

Minutes of the Town of Lake George Zoning Board of Appeals held on Thursday, November 20, 2008 at 7:00 p.m., at the Town Center, Old Post Road, Lake George, New York.

Members Present: Chairman John Santiago  
Kevin Mulcahy  
Robert Risman  
Janie Green  
Grant Gentner

Also Present: Patty McKinney, Clerk  
Robb Hickey  
Jim Grey  
Charles Wheeler  
George Green  
Leah Kelly  
John Caffry  
Michael Friedman  
Jayne Peterson  
Kurt Koskinen  
Michelle Christi  
Dennis Phillips  
George Story  
John Wright  
Tom Burke  
Dana & Mike Seguljic  
Pamela Parrott  
Karen Azer  
Burt McCormac  
Joyce McCormac  
William Teneyck  
Sandra & Art Dormann  
Bonnie Magno  
Joanne Eichler  
Bernice McPhillips McMahon  
Chuck LaPlante  
Frank Dougan  
Mark Ritter  
Christine McKenna  
Kathy Bozony  
Tom & Michele Wessling  
Attorney John Lemery  
Ian Morton  
Mary Morton  
Melissa Vito  
Frank McCoy

Scott Wood  
Jack Abrahams  
Barbara Gates

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

A motion was made by Kevin Mulcahy and seconded by Grant Gentner to accept the October 16, 2008 minutes with the correction that on Area Variance #19-2008 Kevin Mulcahy recused himself from this application.

All in favor.

Motion carried.

### **PUBLIC HEARINGS**

1. Use Variance Application #2-2008 submitted by General Timber, owner being French Mountain Forest, LLC, to request permission to conduct timber harvesting within the RH and RM-1 zones where timber harvesting is not an allowed use, for property located on Bloody Pond Road (264.16-1-27, 264.16-1-28 and 265.00-2-1).

Kurt Koskinen, the forester for General Timber was present. He stated they are looking for a variance to access a stand of timber that they are looking to purchase in Lake George and Queensbury. There is 32 acres along the Bloody Pond Road where the variance would be required. The only access to this property is through the 32 acres. They have marked approximately 15% of the trees, 6 inches or larger for the harvest.

Grant Gentner stated he had requested that the applicant provide credible documentation to demonstrate the financial hardship which has not been received yet.

Attorney Dennis Phillips spoke representing the McPhillip's Family which is also French Mountain. He stated that he had provided a document to the board dated September 25, 2008, which talks about the history of the property being with the McPhillip's family going back to 1937. The document shows a continuous chain of title in this property from 1937 through the present date in the McPhillip's family. Recently, for liability purposes the property has been put into a LLC. This property has been enrolled in Section 480 of the Real Property Tax Law which is a timber incentive section of the law. If a forest is enrolled under this section, it gets lower taxation until such time as the timber harvest occurs and then at that time a 6% severance tax is paid to the Town upon any trees cut on the property. This will result in \$12,819.85 as revenue to the Town. This comes from 6% of \$455,000 which is the value of this timber crop on this

property right now cut to a sustainable forest plan. The hardship comes into the fact that the McPhillip's family have entered into a stumpage contract with General Timber Corporation for \$455,000. This averages out to be \$1,428.25 of timber value per acre. If that value cannot be realized, than that is economic hardship on this family. The family has held this property for this sole purpose for 71 years. Under the APA Act, this property is in a hamlet area, a moderate intensity area and a rural use area. Under the APA Act, a forestry use is a primary compatible use in each of those areas. Up until a few years ago, a variance would not be required. When the Town of Lake George adopted the APA approved plan, what previously was a matter of right now became the necessity for a use variance. He stated the McPhillip's family has no intent of developing this property after the harvest. He stated that under Section 480 if the State of New York gives you a tax incentive to grow a forest then you are responsible for growing a forest. If you wanted to convert out of that forest, you pay severe penalties to get out of that forest. After this timber harvest, the family will continue with the 480 designation for this property.

Kevin Mulcahy asked if there were plans to sell this property? He stated when he was up there he saw signs that had been knocked down with realtor's advertisement and also found an ad on the internet showing this property for sale.

Bernice McPhillips stated they had a listing agreement which has expired.

Grant Gentner asked if it would be placed back on the market?

Attorney McPhillips stated this is a 3 year timber contract.

Kevin Mulcahy stated that timber harvesting is definitely necessary. However, he feels the 32 acres is in a highly developable area and may serve other purposes. He asked if it would be possible to access through the 32 acres without disturbing that and harvest the rest of the acreage. The 32 acres would equate to about \$45,000. He stated the taxes over the last 50 years would equate to about \$35,000 therefore, the timber would return more than what has been paid in taxes over the last 50 years. He also felt that when they do put the road in, it should be put in by Town subdivision standards rather than to logging road standards because he feels this has potential to lead to subdivision down the road if not within the next 3 years.

Attorney McPhillips stated that the family felt that the timber harvest was a more sensitive way to go than developing to the full extent along the road.

Kevin Mulcahy asked if there were any streams in the 32 acres that were in the use variance area?

Kurt Koskinen responded that there were no streams on the DEC map or the APA map.

Chairman Santiago opened the comments to the audience.

Karen Azer: "I live at 7 Mohawk Road. We've expressed concern about the soil, erosion and runoff. I'm just going to highlight a few things because I did already submit a written response. Our concern is that there will be substantial cutting on the 285 acres. We really would like the 32 acres to be a buffer to protect the residential aspect of the neighborhood as well as help of the runoff as far as timber harvesting in that area. I guess the one thing that I would like to talk about is the financial hardship specific to the 32 acres being timber harvested. I think the gentleman last time spoke about the value of the lumber in that area being about \$45,000 and from my perspective, because it's residential, just selling one lot in that area would certainly cover that \$45,000 so it doesn't seem like that's really a hardship. However, if we didn't allow access to the 285 acres, then I certainly understand that would be a hardship. I'm certainly not against responsible timber harvesting and for these reasons my feeling is I think we need to allow them access to that acreage to timber harvest the Town of Queensbury and the other Lake George parcel. What I really am opposed to is the timber harvesting within the 32 acres, but the landing to me is certainly reasonable and we need to compromise on that. Since our last hearing, I did call the realtor because I was curious where it stood in terms of selling the property. He did tell me there was a \$1,000,000 offer on the property last year and I said was the property still for sale because the signs were there. He said I'll check with the McPhillip's family and get back to you. He did call me back and said right now it's off the market because of the timber contract but they're going to let the realtor know what's next. That's what was told to me. Thank you."

Charles Wheeler: "I live at 274 Bloody Pond Road, which is just north of the 32 acres in question. My reason for being here is to show you some pictures that I have taken on two different occasions in the last few years. The first group of pictures was taken up behind my house at the base of French Mountain. What these pictures show are the poor soil conditions on this property and trees that have blown over. These pictures were taken on March 13, 2002. The second set of pictures are two pictures that were taken just north of my house in another area where there is a culvert that Pam referred to the last time. These pictures were taken on January 18th and January 19th, 2006 when we had that bad storm. The first picture shows water that has accumulated to a depth of 12 to 16 feet.

The picture taken the next day shows that the water did work its way through the culvert and dissipate and go away. My point is this just shows the volume of water that can come off of that mountain and the damage that the potential is, especially if you have a landing site or logging on that 32 acres. Therefore, I am strongly against the logging on that 32 acres. If it needs to be used for access to the other property, I can live with that. I did send a letter to the board which I assume you all received.”

Burt McCormac: “I represent the family and we own property on Bloody Pond Road and have for over 100 years. Two things I’d like to clarify, the lack of streams, there are two streams directly behind our property that have never run dry. They were used for reservoirs for properties along Bloody Pond Road for drinking water before wells were drilled. In the lifetime of my grandfather and mine, none of those streams have ever run dry. It shows lack of due diligence on their part as far as what is on the property itself. You know my position on logging of the property. I don’t feel that not doing anything to the property for 75 years and coming back in and saying we’re doing timber harvesting for the good of the neighborhood. 75 years is a long time to go without harvesting or touching the property. I feel its take what you can now, get what you can later. I don’t feel there is a hardship being exhibited along Bloody Pond Road in the 32 acres. At \$1,400 it’s a minimal loss and you could probably save that in taxes by not having it taxed as a residential property for the last 30 years. I see no hardship exhibited and just hope you follow the code of the law and say this is not an allowable use on this property. Thank you.”

Pam Parrott: “I live at 3 Mohawk Road, which is right directly across Bloody Pond Road from the parcel that they want to log. Last week I spoke about the problems that I have because there is a large culvert that comes down from French Mountain right under the road into my front road. A few years ago it filled up and it stayed for a couple of weeks and after it drained out my trees started to die. The main thing I want to say is cutting trees in 32 acres is going to have a very large impact on runoff. When you cut a tree, then you lose the canopy. In a hard driving rainstorm, there is more erosion and there is more runoff. When you cut a tree and leave a stump, a stump is not a tree. Stumps draw in water and certainly the tree itself diffuses the runoff. If I get a lot more runoff and I will, then we’re going to have beyond an economic hardship. I’ve already lost the trees and I’m still losing them. I worry terribly every storm we have. I find it very hard to hear them say they have close to 300 acres that 32 are going to be such a hardship especially when they could just sell a parcel. These are our homes. This isn’t money, dollars and cents. These are our homes. We have a whole neighborhood of people. My property is getting it the worst, but there are other people. We live here. If I lose my home with the trees, that’s hardship. I really hope that you don’t grant

this variance. That's why we have laws. I will say this, I believe in responsible timbering and I am more than willing to compromise. You they need access to go through the 32 acres and take down the trees they need for a minimal road and staging area, that's a compromise. I'm not opposed to that. For us, it would greatly impact the runoff. Thank you."

