

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, February 19, 2013
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, Jeff Anthony, John Michaels, John Famosi, Tony DePace, David Ray, Matt Slaughter, Zoning Administrator Pamela Kenyon and Counsel Michael Muller

Absent: Donald King

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

Jason Saris stated that the Lavender item will not be acted upon this evening. He stated that not all Board members are present to make any decision. It may be discussed tonight but it will not be acted upon. They hope to have all Board members present next month to act upon it.

Jason Saris asked if there were any corrections or changes to the January 15, 2013 minutes.

RESOLUTION:

Motion by Tony DePace to approve the January 15, 2013 minutes as written. **Seconded by** Jeff Anthony. **All in Favor. Motion Carried.**

1. The Planning Office seeks an interpretation of Definition “**Change In Use**” found in Chapter 200, Section 200-8. The definition reads as follows: “**Any use which substantially differs from the previous use requiring alteration to the building or site. For example, different parking spaces, service docks, ingress and egress standards, etc. Change of use will require site plan approval.**” Presently the requirements found in Section 200-14 Type I and Type II Use Tables applied.

Pam Kenyon stated that this has come up several times, most recently in John Gramegna’s application. She stated that she was seeking some input from the Board about when to apply change in use. It is very vague and they currently go by the tables.

Jason Saris stated that the logic behind it is to review the change in use. They are not looking for permission to have it but to make sure that the change in use won’t cause any problems. Jeff Anthony stated that there are 2 aspects to change in use in mere definition; simple change in use and change in density/ intensity. He stated that every application has to be looked at on its merits. Pam Kenyon stated that they already do this and feels that they should continue that practice. Jason Saris agreed, he would rather error on the side of caution and continue this process. He is concerned that if they took a more liberal approach they may find more that slips through the cracks.

John Michaels feels that it is intentionally vague for that purpose, it is the Zoning Administrator's decision whether or not an applicant needs to come before the Board. Jason Saris asked if they need a motion for this. Counsel Muller replied no the ZA was just looking for some guidance and discussion. As Jeff Anthony indicated that change in use or character should be looked at in Site Plan Review and should be looked at on a case by case basis.

2. V12-50 GRAMEGNA, JOHN. To alter non-conforming garage with storage above, specifically to construct an elevated deck with roof covered egress stairway, two dormers and a eyebrow roof, seeks area variance for 1) a deficient front yard setback. 50' is required, 18' is proposed; and 2) to alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.00, Block 1, Lot 5, Zone RL3. Property Location: 29 Long View Lane. Note: The applicant's intent is to convert the second story into a single family dwelling. This item was tabled at the January meeting pending additional information.

Curt Dybas stated that they have provided a site plan as requested by the Board at the last meeting. It notes where the proposed future residence will be located, provides details about the surroundings of the existing structure (gravel driveway that will be paved, plantings, etc) as well as notation of the septic tank, septic field and well that have been installed on the property.

Curt Dybas stated that there was concern with aesthetics of the existing structure. At the last meeting they proposed a deck with an egress stairway. They are now proposing to cover the stairway as strictly an aesthetic treatment. To break up the west elevation they have added some dormers to the roof. To break up the garage door side, they have created an eyebrow roof which will break up the elevation. The structure will get all new windows and the exterior will be painted. The footprint is not changing other than the deck and stairway.

Jason Saris stated that there was some discussion about getting access to the upstairs without the outside staircase which would not require a variance. However with the proposal of the deck, you cannot have it without a variance. Jason Saris stated that he appreciates the effort that was put into the details provided.

John Michaels stated that the site for the future house does not seem to require a variance. Which creates the concern that when the new house is built, the applicant will not need to return to the Board and this structure will continue to have a kitchen and could possibly be rented. He asked if the applicant would be willing to remove the kitchen and agree to conditions that require that as well as prohibiting rental of the structure. John Gramegna replied that he would be agreeable to those conditions.

There was no further correspondence.

Holly Dansbury, neighbor stated that she appreciates the details provided and thinks that the project looks good.

