

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, June 18, 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: Jeff Anthony, John Michaels, Donald King, David Ray, Matt Slaughter, Zoning Administrator Pamela Kenyon and Counsel Michael Muller

Absent: Jason Saris, Tony DePace & John Famosi

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

Jeff Anthony asked if there were any corrections or changes to the May 14, 2013 minutes.

RESOLUTION:

Motion by John Michaels to approve the May 14, 2013 meeting minutes as written. **Seconded by** Matt Slaughter. **All in Favor. Motion Carried.**

Jeff Anthony reminded all applicants that they were short several members and that any applicant, at any time, could choose to table their application.

There were no corrections to the minutes.

1. **V13-11 ADIRONDACK DESIGNERS & BUILDERS.** Represented by Hutchins Engineering. To expand/convert motel unit into a single family dwelling, seek area variance to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.07, Block 1, Lot 6.4, Zone RCH5000. Property Location: 4824 Lake Shore Drive. Subject to WCPS review. *Note: This item was tabled at the April meeting pending a recommendation by the PB. The PB has recommended approval.*

Bob McNally stated that the way the existing structure sits it is 4' from the line and has been there for many years. The applicant would like to keep the foundation and build onto it away from the side setback. Bill Pfau from Carey's was at the PB meeting and was in support of the proposal. He and the applicant have agreed to include a vegetative buffer between the properties with staggering trees.

Bob McNally stated that there will be no undesirable change to the neighborhood, it will be an improvement. It is not self-created, this building has been here for a long time and will remain there for a long time to come. The applicant is seeking to expand on a pre-existing structure. This is a minor request of 4' from an 8' setback.

John Michaels stated that this is a chance for the applicant to come into compliance. The applicant has plenty of room on the other side to move it off the line. They are asking for a 50% variance. Kevin Maschewski stated that the actual wall is 5' from the property line and the roof line brings it to 4'. An existing 2000 gallon septic tanks and 500 gallon pump tank will be utilized. Additionally, the infrastructure will not be disturbed in utilizing the existing foundation. John Michaels stated that he could see if the applicant is re-building the exact same design on the same foundation but this is a much larger expansion and thinks it should come into compliance. Kevin Maschewski stated that it is also best for the neighbor with regard to disturbance and impact on their business.

Don King asked about the difference between the mean high water mark setbacks on the plan. Pam Kenyon replied that 100' line is for the septic. John Michaels asked why the applicant would not be on Town sewer. Kevin Maschewski replied that they are too far from the line and it is not an option.

Matt Slaughter asked about the plan for the other buildings. Kevin Maschewski stated that they would be removed. He anticipates starting demolition in the Fall. Don King asked why the entire project couldn't be postponed until the fall and then move the building off the property line. That way the building comes into compliance and it won't impact the neighbor. Kevin Maschewski stated that the way it is designed now he could build over the summer and then demo the buildings after the summer season. Don King asked what the sub-structure will be used for the new addition to the house. Kevin Maschewski replied that it would be poured concrete. He provided further details.

Chris Navitsky, Lake George Waterkeeper, stated that this is substantially increasing the impervious cover on the property. When the PB developed their recommendation John Gaddy requested that a buffer between the houses be incorporated into the design. The application does not indicate that buffer and wondered if the ZBA would consider this condition.

There was no WC impact or additional correspondence submitted.

Don King presented a motion to deny for the following reasons:
The mandate of the Board is to do the best job they can to minimize the impact. They have an opportunity to prevent another large variance application from passing as a result of one developers desire to build a significant structure to hedge on the cost.

Bob McNally stated that the applicant would like to table the application.

RESOLUTION

Motion by John Michaels to table V13-11 at the applicant's request. Seconded by Don King. All in Favor. Motion Carried.