Bob Risman asked how many home sites there are in the area.

Pam Parrott stated roughly 15.

A motion was made by Grant Gentner and seconded by Kevin Mulcahy to close the Public Hearing.

Kevin – Yes

Grant – Yes

Janie – Yes

Bob – No

John – Yes

Motion carried.

Chairman Santiago stated there is are a lot of issues with this project as proposed and he made a recommendation to the board that Town Counsel draft an approval and denial for this application.

Kevin Mulcahy asked if it was acceptable to put an access road and landing zone in the 32 acres and abandon the timber harvesting on the 32 acres.

George Story stated they would prefer not to but if they had to, they would.

Chairman Santiago stated that the applicant needs to keep in mind that they are applying for a use variance which is held to a much higher standard than an area variance.

George Story stated it's going to be an economic hardship to lose that 32 acres.

Grant Gentner stated that as submitted this will alter the character of the neighborhood. He feels the 32 acres should not be harvested as they already have runoff problems and it has not been harvested yet.

Bob Risman stated he feels the public raised credible concerns, not personal.

Attorney Phillips stated that George Story and has indicated in light of the comments that he has heard from the board, he would be willing to modify his application to limit his relief from this board to access any landing and he will forego the harvesting of any timber on the 32 acres.

This application still needs to go to the Planning Board for the total harvesting.

A motion was made by Kevin Mulcahy and seconded by Grant Gentner to approve the application as modified that the landing zone and access road is allowed on the 32 acre parcel with no timber harvesting on this acreage. The access road shall be put into Town subdivision standards.

Kevin read the criteria:

1. Under applicable zoning regulations, the applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence.

The applicant needs to access the other property however, the district that we're in could be used for development purposes which would return the money that they need. However, we feel in order to be fair and allow them to access the other 285 acres, we need to give them access through that 32 acres that is not in the proper district.

2. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.

This is one parcel where we really have a lot of acreage that needs access through this road. The properties surrounding it are not as large and it is unique. In order to harvest the timber that they've invested in for the past 50 years, they need to do this.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood.

By not timber harvesting the 32 acres, this will maintain the character of the neighborhood.

4. The alleged hardship has not been self-created.

The property was there prior to the zoning change and this allows them to access the other property.

Kevin – Yes  
Grant – Yes  
Janie – Yes  
Bob – Yes  
John – Yes

Motion carried.

2. Use Variance Application #3-2008 submitted by Dr. Shawn Williams to convert “in-law” apartment on the ground level of existing residence to a chiropractic/sports science clinic and consultation office, for property located at 360 Flat Rock Road (238.00-1-65).

There was no one present representing the applicant.

3. Area Variance Application #3-2008 submitted by Michael & Michelle Christie to convert current single-family residence into a 2 family home, for property located at 223 Konci Terrace (277.03-1-34).

Michelle Christi was present. She stated that this property is located at 223 Konci Terrace. There is approximately 3,000 square feet and for the past 8 years, they have lived in the upper 1,500 square feet of the house and would like to request permission to utilize the first floor into a discreet apartment.

Grant Gentner read the application into the record.

A motion was made by Kevin Mulcahy and seconded by Janie Green to accept the application as complete.

All in favor.

Motion carried.

Kevin Mulcahy stated he did research on this and did a 500 foot search around the property and there are no lots within 500 feet who have 5 acres. His concern is if this is permitted, having all the neighbors having undersized lots, is this something that more and more people will be applying for. He does not feel there is a big impact from doing this.

Michelle Christi stated she would be very selective about who they would be renting to as they live upstairs.

Chairman Santiago opened the comments to the audience.



Arthur Dorman: "I live at 228 Konci Terrace, which is directly across from the Christie's. There are a number of things within the application that I would question. First of all, I would point out that the driveway is probably the smallest driveway on the street of Konci Terrace. Certainly with three cars at one and a half spaces per car, that's not terrible, but it's still a small driveway. If there were more than 3 cars, that driveway could become very crowded. According to the drawing that I'm looking at, it would appear that the foyer that they plan on building is actually part of the two car garage that is currently there. That two car garage would probably take a substantial portion of their basement of the 1,500 feet that was being discussed. There are currently two houses on the tax rolls listed at 227 and 226 Konci Terrace as two family homes. Both of those homes would be within probably a 75 yard radius. The house at 227 has parking in back of the house and no one ever sees a car that is parked there. This parking would be in the front. I think probably of greatest concern would be the possibility that there could be an absentee landlord that could rent three bedrooms downstairs and one or two bedrooms upstairs. That certainly would not be adequate parking for that kind of thing. Also, this property has been on the real estate market for approximately one year and appears to still be on the real estate market. There is a sign out in front of the house that remains there to this day. I think beyond that there is an addition to the application that was submitted which says please see the following sketch for a proposed apartment. Please note that although there are three bedrooms sketched out, we would encourage the tenant to be just one person and they could utilize the additional space for storage. It doesn't say there is any guarantee there and certainly even if there was only one rental with two children of driving age, you could conceivably have 5 or 6 cars out there. In general, I would say we are opposed to this."

Joanne Eichler: "I'm opposed to the idea. The zoning in that area is single family not two family homes. I think it should stay the way it is."

Sandra Dorman: "I live at 228 Konci Terrace. Some people were going to e-mail that they opposed this. There is somebody that was here and couldn't stay, but they opposed this and wrote it on a piece of paper. The note was from Charles and Margaret Sandora opposing the application."

Bonnie Magno: "I live at 216 Konci Terrace. I'm definitely opposed to that house being a two family. The driveway is very small and the lot is fairly small also. We'd like to keep it a single family neighborhood if possible."

Mark Ritter: "I live at 236 Konci Terrace. I've lived in the neighborhood for approximately 32 years. The property was zoned in this manner when they bought the property and they knew this when they bought the property. It appears to me that any need is a self-created need that they

have on their own part. The property is for sale and there are also covenants in the development which says this is for residential purposes only. I don't know the impact of that, but just wanted to point it out."

Chairman Santiago asked how long the house has been on the market?

Michelle Christi stated they had a 6 month contract which has expired.

Michelle Christi: "I want to apologize because I didn't realize this was such a process and had we known this was going to upset anyone, we wouldn't have even continued to move forward with it. I definitely don't want to move forward with something that is going to upset our neighbors. That is not our intent. We don't want to upset anybody."

A motion was made by Grant Gentner and seconded by Janie Green to close the Public Hearing.

All in favor.

Motion carried.

The applicant withdrew this application.

4. Use Variance Application #4-2008 submitted by G & G Lands to request permission to conduct commercial timber harvesting in the RCM-S2B zone where timber harvesting is not an allowed use, for property located south of New York State Route 9N, Luzerne Road (277.01-1-9).

Kevin Mulcahy read the application into the record.

A motion was made by Grant Gentner and seconded by Janie Green to accept the application as complete.

All in favor.

Motion carried.

George Green was present.

George Green: I had no idea that we were rezoned. I've always had Chris Gearwar represent us. The hardship caused would be that we're denied from substantial harvesting of timber on this acreage that we've been doing for a number of years. My uncle bought the property in 1939 and over the years it has been logged carefully by a forester. I was unaware that in 2003 we were restricted to not be able to realize a profit on the

timber that is growing on our acreage. I have logging roads throughout the property that have been there for 100 years. My hardship is I'm denied the revenue from the lands that I've always had revenue from logging."

Janie Green stated that this application is one that she would like to have on file as an example of how someone should come in when applying for a use variance to timber harvest.

Kevin Mulcahy stated that there is only one tax map shown however, there is more than one needed for the variance.

Robb Hickey stated he feels that only one parcel is included in the request for the variance.

Chairman Santiago opened the comments to the audience.

A motion was made by Kevin Mulcahy and seconded by Janie Green to close the Public Hearing.

All in favor.

Motion carried.

Robb Hickey stated that tax map number 277.01-1-14 should be included on this timber harvesting plan as well.

A motion was made by Grant Gentner and seconded by Kevin Mulcahy to approve the application.

Grant Gentner read the criteria:

1. Under applicable zoning regulations, the applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence.

This property has been logged for years. It is an internal piece of property and the hardship was created by a change in zoning.

2. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.

This is not a district or a neighborhood. It's an all-inclusive resort.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood.

This does not apply.

4. The alleged hardship has not been self-created.

It was created due to the change in zoning.

Kevin – Yes

Grant – Yes

Janie – Yes

Bob – Yes

John – Yes

Motion carried.

5. Area Variance Application #21-2008 submitted by Charles LaPlante to replace a 33 foot section of existing 4 foot high stockade fence along the northern property line with a similar stockade fence that is 6 feet high and to replace 120 foot section of existing 6 foot high stockade fence along southern property line with similar stockade fence that is 10 feet high. The applicant is requesting a 56' shoreline setback variance, a 2 foot height variance and a variance requesting the good side to face the applicant's property for the northern property line fence replacement and a 32' shoreline setback variance, a 2 foot height variance and a variance requesting the good side to face the applicant's property for the southern property line fence replacement, for property located at Stepping Stones Resort, 3722 Lakeshore Drive in Diamond Point (226.05-1-26).

Janie Green read the application into the record.

A motion was made by Bob Risman and seconded by Grant Gentner to accept the application as complete.

All in favor.

Motion carried.

Attorney John Caffry was present representing the applicant.

