

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
April 26, 2011
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, Kam Hoopes, Tony DePace, David Ray, John Michaels, Jeff Anthony, Counsel Michael Muller and Zoning Administrator Pamela Kenyon

Absent- Jeff Anthony, Bill Pfau

The meeting was called to order at 6:31 pm.

Jason Saris asked if there were any corrections or changes to the March 15, 2011 minutes.

RESOLUTION

Motion by John Michaels to accept the March 15, 2011 minutes as written. **Seconded by** David Ray. **All in Favor. Motion Carried.**

1. V11-04 KELLY, JOHN. To alter pre-existing non-conforming single family dwelling, specifically to convert the 1-story residence into a 2-story residence and construct an attached garage, seeks area variance for 1) a deficient shoreline setback: 75' is required, 12.25' is proposed; 2) Height: 35' is allowed, 41' is proposed; 3) Garage space: 3 bays are allowed, 4 are proposed; and 4) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 200.07, Block 1, Lot 13, Zone RM1.3. Property Location: 62 Fish Point Road. Subject to WCPB and APA approval.

John Kelly stated that he has owned this property for 3 ½ years and in that time he has been planning the best way to utilize the property with a year-round residence. The current house is just a seasonal home; it is not insulated and circa 1957-1960. Although the house is close to the water they tried to put something together that would work with the guest house that was recently constructed. They intend to be full time residents within the next 3 years and they are looking to build something that they can comfortably live in year-round.

Joe Haines presented the project providing an existing site plan. It shows a single family dwelling built in the late 1950's which is one story in height with existing retaining walls, dock, boathouse, new guest house and garage. The property is pie shaped on approximately 1.2 acres in Basin Bay on Lake George. What makes this property unique is that it is not highly visible from the lake. There are two protrusions of land on either side of the property which creates somewhat of a private cove. The property also sits

back on the property so someone would have to really make a turn into Basin Bay to see the house.

Joe Haines provided pictures of the new guest house to show the quality of construction that they intend for the main house. It will be a timber frame home and the materials used will be Adirondack nature. It will be sensitive to the neighbors and nature, as well as the landscape.

Joe Haines stated that they intend to take the house down and put up a new house in the same location. The existing house is dated and is showing wear of its age and use. He stated that the roof is leaking and is not made of quality materials for year-round use. It would not make sense to remodel this house in its current condition. Instead they will take it down to the foundation and put it in the same location as it references the lake. The majority of the addition is to the rear of the house away from the lake. The retaining walls, foundation walls for the front of the house, patio and drip line will all remain the same. He provided more details to the additions. Joe Haines stated that the only 17% of the addition is within the 75' setback that is not behind the house.

John Michaels stated that they are going from 25' to 41' in height which is significant. They also have to be aware that they will need to go to the APA. He stated that he does not understand why they cannot put this story and a half at 35' because they see 2 stories with walk-out basements that still meet the 35' standard. Joe Haines stated that they would not even need this variance except for the fact that one portion of it has an exposed basement. There is about 8' of the entire perimeter of the house where the basement is exposed which creates the height variance. He stated that it is also due to the timber frame design that creates the need for the height. Although it is only 1 ½ stories, the underside of the timbers is at 9.8' and then they have an additional floor in between to run utilities.

John Michaels stated that he understands all of these issues. However, they have approved 2 stories with a walk-out basement before at or under 35'. He doesn't want to approve this and then have it turned down by the APA because they couldn't prove a hardship or enough reasoning for the height. Kam Hoopes stated that they have an issue because the walk out is on the beach area side. John Michaels stated that is only 8' and feels that they have an additional 27' to put another story and a half without an issue. If they can't, he needs to hear the reasons on this issue. Kam Hoopes agreed. However, the key in their 35' restriction is for firefighting because their equipment can only reach so high. However, due to the grading in certain areas they also need to look at whether or not the fire department would concern itself with this area. Jason Saris asked what the height was on the back side of the house. Joe Haines stated the average on the other sides of the structure range from 35' to 32'.

Jason Saris stated that it is a large story and a half home and agrees that they need to explain why they need such a height variance. Joe Haines stated that it has to do with the pitch of the roof, timber frame and the creation of the great room, the construction of the

extra floor and the second floor has 8' ceilings which create a nice living area. Jason Saris stated that essentially it is a 2 story house. David Ray asked how the guest house height compares with the proposed house. Joe Haines replied that it is lower at 29'8" which is approximately 3' difference with elevation change. John Kelly stated that the property slopes down towards the lake. The ridge line for the proposed structure will be lower than the ridge line on the guest house.

