

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, July 15, 2014
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 Famosi, Tony DePace, Donald King, Jeff Anthony, Matthew Slaughter, Holly Dansbury, Michael Calautti, Zoning Administrator, Pamela Kenyon and Counsel Michael Muller

Absent:

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

Jason Saris asked if there were any corrections or changes to the June 17, 2014 minutes.

RESOLUTION:

Motion by Tony DePace to approve the June 17, 2014 minutes as presented. **Seconded by** Don King. **All in Favor. Motion Carried.**

1. **MARKI, BERNARD & PATRICIA.** Represented by the Atty. Thomas Ulasewicz. In accordance with Section 200-72 of the zoning ordinance, seek to appeal the Zoning Administrator's interpretation whereby determining that wildlife rehabilitation undertaken on those parcels designated as Section 171.07, Block 2, Lots 37 & 38 is not considered an artisan activity. If the Board determines that an artisan activity exists, the applicant's seek the following: 1) are the cages in excess of 100 square feet considered an accessory use structures? And 2) Is wildlife rehabilitation and its facilities (cages in excess of 100 square feet) customarily incidental and subordinate to a residential use where the residents are bona fide trained, skilled and licensed wildlife rehabilitators? Zone RCM1.3. Property Location: 2 Braley Point Road.

This item has been tabled at the applicant's request

2. **THE FUND FOR LAKE GEORGE AND THE LAKE GEORGE WATERKEEPER.** Represented by the Atty. Thomas Ulasewicz. In accordance with Section 200-72 of the zoning ordinance, seek to appeal the Zoning Administrator's interpretation whereby determining that Section 200.51C(3) of the Town's zoning Ordinance does not apply to a "shared driveway" as it pertains to a maximum clearance width of 16'. See Zoning Administrator letter dated March 6, 2014 for specifics. Section 171.00, Block 1, Lots 6 & 15.2, Zone LC25. Property Location: Edgecomb Pond Road. Property owned by **ERNEST OBERER.**

Atty. Ulasewicz read the following statement:

This matter involves the subdivision of land locally known as Pinnacle Mountain by its owner Ernest Oberer.

My client sought an interpretation of the Town's Zoning Ordinance that Mr. Oberer is required to get a variance from this Zoning Board of Appeals if he proposed to clear more than a 16 foot right of way to the 3 parcels he wants to create.

Instead, in essence, the Zoning Administrator has determined that the Subdivision Regulations apply to this matter and not the Zoning Ordinance. By granting a waiver a few years ago, the Planning Board essentially said the following:

1. We grant a waiver to allow a 24 foot wide access way to the 3 parcels, and
2. In so doing, we are allowing clearing (removal of all vegetation) to exceed 150 feet in several locations for this access way.

The Zoning Administrator essentially upheld these actions of the Planning Board in her interpretation of the local laws subject of tonight's proceeding.

Pertinent facts you should know are:

1. The Planning board determined in 2007 that the approximately 1 mile access road to service the proposed Oberer subdivision would be considered a "shared driveway" and not a "road". As a result, the Oberer subdivision proposal no longer had to comply with the Town's road design standards in its Subdivision Regulations with regard to slope restrictions.
2. In recent months, the Oberer's have submitted a revised application which, upon limited information, would appear to reduce the removal of all vegetation for this shared driveway to as far a distance as 80 feet.
3. Based upon limited information in the revised application, the clearing being proposed by the Oberer's in its current application before the Planning Board would amount to somewhere in the vicinity of 8 acres. A mile driveway at a 24 foot width, would constitute a clearing of approximately 1.6 acres or 4 times less than what is being proposed. Based on attorney Mike Hill's letter distributed last month, the actual driveway itself is even less than 1.6 acres.
4. Based upon limited information in the revised application, some areas of the shared driveway:
 - a) appear to traverse slopes in excess of 25% grade,
 - b) while even more areas will traverse slopes in excess of 15% grades, and
 - c) 2 to 3 areas appear to traverse slopes in excess of 40% grade.

My client seeks a reversal by this Board of the Zoning Administrator's interpretation and determination using the following logic:

Once the Planning Board determined that a 1 mile (now, 3/4 ± mile) access route intended to service 3 single family dwellings was a "shared driveway" and not a "road", it negated the design standards for streets and roadways in the Subdivision Regulations at §150-17; in essence the purpose and intent behind those Subdivision Regulations are:

"These standards are issued as guides for design and construction of facilities by private developers. They are formulated so that all facilities **may eventually be accepted for maintenance by the town.**"

We know that within the definition of "driveway", it is characterized as "any area privately reserved," in other words, it is a "private area." (see para. 14, supra.) As such, a driveway can never "be accepted for maintenance by the town." Thus, it is improper to call this access route a "driveway" and then apply the subdivision regulations to that component of construction.

The Planning Board and the Zoning Administrator in her subsequent interpretation should have turned to the Zoning Code and applied the "purpose" behind the "clearing regulations" for that body of law to the Oberer facts (see Zoning Code §200-51): that PURPOSE behind the Clearing regulations reads:

"The protection of the natural resources in Bolton is important to its economic success as a tourist community in the Adirondack Park. The clear-cutting of trees has in the past opened up objectionable views, exposed sensitive soils to erosion causing siltation in streams, ponds and lakes and generally degraded the natural environment in the Town of Bolton."

Applying the Zoning Administrator's interpretation to the Oberer set of facts would allow:

1. Clear cutting of approximately 8 acres, much of which are severe slopes on a very prominent mountain view shed in the Bolton Community, and
2. The extremely tenuous task of re-vegetating the area with "final grading and tree planting requirements so as to achieve a final shared driveway in the approved subdivision that is 'limited to a sixteen foot right-of-way.'"

(If I am reading attorney Hill's letter properly, his client will be attempting to revegetate 75% of the 8 acres being cleared -that's re-vegetation of 6 acres.)

Undertaking this type of task, even if it could be done, is likely to result in significant run-off, erosion and slope stability problems as a result of disturbance to the root systems of the existing vegetation in such a large area, to say nothing about the aesthetic impacts to such a distinguishing view shed.

Furthermore, The Zoning Administrator's Interpretation states:

"It is not rational, nor reasonable to read and interpret the Code as limiting all excavation, grading and related construction undertaken to create the shared driveway within a narrow limit of a sixteen foot right-of-way."

This conclusion is misconstrued. Rather, it is because of this very type of thinking that the Zoning Code contains the following provision at §200-63 ("Authorization to grant or deny variances."):

"Any variance to this chapter shall be granted by the Zoning Board of Appeals in accordance with the standards and procedures set forth in this article. In granting a variance, the Zoning Board of Appeals may impose conditions similar to those provided for site plan review uses **to protect the best interests of the surrounding property, the neighborhood and the town as a whole.**"

Accordingly, for a driveway clearing to be anything wider than 16 feet requires the applicant (here, the Oberers) to get a variance from the ZBA.

There is precedent for the position that the clearing regulations in the Zoning Ordinance can apply to a subdivision. In John Santo and Melanie Masters (SD03- 27, July 21, 2005 minutes: attached hereto as **ATTACHMENT B**), a minor subdivision, the Planning Board in voting to accept the application as complete stated:

"Landowners **must abide** by the Town of Bolton **clearing regulations** outlined in **Section 200-51** of the **zoning ordinance.**"

We do not believe Attorney Hill's letter refutes this earlier position by the Planning Board and, as to his explanation regarding wetland setback requirements for a driveway by the APA, the word "wetlands" does not appear anywhere in those Planning Board minutes.

Finally, accepting the Zoning Administrator's interpretation of allowing post construction re-vegetative planting to create a so called "allowable" clearing width for a driveway (which here, is up to approximately 80 feet over a 6 acres area) establishes a significant conflict in that same section of your Zoning Ordinance namely, §200-51 subsection (3) states that clearing for a driveway shall be 16 feet and §200-51 subsection (2) –Clearing for residential buildings shall be limited to 20 feet outside the area occupied by the foundation of that building (that same language is also in your Subdivision Regulations). Is the Planning Board now empowered to say: You can clear to a distance of 100 feet or 150 feet outside the area occupied by the foundation of your residence but must undertake post- construction re-vegetative planting to re-establish a clearing limited to 20 feet outside the area occupied by the foundation of that building? If you answer that question as "yes", you would also be saying: and ...in so doing, you do not need a variance from the ZBA? (all you need is a waiver from the Planning Board)

One last point: Attorney Hill sent you all a second letter yesterday evening which raises 2 points. I want to briefly address his second point claiming that if you change the Zoning Administrator's Interpretation you've created "a very damaging precedent." First, this case has too many unique circumstances to set any kind of precedent starting with wanting to develop three home sites where two will be at the top of a very prominent mountain in this Town. Second, the real damaging precedent was established in 2007 when the Planning Board granted the waiver to Mr. Oberer and, in so doing, decided that a 1 mile road up the side of a mountain was a driveway because the road could not even come close to meeting the design

standards for slopes.