Attorney Caffry: "Mr. LaPlante is applying for 7 very small area variances to slightly expand the fences at the Stepping Stones Resort. The property already has existing stockade fences the entire length of both property lines. He could

replace an in-kind, as is, as of right, there is no question about that. He would like to expand them in certain locations because of some problems he has been having and some of the expansions will require area variances. There are 14 cottages on the property and the fences and they are all pre-existing structures. We are looking at 4 different parts of the fence regulations in your code that apply here. What is there now on the south side is a 6 foot tall fence that goes the entire length of the property and goes all the way down to the lake at that full height. What we're asking for is to make 120 feet of that out of the entire 120 foot plus length, so it's less than 25% that we want to make taller. We want to raise that from 6 feet to 10 feet. The final 10 feet of that is within the 50 foot lake setback area, but most of it is outside the lake setback area. The final 40 feet of the fence next to the shoreline is not going to be changed. The total variances we're asking for on the south fence are only 500 square feet. The existing size of the fence is about 3,300 square feet, so this is less than a 15% increase in the size. We don't think this will have any visual impacts on the lake. If you look at the photos that were attached to the application that are labeled as being for the south side, there is a large pine tree next to one of the cottages and right about there is where the taller fence would start and then it would go back away from the lake. It's not really going to be noticeable from the lake at all. We don't think it's going to have much of an impact. If you're looking from the south, it's not going to be screened by our cottages so much. From the south, you're looking at the cottages anyway and they're taller than the fence. The reasons that Mr. LaPlante is requesting a taller fence is the problems they've had for many years now with the Olympian Motel, which is adjacent to the south. What happens there is there isn't much supervision. Mr. LaPlante says that often there are teenagers running the place and nobody is keeping the guests under control. They go down by the lake. They have parties late at night. They have bonfires. They set off fireworks. There are lights on the poles that shine onto Mr. LaPlante's property. The smoke and ashes go into Mr. LaPlante's cottages. The guests come and complain. He has tried everything he possibly can. He's complained to the Town Board, to Mr. Hickey, he's called En-con, the State Police, you name it. There has never really been anything he's been able to do about it. It continues to be a problem. He has problems renting his cottages. We do have photographs that show some of the fireworks that have been shot off from the Olympian property onto his property, they show some of the fire pits they use, the party tents down by the shoreline and things like that. What he'd like to do is, he's not asking to build a 10 foot high fence the entire length, but the cottages down by the lakeshore, he'd like to raise up the height of the fence to keep the light, smoke and ashes, noise out of his cottages. We don't think there is going to be any visual impact. It won't be detrimental to the character of the neighborhood. Given the overall size of the fence, we don't think this is a substantial variance. There are no other alternatives. He's tried everything else to keep this from happening. We think these are the minimum variances needed. We're not asking to go all the way down to the lakeshore. We're stopping up by the cottages. I noted in the file some of the letters from the Carriage Hill people on the north side. They were objecting to this variance also.

From their property, you're really not going to see this. There are the cottages on the north side of the LaPlante property, on the south side of the LaPlante property and you're really not going to be able to see through that to see the fence from the Carriage Hill side. On the north side, there is a pre-existing fence about 400 feet long. The existing fence there is 6 feet high except the last 40 feet closer to the lake is only 4 feet high. It does go almost to the lakeshore, but stops about 12 feet away. He's only asking to make the fence taller there for 33 feet out of the 400 plus feet length there, that's only about 8%. He wants to raise about 40 feet of that 4 foot section up to 6 feet high. That's the normal limit for a fence. It would be consistent with the rest of the fence. Technically, only 31 feet of that needs that variance. We don't think there is going to be visual impacts from this. The increase in size of that fence is only 66 square feet. It's only going to be 2 feet higher for 33 foot length. The view from the south on the lake is going to be shielded by the cottages. The adjoining lot owned by Carriage Hill is very wooded there are no houses on it. Their actual beach is a couple hundred feet away to the north on a separate lot. This is their dock lot in there. The reason they would like to build a fence a little bit higher there is because of the cottage right there, cottage #8 is very close to the fence and right there is where Carriage Hill basically has small boat storage and a lot of boats laying around on the ground, so there is some traffic in there so the people in cottage #8 really don't have any privacy. You can look from the cottage onto the Carriage Hill property and from Carriage Hill into the cottage through the windows and Mr. LaPlante's main concern there is privacy. We really don't think this is going to have any impact on Carriage Hill. They look into the cottager now so looking at a fence isn't going to be any worse. On the issue of fence being "wrong side out", it's already like that, it's grandfathered that way. Both of these fences were originally built that way. So if the variance were granted was not granted to have the additional part built with the good side facing toward the LaPlante property, it would look kind of odd. We think this is on balance with the area variance criteria, we satisfy all that and again, it's the minimum you could ask for. On the question of the good side facing the LaPlante property, on the Olympian side, the existing fence already has the good side facing toward the LaPlante property, there is another fence on the other side of the Olympian property which again has the fence post on their side of the property so it's not like making Mr. LaPlante turn around part of his fence here would really change anything they've already got fences with the fence post on their side, the entire length of both sides of their property. We think the application satisfies the requirements for an area variance. There is no impact to the lake or to the neighbors and I would be glad to answer any questions."

Grant Gentner: "I don't think a 10 foot fence is really going to do anything to help smoke and fireworks. I'd like you to speak to the problem from the Olympian, has there been any civil action?"

Attorney Caffry: "I think it will solve some and maybe help with others. I think for the noise, it's a barrier. Also, they have spot lights over there and when they

are having parties, they shine over the 6 foot fence into the cottages. By making the fence taller, Mr. LaPlante thinks it will block the light. It's not going to entirely block the smoke, it may divert it upwards some. We'll have to see. I've probably represented the LaPlante's for 10 years now and they've had problems with the Olympian under two different ownerships that entire time. We have had a civil action and in fact one issue was supposed to be no more bonfires. They were supposed to remove the fire pit. Now they just use other things to build bon fires in. We've tried civil action. Whenever this happens, the Sheriff or the State Police say well we didn't catch them or he's not really violating any criminal laws. We've had a couple go-arounds with Robb and Robb feels it's not really his purview. He's not really breaking any zoning laws. We've been to two or three Town Board meetings and asked them to do something. They haven't been able to do anything. Mr. LaPlante spent a lot of money having me try to find a way to deal with it as a civil matter and it really has never happened. It goes on every summer for several years now. His guests complain and it's kind of an out of control situation next door."

Janie Green asked how long Mr. LaPlante has owned the property.

Attorney Caffry stated 18 years.

Janie Green asked if he put this fence up when he purchased it.

Chuck LaPlante stated part of the south side was there and he put the fence up on the northern side.

Bob Risman stated there are other fences in the neighborhood that exceed the 6 foot limit and would the applicant have a problem with the granting of this request with the condition that it shall remain in effect until rights, title and interest of the property transfer.

Attorney Caffry stated the problem isn't personal to Mr. and Mrs. LaPlante. It's a problem that affects the business because it affects the occupants of the cottages. If the LaPlante's sell, it's just going to be creating the problem again all over again for the new owner.

Chairman Santiago opened the comments to the audience.

John Wright: "Bartlett, Pontiff here on behalf of Tom Burke and Olympian Village. Unfortunately, I have to take up part of my 3 minutes responding to these conclusary allegations with no real objective evidence. From the sounds of it, there is some debris on the applicant's property that they claim came from my client's property and that's going to justify a 10 foot fence. I just point out that all of the problems that Attorney Caffry cited, bonfires or noise, fireworks, there are State, local and County agencies that are designated to deal with these kind of things. The applicant has called the police constantly and my client has never

been cited once. If they had, you can bet the applicant would have brought that forward. You don't have any objective evidence of any of the problems that they claim justify this variance. I'm just going to go through the application with the five criteria. Undesirable change or detriment to nearby properties, this is a huge tall fence, 10 feet is almost as tall as these ceilings. The view from the beach area up the lake is just going to be devastated and absolutely taken away. You'll have to go down to the lakeshore to get any scenic view. Not only the view, but the value of this property and his business is definitely going to be effected. Whether the benefit sought by the applicant can be achieved by some other method. I don't really know what the benefit he is seeking is. A two inch wood fence, even if there is noise, I don't know that this is going to do anything. If it's smoke, a wood fence is not going to stop that. Whether it's a substantial variance. This is a 10 foot fence in an area where part of it should only be 4 feet. That's a 250% variance. Where it's 6 feet, that's 150% variance. I would call that substantial especially since it's going to prevent any human being that I know from looking over the fence. It's going to have an adverse effect on my client's property and I just would like the board to recognize that there is no objective evidence. These conclusory allegations just don't cut it. There are police agencies that deal with noise. There is a County fire code if there is a bonfire that shouldn't be there. Attorney Caffry is a very capable attorney that we have the utmost respect for and if there were a civil action to be had then perhaps that is the avenue of redress. I don't feel this board is the place to come for these allegations. Thank you."

Tom Burke: "I'm from the Olympian Village. Thank you for allowing me to speak. I have to say that I'm taken back. I'm shocked and outraged at the arrogance of Mr. LaPlante's allegations through his attorney. I take great offense to the remarks that have been made here this evening. There has never been any civil action involving me. Anything that the attorney tried to dupe the board with took place with the prior owner, not with me. There has never been a civil action. Moreover, the fence did not exist before Mr. LaPlante put it up. So when he sits there and says I can't remember, which side are you talking about, he put that entire fence up. There was no fence there. In fact, the previous owner of the Stepping Stones told me there was no fence there. The guy across the street, the son of the guy I bought the hotel from, told me that Chuck put the fence up because people were running over from his place and jumping in our pool and he didn't like that. I didn't own the place at the time and I wasn't there, but he put that entire fence up down the side, on the south side. I think he did so without the benefit of the permit. Moreover, the fence is illegal; the good side doesn't face the neighbor. Mr. LaPlante has a way of getting into litigation with Carriage Hill, he got into litigation with the guy across the street, he got into litigation with the guy I bought from. He hasn't sued the fish in the lake yet."