2. V13-16 MENZIES, PETER & GRETCHEN. Represented by the LA Group. **1)** To alter non-conforming winter cabin and associated retaining wall, specifically to add 255 square feet to the cabin and enlarge the retaining wall, seek area variance for **a)** a deficient front yard setback.

50' is required, 38' minimum is proposed; and **b**) to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). **2**) To alter non-conforming summer cabin, specifically to add 810 square feet, seek area variance for **a**) deficient shoreline setback. 75' is required, 40' is proposed; and **b**) to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.08, Block 1, Lot 6, Zone RCM1.3. Property Location: 32 Jacobi Point. Subject to WCPS and APA review. *Note: The walkway and timber stair system along with the retaining wall associated with the summer cabin are not included with this application. Site Plan Review will be required for these items.*

Note: Jeff Anthony recused himself. John Michaels chaired this application.

Peter Menzies stated that he and his wife fell in love with the property because it retained the Adirondack and lake qualities. They take the lake quality very seriously and they wanted to take proper steps to improve this property. They care about the community and the lake.

Mark Tabor, LA Group reviewed the variances for expanding upon pre-existing non-conforming structures. He stated that they have reduced the expansions from what was originally proposed. The benefit cannot be achieved by other means. They are trying to create a comfortable living space year round for their family and it cannot be done without the area variance because the summer cabin is not winterized and there are no plans to winterize it. If the applicants wanted to winterize the summer cabin it would take extensive work and money. Mark Tabor stated that they cannot expand the winter cabin in any direction other than what they are proposing without taxing the environment. There are steep slopes which make development and construction difficult on this lot.

Mark Tabor stated that they tried their best to minimize their variance requests. They have come up with a balanced plan to achieve the benefit while minimizing the request and impact on the land. There is little effect to the neighborhood. Mark Tabor stated that they are looking at 250 additional square feet on one building. They are keeping the Adirondack style and quality of the structure and there is existing screening that will remain.

Mark Tabor stated that the request isn't substantial, it is 250 sq feet. The additions are limited in size and will have minimal impact on the environment.

Mark Tabor stated that at the last meeting the Board was concerned about having 2 residences on one property. Since that time they asked the architect about what it would take to convert the summer cabin into a year round residence. The house does not currently have a foundation so a foundation would need to be added. In order to insulate they would need to replace the siding, roof, windows, doors and put insulation in. They would have to install a boiler and furnace and plumbing for that. They would also have to enclose the porch.

Mark Tabor stated that all of that work would fall into modification of an existing structure which the applicants have no desire to do, but it would require any future applicants to come before this Board to make such changes. That provides some control over this structure for the future. Counsel Muller agreed that those changes would constitute a modification to an existing structure and would require the applicants to come back to this Board. He stated that the Board

could also make it a condition of approval or as a covenant in a deed so that it would alert any future buyers.

There were no comments from the public in attendance and there was no further correspondence received.

John Michaels stated that the smaller addition on the winter house does not really make it a viable house, so his concern of using it 2 different ways has been diminished. However he disagrees about the modification to the summer house; it could be done so that the applicants or any future applicants would not have to return. He would rather see a restriction or covenant.

RESOLUTION

The Zoning Board of Appeals received an application from Peter & Gretchen (V13-16) 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; the space for this family cannot be achieved otherwise.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the applicant has done a nice job with the plan and is considering the environmental impact with the steep slope.

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; the applicant has made every effort to make this the most minimal request.

5) The alleged difficulty is not self-created, the applicants have accommodated our requests.

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 Matt Slaughter and seconded by Don King, it is resolved that the ZBA does hereby approve the variance request as presented. Jeff Anthony recused himself. **All Others in Favor. Motion Carried.**

3. **V13-17 AYVAZIAN, BRETT & PATTY.** Represented by Greg Bonath. To alter non-conforming single family dwelling, specifically to add a dormer and 12'x 32' deck, seek area variance for **1)** a deficient side yard setback. 15' is required, approximately 11' is proposed on the west side; and **2)** to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.16, Block 1, Lot 20, Zone RCM1.3. Property Location: 41 Pioneer Village Road.

