

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday – February 23, 2010
6:30 p.m.**

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

Present: Jason Saris, Jeff Anthony, John Michaels, David Ray, William Pfau, Tony DePace, Kam Hoopes, Counsel Michael Muller and Zoning Administrator Pam Kenyon.

Absent: None

The meeting was called to order at 6:35pm.

Jason Saris asked if there were any corrections or changes to the January 19, 2010 Zoning Board of Appeals minutes.

RESOLUTION

Motion by Kam Hoopes to approve the January 19, 2010 Zoning Board of Appeals minutes as written. **Seconded by** Jeff Anthony. **All in Favor. Motion Carried.**

1)V09-49 GREEN ISLAND LLC (LORENCE & LINDA QUEEN). Represented by Chris Gabriels. In accordance with Section 200-93A (other regulations applicable to Planned Unit Developments), seeks area variance to convert an “L” shaped dock into a “T” shaped dock. Section 171.12, Block 1, Lot 1, Zone PUD. Property Location: 35 North Island Drive. Subject to WCPB, PB, TB & APA review. The WCPB determined no county impact.

Chris Gabriels stated that this is a minor modification. The only reason that it is before the ZBA because it is a modification to a PUD. He stated that it already has APA and LGPC approvals. It meets the Town regulation with a setback well over 100’ to the nearest neighbor.

Jason Saris asked why the applicants are seeking modification. Chris Gabriels replied that the owners are looking to modify the shape from an L-shaped dock that angles to the south to a T-shaped dock that angles to the north.

John Michaels asked if these would be used by boats. Chris Gabriels stated that the original APA PUD approval had a stipulation that did not allow any docks on that side of the island. Two years ago approvals were granted to construct a swim dock on that side of the island.

Bill Pfau asked if this application was similar to Sagbolt applications in which they are not looking at a particular variance request but rather a PUD modification. Jeff Anthony asked if they would need to go through the criteria. Counsel replied no. He stated that they are seeking a modification to the PUD. In addition to the APA review and approval, a variance is necessary to modify the PUD. He stated that the PB will also review this application and make a recommendation but the final approval comes from the TB.

Jason Saris stated that if it were a modification to the resort that was consistent with operating a resort it wouldn’t require a variance. Counsel Muller stated that everything that Sagbolt has done has followed the same process. He stated that he does try to avoid this process since it is time consuming but it is typical procedure in most PUD modifications. He stated that it will almost be impossible to go through the 5 criteria. However, the good thing is that the APA has already approved it so they would not be challenged at that level.

RESOLUTION

Motion by Jeff Anthony to accept application V09-49 as proposed and recommend to the PB and TB that this PUD should be modified as requested. **Seconded by** John Michaels. **All in Favor. Motion Carried.**

2) LICHTENSTEIN, ROBERT & MARJORIE. Represented by Attys. Jonathon Lapper and/or Stefanie DiLallo Bitter. In accordance with Section 200-72 of the zoning ordinance, seek to appeal the Zoning Administrator's decision, whereby determining that in accordance with Section 200-67(C) of the zoning ordinance, the variance (V07-14) granted for the retaining wall on August 13, 2007 has expired. Section 157.05, Block 1, Lot 40, Zone RCL3. Property Location: Brook Hill Drive, vacant lot behind Lagoon Manor. NOTE: This item was tabled at the applicant's request.

Jeff Anthony stated that a few years ago he recused himself from this application because he represented the land owner adjacent to this property. He asked if he should step down again. Counsel Muller stated that if he could render a fair decision on its merits and there was no conflict of interest he could remain on to review the application. Jeff Anthony stated that he had no conflict and felt that he could make a fair decision. Counsel Muller asked Stefanie Bitter if the applicant had any issue with Jeff Anthony remaining on. Stefanie Bitter replied that she had no problem with it.

Stefanie Bitter stated that she is presenting an appeal to the ZA's interpretation. However, she came prepared with a new area variance application as she is not able to persuade the Board.

John Michaels stated that he and a few other Board members were not present for the original application and requested that she provide information as to what the original application was. Stefanie Bitter introduced Bob Holmes who was the project manager to provide the details of the presentation.