Chairman Santiago: Excuse me. It's not a personal vendetta here. He has a right to submit photos and we can review it."



Tom Burke: "I have not seen those photos."

Chairman Santiago: "Excuse me, I'm speaking. You have to stick with what you're looking at. I need you to address the variances. I'm not looking for issues in the past."

Tom Burke: "I'm trying to clarify the record for you. Statements were made and I'm rebutting them."

Bob Risman: "We're seeking facts and merits, not personal complaints. In addition, the hearsay you speak of, in one account your attorney is claiming that there are no incident reports, which the zoning officer did not refute. At the same time you're claiming that you heard through a previous owner that Mr. LaPlante did x, y and z. Exactly the same allegations your attorney is making."

Tom Burke: "No. I stated a fact. I said there was litigation with the prior owner, not with me."

Bob Risman: "You also claimed that the previous owner something to the effect that he had knowledge about whether or not the fence was permitted. You also made an accusation that the fence is currently illegal and it may or may not be or is or is not permitted. Where is your documentation?"

Tom Burke: "It doesn't comport with the ordinance."

Bob Risman: "How do you know?"

Tom Burke: "Because I read it, within 50 feet of the lake, the fence can only be 4 feet tall."

Bob Risman: "That's the reason he's here for a variance."

Tom Burke: "It already exceeds 4 feet."

Grant Gentner: "It's all hearsay."

Kevin Mulcahy: "There's no way to prove where the fireworks came from. There's no way to prove who put the fence up. It's all hearsay."

Bob Risman: "Mr. LaPlante's attorney offered into evidence Robb's testimony; incident reports, civil action, this is prior to you being there yet you claim the fence is illegal, offer into evidence, what?"

Tom Burke: "The fence does not comport with the strict requirements of the ordinance."

Bob Risman: "I'm not talking about today's variance where the applicant seeks a variance, I'm talking about your allegations that the previous owner told you the fence was illegal at a past time."

Tom Burke: "Yes, he told me that."

Kevin Mulcahy: "It's pre-existing, non-conforming. That's where we are at. What happened in the past isn't what we're looking at."

Bob Risman: "Do you have a notarized statement from the owner?"

Tom Burke: "No."

Bob Risman: "Your attorney knows that a notarized statement would be at the very least evidence without testimony."

Tom Burke: "I thought he was going to be here tonight. In any event, the 10 foot fence would create an obstruction, a blockage, a physical barrier that would obstruct and obscure the lake views that we would enjoy currently from our property."

Bob Risman: "Do you have photos of the purported blocked view with you that we could see?"

Tom Burke: "No. I can tell you that I would be in a tunnel because my beach area and the picnic area are blocked then by a 10 foot fence."

Bob Risman: "As I understand the property and I visited the property and the property tends to be a U-shaped, horseshoe shaped to begin with. The orientation in my opinion humbly is east, the fence is north."

Tom Burke: "The fence is on the north side. However, when you sit on the beach area, it's like a long rectangle....."

Bob Risman: "You just mentioned from the property. If you're sitting on the beach, there would be no fence out on the lake."

Tom Burke: "As you look to the side, your views are completely blocked at that point by this fence."

Bob Risman: "What would be the view if the fence wasn't there?"

Tom Burke: "We'd see the lake."

Bob Risman: "You wouldn't see the back of Mr. LaPlante's buildings?"

Tom Burke: "Only where they exist, two small buildings, no. This would be a physical barrier, as someone referred to, the Berlin Wall."

Bob Risman: "Do you have any photographs you wish to offer into evidence?"

Tom Burke: "No."

Bob Risman: "So we have no way of knowing."

Janie Green: "It's not at his burden to bring those. We can go visit his property and look over on the applicant's property. You have docks on your property?"

Tom Burke: "We have a dock for a boat."

Janie Green: "So you're saying that guests would have to walk out onto the dock to see up the lake?"

Tom Burke: "Yes."

Bob Risman: "Is there a point that jets out? As your guests sit on the lake at the beach, is there a point obstructing any north view? Is there a bay?"

Tom Burke: "No. There's not a bay."

Bob Risman: "I disagree."

Tom Burke: "I can't see a bay."

Bob Risman: "I think Mr. Santiago's comments were to please stick to the facts and merits."

Tom Burke: "The facts are that this will be a detriment. It will devalue my property. It will impact the business. It will be a negative in every possible way that you can imagine. I strongly and vigorously urge you not to grant this variance. This is a spite fence pure and simple. There is no benefit that Mr. LaPlante will gain from this. The allegations that he has made, I refute."

Janie Green: "How long have you owned the property?"

Tom Burke: "5 years."

Bob Risman: "Have there been any incidents within 5 years?"

Tom Burke: "No. In fact we have had no citations from any agency."

Bob Risman: "I didn't ask if there were any citations."

Tom Burke: "No. There have been no incidents except Mr. LaPlante wants everyone to live by his rules whatever they may be."

Janie Green: "Did he call any police agency to come to your property on any occasion?"

Tom Burke: "Yes, and at a point in time the police told me that I should file a complaint for harassment because they were not going to come back anymore."

Bob Risman: "What was the nature of the complaint that summoned the police?"

Tom Burke: "I have no idea. When they got there, they said there was nothing wrong and that was it."

Bob Risman: "What was the allegation?"

Tom Burke: "Noise I think. I'm not sure."

Bob Risman: "What time of day or night?"

Tom Burke: "It doesn't really matter."

Frank Dougan: "I'm from the Carriage Hill Lake Club. We have a problem with this variance and hope you deny it. In terms of our property, our property is undeveloped. It's used basically for swimming. To refute a claim he said that our beach is on the other side, there are two separate properties. There are different group of owners for one property and the other property. We do have a swimming area there that some people use exclusively for a swimming area who don't belong to the other property. In terms of the fence on our side, the 4 foot fence is fine. In terms of privacy, his window is more than 6 feet high on the cabin the remedy, put a shade up. He's going to restrict our view down the lake to the south from our property. In terms of the south property, we can see that fence from our property now because the southern end is in. We jet out on a rock jetty, so we can see the southern fence right now, 6 foot fence right now, clearly visible. A 10 foot fence is going to look like a big wall out there. We hope you turn it down. In terms of the fence, a comment was made by the attorney that it won't affect our view. His attorney made a comment at the Lake George Park Commission that a boat on a lift 150 feet away is like putting a wall there. This is like putting a wall there. This is going to restrict our views. You're welcome to come take a look. It's going to affect the value of our property and this is nothing but a spite fence. Thank you."

Bob Risman: "You suggested that you're concerned with the view at the lake where your beach is that the fence is now 4 feet and being increased to 6, do you have an objection to the height, the 10 foot height from that point?"

Frank Dougan: "That's on the other side of the property, that's south. We can see that south facing fence, the 6 foot fence, the 10 foot fence you'll probably be able to see up the lake. We also have an objection to the good side facing his property. If nothing else as a good neighbor, he can face it to our property. If he wants the good side facing him, all you have to do is slap a good side on the other side."

Bob Risman: "Is the good side now facing him?"

Frank Dougan: "The good side now is facing the other way and the fence is in disrepair. I'll agree with that."

Bob Risman: "Could your association slap a fence on the other side so that you'll have a good side as well?"

Frank Dougan: "We don't want the fence at all."

Bob Risman: "Was it pre-existing?"

Frank Dougan: "It probably was. I've only been there four years."

Bob Risman: "So conceivably your association could put another fence on the other side. You would have a good side and he would have a good side."

Frank Dougan: "Right, but we shouldn't have to bear the expense of him putting up a fence."

A motion was made by Grant Gentner and seconded by Kevin Mulcahy to close the Public Hearing.

All in favor.

Motion carried.

Attorney Caffry: "I'll start with Mr. Dougan first. I really don't understand why they think raising part of the existing fence by two feet is going to block their view down the lake. Their beach is on the other side of a point. From their beach you can't see this. From their boat docks which are on the end of a little point that sticks out, you can see the LaPlante property. The fence that we want to expand on that side is right next to the cottage. You can't see through the cottage and the fence is going to be shorter than the cottage. This is not going to block any view that they currently have already. Mr. LaPlante purposely is not

extending the additional height of the fence any farther towards the lake than the existing four foot fence there. Nobody has disagreed that the north fence is pre-existing. As far as which side it faces, again that is pre-existing. It would be very odd to turn the fence around and have this little 2 x 33 foot addition face a different way than the rest of the fence. As far as them seeing the fence on the south end towards the Olympian side from the Carriage Hill property, depending on where you are from Carriage Hill perhaps you can. Remember, that fence, all 6 feet high of it, extends past the cottages all the way down smack down to the shoreline. I'm sure they can see that. Again, the part that he wants to expand is not the part that you're going to see from Carriage Hill. From where Carriage Hill is, it's going to be behind that first cottage and the cottage is higher than 10 feet. I don't think either one of these things have either impact on the Carriage Hill people at all. As far as Mr. Burke and his attorney I have a number of things to say. First I'd like to ask Robb isn't it true that Mr. LaPlante has been into your office many times to complain about what has happened at the Olympian?"

Bob Risman: "Isn't that the purview of the Chairman of the Board?"