RESOLUTION

The Zoning Board of Appeals received an application from John Gramegna (V12-50) 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#2 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it should be an improvement to what currently exists.
- 3) The request is not substantial; the building is already there.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; septic and a new well are improvements.
- 5) The alleged difficulty is not self-created,

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

Now, upon motion duly made by John Michaels and seconded by Matt Slaughter, it is resolved that the ZBA does hereby approve the variance request as presented with the following conditions: 1) if and when the principal building is built that the kitchen in this structure is removed and it is converted to a guest house and 2) the guest cottage to be used for those purposes and not to be rented to a third party. **All in Favor. Motion Carried.**

3. **V13-01 F.R. SMITH & SONS.** Represented by Chris Gabriels. For the construction of three commercial boat storage buildings, seeks area variance for 1) **Deficient setbacks. Front:** 200' is required from Edgecomb Pond Road. Building A-1: 50' is proposed. Building A-2: 155' is proposed. Building B: 150' is proposed. **Side:** 60' is required. Building B: 50' is proposed. **Shoreline:** 200' is required. Building A-1: 165' is proposed. Building A-2: 62' is proposed. Building B: 55' is proposed. **Length:** 120' is allowed. 122' is proposed for Buildings A-1 & A-2 and 162' is proposed for Building B. Section 171.00, Block 1, Lot 10, Zones **RR5** and LC45.

Subject to PB, LGPC, WCPS, DEC and APA review. *Notes: See SPR87-08 approved by the PB on 4/30/87 for commercial boat storage. Site Plan Review is required but has not yet been applied for. Wetlands exist on this parcel.*

Chris Gabriels stated that the applicant applied and got approval to build a 60' x 200' building. In that documentation it was stated that there was an intention to build another building of the same size on that property. The applicant only built a 60' x 100' and are seeking to restructure the various approvals from the past. There are quite a few variances they are seeking and the property already enjoys some leniency from some of the variances previously granted.

Chris Gabriels stated that the two major issues are visual impact and storm water. With regard to visual impact, he stated that it should be the same and could be a little bit less. With regard to stormwater, given the present conditions, it should be improved. The conceptual proposal was to slope all of the buildings to the center and drain it to a catch basin which should create some distance between the stream. Chris Gabriels stated that the applicant is also seeking to install a boat wash station to help with providing cleaner boats going into Lake George. Having the wash station at this location will get it away from the lake, at its current operation.

Jason Saris asked if the boat wash station will be staff operated and not a public wash. Chris Gabriels replied that it is a privately owned station that will be used as such. They will be using it to wash their customer's boats.

John Michaels asked if there was a grading plan. Chris Gabriels replied not at this time but they are working on it. One of the buildings is proposed to be on an area that is already cleared and will require about 4-5' of fill along the back edge and the other building will require 3' of fill along the back edge. John Michaels stated that this project warrants a grading and stormwater plan. Chris Gabriels stated that the applicant is in the process of doing that now. John Michaels stated that he doesn't have a problem with the concept, but would like to see a stormwater plan before further review.

Jeff Anthony asked why the APA was involved in this project. Chris Gabriels stated that he is not sure but knows that they were involved in the first project. Pam Kenyon stated that there are quite a bit of wetlands on this property and the applicant may want to consider having them flagged. She stated that it is under APA review because it was a Class A Regional project because it was a commercial use structure with greater than 2,500 sq. ft.

Counsel Muller read the following correspondence:

- 1) Chris Navitsky, Lake George Waterkeeper, who voiced concerns about the requested shoreline variances. He suggested the following: 1) to look at alternative site designs that would reduce variances particularly minimize setbacks to stream corridor, 2) Topographic information and site clearing information should be in the plan, 3) Stormwater management plan should be included and 4) request recommendation from PB.
- 2) WC Planning Department, recommends no WC impact with stipulation that the Town consider appropriate methods to contain onsite run-off of the roof structures.

