

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
August 16, 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, John Michaels, Don King, David Ray, Jeff Anthony and Counsel Michael Muller

Absent- Zoning Administrator Pamela Kenyon

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

Jason Saris asked if there were any corrections or changes to the July 19, 2011 minutes.

RESOLUTION

Motion by Don King to approve the July 19, 2011 minutes as written. **Seconded by Jeff Anthony.** Tony DePace recused himself. **All Others in Favor. Motion Carried.**

- 1) **V10-56 VILLENEUVE, RAY & KELLY.** Represented by Stephen Jung. To alter pre-existing non-conforming single family dwelling, seek area variance for **1) Deficient setbacks. Shoreline:** 50' is required, 34' is proposed from the mean high water mark of Lake George and 11' is proposed from Finkle Brook. **Front:** 30' is required, 1' is proposed; and **2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.11, Block 2, Lot 25, Zone GB5000.** Property Location: 16 Parkside Drive. Subject to WCPB review. *Note: This item was tabled at the July meeting pending additional information.*

- 2) **V10-57 VILLENEUVE, RAY & KELLY.** Represented by Stephen Jung. To alter pre-existing non-conforming garage, seek area variance for **1) Deficient setbacks. Shoreline:** 50' is required, 10' is proposed from Finkle Brook. **Rear:** 15' is required, .5' is proposed; and **2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.11, Block 2, Lot 25, Zone GB5000.** Property Location: 16 Parkside Drive. Subject to WCPB review. *Note: This item was tabled at the July 2011 meeting pending additional information.*

Note: Items 1 and 2 were heard together.

Stephen Jung stated at the end of the last meeting he had an opportunity to talk to Dave from RPI and they discussed some possible changes to the loft building which seemed to be the biggest area of focus. They have since removed the second floor and changed the roof which resulted in a reduction of the height by 4' or more. He stated that they will not change the

colors or design of the building but the overall mass of the structure has been reduced.

Stephen Jung stated that since last meeting they have also met with a landscape designer who has provided a planting plan, which was the second item of concern. He introduced landscape professional Charlie Spinella to review the planting plan.

Charlie Spinella stated that they are attempting to create a series of rain gardens that will intercept stormwater moving off the hardscape and roof before getting into the stream or lake bed. The owner would like some turf grass but the majority is native plant material. He explained that they will now have a scattered stone path instead of a continuous paved pathway in the original drawing. This will allow the surface water to infiltrate in between the stone.

John Michaels asked where the plant list came from. Charlie Spinella replied that it came from the APA. They provide a good list but he did cross check the list to be sure that he can get the plant material locally because there is a lot of material on the list that is not commercially grown. He has spoken to a woman at Fiddlehead Nursery and she grows nothing but native materials for these lists and he has since found additional suppliers.

Don King asked about their time frame for installation of the landscape. Charlie Spinella stated that he can get the plant material up until the fall. They would want to stabilize the site as quickly as possible. However, they will not do most of their installation until after the construction cycle is done. He stated that he is suggesting the use of straw bails all around the site to prevent the run-off instead of the silt fences. Charlie Spinella replied that it is possible that the installation of plant materials won't be until the spring. Jeff Anthony agreed that it would be best to plant the materials in the spring so that they have the best chance of survival.

Redman Griffin, attorney for RPI, stated that they are delighted to see that the garage will be staying just one level. The only question that they had was about the trees shown on the plan. Stephen Jung replied that they are existing trees but they were not shown in the correct proximity to the structure. Redman Griffin stated that if the Lake George Waterkeeper is satisfied with the stormwater changes then they are satisfied as well.

Chris Navitsky, Lake George Waterkeeper, stated that they appreciate the review that the ZBA has done especially their focus on the landscaping plan and their attention to the regulations regarding the balancing criteria. He did submit a letter but was not aware of some of the changes so some of the questions may have already been addressed.

Chris Navitsky stated that they had some questions regarding the extent of work done on the cottage since it is only 6' from the property line. He asked if all of the work will be done entirely on the applicant's property or will there be encroachment on the adjoining property. He asked if that could be addressed. He stated that they also feel that having the cottage right on the property line it reduces the possibility for the continuous buffer that should be installed along Finkle Brook. Having a more compliant structure would allow for a continuous vegetative buffer. He stated that they also questioned the trees shown on the plan and asked for some clarification. He asked if the retaining wall will still be part of the application.