Attorney Caffry: "I will ask the Chairman to inquire of Mr. Hickey and Mr. Wood if they have heard complaints from Mr. LaPlante in their official capacities and maybe if they or any of you have been to the LaPlante property and witnessed any of this yourselves, we'd like to have it on the record."

Kevin Mulcahy: "I've heard complaints at the Town Board meetings from Mr. LaPlante."

Attorney Caffry: "If the board thinks that's an important issue and if you want to table it, we'll give you sworn affidavits; we'll give you Police Reports. I didn't think the board would want that stuff, but if you think it's important and you want us to refute their claims that we don't have any solid evidence, we can give you solid evidence. Just because someone hasn't been arrested just because something isn't a crime doesn't mean it's not a land use issue that is within this board's purview and that's where we're trying to go with this. We don't think it's going to affect their view from their beach area. We're not going to increase the part next to their beach. We're only going to make the part taller that is next to their cottage. Mr. Wright kept saying we didn't prove there was any hardship; wrong kind of application for that. This is an area variance. You don't have to prove hardship. That's not an issue here. The increase in the size of the fence, it is taller, but the amount of the fence that we're increasing is a small percentage of the fence. We're not asking to increase the total length of the fence. We really don't think it's going to impact their property at all. I never said there was a civil action against Mr. Burke. There was a civil action against the former owner although we're not real clear on if Mr. Burke actually owns it or not. It's still in the real estate records as the same owner. Mr. LaPlante said that that part of the fence was there before. I think if the fence was illegal and

wasn't grandfathered in, Mr. Hickey or Cliff Frasier who was here for many, many years, I'm sure they would have said something and taken care of it. I think those are our main issues. We don't think despite all the human cry you've heard, if you actually look at what we're proposing to do, we're not going to impact anyone's views."

Chairman Santiago: "I have been. I'm familiar with the property. I went out to see exactly where the fencing was going to be replaced. I've been to the property understanding that there were some issues that were going to be addressed at the Town Board. I've been to the property during the daytime and during the nighttime and I have seen, in all honesty, I'm not surprised by the pictures that were submitted. I went there at 11:00 one night and saw ungodly amounts of bonfires being lit on the property next door at the Olympian. I saw hatches of where stereos were being placed, the hatches opened up and the big speakers in the back. I heard that myself. I don't know if it's factual or not, but I understand that the owner of the Olympian is an absentee landlord and does not live on the property. I'm not surprised as what was addressed. As far as the view goes, unfortunately no one owns a view. While looking at the property carefully, I looked at where the fencing was going. The fencing was filtered behind the cottages as he stated. If there was a hardship to be created, I would think there is one here due to the fact that if he has customers that aren't coming back from a neighboring property, that is a hardship even though one doesn't have to be established. I don't have a problem for the fact that I don't think you're being obtrusive with the fence and that's not to say that a 10 foot high fence is the norm and every circumstance is taken different. You just happen to be applying to put a fence behind a cottage which is filtered by the cottage. Neighbors should try to work these things out between them, but obviously this hasn't happened and I don't see it happening in the future. There was a comment that Bob had brought up and I would ask the applicant that if in fact the property was ever transferred title to residential homes, would you have that as a condition that the fence be removed or replaced with a 6 foot high fence."

Attorney Caffry: "If the Olympian is ever converted from a motel to residential use, reducing that fence on that side down to the 6 feet?"

Chuck LaPlante: "All I care about are my guests. If changing to residential still has a party atmosphere, then nothing has changed."

Bob Risman: "We're not focusing on what Mr. Santiago asked."

Attorney Caffry: "I think that if it had to do with the Olympian changing hands and being converted to residential that would be fine. If there was a problem with a new resident there, we would deal with that when it happened."

Bob Risman: "I'm aware of the animosity here. For years I have witnessed it as well. I've seen it transcend boards, public interest, civil, litigation, etc. The fence is put in place at a limit for a specific reason, vista, etc. There is a discrepancy here that Mr. LaPlante's property utilizes 14 commercial units where the Olympian is 40. This would create a lot more people density than 14. I can fully understand this developing past, present and I'm not going to say future animosity. It would stand to good reason that a granted variance to increase the size of fence might work out on that particular property line perhaps with the condition that when Mr. LaPlante transfer any rights, title or interest that it return to the code stated limitation and the new owner of the Stepping Stones can then determine or decide if they wish to proceed with a higher fence."

Kevin Mulcahy: "Let's address the bad side of the fence facing the neighbors. I'm looking at something that is bad and now I'm going to expand that so now the guy on the other side he's looking at more bad. It's increasing the non-conformity and that's at the expense of the adjacent property owner. I don't see where fireworks aren't going to go 10 feet high. I do see a possible minimal deduction in sound transfer but it's still not going to stop the sound and I have concern that we have the fences now that go all the way to the lake in looking at those, I don't think they are very appealing to me and I wouldn't want to expand anything more within the lake frontage. I think that fences don't create good neighbors and the more we expand the fences and especially putting more negative side towards the neighbor, possibly that would help deteriorate a condition that is already bad."

Grant Gentner: "My comments pretty much mirror Kevin's. Section 175-64 of the Town Code prohibits us from expanding upon a pre-existing, non-conforming fence. I don't have a problem expanding it on the north side because you have the cottages and you have all the shrubbery. I am not in favor of doing it on the southern piece of the property on the lakeshore. I don't think that's going to solve any problems."

Janie Green: "I agree that it's already a pre-existing, non-conforming fence. It's an eyesore. I don't know if putting two good sides is going to make it better. I don't see where putting a condition on it for property owners for the fence to come down to a normal height if there is a different owner doesn't make any sense to me. It's a lot of information for a fence."

Chairman Santiago: "After looking at the property and understanding how the fence is going to be utilizing where the extended pieces are, I just look at it as it is going to be filtered behind the cottages. I myself witnessed issues firsthand and I don't know if the fence will take care of any or all or none of it, but it's an avenue that I think the applicant has reached out on many different dimensions of government to try to rectify the situation and I think it's a last alternative. I



don't see impact from the lake being that the trees and buildings are filtering any type of extension."

Bob Risman: "Should this Public Hearing remain open perhaps to give the applicant time to address some of these issues based on the possible perception that board members are raising very good reasons to deny the application?"

Attorney Caffry: "Which issues in particular do you think would benefit for more evidence?"

Bob Risman: "Kevin and Grant and some of the public interest have brought these to the board's attention and it appears that from my interpretation that many of the board are sympathetic to their concerns. To be specific, I don't know if I can be specific without polling each member of the board however, the height at the lake of the north side, the good side, possibly the height at the lake on the south side."

Attorney Caffry: "We already have photos that show what is there now."

Bob Risman: "It's just an option, merely a humble suggestion."

Attorney Caffry: "We can come back with more evidence on all of this, but I guess I'd want to know what you are looking at specifically."

Bob Risman: "The height of the fence at the lake on the north side; the height of the fence at the lake on the south side, the good sides of the fence; perhaps 7, 8, 9 feet, 8 1/2, 9 3/4, I don't know."

Attorney Caffry: "Are you suggesting maybe instead of 10 feet going a little less than that?"

Bob Risman: "I think this would be your option or you'll have to poll other members of the board. I'm merely humbly suggesting the possibility of holding the Public Hearing open."

Janie Green: "It's such a hard call. Is a 10 foot high fence going to solve your problem? I know you want me to say yes, but I'm not convinced that it will solve your problem."

Chuck LaPlante: "I'm not looking here to solve all the problems. As some of the board members said, I'm not looking to solve all the problems because it won't, but it will solve some. Just for an example, they park their cars on the other side of the fence with their headlights on at 11:00 at night and their headlights are shining directly into my windows."

Janie Green: "All the way down to the lake?"

Chuck LaPlante: “Only at the lake area because that’s where they choose to place their picnic tables in that area. As far as the headlights, absolutely there will be no headlights shining in the windows. Will it cure all the sound, no, but it will reduce the sound; absolutely, two of the biggest problems.”

Chairman Santiago: “One of the things that I saw when I was there with respect to the bonfires is when the smoke comes over a 6 foot high fence, the smoke is going right into the eve of the building where if it was a 10 foot high fence behind the cottages I can see that smoke going straight up and then up and behind the cottage depending on obviously the way the wind is blowing.”

Attorney Caffry: “We specifically asked the Town Board to do something about the bonfires and they said they couldn’t do anything about it. Somebody mentioned that you can’t expand a non-conforming use, that’s what variances are for. The other was about a double sided fence facing both ways, I would have concern about maintenance of a fence like that.”

Grant Gentner: “A 10 foot fence is not going to solve a smoke problem. If the fence is not put tight enough together, the lights are still going to shine through it. I don’t believe that a 10 foot fence on the southern end of the property is going to solve any problems. I don’t have any problems on the northern end where the shrubs are and the house, but I don’t want anyone to think for a minute that a 10 foot fence is going to solve a smoke problem, because it is not. There is an acrimonious relationship between the two parties. I feel like I’m sitting down at the Warren County Courthouse playing Judge which this is not our job. Our job is to look at the variance. I am against increasing the fence on the southern side of the property. It’s pre-existing, non-conforming. I don’t have a problem with it on the northern side. If the application was amended, I would be amenable to that other than that no, I’m not in favor of the variance.”

Attorney Caffry: “They are technically two separate fences. I think you could grant parts of it and not all of it. They are separate variances. You can put conditions on. If we applied for 50 feet and you wanted to limit it to 20, you can.”

A motion was made by Janie Green and seconded by Bob Risman to approve the application.

Janie 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.

The character of the neighborhood already have these fences on the south side going to the lake and it's not going to make that undesirable change any better.

- 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.

