

Minutes of the Town of Lake George Zoning Board of Appeals held on Thursday, July 7, 2005 at 7:00 p.m., at the Town Center, Old Post Road, Lake George, New York.

Members Present:           Chairman, Peter Smith  
                                  John Santiago  
                                  Karen O'Carroll  
                                  Laura Moody  
                                  Scott Walton

Absent:                       Hoddy Ovitt

Also Present:               Patty McKinney, Clerk  
                                  Jim Grey  
                                  Joe Stanek  
                                  Kevin Mulcahy  
                                  Charles Hoffman  
                                  Rita Dorman  
                                  John Mason  
                                  Attorney Michael O'Connor  
                                  Attorney Jon Lapper  
                                  Dennis Austin, The McKernon Group  
                                  Gordon H Jevons  
                                  Rod & Kim Cornelius  
                                  Chris Navitsky  
                                  Attorney John Caffry  
                                  Pat Brennan  
                                  Kathy Bezani, LGA  
                                  Regina Liccardi  
                                  Ava Florenza  
                                  Kevin Clifford  
                                  Jeff Anthony

Chairman Smith opened the meeting at 7:00 p.m.

A motion was made by Scott Walton and seconded by John Santiago to accept the June 2, 2005 minutes with the correction on Page 11 from Scott Wood to Scott Walton.

All in favor.

## REGULAR MEETING

1. Area Variance Application #11-2005 submitted by Charles and Luscia Simonetti to replace existing deck and enlarge by 45 square feet. The applicant is requesting a 35 ½ foot right side variance, for property located at 32 Still Bay Road.

Chairman Smith read the Warren County Planning Board recommendation of No County Impact.

A motion was made by Karen O'Carroll and seconded by Scott Walton to approve Area Variance Application #11-2005 with the condition that the Town Board releases the Stop Work Order.

Karen read the criteria:

- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

No. Almost every home in that neighborhood has a deck and there is no negative impact of the lake view from neighboring properties.

- 2) Whether the benefit sought by the Applicant can be achieved by some method, feasible for the Applicant to pursue, other than an area variance.

No. Due to the current location of the house on the lot and its proximity to the lake, they would require a variance to put any deck on.

- 3) Whether the requested area variance is substantial.

No. The deck was pre-existing. He is replacing it and there is a small addition that was added which is two feet closer to the property line than the original setback.

- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

There is no adverse effect on the neighborhood.

- 5) Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

It wasn't self-created due to the fact that the deck was pre-existing and he was repairing that and squaring it off. It basically was due to the proximity of the deck to the lake.

John – Yes

Scott – Yes

Laura – Yes

Karen – Yes

Peter – Yes

Motion carried.

2. Area Variance Application #14-2005 submitted by Kenneth Ermiger to construct a four foot high white vinyl fence on the west and south of the property. The applicant is requesting relief from the 75 foot shoreline setback requirement, for property located on Green Harbour Lane at Cooper Island.

Chairman Smith read the Warren County Planning Board recommendation of No County Impact with stipulation that the fence length and distance from the shoreline be included with the plans.

Attorney Jon Lapper was present representing the applicant.

Attorney Lapper stated that the applicant has modified the fence to the wrought-iron style black estate fence on the lake side and a vinyl covered chain link fence on the marina side. The applicant would like to do the vinyl covered fence in the dark green so it will fit in. The Planning Board approved this subject to the Zoning Board's approval.

The reason for the variance is just to separate the mansion from the marina.

Karen O'Carroll asked what the length of the fence would be. Attorney Lapper stated it will go from the shoreline to the house. He stated he would submit this information to the Zoning Office.

Attorney Lapper stated that there will be landscaping along the fence.

Karen O'Carroll stated that her concern is the visibility from the lake. She felt he could achieve the same goal by utilizing landscaping verses a fence.

Laura Moody asked if the applicant could provide a better plan.

A motion was made by Scott Walton and seconded by John Santiago to approve Area Variance #14-2005 with the conditions that it be a 4 foot fence and the plan showing the length of fence and distance be submitted to the Planning Office.

Scott Walton read the criteria:

- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

I don't see the detriment. I see this as a 4 foot fence. The stipulation that Mr. Ermiger's counsel made is that they are going to put some plantings around it. It is more secure than just having vegetation there. Since there is a commercial use on the same piece of property, I can see an excellent case for him doing it, from the liability standpoint.