Regarding stormwater, they estimate that the volume of stormwater is over estimated by 33%. They claim that there is an average depth of 1.5' of the stormwater basin, but it is the maximum depth that is 1.5'. They also wondered if this would be going for site plan review.

Counsel Muller stated that they have a letter from the Waterkeeper but Chris Navitsky stated that he could defer from reading it. Warren County Planning Board had no action taken.

Stephen Jung stated that the retaining wall has been removed from the plan. With regard to the continuous buffer along the cottage, that area is not part of the applicant's property. Regarding the construction, they plan to keep everything on the applicant's property.

Dave Diehl From RPI, stated that he feels that it is unrealistic to think that the applicants will not need to use the RPI property during construction. However, he is okay with allowing the use as long as everything is put back the way they found it.

RESOLUTION

The Zoning Board of Appeals received an application from Ray and Kelly Villeneuve (V10-56 and V10-57) 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 Items# 1 & 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; these are setback issues.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is an improvement, all comments and concerns from neighbors have been addressed and answered several times.

3) The request is not substantial; considering the neighborhood and neighboring properties and it will be an improvement on the present appearance of the property. They will still have the same drip line of the current house and it will not be much different then where it sits now.

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

plans have been added to address any stormwater concerns.

5) The alleged difficulty is not self-created, the original building was not created by the present homeowner.

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

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

- 3) **V11-30 SENESE, JAMES & ANN MARIE.** Represented by Kevin Kershaw. For the construction of a proposed 19.5' x 25' garage with storage above, seek area variance for deficient setbacks. **Front:** 30' is required, 14' is proposed. **Side:** 8' minimum is required, 7.2' is proposed. **Rear:** 15' is required, 6.5' is proposed. Section 171.15, Block 3, Lot 77, Zone GB5000. Property Location: 3 Congers Point Way. Subject to WCPB review.

Kevin Kershaw stated that the applicants are seeking to build an 18' x 24' garage with minimal setbacks on three sides. It is a one car garage with storage above. The garage door faces the right-of-way and has a few windows and an access door in the back with storage upstairs. The overall height is 21' and will have the same vinyl siding to match the house. They plan to plant arborvitae on the back of the building to screen it from the neighboring property and to pick up some of the rain water coming off the road.

John Michaels stated that this is a large structure to house lawn equipment because there is not much lawn left on this property. Jason Saris asked what percentage of the lot coverage would they be covering with this proposal. Jim Senese stated that based on the architect's figures, they will be at 22% of their acreage. Kam Hoopes stated that the last time they had an application the overall length of the building came up. Jim Senese stated that this will not be attached to the existing building. The existing building is approximately 108' long. The lot is a .34 acre lot and the total square footage of building, deck, porch and proposed garage will be 3,261 sq. ft.

Jason Saris asked why this was slightly askew from the line up of the house. Kevin Kershaw stated that it is so they can pull straight into the garage door. Otherwise the ledge rock that has the Association sign will block their entry. Additionally if they straighten it, it would make it parallel to the side of the house and the back of the property drops off and they would have to build a major foundation. Jason Saris stated that he asked because it seems that if it were straighten out it would not violate the setbacks quite as much. Kam Hoopes stated that it seems to be a good thing that this is not lined up with the house since it is already 108' long.

John Michaels asked what happened to the shed approval from last year. Jim Senese replied that the Garden Time shed was rather expensive and he felt that having a permanent garage was much more favorable.

John Michaels asked how the HOA feels about the proposal. Jim Senese stated that he is an officer but recused himself from this. However, they do have a letter from the HOA Board granting approval.

Jason Saris asked if the applicants could explain why the need for such a large structure since it is just for lawn equipment. Jim Senese stated that it is a garage which will house a car and a lawn mower and snow blower. The upstairs area will just house files and stuff that they cannot store in the house. His basement is at rock ledge and you cannot stand in half of the basement. Also since it is poured foundation on rock ledge it is not a great area for storage especially given its damp nature.