Joe Haines stated that the main part of the house which is the entryway, garage and master bedroom, was kept down to 26'10" which is less in height. John Michaels stated that he likes this plan however he is concerned about the height issue. Joe Haines stated that they are only 1' off of the APA regulation which allows 40', so it may be appropriate to lower the structure down a 1' if necessary. Jason Saris stated that all variances are to be minimums and this process is to determine if this is the minimum. Joe Haines stated that it would be tight to lower the height but would be possible to lower it a foot.

Joe Haines stated that is important to note that whether this is considered 1 1/2 stories or 2 stories, they were sensitive to roof lines and projections of the buildings. On the lake side they pushed back the scale. He stated that they have several levels leading up from the lake which all work to soften the appearance of the structure. He provided more details and renderings to indicate the scale and appearance of the structure. Joe Haines stated that they will also have a lot of foliage and vegetation which will provide additional screening from the lake. Joe Haines stated what triggers the need for the variance is the door in the walk out basement. The higher portion of the house is on the opposite side. The soffit on this side of the house is the lowest and they kept the roof line down.

Kam Hoopes asked how much of the entire perimeter is involved on the beach side. Joe Haines replied that is it approximately 2% of the perimeter of the drip line of the house. Kam Hoopes asked what the height of the drip line was and how far it is from the peak. Joe Haines replied approximately 16' and approximately 25' from the peak. Joe Haines stated that the door is a little lower than the dock level. John Michaels stated that the 41' is really measured from the dock level and not from the top of the retaining wall.

Joe Haines provided the plans for the construction of the timber frame to show the complexity of the structure.

Jason Saris stated that they do not need a variance to rebuild this house exactly in kind and asked why they need the proposed addition. Joe Haines stated that the current footprint of the house does not meet his client's needs. The number and size of the rooms and living space are not adequate for today's lifestyle.

Jason Saris asked why they could not build a compliant house that does not require variances, to meet those needs. Joe Haines replied that the location was chosen for many reasons. The property naturally plateaus in this area and it causes the least amount of disturbance for the area. This site also provides the least amount of change from the view point of the lake and from neighbors.

Joe Haines further explained that the applicant moving the septic system even further away from the lake. If they placed the new structure closer to the guest house they would need to leave the septic where it is and they do not have a lot of details as to the operation or condition of the existing septic. Additionally they would have to move the existing well.

Joe Haines stated that if they had placed this closer to the guest house they would not have the best function of the garage. They would also have two structures closer together which would create more visual impact. They would also have to raise the building up grade-wise 6-7' and would alter the walk out basement and move the living level up higher. His client wants the living level to be level with the ground. The proposed location is the best and most appropriate location especially due to the uniqueness of this property being in a cove like setting. He stated that the site line will not be affected because the house sits down off the road, and it will not have the appearance of being taller than the guest house as they are not affecting the site line along the lake.

Jason Saris asked if they have looked at other alternatives for the additions to lessen the setback variances. Joe Haines replied yes. He stated that if they went straight off the back of the house they would be dealing with a grading issue again and would be burying the structure as they went up the hill. Additionally the applicant has the largest piece of unused property on the side that they are proposing. If they were to put it on the other side it would be closer to the side setback or the guest house. The additions they put on created a court. The proposal also will be creating minimal disturbance because they will not have to take down many trees. Kam Hoopes stated that they have more buffering and screening on this side. Joe Haines stated that they would see more of the house if they were to place it otherwise. Kam Hoopes stated that the original house was centered on this lot and additional property was obtained from a neighboring lot to add to the buffering.

John Michaels asked about the new septic system. He asked what the guest house uses for septic and whether or not it would affect this septic plan for the proposed house. Joe Haines stated that the guest house has its own septic and the proposed system will be independently designed for 3 bedrooms. John Michaels asked why there are drywells shown on the septic plan. Joe Haines replied that they are there for stormwater when they built the guest house and driveway.

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

- 1) Kathleen S. Lindberg-Bozony, Lake George Waterkeeper, with comments and suggestions for the applicant to consider other alternatives.
- 2) Warren County Planning Board recommendation is that there is no Warren County Impact with the stipulation that the applicant provide in greater detail why setback distance to the shoreline cannot be met or reduced and storm water be compliant with LGPC regulations.