Once the access to the Oberer parcel was determined to be a “shared driveway” as opposed to a “road”, the clearing requirements under the Zoning Code, as opposed to the Subdivision Regulations, become applicable, i.e. §200-51. In essence, this shared driveway cannot be designed “to eventually be accepted for maintenance by the town” since a driveway is a “private area”. If the applicant cannot comply with the 16 foot limitation required by §200.51.C(3) of the Zoning Code (and he cannot), the applicant must apply to the ZBA for an area variance pursuant to §200-63 of the Zoning Code.

Lake George Waterkeeper Chris Navitsky passed out handouts to the Board and stated the following:

- To address some of the concerns of the site, he went to the National Co-operative Soil Survey website which is operated by the USDA Natural Resources Conservation Service and specifically inquired about the site constraints for Mr. Oberer’s 75 acre property with regard to construction of local roads and streets, lawns and landscaping and surface water management.
- In order to insure that he was viewing the actual area without having the benefit of the actual survey lines he selected an area depicted on the map which he felt was comfortably within the 75 acre property.
- This study area turned out to be approximately 60 acres, but roughly approximately 80% of the Oberer site.
- The survey information states that approximately 82% of the study area of this site has soils that are “very limited” in their ability to successfully have a road built on them because of ponding, depth to saturated zone, subsistence, cross action, and soils.
- "Very limited" indicates that the soil has one or more features that are unfavorable for the specified use. The limitations generally cannot be overcome without major soil reclamation, special design, or expensive installation procedures. Poor performance and high maintenance can be expected.
- Regarding lawns and landscaping, all the acreage in the study area was classified as “very limited” in their ability to successfully sustain lawn or any form of landscaping or tree planting.
- If Mr. Oberer and the Zoning Administrator’s interpretation were to prevail and the subdivision was approved (which already has been once by default) 6 acres of cleared area which all have “very limited” soils for this activity, would have to be re-vegetated.
- 97% of the study area is classified as “very limited” in their ability to successfully manage surface water runoff.
- He would like the Board to keep in mind that Mr. Oberer is proposing to clear cut and remove all vegetation on approximately 8 acres of this site in what the Planning Board has designated as a driveway.

Atty. Muller responded that the whole purpose of this meeting was to appeal the Zoning Administrator’s interpretation. He stated that because of the highly technical aspect he wanted to read into the record the largest portion of what the Zoning Administrator’s interpretation was. He also stated that he had worked together with the Zoning Administrator’s in creating this reply which states as follows:

It is agreed that in October 2007, the Planning Board determined on application SD06-05 that the approximate one-mile access path for the proposed Oberer subdivision would be considered a "shared driveway," thereby excluding the applicant from the requirements of compliance with Code road design standards.

It is also acknowledged that the applicants' current sketch plan, "Conceptual Subdivision Plan – Subdivisions of Lands of Ernest A. Oberer," dated 10-22-12 (revised through 1-23-14) designates the proposed access to the two proposed upland lots as a "Driveway."

You inquire: "If the 2 upland residential parcels to be created by the Oberer subdivision are accessed by a 'shared driveway,' doesn't Section 200.51 C (3) of the Town's Zoning Ordinance require that the driveway be limited to a maximum clearance width of 16 feet?"

Section 200.51 Clearing Regulations is written in three subsections:

A -regulating lumber or timber harvesting,

B -regulating subdivisions, and

C -regulating single-family home construction.

It is the determination of the Planning Office that the Oberer *subdivision* is appropriately regulated by subsection B of Section 200-51 as this section regulates the subdivision of real property. The Oberer project application is appropriately characterized as a *subdivision*.

The Planning Office has determined that Code Section 200-51 C(3) *does not* apply to the Oberer development as the indicated sub section pertains only to single family home construction and *not* to subdivisions.

In review of the Oberer subdivision proposal, by application of Code Section 200-51 B (1) it is specified that:

"During construction, clearing shall be limited to the extent of grading only as approved by the Planning Board." [Emphasis added]

More specifically, in reading of Section 200-51, the Code book makes reference in an Editor's note 18, ***"For clearing in regard to subdivisions, see Ch. 150, Subdivision of Land §§150-2 and 150-17 G."*** [Emphasis added]. By direction of the Editor's note, "Code" Section 150-2 is mandated. This section provides that municipal board review and compliance with Town of Bolton Land Subdivision Regulation shall be required as a prerequisite to any land subdivision. Further Code Section 150-17 G Tree Clearing...also applies and more specifically Code Section 150-17 G(6) Driveways states: "Clearing for a driveway shall be limited to a sixteen foot right of way."

Based upon a thorough reading and a cumulative application of the Town of Bolton Land Use Ordinance (Chapter 125 Stormwater and Erosion Control; Chapter 150 Subdivision and Chapter 200 Zoning), I find that Code Section 200-51 B(1) when read with Code Section 170-17 G(6) may reasonably be construed in conflict. On the one hand, Code Section 150-17 G(6) would appear to limit a driveway clearing width to no greater than sixteen

feet; on the other hand, Code Section 200-51 B(1) specifies that "during construction," clearing shall be limited to the extent of grading only as approved by the Planning Board.

In an effort to read both Code sections as "compatible," it is my determination that the Planning Board has the proper and sole discretionary authority to consider *all* criteria specified in stormwater regulations, zoning and subdivision regulations in determining *during construction* the required *limits of clearing* necessary for the proper installation of a shared driveway in the proposed Oberer subdivision. Upon *completion* of the construction, the "shared" driveway, in accordance with Code Section 150-17 G(6) would be required to be in final form "...limited to a sixteen foot right of way."

In order to achieve compliance with both sections of Code, when and if construed as compatible requirements, any final subdivision approval would require that the Planning Board consider a re-vegetation plan, final grading and tree replanting requirements so as to achieve a final shared driveway in the approved subdivision that is limited to a sixteen foot wide right of way. The language "...limited to a sixteen foot right of way" pertains to the finished shared driveway. It is not rational, nor reasonable to read and interpret the Code as limiting all excavation, grading and related construction undertaken to create the shared driveway within a narrow limit of a sixteen foot right of way. This analysis is clearly supported by the specific application of Code Section 200-51 B (1) which provides broad discretionary authority to the Planning Board in determining clearing and grading limits within a subdivision.

Mention should also be made to the fact that "if" a plain reading of Code Section 200-51 B(1) and Code Section 150-17 0(6) cannot be construed as compatible and should they be reasonably construed to be in conflict, then a determination and interpretation required by law must be construed favorable to the applicant, Oberer.

Without specific case citation restated here, it is a well settled general rule of zoning code interpretation and language construction that zoning codes are enacted in derogation of the common law. Wherever there is a zoning code ambiguity (or a conflict in code language), the only appropriate code interpretation is to construe against the municipality. In such instance, the Oberer subdivision would not be controlled by a "stricter interpretation" of a sixteen foot clearing limitation. Interpretation and determination favorable to the applicant would require that application of Code Section 200-51 B (1) must prevail.

Although the Oberer subdivision application has a considerable history with the Planning Board since at least 2006, the current application submitted for review in 2014 presents substantial revision and at this early stage it is merely a "sketch plan." It is not the prerogative of the Zoning Administrator to "prejudge" the Oberer application before it may be fully considered by the Planning Board.

The Planning Board will remain informed as to the legal positions taken by the Fund for Lake George and the Waterkeeper. Concerning the proposed width of the subdivision's "shared driveway," as Zoning Administrator, it is my intent to direct the Oberer application to the Planning Board to allow them to consider the details of the private access pursuant to the requirements of Code section 200-51 B(1). By virtue of this specific Code section "...during construction clearing shall be limited to the extent of grading only as approved by the Planning

Board."

