

**Town of Bolton  
ZONING BOARD OF APPEALS  
MINUTES  
Tuesday, January 17, 2012  
6:30 p.m.**

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

Present: Jason Saris, John Michaels, Donald King, Jeff Anthony, John Famosi, David Ray, Counsel Michael Muller, Zoning Administrator Pamela Kenyon

Absent: Tony DePace

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

Jason Saris asked if there were any corrections or changes to the December 20, 2011 minutes.

**RESOLUTION:**

**Motion by** John Michaels to approve the December 20, 2011 minutes as written.  
**Seconded by** Jason Saris. **All in Favor. Motion Carried.**

**1) MARKI, BERNARD & PATRICIA.** Represented by Atty. David Pentkowski. In accordance with Section 200-72 of the zoning ordinance, seeks to appeal the Zoning Administrator's interpretation whereby determining that because animal rehabilitation is not an allowed use in the RCM1.3 zone and no permits (certificates of compliance) were issued for the structures, Bernard and Patricia Marki are in violation of Section 200-21(Application of Regulations) and 200-78A(1) (Building Permits) of the zoning ordinance as a new land use (animal rehabilitation) has been established and is being used in such a manner that is not in conformity with the regulations set forth in the RCM1.3 zoning schedule thus requiring a use variance and no permits(certificates of compliance) were issued to construct the structures in which the wild birds are housed. See interpretation/determination dated October 24, 2011 for specifics. Section 171.07, Block 2, Lot 37, Zone RCM1.3. Property Location: Braley Point.

*Note: This item has been tabled.*

**2) V11-56 WHITNEY, CAROL.** Represented by Gerald Flynn. To allow retaining walls to remain, seeks area variance for a deficient shoreline setback. 75' is required, 50' is proposed. Section 200.07, Block 1, Lot 4, Zone RM1.3. Property Location: 25 Fish Point Road. Subject to WCPS and APA review.

Gerald Flynn stated that when they started this project their goal was to complete it without the need for any variances. The applicant wanted to build within the compliant

boundaries and wanted to avoid any zoning issues. When they tore down the existing house and started the project they moved the house back to meet the setbacks from both side and lake shore. The existing septic system was allowed to be reused because the structure maintained the same amount of bedrooms. When they started excavating they ran into a lot of ledge rock and had to blast. In the end they hauled a lot of rock away but used some of it around the existing foundation as retaining walls or landscaping features because it seemed to fit in with the natural landscape. At the end of the project Mitzi Nittmann came for final inspection and found that they had installed a retaining wall. He stated that she explained that they would need a certain amount of space between them in order to not be considered a retaining wall. However they decided to obtain the variance rather than moving these rocks around to create the appropriate space because it fits in well with the landscaping on the property.

John Michaels stated that he likes that they used the rocks. He also feels that it will slow down the flow of the water with the creation of flat areas. The applicant just didn't understand the ordinance. Jason Saris stated that the ordinance does not define what the structure is made of, it is just for a structure and although this does look great, it fits the definition. Gerald Flynn stated that they spent a lot time on this project to make sure they didn't have to be at the ZBA and if someone explained it to them before they would have done so.

Counsel Muller read the following letter:

1) Chris Navitsky, Lake George Waterkeeper, who is not opposed to the project recommends the following reasonable conditions of approval: 1) evaluate the existing stormwater management controls and if none exist require raised planting beds to be retrofitted to rain gardens to provide storm water management and 2) provide an adequate shoreline buffer.

Jason Saris asked if stormwater management was required on this project. Pam Kenyon replied that she was not sure if it was required at the time. Gerald Flynn explained that they did not need stormwater management because they were within the permitted boundaries and wouldn't need it. Additionally, there is minimal pitch to the lake and there are existing shrubs that were never disturbed and a lawn area along the lakeshore. They also added plantings with all new shrubs and mulch all around the sides.

Jeff Anthony stated that the stones on the southeast side of the building are scattered and not regularly laid as a retaining wall. On the east side they have 2 pieces that are laid and terraced which he is assuming why the applicant is before the Board. Jeff Anthony stated that from a landscape perspective he finds this very attractive. It is a good reuse of the native materials and it creates areas for stormwater management. It will catch water and allow it to percolate into the soil.

Don King stated that this project will go to the APA. Jason Saris stated that in his opinion, the APA is more concerned with expanding towards the lake. However the

practical difficulty is that the rock was already there and was difficult to get off the site. The rock serves a purpose; they help to retain the soil and keep it from migrating towards the water.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Carol Whitney (V11-56) 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 Staff;

And, whereas the Warren County Planning Staff determined that there was no County action;

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

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; this is a shoreline variance and the only means to achieve this is to get a variance.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the rocks, boulders and landscape materials are all natural materials and are in character with the Adirondacks and neighborhood.

3) The request is not substantial; this is not a substantial violation of the zoning law in terms of distance from the lake.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it is the opposite as it will have positive effects in that it is not lawn with terraces of stone and earth that are planted with landscape materials that can function as recharge and infiltration areas.