Tony DePace asked what they are supposed to do about the conditions from the 1987 approval, with regard to “no water or sewer service to the site”. Counsel Muller stated that they could abide by them, supplement them or reject them. It is up to the Board to determine if they need relief. Pam Kenyon stated that a new application will be going before the PB. Counsel Muller suggested making any recommendations that they feel necessary to go to the PB.

Jason Saris stated that he feels the applicant should be asking for everything that they may need. Pam Kenyon stated that the applicant will need to go to the PB but has not yet applied. Jason Saris asked when that might happen because what the applicant asks for may change and affect what they are looking to approve today.

John Michaels stated that he cannot evaluate this project without a stormwater or grading plan. Chris Gabriels asked if there were any other concerns. John Michaels replied no, he is mostly concerned that it fits environmentally. Tony DePace stated that he too shares those concerns. However, he does like the idea that they will be washing boats up at this location rather than by the lake. Jason Saris stated that he has no issues with the project. It will not affect the visual impact or character of the neighborhood.

RESOLUTION

Motion by John Michaels to table item V13-01 pending further information. Seconded by Tony DePace. All in Favor. Motion Carried.

4. **V13-02 MENZIES, PETER & GRETCHEN.** Represented by the LA Group. For the construction of an 8’ x 8’ storage shed and landing as part of a new dock construction project, seeks area variance for deficient setbacks. 75’ is required from the mean high water mark. 0’ is proposed. Section 171.08, Block 1, Lot 6, Zone, RCM1.3. Property Location: 32 Jacobi Pt. Road. Subject to WCPS and APA review.

Note: Jeff Anthony recused himself.

Mark Taber gave an overview of the project. The dock in its current location is not in compliance due to the side yard setback. There is a temporary canopy structure over the dock. After a lot of discussion, the applicants have decided to remove the existing dock structure and put in a new dock that will conform to the side yard setbacks. As part of that project they will need to rebuild an existing set of stairs to service the dock. Additionally the applicants would like to build an 8’ x 8’ shed which would not normally need a variance, however, it is attached to the dock and requires a variance.

Mark Taber stated that this is really the only place for the shed, the shoreline is very steep, rocky and heavily vegetated. Also due to the grade change above, they do not feel it is feasible to build it in another location. The shed will be used for their boating and recreational activities.

Mark Taber stated that this is taking a dock that is a non-conforming structure and bringing it into

compliance. The proposed boathouse structure will be replacing a temporary structure and they will be in compliance with LGPC requirements. It will be built in Adirondack architecture and style.

Jason Saris asked if the 8' x 8' shed is enough storage. Mark Taber replied yes they have other storage options within the boathouse. This essentially it is what will fit on the site without blasting into the hillside or removing a lot of vegetation. He stated that it fits nicely into the hillside and shoreline.

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

RESOLUTION

The Zoning Board of Appeals received an application from Peter and Gretchen Menzies (V13-02) for an area variance as described above.

And, due to notice of the public hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning 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#4 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; the boathouse is being moved off the property line to conform with the 20' setback.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this will be an improvement
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created,

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

Now, upon motion duly made by Tony DePace and seconded by Matt Slaughter, it is resolved that

the ZBA does hereby approve the variance request as presented. Jeff Anthony recused himself.
All Others in Favor. Motion Carried.

5. **V13-03 BOLTON CROSS LLC.** Represented by the LA Group. For a proposed 10-unit townhouse project with each unit located on a separate parcel, seeks area variance for 1) **Density.** 7.95 acres are required. 2.54 acres exists 2) **Lot coverage.** 40% is allowed in the GB5000 zone and 15% is allowed in the RM1.3 zone. 3) **Setbacks: Front:** 30' is required, **Rear:** 15' is required, **Sides:** A total of 20' is required in the GB5000 zone and **Front:** 50' is required, **Sides:** 20' is required, **Rear:** 20' is required in the RM1.3 zone; 4) **Lot Width:** 50' is required in the GB5000 zone and 125' is required in RM1.3 zone; 5) **Lot Depth:** 100' is required in the GB5000 zone and 150' is required in the RM1.3 zone. 0' is proposed for all. 6) **Section 200-37B Shoreline Regulations:** 215 linear feet is required, 156 linear feet exists. Section 171.19, Block 1, Lot 55, Zones RM1.3 & GB5000. Property Location: 4913 Lake Shore Drive. Subject to WCPB review. *Note: Site Plan Review is also required but has not yet been applied for.*

Note: Jeff Anthony and John Michaels recused themselves.