This interpretation/determination was considered and rendered upon consultation with legal counsel for the Town of Bolton and in accordance with a thorough review of all applicable code sections appropriate to the Oberer application. Any appeal of this determination and interpretation shall require conformity with the requirements of Code and Town Law.

Atty. Muller stated that he tried to be specific in reading what the interpretation was as it is highly technical and highly specific, but he believes the Board has the tools to make a determination in support of the Zoning Administrator's interpretation if that is their choice. He stated that a simple answer would be to look specifically to the code and they will find that in the code section that is written in three sub-sections, timber harvesting is out. He said go to B and C and ask yourself if this is single family construction or subdivision. If the Board finds that the Oberer subdivision is a subdivision, then they are in the section that did not make any specific requirements as to width and left it in the sound discretion of the Planning Board. He stated that the arguments made tonight by the Waterkeeper and the Fund for Lake George may be very germane to this application, and he would not challenge any of it in this proceeding, it is all important information, but it is all information for the Planning Board.

Jason Saris asked if the concept is that this is the only Board that can offer relief from the Ordinance. Atty. Muller stated that this was the only Board that can offer relief from the Ordinance by variance, but that is not what they are here for tonight.

Jason Saris stated that if the limit for a driveway was 16' and the end result would put it all back to the 16', it would not be considered something they would need relief from, the Planning Board has the authority along as the end result is 16'. Atty. Muller agreed and stated that the ZA has determined that it is up to the Planning Board based on the sections read, that it's within their discretion as to how they are going to approach the clearing widths. Jason Saris asked if the end result, when it was all done, would be considered compliant if it was at 16'. Atty. Muller stated that was correct.

Jason Saris stated that from the gist of what he was hearing, the applicant may not be able to return it to the 16'. Atty. Muller stated that this would all be what the Planning Board would be hearing in the Public Hearing, and perhaps persuaded enough to vote no. Jason Saris asked if this would be reviewed prior to them being able to move forward. Atty. Muller replied absolutely at least at two junctures, one being SEQRA and the other being stormwater review.

Atty. Michael Hill handed out letters to the Board and detailed them as follows.

This is not complicated the question before you is whether the Planning Board has the authority to determine the width of clearing for these driveways. The ZA's answer is yes. The Fund in its appeal suggests that section 200-51(C)3 of the zoning code, part of the clearing regulations apply and imposes a 16' limit and that a variance is needed from the Zoning Board of Appeals for any greater width. He stated that it's clear that section 200-51c is not applicable in these circumstances because as it has been pointed out, the application is for a subdivision and there is different section of the code that applies. He stated that in Section 200-51 subsection B relating to subdivisions which states very clearly that during construction, clearing shall be limited to the extent of grading only as approved by the Planning Board. He stated that there is

a note that directs you to the subdivision regulations. He states that in section 150-17 subsection G of the subdivision regulations items 3,4,5,6 are all of private property in nature and the code clearly specifies that even in those private property areas, none of the driveways would be eligible to be dedicated to the town, the Planning Board has review authority to review clearing that goes on in those areas. #6 in particular states that clearing for a driveway shall be limited to a sixteen-foot right-of-way.

Atty. Miller stated that 150-27 of the subdivision regulations clearly states that the Planning Board has authority to grant waivers from all requirements of chapter 150, including granting waivers for all driveways. A straight forward reading of the Zoning & Subdivision Regulations makes it clear that the Subdivision Regulations govern clearing for driveways proposed as part of subdivision applications and the Planning Board can waive the 16' and allow for wider clearing. In enacting the Zoning and Subdivision Regulations it seems clear that the Town Board wanted driveways and driveway width to be reviewed. In the case of single family home construction where the proposed house is not part of a subdivision application driveway clearing wider than 16' needs to be granted by variance by the Zoning Board. In the case of driveways proposed as part of a larger subdivision application that is going to be reviewed by the Planning Board, the Town Board evidently believed the review by the Planning Board was the appropriate place for that review to take place and thus provided the Planning Board with that specific authority and the authority to grant waivers rather than making applicants come before the ZBA. Atty. Miller stated that the waiver authority makes very logical sense. As a practical matter, it is simply not possible to construct a driveway of normal width (10 to 12 feet wide) and normal grade over significantly sloped terrain without clearing a path wider than 16 feet. Any contractor who does site work and grading will confirm this, as will any engineer who designs driveways to go over such terrain. The Planning Board has been routinely granting waivers for years for applicants to clear paths wider than 16 feet for driveways, even if the waivers have in some cases been implicit rather than explicit. The Fund and the Waterkeeper are trying to persuade you that the plain language of the codes isn't enough and that there should be more in the Town's regulations. The language of the code is clear, the Fund and the Waterkeeper think that the Town's codes should read differently and that they should be stricter and more rigorous. Atty. Miller stated that it is in the Fund and the Waterkeeper's interest to make the Board think that the issue is complicated when it is not. If the Fund and the Waterkeeper want the content of the Town's Code to be different, they should go to the Town Board and propose the changes they are seeking, but for right now the plain language of the existing Code which needs to be followed. Given the plain language of the Codes, the Zoning Administrator's determination is correct and should be upheld, otherwise there will be a very detrimental precedent set with far reaching implications. The Planning Board would be stripped of its authority grant waivers, long-time residents and hometown contractors who have done other subdivisions in the past without any issues or controversy regarding driveway width would have to get variances and go through processes they have never gone through before. If the Board overturns this determination the Fund and Waterkeeper would be back using this as a precedent. Atty. Miller respectively urged the Board to uphold the Zoning Administrator's determination. Atty. Miller stated that the particulars relating to the Oberer application are not germane to the Board's decision. He stated that the Board should be treating this as a generic question not specific to any particular application.

Jason Saris asked Atty. Hill if he was suggesting that the Planning Board's discretion for the driveway width extends to determining the finished size or if it was just during construction and after construction it gets put back to 16'. Atty. Hill referred to the code provisions and stated that clearing for a driveway shall be limited to a 16' right of way and Section 150-27 provides that the Planning Board can waive any requirements of the chapter. He stated that he believes that if the Planning Board saw fit, they could issue a waiver that would allow for a greater finished driveway, wider than 16' if they wanted to. He stated they were not seeking a driveway width wider than 16'. He stated that most of the driveway that they are proposing will be 12' in width with a 1' shoulder on each side for a total of finished width of 14'. He stated that there will be a few sections where the driving surface will be 14' wide, with 1' shoulders at the request of the Planning Board to assure sufficient width for emergency vehicle access. He said they were not seeking any width greater than 16' for the driveway itself. Atty. Muller read the Zoning Administrator's exact response. "it is my determination that the Planning Board has the proper and sole discretionary authority to consider *all* criteria specified in stormwater regulations, zoning and subdivision regulations in determining *during construction* the required *limits of clearing* necessary for the proper installation of a shared driveway in the proposed Oberer subdivision. Upon *completion* of the construction, the "shared" driveway, in accordance with Code Section 150-17 G(6) would be required to be *in final form* "...limited to a sixteen foot right of way." Atty. Hill stated they had no issue with that, they are not seeking any finished driveway width greater than 16'.

Tony DePace asked if they would need to get permission from the Planning Board to clear over the 16' during construction. Atty. Muller stated they would need to get permission from the Planning Board. Tony DePace asked if the Planning Board normally gave this permission or would it come back to the Zoning Board. Atty. Muller stated that the Planning Board normally gave this permission.

Atty. Ulasewicz stated the purpose for the design standards for roads and streets in the subdivision regulations is no longer applicable once they call the access to this subdivision a driveway. If you take a look at 150-17 generally clearing will be kept to a minimum. Subsection 2 Clearing for roadways states: Clear-cutting shall be limited to those areas disturbed by grading for the construction of the roadway, drainage ways and side slopes, as specified in this section. Subsection 6 states: Clearing for a driveway shall be limited to a sixteen-foot right-of-way. He submits that the Zoning Administrator has taken the word driveways from Subsection 6 and put it up in Subsection 2. He states that in number 2 it specifically uses the word clear cutting and that is what is happening here. He said clear cutting does not appear in driveways, it is clearing and in clearing for roadways, it has no limitation on dimensions, in driveways it is specifically limited to 16'.