Ann Marie Senese stated that they are trying to move up to the area permanently. They have a large home in Glenville and part of coming up here was to make provisions for a brother-in-law and mother-in-law and that's why they made prior additions. Her brother-in-law has since passed away but her mother-in-law is still a viable option. The lawn equipment referenced is her John Deere snow plow and she intends to snow plow Congers Point Way, her driveway and any of her neighbor's driveways as well as her church. She stated that Jim also has a John Deere lawn mower and they would like to have storage for that as well. Ann Marie Senese stated that she loves to decorate for every season and she will need the storage. With this being their permanent home they will try to bring absolutely everything with them and they are not into downsizing. John Michaels asked why prior applications didn't include this type of request. He would have rather seen a larger attached garage for the house to incorporate the current storage request than have it piecemealed. Jim Senese stated that the reason it was broken up was due to economics.

Chris Navitsky, Lake George Waterkeeper, stated that they have met Kevin Kershaw and Jim Senese on site to discuss the stormwater. He stated that if approval is granted they should consider requesting stormwater incorporated where available. He also suggested finding out the depth of the bedrock.

Kevin Kershaw stated that along the west side of the garage they intend to incorporate a swale to hold the water away from the one side. They have incorporated a rain garden on the north side of the property. They intend to plant arborvitae along the garage to buffer this from the neighbors and to pick up the roof water from the garage.

Kam Hoopes stated this is a long skinny lot and it is mostly impervious. There is no view that will be blocked.

Barbara Drake, neighbor, asked that the Board look at the construction in their area. She has had a lot of comments from people looking at her house regarding the close proximity of the houses. She understands that everyone would like to have a large house but some of the things requested are self-imposed hardships. She asked that the Board look at the additions to the area and the impact to the other 16 homeowners who may request the same.

Jim Senese stated that he viewed Barbara Drake's listing for her property which occupies 2,300 sq. ft. and their house currently takes up 2,496. There is 200 sq. ft. difference between their homes.

Frank McDonald, neighbor asked for the explanation of the trench that will be installed. Kevin Kershaw stated that they will install a swale trench filled with stone. Under the stone the ledge is about 6-10" at the most. The swale will bring it around the back to the rain garden if it were to overflow. Frank McDonald asked how far the garage will be from their property line and will it be enough room to incorporate this swale. Kevin Kershaw replied that it will be 7'2". He stated that he could also use gutters on the side to move that water. Frank McDonald replied that would be preferred. Jim Senese stated that they would be able to accommodate that.

Counsel Muller stated that there was no WCPB.

John Michaels stated that he has not heard compelling evidence as to why this could not be smaller or incorporated into the property in a less intrusive way.

Jody Connelly, neighbor stated that she drives by the Senese's property everyday. Although it is beautiful, it is already very long. She asked when there will be a limit to the construction since they are dealing with very small lots in this development.

Jim Senese stated that they have looked at various designs and feel that this best fits their needs. This is the flattest area and is the best location for it. The shed last year was about 20' x 24' so they have downsized the request a bit. Additionally the shed would have required a retaining wall to fit on the property. This has eliminated that need. They also feel that this is a very aesthetically pleasing structure.

Jeff Anthony asked if they could impose a condition that no further expansion be allowed on this lot. Counsel Muller replied no they conditions imposed have to be reasonable. They cannot pre-empt the applicant from coming back at a future date to make an improvement to the property. He stated that they could apply the condition that there is no further expansion of the garage.

RESOLUTION

The Zoning Board of Appeals received an application from James and Ann Marie Senese (V11-30) 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 essentially the last reasonable building spot to accommodate something like this.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is in the GB5000 zone and all of these properties are consistent with large homes on small lots. It is consistent with the neighborhood and nearby properties.

3) The request is substantial; although this is smaller than the previous variance request for the Garden Time Shed. All actions in this subdivision seems to be substantial however it does fit in with the character of the neighborhood.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the property is on one big ledge rock and it is impervious surface on top of already impervious surface. However the applicants are taking steps to direct and slow the flow of stormwater.

5) The alleged difficulty is somewhat self-created, but not in any way that concerns this Board.