Stefanie Bitter stated that this property is located on Brook Hill Drive in an approved subdivision. She stated that this is a pre-existing non-conforming lot. The applicants purchased the property in 1971. In the last 10 years determined that they were ready to start construction. At that time due to the regulations that existed, the specific septic regulations put them in a difficult position due to restraints of the lot. When determining the placement of the septic system on the lot, Jarrett Engineers had incorporated a retaining wall. The retaining wall would be supporting the septic system. However, since the wall is considered a structure, and does not meet the setbacks from the front and side, a variance was sought and granted.

Bob Holmes, Jarrett Engineers, explained that their plans outlined the previous variance sought and received in 2007. He provided the further details. He stated that in the process of the approvals they had some negotiations with Pam Kenyon, Tom Nace, NYS DOH and Jarrett Engineers. They all met on site to discuss a site modification for a waste water system which is the process that they actually started. Bob Holmes stated that if they could avoid constructing a retaining wall, they would do so. However, Tom Jarrett has more confidence in doing that than he does. Therefore they would like to continue the variance that they originally sought, in case they run into the position where they cannot do this without a retaining wall.

Stefanie Bitter stated that the septic variance is still pending before the DOH. In 2005 they went before the TB to discuss the variances that were required for the septic system. The constraints that exist on the lot, one of which is due to fact that the adjacent neighbor put his well right on the property line, not leaving much room for a septic system to be constructed. The applicants have reached out to the neighboring properties to see if anything could be done, such as hooking into Lagoon Manor sewer system or placing the septic in another location but unfortunately nothing worked out. So it brought them back to the Town and at the time Pam Kenyon stated that they would have to obtain the area variance for the retaining wall prior to returning to the TB.

Stefanie Bitter stated that the area variances were obtained in August 2007. At that time it was discussed that this retaining wall could not be constructed until the septic variance was granted. They began to review the septic variance before the TB in October 2007. At that time the matter was tabled due to technical questions that Tom Nace had to answer for the TB. In January 2008 they returned again to the TB and at that time they were looking for the DOH approval of the proposed system. The DOH received their application in June 2008. Although there were many site visits and a lot of discussion they did not receive a written determination from the DOH until June 2009. The DOH determined, that due to the fact that they had less than 1' of usable soil, they had permission to put 2' of fill on the property, which would then have to sit for one year and then have the DOH re-evaluate the application. Stefanie Bitter stated that they then had to seek a fill permit from the Town in June 2009. At that time Pam Kenyon felt as though she needed to discuss the matter with the TB because the septic variance was pending. They didn't receive a determination until October 2009, at which time they were notified that their area

variance had expired but they could place the fill on the property which is why they are here before the Board appealing the decision.

Stefanie Bitter stated that they understand Pam Kenyon's determination to a certain extent. However, there is a very unique set of circumstances here. The applicants had not abandoned the project, they were in a position where they had to take the process step by step, which they were doing. They feel that the actions that they have taken thus far had preserved their rights and the area variance. She stated that if that avenue isn't appropriate to explore then they need to look at it in the sense that the retaining wall was really conditioned on the septic variance actually being granted by the TB. Without having that septic variance granted the time of the area variance should not have even started to tick because they could not get a building permit without that septic variance.

Kam Hoopes stated that Pam Kenyon is capable of granting an extension. Stefanie Bitter replied that she did. However, it is only a 1 year extension. Kam Hoopes asked how soon the applicants would be able to proceed with this project. Bob Holmes stated that the fill has been placed on the property already. He stated that they are at the point with DOH for the site modification. He stated that the fill needs to sit through one freeze thaw cycle which they are in and they will re-evaluate the soil in the spring. He stated that their objective is, if the soil is found to be suitable, the DOH is looking to hand over of the jurisdiction.

Jason Saris stated that his impression was that they usually consider commencement of a project as actual construction or work being done. He asked Counsel Muller for some advice with regard to whether or not the application for septic variance or other procedures being discussed be classified as commencement of the project and the start of the time frame. Counsel Muller replied that the classic example is the shovel in the soil type of commencement. However, if the Board feels as though the steps that have been taken and outlined by the applicants is commencement then they could consider that their interpretation. The other argument that has been presented is that they got their approvals but they could not go forward because they were in an administrative loop with other agencies. Counsel Muller stated that the administrative loop is the weakest argument and feels that Pam Kenyon's interpretation is correct and that they need to re-apply. Pam Kenyon stated that she had discussion with Kathy Simmes, Supervisor at the time and Greg Smith, Chairman of the ZBA at the time, who both felt that they needed to re-apply for the variance. Counsel Muller stated that if the Board is comfortable with the factual basis that they project did start, accept it as so and interpret it as so, they are not adding an extension because that does not apply in their code but they are just finding that there was commencement of the project within the time period. If they are not comfortable with that then they should move forward with the next application.