Don King asked him how he explains 150-27. Atty. Ulasewicz stated he explains it as the waiver no longer applies once they have taken it out of purpose of the subdivision regulations design standards. Once the purpose of the design standards of the subdivision regulations becomes inapplicable, you flip over to a variance, not a waiver.

Matthew Slaughter asked if the Planning Board should have no say over driveways or private buildings within a subdivision. Atty. Ulasewicz stated that he is saying that if the driveway is to exceed 16' a variance is required from the ZBA and not a waiver from the Planning Board.

Jason Saris stated they were not offering a permanent relief, they would be offering a temporary relief while it's under construction. Atty. Ulasewicz stated the important thing here is that the criteria for granting a waiver and the standard for granting a variance are very different. He is submitting that what this Board would have to consider in entertaining a variance for a driveway wider than 16,' would be what is the minimum amount necessary, and are there alternatives available that would reduce the size of the variance and still accomplish the objective the applicant is seeking. He stated that this criteria is not applicable to a waiver. Jason Saris stated that the Planning Board is not offering anything other than a temporary width greater than 16' and the finished product will be 16' and compliant. Atty. Ulasewicz stated their position is that if you don't apply the criteria for the area variance and you allow 8 acres to be denuded and 6 acres to be planted on lands that have severe limitations for replanting and other considerations. Jason Saris stated that Atty. Ulasewicz is suggesting that they may not be able to pull it off. Atty. Ulasewicz stated that the Planning Board should not be allowed to legally apply the requirements of a waiver to this application, it should be the criteria for a variance.

Jason Saris asked what his definition of clearing as opposed to clear cutting was. Atty. Ulasewicz stated that clear cutting was the removal of all vegetation, clearing was the removal of some vegetation. Jason Saris stated that in sense of a driveway it would be clear cut. Atty. Ulasewicz stated he would agree with him if it was 16' but they are talking at least 80' out from that driveway of clear cutting which is 6 acres on the side of a mountain. He stated that is why the regulations say keep it to 16' as you are clear cutting.

Don King asked Atty. Muller if the points they are going over at this time are not pertinent to tonight's determination. Atty. Muller stated that was true, and although Atty. Ulasewicz and the Waterkeeper had some excellent points that definitely need to be addressed by the Planning Board, but they are not properly addressed on this appeal. Atty. Muller stated that he gets a little concerned when they have discussions about the significant differences between waivers and variances. He stated that this is not an issue on this appeal nor the determination, it was never mentioned.

Atty. Ulasewicz said that if they are suggesting that a variance needs to be received from the Zoning Board of Appeals, doesn't stand to reason that the criteria for a variance under your ordinance is what is to be applied. Atty. Muller stated that there is no waiver here and there is no variance here....it is an appeal. He stated there has never been a request for a waiver in before the Planning Board and there has never been a request to interpret how the waiver applies. He stated that they were asked specifically to interpret a section of the code. Atty. Muller referenced the February 7, 2014 letter requesting the interpretation/determination of the Town of Bolton Zoning Code §200.51.C- Clearing Regulations - "Single Family Home Construction" specifically your request for an interpretation/determination is directed to the issue of application of Code §200.51.C to the pending Oberer subdivision. Atty. Muller stated the question presented by the Waterkeeper and Atty. Ulasewicz's inquiry is to look at Section as it applies to single family home construction....why doesn't it apply. The answer comes back to because we are looking at a subdivision.

Jeff Anthony stated that he thinks that trying to define a driveway/roadway puts them in more of a definition problem. He stated they had a roadway in a subdivision that has a problem so they ask for a waiver that it not be engineered to your town roadway standards and he believes this is what

the Planning Board did. He believes the Planning Board said they could have a roadway in this subdivision constructed to driveway standards, meaning less width, less shoulder width and steeper gradient. He thinks combining these two terms is confusing everyone. He stated that it is still a roadway in a subdivision accessing 3 lots designed to driveway standards and he believes the Planning Board has the right waive virtually any statistic related to the shape, size, dimension, gradient or anything related to that construction.

Jason Saris stated that the Board should look at this in a generic way and it is an appeal to an interpretation and the details of this one application other than the fact that it is a subdivision are not pertinent to the Boards' analysis of this. He stated that even if the Board does not agree with the way the code approaches some of the other things that have been mentioned, it is not part of their decision. He thinks the real questions are if the Zoning Administrator's interpretation is reasonable and backed up by past practice which is an important consideration. If there is any kind of conflict in the Boards opinion, in the way the zoning is written, they are bound by what the least restrictive interpretation is. He believes the interpretation is reasonable and it has logic behind it and makes sense. He stated that he certainly hopes that the Planning Board scrutinizes the heck out of it and he believes they will.

Jeff Anthony stated he did not condone building roads on 25% slopes or 40% slopes or clearing 100' width, but that is not this Board's jurisdiction it is the Planning Board's jurisdiction and he trusts that they will do their job if and when this project goes in front of them. He stated this Board is looking solely at the issue of if it's really a variance or not and if the Planning Board has the right to waive certain things. He said in his opinion it is clear that if they are here with a roadway/driveway in a subdivision he believes 150-27 gives them the right to waive any statistical criteria about that construction.

Matthew Slaughter stated that if he understood Atty. Ulasewicz argument, he was saying that because this is a private driveway it does not get the application of subdivision, it gets the application of 200.-51(C). He stated that inherent in that argument is the discussion of the waiver requirements and there was no mention of the waiver requirements in Atty. Ulasewicz's appeal, but he thinks that it is inherent in it, because he thinks that Atty. Ulasewicz is saying that by being a private entity that's where you apply the single family home construction issues and that applies to the waiver of the requirements because the language has to do with whether it may be eventually accepted by the Town, which is inherent to his argument. Atty. Ulasewicz agreed. Matthew Slaughter did not know whether it was fair to say they are ignoring the waiver of requirements issue. He stated that upon reading later on there, it says each facility shall be designed and constructed as a part of a future complete system, and he interprets that to mean that the Planning Board can waive requirements because even private aspects of development will be constructed as part of a future complete system. He said he interprets this as saying that the Planning Board can waive requirements.

Jason Saris explained that the Zoning Administrator's interpretation isn't granting permission of a finished driveway of over 16', it is allowing them to clear a greater area that facilitates construction and return it to the required 16' so that it is compliant in the end. He states the waiver is not to give permission or relief from the ordinance. Matthew Slaughter stated in the Zoning Administrator's letter she writes; You inquire: "If the 2 upland residential parcels to be created by the Oberer subdivision are accessed by a 'shared driveway,' doesn't Section C apply? He stated he

thinks that inherent in what Atty. Ulasewicz is saying is part of the waiver issue and she is quoting his language in the decision letter. He thinks they are not deciding something as narrow as simply should we apply b or c.

Don King stated the Board is not applying anything. They are the decision of the Zoning Administrator to defer in this particular situation based on tradition and prior decisions, her right to defer to the Planning Board to make the determinations of how far, how big, how long, how little they are granted to do. They are not deciding whether the Zoning Administrator was correct in making a decision to defer to the Planning Board. In his opinion she was.

Atty. Muller addressed the question by stating that Matthew Slaughter had the argument absolutely correct and the Zoning Administrator never reached that question because it was never posed. He read the following from her letter; Upon *completion* of the construction, the "shared" driveway, in accordance with Code Section 150-17 G(6) would be required to be *in final form* "...limited to a sixteen foot right of way." Atty. Muller stated that had the question been posed to her about and to the extent that it shall exceed 16', shall you require a waiver to be provided by the Planning Board or a variance to be considered and granted by the Zoning Board. He stated it was never asked so no opinion was offered.

RESOLUTION

Now, upon motion duly made by Don King and seconded by Tony DePace, it is resolved that the ZBA does hereby state that the Zoning Administrator for the Town of Bolton had the right as a tradition to defer in this particular instance to the Planning Board, who has the right and the mandate to determine the construction methods and the mitigation methods that are put forth for any project that has a development context in the Town of Bolton. As a caveat: excellent research has apparently been done on reasons for not allowing this subdivision to go forward but this is not the mandate for tonight. The mandate from the Zoning Board to the Planning Board is that they do due diligence and study and discuss the information presented to the Board tonight, and make their determination on how the project goes forward and what restrictions and remediation's are necessary. This motion is to uphold the Zoning Administrator's determination. **All in Favor.**
Motion Carried.