With regard to stormwater, Jason Saris noted that the Waterkeeper indicated that it is only for the addition and not for the entire project. Since they are knocking down the entire structure he does not understand why they wouldn't need stormwater for the entire structure. Pam Kenyon replied that they only have to account for the addition. Jason Saris stated that the Waterkeeper is also concerned with all of the impervious surfaces on the property. John Kelly stated that he is not taking into consideration the fact that they already have stormwater management and new septic system for the guest house. He is just as sensitive to the environment and lake as the Waterkeeper and feels that he has shown that in his plans. They will be replacing the existing septic system and utilizing stormwater management for the new building. Joe Haines added that they intend to include stormwater management wherever they can. They are moving the septic another 100' from the lake and farther uphill.

John Michaels asked if the client would be interested in separating the height variance from the application. The applicant agreed. Joe Haines stated that his client is willing to reduce the height of the building to under 40' and they would be willing to make that a condition tonight. Jason Saris stated that if they bring it under 35' they do not need the variance tonight. However, if it is over 35' they will need a number to work with in order to consider granting relief.

RESOLUTION

The Zoning Board of Appeals received an application from John Kelly (V11-04) 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 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; this is a 1955 camp built to camp standards with a full basement 12' from the lake. Moving it back would create further disturbance by destroying the basement, burying the well and changing the grade. They are invading a modern day lake setback but they are using the original footprint.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this will be an improvement on the character of the neighborhood by bringing it up to date.

3) The request has substantial attributes; however, considering the size of the property and location, this is not an outrageous project.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; except for the inference that being close to the lake is an environmental problem. There have been storm water measures taken on the previous projects and more is planned for the proposed project.

5) The alleged difficulty is not self-created, since the present owner was not the one that located the structure.

The other alternative locations were discussed and this appears to be the best of all the alternatives. There is more screening on this side of the property and the land is flatter for a building. This applicant is doing their best to improve on the setback situation. The well is 10' behind the existing building.

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

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

There was further discussion of the height. Pam Kenyon asked for clarification of where they were taking their measurements. Joe Haines replied that it would be 39'8" from the lowest point of the basement by the beach area to the chimney, which is 2' higher than the ridge line. Pam Kenyon replied that they only measure to the top of the roof and not the chimney. Joe Haines stated that it would then be 37' 8". Jason Saris asked if they would be seeking a variance for a maximum height of 37 feet 8 inches. Joe Haines replied yes.

RESOLUTION

The Zoning Board of Appeals received an application from John Kelly (V11-04) 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 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:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; it is a dimensional consideration.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the 37' 8" only represents that corner of the beach and not a fire hazard.

3) The request is not substantial; especially since it has been reduced by the applicant and it is now only 2'8" above the Town Code and below the APA code.

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, for aesthetic reasons and building techniques this is the end result.

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

Aesthetically, when this house is viewed from the lake, the level of the land looks like the top of the retaining wall because they do not see the low point where the beach is. The house will not have the look of something taller than 35' because the retaining wall is more than 2' tall. The grade rises behind the house to also mitigate any visual impact. Additionally this property is located in its own little cove.

Now, upon motion duly made by Kam Hoopes and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented with a maximum height of 37 feet 8 inches. John Michaels opposed. **All Others in Favor. Motion Carried.**

2. V11-05 DEFTY, SARAH. To alter pre-existing non-conforming single family dwelling, specifically to construct a 119 sq. ft. vestibule entry, seeks area variance for 1) a deficient front yard setback: 50' is required, 31' is proposed; and 2) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.19, Block 2, Lot 39, Zones RM1.3 & RL3. Property Location: 17 Garden Way. Subject to WCPB review.

Sally Defty stated that she needed a variance when she originally built her house due to the brook on the south and west and the placement of her leach field for the septic system on the north. This forced her over to the east end of the property which is where she wants to create this addition.

Sally Defty stated that she is a lifelong summer resident but she didn't realize what winters were like. Now that she has lived here during the winter she would like to create

a mud room entryway before entering the house. She will be further encroaching on setbacks from the road by an additional 5'.

Jason Saris asked if the construction of the addition will match the existing house. Sally Defty replied that the same materials will be used.

Kam Hoopes stated that this house is not part of the subdivision owned by Home Place Corporation. Additionally the right-of-way is part of the driveway supplying those houses with access. Sally Defty stated that she does have permission from the president of the Home Place Corporation.

Jason Saris asked if there was any correspondence. Counsel Muller read the following:
1) Gordon McAleer, President of Home Place Corporation, in support of the project.