Kam Hoopes asked if they could look at both arguments to apply to the appeal. Counsel Muller replied yes. Jason Saris stated that if they were to find favorable with the applicant they would be overturning the ZA's determination. John Michaels stated that if they agree with the applicant and overturn the ZA's interpretation because other agencies or Boards causing delays they would never have a deadline or timeline. Kam Hoopes agreed.

Jason Saris asked if there was anything stopping them from any of the other agencies, from starting construction of the retaining wall. He stated that he understands for not the intended purpose that the other agencies were to deny their application, but was there any reason why they could not start some physical construction on a retaining wall that they were granted permission for. Bob Holmes stated that the other agencies that they were dealing with were more specific to the fill material which the retaining wall would contain. Without the fill material on the property they would not be able to construct and stabilize a retaining wall. He stated that they did not know that it was going to take over a year to get an administrative decision from the DOH. Jason Saris stated that it is difficult to determine what would start the clock or what the definition of starting construction or work.

John Michaels stated that he is comfortable with the fact that they did something, but he is less comfortable with the second application for a new variance when they have said that they don't even know if they need it.

Kam Hoopes agreed that Pam Kenyon followed the correct procedure and started the clock when it was supposed to be started. However he feels that he can see the other side of the argument. He stated that they did put the fill down which is a substantial part of the construction. Jason Saris asked when the fill was placed. Stefanie Bitter replied that the permit was applied for in June 2009 but they did not receive permission until after the variance

expired and the filled was placed in October 2009. Kam Hoopes stated that with that information then he does not see that they have any argument.

Jason Saris stated that they are back to the weaker administrative argument and they need to decide what they want to do. Stefanie Bitter stated that she did not feel that they would have been able to construct a retaining wall without having a principal use on the premises without the Town's permission. Counsel Muller agreed that they would not be allowed to do that because they do not meet the setback.

Kam Hoopes stated that he feels that they should uphold Pam Kenyon's decision. Bill Pfau stated that he was concerned that if they deny this appeal and there is a chance the second application could be denied. John Michaels stated that if it gets denied it doesn't mean that they can't come back with another application because they don't know if they really even need the retaining wall. Bill Pfau stated that they have to assume that they do need it. Stefanie Bitter stated that was why they were there. John Michaels asked how he can assume that when Bob Holmes says that they don't know if they need it. Bob Holmes stated that in his professional opinion, as an engineer, they require a retaining wall. He stated that in any of their applications if they can minimize impacts, there is an objective to try and do so. John Michaels stated that one of their criteria that they look at when reviewing variance applications are feasible alternatives. He stated that they should not be talking about the chance for an alternative if they want approval. Jason Saris stated that he feels that the applicants will do what they can to either not use the retaining wall or minimize the impact. Counsel Muller agreed with John Michaels that if there are other feasible alternatives, including the possibility that this is not necessary at all, then the variance application tends to shoot itself down. Stefanie Bitter stated that at this point the feasible alternative is what exists now and they cannot determine whether or not that soil is going to be acceptable to the DOH in the spring. John Michaels stated that maybe they should come back when they know what they need.

RESOLUTION

Motion by Kam Hoopes to deny the appeal and uphold the Zoning Administrator's decision whereby determining that in accordance with Section 200-67(C) of the zoning ordinance, the variance (V07-14) granted for the retaining wall on August 13, 2007 has expired. **Seconded by** John Michaels. **All in Favor. Motion Carried.**

3) V10-01 LICHTENSTEIN, ROBERT & MARJORIE. Attys. Jonathon Lapper and/or Stefanie DiLallo Bitter and Jarrett Martin Engineers. For the construction of a proposed retaining wall associated with a septic system, seek area variance for deficient setbacks. a) Front: 50 ft. is required from the edge of the right-of-way, 1 ft. is proposed. b) Side: 30 ft. is required, 5 ft. is proposed. Section 157.05, Block 1, Lot 40, Zone RCL3. Property Location: Brook Hill Drive, vacant lot behind Lagoon Manor. Subject to WCPB review. Originally approved on 8-13-07 under V07-14 but never acted upon.

