they deny Mr. Gabriels appeal.

Jason Saris stated that the PB is an extension of the Town. He stated that if the Town cannot make up its mind, he feels that the property owner deserves the benefit of the outcome. He stated that in this situation they followed the law. He is not comfortable with how they get there and feels that perhaps there is a better way, but he does not feel

that is up to them to do that. He does feel that there should be something in place to protect the property owner. John Michaels stated that he feels that this would be a wake-up call to the PB so that this type of situation does not occur in the future. David Ray asked if the PB was aware of the consequences in this situation. Counsel Muller replied yes. David Ray stated that he agrees with Jason Saris that the applicant deserves an answer one way or another. If the PB was aware of the fact that this was going to be a decision anyway, then so be it. Jason Saris stated that they had the opportunity to come to a final conclusion and receive a determination. Jeff Anthony stated that the advice that Counsel Muller gave to the PB based on the Planning Federation and Town Law that pre-dates all of them they could run into some serious repercussions. He stated that going against the Planning Federation would negatively recognize the Town of Bolton of going against 50 years of planning. Jeff Anthony stated that he feels that the Town law is correct and the Planning Federation guideline is correct and he has always interpreted it that way throughout his entire career. He believes that the Town acted correctly.

RESOLUTION

Motion by Kam Hoopes to deny the appeal from Alexander Gabriels III. **Seconded by** Jeff Anthony. **All in Favor. Motion Carried.**

Motion by Jeff Anthony to adjourn the meeting at 9:11pm. **Seconded by** Jason Saris. **All in Favor. Motion Carried.**

Minutes respectfully submitted by Kristen MacEwan.