5) The alleged difficulty is not self-created, the rocks existed on the site and it was something they had to deal with during construction and the solution was to use them in the landscape.

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

The practical difficulty is that the removal of the rocks by the owner and/or contractor

would have been difficult; loading heavy boulders and rocks on a truck and finding a place to dispose of them. It would have added cost to the project and would have taken time and materials to deal with the situation. The final solution is a benefit to the environment rather than a detriment.

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

**3) V11-57 LAVOY, GARY & ANNEGRET.** To replace and reconfigure non-conforming docks, seek area variance for deficient side yard setbacks. 20' is required, 11' is proposed on the north side and 3' is proposed on the south side. Section 186.06, Block 1, Lot 1.1, Zone RCH5000. Property location: 4762 Lake Shore Drive. Subject to WCPS review.

Gary LaVoy provided plans that show the existing dock configuration and setbacks and the proposed reconfiguration. He indicated that he worked with the LGPC for about a year and received approval in December with the layout as proposed. Their rule was that everything that he did had to be less non-conforming than when he started and he has achieved that.

Gary LaVoy stated that he will be replacing the crib docks with stake docks and they will be removing most of the stones. Jason Saris asked if the new docks would be wood or metal. Gary LaVoy replied that they will be Dock Doctor special. Jeff Anthony asked if they were similar to the ones at Lagoon Manor. Gary LaVoy replied yes and they are like the Town docks as well.

John Michaels stated that the existing non-conforming docks seemed more conforming than the new proposed docks configuration. He asked why he couldn't be conforming. Gary LaVoy stated to be conforming he would only be allowed 1 dock on his 150' lakefront. John Michaels asked what benefit he would get out of the new configuration. Gary LaVoy replied that the existing docks require parallel parking, the new configuration each person will have an assigned slip which will provide easier access in and out.

Don King stated that it looks like they are losing quite a few slips. Gary LaVoy stated that they will be losing 3 slips. Don King stated that the specs indicate that they will be restricted on the size and width and boats that can dock there. Jeff Anthony asked if the LGPC permit allowed him to dock boats on the northern and southern sides of the northern and southern dock. Gary LaVoy replied yes but they will have to parallel park.

John Michaels stated that he was not particularly fond of the new configuration because it is not the traditional dock style. He feels that the applicant would be able to have more than one dock on 150' of lakefront. Jason Saris stated that he probably won't get much;

the LGPC limits dock length to 40'. He stated that he is not particularly traditional when it comes to aesthetics of docks because there are number of these systems on the lake. He understands why the LGPC have it severely limited now but this dock is grandfathered in and the applicant's business is built around it. So this is not the time to ask him to be conforming. Jason Saris stated that what is being proposed is a thoughtful design although not traditional.

There was no correspondence or comments from the public in attendance.

John Michaels stated that the applicant is spending a lot of money and would like to know what the benefit is. Gary LaVoy replied that it is more beneficial to his customers which makes it more valuable to him.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Gary & Annegret Lavoy (V11-57) 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 Staff;

And, whereas the Warren County Planning Staff 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; the benefit can be achieved by other means however the applicant has stated that the "chevron design" is more beneficial to his customers for safety and ability to use the dockage that is there.

2) There will be no undesirable change in the neighborhood character or to nearby properties, docks exist now and will in the future and there is no character change to the neighborhood. This is a waterfront community with docks and fit the neighborhood character.

3) The request is not substantial; there is less or equal square footage to the existing docks. The request is not for additional dockage and there is a possibility of less boats being docked there, which could reduce boat traffic.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; crib docks are being removed and stake docks are being put in; there will be a better free flow of water through the area, which could be a possibly positive effect on the environment.

5) The alleged difficulty is self-created, the current docks are in good shape, they do not have to be changed or moved, but the applicant perceives it as a benefit to his clients.

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

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

**4) V11-58 SALAMONE, KEN.** Represented by the Phinney Design Group. For the construction of a proposed single family dwelling, seeks area variance for **1)** a deficient shoreline setback: 75' is required, 18.8' is proposed; **2)** Height: 35' is allowed, 38' is proposed; **3)** Length: 120' is allowed, 146.10' is proposed; and **4)** Garage bays: 3 bays are allowed, 2 exist and 2 are proposed. Section 213.05, Block 1, Lot 6.1, Zone RM1.3. Property Location: 4124 Lake Shore Drive. Subject to WCPS review and APA review.

*Note: Jeff Anthony recused himself from the application.*

Jason Saris indicated that the Board was short one member and Jeff Anthony has recused himself. He stated that if at any time the applicant does not feel that they wish to proceed until a full Board is present they may choose to table the application until it can be heard before a full Board.

Tim Wade stated that the applicant is proposing to construct a new house within the volume and footprint of the previously existing house. On lot 1 there is a pre-existing accessory building that is used for storage that was approved under a separate variance. There is an existing guest cottage that was also approved under a previous variance. This project is looking to build a house in the formally existing house footprint but not in the area where previously approved.