- 2) Whether the benefit sought by the Applicant can be achieved by some method, feasible for the Applicant to pursue, other than an area variance.

No. Vegetation will not do it. He can add vegetation to block out the fence, but it will still have the security and privacy that he needs.

- 3) Whether the requested area variance is substantial.

No.

- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

It's not going to block anyone's view. The neighbors have not had any adverse comments other than the color which has been changed to a darker less visible color.

- 5) Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The difficulty is due to the fact that the marina is there. There are people coming in to use the bathrooms and are not familiar with that area. The kids may wander over and may have a tragedy.

John – Yes

Scott – Yes

Laura – Abstain

Karen – No

Peter – Yes

Motion carried.

3. Area Variance Application #15-2005 submitted by Jeffrey M. and Judith M. Killeen, Trustee to expand an existing structure within the 75 foot shoreline setback requirement, for property located at 3644 Lakeshore Drive in Diamond Point.

Chairman Smith read the Warren County Planning Board recommendation of No County Impact with the stipulation that appropriate stormwater and erosion control measures are implemented.

Attorney Michael O'Connor was present representing the applicant. He stated that they also went to the Lake George Planning Board and obtained Site Plan approval subject to the approval of the area variance and Robb Hickey's approval of the stormwater management plan. They also went to the Consolidated Board of Health and obtained approval for the septic system that will be installed as part of this renovation project. He stated that this is an existing house which they would like to maintain. They are adding

two wings to it. This property does not have a great deal of neighbors. There is very little impact that is proposed by what they are doing.

Karen O'Carroll stated that the existing footprint is nearly 19 feet from the lake with the existing footprint and now it will be 43 feet from the lake on one side and then 28 feet at the lake from the steps on the north side. Her concern is is this the minimum they could give to them. Is this the smallest home that they could possibly live with?

Attorney O'Connor stated they are trying to maintain the old home and accommodate that maintenance, but still have some square footage that allows them to enjoy what they have. They are going to great extent to maintain colors, windows, the architecture of what they have. He stated that they gave distances from the decks not necessarily to the house.

A motion was made by John Santiago and seconded by Scott Walton to approve Area Variance 15-2005.

John Santiago read the criteria:

- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

No. There will be no undesirable change and it is within the character of the neighborhood. There is no impact on neighboring properties whatsoever.

- 2) Whether the benefit sought by the Applicant can be achieved by some method, feasible for the Applicant to pursue, other than an area variance.

No. Due to zoning, there is a 75 foot setback from the lake. The house has been in existence for nearly 100 years and there is no other alternative in trying to maintain the character and the structure of the house.

- 3) Whether the requested area variance is substantial.

There is no negative impact. Due to the fact that the house has been there for a long time, it does sit in a bay so it will not be seen by people from the lakeside.

- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

No. If anything it will be a benefit to the lake because there is a new septic system going in with a sealed tank with a pump and a water shut off in case power goes off.

- 5) Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

No. Due to zoning, the house was there long before zoning so this is not self-created.

John – Yes

Scott – Yes

Laura – Yes

Karen – Yes

Peter – Yes

Motion carried.

### **PUBLIC HEARINGS**

1. Area Variance Application #17-2005 submitted by Rodney Cornelius to place a 10 x 12 gazebo within 20 feet from the lake, for property located at 4 Vandercar Lane off Lake Shore Drive. The applicant is requesting a 55 foot shoreline setback variance.

Laura Moody read the application into the record.

A motion was made by Karen O'Carroll and seconded by Scott Walton to accept the application as complete.

All in favor.

Motion carried.

Rodney Cornelius was present and explained his project. He stated that this is a screened in gazebo. There is a hilly terrain behind the area where he would like to place this and there are boulders there as well. The area that he has along the shore, there is 310 feet of frontage, there is a natural cove area there. He has contacted his neighbor and he is in support of it. The people on the north side are in support of this also. This will not obstruct anyone's view. He has around 12 acres and 310 feet of frontage.

Chairman Smith opened the comments to the audience.

A motion was made by Karen O'Carroll and seconded by John Santiago to close the Public Hearing.

All in favor.

Motion carried.

No decision can be made until the Warren County Planning Board has reviewed this application.

2. Area Variance Application #18-2005 submitted by Kevin Ross to construct a 31 x 19 addition to existing log cabin, for property located at 23 Christiana Court. The applicant is requesting a 5 foot right side variance.