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

Now, upon motion duly made by Kam Hoopes and seconded by David Ray, it is resolved that the ZBA does hereby approve the variance request as presented. Kam Hoopes, Jason Saris and David Ray approved. Tony DePace, John Michaels, Don King and Jeff Anthony opposed. **Motion Denied.**

- 4) **V11-32 BERKOWITZ, NED & ROBERTA.** Represented by Kevin Kershaw. 1) For the construction of a proposed attached 2 car garage/second story above/breezeway, seek area variance for a deficient **Front** yard setback. 30' is required from the edge of the right-of-way, approximately 1' is proposed. 2) For the construction of proposed retaining wall/steps, seek area variance for deficient setbacks. **Front:** 30' is required from the edge of the right-of-way, minus 5' is proposed. **Side:** 8' minimum is required, 1' is proposed. 3) To allow a 10.10' x 9.6' storage shed to remain, seeks area variance for deficient setbacks. **Front:** 30' is required from the edge of the right-of-way, 15' is proposed. **Side:** 8' minimum is required, 1.9' is proposed. Section 171.19, Block 2, Lot 5, Zone GB5000. Property Location: 17 Congers Point South. Subject to WCPB review.

Kevin Kershaw stated that he has been in the process of renovating the applicants house for the

past 8 months. The house stayed on the same footprint and they have built the house from the inside out. Last fall, Erik & Erik brought a plan before the Board for the garage which was not approved. They have since revised the plan to include some additional information about the garage itself and entry into the garage. The garage is a two car garage with a breezeway to attach the garage to the house. The reason for the breezeway is to also connect the upstairs. This will also allow them to lower the roof line. He stated that John Michaels had requested to see a retaining wall because in order to have a flat area for the entry they would need a retaining wall. This will go along the property line on the Pierson's side and they will have stairs down the back. They have also included a stormwater plan which takes all of the water off the breezeway and garage with gutters to the back side of the house.

Jason Saris stated that he does not feel that the Board wanted to see a retaining wall, but rather John Michaels pointed out that the garage couldn't be built as it was proposed. Kam Hoopes asked if this is the same plan but with a retaining wall. Kevin Kershaw replied no it has been revised because the garage now has a bedroom above it. In building the house, they found that there was no good area for a laundry room. He had suggested to take one of the bedrooms and make it a laundry room and then at a future date they could connect to the bedroom above the garage.

Jason Saris asked if the breezeway would have a bathroom. Kevin Kershaw replied yes, they were trying to keep the plumbing all to one area. Kam Hoopes stated that this looks more like an enclosed area which would not make this a breezeway but a mud room.

John Michaels stated that he is not sure that this is the best spot for this garage. He is not sure that it will all fit in there; plus there is a lot of retaining wall.

Ned Berkowitz provided some explanation of the history of the property. He stated that the house was built in the 1800's and they have made every effort to maintain the historical and architectural integrity of the property. The side of the house that faces the marina is what they consider to be the main entrance to the house and the north face is back. This garage location was chosen because using the right-of-way entrance as a full-time resident would be difficult for ingress and egress. It would not allow him much space to get in and out with his large truck. He does not feel that this is safe or practical especially with snow build up. Additionally they would have to deal with a bit of a grade getting out of the garage in the winter which was also a determining factor. John Michaels asked why it wouldn't work to put the garage on the other side. Ned Berkowitz explained that it is a private ROW and is not always maintained or plowed. They would also like to have this attached to the home. John Michaels stated that it still could be attached. Ned Berkowitz replied that is the front of the house and they do not want to destroy the façade of the house. They also wanted to minimize the amount of driveway or roadway that would have to be maintained in the winter.

There was further discussion about why they cannot access the property by moving the garage. Ned Berkowitz stated that they felt that this was the most reasonable point of entry. He stated that there is traffic from the other neighbors that would be going by and they will also have to deal with snow build up. Jeff Anthony disagreed and stated that there is not a lot of traffic on

this road; with 1 car every few hours. He does not feel that backing out on Congers Point Drive would be difficult. Ned Berkowitz stated that he is more concerned with the width of the roadway and snow build up.