3. **V14-17 DOHENY PARTNERS.** Represented by Richard Doheny. For the installation of a 500 gallon propane tank, seek area variance for a deficient shoreline setback. 75' is required, 8.7' is proposed on the west side and 37' is proposed on the east side. Section 200.14, Block 1, Lot 10, Zone RM1.3. Property Location: 169 Cotton Point Road. Subject to WCPS and APA review.

Richard Doheny presented the following:

- They own a year round residence on the end of Cotton Point Road.
- They are seeking an area variance to install a 500 gallon propane tank that does not meet shore line setbacks.
- There is no place on the parcel that has more than 75' from the shoreline.

- The location they have picked is currently occupied by an accessory structure that they will remove.
- The tank that is virtually the same size will be placed in that area.
- It will be behind a large stone planting.
- The planter and plants will hide it from the neighbors view.
- They do not have any other options.

Tony DePace asked if there was any chance of burying the tank. Mr. Doheny replied they would prefer to bury it but they hit ledge rock about 2' down.

Holly Dansbury asked what was currently in that location. Mr. Doheny replied an approximate 4' x 10' shed.

Tony DePace asked if this would be seen from the lake. Mr. Doheny replied yes, but the tree limbs do obscure some of it. Tony DePace asked if they are planning on any plantings in, but it is very tough to grow anything in that area due to the tree coverage.

Jason Saris asked if this was a tank they would purchase and own or lease from a company. Mr. Doheny stated they would be purchasing it. Jason Saris asked if they would be painting the tank any colors. Mr. Doheny stated he would love to paint it camouflage but he believes it needs to be white because of temperature and for emergency agencies to locate it. Don King stated they he thinks you can buy tanks that are already painted dark green. Mr. Doheny stated that he has not called to find out the code and if it must be white or not. Don King stated that whomever he purchased from should know.

Matthew Slaughter asked about putting a shed over the tank. Mr. Doheny replied that he was not adverse to that, but he was not sure if it can be, as you are usually required to keep 10' from any propane tank that is filled on site. He stated that they were open to any suggestions as to how they can achieve this.

Jason Saris inquired if they had played around with the location to see if it could be placed elsewhere on the site to see if the relief they were asking for would be less. Mr. Doheny stated it would not be practical, short of dropping it in the middle of the driveway there was no way to get away from the 75' setback, he explained there was no other location to put it, where it could be accessed for its purpose.

Tony DePace asked if this was a year round home. Mr. Doheny replied yes and this is why they could not access it in the winter if it was put elsewhere. He explained they need the bigger tank due to the amount of propane they use.

Atty. Muller stated that the applicant should be aware that he believes that there is a New York State building regulation stating you had to be 10' off your property line with a propane tank. Mr. Doheny, stated he believes that it's a property line that can be built upon. Jason Saris answered that he believes with a 500 lb. tank you have to be 10' away. Mr. Doheny stated that he thinks it upon a property line it can be built upon. Atty. Muller stated that whatever relief that Bolton grants Mr. Doheny, he needs to realize that there will be other agency requirements he must follow.

Jeff Anthony asked about blasting to lower the tank. Mr. Doheny stated you need approximately 6 inch of bedding under the tank, and he had no idea what the problems would be moving rocks 8' from shoreline. Jeff Anthony asked if he had explored it. Mr. Doheny replied they had not.

Jason Saris asked if they bury it would they would need a variance. Pamela Kenyon, Zoning Administrator stated they would not.

Tony DePace stated that the view from the lake would not be attractive and he would suggest that they look into a way to screen it. Mr. Doheny asked if they would get approval on condition of landscaping around the tank or do they need to pursue burying the tank.

Don King stated that the Board has an obligation to make sure the applicant has considered all viable options before they grant a variance and it seems that all not options have been waived. He stated it might behoove him to table the application to get some more information on other options for screening the tank for next month's meeting. Mr. Doheny agreed.

RESOLUTION

The Zoning Board of Appeals received an application from Doheny Partners (V14-17) for an area variance as described above.

And, due to notice of the public hearing of the ZBA

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:

Now, upon motion duly made by Don King and seconded by Tony DePace, it is resolved that the ZBA does hereby table the variance request as presented for more information. **All in Favor.**

Motion Carried.

4. **V14-18 CASACCIO, JAMES & TENEE.** To alter non-conforming single family dwelling, specifically to place solar panels on the roof, 1) seek area variance for a deficient shoreline setback. 75' is required, 52' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.12, Block 1, Lot 23, Zone RCM1.3. Property Location: 13 Cherry Lane. Subject to WCPS and APA review. See V13-18 for previous approvals.

Holly Dansbury recused herself and alternate Michael Calautti sat in her place.

James Casaccio stated that they will be using low profile panels that you can't see from the lake. Jason Saris asked if the panels would cover the whole one side of the roof. Mr. Casaccio replied yes, on the whole south side. Jason Saris asked how far they sit off the roof and if they followed the roof line. Mr. Casaccio and they were 4" off the roof.

Atty. Muller stated one of the practical difficulties was that the developer has chosen to keep it within the profile and footprint of the existing building as opposed to locating them distant from the building.

Jason Saris stated that it was a pre-existing non-conforming structure and the practical difficulty was to stay on that structure as they had other feasible alternatives, but they choose the best one.

RESOLUTION

The Zoning Board of Appeals received an application from James & Tenee Casaccio (V14-18) for an area variance as described above.

And, due to notice of the public hearing of the ZBA;

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; Solar panels chosen will have very little effect being on the house.

2) There will be no undesirable change in the neighborhood character or to nearby properties. It only raises the roof about 4”

3) The request is not substantial; it is staying within the original footprint of the house.

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

5) The alleged difficulty is self-created; they made the choice to do the project environmentally friendly.

The benefit to the applicant is not outweighed by the potential detriment to health, safety and welfare of the community. By choosing not to do solar fields they have chosen the least amount of impact.

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

5. **V14-19 LAFFERTY, LAWRENCE.** Represented by Ralph Schissler III. For a proposed two lot subdivision, seeks area variance for 1) Deficient density. 20 acres is required, .92 acres exist, .37 acres is proposed for Lot 1 and .55 acres is proposed for lot 2. 2) Lot depth. 300’ is required, 95’ is proposed for Lot 1 and 175’ is proposed for Lot 2. 3) Lot width. 250’ is required, 85’ is proposed on the northeast side. 145’ is proposed for Lot 2. 4) Deficient side yard setback. 30’ is required, 22’ is proposed for Lot 1. 5) Shoreline lot width. 250’ is required, 218’ is proposed for Lot 1. Section 172.02, Block 1, Lot 7, Zone RR10. Property Location: Fourteen Mile Island. Subject to WCPS and APA review. See SD14-03 associated with this project.

Ralph Schissler III presented the following:

- This parcel has been owned by the Lafferty family since 1966.

- This parcel is located on the southeasterly shore of Fourteen Mile Island, also known as Kenesaw Island, near the easterly shore of Lake George.
- This parcel was purchased with a boathouse, which was remodeled between 1966 and 1972 into the camp on Lot 2, and a seasonal camp building, which had an addition added in 1986, on Lot 1.
- Both structures have existing septic systems.
- The septic systems were inspected, as requested by the Town of Bolton, Upstate Design Associates, LLC.
- The island itself consists of 6 parcels of land.
- His client desires to subdivide this overall 0.92± acre parcel into two lots.
- The subdivision would create Lot 1 with 0.37± acres and Lot 2 with 0.55± acres.
- The total subdivision is not changing the character to the island or the lot.
- The existing has two camps and two docks.
- The family is wishing to subdivide this amongst themselves.
- If they wanted any other changes they would need additional variances.
- They feel they are doing the minimum amount of variances needed.
- We have submitted an Adirondack Park Agency (APA) Jurisdictional Inquiry Form and have obtained a Non-Jurisdictional determination per Jurisdictional Determination J2013-0635, dated October 24, 2013.

Jason Saris asked if Mr. Schissler was familiar with the criteria in granting a variance. Mr. Schissler replied that he was not. Jason Saris explained that this was an extremely substantial variance request.