Anthony Manney stated that he has been looking at this property for the past 3 years and has worked hard to create a development plan that works economically and creates an appropriate gateway into Town. It will be a project that they can be proud of. Once completed he plans to personally reside in one of these town homes. He and his team have met with the Town previously to discuss this project. They looked at this project as condominiums however in the current market banks are not financing condominiums so they have decided to approach it with the town home concept. He feels there is no other viable way to reinvigorate this property other than town homes. Anthony Manney stated the current structure is dilapidated and should be taken down sooner than later.

Mark Taber, LA Group, stated that their goal tonight is to get an approval of the variances conditioned that this will require site plan approval. They have met with Pam Kenyon and Counsel Muller about the process. He stated that they have fully designed and understand this site to best handle the site and to minimize impacts.

Mark Taber described the existing conditions of the site. The site sits within two zones GB5000 and RM1.3. The property is 2.54 acres; with 1.5 acres of upland and 1 acre that is underwater. The 4 buildings on the site are in a severe state of disrepair. The site is accessed by a driveway on the southern side and Evergreen lane on the northern end of the property. There is no formal parking on the site. He provided more details regarding the existing conditions on the site. With regard to adjacent land uses, Mark Taber stated that this area is primarily residential in nature. There are some commercial and public uses as well. The project is at the end of the public sidewalk.

Mark Taber stated that 7 test pits were dug around the site. The southern side of the property has quite a bit of bedrock. On the northern side of the driveway they had 6-7' before hitting bedrock. The soils are moderately drained soil. He explained that the property is currently being serviced

by town water and sewer which are on the Lakeshore Drive ROW.

Mark Taber stated that the site has been subject to several different design concepts and previous approvals; one such project was a bed and breakfast with up to 12 guest units as well as a tea and coffee shop. Most recently it has been used as a bed and breakfast that was abandoned in 2007. In that most current use, they feel there are 8.1 units existing and grandfathered on the site based on the interpretation of the land use code and APA regulations. That is also based on the fact that if they were to come in and propose this on a vacant site, the project would be allowed 8.1 units or building lots.

Mark Taber provided an overview of the 10 proposed units that would consist of 3 buildings; 2 with 3 units and 1 with 4 units. They are looking to eliminate the southern access and access the property off of Evergreen Lane. They would have 24 parking spaces.

Mark Taber stated that the landscape quality and streetscape character entering into Bolton is very important. This project will be increasing the quality and character to the entrance of town. They are proposing to move the buildings back from the street. He provided further details. From an environmental standpoint, Mark Taber stated that they are proposing to add to the landscape around the pond. Stormwater will be compliant with the Town code. The impervious area will slightly increase but they will be able to attenuate it with stormwater management.

Jonathon Bunker, of the Michaels Group provided some details about the architectural design of the project. The 3 unit buildings will be fronting Route 9N and the 4 unit building will be fronting Dula Pond. They will be designed traditional in nature, to compliment the scale and aesthetics of the existing streetscape. The buildings will be detailed with generous overhangs and will echo the style of the existing Inn. Use of natural materials wherever possible to better blend it to the site. The 3 unit buildings will be staggered and will each have wide, large verandas, which they feel will lower the scale and connect it to the street. All buildings are within the height requirement of 35'. The units will be similar in design and approximately 2,000 sq. ft each.

Matt Slaughter asked for details about the porches and how it is linked to the style of the previous structure. Jonathon Bunker stated that the porches will be 8' wide to serve as an outdoor living space. It is traditional in style like the current structure.