Karen O'Carroll read the application into the record.

A motion was made by John Santiago and seconded by Scott Walton to accept the application as complete

All in favor.

Motion carried.

Kevin Ross spoke. He stated that the cabin is skewed to the property line and that is why the variance is only for a 5 foot to the corner. He stated that his neighbors have no objection to it. He also has an approval from the Village Estates Board of Directors that they agree with the project and for the request for the variance.

Kevin Mulcahy: I believe if the information that I've seen on the Warren County website is true, that this lot is less than ½ acre. It's RCH-LS, which is one acre zoning in that area. Our zoning book says that we shall not increase a non-conforming use. The building right now is on an undersized piece of property. So to expand that, if the building doesn't meet the stormwater and wastewater regs as they stand after 1978, then we would be increasing a non-conforming use. My concerns would be that the wastewater and the stormwater would be up to the code as it stands amended in 1978. If it doesn't, then it is increasing non-conforming use.

Chris Navitsky: I just had a question on the existing septic system too, if there was any increase in the bedrooms and what the existing system was. Was any information that was provided and if the system could be certified for the expansion?

Kevin Ross stated that this log cabin was listed as a two-bedroom log cabin. One of the bedrooms had been turned into a living room. What he is doing is turning it back into 2 bedrooms.

A motion was made by John Santiago and seconded by Scott Walton to close the Public Hearing.

All in favor.

Motion carried.

Scott Walton asked if Mr. Hickey had considered that they may need an additional variance.

Chairman Smith stated they were going to wait to hear from Robb to see whether or not there were any additional variances required.

3. Area Variance Application #19-2005 submitted by Jeffrey Donahue to expand existing deck by 45 square feet, 55 feet from the lake, for property located at 3756 Lake Shore Drive. A 20 foot shoreline setback variance is required.

John Santiago read the application into the record.

A motion was made by Laura Moody and seconded by Karen O'Carroll to accept the application as complete.

All in favor.

Motion carried.

Dennis Austin of the McKernon Group was present representing the applicant. This is a series of small projects. This house was built in approximately the early to mid 90's. The split rail fence will be replaced with a small fence. The shower goes directly into the existing septic system. The shower is covered by a small roof under the deck so there will be no run-off going into the septic system.

Chairman Smith opened the comments to the public.

A motion was made by John Santiago and seconded by Scott Walton to close the Public Hearing.

All in favor.

Motion carried.

No decision can be made until the Warren County Planning Board has reviewed this project.

4. Area Variance Application #20-2005 submitted by Diamond Point Lodge, LLC to construct a 10 x 12 deck on cabin number 5 and a 12 x 33 rear deck with a 12 x 12 wrap-around side deck on cabin number 6, for property located on Vito Road in Diamond Point. A 5 ½ foot front yard variance and a 3 foot rear yard variance for cabin number 5 is requested and a 36 foot front yard variance for cabin number 6 is requested.

Laura Moody read the application into the record.

A motion was made by John Santiago and seconded by Scott Walton to accept the application as complete.

All in favor.

Motion carried.

Chairman Smith opened the comments to the audience.

A motion was made by Scott Walton and seconded by Laura Moody to close the Public Hearing.

All in favor.

Motion carried.

Gordon Jevons was present. He explained his project to the board. He stated this will not have any impact on the neighbors.

No decision can be made until the Warren County Planning Board has reviewed this application.

5. Area Variance Application #21-2005 submitted by Irwin Nathanson to construct a 768 square foot detached garage with accessory apartment above, for property located at 609 Diamond Point Road. An 11.5 acre variance is requested.

Scott Walton read the application into the record.

A motion was made by Laura Moody and seconded by Karen O'Carroll to accept the application as complete.

Pat Brennan was present representing the applicant. He stated that the applicant lives in England and plans to retire to this home. Their intention is to have somewhere private for their children and grandchildren to stay when they visit. What they intend to build is a 360 square foot guest quarters above a new garage. They do not intend to rent this out as an apartment.

Scott Walton stated that it has been his experience on the board that everybody would like to have an apartment over a garage and although they say it is for family members or an occasional guest, there is really nothing stopping them from renting it out. He also stated this is an extremely substantial variance.

Laura Moody asked if it was considered a residence if there was no kitchen.

Karen O'Carroll stated it would be helpful if the applicant could present a topography plan.