John Michaels stated that they could consider shortening up the garage a few feet to allow for more room to back out. Ned Berkowitz stated that the size of the garage was dictated by the breezeway and the step down into the house and the stairs to get into the garage. Kevin Kershaw agreed that they would need that room. Jeff Anthony stated that they were talking about the depth of the garage; he stated that they could always add some width if they needed the storage space. John Michaels stated that if they were to shorten the garage and enter the garage off the paved right-of-way would be a lot less disturbance and save a ton of money. Ned Berkowitz stated that the other location was not feasible because it would affect the aesthetics of the front of their house.

Counsel Muller stated that there is a letter from the Lake George Waterkeeper but he will allow the Waterkeeper to speak for himself. There was no WC PB impact.

There was a discussion as to tree coverage on the lot. Ned Berkowitz stated that 3 trees would need to come down.

Kathy Spawn stated that they will be losing 3 trees on the property. She stated that the garage will block a view of the lake between the Berkowitz and Connelly house. However she will be gaining a view of the lake over the Berkowitz's house which is more attractive than the view between the two homes. She stated that although this is a large structure she feels that it will be more aesthetically pleasing to look at than the current back yard.

Kathy Spawn asked what will happen between the garage and road. Kevin Kershaw replied that it will be a swale to catch the rain water or the snow. With regard to the retaining wall, it seems that they will be coming close to a few trees that are owned by the Pierson's and she wants to be sure that the storm water will not impact those trees because if they were to fall down they could fall on her property. Kathy Spawn stated that she hopes that the new building will block some of the noise from the marina lift.

Jim Senese, President of the HOA, stated that the Board have not given an approval due to some concerns from the Board members. He read a letter from the Pierson's regarding the proposal. They were concerned that even though the applicants met with them, it did not allow them sufficient time to have an independent evaluation of the possible adverse effects on their property. Their concerns pertain mostly from the retaining wall and additional stormwater. Jim Senese stated that had it not been for the number of concerns they would have signed off on an approval to the ZBA.

Chris Navitsky, Lake George Waterkeeper, appreciates the review and attention to the proposal. They provided some suggestions for reasonable conditions. With regard to stormwater, there should be clarification on the plan with the guttering that was mentioned. They also feel that there is a lot of disturbance and would like to see no net increase in

impervious cover for the project. They felt more of the lower parking area should be removed to compensate for the upper driveway. Since it is so close to the lake they would like to see consideration for more stormwater management on the existing building. They also felt that if there were other site concerns they might consider having site plan review by the PB.

Jody Connelly, neighbor, has some concerns with losing the trees on the street since they will be losing all of their canopy. They also have concerns with the run-off from the back of the garage. She stated that their stormwater controls will be right up against her driveway so should it fail it will be effecting her driveway. She is concerned with the grade being higher and the removal of trees to absorb the water. She agrees that they deserve to have a garage but feels that they have other places to be able to accommodate this request.

Jason Saris asked if there would be any stormwater for the driveway and retaining wall. Kevin Kershaw replied no, Devin Dickinson feels that there is none there now and it is already impervious. Ned Berkowitz stated that this area already has ingress and egress. Every care has been given to get in and out of that garage and he feels that this is a reasonable request. Moving the garage to the other side does not allow a lot of room to move in and out of the garage. John Michaels stated that he would have liked to have seen alternatives discussed.

Tony DePace asked if they pulled this back from Congers Point Road would they be able to save any of those trees. Kevin Kershaw replied that it would help but he can't guarantee it. Jeff Anthony stated that they really need to see where those trees area to begin with.

Jeff Anthony asked Jim Senese if the HOA will make a decision on this proposal. Jim Senese replied that they will send a letter of support once the concerns and issues are resolved or addressed. Kam Hoopes stated that the Piersons are elderly and there is no house currently on the lot. He asked why they were so concerned with the proposal. Jim Senese replied that even though it is vacant, they anticipate on selling the lot and they do not want anything that would depreciate their property value. Ned Berkowitz stated that there are no issues with stormwater right now. He stated that the Pierson's indicated that they wanted a retaining wall to delineate their property line. However at the time the previous owner of their house was worried about his grandchildren falling off side of that property. Kevin Kershaw stated that there is a gully that travels along the property line between Pierson's and Berkowitz's property; the water runs off the Pierson's property and the Congers Point Road onto the Berkowitz's property.