Jason Saris asked if the stone wall will be filled in to block that southern driveway. Mark Taber replied yes. Tony DePace asked if the fence will remain. Mark Taber replied that they are working a few different ideas and options. They like the look of the fence but when coming out of Evergreen Lane the fence blocks the site line. They are proposing to move the wall back a bit but they are not sure as to the overall end result.

Jonathon Bunker stated that the intention is that these structures may vary slightly from one another but overall have a look of unity so it doesn't look like a line of town homes.

Jason Saris stated that he understands the functionality of the porch and appreciates that this is to

look like the front porch from the road however these will function as the back porch for the homeowners. Typically back porches are used for grills and storage, he asked if the aesthetics are going to be functional. Jonathon Bunker stated that each of the units has a porch at the main entrance to catch or store some of those items. He feels that these spaces will be more utilized as an outdoor living space rather than a storage area. Tony DePace asked if there will be any HOA regulations in place. Anthony Manney replied yes. He provided further details.

Counsel Muller read the following correspondence:

- 1) Chris Navitsky, Lake George Waterkeeper, recommends denial due to the following concerns: 1) request recommendation from PB, 2) request reduction of density, 3) require additional information to demonstrate storm water requirements can be met and 4) demonstrate that additional flows will not the result in negative impact to the wastewater treatment plant.
- 2) Email from Joseph Pfau in opposition to the project.
- 3) WC Planning Staff, recommends no County impact with stipulation??.

Mark Taber stated that they did look at several different alternatives. He stated that development is extremely limited on the site. As a residential use you could build 2 residential homes. However given the location and cost of the property is not a viable financial alternative nor something that people would want to see from a visual standpoint. They looked at commercial and retail uses within one building. However on the flip side they have to look at intensity of use, parking concerns, and potentially greater environmental impact. They could consider the same use as it is now as a bed and breakfast. It could be built within the setback requirements but they felt that it would again be a greater intensity in use with transient traffic. Mark Taber stated that if they were to pursue a bed and breakfast they would be permitted between 20-30 guest suites without any variances based upon the town code and APA requirements. That density or intensity of use is a larger than a town home use. The applicant decided not to go with the commercial use because there are a lot of restaurants in Town already. Additionally, based upon the applicant's desires, they feel the best use for this site is town house development.

Mark Taber stated that the town homes are an allowable use in both zones. It is compatible to the land use in this area. They have a walk-ability aspect that is desirable. This development structure provides enough marketable units to allow for a reasonable rate of return based on the land purchase cost and land development cost and provides for an appropriate use of the site.

With regard to the zero set backs, Mark Taber stated that in town house development each house becomes its own lot so this becomes an 11 lot subdivision; 10 town home lots and 1 common lot. Each lot then is required to meet all the Town standards and creates the need for the variances. Jason Saris stated that if this was a traditional set up could they explain what the setbacks are for each of the buildings so they can better understand the relief that they are requesting.

With regard to variances, Mark Taber stated that the first they are dealing with is density. They are allowed to have a total of 3 single family units or 20-30 guest units under 300 sq. ft. Existing on the site there are 8.1 units and they are proposing 10 sites. The second variance is the minimum setback variance. He reviewed the building coverage that encroaches on the setbacks. He stated

that they have moved structures off of the existing shoreline setbacks. The third variance is with regard to lot coverage. Mark Taber stated that looking at the lots individually they are at 100% density. Looking at building mass on the site, they have grouped the buildings a lot closer together. Total existing lot coverage is 14,475 sq ft and they are proposing 15,090 sq. ft. They are increasing total building coverage by 615 sq. ft. bringing it from 13% to 13.6% in building lot coverage. As it applies to zoning, the code allows 40% of building coverage in the GB5000 and 15% in the RM1.3. As proposed, the project is 8.1% in the RM1.3 and 40.6% in the GB5000, which are not substantial increases. With regard to the fourth variance, Mark Taber stated that the minimum lot size cannot be met with the townhouse development. With regard to the 5th variance, minimum lot width for shoreline frontage, Mark Taber stated that they would need 150' for the first unit plus 10' for each additional unit. He stated that they have 160' and would need 240'. However it is important to point out that the only lot that will truly have waterfront is the HOA lot that will be commonly used and shared by all home owners. Mark Taber stated that they feel that this was a requirement that was geared to those properties on Lake George for boathouses and docks to control the intensity of use on the shoreline. He stated that this lot will be commonly owned and used but will not have any recreational use.