Stefanie Bitter stated that this application is for a retaining wall that will support a septic system that requires a septic variance from the local BOH. She stated that this variance was already extended in August of 2007 and the only change in circumstances is that the area variances have expired as was determined by the ZA and the ZBA. Although fill has been placed on the property, it has not been determined if that fill is deemed suitable.

Stefanie Bitter stated that when they review the factors of the application, the benefit to the applicant outweighs any detriment to the community or Town. This property was purchased in 1971 as a buildable lot. However, it is not a buildable lot without the variances being sought. Stefanie Bitter stated that no undesirable change will be deemed to exist on the property. Re-iterating what the ZBA found in August of 2007, that the stone wall will maintain vegetation and landscaping was presented with the original plan.

Stefanie Bitter stated that the benefit could not be achieved by any feasible alternative due to the circumstances that exist today. She stated that although the request is substantial, it is a wall and not a building. It will not have any adverse physical or environmental effects since it is a wall that will be screened, which was presented in 2007 and being presented today. They do not believe that this should be considered a self-created difficulty since this is a building lot that has been in existence since 1971. The practical difficulty is that without the variance this cannot be deemed a buildable lot.

Jason Saris stated that he had the benefit to sit on the local BOH on the TB in reviewing the application for the septic system. He stated that the BOH put a lot of time and effort into reviewing this project. He stated that the applicants have owned the lot for a long time and feels that this really is the only way to utilize this lot. He stated that there aren't any septic alternatives. Stefanie Bitter stated that many hours and years were spent looking for alternatives. She stated that they sought help from other neighbors including Lagoon Manor. Kam Hoopes stated that the variances, numerically are substantial. However, denying the variance, would be even more substantial because this lot would then be rendered unbuildable. He feels that they thoroughly reviewed this project in 2007 and there are no alternatives. This is a relatively small structure for a seriously important outcome, which is for the applicants to use the property as it was intended.

John Michaels asked how the neighboring well interfered with the placement of the septic. Bob Holmes stated that it made it difficult to maintain the 100' setback from the well. John Michaels asked if the circumstances would be different if the well wasn't there. Bob Holmes replied that they would still have to deal with the setback from the lake.

Bill Pfau stated that in the previous approval there were conditions of approval including a plan to screen the retaining wall. He asked what this plan would entail in the way of screening. Stefanie Bitter replied that just as proposed in the original variance they plan to conceal the wall with vegetation and vines.

Frank McDonald representing the Brook Hill Development stated that Stefanie Bitter indicated that this retaining wall will not have any visual impact. However there is a quasi lot to the north of the applicant's property that will look at this wall. He also indicated that the developer has written a letter of opposition which should be read into the record. Counsel Muller read a letter from Glen Waehner who wrote in opposition to the project.

With regard to the letter, Jason Saris stated that there is a concern of reliability of the septic system. However, that is for the BOH to consider. He stated that issue is thoroughly reviewed by local BOH. He stated that their only duty is to review the aesthetics and the setbacks issues only.

Stefanie Bitter stated that the adverse impacts of the visibility of the wall will be mitigated by screening. With regard to reliability of the system, she stated that this system is not only going to be signed off by the TB but also the Town Engineer and DOH. Although offers have been extended by the neighboring property owners, they have not been found to be reasonable relative to the value of the land. Bob Holmes stated that pending approvals he feels that this will be compliant waste water disposal system. David Ray asked if the northern property was developable. Frank McDonald replied yes without any variances. Kam Hoopes mentioned for the record that the northern lot is part of a PUD and would still need review by the Town Board.

RESOLUTION

The Zoning Board of Appeals received an application from Robert and Marjorie Lichtenstein (V10-01) 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 there was default approval from the Warren County Planning Board;

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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, if they were able to obtain their septic variance in the time period allowed this would not be before the Board at this time.

- 3) The request is not substantial; it is not a building it is wall.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the DOH and local BOH will have jurisdiction and review and be sure that this will not happen. It will be well screened from the lake.
- 5) The alleged difficulty is not self-created,

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

Now, upon motion duly made by John Michaels, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition(s): 1) If there is an ability to mitigate the height or length of the wall at any time during construction that the Zoning Board would approve, 2) That the applicant apply the screening requirements from the approval of the first variance (V07-14). Specifically the conditions are as follows: The north side of the wall is to be screened with evergreens and the remainder of the wall is to be screened with some type of cascading vine. **Seconded by Tony DePace. All in Favor. Motion Carried.**

4) V10-02 DeLORENZO, JOSEPH & LOIS. Represented by Carl Schoder of Schoder Rivers Associates. To alter nonconforming structure, specifically to allow an approximate 4.8'x 13' handicap ramp to remain, seek area variance for 1) a deficient front yard setback. 50' is required, 35.3' 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 12, Zone RM1.3. Property Location: 4 Lake View Hill Road. Subject to WCPB review.