Tony DePace asked if they considered a 99 year lease amongst each other rather than subdividing the property. Mr. Schissler stated that the family itself is a little riff about the subdivision. Tony DePace stated this was a very substantial request and he is afraid that there are a lot of islands with parcels with multiple living dwellings, and passing a variance like this would bring up a lot of questions about if they could all subdivide.

Mr. Schissler stated there always were two structures and there is existing septic and yes the parcel would be smaller but the character of the island would be family. Tony DePace replied that this would be debatable. Mr. Schissler replied they were not looking to increase the dock space.

Holly Dansbury stated it seemed as though some family members wanted to keep it and some were looking to sell it off. Mr. Schissler stated he did not know.

Jason Saris stated that when you subdivide both lots do not get to have all the accessory structures that go with the primary and each dwelling would gain the right to have accessory structures which has the potential to change the character of the island and this concerns him. Mr. Schissler asked if this could be a recommendation to the Planning Board to put as a condition on the approval.

A letter stating concerns from the Lake George Waterkeeper was read into the record by Atty. Muller.

Letters and emails opposed to the application were read into the record from the following neighbors:

Herbert M. Bergman MD

Sandy Finley

Judith Wilner MD and Joseph Wilner MD

Amy Bartlett Esq. and Richard Bartlett Esq.

Atty. Stephani Dilallo Bitter stated:

- She is here on behalf of Douglas Lafferty who owns 50% of the property and is in opposition of the application.
- He has commenced a partition action relative to this property stating the only way to move forward is to sell the property in its entirety.
- The parcel is less than an acre in size.
- It is zoned RR10.
- It is already the smallest parcel on the island.
- This application is substantial.
- It is not appropriate to divide the property because it will increase the intensity of the use and it will not solve the family's problems.
- It will be against a restrictive covenant that exists allowing one dwelling and one guest house on this parcel.
- These are small lots with buildings in close proximity to each other.
- If the variance is granted the intensity of use will be greater by possibly creating more docks and buildings.
- This will create two substandard lots that are less than an acre in size.
- Subdividing the property is not the solution and will not solve the family's problems
- This will set a dangerous negative precedent to subdividing a property on an island.
- The request will have a negative effect.
- This is clearly a self-created hardship.
- They request they deny this application.

Dick Bartlett stated he appears as a property owner on 14 mile island. He said that it's a bizarre subdivision physically and that the property on the island is fragile. He stated they should ask why the application is being made as there is not any agreement among the Lafferty family at this time to physically divide the property. He stated that there is a partition action pending in the Supreme Court at this time. The two brothers are not on friendly terms. He does not understand why they are here at this time. He hopes it will be defeated and at the very least tabled because it is a bizarre division of property. He urges the Board to deny the application.

Rich Watkins stated that it does seem to him that to take a piece of property that it is not even 1/20th of the area required for a subdivision really seems to be incredible in pushing the boundaries and precedent.

Richard Eager, Attorney representing the 14 mile island partnership stated:

That on behalf of 14 Mile Island Partnership, owner of property having the tax ID of 172.02-1-4, I hereby register the Partnership's vigorous objection to the minor subdivision application of Lawrence Lafferty.

The request for significantly substandard lots, which would also violate the lot depth, width and side yard setback requirements, is wholly out of character with, and would adversely affect the other lots on Fourteen Mile Island and should not be granted. Our family has owned and enjoyed property adjacent to the Lafferty property for more than 50 years. We are very concerned that approval of this application would serve as a dangerous precedent that would allow our idyllic island to be carved up into minute parcels.

We understand that this subdivision request results from a disagreement between the current property owners and strongly urge this Board to refer the owners to a more appropriate venue for a resolution, rather than to impact the remaining owners on Fourteen Mile Island.

He stated that 4 owners of the 6 lot island had voiced opposition to this proposal. He said that the precedent this would be set would be very frightening if it was approved.

Mr. Schissler stated that this may or may not fix the family issues and if the Board would like to discuss this further they can and the septic can be researched further. He does not feel that it will change the overall use of the property. He stated he could not argue the character change.

RESOLUTION

The Zoning Board of Appeals received an application from Lawrence Lafferty (V14-19) for an area variance as described above.

And, due to notice of the public hearing of the ZBA;

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 be achieved by any other means feasible to the applicant besides an area variance; This will not benefit anyone but one of the owners.
- 2) There will be an undesirable change in the neighborhood character or to nearby properties.
- 3) The request is very substantial;
- 4) The request will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is 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 Don King, it is resolved that the ZBA does hereby deny the variance request as presented. **All in Favor. Motion Carried.**

6. **V14-20 ZECCOLA, VINCENT & DIANE.** Represented by Curtis Dybas. To alter non-conforming single family dwelling, specifically to add an 8'x 15' addition to an 8'x 12' screened porch, 1) seek area variance for a deficient front yard setback. 50' is required, 10' is proposed; and 2) to alter a non-conforming structure

in accordance with Section 200-57B(1)(b). Section 186.18, Block 1, Lot 29, Zone RM1.3. Property Location: 24 The Back Road. Subject to WCPS review. See V13-38 for previous approvals.

Curt Dybas presented the following:

- He was here in October for a bedroom expansion and prior to submission they pulled the porch addition due to not having approvals from the Board of Governors of the Rainbow Beach Association when they came before the Zoning Board.
- In June the Board of Governors did approve the addition.
- This cottage was purchased in 2012 and they are doing extensive repairs.
- They would like to complete the project with this addition which will also be a main entrance to the cottage.
- The front of this would be in line with an existing deck.
- They are trying to keep this in character with existing cottage and the surrounding cottages.
- This is strictly a seasonal use screened porch.

Jason Saris asked if they would be filling in a small corner. Mr. Dybas replied that there was a small setback and they were pulling it out forward to match the existing deck and matching the roofs edges.

Jason Saris stated they would not be lessening the setback from what it already is. Mr. Dybas replied that is correct.

A letter in favor of the application from the Rainbow Beach Association was read into the record by Atty. Muller.

RESOLUTION

The Zoning Board of Appeals received an application from Vincent & Diane Zeccola (V14-20) for an area variance as described above.

And, due to notice of the public hearing of the ZBA

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; it is a modest addition and the variance seems to be only appropriate.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. This addition will not extend beyond existing constructed portions of the site.
- 3) The request is not substantial; this is a minor addition.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; this does not seem to have any impact at all.
- 5) The alleged difficulty is self-created; the applicant wants this.

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 Matthew Slaughter, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition.

1) minor stormwater is implemented. **All in Favor. Motion Carried.**

7. **V14-21 LINDER, MARY.** Represented by Douglas Lafferty. To alter non-conforming single family dwelling, specifically to add an 856 square foot addition, 1) Seeks area variance for deficient setbacks. Front: 75' is required, 62' is proposed. Side: 20' is required, 15' is proposed; and 2) To alter a non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.18, Block 1, Lot 15, Zone RL3. Property Location: 88 Mohican Road.

This item has been tabled at the applicant's request

8. **V14-22 HIPPELE RAYMOND.** To alter single family dwelling, specifically to add an addition, 1) seeks area variance for a deficient shoreline setback. 75' is required, 44' is proposed; and 2) To alter a non-conforming structure in accordance with Section 200-57B(1)(b). Section 185.19, Block 1, Lot 57.2, Zone RCL3. Property Location: 50 Acorn Drive. Subject to WCPS and APA review.

Raymond Hippele presented the following:

This is an addition to their home and the entire addition is behind the house away from the lake. They tried to incorporate going to the rear of the house and they do not have a garage at this time.

Jason Saris asked how old the existing home was. Mr. Hippele replied the original cabin was from the 40's and has no foundation. He said they put a master bedroom addition on about 10 or 12 years ago to the side. Don King asked if that addition had required a variance. Mr. Hippele replied yes and it required a brand new septic to be put in.

Holly Dansbury asked if the current addition would come up to the current driveway stops. Mr. Hippele replied yes. She asked if they would have to modify their existing driveway. Mr. Hippele replied yes they would have to.

Jason Saris asked if there would be any other additions or modifications planned for the future. Mr. Hippele replied that he did not think so.

Don King asked if there was anything dealing with the stormwater for the modification needed to reconfigure the drive. He stated that he believes this needs to be identified and addressed in the application. He said he also thinks it is a very attractive house but based on the existing height of the structure and the existing height the proposed structure, this project it is fairly substantial which has the potential of physically impacting the neighborhood and he would like to see this to be a more complete application. Mr. Hippele asked if this was in terms of stormwater for the driveway. Don King replied in terms of the configuration of the driveway and the stormwater calculations.