Tim Wade provided the architectural details to the plan. They are trying to create a building that is much less in volume than was previously proposed and introduce stormwater management and erosion and sediment control plans that previously didn't exist on the property. The previously proposed and approved setback was 15.4' and they are proposing to add an additional 3.5' to the distance from the lake which will come to just the deck of the house. The actual wall of the house will be 30'10" from the lake. The main portion of the house will be within the footprint and they are proposing to add a breezeway and a 2 car garage with a loft above for convenience of the applicant. The

addition is beyond the 75' setback from the lake.

Tim Wade stated that the total height will be 38' which is another variance they are seeking. The previously approved plan had a little less height but it did push the limit with the setback to the lake. They are trying to provide something more suitable to the landscape and lake shore environment. In addition to pulling the house back from the lakeshore they are also looking to make the portion of the house on the lakefront only 2 stories, with the 3rd story starting approximately 45' away from the lake.

John Michaels asked what will be stored in the space above the garage because it looks like there is a large garage door entering into it. Tim Wade replied that it is for storage of seasonal furniture and the applicant was looking for ease of access.

Tim Wade provided elevations for each direction approaching the home to show the change to the volume of the house. They feel with the stepping design it works well with the landscaping stepping up but from a lake view perspective; it creates a 2 story volume rather than a 3 story volume.

Tim Wade stated that they are proposing a green roof on a portion of the roof so they will have some stormwater management within the roof system. All of that will be directed to rain gardens and other infiltration within the site.

Tim Wade stated that they will use natural material for the structure; natural cedar and stone. They would like to have this less prominent on the lakefront and blend well with the existing trees.

John Michaels asked if they could review the property line adjustment. Tim Wade explained that in order to create the breezeway and garage they will have to adjust the lot line between lots 1 and 2. The lot line currently goes straight to the lake but part of the driveway did go onto lot 2 so they are proposing to have the new lot line come parallel to the garage and have a 20' setback even with the garage and then come back to the lake and intersect what was the existing property line approximately 15' from the lakeshore.

John Michaels stated that he is concerned that the lot line will cause a zoning issue on lot 2 if the applicant or future owner were to ever put a house there. Tim Wade explained that they could build a house further back from the lake and they would still have access to the lake but both houses would have privacy. He stated that this lot line adjustment will maintain some of the original intention of the deeds in which each lot has a little privacy. They are also trying to hold some value in this lot for the applicant.

John Michaels stated that they cannot restrict future applications. He is concerned that they would be making a lot line adjustment to set themselves up for a variance. He doesn't want to find out that lot 2 isn't buildable, they should know about it now. He would like this applicant to show them that they can build a house on there now and that

it meets the zoning. He does not want to make another lot non-conforming. Tim Wade stated that they have looked at this and found that there is ample space to build a house and it would be beyond the 75' setback from the lake.

Ken Salamone stated that the lot line adjustment would mean that the home would need to be set back further from the lake and that was their intention. He explained that he purchased them separately and bought lot 2 first. Over the years he has considered combining them but decided to keep them separate. It will be a better value to keep this lot separate; it is almost an acre of land and a nice lot to sell in the future if need be. When he bought lot 1 they started to work on design plans. He found that the original house design did not work, because it looked like a hotel. He wants to be able to pull up to his home and not see this massive structure. He stated that he worked with Mike Phinney to really reduce the impact from the lake. However in order to do this properly they need to do a lot line adjustment. He stated that he is willing to go back to the architect and put a requirement on lot 2.

John Michaels stated that he likes this design very much, but his biggest concern is that they cannot make limitations on this other lot. Jason Saris stated that no matter what they do they cannot stop anyone from asking for a variance. Ken Salamone stated that he would have combined the lots if lot 2 was not buildable. It has access through lot 3 for its own driveway, it has its own approved septic and it is the flattest of all the properties. Jason Saris stated that all they are looking for is more information that there is a suitable place to build a house on this lot that will not require a variance. Tim Wade stated that in his discussions with Mike Phinney and Ken Salamone it was about maintaining the value of that lot. They would not want to do something with the lot line adjustment that would prevent Ken from selling the lot in the future.

Jason Saris stated that this is a vast improvement to the original proposal. It looks like very few trees are going to be removed to accommodate the construction. Tim Wade agreed and stated that they are trying to maintain as much vegetation on the shoreline and have the house better blend in with the landscape.

Justin Sanford, LA Group, stated that when the first reviewed the site their first main component was to identify the trees they wanted to maintain. They also wanted to add more deciduous trees. Mark Tabor, LA Group stated that there are a lot of trees that will need to be removed within the footprint of the house. In their tree inventory they documented the trees that were substantial with regard to view from the lake as well as overall keeping the integrity of the soil. Additionally they have a significant amount of trees behind the structure and along the side. John Michaels stated that he knows they will have to remove trees to build the house. However they seem to be losing a large buffer between the proposed garage and the lake. Mark Tabor stated that they will be removing 16 trees in the garage area. Additionally they removed some trees to provide a rain garden. John Michaels asked if it was more beneficial to have a rain garden versus the trees. Mark Tabor replied that for this plan it is important for them to incorporate



stormwater management. From a visual standpoint there are some existing trees in the foreground. They are trying to save some on the edge of the grading as well.