Carl Schoder stated that the applicants have constructed a handicap ramp to access their residence and now are seeking the necessary variances. Mrs. DeLorenzo was being released from a medical facility, where she was being treated and became wheelchair bound temporarily. He stated that they were alerted to the situation and contacted the Town at that time and established that a variance would be required. Normally they would have sought this approval before the ramp was constructed. However, they were faced with an urgent and emergency situation and something had to be in place for access the house. The variance request is relatively minor. It is a timber ramp. He stated that they attempted to mitigate the need for the variance by moving the ramp back as far as they could, which worked better given the grade. Some temporary grading was done, which will be finalized later. There were no other alternatives since there was no other access to the house that could be reached by a vehicle. The ramp is of the exact same construction of the existing non-conforming deck with regard to appearance and materials.

Kam Hoopes stated that the emergency nature of the situation seems to mitigate the need to apply a civil penalty. Something had to be done quickly and he feels that the project was done in appropriate manner that is approving to the Board.

Counsel Muller read a letter from Doug Houghton and Stephanie Mason in support of the application.

RESOLUTION

The Zoning Board of Appeals received an application from Joseph and Lois DeLorenzo (V10-02) 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 there was default approval from the Warren County Planning Board;

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 surrounded by the right of way.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is a simple ramp of timber construction.
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created,

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

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

5) V10-03 DJMD BOLTON NY LLC. (Daniel Lewis). Represented by Peter L. Gluck and Partners. To alter nonconforming structure, specifically to allow an approximate 30 square foot addition and an attached retaining wall to remain, seeks area variance for 1) a deficient shoreline setback. 75' is required, 58' is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.20, Block 1, Lot 39, Zone RCM1.3. Property Location: 5274 Lake Shore Drive. Subject to WCPB and APA review.

Stefanie Bitter stated that they are seeking a variance relative to the construction of a retaining wall and a 30' addition to a non-conforming structure. The Lewis project has done a great deal of work but their priority has always been the protection of the lake. In this case, the Lewis' were trying to even out some corners in the storage area under the existing home. It was part of the original building, when it was demolished. Originally they intended to replace the structure in kind but it was their opinion that the original structure was not usable and that is why it was demolished. Since it is under the structure it would not be visible and could be deemed not an expansion, which wasn't the case.

Stefanie Bitter stated that when they were constructing the retaining wall, which was originally parallel to the lake, to make additional room for landscaping, they decided to make it perpendicular to the lake. Again this is positive for the lake providing for more green and less structures.

When looking at the area variance and weighing the factors, Stefanie Bitter stated that the benefit to the applicant outweighs any detriment to community or town. There is no undesirable change to the neighborhood or nearby properties, this modification will provide less structures and be less visible to the lake. The benefit could not be achieved by any other feasible means, unless you consider maintaining the retaining wall in the fashion that it was which would have a greater impact on the lake. Stefanie Bitter stated that the request would not be deemed substantial not when looking at the project as a whole and how it has been constructed. No adverse impacts or effects exist with the request at hand. Stefanie Bitter stated that although this may seem that this is self-created, the applicant had the best interest of the lake in mind. The construction materials utilized for the storage area do match the rec building and make it aesthetically connected.

Eric Schaffer stated that the existing camp had a 45' retaining wall along the lakeshore. They did not feel the need for it and felt that they could accomplish it with grading and planting and getting rid of the wall altogether. That did not change the fact that there were grade issues so they extended the south elevation of the wall about 10' in the other direction instead of 40' south. They used the same siding material and made a slope that they will landscape.

With regard to the addition, Eric Schaffer stated that there was a 32 sq. ft corner of the original building and foundation that had a bump out. Due to constructability and the fact that it was buried and underneath the roof which is a pre-roof, sod and pavers, they decided to square the building off to make it easier to build.

Bill Pfau asked if they were present before the Board voluntarily. Eric Schaffer replied that the Town inspectors noted the change in the plan.