Greg Bonath stated that when he began developing the plan for the applicants he was under the impression that they met all setbacks. However over the years the ROW setback was changed from 30' to 50'; the applicants just miss the front by about 5' but the side and back setbacks are fine. The structure is a steep pitch chalet and the applicants are looking to add a dormer to create a bathroom in the back of the house. They are also seeking to add a deck. This is a wooded lot and they intend to keep it that way but would like additional space to enjoy the summer season. The deck is 12' x 32' and again will be in the rear of the house.

John Michaels asked about the septic. Greg Bonath explained where the septic and lines were located. He stated that he is not concerned with interfering with the septic.

There was no correspondence.

A neighbor (name unknown), neighbors asked for more details about the deck. Greg Bonath provided further details.

RESOLUTION

The Zoning Board of Appeals received an application from Brett and Patty Ayvazian (V13-17) 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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, the house could use some upgrades and improvements.
- 3) The request is not substantial; it is only for the front yard setback and all construction is in the rear.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the neighbor was present and agreed that this will not have an impact.
- 5) The alleged difficulty is not self-created, it is a front yard setback and all construction is in the back.

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

4. **V13-19 SCHEIBER JR., EDMUND.** To alter non-conforming single family dwelling, specifically to replace existing 2'x4' landing with stairs with a 26' x 14' deck, 1) seeks area variance for a deficient shoreline setback. 75' is required, 33' is proposed; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 200.18, Block 1, Lot 47, Zone RM1.3. Property Location: 51 Hemlock Point Road. Subject to WCPB and APA review.

Ed Scheiber stated that he is seeking to construct a 14' x 26' deck on the front of their property. He feels that the benefit cannot be achieved by any other means. On the north side of the house there are no doors currently there. The south side would be too close to the 20' side setback which their HOA requires. Additionally, they would also be facing the neighbor's bedroom side of the house which would not provide a lot of privacy for either party.

Ed Scheiber stated that this will not cause an undesirable change the neighborhood. It will be in the same style and architecture of the neighborhood. There are 7 homes in the neighborhood and all have an enclosed porch or deck. Of the 7 homes, 3 are well within the setback requirement, 2 homes to the north of him are 30' and 33' from the waterfront setback and he is asking for basically the same thing. He does not feel that the variance is substantial.

Ed Scheiber stated that there are no adverse effects on the environment. His lot is very level and they would not be causing a run-off issue. He is a member on the Board of Trustees for the Fund For Lake George so he is sensitive to water quality. They plan to add plantings around the outer part of the deck as well as a rain garden where the stairs and deck meet.

Ed Scheiber stated that the difficulty is not self-created. When the original house was built there were no setbacks so they are within 46' from the shoreline. Additionally the shoreline is closer than it once was due to severe ice build-up which pushed the shoreline back.

John Michaels asked when the house was rebuilt. Ed Scheiber replied 2001. John Michaels asked if the new house is in the same setback and did it have a deck. Ed Scheiber replied yes the front of the house is in the same location of the old house to keep the foundation for the garage. John Michaels asked if they needed a variance at that time. Ed Scheiber replied yes. He stated that in 1996 he built a deck on the old house without a permit. In 2003 he asked the Board to reconsider this same deck proposal. John Michaels stated that the original plan did not include sliders. Ed Scheiber stated that it was a screened in porch but in the construction of it they decided to put in sliders. He stated that at that time they had proposed to have a small balcony off the bedroom. At that time the Board indicated that they wanted to see the balcony designed out and that in order to gain approval he would have to get rid of the deck.

Don King stated that the proposed deck creates a 30% reduction in space between the structure and the lake when they are already in significant violation of the setback with the house. He stated that the Board does not like to make things any more non-compliant. Ed Scheiber stated that his neighbors have a similar deck that are within the setback; he is not asking for anything more and they received approval. Don King asked when the neighbors may have received their variances. Ed Scheiber replied 2001 or 2002.