Justin Sanford provided more details about the stormwater management controls. As part of the application they did apply for a minor stormwater permit. The code requires that 1.5 gallons of storage per square foot of additional impervious surface. The previous structure had 9,004 sq. ft of impervious area and no stormwater management. The previously approved house had 8,600 sq. ft of impervious area and what they are proposing only has 4,500 sq. ft of impervious area. They were able to drastically reduce the impervious area with the implementation of the green roof; roughly 1200 sq. ft of the roof will be green. Additionally they are looking to replace an impervious parking area with permeable pavers. Based on the reduction of impervious surfaces no stormwater management was required by the code, but they are well aware of the close proximity of Lake George, the sensitivity of the site and best management practices so they wanted to implement more stormwater management to protect the water quality. To account for the remaining portion of the roof that will not be green they will implement the rain garden. They dug several test pits on site and found the best location for one on the site. They will have an overflow area as well for large rain storm events. The sizing of the rain garden is based on Bolton code on capturing the first ½ inch of rain event over the entire impervious area of 4,500 sq. ft. They nearly doubled the required amount of 180 cubic feet required and will have over 300 cubic feet in storage. Justin Sanford stated that they will have a silt fence in place throughout the entire construction and until permanent stabilization is achieved. Additionally they have a landscaping and planting plan. He provided more details regarding the planting plan.

John Michaels stated that he still feels that forested trees act as a better stormwater control rather than a rain garden. Mark Tabor stated that the rain garden area has approximately 6-7 trees being removed and they are all within 20' from the house. If they were not to have a rain garden, due to the grading required in this area it would put them in the situation of needing retaining walls to protect those trees. Most of the trees removed in the rain garden area would need to be removed any way for development.

John Michaels asked what the previous height variance was. Tim Wade replied that it was 39.5', this structure is lower at 38'. Jason Saris stated that in these situations he does not have too much of a problem with height variances because the land rises up behind the house and it is all wooded.

Counsel Muller read the following letter:

Chris Navitsky, Lake George Waterkeeper, who is opposed the project because it violates conditions of approval for Wide Waters Subdivision SPR05-23. Wide Waters Subdivision was approved on November 17, 2005 and after much discussion and concern about the protection of mature vegetation on the site. One of the conditions of approval was "no tree removal is to be conducted." Also during the subdivision they established a record of plotting existing trees, each

tree was assigned a specific number and indicated as to whether they were to be removed. This plat is part of the approved documents on file with the County. The clearing required to accommodate the proposed project appears to violate this and therefore should not be considered by the Board.

The proposed project and requested variance violates restrictions placed in the recorded deed for Wide Waters lot 2, which had several restrictions including: "Further subject to restriction that no vegetation shall be cut by the owner of lot 2 within 20' of the northerly property line of lot 2 below the 334' contour line of the subdivision map." The clearing required for this proposal seems to violate the deed covenant and therefore should not be considered by the Board.

Site development as proposed should be considered segmented and comprehensive review is warranted. Development of the property continues to be proposed in small pieces and segments which avoids the comprehensive review of the Town's stormwater regulations and violates the NYS SEQRA law.

The granting of the variance will have an adverse effect on the environment. Reduction of the 75' shoreline setback results in impervious surfaces close to Lake George which will negatively impact water quality. Additionally, site conditions are constrained including limited depth to bedrock which will reduce storm water treatment. The project proposed significantly alters existing vegetation in close proximity to the lake which increases the risk of negative water quality impacts.

There are alternatives other than an area variance. During the Wide Waters subdivision review the house location for lot 2 was considered and would not require shoreline setback variances and designated specific mature trees to be removed.

The existing structure was taken down over a year ago and should not be considered as existing according to Section 200-61a. He feels that they should recommend that this goes back to the PB prior to the issuance of any variances.

The Lake George Waterkeeper feels that the variance request should be denied for the following reasons: 1) site development has been segmented without a comprehensive review of potential environmental and community impacts, 2) the granting of the variance will result in environment impacts for installing impervious surfaces within the shoreline setback and reduce stormwater treatment, 3) alternatively to allow the applicant to achieve benefits without the issuance of area variances and 4) the model is incorrectly put in the application with violations of Town Code.

John Michaels asked how they are supposed to grant the variance when they had tree

clearing conditions placed on site plan review for the original subdivision. Counsel Muller stated that he would feel that he would want to protect the PB because they worked really hard to determine what should be on the original subdivision plan.

Tim Wade read the conditions of approval that were placed on the filed plat. He stated that their interpretation is that the tree removal is specifically tied to the certificate of compliance and not the development of the building on lot 1.

Chris Navitsky provided the Wide Waters Subdivision plat that indicates that only specific trees are to be removed and not the additional ones that the applicant is discussing tonight.