Pam Kenyon stated that there is no WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from Sarah Defty (V11-05) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#2 of the agenda.

The Board makes the following conclusions of law:

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

2) There will be no undesirable change in the neighborhood character or to nearby properties, the addition will improve the neighborhood and provide a bit more character.

3) The request is not substantial; it is a small addition to the existing house.

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

5) The alleged difficulty is not self-created, especially since the applicant has not

resided here in the winters and was not aware of the need for this kind of room.

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

3. V11-06 BOLTON LANDING LLC. (BUDDY FOY). Represented by Gary Hughes. To alter pre-existing non-conforming structure, specifically to construct a proposed 65.4' x 10.8' roof over proposed walkway and a 14'x 17' patio, seeks area variance for 1) a deficient front yard setback: 30' is required, 21' is proposed; 2) Parking: 7' additional spaces required, 0 proposed; and 3) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 3, Lot 91, Zone GB5000. Property Location: 4950 Lake Shore Drive. Subject to WCPB review.

Gary Hughes represented the applicant. The property has three existing buildings on it. The building that currently has the Ben & Jerry's with a studio apartment on the back and apartment above is what is being discussed in this proposal. The applicants are proposing to change the studio apartment in back of the building into a wine store. The Ben & Jerry's and the apartment above will operate in the same manner. In order to draw people into the wine store, the applicant wanted to connect the patios to draw people in. He is also proposing signage over the entry to the porch.

John Michaels asked what material they will use for the patio. Gary Hughes stated that it will be pavers with a roof over it. Due to fire concerns they will have to use steel poles with steel joists and finishes. The existing building has metal and vinyl finishes currently so it will be a good fit aesthetically.

Jason Saris asked if this is part of any future plans for this structure. Gary Hughes replied no. The space is very small and he is not planning to create a liquor store, just to sell fine wines.

Tony DePace asked why they needed the additional parking variance. Pam Kenyon replied that it was for the patio and the additional retail.

Jason Saris asked if this new area would just be access to the new store or would product be displayed out there. Gary Hughes replied that he does not believe that the NYS Liquor Authority would allow him to have any type of display on the patio. Tony DePace asked if there would be any seating out on the patio. Gary Hughes replied that there could be, but it would not be to serve wine. Gary Hughes stated that the applicant will probably dress up the area and may add some benches which would allow for pedestrians a place to sit, get out of the elements or eat ice cream. John Michaels feels that the additional seating will help out there.

Pam Kenyon stated that there was no correspondence. There was no Warren County impact with the stipulation that the applicant review on-site stormwater management techniques at the rear of the parcel to mitigate any increase in stormwater run-off.

Jason Saris asked if the applicant has considered stormwater management. Gary Hughes stated that due to the long winter he was not able to really look at the soils in this area. However, he is aware of quite a bit of ledge. The water drains to the back of the property and feels that the run-off could be handled with a dry well under the parking lot which is not paved. Kam Hoopes stated that it will be a limited space between the buildings and it would be a great opportunity to concentrate their efforts to address stormwater. Gary Hughes agreed that they could gutter this area and drain it back to the dry well.

Jason Saris if there was any comments from the public in attendance.

Frank McDonald commended Buddy Foy for trying to increase the business in town. With regard to the parking part of it, the applicant is expecting people to be pedestrians. Frank McDonald stated that he would like to take this opportunity to address the large delivery trucks that supply the restaurant and stores. The trucks stop in the road when no one is even there. They often have to wait until someone is there to unload. He stated that although it is not good in the off season, it is even worse in the summer when there is parking on both sides of the street. Frank McDonald stated that the applicant indicated on his previous approval that the trucks could park in the Rye Field parking lot and bring it across the street. However, that has yet to happen. He asked the ZBA if there was anything that could be done to help them with this issue.

Tony DePace stated that this will be retail of wine only. Gary Hughes replied yes, there will not be any serving. With regard to Frank McDonald's comments about delivery of supplies, Gary Hughes stated that typically with wine distributors they do not use large tractor trailers which could go into the parking lot in the back.

Vasiliki Tekmitkov asked if they would allow wine tasting. Gary Hughes replied that occasionally they do allow for wine tasting within the store to try a new product. Vasiliki Tekmitkov asked how wine tasting is not considered serving alcohol. Kam Hoopes stated that they do a tasting in anticipation of making a sale, but they are not serving or selling wine by the glass.