Kam Hoopes stated that he visited the site and found the revisions have a lot of merit. The original retaining wall was more of an invasion of the lakeshore than the new retaining wall which essentially goes away from the lakeshore but certainly completes the capability of being buried on the back side. It was an existing footprint that they were taking advantage of for lakeshore storage, which is certainly within their rights given the scope of the project. Even though it did not follow the plan, he finds that it is better for the lake.

Jeff Anthony agreed he feels that both variances have a positive approach to minimizing the impacts, visually to the lake and landscaping where there would have been a retaining wall. He feels that these proposed changes have a lot of merit and it was an attempt on the applicant's part to be sympathetic to the lake and the visual qualities of the lake. However, he is concerned with the APA's review. He asked Counsel how they can structure this approval so that they are not doing this applicant any injustice. Counsel stated that a strong resolution to support this variance which would detail all of elements of Town law as well as addressing the practical difficulty and feasible alternatives.

Jeff Anthony stated that the applicants have sought alternatives, which would have been to build as approved. However, it would have been less desirable from an impact point of view, which in itself shows that some attention given by the applicant/developer to be sympathetic to the visual qualities of the area.

John Michaels stated that when he visited the site he was told that this building will be used for kayaks and storage. Eric Schaffer stated that their intention from a design standpoint is that this is used just for storage. John Michaels asked if they would be agreeable to a condition of no vehicles being allowed in the building because they would have to change the grade to a point. Eric Schaffer stated that they would not be able to get vehicles in the building so they would be agreeable to no cars. He stated that the full intention of this project is to have limited vehicle access down by the lakeshore. Kam Hoopes agreed that this would be a good condition to add so that any future owners would be bound by the same condition.

With regard to practical difficulty, Stefanie Bitter stated that they would not be able to lessen the impact to the lake without requiring a variance due to the grade of the property and the fact that the retaining wall had to be modified as well as the structure that was existing is being utilized so that it was being replaced in kind.

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

RESOLUTION

The Zoning Board of Appeals received an application from DJMD Bolton NY LLC (V10-03) 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 there was default approval from the Warren County Planning Board;

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; the applicant had an approved plan before but has proven to the Town that a consideration of alternatives that this is a better way for this to be constructed.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a positive impact since what would have been a highly visible retaining wall paralleling the lakeshore is now

perpendicular to the shore and the impact has been reduced furthermore. The applicant's representative has indicated that the slope will be planted with vegetation and other plant materials which would further add to the screening of the retaining wall.

3) The request is not substantial; it is equal in the amount of wall that was built at this moment than what was proposed or approved to have been built.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; this will reduce the visible effects, which is really the consideration on both the extension of the underground portion of the building which is not visible as well as the removal of a retaining wall that would have been highly visible and the subsequent mitigation of the visual impact by plantings.

5) The alleged difficulty is not self-created, the applicant is working with an existing structure in an existing location with existing grades and he had to respond to the conditions of the site in the field and he responded properly.

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

With regard to practical difficulty, when the applicant considered this application or construction in the field, he was faced with practical difficulties in terms of the grading and the need for a retaining wall and the solution that was offered and ultimately constructed was one that eliminated an extensive piece of retaining wall rather than construct it as approved in the original application and approvals. The practical difficulties were site conditions and the extension of the building was merely to square it off which reduced having to build extra corners, which is underground anyway, and it reduced the construction cost that resulted in a much cleaner looking building.

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 with the following condition(s): 1) that the grade is maintained as it exists to restrict vehicle access. **All in Favor. Motion Carried.**

6) V10-04 CLARKE, ROSAMOND (Estate of). Represented by Jeffrey Tennent. To alter pre-existing non-conforming structure, specifically to construct a proposed deck, stairs and landing, seeks area variance for 1) deficient setbacks. a) Front: 50' is required, 19.8' is proposed, b) Side: 30' is required, 24' is proposed, c) Rear: 30' is required, 14' is proposed, and d) Shore: 75' is required, 43' 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.

Jeff Tennent stated that based on some of the input from the last application the applicants have decided to try one more time. They have taken the previous application and recommendations from the APA and developed the current plan. When discussing this plan with Pam Kenyon, he stated that initially they were concerned with having the septic tanks underground and having room to do that. However, the tanks are all installed they have figured out a way to put the deck on the side and not interfere with the servicing of the tanks. He stated that the original plan to go towards the lake was not only desirable to the applicant but it did require less variances.