Jeff Anthony stated that there is enough questions that have been asked tonight that he feels that applicant should return after addressing some of these issues. He would like to see the HOA letter of support as well. Jason Saris asked if they were confident that the surface water would not run onto a neighboring property with the re-grading of the parking area. Kevin Kershaw replied that the surface water will run the same way it is running now but they could incorporate some retention ponds and also install some rain gardens on the front of the house. He stated that he is sure that Chris Navitsky could assist them with this.

Don King stated that he is concerned with the snow removal in the winter. They cannot take it

across Congers Point Road and they cannot block the stairs so the snow removal will go up onto the Pierson's property which will create another point of accumulation which has not been addressed.

Don King stated that if there was a way to make a compromise on the breezeway and length of the garage they would have more than adequate room to have ingress and egress off of Congers Point Road. This would eliminate the need for the retaining wall, impervious surface, eliminate the snow removal issue and point flow of the water discharge off the pavement and unattractive set of stairways coming into the house.

Kevin Kershaw asked if it would be a more favorable plan if they were to access the garage off the Congers Point drive. Jason Saris stated that they are not sure if it is a viable option and is something that they would have to determine if that benefit could be achieved with less impact. He stated that they need to find out whether or not this can be done any other way in order to be able to proceed.

Jeff Anthony stated that he would like to see additional stormwater devices and swales added to the drawings. Don King added that they would also like to see the locations of the trees.

RESOLUTION

Motion by John Michaels to table application V11-32 pending further information. Seconded by Jeff Anthony. All in Favor. Motion Carried.

- 5) **V11-31 GREENE, ROBERT.** Represented by Neil Pelone. To rebuild single family dwelling destroyed by fire, seeks area variance for deficient setbacks. **Front:** 50' is required from the edge of the right-of-way, 41' is proposed. **Stream:** 75' is required, 50.3' is proposed. Section 200.14, Block 1, Lot 35, Zone RM1.3. Property Location: 7 Birch Drive. Subject to WCPB and APA review.

Neil Pelone stated that they would like to rebuild the original house in the original location which violates a stream and front setback. They would also like to make an addition of an attached one car garage.

John Michaels asked if they are any closer to the stream. Neil Pelone replied no they have reconfigured the deck and stairs so that they encroach less on the stream. Kam Hoopes asked how active the stream is. Herb Koster replied that the Town Engineer considers it an active stream. However, it has on occasion dried up but not every year. Kam Hoopes asked who has determined that this was a shoreline. Neil Pelone stated that he recalls talking to Pam Kenyon about there being a change in the stream setback from when the house was first built. Jason Saris stated that this is subject to APA review so this must be considered a APA stream.

Jason Saris asked if they will retain anything from the original house such as the septic. Neil Pelone replied no everything will be new.

Counsel Muller indicated that WC PB found there was no County Impact.

Jason Saris stated that they have a the right to rebuild the structure in the existing footprint, so even though the house burnt down this is still considered a pre-existing non-conforming structure. Additionally, the setbacks have changed but the plans have remained the same.

Herb Koster stated that the HOA does not have any requirements for a vote on this. He stated that this comes closer to his property than anyone else's and he has no concerns.

RESOLUTION

The Zoning Board of Appeals received an application from Robert Greene (V11-31) for an area variance as described above.

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

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

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

this Board makes the following findings of fact:

The application of the applicant is as described in Item#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; it is a simple rebuild of a house that was destroyed by fire with one addition that does not require any further area variance. The replacement of the house in the same place with an additional garage, which does not cross setbacks.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this house burned down in October and it will only be an improvement.

3) The request is not substantial; it is the same plan in the same spot. The setbacks have changed over time and that is why it is now non-compliant.

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

5) The alleged difficulty is not self-created, the owner did not set fire to the house or change the setbacks.

The practical difficulty is that the house burnt down, this is the disturbed ground that they built on before. The setbacks have changed over the course of time which made the house non-compliant but it was built in compliance originally. It's compliance has been improved because the proposed deck stairs have been moved.

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.

The meeting was adjourned at 8:26pm.

Minutes respectfully submitted by Kristen MacEwan.