There was no WC impact. One letter was received from the Lake George Waterkeeper who chose to speak instead of having the letter read.

Chris Navitsky, Lake George Waterkeeper stated that there is concern about further encroaching up the shoreline setback. He stated that they recognize the plantings and buffers that the applicant is proposing and they recommend the ZBA apply the town criteria and requirements and impose conditions for stormwater management. Alternatives should be considered to reduce the shoreline variance.

Don King provided the following motion to deny the application.

Looking at the benefits, the applicant set forth a reasonable argument with the exception of the north side near the garage. This is an issue of continued encroachment. The applicant has constructed or reconstructed his house closer to the lake and he feels that it is not a good application. The variance is substantial; it would place the structure 30% closer to the lakefront. This has been addressed on other applications of continue growth into non-conformity. There is more structure closer to the lake. The difficulty is self-imposed, the applicant has made several changes to the property including adding a structure without permission prior to the new home being built to seeking to add a deck after the structure was in place was intentionally not part of the approval of the new house.

Jeff Anthony reminded that applicant that he has the choice to table the application prior to him seeking a second to the motion.

Ed Scheiber stated that he does not understand the comments that he has been moving closer to the lake. He tore the old house down and built a new house. Don King stated that he modified the porch and added a deck to the old house without permission. Ed Scheiber stated that in 2003 someone on the Board had suggested that he added the screened in porch, however that was already in existence in the old house. John Michaels stated that the applicant admitted that he changed the screened in porch into living space instead of keeping as a screened in porch. Ed Scheiber indicated that he wanted to table the application.

RESOLUTION

Motion by Don King to table application V13-19 at the applicant's request. Seconded by Matt Slaughter. All in Favor. Motion Carried.

5. V13-18 CASACCIO, JAMES & TENEE. Represented by Carl Schoder of Schoder Rivers Associates. To alter non-conforming single family dwelling, specifically to add a second story and construct an attached garage, 1) seek area variance for a deficient shoreline setback. 75' is required, 42.50 is proposed; and 2) to alter a pre-existing 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 WCPB and APA review.

Carl Schoder reviewed the proposed project. The applicants are seeking to replace the dated house. They are seeking to provide more living space which is more in line with the neighborhood and create a 2 car garage. The footprint of the house will remain; they will be adding a 2nd floor to the house by lifting the current level and constructing the first floor on the recommendation of the contractor. They are utilizing the footprint with the exception of the deck which they are changing slightly. However with the change they are making it less non-conforming.

Carl Schoder provided information regarding tree removal for the site. He stated that Barry Kincaid reviewed the site and made recommendations to the applicants. There are a lot of mature white pines on the property that have been considered a danger to the house and structures. They will be removing trees within 20' of the house, additionally they will need an area to construct the garage. One other tree which is also a mature white pine will be removed near the boathouse.

Carl Schoder provided details about the house design and development.

Carl Schoder stated that the property currently has no stormwater management and the proposal does include a plan to the greatest extent possible. There is some difficulty on the site because there is bedrock and relatively high ground water. They have designed an infiltration system on the lower part of the property. He provided further details regarding the stormwater. They are replacing the gravel driveway with a paved surface with a drain and water collection system. John Michaels asked if the applicants would consider using permeable pavement. Carl Schoder replied there is a fair amount of water that is pretty shallow and he has concerns with how that would affect the pavement in terms of freezing and causing damage.

Carl Schoder stated that the house construction would be lake inspired with neutral colors and materials. There is little disturbance and they will have filtered views.