Jeff Tennent stated that the benefit could not be achieved by other feasible means. It is a pervious deck, which is more desirable for stormwater control because it allows water to disperse and flow more naturally. There is less impact than if a ground level patio was constructed, which would have required retaining walls or leveling off the ground. The slope of the land dictates that a deck is the safest way for the owners to be able to enjoy the outdoors. Jeff Tennent stated that the project will not produce an undesirable change to the neighborhood. He feels that it is in harmony with the surrounding camps which most have decks and patios. This is the only camp that does not have a deck or flat area to enjoy the outdoors. The deck will not adversely affect the neighborhood or nearby properties. Jeff Tennent stated that he does not feel that the deck area is substantial and it would provide a useful outdoor area to a structure that currently does not have one. He stated that they do not feel that this will have any adverse effect of the physical or environmental conditions of the neighborhood. This is in keeping with the neighborhood and nearby properties. Jeff Tennent stated that you could argue that this, or any application, is self-created, but the lay of the land is not self-created, it has been like that for a very long time. The applicants are trying to create a sensible solution with minimal impact to the lake. The proposed size of the deck is minimal in order to allow for a table and grill.

John Michaels asked how far the original proposed deck extended past the house. Jeff Tennent replied that it extended 6' past the house. The current deck will not go any further than the house structure. He reviewed more

details of the plan. Bill Pfau asked how the square footage compared to the last proposal. Jeff Tennent replied that it is considerably less because it was going all around the house. He stated that he probably reduced the size by a third. Bill Pfau asked if anyone from the APA visited the site. Jeff Tennent replied no. Bill Pfau feels that they should grant approval since it is smaller and has less impact to the lake than the previous application. Jeff Tennent stated that the APA seems to not want any additional lakeside encroachment. He feels that they were suggesting considering the sides of the house. Jeff Anthony stated that the key that they are not going any further to the lake outside of the stairs.

There were no comments from the public in attendance. Pam Kenyon stated that there was no County impact and not correspondence on this matter.

Counsel Muller stated that he wanted to make sure, for the applicant's sake, that there has been ample discussion of feasible alternatives. Jeff Tennent stated that the only alternative would be to do something on the ground level, which would be far more disruptive. The slope is quite steep, the septic tanks are located in the lower area and they could not build over them. The topography would need to be changed considerably. With retaining walls of considerable height it would be a negative visual impact to the lake. If they were to create a patio on the ground level it would be greater disturbance to the environment. Kam Hoopes stated that the retaining walls would be invading the lakeshore since they are considered another structure. Jeff Tennent stated that they would also fall under the same restrictions that they are under now since this would be considered a structure.

Counsel Muller stated that in one of the previous correspondence with the APA they indicated that although the TB had made some provisions in granting relief of the septic system that there be stormwater considerations, that was lacking at the ZBA level. Jeff Tennent stated that stormwater measures have already been taken. Counsel Muller stated that it should be mentioned. Jeff Tennent stated that Tom Jarrett re-designed a new stormwater berm across the whole lower portion of the property below the septic tanks so it will catch anything there. They also created a diversion above so any surface water is steered away. The septic tanks are sealed and alarm systems have been installed and approved by the engineer. Jason Saris suggested that they have a additional discussion about the stormwater for the current proposal. He asked if the project will create the need for further stormwater measures being taken. Jeff Tennent stated that the impact to the soil is very minimal, they are small footing with support posts and the decking boards will be slotted to allow water to disperse naturally. He stated that the roof lines are not changing and no water is being re-directed.

RESOLUTION

The Zoning Board of Appeals received an application from Estate of Rosamond Clarke (V10-04) 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 there was default approval from the Warren County Planning Board;

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item# 6 of the agenda.

The Board makes the following conclusions of law:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; this deck, whatever direction that it is put in, will run into setback issues. This application has been reduced on the lakeshore side but now has more of a sideline issue .

2) There will be no undesirable change in the neighborhood character or to nearby properties, all of the houses in this area are similar in property sizes, construction styles, etc.

3) The request is not substantial; taking into account the neighborhood character and nearby properties, this is very consistent.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; with all the deliberations stormwater measures have been taken and are in place.

5) The alleged difficulty is not self-created, the topography and the slope do not allow the applicants to enjoy their shoreline property in any kind of convenient way. Alternatives are equally or more offensive to the lakeshore, including retaining walls and patios. There is no way to level the ground which isn't going to be problematic on the lakeshore.