He said they do not have any topography identified on the map and there will be more runoff from the house and where it will be captured.

A letter from the Lake George Waterkeeper stating his concerns for the need additional information of stormwater management and the existing wastewater treatment system was read into the record.

Tony DePace asked how many bedrooms there would be in the home. Mr. Hippele replied it would remain at two.

Mr. Hippele stated that they put the septic system 10 or 12 years ago and you can see on the plans that the septic system will not be impacted at all by the new addition.

John Carney neighbor stated that he would like more information so that he can make an opinion. Jason Saris stated that Mr. Carney can look at any of the plans that had been presented.

Jeff Anthony stated he would like to see more information on the stormwater. Jason Saris stated he would like to see where the septic system was located on the packet that was submitted.

Don King suggested that Mr. Hippele may want to table to present the Board with more information. Mr. Hippele agreed.

RESOLUTION

Now, upon motion duly made by Don King and seconded by Tony DePace, it is resolved that the ZBA does hereby table the variance request for additional information. **All in Favor. Motion Carried.**

9. **V14-23 ENGLISH, EDWARD.** Represented by Eugene Baker. For the construction of a proposed 38.4' x 32.8' garage with storage, seeks area variance for deficient setbacks. Shoreline: 75' is required, 30' is proposed. Front: 50' is required, 8' is proposed. Section 171.08, Block 1, Lot 12, Zone RCM1.3. Property Location: 18 Braley Point Road. Subject to WCPS and APA approval. See V06-16b for previous approvals.

This item has been tabled at the applicant's request

10. **V14-24 JENSEN, ROY.** Represented by Mary Dorritie. To demolish and rebuild single family dwelling, seeks area variance for deficient front yard setbacks. 30' is required. 21' is proposed on the north side and 11' is proposed on the south side. Section 171.15, Block 3, Lot 42, Zone GB5000. Property Location: 36 Norowal Road. Subject to WCPS review. See V14-12 & V14-15 for previous denials.

Mary Dorritie handed the Board packets and presented the following:

She stated that after careful consideration Mr. Jensen has opted to reduce the size of the proposed home from 54'5" to 50'5" and added 2' to the deck on the north side. This reduces the north side

variance request from 21' to 22', and also reduces the square footage from 1,512 square feet to 1,367 square feet.

1. How can the benefit that you desire not be achieved by other feasible means?

The existing lot is part of a 10 cabin colony subdivision which predates the Town of Bolton Zoning Ordinance for the GB5000 zone and as a result, is deemed a "prior non-conforming lots of record" as they existed prior to May 22, 1979. The only way to achieve a home with 1,367 sq. ft. without changing the footprint of the existing home would be to build a 2 story home. This would violate the Declaration of Easements and Restrictive Covenants of the Norowol Cabin Association, the document states, "No buildings shall be erected, altered, placed or permitted to remain on Lots numbered 2-9 on the Map other than one single family dwelling not to exceed one story in height, 34 feet high at a maximum"(p5), therefore other avenues were pursued.

In the first area variance proposal to the ZBA on May 20, 2014, Mr. Jensen had 4 setback requests:

- Fronts: 30' is required, 18' was proposed on the north side and 11' was proposed on the south side, The house was 2' to the south side from the original footprint.
- Sides: A total of 20' is required. 14' was proposed.
- Height: 32 feet.

In the second area variance proposal to the ZBA on June 17, 2014, Mr. Jensen had 4 setback requests

- Fronts: 30' is required, 18' was proposed on the north side and 11' was proposed on the south side. The house was 2' to the south side from the original footprint.
- Sides: A total of 20' is required. 17ft 2in was proposed.
- Height: 28 1/2 feet

The third proposal to the ZBA on July 15, 2014, Mr. Jensen has now reduced his setback requests from 4 to 2.

- Front: 30' is required, 22' is proposed on the north side and 11' on the south side. The home was moved 2' to its original footprint on the south side.
- Sides: variance request eliminated
- Height: 26 feet

Total change

- Front variance request on the north side is reduced by 4 feet.
- Front variance request on the south side is unchanged from the original footprint of the home.
- Sides are reduced by 6 feet therefore eliminating need for variance request.
- Reduced height by 6 feet. It should be noted that the land slopes toward the lake, lakeside the home is 26ft in height, at the south side the height change is only 6 feet from the existing home and it should be taken into consideration that the ridge has been rotated 90 degrees, which certainly benefits the neighbors to the rear.
- Also, Mr. Jensen reduced the height and style of the home to accommodate the opposing neighbors, his entire project has always been within the height restrictions of the cabin association as well as the town, 34 feet and 35 feet respectively.

- He is unable to further reduce pitch as it is not recommended to go any less than a 7 on 12 due to the snow load in the Adirondacks.

Ms. Dorritie then had the Board go over the pictures 1-10 that she had handed out earlier.

2. How will your project not produce an undesirable change in the neighborhood?

She stated an undesirable change to a neighborhood could be interpreted as a home which is considered an eyesore, or a home that is too large for the neighborhood. Mr. Jensen's home will fall in the middle when comparing all the cabins in the association, some are larger and some will remain smaller. Its design complements the other homes in the association. Mr. Jensen sought out the opinions of others in the neighborhood to be sure that this was not perceived as an undesirable change. Also, by conforming to the Declaration of Easements and Restrictive Covenants of the Norowal Cabin Association, as well as the Bolton Landing Zoning Ordinance he is not creating an undesirable change for the community at large.

In the first area variance proposal to the ZBA on May 20, 2014, he submitted a letter from the Norowal Cabin Association in support of the requested variance. This letter was signed by Buzz Lamb, President, John McClelland, Vice-President and Cheryl Lamb, Secretary and Treasurer. These officers are the owners of Cabins; 1,5,6,9&10.

In the second area variance proposal to the ZBA on June 17, 2014, the letter from the board of the Norowal Cabin Association was resubmitted in favor of the variance request. Scott Kupec owner of cabin 2 also submitted a letter in favor of the variance request, and Wilma Rizzi who is the owner of cabin 4 spoke in front of the board in favor of the requested variance. In this 10 cabin association, 7 are in favor of the proposed variance request and 2 are opposed. In addition, Mr. Jensen reached out to those in the 500' radius of the project and also to neighbors who are just beyond the 500' radius. He received 14 letters of support. Tonight, Mr. Jensen has submitted a letter dated June 30th from the Norowal Cabin Association in support of the current requested variance signed by the same Board members.

3. Is the requested area variance substantial?

The front variance request to the north is substantial but has been reduced from the initial request of 18' to 22'. The side variance requests have been eliminated. The front variance request to the south is unchanged from the original footprint. Mr. Jensen has made substantial changes to the original variance request but given the nature of the non-conforming lot it is impossible to change the footprint to accommodate a modest home without an area variance request.

4. Will there be an adverse effect or impact on the physical or environmental: conditions in the neighborhood

There will not be an adverse impact on the physical or environmental conditions as Mr. Jensen has addressed any potential problems with stormwater runoff and makes a firm commitment to the Board that he will comply with Town's Stormwater and Erosion Control Regulations and will utilize the services of D.L. Dickinson Associates. Mr. Jensen lives in this community and is committed to do his part to protect the lake. He is not just visiting, this is his home.

At the first area variance proposal to the ZBA on May 20, 2014, Mr. Jensen was not prepared to address the issue of dealing with the stormwater runoff. At the second area variance proposal to the ZBA on June 17, 2014, a Stormwater Plan prepared by D.L. Dickinson Associates Surveyors/Engineers was submitted at which time Jeff Anthony then requested that Mr. Jensen submit a plan which included a test hole. Tonight's third proposal to the ZBA on July 15, 2014, Mr. Jensen has provided you with a more detailed Stormwater Management Plan, which includes the soil test. Mr. Jensen defers to D.L. Dickinson for any specific questions about this plan.