Chairman Smith opened the comments to the audience.

A motion was made by Scott Walton and seconded by Karen O'Carroll to hold the Public Hearing open.

6. Area Variance Application #22-2005 submitted by Julie & Sonny Bonacio to construct a second floor addition over existing single-family dwelling within the 75 foot shoreline setback requirement, for property located at 22 Coulterbrook Road. The applicant is requesting a 26 foot shoreline setback variance.

Chairman Smith read the application into the record.

A motion was made by Scott Walton and seconded by Laura Moody to accept the application as complete.

All in favor.

Motion carried.

Jeff Anthony and Charlie Hoffman were present representing the applicant.

The proposal will add 2 new bedrooms in addition to what is there now. The solution of the grade problem and entrance into the building is significant for them as a family. The stairs and entryway that are there now is somewhat precipitous coming from the parking area down through some stone stairs and into the rear of the house. Their desire is to be able to enter the building quickly from the car and not have to negotiate slippery or wet stairs. The second floor addition was a key element in the architect's solution to the problem, to get them into the house and then make the vertical connections within the building itself.

Jeff Anthony stated that any stormwater management issues will be addressed at the Planning Board. They will be submitting a Site Plan Review application for the August Planning Board Meeting.

Chairman Smith opened the comments to the audience.

A motion was made by Scott Walton and seconded by Laura Moody to close the Public Hearing.

All in favor.

Motion carried.

No decision can be made until the Warren County Planning Board has made their recommendation.

7. Area Variance Application #24-2005 submitted by Kevin Clifford to demolish existing residence and garage damaged by fire and replace with a 28 x 44 two story single family residence with a three car garage, for property located at 3711 Lakeshore Drive behind the Pot Belly Deli. The applicant is requesting a 12 foot left side variance, a 5 foot rear yard variance and a lot coverage variance (pre-existing over 60%).

Karen O'Carroll read the application into the record.

A motion was made by Laura Moody and seconded by John Santiago to accept the application as complete.

All in favor.

Motion carried.

Kevin Clifford spoke. He stated he sustained a fire to his residence two weeks ago. What he would like to do is demolish both the house and the garage on the property and combine the square footage of each area into one unit. The living space will be decreased. Currently, it is 1,404 feet; the proposal is 1,202 square feet. This will be a three car garage with a two-bedroom above it. What exists now is a two-bedroom. The height will remain the same.

Karen O'Carroll asked if he had any elevations. She also asked about septic.

Kevin Clifford stated the septic sits between the house and the deli. The deli has a holding tank which sits under the driveway in the back. The house has a separate system.

Chairman Smith opened the comments to the audience.

Kevin Mulcahy spoke. He stated that the house apparently looks like it's going to need new variances from where its original location is.

Chairman Smith stated the house was going to stay on the same footprint. He is going to remove the garage and connect it to the house.

Kevin Mulcahy stated that the proximity of the structure to the septic is a regulated dimension which falls under the Board of Health Regulations. Would the movement of the buildings on the lot affect the proximity of the new construction to the existing system?

Chairman Smith stated that the septic systems are not being touched.

Attorney John Caffry: I'm representing Regina Liccardi, who lives down at the end of Lake Road on the water there next to the Town beach, which is approximately 500 feet away. We have a number of concerns about the variance application, one having to do with septic systems and another having to do with what I think it's overall going to be an increase in the size and bulk of the buildings. This is a non-conforming lot that is already way overbuilt under your current standards. With regard to the septic, the property is only about 700 feet from the lake and there is a Town beach and motel beaches. Before this is re-built, there should be something done to check these systems and make sure they work. If this is only going to be a two-story addition; one story living space and one story garage, this is not clear in the application. With regard to the square footage, you said approximately 1,200 square feet of living space. The building overall is going to be about 2,400 square feet of total floor spaces and right now, even with the existing garage, the total floor space is under 2,000 square feet. You're adding 200 square feet of total building floor space and you're increasing the overall bulk of the structures on the property. This is only 3/10ths of an acre in a one acre with two principle uses. Ordinarily, you're only allowed one principle use. You can have a house or you can have a business, but ordinarily you don't have both under your zoning. The lot is already overused. Earlier there was a question raised by Mr. Mulcahy about