Jason Saris stated that the applicant is not seeking relief from that condition and nor should they give it. This is not something that the ZBA is concerned with but rather the zoning office to be sure they are in compliance. John Michaels stated that the PB put a lot of effort into this subdivision and he does not want to allow any variances that would change that. Jason Saris asked if he was concerned that approval of the variances would prejudice the PB decision. John Michaels stated that this was not going before PB. Counsel Muller stated that as Zoning Administrator she can make a lot line adjustment when it is clean and simple. However in this case the sense of tampering something that the PB carefully crafted they also have the option to seek review of the PB. Pam Kenyon stated that she would like to think about this and discuss it with Herb Koster.

Counsel Muller stated that he is not sure if the Waterkeeper's citation of the zoning code was correct about carrying the old structure over 1 year because he believes it was revised. He believes the current law on this is that a non-conforming building or structure may be replaced or rebuilt on its identical footprint within 24 months after its removal, so in this instance it would be okay. Jason Saris recalls that it was altered to allow for a more reasonable time. He feels that this project was started and it was a large project so he does not feel that the intent was to segment. In fact he appreciates the fact that they took the time to revisit the design so they didn't rush and build the wrong house.

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

Melissa Vito stated that she thinks they have serious problems with at least two issues that the Waterkeeper points out in his letter. One of those is the segmented review being given the site, which violates both Town stormwater regulations and SEQR law. The other is that the application incorrectly uses the noncompliant structure that was demolished well over a year ago to justify the application and reduce stormwater requirements. Those seem to be serious violations of the law and are not being taken seriously by the board.

She has a place on Boon Bay just north of this property, and despite her efforts to keep the shoreline natural, maintaining rain gardens and a small catch basin, planting

shrubbery, using no fertilizer, leaving the trees that grow naturally there, and with a house 300 feet back from the shoreline, she can see bright green algae in the water there and have found lots of Asian clams. She hopes everyone has seen Kathy Bozony's underwater pictures of the massive algal blooms in Boon Bay just north of this property. They show horrible algal growth, a lot of different kinds of algae, in Boon Bay. It is certainly no place to want to swim or dive. This is no time to be granting variances for development that is bound to increase nutrient loading to the lake. She feels she has stake in this design and how lake friendly or lake damaging it is.

But everyone around here needs to be concerned about the departure from code that is happening with development all over this watershed.

As for the role of the zoning board in code enforcement, Melissa Vito stated that the board is prohibited from granting a variance to code when an alternative that meets code is available to the applicant. As Chris [Navitsky] just pointed out, the Town's Planning Board pointed out an exact location on the site that would meet code with no variance needed. So she finds it strange that the board is even taking time to consider this application. It's clearly out of your hands now. And it's also clear that the 75 feet required and the 18 feet proposed could in no way be considered the minimum variance necessary or not a substantial variance.

As for considering whether the variance will cause negative environmental impacts, Melissa Vito stated that the large number and severity of the ones that would come with this proposal are undeniable. Impervious surfaces so close to the lake that no stormwater controls could begin to be effective, the loss of beautiful large trees that give beauty to the site and have many lake protective benefits, and just too much paving and roofing and other impervious places compared with undisturbed ones, making adequate stormwater control impossible.

With the Planning Board's decisions already made and with these reasons to deny the variance, it would seem nothing if not plain illegal to grant these applied-for variances. Melissa Vito stated that she would love to know if the owners find this lake and its beauty and fine water quality worth buying a piece of, why are they planning to undo the beauty of the site as it is and build a house of a size and at the proximity to the lake that will be sure to reduce the water quality of the lake at their site, not to mention all around their site. She is not sure if they just don't know basic facts about the effects on the lake from paving, soil erosion, fertilizers, uncontrolled stormwater runoff. An engineer will probably have assured the owner that his stormwater management system will control all runoff. There are false rumors out there that claim engineered stormwater management can do the same job as the native forest.

Melissa Vito stated that the architect will have wanted to make the owners happy with a house of the exact size they desire. Neither engineer nor architect will be eager to point out that a house very close to the lake leaves no room for the rain gardens and vegetative

buffers necessary to catch the stormwater and clean it up before flowing into the lake. In fact, to be effective, a vegetative buffer has to be a lot more than 18 feet wide, when that is the proposed setback requested with this application. As for the carefully determined ratio of pervious surfaces to undisturbed land that will prevent lake pollution, the size of the house and garage applied for are in clear violation of that protective measure.

Melissa Vito stated that possibly, the owners may not believe what the scientists have learned about the effects of untreated stormwater runoff from developed areas. We have to keep it in mind that the content of these codes isn't based on the opinions of the writers, or even their sense of aesthetics, but on the science of the land and water. Ignoring code restrictions in the past have now given us a western shore plagued by algal blooms, with aquatic plants and sandy lake bottom totally slimed up where algae never grew before.