Mark Taber stated that overall they do not feel that these are significant variances. He explained the ownership structure dictates the need for these variances.

Jason Saris asked for clarification about the setbacks in feet and inches rather than lot coverage. Mark Taber stated that the minimum setbacks for each lot is zero, he reviewed the setbacks from the road and pond.

John Famosi asked if the density calculations includes Dula Pond. Mark Taber replied yes it is roughly 1 acre.

Jason Saris stated that he questions whether this piece of property is appropriate for 3-6,000+ sq. ft buildings. Mark Taber stated that given the surrounding land use they feel that it is appropriate. They are making significant improvements on the property and improving the down town district. They will be residential buildings that will be occupied by residents rather than transients which reduces the intensity of use.

Pam Kenyon stated that she needs to make a correction to the agenda regarding the shoreline setback variance. She did not include that in the agenda.

Matt Slaughter asked why the applicant decided not to run it as an Inn. Mark Taber stated that several factors affected the choice. Not only because of the increased intensity of use but it was not an interest of the applicant. They feel it would be more difficult to recoup the value of the land with another alternative.

Lorraine Wilson LaFave, neighbor of town homes on Cross Street, stated that she thought those were excessive and feels that these are also excessive. She stated that while the town homes look nice, they are not appropriate for the hamlet. Those town homes have not been used to their

capacity until just recently. Additionally there are concerns with parking and common space area; they are large units with very little area around them. She does not feel that the applicant has reasonable justifications for such an excessive project.

Deanne Rehm, 13 Sacrament Lane, stated that she recalls when the town gateway had views of the lake that are now covered by privacy fences and the LGLC building that used to be green space. Now we are looking to take down the old farm house and put up something that is very urban. She too has concerns with the back porch not only being used for storage but feels that people will probably want privacy too and wonders if they will end up looking at fences there as well.

Deanne Rehm stated that she would prefer more of a commercial operation because it would offer employment opportunities. Even though there would be a lot of transients using the property, those transients are the people that will eat in the restaurants and shop in the stores.

Deanne Rehm stated that John Famosi raised a good point with regard to including lot coverage to include the land under the water. She feels that if they take that 1 acre out of the equation the lot coverage would be a lot more significant than what the applicant is presenting. With regard to Chris Navitsky's letter, Deanne Rehm stated that he raised the point about the APA not including the land under the water. It makes a major difference in the density. There have also been issues with Dula Pond being considered wetlands by the APA. When the town has tried to do some dredging projects there many permits were needed. She stated that anything within 200' of wetlands requires APA review and the applicant should submit an inquiry.

With regard to omission of the shoreline setback variance on the agenda, Deanne Rehm noted that the notice also failed to indicate that this project will also require subdivision approval in addition to site plan review.

With regard to density, Deanne Rehm stated that the applicant has talked about grandfathering and conversion of guest suite units to houses. She stated that you do not exchange 300 sq. ft. hotel units for 2,000 sq. ft homes.

With regard to other feasible means, Deanne Rehm stated that the applicant has indicated that the other alternatives do not fit within the desired business plan and are not economically feasible based upon the purchase price of the property. It is not this Board's responsibility to pay a price that is exorbitant and then overdevelop the site to justify the price they paid. The current value of this site with 1.5 acres is \$370,000. A building site within the hamlet with water and sewer would be worth approximately \$75,000. She would say that this site has 4-5 potential building sites but not 10.

With regard to the project being substantial, Deanne Rehm stated that four buildings exist now and they are proposing 10, which is a very substantial variance.