With regard to waste water system, Carl Schoder stated that this property had an upgrade in 2009 and is located on the other side of the road. It was designed for 150 gallons/bedroom. The current residence will have all new fixtures in the home which will reduce that down to 110 gallons/bedroom so the existing septic field will be adequate for the new structure. Don King stated that he has some concerns with the leach fields because of the shallow depth to bedrock. Carl Schoder stated that Keith Manz designed the system and has provided as-built plans to show the system in detail. He stated that he has also been out to review the system and found it to be functioning properly. Additionally Carl Schoder stated that he designed the system on the property next door and has done test pits to find adequate depth to bedrock. He stated that they also meet the setback between the well. John Michaels asked if there was room for expansion if needed. Carl Schoder stated that the last system was replaced over the previous system. There is some room to the back.

The setback is consistent with the neighborhood. Carl Schoder stated that all of these homes were originally built to the 50' setback to the lake which was in place at the time. That setback is now 75'. All other setbacks have been met.

Carl Schoder stated that the site is difficult to develop so in terms of alternatives they are limited. This is the least impact that they can have to update the property.

Don King stated that there is a lot of surface water currently. He asked for more details on the stormwater control measures and infiltration system. Carl Schoder provided more details to the collection system and outflow.

Matt Slaughter asked about clarification of the tree removal. Carl Schoder provided details about the tree removal. He stated that Barry Kincaid provided a thorough review of the trees and provided recommendations as presented tonight. John Michaels stated that there are a lot of trees on the property so there is plenty to still provide a filtered view. Carl Schoder also noted that the walkway down to the lake will be removed which will provide additional infiltration of the water.

There was no WC impact.

Chris Navitsky, Lake George Waterkeeper, stated that they are not opposed to the variance request and view it as an improvement to water quality improvement. They appreciate the stormwater management proposed but recommend the following conditions that the stormwater include all existing surfaces as well as new proposed structures. Regarding the stormwater system, they recommend vegetation near the collection system to help stabilize the ground and stop erosion. Carl Schoder stated that he could consider some additional plantings by the outflow near the stones.

RESOLUTION

The Zoning Board of Appeals received an application from James and Tenee Casaccio (V13-18) 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# 5 of the agenda.

The Board makes the following conclusions of law:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; the applicants have taken great care to minimize the expansion of the footprint especially by not encroaching on the lake and instead going vertically. The expansion will be well screened and will have very little impact on the views from the lake.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the neighborhood has developed and grown out of older facilities. Most of the older facilities have been eliminated or renovated upon and done so with the aesthetic values we want to see in the Adirondack community.

3) The request is not substantial; the applicant is not impinging upon the setbacks or encroaching on the shoreline. They have minimized some of the structure by eliminating some decks and stairways and allowed for more absorption between the structure and lake.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; there is significant improvement of the stormwater run-off in terms of surface and subsurface applications. Some of the water will be captured and filtered and the applicant has agreed to reducing the rock bed and add additional vegetation.

5) The alleged difficulty is not self-created, it is an existing structure that the applicants are trying to improve for year round living. There will be minimal disruption to the environment and community.

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

Now, upon motion duly made by Don King and seconded by Matt Slaughter, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) the applicant will eliminate some of the rock bed on the outflow of the roof liters and replace it with appropriate vegetation to slow the discharge. **All in Favor. Motion Carried.**

6. V13-20 SCHUPP, ROBERT & HELEN. Represented by Carl Schoder of Schoder Rivers Associates. To alter non-conforming single family dwelling, specifically to construct an attached

garage with living space above along with an addition between the house and garage, 1) seek area variance deficient setbacks. a) Shoreline. 75' is required, 73' is proposed; and b) Front. 50' is required, 39' is proposed; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.08, Block 1, Lot 2, Zone RCM1.3. Property Location: 52 Jacobi Point Road. Subject to WCPB and APA review.

Carl Schoder stated that the agenda should be clarified regarding the shoreline setback. The proposed setback is 43.8' not the 73'. They are not increasing it and they are not doing anything on that side of the house. Pam Kenyon stated that she took the measurement from the addition. There was further discussion, it was decided that it would be left at 73' setback request because that is where it is attaching to the house. The existing house is all within the setback and to attach it comes within the shoreline by that distance.