Melissa Vito stated that she is sure everyone involved in this project is claiming that one lone new house right on the lake isn't going to ruin the water quality. Maybe no one has mentioned the dire cumulative effects when we have one after another after another of such projects. Whatever the owners know, it's hard for her to understand why people who have found the Adirondack landscape beautiful and the water quality of Lake George so desirable that they want to buy into it are willing to exacerbate the lake's problems caused by deforestation and water pollution. That means these owners are becoming part of the problem. She does not know why they wouldn't want instead to become of part of the solution, developing the land only with the greatest care to preserve the great trees and the water quality.

Melissa Vito questions why doesn't a lifetime of caring for this lake and this land that the zoning board members must bring to this board manifest itself in decisions that reflect such caring. She would expect them to want to stand guard over the lake by enforcing our protective codes or at least granting only minimum, reasonable, legal variances. It also puzzles her that she has never heard a member of any board discuss with applicants and their representatives the reasons for our codes, that they were carefully crafted so that if followed they would go a long way toward protecting our great resource.

Melissa Vito stated that she has never heard any board say right out to an applicant, "Do you understand the effects this plan is going to have on the lake? We already have terrible algal blooms all over the western shoreline. Why don't you consider a design for your property that will help keep the lake clean and its landscape natural looking? It would be to great benefit. You would be a real hero to do this right, to stay within code, to do everything possible to protect the lake both during and after construction. This will make you a part of the solution instead a part of the problem the lake is having. Very useful help is right out there, at the office of the Lake George Waterkeeper, for instance—great suggestions from professionals educated in ways to build without creating a permanent source of pollution."

She stated that she keeps wondering why she hears nothing like that. Instead she hears

more of an attitude from the boards that seems to look for ways to get away with breaking code.

Melissa Vito stated that it's a serious flaw in our permitting system that doesn't offer pre-design services to the owners and their design team early in the process. Such services would include information about how to design the project so that it meets code. And meeting code requirements would be encouraged, and education in lake health would be provided. At this point in the process tonight, the board is under pressure to grant these variances just so the applicant won't have to go back to the drawing board for expensive design revisions. But the plan on the boards now spells disaster for that piece of the Lake George watershed.

Melissa Vito encouraged the Board to do what might not be easy but is the only right way. And if you don't deny this application, they will be completely throwing out the laws of our code, not to mention all the recorded decisions the planning board already made, with serious consequences of water quality degradation, and risking lawsuits to boot. A denial of this application is the only choice of actions to be taken tonight. As the old Indian proverb that says, "We did not inherit the earth from our ancestors. We are borrowing it from our children."

Tim Wade stated that the reason why they are placing the house where it is proposed is because of the limitations on the site. There is a sharp line of ledge rock behind the house and they are trying to maintain access to the existing guest cottage. If they push the house back they block access to the guest cottage.

Jason Saris stated that they need to decide whether or not they want to proceed with this application tonight or to refer it to the PB to see where it stands with them. John Michaels stated that he would like the PB to review this prior to any decision being made about the requested variances.

Ken Salamone asked how the PB has jurisdiction with this variance application. Jason Saris replied that it has to do with the compliance of the site plan review when these lots were created. Ken Salamone stated that when he bought these lots he was under the understanding that he could remove trees where the house was going to go. He has owned this property for several years and has not taken down any trees except for where a structure was going to go or if it was warranted. He has planted trees on this property because he likes the vegetation on the property. He has removed driveways and cabins that were existing on the property in addition to the enormous house. He has brought this property closer to being environmentally friendly. He has been planning and thinking about what is best for his property and has carefully created this proposal. His interest has always been to make this as environmentally friendly to the lake. The original house had its septic running right into the lake. He has bought these properties and paid his taxes; he is simply requesting the opportunity to enjoy it. He is bothered by all of the comments about not wanting to take care of the environment and lake. He stated if these

people want his property to bring it back to whatever they envision they have to write the check. He has done whatever he can to preserve the interest of the community and his family. He wants to do this project correctly and does not want to take any shortcuts.

Jason Saris stated that he feels that the Board agrees but asking the PB to be involved in this has nothing to do with a consideration of anything being done outside the code. It really is about getting clarification of the site plan review. He stated that the ZBA does not have the right to give variances to what site plan review did. They are just making sure that the ZBA is not inadvertently doing that in some way. Property owners have the right for reasonable relief and they all have a good understanding of what Bolton's code is.

## **RESOLUTION**

**Motion by** John Michaels to refer application V11-58 Ken Salamone to the PB prior to continuing with the review of the variance application. **Seconded by** Don King. **All in Favor. Motion Carried.**

**5) V11-59 EVANUSA, STEPHEN & MICHEL.** Represented by the Phinney Design Group. To alter non-conforming single family dwelling, seek area variance for **1)** deficient setbacks: **Shoreline:** 75' is required, 31.10' is proposed; and **Side:** 20' is required, 18.8' is proposed; and **2)** to alter non-conforming structure in accordance with Section 200-57 B (1) (b). Section 200.07, Block 1, Lot 20, Zone RM1.3. Property Location: 2 Fish Point. Subject to WCPS and APA review.