With regard to the project being self created, Deanne Rehm stated that even if it is, it is not a reason to deny but there is no question that this difficulty is self created. The reason they need to build 10 units is to justify the purchase price.

John Whitney, 8 Dula Place, stated that he thinks this is a good project. He does not recall the views of town in the earlier years. He also disagrees with the value of the property. He is concerned that the buildings and fence as they exist are in disrepair. He feels that this is a viable and responsible alternative to what exists. This will bring more people into Town and help the tax base. He feels that it will be less impact than a commercial use.

Kathy Spahn, asked what kind of impact this project will have on Evergreen Lane since it is a narrow lane that is used by other residents.

Pam Kenyon stated that she did not find anything that prohibits using the land under the water as usable land for density determination. Counsel Muller stated that Bolton does not reduce the density for land underwater or wetlands. He stated that we don't often run into this situation where an entire acre is covered by water. However Bolton's past practice is not to reduce the amount of acreage to account for water on the property.

With regard to the other town home units developed in town, Mark Taber stated that the previous project was purchased and built to specifications as outlined in its approval. That project was not designed or developed by the applicant.

With regard to the density, Mark Taber stated that this is a developed property with 4 buildings that have a number of units in side of it. The property could be renovated and used as it exists today. He demonstrated that their proposed density is not much different than what exists today on the lot. In addition it will substantially improve the aesthetics and environmental impacts that exist today.

With regard to cost, Mark Taber stated that cost is mentioned in the application not to put the burden on the Board, but rather to better understand that it one of the reasons why those particular uses were not pursued any further.

With regard to impact on Evergreen Lane, Mark Taber stated that it is 15' wide, there is a slight alteration that would occur to improve what exists now. They don't plan to create a wider driveway because they would like to keep the feel of the driveway and also do not want to create any further impervious area.

Jason Saris stated that he is willing to look at the project further. However, his biggest concerns are the intensity and visual impact. While they look nice, it is a lot development on this site. He stated that because a portion of the property is underwater they are required to cluster the buildings on the remaining area. He suggested looking at potentially reducing the number of units or the size of the units. He stated that what exists is pre-existing non-conforming. It is properties like this and the Anchorage that are the very reason the ordinance exists. Matt Slaughter agreed with Jason Saris. He commends the effort to make this fit into the space but it is extensive and he thinks that they could do better. He stated that he is most concerned with aesthetics and character of the structures.

Anthony Manney stated that the Board previously approved the 4 units on a quarter of an acre. If

you were to compare that with this site they could approve 20 units on this lot. He is not sure where the density issue changed from a few years ago. He stated that some may think that less units mean less cost but stormwater management, professional fees, landscaping, etc all add up and to make the project work financially he needs to have a certain amount of units. He stated that the economics work on this project with 10 units. He assured the Board that this a viable project and it will take place.

Tony DePace asked if they were to get approval would they start all units at the same time. Anthony Manne replied yes. He stated that in order to make it a viable project for stormwater and covering the cost 10 units needs to be the bottom number. He stated that he is surprised that just a few years ago these Boards approved 4 units on a .25 of an acre. Jason Saris stated that some of the comments being made tonight are telling the Board that perhaps they made a mistake with allowing approval of that project. He stated that these are all individual projects and his thoughts have nothing to do with Cross Street or any other development project in Town.

Jason Saris reminded the applicant that they are short one board member and 2 have recused themselves. He provided the applicant the opportunity to table the application until they have a fuller board.

Mark Taber thanked the Board for their time. He stated that they are considering tabling the application and asked the Board for specific issues that they may have at this time. David Ray stated that he has concerns with parking as well as the width of Evergreen Lane. The intensity of use will be increased and the road is not proposed to be widened. Pam Kenyon agreed that there may be a concern with the width of Evergreen Lane. John Famosi stated that he has concerns with the pervious surfaces. With the bedrock and additional surfaces he doesn't see a lot of green and stormwater space left. Mark Taber provided some details about stormwater and open space plans.

Mark Taber asked if this project would have to be re-noticed. Counsel Muller replied no.