Jason Saris stated that he would make the point that with regard to parking, traditionally, on street parking is available in the town. However, since the parking is limited businesses in the GB5000 have typically been given a parking variance. If they were not to grant these variances they would not have a business district because no one could meet the parking requirements.

RESOLUTION

The Zoning Board of Appeals received an application from Bolton Landing LLC (V11-06) 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 norm for downtown Bolton businesses.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it will enhance this area. It is in the GB5000 business district.
- 3) The request is not substantial; it is a simple sheltered roof over a paved area.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the Board would like the applicant to take as much care as possible when dealing with storm water.
- 5) The alleged difficulty is not self-created,

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

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

4. V11-07 KOLVEK, RICHARD & MARY. Represented by Daniel Kolvek. To alter pre-existing non-conforming single family dwelling, specifically to construct a 250 sq. ft. deck and stairs, seek area variance to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.00, Block 2, Lot 90.1, Zone RCL3. Property Location: 5516 Lake Shore Drive. Subject to WCPB review.

Dan Kolvek stated that he is seeking to add a deck to the back of the existing house. The proposed deck is approximately 250 square feet and will be within the building envelope. It is attached to the house which is a pre-existing non-conforming structure due to the

front yard setback. There will be no change of grade or cutting of trees or additional of impervious surface area.

Kam Hoopes stated that this is a minimal request. This addition is on the back side of building away from the right-of-way and not visible from the neighbors.

There was no correspondence and no Warren County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Richard and Mary Kolvek (V11-07) 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 above grade.

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

3) The request is not substantial; it is a small deck.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; there are no trees coming down or grading that will occur.

5) The alleged difficulty is not self-created,

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

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

5. ALEXANDER GABRIELS, III. In accordance with Section 200-72 of the zoning ordinance, seeks to appeal the Zoning Administrator's interpretation of Section 200-93, whereby it was determined that the restoration of the employees dormitory on Green Island did not constitute a "change" thus a variance was not required. Section 200-93 reads as follows: For the purpose of regulating development and the use of property after initial construction and occupancy, any changes shall be preceded by a variance request. Properties lying in the PUD Districts are unique and shall be so considered by the ZBA and Planning Board when evaluating variance requests. The maintenance of the intent and function of the PUD shall be of primary concern. Section 171.16, Block 1, Lot 16, Zone PUD. Property Location: 110 Sagamore Road known as the Sagamore.

Zandy Gabriels stated that he feels that this adequately describes the concern that he has, which is that they have a significant change to one of the buildings over at the Sagamore that did not go through the PUD amendment procedure. He stated that they only have 2 PUDs in Town. The Sagamore was the first PUD and it is a key and critical industry to the Town and Warren County. He does not want to cause any harm here, but he feels that the proper procedure was not followed.

In the past this type of project has been treated as an amendment to the final plat which requires a legislative act. For some reason the Town decided not to go through the PUD amendment and it would just require site plan review because it was the same building going up in the same footprint and under the same use. Zandy Gabriels argued that is wrong. Under Section 200-93 it clearly says any changes are to go through the variance process to make sure that everything is in accordance. What is most important is that when it comes through this Board it is a public hearing and requires public notice to neighboring property owners. That does not happen under site plan review before the PB. Zandy Gabriels stated that he just happened to attend that PB meeting and was for the first time hearing about this project. At that meeting he was afforded a courtesy by the Chairman to make a comment. Other neighboring property owners did not have that right or courtesy extended to them. Since the PUD is unique of mixture of residential and commercial properties within the PUD and does impact neighboring property owners he feels that the legal rights need to be attended to.

Zandy Gabriels stated that he was unaware at the PB meeting that would be the end of the process for Sagbolt. Apparently the APA does not have a problem with this and in the long term he does not feel that this will be particular problem. However they are just at the beginning stages of this and he is suggesting that it needs more than just a site plan review. This would afford other property owners and opportunity to review and comment on this project.

Zandy Gabriels stated that Sagbolt will question his standing or right to appeal this decision because he has not experienced any material harm because of this site plan review. He suggests that is incorrect because he is a property owner that abuts this property and was not given his legal rights to review the project.

Zandy Gabriels stated that they keep describing this as a dormitory structure. When it

was built in the late 20's and up until the late 70's it was used as a dormitory. However when the Wolgins bought it they did not use it in that fashion, nor has it been used that way in 25 years. He suggests that this is a change in use. Neighboring property owners have grown accustomed to not having the approximately 43-86 employees there.