Jon Haynes stated that they are maintaining the existing footprint of the cottage and attaching an addition for a master ground floor guest suite. This suite will be built in conformance to the setbacks but in order to attach it to the existing footprint they have to create a narrow hallway. The hallway is 2'8" wide extending into the 75' shoreline setback but is behind the existing footprint. The hallway is 14.7 sq. ft which is 2/10,000 of a percent of the lot. They will be removing the existing garage, part of the driveway and a small retaining wall. John Haynes also indicated that they will be replacing the septic system.

John Michaels asked how tall the existing structure will be. Jon Haynes replied that it will be 33'. He provided pictures of the existing structure from the lake and a rendering of what the structure will look like with the addition. He stated that there is an existing dense vegetative buffer between the house and lake which will remain so the view really won't change.

John Michaels stated that he feels this works well for this property. Jason Saris asked if there are future plans to replace the garage. Jon Haynes replied not at this time.

Counsel Muller read the following letter:

1) Chris Navitsky, Lake George Waterkeeper, who indicated they were not opposed to the application and recommended the following conditions: 1) require stormwater management for the existing structure and new construction and 2) require site plan review by the PB.

Ellen Deane-Cummins, southwest neighbor, stated that she had some concerns with the design. This will not only affect her but other areas of the property. The rendering does not show the area in which most people would view the property from the lake. Additionally she feels that there is a lot of glass being used which might create issues with reflection from the sun. She also is concerned about the height of the building.

Jon Haynes stated that the way the roof was designed is so the water will be shed away from her property. The alternative to achieve the same square footage that they desire without needing a variance is to build it within the footprint which would make it a taller building. By attaching the addition with a small hallway it is keeping the structure lower. Ellen Deane-Cummins stated that it doesn't change the fact that they are increasing the height of the structure and she is concerned about it.

Stephen Evanusa stated that if they knocked the house down and rebuilt in beyond the 75' setback it would affect her even more. He stated that the house in the current location is tucked in behind the trees which they plan on keeping.

Ellen Deane-Cummins stated that she is concerned with all of the glass and being extremely reflective. John Michaels stated that this is not visible from the lake. Stephen Evanusa stated that she will see the side of the house. Jeff Anthony asked if they would be using non-reflective glass. Jon Haynes replied that they can and they planned to use triple glazing to increase the R factor. Jeff Anthony asked if they will be using built in shades for the windows. Jon Haynes replied yes.

Jeff Anthony asked if there will be any additional lighting. Jon Haynes replied no they will just keep the existing lighting on the dock. Jeff Anthony stated that if they do decide to add additional exterior lighting to be sure that it is dark sky compliant. Jon Haynes agreed.

Ellen Deane-Cummins stated that she understands that they have a porch on the roadside and is unsure that the applicants are aware of how dusty that road gets in the summer and due to the traffic flow in and out. She stated for their comfort they may want to take that into consideration.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Stephen & Michel Evanusa (V11-59) 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 Staff;

And, whereas the Warren County Planning Staff determined that there was no County action;

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; They put all new construction past the 75' setback. This will not affect anyone's view from the lake.

2) There will be no undesirable change in the neighborhood character or to nearby properties, it is in need of repair and will improve the neighborhood.

3) The request is not substantial; especially in square footage, the lake frontage is very small with only 2.8'. Additionally the applicants are staying 3' under their height requirement; which is commendable.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; they are decreasing the stormwater and impervious surface, and getting a new septic system.

5) The alleged difficulty is not self-created, the applicants bought an existing house that is in need of repair.

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 with the following conditions: 1) minor stormwater management controls are to be implemented, and 2) non-reflective glass with shades built in are to be used. **All in Favor. Motion Carried.**

**6) V11-60 CHIMENTO, NANCY.** Represented by Atty. Michael O'Connor. To alter non-conforming single family dwelling, specifically to construct a proposed 12' x 12.11' roof over blue stone patio, seeks area variance for **1)** a deficient shoreline setback. 75' is required, 67' is proposed; and **2)** to alter non-conforming structure in accordance with Section 200-57 B (1) (b). Section 186.15, Block 1, Lot 45, Zone RM1.3. Property Location: 150 Homer Point Road. Subject to WCPS and APA review.

*Note: This item was heard first on the agenda.*

Michael O'Connor stated that the applicants are requesting to fill in the roof system on the back of the house. The roof is going to cover an existing patio. The applicant rebuilt the house in 2002-2003 in which they set up a nice patio which now gets water on it from 3 different sides of the roof that surrounds it. The roof will be 10' x 11'. Michael O'Connor stated that this will not have any impact on anyone; it will not be visible from the lake. He added that it may not even be visible from Homer Point Road because it sits back away from the road.

Michael O'Connor stated that this is subject to WCPB review, however that Board is now defunct. He has spoken to Wayne LaMothe from WC Planning who indicated that they will now have staff review applications, but they need to adopt a local law in order to do that so January and most of February they are not going to have the means to that so all applications will come back with no County action. Jason Saris stated that this is also up for APA review.