The applicant has tried different methods and this seems most feasible.

- 3) Whether the requested area variance is substantial.

It is, but there are extenuating circumstances along the property line.

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

No.

- 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 fences were already there when he purchased the property so he didn't create this himself.

Kevin – No  
Grant – No  
Janie – Yes  
Bob – Yes  
John –Yes

Motion carried.

### **REGULAR MEETING**

1. Area Variance Application #9-2008 submitted by Lake Shore Lodges, LLC to construct a tourist/timeshare project for property located at 3678 Lake Shore Drive and 2677 Lake Shore Drive. The applicant seeks relief under Section 175-52(A)(5)(c) for 13 units over 1,000 square feet in size in regard to the permissible square footage of floor space per unit for a tourist time-share project in the RCH-LS zoning district; relief under Section 175-52(B) of 45 feet on the lake side in regard to the required building setback of 100 feet from the lakeshore; relief under Section 175-52(C) of 43 feet (225 required) on

the lake side in regard to shoreline frontage required; relief under Section 175-34(A)(1) of 30 feet on the lake side for an existing bridge (to be covered) in regard to the 30 foot stream setback required for accessory structures; additionally, if the applicant retains the existing footprint of the building (which is a 15 foot setback), it will require a stream setback relief of 15 feet for the portion of the proposed building within the existing footprint; relief under Section 175-21(G)(2)(b)(4) of 90 feet on the lake side for an infiltration device in regard to the 100 foot setback required from "Lake George and any down gradient drinking water supply, lake, river, protected stream, water well, pond or wetland" (226.09-1-11, 225.12-1-16).

Chairman Santiago: "In response to some public comments during the Public Hearing process I would like to state for the record although I am a property owner within 500 feet of this project I have and will remain completely objective and unbiased during the entire review process and will do so while rendering my decision of the Lake Shore Lodges application. I have no financial interest whatsoever and I feel that any decision I render will have no benefit directly to me or my property thus I have no conflict of interest with this project. The project before this board will cater to a different clientele and target a completely new and unique market."

Bob Risman: "If I may, thank you, and please Ms. McKinney, if you would note and record the following in the official written recorded minutes of this November 20, 2008 ZBA meeting: For the record, I wish to respond to Mr. Mike Seguljic's comments, recorded in the official ZBA minutes of October 16, 2008 on page 8, who raises a question, apparently unsupported by any authority, on the topic of conflicts of interest. Mr. Seguljic's recorded comments are as follows: "It has come to our attention that some members of this Board own properties in close proximity to the parcels subject to the ZBA variance process. One Board member appears to own a motel within 500-feet of both parcels, with a second member having a motel within 500-feet of the lake parcel. Both individuals could conceivably benefit by approval of the variances enabling the complex to be built. It would seem that for this Board to withstand scrutiny and uphold the integrity of the Town's Planning Process, it may be necessary for said Board members to recuse themselves, lest the jeopardize the value of the Board and potentially soil its integrity." First, I believe it appropriate to address Mr. Seguljic's comments. It is factually correct that I own property near the Applicant's proposed project. I have carefully considered the subject of objectivity and bias with regard to this Area Variance Application No. 9-2008 submitted by Lake Shore Lodges, LLC's, and, I have determined and concluded that my ownership of property in the area does not influence my decision, either for or against the application. I have determined and concluded I have been, and

remain, diligent and shall continue to be objective and unbiased in my review and decision-making of the application based on the facts and merits. I do not believe the value of my property would be affected either way if the project Application be approved or denied. The subject property as it sits, both real and improved, is unique, dissimilar to mine, and services distinct clientele. The subject proposed Application, too, would result in development dissimilar to my property, and again, service distinct clientele. I believe it stands to good reason and logic that if such a project should burden or benefit nearby or area properties, any possible enhancement would be lateral “across the community board,” and not specific to any one property, or specifically, my property. If the Application is denied, passive market forces would appear to apply without benefit or burden, “across the community board.” If the Application is approved, the same or similar rule would appear to apply, again, “across the community board.” Second, let’s be clear here - no pro-forma request or proper procedure has ever been invoked for my recusal, but I nevertheless wish to satisfy any query of this nature, because that is in harmony with the discharge of our duty as a public board and I think we should rightly honor Mr. Seguljic’s right to express himself as fellow members of our community. That said, I wish to address this question on the merits. Ostensibly, Mr. Seguljic expresses an opinion of belief that I somehow have a conflict of interest in hearing this matter as Board members by simple virtue of the fact that my land and my business, which also contains my home in which I have resided as a Lake George citizen and resident for years, by pure happenstance is located in sort of physical proximity to the project before this Board. First and most importantly in response to that concern, let me say that the character and scope of that project and its business interests are neither at odds with, nor share common interests my interests, whether personal or financial. In addition, as the I believe the courts have held in zoning cases precisely such as this, if residents with towns of modest populations were made to recuse themselves for every project that came up near to their homes or businesses, or which involved persons they know or are familiar with (which is not the case here), the public would rarely have the benefit of a full Board, as the public has chosen to comprise it, to even hear their applications, and therefore the burden of proving such conflicts is high in such situations, I believe, as a matter of law. Second, to my knowledge, I have ever had any business interests or business dealings with the sponsors or owners of the proposed project, directly or indirectly whatsoever. Third, my mere physical proximity to parcels of land which a project is proposed, without more, utterly fails, and in fact cannot demonstrate any animus or interest in success or failure, modification or oversight of such a project in any meaningful way other than the mere expression of Mr. Seguljic’s personal opinions or desires as to how he, or as he put it ‘our,’ the meaning of ‘our’ undisclosed, would like to see the composition of this Board in its operation, powers, and authoritative

review of the proposed project he, 'they,' evidently oppose. Members of the public, and this Board should consider as well possible motivations or basis Mr. Seguljic, 'they,' might himself and themselves have in even suggesting such a reconstitution of this Board and its duly appointed decision-making powers in view of the fact that Mr. Seguljic himself, and others in very close proximity, lives or live in the Diamond Point area in proximity to the proposed project and may therefore have either a direct financial stake or personal animus in securing its failure, something that may or may not be in the public interest of this town, the determination of which is the very job this Board is charged with and appointed to decide. While it is also our position to hear his concerns, that right to expression does not justify, much less mandate such a measure as recusal be taken. Finally, let us please not confuse Mr. Seguljic's, and others', apparent opposition to this project as interpolating into or somehow creating out of whole cloth legitimate grounds for suggesting, much less requesting or securing our recusal from our publicly appointed duties, unless he, or they, can legally prove or actually support his, or their, expressions or desires to the contrary with good authority that is on point factually on the law and which meets the high judicial standard to require such action. I wish to thank the Board for its time."

Attorney John Lemery: "The applicant during this long process has never requested any member of this board to recuse himself or herself and we would not intend to do so and we're perfectly comfortable with the dialogue that has gone on here and whatever decision is made, we're willing to live with it. We do not claim there is any conflict by any member of this board in connection with this transaction. I don't know what more you want to hear. I wrote a letter on October 24<sup>th</sup> to the board. I think we've laid out in very substantial detail our position and where we are resulting from the 4 or 5 Public Hearings we've had. I'm happy to answer any questions that you might have. We think we have a great project and one that everyone will be proud of. We'll do our best to be a good neighbor to all the people who have spoken out here. We think that it will be a benefit. We've heard the concerns and to the extent we can mitigate them and we will mitigate them. We take their comments seriously and we certainly don't want the kind of situation I observed here earlier with our neighbors. Thank you."

Kevin Mulcahy: "Will the parcel that is not being developed retain access rights to the lake also?"

Robb Hickey: "That is part of the total lot. It's just that he cannot develop anything up there."

Kevin Mulcahy: "Where is the indoor/outdoor pool going?"

Attorney John Lemery: "It's conceptually designed down on the lake side. We moved it back to get away from that setback."

Kevin Mulcahy: "Is it within that 50 foot setback that you're asking for?"

Attorney John Lemery: "I don't believe it is. We've moved it back."

Chairman Santiago: "It's been brought up during the Public Hearing and we're interested in the character of the neighborhood as far as the construction process and I think you had at some point said that you didn't want to harm that and you're willing to work with the neighbors. Mr. Wessling had a concern with the time frame as far as construction goes. Just knowing how some of the businesses operate within the area, is a Memorial Day through Labor Day restriction reasonable?"

Attorney John Lemery: "I think that's not unreasonable to say from Memorial Day to Labor Day we could certainly restrict whatever construction we're doing to the west side that would not impact the lake side. I don't see that to be a problem. I think that's reasonable. I assume that if we had a building up outside of those periods, I'm assuming we would be free to work inside those buildings at that time."

Chairman Santiago: "When we talk about construction, we're talking about noise levels and major construction."

Chairman Santiago stated a letter has been received from Charles Burrows regarding the Diamond Point Water District. A copy of this letter is on file in the Planning and Zoning Office.

Jim Suozzo stated that nothing in that letter causes a problem for them.

Attorney John Lemery stated that he had spoken with the Supervisor who said there was plenty of water however, a new pump may be needed and the applicant was willing to supply the cost for this pump.