Zandy Gabriels stated that there has also been a slight change in physical character. His mother noted that the porches were not going to be constructed. Although porches are minor amenities, they do help to cut down on the visual impact of this massive 90' wall with 3 stories. This detail was omitted at the January site plan review discussion and it is a physical change.

Zandy Gabriels stated that there has been a change to the demolition of a big building. The act of demolish is no small event and not something that can be accomplished in a short period of time, neither will the re-construction. The Town of Bolton really only has 2 seasons; summer July 4th to Labor Day and then they have the rest which is construction season. He is about to be hit by change this summer because the anticipated start date will be soon and more than likely will occur all summer long. This impacts the property and the access in and out of the property. He feels that construction should be occurring outside of the summer season. He is not sure why they didn't start after approval in January because they could have been done before summer. Instead Sagbolt received their demolition permit from the County on April 12. This project is not moving quickly at all and construction all summer long is not a great advertisement for a 4 star hotel. Tony DePace stated that although it would be nice to not have construction go on in the summer months, as far he knows there is no regulation for this and asked why they were discussing this topic. Zandy Gabriels stated that he was just making his argument as to why he is an aggrieved party.

Ben Pratt, representing Sagbolt, LLC, stated that generally in the past few years while before the ZBA, the question has been why they are there. He stated that they have always complied with what was required by the Town and intend to continue with that. In return they only ask to be treated according to the rules just as everyone else is. What is difficult with this, is that there is no clear line as to what a PUD amendment is or isn't.

Prior to submitting their application they met and spoke with members of the Town, LGPC, APA and NYS OPRHP to make the determination of how to proceed and what regulations or approvals were required. In this situation, the APA found that this was non-jurisdictional because they had originally approved the dormitory and they were just getting around to doing the work. The APA felt that it just required submission of site plan materials in the same way that they have done everything else. As long as the Town felt that this was not a PUD amendment, the APA found that this was non-jurisdictional. OPRHP issued a draft letter to the APA indicating a negative impact. However it is not FOIL-able because it is just a draft and it was never formalized because it was non-jurisdictional to the APA. OPRHP did come up for a site visit and found that this is the way to solve a problem for this building. It is a historic structure but it does not have a significant historic value. Finally, the Town did not find this was any kind of change that

required a PUD review.

Ben Pratt stated that Zandy Gabriels raises the issue of physical appearance with the porches. There is no evidence that the porches are significant. He stated that their plans presented in January never hid the fact that there were porches. He stated that OPRHP did not feel that the porches were a historical significant event. They also felt that this change reduced the amount of impact.

With regard to whether or not this was a change in use, Ben Pratt stated that all parties again did not feel that this was a change in area or approved use. Therefore they did not feel that this was a PUD amendment. He stated that not only Pam Kenyon had this interpretation but they also met with Supervisor Conover and Counsel Muller for their review as well.

With regard to construction status, Ben Pratt stated that they didn't get the non-jurisdictional letter from the APA until April 6th. They could not get their demolition permit until they got the letter from the APA which was on April 12th. They have also had an asbestos abatement study performed and have given a 10 day notice to the State. They intend to start the demolition as soon as the 10 day period passes. This is a pre-fab building that will be hung in place. The construction is to begin now and they anticipate completion by July. Ben Pratt stated that this building is needed and will be used now. The whole reason for the project is because on-site housing is required to hire the number of quality employees that the Sagamore needs. They paid hundreds of thousands of dollars in overtime last year as a result of not being able to have the right number of quality employees.

Ben Pratt stated that in order for an individual to bring an appeal they must have standing. In order to have standing, one must make an objection which is different from an objection that anyone in the Town can make. Zandy Gabriels did not make any objection like that in this appeal. He only made two objections, the physical change without the porches and the change in use; anyone in Town could make those objections. Ben Pratt stated that given that Zandy Gabriels does not have any standing in this appeal, they request that the ZBA deny his appeal and uphold Pam Kenyon's decision that this does not constitute a PUD amendment.

John Michaels suggested that Ben Pratt appeal to the TB to amend the PUD legislation so that they do not have to go through these extensive steps. He feels that Sabolt went through the proper process in having the site plan review.