RESOLUTION

Motion by John Famosi to table V13-03 pending further information. **Seconded by** Matt Slaughter. John Michaels and Jeff Anthony recused themselves. **All Others in Favor. Motion Carried.**

6. V13-04 PELLI, JOSEPH & GAIL. Represented by Eric & Eric. To alter pre-existing non-conforming single family dwelling, specifically to enlarge a deck with landing and stairs, seek area variance to alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 200.06, Block 1, Lot 6, Zone RM1.3. Property Location: 4458 Lake Shore Drive. Subject to WCPS review. See V12-29 for previous approvals.

Don Stubbler stated that the addition is proposed for the back of the house. Previously the applicant lost his deck to create the addition on the back of the house. The applicant is now seeking a larger deck to enjoy his outdoor space. The deck is proposed to go along the back of the house and will not be encroaching on the side setbacks.

Jason Saris asked if the deck is going to change the stormwater work that has already been done. Pam Kenyon replied that she was unsure but will make sure that it does not.

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

RESOLUTION

The Zoning Board of Appeals received an application from Joseph and Gail Pelli (V13-04) for an area variance as described above.

And, due to notice of the public hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning 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# 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; he is keeping in within the confines of the existing house and not extending into the side yard.

2) There will be no undesirable change in the neighborhood character or to nearby properties, 200' from the rear yard and 141' from the road, it will not visible from the road.

3) The request is not substantial; it is essentially the same size as the rear addition which took the place of the original deck.

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

5) The alleged difficulty is not self-created,

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

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

7. The Zoning Administrator seeks interpretation of School and Home Occupation listed as Type II Uses in the RM1.3 zone as it pertains to a fitness studio. Specifically, is a fitness studio classified as

one of the above? See letter received on 2-5-13 for services offered.

Pam Kenyon stated that this fits under our definition of a home occupation. She believes that this will require an area variance for an additional 300 sq. ft. She currently has 500' and is looking to expand to 800 sq ft. Jason Saris stated that he tends to agree with the ZA. This has been discussed a lot with the new ordinance. This is a much better fit than school.

Tony DePace stated that they already have the Sweet Pea Farm and asked if they could just add another use. Pam Kenyon stated that she tried that but couldn't make it work because that is an agricultural use. Jason Saris stated this is keeping in spirit of a home business. This is not a business that is going to put out a sign soliciting business but rather this is a private business for personal use. This is in their home and aren't interested in just having the general public showing up. The Board agreed.

8. WALLER, RICH & WAUNEATA, KRONENWETTER, JOHN & MCBAIN, JAY. In accordance with an order of the Warren County Supreme Court in the action John A. Lavender II Plaintiff against ZBA for the town of Bolton et.al. Index 57523. The matter is referred to the ZBA for a determination as to the specific finding by the Board and relied upon in support of the resolution dated June 19, 2012. Section 171.10, Block 1, Lot 7, Zone RL3. Property Location: 18 Skyline Drive.

Counsel Muller explained that they have specific instructions from Judge Krogmann. Brian Rechinbach stated Judge Krogmann found that there were no findings of fact in the resolution provided on June 19, 2012. He requested that the Board read the entire record of 575 pages and restate the resolution that includes specific findings of fact.

Counsel Muller stated that the Board needs to be composed of the same members that sat originally. Jeff Anthony stated that he has read the 575 pages and he created notes for the Board as a draft to begin thinking about their findings of fact. Jason Saris clarified that they are not rearguing this and nothing new is being presented. He understands that they are asking those that were in favor of the resolution to look through the record and make it complete. Those that were not in support of it, other than running the meeting, he asked if they have a role in this. Counsel Muller replied yes even though they did not vote favorably they are still included. He encouraged the Board to act on this during the March meeting. There was discussion about whether everyone would be there at the meeting. The Board decided that this would be discussed either during their regular meeting on March 19th or at a special meeting on March 26th.

The meeting was adjourned at 9:31pm.

Minutes respectfully submitted by Kristen MacEwan.