A motion was made by Bob Risman and seconded by Grant Gentner to approve. Bob read the following resolution:

Lake Shore Lodges, LLC, ("Applicant") has applied for six area variances in connection with its proposal to construct a "tourist timeshare project" (the "Project") on parcels at 3677 and 3678 Lakeshore Drive (Area Variance Application #9-2008, as amended). The parcels are separated by Route 9N. One of the parcels ("Lakeside Parcel") measures approximately 1.37 acres and has about 182 feet of frontage on Lake George and about 165 feet of road frontage on Route 9N. It is located in the RCH-LS Zone and is more specifically identified as Tax Map # 226.09-1-11. The parcel is

divided by Smith Brook, which runs through the parcel approximately diagonally from near the northwesterly corner of the parcel to a point along its southerly boundary line approximately 100 feet from Lake George. The Lakeside Parcel is currently occupied by the Family Suites Motel (formerly the Sand & Surf Motel), consisting of an operating 22-unit motel building with 44 bedrooms and a separate office building, both of which are pre-existing non-conforming buildings, along with other structures. Approximately 9,048 square feet of the parcel is covered by buildings, with 34,350 square feet covered by paving and other impervious surfaces. The structures contain about 16,180 square feet of living space. The buildings are served by a septic system located on the adjacent lakeside parcel to the north. An 18-slip Class A marina is associated with the Lakeside Parcel. Each slip has connections for electricity, water and cable TV. The slips have provided space for additional overnight accommodations for transient boaters.

Applicant's other parcel is on the westerly side of Route 9N ("Upland Parcel"), directly across from the lakeside parcel. The upland parcel measures approximately 13.38 acres overall, with about 10.65 acres in the RCH-LS Zone and about 2.73 acres in the RR-10 Zone. It has approximately 165 feet of frontage on Route 9N and is more specifically identified as Tax Map # 225.12-1-16. The Upland Parcel is currently occupied by a single-family home which has 3 bedrooms.

Applicant proposes to develop a tourist time-share project using both parcels and legally combining them into a single lot (collectively, the Property). On the Lakeside Parcel, Applicant proposes to demolish the existing motel and office building and construct a "boathouse club" building, the first floor of which would be a non-public restaurant (open to residents and guests only), locker rooms and showers and an indoor/outdoor swimming pool. The second level would consist of living space in the form of 7 tourist time-share residential units. The building would have a "footprint" of approximately 7,045 square, or about 2003 square feet less than all of the structures currently on the parcel. The boathouse club would cover the building footprints of the existing motel and office building, as well as some additional area between the existing buildings. Living space would total approximately 9,552 square feet (exclusive of common areas, per Town Code), or about 6,600 square feet less than the existing structures. Architecturally, the building would have an "Adirondack-style" appearance. There would be 24 parking spaces on the site, west of the building. Approximately 63% of the lakeside parcel would be greenspace/permeable surfaces, while the remaining 37% would be covered by impervious surfaces. These figures comply with Code requirements, and the building would meet the Town's height restrictions. The boathouse club would be 55 feet from the Lake and 15 feet from Smith Brook, thus requiring setback variances from them.



On the Lakeside Parcel the applicant intends to place a cover over one of the three existing footbridges that span Smith Brook to protect building residents and users from the weather when entering and leaving the boathouse club. The covered bridge would be limited to pedestrian use only. The existing asphalt and concrete on the sides of Smith Brook, which effectively channel it as it runs into the Lake, would be removed and the streambanks would be planted with vegetation to control erosion. Stormwater management would be employed on the parcel, using “storm gardens” to catch and infiltrate runoff. Two of these “storm gardens” would carry water from the parking area and would be located no closer than 10 feet from Smith Brook, requiring 90-foot variances.

The applicant proposes to construct two residential buildings on the Upland Parcel, containing 38 living units. The buildings would be situated on a developed area of about 1.7 acres, with approximately 11.68 acres, or 87%, of the parcel remaining undeveloped, including all of the 2.73 acres in the RR-10 Zone. Approximately 13% of the parcel would be covered with buildings and other impervious surfaces. Living space in the buildings on the Upland Parcel would total about 48,540 square feet, excluding the underground garage associated with the lodge building. Each unit would have one outside parking space for guest parking.

All buildings on both parcels would be on the Diamond Point municipal water supply system and would be served by a new “packaged” wastewater treatment system located on the Upland Parcel. Use of the existing septic system on the adjacent Lakeside parcel to the north (Gilchrist Marina) would be discontinued. The new system would provide primary as well as secondary treatment. Wastewater from the Lakeside Parcel would be pumped uphill to the new treatment system. A standby electrical generator would power the pump during power failures.

The 18-slip marina would remain but would be used only for the docking of boats belonging to the owners of the residential units, with no overnight use by owners or transients proposed.

The application was referred to the Warren County Planning Board, which recommended approval with no conditions requiring consideration by this Board.

On June 19, 2008, this Board opened a properly-noticed Public Hearing for the purpose of hearing and taking the spoken and/or written comments on the area variances being sought by the Applicant. The Public Hearing was continued to August 21st, September 18<sup>th</sup>, and October 16, 2008. A number of people offered spoken and written comments and materials, including a petition, for the Board’s consideration. The Public Hearing was closed on October 16, 2008.

The Board has reviewed, considered and deliberated about the Applicant's variance application, the approval recommendation of the Warren County Planning Board, and all written and spoken comment received in connection with the application through the close of the Public Hearing.

The Applicant is seeking the following variances from Town Code requirements in order to construct the Project as proposed:

- 1) Relief from Section 175-52(A)(5)(c) restricting the maximum size of tourist accommodation units to 1,000 square-feet. Applicant proposes 13 units that would exceed this limit, with a total of 7,674 square feet of area over the collective 13,000 square-feet allowed. The 32 units under 1,000 square feet have a total area 6,704 square feet less than allowed under Code, so the net excess area is 970 square feet.
- 2) Relief of 45 feet from Section 175-52(B) requiring that tourist accommodation buildings be set back at least 100 feet from the shore of any lake or pond. The proposed boathouse club would be located 55 feet from Lake George.
- 3) Relief of 15 feet from Section 175-34(A)(1) requiring that all buildings and structures be set back at least 30 feet from the mean high-water mark of a Class AA stream. The proposed boathouse club would be the same distance from Smith Brook, a Class AA stream, as the existing motel, requiring a 15-foot setback variance.
- 4) Relief of 30 feet from Section 175-34(A)(1) requiring that all buildings and structures be set back at least 30 feet from the mean high-water mark of a Class AA stream. Applicant proposes to construct a cover over an existing bridge across Smith Brook, to be used as a walkway between the parking area and the boathouse club. Modification of the existing structure would require a setback variance.
- 5) Relief of 90 feet from Section 175-21(G)(2)(b)(4) of the Code requiring that stormwater infiltration devices collecting runoff from a parking area be located at least 100 feet from any protected stream. Applicant proposes to place two "storm garden" infiltration devices within 10 feet of Smith Brook.
- 6) Relief of 43 feet from Section 175-52(C) requiring minimum shoreline of 225 feet on Lake George for the proposed 45-unit tourist time-share Project in the RCH-LS Zoning District. The Property has 182 feet of frontage.

## Findings and Determinations

The Board now makes the following determinations. Unless otherwise noted, each of the following determinations applies to all of the variances sought.

- 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 variances.*

The proposed variances would not cause an undesirable change in the character of the neighborhood or a detriment to nearby properties as long as major structural construction of the proposed project is carried out during the “off season” when other area motels and resorts are likely to have low occupancy rates or be closed.

The Property is located within the Town’s RCH-LS Zoning District, intended for high-density residential-commercial development. The area is characterized by existing motels, a number of them on other non-conforming Lake George shoreline lots, and other tourist accommodations, along with some single-family residences, mostly older. The proposed tourist time-share project is the type of use envisioned for the area in the Town’s comprehensive plan and Code, and it is a permitted use in the RCH-LS Zoning District. In terms of proposed living space, the Project conforms with Zoning Code density requirements.

The appearance of the buildings would be consistent with the character of the area. The “Adirondack” style architecture of the proposed buildings would be aesthetically pleasing and compatible with the area, fitting in especially well with the wooded surroundings of the upland parcel, even those over 1,000 square feet. The photo simulations showing the proposed Project from the Lake indicate that the buildings will blend in well with the surroundings.

The proposed “boathouse club” on the Lakeside Parcel would not use that parcel any more intensively than the existing motel. If anything, the impact of the boathouse club on the Lakeside Parcel would be less intensive than the current motel in terms of building footprint and impervious surfaces. On the Upland Parcel, the 38 residential units proposed, in 2 buildings, would be far less intensive than the maximum number of hotel or motel rooms (154) allowed by Code. Overall, the total area of living space proposed for the Property (58,097 square feet) is within the maximum allowed under the code (58,177 square feet) with far fewer bedrooms (61,

total) than the maximum of 154 allowed. Significant portions of the Property would be left undeveloped, especially on the Upland Parcel. The value of neighboring properties is likely to be enhanced by this aspect of the proposed Project.

With regard to Applicant's beach, the variance requested is not likely to result in any significantly greater intensity of use of the beach or any "spillover" from Project residents or guests onto the shoreline of neighboring properties. To the extent Project residents may find the beach crowded at any particular time, it seems likely they would use the swimming pool at the proposed boathouse club as an alternative for swimming, thus alleviating crowding at Applicant's beach. There are natural and man-made impediments that would prevent easy access to the shoreline of neighboring properties. Thus, use of the Applicant's beach by residents and their guests will very likely be self-policing if the beach area becomes crowded.

The Project would likely result in greater traffic in the area and in more pedestrians crossing Route 9N to go between the Lakeside and Upland Parcels. However, alternative uses of the Property, such as for a motel, could result in even more traffic. Potential for increased traffic is not a reason for this Board to deny the requested variances. The Planning Board would address traffic considerations as part of its Site Plan review for the Project.

For all of the above these reasons we find that granting the six variances being sought would not result in an undesirable change in the character of the neighborhood or be a detriment to nearby properties, as long as major structural construction of the Project is carried out in the "off season" in order to avoid disruption to the business of area motels and resorts.