Jason Saris stated that Zandy Gabriels does have a valid point regarding how that review takes place and how the public can be involved. He understands John Michaels desire to amend the code to better handle PUD amendments. However, depending on which Board hears PUD amendments will make a difference in whether or not public input is allowed. He agrees with Zandy Gabriels point that having this reviewed in an environment where the public can't even ask questions, isn't the best place to have it

reviewed. Ben Pratt agrees that the comments are correct and they have discussed with the Town regarding participation in the zoning review of the ordinance and have had the same encouragement that John Michaels is suggesting. Although they would like to be involved, his understanding was that the Town wanted to re-write the entire ordinance and not piece meal. Jason Saris stated that there has been a draft proposal for the ordinance that has not been moved forward and should be. Ben Pratt stated that Zandy Gabriels did not raise this as an objection but if he had, again it would have been just a general objection that anyone can raise.

John Michaels stated that typically TB's review PUD amendments. ZBA's deal with zoning ordinances and with PUDs they are dealing with interpreting a local law that they didn't write. Jason Saris stated that in the past these PUD amendments have gone before the TB which does allow for public input. Ben Pratt stated that typically these go before the TB and if they would like further review they usually refer it to the PB; the ZBA is not usually involved. Jason Saris agreed that this would not be a bad way to go.

Jason Saris asked how this structure is identified in the PUD document. Ben Pratt replied that the PUD document does not really identify the structure other than the map which just shows the structures on the island. The PUD contract with the Town is a very short document that does not have a lot of meat to it. This was the Town's first PUD. The APA specifically refer to the hotel and dorm restoration. However, the Town does not have anything specific in the contract between them and Norman Wolgin.

Kam Hoopes stated that typically when they review this they are not sure what they supposed to do with these submissions. They understand that they are looking to make sure that there are no significant changes to how the hotel operates with each of the improvements made. The previous projects have been rather significant with major renovations and change. This is the one time that they could stream line the process because it was a replacement in kind and he feels that Pam Kenyon showed good judgment.

Jason Saris stated that Zandy Gabriels does share some valid points. They need to determine whether or not procedurally things were done properly. Zandy Gabriels also raises the point as to whether or not this is a change in use. It was a dormitory but has not been used as a dormitory for the past 25 years. Kam Hoopes disagreed that this has always been the allowed use. Ben Pratt stated that the approved use has not changed. The fact that Green Island or Sagbolt has not used it in this manner does not constitute as a changed use. Jason Saris stated that he wonders if they should have come before the Town when they started using it as storage and office space since it was a change in approved use.

Ben Pratt stated that he understands the points that they are discussing, but the bigger issue they have to deal with is whether or not the applicant has a standing or to be aggrieved party. If he does not have standing then none of this other stuff can be discussed. Counsel Muller agreed that they need to address this issue first. The case law

defines an aggrieved party as one who has suffered an injury, in fact, distinct from that of the general public. He stated that they will have to make a determination of whether or Mr. Gabriels is an aggrieved party. He further explained the thought process in how they got to make the decision to proceed in this manner. It was based on the APA original 1983 approval.

Pam Kenyon stated that she has the original permit from the APA and it does state that it was for the existing restoration of the existing hotel and existing dormitory. She stated that she is not sure if it should have come before the Town when it was not used as a dormitory. She noted that they have not been consistent with how they have handled this process, sometimes it has required a PUD amendment, while other times it required a variance and still other times just a permit. She agrees with John Michaels that they need to work on the legislation to streamline the proper procedure. Pam Kenyon stated that she agrees also with Zandy Gabriels in that the code does not adequately define what constitutes a PUD amendment or the proper procedure to follow.

Jason Saris stated that the Board would need to address the issue of standing before they can go forward with Mr. Gabriels appeal.

Zandy Gabriels stated that there are only a select number of individuals that are impacted by any changes on the PUD. With regard to the suggestion that one would have to be materially harmed, means that there is no ability to come before any Board to seek an appeal. An Article 78 would be fruitless because nobody has standing because with zoning issues no one is materially harmed because you are dealing with regulations. The only person that can make the appeal is the applicant themselves which shuts the public out under this theory of law. Zandy Gabriels stated that he is an aggrieved party. He is a neighbor that will be subjected to all of the traffic going right by all summer long. He agrees with Ben Pratt's argument that the PUD is very sloppy and non-existent, with the exception that it says that any changes on the PUD get a variance.

Ben Pratt stated that not only does Zandy Gabriels need to have standing but he needs allege standing in his appeal and in the document before them it does not do this. The ordinance specifically provides that someone needs to be personally harmed, but it goes on to say that the municipality, through a Board, can sue without that requirement. So there is a remedy, it just prevents individuals from bringing lawsuits based on Town-wide issues; they have to have issues specific to them.