where you have a pre-existing non-conforming lot and the use isn't supposed to be expanded without a variance and you tabled that one so he could come back and apply for that additional variance. That's Section 175-63, which says a building or structure that doesn't conform to the Zoning Regulations shall not be expanded or enlarged. However, it can be rebuilt on the same footprint and it can be rebuilt or modernized if you're not expanding the volume. Then there is an additional Section 175-64, no permits shall be issued that increase a non-conformity of any existing non-conformity. So the setback variances are going to be actually larger, because even if they're not close to the property line, you've got more building close to the property line now. There is no variance that has been applied for under Section 175-63 and 64 and they need to apply for that. Also, I have concerns about the overall layout of the property and think that this really needs to go to Site Plan Review. Ordinarily a house doesn't have to unless it's in the Shoreland Overlay, but you've already got a business there. He's talking about re-arranging some of the functions. He says we're going to have more parking and move the garbage. If I were the neighbor in the back, I sure wouldn't want the dumpster next to the property line next to my house. He said the garage was going to be used for cars and storage. I think that needs to be clarified, is that storage for the deli in which case that's an expansion of the business and that's another question. He mentions in the application that we're going to have more parking, but he doesn't show where. There's no elevations, there's no plot plan that shows anything other than the buildings. I went out there this evening to take a look at it, practically the whole lot is paved. I'm not sure where he's going to have this additional parking, but if he's claiming that for grounds for a variance, that's something that needs to be documented. There is no elevations and no plans for the buildings. There is no information regarding the adequacy of the septic systems and there is an increase in the overall bulk of the buildings, the overall size, that requires additional variances under Section 175-63 and 64. Overall, my client believes the application should be denied that there is a substantial variance for the increase in the size of the total buildings. There's no real need for it. He can build that house as is on the same footprint without a variance so there's no need for a variance and it's basically a self-created hardship in that he's requesting to increase the size. He doesn't have to. He could rebuild as is.

Ava Florenza: "I am here to request that you do not disregard our letter. We are concerned about this, all of a sudden there was a fire one day and within a week I get a phone call that there's a letter from the Town that there's a

variance application. We are very concerned. I can say right away that the view from the house I live in will be completely blocked by what he is proposing and that will greatly affect our property value right there.”

A motion was made by Laura Moody to close the Public Hearing. There was no second.

Several board members felt that the Public Hearing should be left open due to the fact that they felt more information was needed.

Karen stated she would like to see elevations, floor plans and to check with Robb for additional variances, if required.

A motion was made by Karen O’Carroll and seconded by Scott Walton to hold the Public Hearing open.

John – Yes

Scott – Yes

Laura – No

Karen – Yes

Peter – No

Motion carried.

8. Area Variance Application #23-2005 submitted by Walton Service Group, LLC, to convert existing motel into a two family dwelling, for property located at 2107 State Route 9N South. The applicant is requesting a 1.39 acre variance.

John Santiago read the application into the record.

A motion was made by Laura Moody and seconded by Karen O’Carroll to accept the application as complete.

All in favor.

Motion carried.

Scott Walton stated that to make this a single-family would be very difficult to do. A two-family would allow it to stay a tourist accommodation. It

would be in keeping with the neighbor. Nothing in the footprint will change except for two 10 x 20 decks on the rear.

Chairman Smith read the Warren County Planning Board recommendation of No County Impact with stipulation that improvements to the site and building be included with the plans.

Chairman Smith opened the comments to the audience.

A motion was made by John Santiago and seconded by Laura Moody to close the Public Hearing.

All in favor.

Motion carried.

A motion was made by John Santiago and seconded by Karen O'Carroll to approve Area Variance V23-2005.

John Santiago read the criteria:

- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

No. The character of the neighborhood will remain due to the fact of multi-family units in the area.

- 2) Whether the benefit sought by the Applicant can be achieved by some method, feasible for the Applicant to pursue, other than an area variance.

Due to zoning, an area variance is required.

- 3) Whether the requested area variance is substantial.

No. It will be decreasing the amount of traffic and people.

4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

No. As the applicant stated, it will just add to the character of the neighborhood.

5) Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

No. As the applicant stated, the area is calling for larger rooms and better accommodations.

John – Yes

Laura – Yes

Karen – Yes

Peter – Yes

Motion carried.

A motion was made by Scott Walton and seconded by John Santiago to adjourn the meeting at 10:00 p.m.

Respectfully submitted,

Patricia McKinney  
Planning & Zoning Board Clerk