*2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than area variances.*

In order to draw today's resident vacationers and tourist travelers to Lake George, it is increasingly necessary to offer full-featured, year-round residential units in the sizes proposed along with amenities like the boathouse club, with its planned Lake-side restaurant, locker rooms and indoor-outdoor swimming pool, as planned for the Applicant's tourist time-share project. The benefit being sought by the Applicant is a four-season tourist time-share facility that will be viable in today's vacation / tourism market. The Applicant cannot achieve this benefit without all of the variances

being requested. The scale of the proposed Project – the number and sizes of the residential units and the size of the boathouse club - is necessary for its economic viability. Locating the proposed boathouse club on the Lakeside Parcel is essential to the viability of the project. It provides the connection to the Lake and the logical “hub” and focal point for the Project and enjoyment of the Lake by residents and their guests. Five of the six variances being sought relate to the Lakeside Parcel. Any development on that parcel would be constrained by its modest physical dimensions and the Class AA stream which runs through it diagonally. The resulting combination of shoreline, sideline and stream setbacks severely limit the size and location of the portion of the site available for development. Consequently, virtually any building and any stormwater infiltration features would require setback variances. Even though the proposed boathouse club building will have a smaller building footprint than the total of the existing structures currently on the parcel, which pre-date the Town’s Zoning Code and are non-conforming, it cannot be built under current zoning without the variances being sought by the Applicant. The “storm garden” infiltration features that would carry runoff from the parking area on the Lakeside Parcel cannot be situated anyplace on the parcel without variances. The location of Smith Brook, the combination of the stream and shoreline setbacks and the topography of the parcel collectively mean there is literally no place on the parcel where these “rain gardens” could be positioned in compliance with setbacks. There is thus no feasible alternative to the variances for them. (It should be noted that there are currently no stormwater management features on the site at all. It is possible that no “storm gardens” will be needed for the Project because Applicant is proposing to significantly reduce the amount of impervious surface area on the parcel, as compared with the existing motel. Applicant is nonetheless voluntarily proposing stormwater management in order to improve the quality of water going into Lake George.) The number of residential units required for economic viability of the project also results in the need for the shoreline area variance. It would be infeasible to develop the Project without this variance as well as the others requested.

*3) Whether the requested area variances are substantial.*

Some of the variances requested may seem significant on a mathematical basis, particularly the 100% variance being sought for the footbridge and the 90% variance for the proposed “storm garden” stormwater management features. However, when viewed in the context of the physical constraints on the Lakeside Parcel and the

existing 22-unit/44-bedroom motel on the property and the overall size of the Property, we do not find them to be substantial.

The need for a 100% setback variance for the existing footbridge over Smith Brook is a technicality resulting from Applicant's plan to simply put a cover over the bridge to protect those using it from the weather as they enter the boathouse club. The footbridge has been in place as a pre-existing structure for many years. Granting the variance will not result in a new bridge. Only a cover will be added. Thus, even though the 100% variance for the footbridge may seem substantial, we find that it is not.

The substantiality of the 90% variances being requested for the "storm garden" infiltration features to manage stormwater runoff from the parking area has to be considered in relation to the site constraints of the Lakeshore Parcel and the beneficial purpose they would serve. The locations for these features are limited by the constraints imposed by site size, configuration and the locations of Smith Brook and the parking area. There are no feasible locations for these "storm gardens" other than the location proposed. There are no stormwater management features to control runoff on the developed site now. In light of this fact, the proposed "storm gardens," to any extent they are effective, will be a benefit to the water quality of the Lake and Smith Brook and an improvement over the current lack of any stormwater management measures. Therefore, we conclude that the variances for the proposed "storm gardens" for the parking area are not substantial under the circumstances.

The variances being sought for the proposed boathouse club building likewise are not substantial because they would not result in any change or further encroachment on the Lake or Smith Brook as compared with the existing motel and office building. Applicant has proposed removing asphalt and concrete adjacent to the streambanks to help restore a natural water flow. In addition, Applicant also proposes a new wastewater treatment system. Both of these proposals would improve conditions on the parcel as compared with current conditions and should help improve water quality in the Lake. In this context, the variances sought for the boathouse club building are not substantial.

The relief being sought for shoreline length is less than 20% and is not substantial. In practical effect, any crowding on Applicant's beach area would be self-policing and would probably be alleviated by its swimming pool. It seems unlikely there would be

any detrimental effect on neighboring properties. Thus, in context, the variance for shoreline length is not substantial.

Finally, the variance for the 13 proposed residential units over 1,000 square feet in size would not be substantial. The Project complies with the overall density limit and a large portion of the Property would remain undeveloped. Additionally, to the extent the 13 units are over-sized, many of the 32 units under 1,000 square feet are significantly smaller than permitted, thus serving as a counterbalance. The 907 square feet of net extra living space is not significant for a project over 58,000 square feet in size which meets overall density limits. The portion of the Upland Parcel in the RCH-LS zone, 10.65 acres, would accommodate much more intensive development with smaller motel rooms. The compatibility of the proposed Adirondack-style buildings with the surrounding wooded area and the fact that the majority of the Property would remain undeveloped are factors in our determination that the variance for unit size would not be significant.

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

The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the area. The proposed building on the Lakeside Parcel, though somewhat larger than the existing buildings, would be of a pleasing "Adirondack" style and would have an adverse effect on the surrounding area. Any greater use of the beach area will be offset by the pool and other common areas of the boathouse club building and by the fact that the existing boat docks will no longer be used for overnight stays by boaters. The stormwater management features should improve and protect the quality of water in Lake George and Smith Brook. The new residential structures on the Upland Parcel are allowed by code and would be a much less intensive use of that parcel than a motel, another allowed use. The buildings will be of compatible "Adirondack" style that will fit into the surrounding woods and will occupy only a small portion of that parcel, the majority of which will be left undeveloped. The visibility of the residential buildings on the Upland Parcel from the Lake will be minimal. The new wastewater system on the Upland Parcel, serving the entire Project, will provide both primary and secondary treatment of wastewater and will keep effluent farther away from the Lake, distinct improvements over the current older, basic septic system on the adjacent shoreline parcel to the north. In all, we find that the Project will not have any

significant adverse physical or environmental effects and, in fact, will result in major environmental benefits.

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

The Applicant was aware, or should have been aware, of the characteristics of the Lakeside Parcel and the requirements of the Zoning Code governing potential development on it. No one compelled the Applicant to purchase the Property. Thus, to the extent Applicant wants to develop the site in a way that requires variances, the difficulties necessitating the variances are arguably self-created. However, development on the Lakeside parcel is indisputably limited by natural features such as the topography and the location of Smith Brook, factors beyond anyone's control. That parcel is already developed. Applicant's project would lessen the intensity of development on it. A significant part of the overall Property would remain undeveloped, and water quality of the Lake and Smith brook would be protected and enhanced by the proposed stormwater control measures (which the Applicant has voluntarily proposed even though they may not be required by Code) and the wastewater treatment system. On the whole we find that these factors mitigate the degree of Applicant's self-created difficulty, which, in any event, would not preclude the granting of the variances.

### Conclusion and Decision

After considering all relevant factors, including the location of the Property, its size and natural features, the existing development on it, Applicant's proposed Project and its potential effects, both detrimental and beneficial, this Board finds that the benefit to the Applicant from granting the requested variances would outweigh the possible detriment to the health, safety and welfare of the community. The Board therefore grants Applicant's variance requests for the purpose of constructing the proposed Project, subject to the following Conditions:

- 1) Major structural construction activity, including demolition, site work and utility installation, shall occur only during the "off season," which shall be from Labor Day through Memorial Day each year on the lakeside;
- 2) The applicant follow any recommendations of the Town of



Lake George Planning Board and/or Consolidated Board of Health;

- 3) The applicant's project remains connected to and utilizes the Diamond Point Water District;
- 4) The applicant request and receives a copy of the letter from Town Engineer, Charles J. Burrows, P.C., Consulting Engineers dated November 18, 2008 and works with and follows his, the Town of Lake George Planning Board and Consolidated Board of Health recommendations with regard to related Diamond Point Water District work and upgrade; supply pumps and changes for that system, all costs to be borne by the applicant;
- 5) The applicant work with the Town of Lake George Planning Board to apply stream buffer and foliage canopy Best Management Practices.
- 6) The applicant shall make every best effort to commence, sustain and complete construction during non-peak Lake George area tourism months.

7) SEQRA shall be deferred to the Planning Board.

Duly adopted this 20th day of November 2008, by the following vote:

Kevin – No  
Grant – Yes  
Janie – Yes  
Bob – Yes  
John – Yes

Motion carried.

2. Area Variance Application #13-2008 submitted by Vojac, Inc., to modify Area Variance #43-2006 to allow a nine (9) unit building in Phase IV to exceed the 40 foot height limitation. The applicant is requesting a 13 foot height variance for property located at 3210 Lakeshore Drive (238.16-1-17.13).

This application was tabled at the applicant's request.

3. Request from Frederick and Joanne Zalucki to request a two year extension for Area Variance 39-2006.

A motion was made by Grant Gentner and seconded by Kevin Mulcahy to grant a two year extension with the previous conditions placed being adhered to.

Kevin – Yes  
Grant – Yes  
Janie – Yes  
Bob – Yes  
John – Yes

Motion carried.

A motion was made by Grant Gentner and seconded by Kevin Mulcahy to adjourn the meeting at 11:10 p.m.

Respectfully submitted,

Patricia McKinney  
Planning & Zoning Board Clerk