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.**

7) V10-05 KOSAKOWSKI, KEVIN & CAROLE. For the construction of a proposed single-family dwelling, seeks area variance for deficient setbacks. 1) Front: 50' is required, a) 14.5' is proposed from the edge of the right-of-way for Millstone Drive, and b) 45' is proposed from Three Oaks Road, and 2) Sides: 30' is required, a) 26' is proposed on the northwest side, and b) 17.5' is proposed on the southeast. Section 185.20, Block 1, Lot 25, Zone RCL3. Property location: Three Oaks Drive. Subject to WCPB review. See V08-17 granted on May 19, 2008 for previous approvals.

This item was tabled.

8) FUND FOR LAKE GEORGE & LAKE GEORGE WATERKEEPER. Represented by Thomas A. Ulasewicz, Esq. In accordance with Section 200-72 of the zoning ordinance, seek to appeal the Planning Board's and Zoning Administrator's interpretations and implementation of the Town's Zoning Ordinance pertaining to the shared driveway involving the Oberer subdivision SD06-05. Section 171.00, Block 1, Lot 6, Zone LC25. Property Location: Edgcomb Pond Road. **NOTE: In accordance with Section 200-74 of the Zoning Ordinance any appeal from an action of the Planning Board must be undertaken in accordance with Article 78 of the Civil Practice Law and Rules (A PB action is not appealable to the ZBA). An article 78 must be filed no later than 30 days from the effective date of a decision or ruling. Additionally, according to Town Law an appeal against the Zoning Administrator must be filed within 60 days unless otherwise specified in the zoning ordinance, for which it is not. On 10-18-07 the PB passed a resolution whereby classifying the roadway as a shared driveway.**

This item was tabled.

Jason Saris stated that he had an item that he wanted the ZBA to consider. He stated that the TB is considering a larger fee for an after the fact variance application. They have considered possible fees that would act as a deterrent but that fee has not been determined. However, it will be determined by the TB. He explained that there would be an appeal procedure especially in special cases such as one that they heard tonight for DeLorenzo. John Michael stated that he thought it was a good idea and suggested that they ZBA members should get \$75 to hear after the fact applications. Jason Saris stated that they could send that request to the TB also. John Michaels stated that he feels that this is a good idea because a lot of the after the fact applications did not know that they were after the fact. Jason Saris stated that the biggest thing is to try and motivate people to do the right thing. He stated that he people that are conscientious take the right path, but there are some that aren't and it isn't necessarily an honest mistake. Bill Pfau asked if this will be the same for every applicant. Jason Saris replied yes, it would apply to any ZBA or PB application.

Tony DePace asked how other towns handle this type of situation. Counsel Muller stated that there is the full gamut of handling effectively to poorly. He stated that there are some that have this type of procedure. He stated that if they were to approach this issue the ZA would act administratively and without bias. The applicants would then have the option to move forward with the application or to appeal the fee/penalty with the TB. Pam Kenyon asked if the individual looking to appeal the fee would go to the TB first. Counsel Muller replied yes. Counsel Muller stated that they are still working out some details to the proposed change. He stated that they are also considering the fees to charge. They are looking to charge enough to stop someone from doing the wrong thing.

They are also hoping that this would deter someone from challenging this in court since it costs \$400 just to bring a lawsuit upon the Town. Jason Saris stated that they need to find a way to motivate people to do the right thing.

Jason Saris stated that if the Board is agreeable they should tell the TB that they are supportive. John Michaels stated that he feels that this will really improve their process. Now they can just hear the application on its merits. They will not have to be concerned with the fact that it is after the fact because they will have already been charged a higher fee. They also don't have to listen to the applicant with regard to why they should not have to pay the higher fee which again will streamline their process.

Bill Pfau stated that he is concerned that if someone is denied the re-imbursement of the higher fee at the TB level that the ZBA would be pressured into granting the variance since they have so much money invested into the project. Jason Saris stated that is not part of the criteria that they need to concern themselves with.

RESOLUTION

Motion by John Michaels to support the Town Board concept of applying a higher application fee for after the fact variance applications where they have the procedure to lower that fee on a case by case basis if there are special circumstances. **Seconded by** Kam Hoopes. **All in Favor. Motion Carried.**

The meeting was adjourn 8:25pm

Minutes submitted by Kristen MacEwan.