Jason Saris asked Counsel Muller if what is on the agenda was submitted by the applicant and was not supplied by the Town. Counsel Muller replied yes. He spoke with Zandy Gabriels right before his submission and only discussed the timing of the submission. Whatever is in or absent from his petition is entirely from the applicant. Jason Saris asked if they omitted anything to shorten up the appeal. Counsel Muller replied no.

Jason Saris stated that they would need to address the standing issue and whether or not he presented his application to them correctly. Kam Hoopes stated that he feels that this

appeal is based on a technicality and they are countering it with a technicality. Jason Saris stated that it was not his intent to counter it with a technicality but it is his intent to see that this Board follows the rules.

RESOLUTION

Motion by John Michaels to deny Zandy Gabriel's appeal due to his lack of standing because it does not represent any individual harm specific to him. **Seconded by** Tony DePace. **All in Favor. Motion Carried.**

Pam Kenyon commented that it is very difficult dealing with PUD amendment language. She appreciates John Michaels comments about getting the TB to do something about it. Jason Saris stated that some of this is addressed in the draft ordinance which may or may not address all of these issues but it is the start of the process. They had hoped that once the draft was completed it would go to the public hearing process. He asked if the ZBA was interested in requesting that the TB move forward with these amendments. Kam Hoopes agreed that they worked on that draft for over 4 years only for it to be buried. It needs to be brought out and moved forward. Jason Saris stated that he does not want to hold up the next applicant but would like to address this again before the adjourn.

6. V11-08 MacEWAN, ROBERT & DEBORAH. To construct a proposed 4-unit townhouse complex, seek area variance for deficient 1) front yard setbacks: 30' is required, a) 13' 6" is proposed from Goodman Avenue (lot 4); b) 20' is proposed from Cross Street (all lots); 2) rear yard setback: 15' is required, a minimum of 1.5' is proposed (all lots); 3) side yard setback, 20' total is required; a) 10' is proposed for lot 1; b) and 0 ft. is proposed from interior lot lines. 4) lot coverage 40% is allowed, 59% is proposed for 2 & 3; 5) lot size; 20,000 sq. ft. is required; a) 2,614 sq. ft. is proposed on lot 1; b) 1,742 is proposed on lots 2 & 3; c) 3,049 is proposed for lot 4. 6) lot width; 50 ft. is required; a) 28.24 ft. is proposed for lot 1; b) 22 ft. is proposed for lots 2 & 3, c) 34.27 is proposed for lot 4. 7) lot depth; 100 ft. is required; 79.85 is proposed for each lot. Section 171.15, Block 1, Lots 74.1, 74.2, 74.3 and 74.4, Zone GB5000. Property location: 2, 4, 6 & 8 Cross Street, formerly known as Wilson's Laundry. Subject to WCPB review. NOTE: This variance was previously approved on 9/19/05, 11/14/05 and 7/14/08 under V05-55, V05-68 and V08-34 but never acted upon.

Rob MacEwan requested a re-approval of his project. They have kept this alive for 6 years and hope to keep it alive for a bit longer.

Kam Hoopes provided some history since he was the only current member that was on the Board at the time when this first came before the ZBA. He stated that they all put a lot of work into this project. There was only one dissenting vote in the first meeting and by the third approval they actually made the motion to approve it.

John Michaels asked if they plan to build it this time. Rob MacEwan replied that the have a perspective buyer.

Pam Kenyon stated that there was no correspondence. It was not sent back to WC because it had no impact at that time of approval.

RESOLUTION

Motion by Kam Hoopes and seconded by Tony DePace to extend the approvals for variances V05-55, V05-68 and V08-34 for one year and one year, thereafter at the Zoning Administrator's discretion. All in Favor. Motion Carried.

With regard to having the TB review the existing Zoning Revisions, Jason Saris asked if any Board member was interested in making a motion. Counsel Muller suggested that they incorporate that they would like this to be sent to the APA for their input. Frank McDonald agreed and stated that he does not understand why this has not been acted on since it was worked on so hard by so many people for 4 years.

RESOLUTION

Motion by Kam Hoopes that the TB takes action with regard to the existing proposed draft of the Zoning Regulations Revisions and that they give consideration to submitting it to the APA. Seconded by Tony DePace. All in Favor. Motion Carried.

The meeting was adjourned at 9:30
Minutes respectfully submitted by Kristen MacEwan.