5. How is the alleged difficulty not self-created?

The contention raised by Ms. Snedeker and the Pachucki's is that this is a self-created hardship in that Mr. Jensen knew what he was buying 34 years ago and therefore he should not be allowed to change the footprint of his home. Roy had a vision as did Joy, Mike and Sandy and all the other members of the association. Each homeowner made a choice when they purchased their home, whether it was the front row or the rear row based on preference and availability. The Pachucki's cabin is the only cabin whose footprint has not changed over the years, except for a shed they have on their lot. Just as Mr. Jensen knew what he was buying 34 years ago, so did the Pachucki's and Ms. Snedeker.

This is not a self-created hardship; it is a sign of the times. Mr. Jensen is keeping in step with the neighborhood and improving the condition by replacing a vacation cabin built in 1952 with a new home with much better efficiency, insulation & curb appeal. In order to build his modest home he has investigated many options and has made several revisions to his initial plan, having one of the 10 non-conforming lots has been the difficulty and this is certainly not a self-created hardship. It is a hardship for all of the Norowal Cabin Association members.

There is no detriment to the health, safety and welfare of the community. The community has given an outpouring of support to this variance request; the stormwater management plan will eliminate any safety or health concerns.

In closing, I would like to ask the board to support Mr. Jensen in his request for an area variance, and thank you for allowing me to come before you tonight on his behalf. Mr. Jensen and I will be getting married in August, and we have just had an addition to our blended family, a new granddaughter born just yesterday, we have another on the way in December. Our plan is to live here for many years to come and wish to be able to have a home in which we can build happy memories with all of our children, their spouses and the grandchildren. I certainly hope that this addresses any and all concerns that the Board may have.

Atty. Muller read a letter received from Norowal Cabin Owners Association, Inc. in favor of the project into the record.

Joyce Snedecker, owner of cabin

- She has been there since 1987.
- They had to have approvals to renovate and she was only allowed 23' height.
- This was because Buzzy Lamb still owned the lots behind her and did not want his view impeded.

- She showed the Board pictures and stated she is going to lose her mountain view and partial view of the lake.
- 2 years ago her assessment went up \$100,000 more than it was.
- She went to the assessor to see why her assessment went up so much and was told it was due to her lake and mountain view.
- She used to be here 6 months a year and she would like to have a larger house too, but the size of your family should not dictate the size of your home.
- This house should not be as large as it is.
- This is not a place for people to live permanently.
- He does not need such a huge basement.
- Yes she has cut the shrubs in front, but Buzzy Lamb has cut a lot for the view.
- She has nothing against Roy or Mary personally, she just does not like the house they are building due to the restrictions on her view.

Wilma Rizzi stated she lived next to Roy and that part of the view that Joy will lose is part of the marina and the boats. Joy says it is not a year round place but she likes people to be there year round to keep an eye on things.

Atty. Pasquariello, representing, Mike and Sandy Pachucki and Joyce Snedeker, owners of cabins 7 and 8 stated the variances are substantial.

- The front is 21' which is a 70% change
- The rear (front) is 11' which is a 63% change.
- The granting of this variance is going to affect their view of the lake and the mountains.
- These two properties are in a 601 neighborhood meaning the view of the lake has an effect on value and assessment.
- He read a letter from Sally Pepper of Caldwell Banker King George Realty into the record.
- He read a letter from Town Assessor, David Rosebrook into the record.
- He respectively submits that the two people impacted by this application are the Pachucki's and Joyce Snedeker, the other neighbors are not impacted at all.
- Regardless of where you purchase the property the purpose of the Zoning Ordinance is to protect the surrounding properties.
- The views of the people in the back have to be respected by the Board and law has to be followed.
- They bought it with a view and they have a right continue to have that view. It should not be obstructed.
- He put up photos and detailed them to the Board as their interpretation of what the view will be.
- They do not object to Mr. Jensen building a structure, but they wish that he had talked to them to work on a plan.
- They request that the application be denied.

Jason Saris asked what Atty. Pasquariello meant when he made the comment that the Bolton Ordinance would guarantee they would never lose their view. Atty. Pasquariello stated that he misspoke and did not mean to say that. He stated that they bought a property with some elements of view. If someone wants to change that, they have that right, but he thinks the Board has to look

at the criteria for an area variance. He stated that one of the criteria's is detriment to others. The detriment is loss of view which is a significant injury.

Jason Saris asked if the applicant had met with Atty. Pasquariello's clients, as it was suggested, what would have been a satisfactory way the applicant could have achieved his benefit. Atty. Pasquariello stated he did not know, he would have to hear what the possibilities were. Jason Saris stated they have been looking at this property for over 3 months now and it is lost on him what else one could do.

Tony DePace asked if there was still a 22' height restriction. Atty. Pasquariello stated that he believes they go higher. Tony Depace stated this has changed drastically from their first application and the Mr. Jensen has come down a lot on their roof lines and their view. He wanted to know if the Association does not have any restrictions the day after Mr. Jensen puts his small addition on, the neighbors can add to their home. He believes that the second row can have the best view in the Association. Atty. Pasquariello stated that he is just looking at what the view will be now.

Holly Dansbury asked if there was any view easement in their deeds guaranteeing the view. Atty. Pasquariello said no. She asked if when they bought it they were told they would always have the view. Atty. Pasquariello stated that he thinks they reasonably assumed they would always have the view.

Atty. Pasquariello stated that the Town Assessor thinks this is an important issue. Jason Saris stated that they obviously all respect that it is important, as the application has been denied twice. He stated that the Board takes it very seriously.

Mike Pechuki handed out pictures to the Board and stated that there are only two cabins that are over 23' and one that is over 25'. He stated that all the roof lines are the same. He won't be able to see his boat dock or the beach. The south side of the proposed structure is 21' which starts 3' out of the ground and he would propose that Mr. Jensen lower that to get closer to the existing roof line which would enhance the view.

Mrs. Snedecker stated that picture #4 of what was presented by Mr. Jensen it shows how he comes out in the front, but not the back. The deck will block part of her view to the last.

Atty. Muller stated that the Board members may consider this variance to be complex in addition to being controversial and the Board has the option table it for the purpose of allowing the record to be read and allowing him to suggest a resolution based on findings of fact and conclusions of law both for and against so the Board may select one after deliberation.

Jason Saris stated the Board does not need an applicant's request to table an item if they want more time to consider. He said he believes that what Atty. Muller may be alluding to is that because of this controversy it may not end with a vote here, Atty. Muller would supply the Board with both favorable and unfavorable resolutions in draft form, so that anyone considering making a motion in either way would be able to do so.

Jeff Anthony stated he liked that idea. He asked the applicant what the function of the basement was. He stated that he could see some manipulation of the levels to lower the height of the building. He said they could drop the whole thing down into the ground as an alternative.

Jason Saris stated if they do not close the Public Hearing at this meeting tonight, everyone would be able to comment at the next meeting until the Board closed it. Mary Dorritie inquired why they would keep the Public Hearing open. Atty. Muller stated that it was to allow the Board the opportunity to make thorough understood findings of fact which are required by courts, and conclusions of law. He stated that this would work favorably for both sides.

Atty. Muller stated that this record needed to be amply stated, with correctly recited findings of fact and conclusion of law, which will work favorably for both sides. Mary Dorritie asked if this would mean that they would have to go over the whole application again. Atty. Muller replied no.

Tony DePace stated that he was not sure what the Attorney was going to tell the Board. Jason Saris replied that he was hopefully going to make sure they have all the legal information they may need to make a motion either for or against the project that would be defensible in court. Atty. Muller said he would be bringing a sheet of paper that makes finding of facts of what was stated and what the Board would find to be the facts, followed by conclusions of law. He stated this would be how the Board would be applying the Zoning Code and the 5 part test to grant or deny the request. Tony DePace asked if when they come back in a month, would the Board be able to just go into the motion. Atty. Muller explained that because the Board has left the Public Hearing open they would ask if there was anything new before closing the Public Hearing at the next meeting. Tony DePace asked if the applicant could then come back with a different plan. Jason Saris stated that if they changed the plan, it would require the Board to start all over again. Atty. Muller agreed. Jason Saris stated that they would leave the Public Hearing open also to allow the Board to ask more questions of the applicants and the public.

RESOLUTION

Now, upon motion duly made by Don King and seconded by Jeff Anthony, it is resolved that the ZBA does hereby table the variance for a response from the Town Attorney. **All in Favor. Motion Carried.**

The meeting was adjourned at 10:12pm.

Minutes respectfully submitted by Kate Persons.