Carl Schoder stated that they are taking a very small house and increasing the living space and proposing a garage. They looked at alternatives but they would increase the structures non-conformance. Instead they did the work behind the structure. However, they are dealing with a large rock mound. They are proposing to remove a small portion of the rock mound to allow them to build the addition. Currently the structure is 24' x 35', it is one story with 2 small bedrooms. The bedrooms would be combined into one bedroom. The addition would include a 2nd floor living space with 2 bedrooms. Carl Schoder stated that a waste water system was developed by him several years ago. It is designed for 3 bedrooms, which is what they are proposing.

With regard to stormwater, Carl Schoder stated that currently there is none. The proposed system is fairly involved. He provided more details of the system.

Carl Schoder stated that in order to build this addition it involves another setback with regard to the ROW. It is a driveway access for the last property on the road.

Carl Schoder explained details about the visual impact. In order to build this the lower floor will be set down so that it will not be seen from the driveway. There is additional screening. It meets the height and length requirements.

John Michaels asked about the sheds on the property. Carl Schoder stated that the smaller shed will be removed. The larger shed will be moved to the location of another shed that will be permanently removed. He provided further details.

John Michaels stated that he sees an additional kitchen being proposed. Pam Kenyon stated that they can have more than one kitchen in the same house.

There was no WC impact or correspondence.

Chris Navitsky, Lake George Waterkeeper, stated that they do have some concerns about the variance and clearance. They recommend that the Board apply the regulations and look at alternatives and potential impacts. They could reduce the size to reduce the impact. The variance could potentially have adverse effects to the environment that may not be mitigated.

They see that stormwater has been proposed to handle the increased impervious area but would like to see the existing cover and construction included as well. He asked if there is any consideration of adding trees or vegetation that is being removed. They also suggest seeking the PB recommendation with regard to development.

Counsel Muller reminded the Board that this will go before the APA and should discuss the practical difficulty.

Carl Schoder stated that there is no opportunity based on the size and configuration of the lot to build this addition and garage at other locations that would not cause less impact. If they were to try to knock the house down and rebuild, it would be much higher and bigger. They tried to tuck the house back to reduce the visual impact. To build another 3 bedroom house would create more environmental impact. Counsel Muller stated that the practical difficulty is that the addition needs to be attached to the house that is already existing and encroaching in the shoreline setback.

RESOLUTION

The Zoning Board of Appeals received an application from Robert and Helen Schupp (V13-20) 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; this was a small structure that is being renovated for better use.

2) There will be no undesirable change in the neighborhood character or to nearby properties, it will be an improvement to the property and neighborhood.

3) The request is not substantial; it is a 3 bedroom house and they are not encroaching on the lake. The applicant is utilizing the footprint and staying away from the rock and the lake.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; there are stormwater measures being taken. It will be an overall improvement to the neighborhood.

5) The alleged difficulty is not self-created, this lot has a lot of constraints. It will have no visual impact to the lake or neighborhood. Good engineering has been applied and reviewed.

They have looked at the alternatives and there really is no other way or feasible alternatives to put a three bedroom house on this site. There is no impact from the lake and this appears to be the most balanced and best alternative presented. It is also dealing with a 73' setback which is deficient by 2'; it would be impossible to have this project without that encroachment.

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

7. **V13-21 BEHAN, DANIEL.** Represented by Don Russell. To alter non-conforming single family dwelling, specifically to reconstruct and repair east side of single family dwelling damaged by large pine and expand size of pre-existing dormer on second floor, seeks area variance for **1)** Deficient setbacks. a) Shoreline. 75' is required, 73' is proposed; and b) Sides. 20' is required, 8.3' is proposed on the west side and 17' is proposed on the east; and **2)** to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 200.14, Block 1, Lot 14, Zone RM1.3. Property Location: 20 South Beach Avenue. Subject to WCPB and APA review.