John Michaels asked if the roof will be the same height of the existing roof. Michael O'Connor replied that the eave will be the same as the existing eave height and feed into the existing eave; however it will not go all the way to the top of the existing roof it is more of a shed roof.

There was no correspondence or comments from the public in attendance.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Nancy Chimento (V11-60) 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 Staff;

And, whereas the Warren County Planning Staff determined that there was no County action;

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# 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; the alternative is reconstruction of the entire main roof and adjacent roof on the other portion of the house. This seems to be a simple fix.

2) There will be no undesirable change in the neighborhood character or to nearby properties, people will not even notice that this has been changed, it will blend into the existing roof structure.

3) The request is not substantial; this is less than 5% of the entire roof area.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; this roof is to direct water away from the porch. They also have significant ice build up in front of the patio doors so it makes sense to protect that.

5) The alleged difficulty is not self-created, when the new house was constructed it was built on the existing footprint and when they designed the roof it was mainly an error on the part of the architect to not account for the water run-off in this area.

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

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

**Motion Carried.**

**7) V11-61 TONN, ROBERT & KATHLEEN.** To alter single family dwelling, specifically to add a proposed 2 story addition and attached garage with storage above, seek area variance for **1)** a deficient front yard setback. 50' is required, 33' is proposed; and **2)** to alter non-conforming structure in accordance with Section 200-57 B (1) (b). Section 185.19, Block 1, lot 21, Zone RCL3. Property Location: 31 T.L.V. Road. Subject to WCPS review.

Robert Tonn stated that they built this house 25 years ago on a 60' wide piece of property which only allowed them 18' on either side of the house. Twenty-two years ago they bought the property next to them and consolidated it with the house lot in hopes of expanding one day. They are trying to put the extension back away from the property line and off to the right where they have about 250' of space. The existing house is what he needs the variance for because at the time the setbacks were different than they are now.

Robert Tonn stated that they are looking to move here year round so the 2 car garage is to store their boats and cars. Additionally they will be expanding their kitchen and adding a family room and bathroom.

Jason Saris asked if they explored other alternatives. Robert Tonn replied that they really

only have 1 way to go. They cannot go to the left of the house because they only have 18', they cannot go forward because they are too close to the road and behind the house they have their septic. The only way to go is to the right side of the house. The extension itself is going where the driveway is now and the garage is going where his boats are being stored under tarps. They will only be taking down 4 trees for the construction of the addition.

Counsel Muller read the following letter:

1) Chris Navitsky, Lake George Waterkeeper, raising the following points: 1) require evaluation and certification of the existing onsite wastewater treatment system and determine if it is adequate for the proposed wastewater flows, and 2) require stormwater management plan for the existing structure and expansion.

Robert Tonn stated that he has never had any issues with the septic in the last 25 years that he has owned the property. The septic is behind the house and is approximately 450-500' from the lake. Additionally it is on flat ground. Jason Saris stated that this is an expansion and typically the intensity of use on the property will change and increase. Typically when homes are expanded it increases the amount that they are used and something that might have been adequate previously may no longer be. Robert Tonn stated that he does not feel that the intensity will increase. His children are getting older so the use of the house will go down because there will be less people in the house.

Robert Tonn stated that he is looking to expand the kitchen because it is extremely small and not practical for year round use. They are adding a bathroom because they have been dealing with only one bathroom for 25 years and need an additional bathroom. With regard to the garage, they just need storage space. Eventually they will be moving here year round, and coming from a house that has a basement, crawl space, attic and 2 car garage.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Robert & Kathleen Tonn (V11-61) 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 Staff;

And, whereas the Warren County Planning Staff determined that there was no County action;

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# 7 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 only way to improve this property and expand the house. The applicant has demonstrated and testified that this is the most logical way of expanding his house and that it is the most feasible alternative for the expansion of the house.

2) There will be no undesirable change in the neighborhood character or to nearby properties, there is sufficient open space between buildings and houses on this piece of property that would not warrant a cluttered neighborhood character to be developed. The building will be in character with other structures in the neighborhood.

3) The request is not substantial; this is substantial but does not substantially violate zoning codes of the Town.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; this is a flat level site.

5) The alleged difficulty is not self-created, the house is small and what they bought and have been living with their whole life and they are seeking to have something larger.

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

Now, upon motion duly made by Jeff Anthony and seconded by Don King, it is resolved that the ZBA does hereby approve the variance request as presented with the following conditions: 1) minor stormwater management controls are implemented, and 2) that the septic system is reviewed by a certified engineer to be sure that it can handle the additional flows for the new construction. **All in Favor. Motion Carried.**

**RESOLUTION:**

**Motion by** Jason Saris moved to thank Kam Hoopes for his 10 years of dedicated service to the Zoning Board of Appeals. **Seconded by** Jeff Anthony. **All in Favor. Motion Carried.**

The meeting was adjourned at 9:01pm.

Minutes respectfully submitted by Kristen MacEwan.