Don Russell stated that the applicants had a pine tree fall on their house. They would like to repair the house in a little different style with a gable formation instead of the shed roof. He provided pictures of the previous look. The proposal is affecting a pre-existing non-conforming structure. They are not seeking to increase the footprint in any way. The house is about 100 years old a not much has been done to the house since that time. He stated that there will be 2 more windows then previously existed.

There was no WC impact and no correspondence.

RESOLUTION

The Zoning Board of Appeals received an application from Daniel Behan (V13-21) 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# 7 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; the applicant has suffered some serious damage and the applicant is taking advantage of the opportunity to improve the structure.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is a positive change.
- 3) The request is not substantial; the height of the building is the same.
- 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, it was created by the damage from the tree.

The practical difficulty is that it would be a significant financial burden to knock the building down and start over. Additionally, the dormer is attached to the building; the new dormer will be attached to the existing structure and will not exceed the existing footprint.

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 Matt Slaughter and seconded by John Michaels, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

8. **V13-22 PERSONS, BARRY.** Represented by Mark Roden. Seeks use variance for an accessory structure without a principal structure. The structure is presently used for equipment maintenance. Section 185.00, Block 1, Lot 59.11, Zone RL3. Property Location: 691 Trout Lake Road. Subject to WCPS review. Subject to SEQ. R.

Mark Roden provided a history of the property, subdivision and structures located on this property as well as adjoining properties owned by the applicant. Mark Roden stated that he owns a large piece of property that is somewhat of a wildlife preserve. There are trails throughout the property that he maintains and Barry Persons uses some of his equipment and stores it there.

Mark Roden stated that Barry Persons is an excavator and logger. This structure is a barn, shed and forest use structure so this accessory structure fits that use. Barry's brother works on boats and stores some of his equipment there. Barry also stores his four wheelers and other equipment there. Mark Roden reviewed the uses that go along with the accessory structure. The building is an accessory use for all of his properties. He doesn't want to attach it to some of the other lots that already have buildings because more than likely future buyers are not going to want that structure and it is important for Barry to keep.

John Michaels stated that the standards for a use variance need to be explained in terms of dollars and cents and not just use. You cannot have an accessory structure without a primary building use on the lot. He asked if the applicant could modify the structure to make it a primary

structure or try to obtain a special use permit. Counsel Muller stated that there are options for that. John Michaels stated that if they were to proceed with the use variance, the applicant should consider hiring a lawyer to prove the economic burden. Counsel Muller explained that even if the applicant were to hire the best lawyer to prove the economic impact the applicant is seeking a BLA to separate the structure which is self-created, which is not allowed in use variances. He agrees with John Michaels about exploring making some changes to make it a primary structure to make it compatible with the zoning.

There was further discussion about alternative choices for the applicant.

Mark Roden stated that he would like to move forward with making this into a principle structure in order to allow for the subdivision. Pam Kenyon suggested a lot line adjustment and adding this to the house property and then if he decides to sell they can deal with it at that time. Mark Roden stated that it is only 2 acres and he is concerned that later down the road he would not be able to divide that off because it would make it a non-conforming lot.

There was no correspondence or WC impact.

David Ray suggested consulting a lawyer before proceeding with any further action. Mark Roden asked if he could turn the structure back into an accessory use if Barry decides to build a house on this lot. Counsel Muller said yes. Mark Roden stated that he will work with Pam Kenyon to turn this into a primary structure and withdraw the application.

RESOLUTION

Motion by John Michaels to consider application V13-22 as withdrawn at the applicant's request. **Seconded by** Don King. **All in Favor. Motion Carried.**

The meeting was adjourned at 9:14pm.

Minutes respectfully submitted by Kristen MacEwan.