

**Town of Bolton  
ZONING BOARD OF APPEALS  
MINUTES**

**Monday, June 20, 2005**

**6:30 p.m.**

-

SEQR = State Environmental Quality Review

PB = (Town of Bolton) Planning Board

WCPB = Warren County Planning Board

APA = Adirondack Park Agency

LGPC = Lake George Park Commission

DEC = Dept of Environmental Conservation

**Present:** Chairman Greg Smith, Tony DePace, Kam Hoopes, Meredith McComb, Tom McGurl, Michael Murray, Bill Pfau, Zoning Administrator Pam Kenyon, Town Counsel Michael Muller

**Absent:** None

Chairman G. Smith opened the meeting at 6:36 pm by asking for corrections to the May 16, 2005 ZBA minutes. T. McGurl said on page 31, third paragraph, #2 should read, "...would not aesthetically be a more pleasing option..." as his idea is that the applicant meant it would be better to have a ramp than a lift.

Motion by T. DePace to approve the May 16, 2005 minutes as amended. Seconded by B. Pfau. Six in favor, One Abstained (G. Smith, as he did not attend the May 16, 2005 meeting). Motion carried.

**1) V05-12 TEKMITCHOV, VASILIKI.** To alter existing structure, specifically to create a second story deck over existing restaurant/bar area to accommodate additional seating, seeks area variance for deficient 1) front yard setback: 30' is required, 25' is proposed from Route 9N; 2) front yard setback: 30' is required, 1' is proposed from Congers Point North; and 3) parking: 46 spaces total required for entire property, including 10 spaces for new deck area, 0 spaces exist, 0 proposed. In accordance with Section 200-56A, seeks area variance to alter a non-conforming structure. Section 171.15, Block 3, Lot 74, Zone GB5000. Property location: 4960 Lakeshore Drive, known as Lilly's. The WCPB recommended no County impact with the stipulation that the Town investigate the issues concerning compliance with handicapped access under ADA. This application was tabled last at the applicant's request.

Motion by M. McComb to table the application. Seconded by T. DePace. All in favor. Motion carried.

**2) V05-37 TOWN OF BOLTON LOCAL DEVELOPMENT CORP.** Represented by Matt Steves of Van Dusen & Steves, LLS. 1) Seek area variance for deficient density for the creation of a proposed 2-lot subdivision of that parcel designated as Section 171.15, Block, 3, Lot 36: 20,000 sq ft is required for a single-family dwelling, 7,666.93 sq ft is proposed for the parcel along Sagamore Road; and 2) for a proposed lot line adjustment between parcels 171.15-3-36 & 171.15-3-44, seek area variance for deficient setbacks for the eastern most existing dock on parcel 171.15- 3-36: 20' is required, approximately 8' is proposed. Zone GB5000. Property location: Norowal Road known as Norowal Marina. Subject to WCPB review. Subject to SEQR.

Matt Steves, representing the Town of Bolton Local Development Corp. (LDC) gave an overview of the project by saying (1) a 2-lot subdivision is proposed requiring a variance for a 7,700 square foot lot, (2) a boundary-line adjustment is proposed between parcels 171.15-3-36 and 171.15-3-44 along the lake to the east of the buildings utilized by the marina, (3) the proposed lot-line is at an angle, thus when extended into the water, a 20' setback would be maintained at the end of the dock and (4) it is the easternmost dock only that requires a variance. K. Hoopes said there was also another proposed lot line adjustment in the center of the property between parcels 171.15-3-36 and 171.15-3-49.

B. Pfau asked if Matt Steves could give an overview of what the LDC is doing and why the lot line adjustments are being sought, to which Matt Steves noted that he did not have all the details.

M. McComb asked if the properties are separate from the parcel under discussion to be conveyed to the LDC and Matt Steves said (1) the only split out of the parcel that is being conveyed is the house parcel along Sagamore Road, (2) the rest are lot line adjustments from separate tax parcels existing at this time and (3) the adjustments are not part of the conveyance.

B. Pfau asked how many additional lots would be included in this proposal and Matt Steves answered by saying (1) the proposal is to increase the lot on the northeast corner on the shore by moving the lot line to the west, (2) to increase the lot in the center of the property by moving that lot line to the west and (3) the only new lot that is being created is the one lot around the house on Sagamore Road.

M. McComb asked how many residences would be supported by this plan and she said that if there are seven building lots she is wondering how many houses are going to remain. G. Smith responded by saying everything that is there will remain. Counsel said (1) there are five existing lots that, as of record, could be sold independently that will be terminated and incorporated within a larger parcel, (2) today, if there were no transfer anticipated, Mr. Lamb could transfer five residential lots and (3) there will be five less potential uses on what constitutes the larger common beach.

B. Pfau asked for the reason the size of the 7,700 square foot parcel cannot be increased and Matt Steves answered by saying that it would encroach upon the usage of the marina property. K. Hoopes said (1) the property the Town is looking at also includes the metal building to the north and all the docks and (2) Mr. Lamb would be keeping the center area where the cabins are. G. Smith said (1) it would include all three metal buildings and (2) there are four different private owners in the center section, which has always been separate from the Norowal Marina property. Matt Steves said the four separate owners are surrounded by the loop road and are not being touched in any way.

M. McComb said she is normally dead set against creating substandard lots, but in this particular case, it strikes her that if the Sagamore Road lot is carved out small, that leaves more land for the operation of the marina, that would be to the Town's advantage. G.

Smith said (1) that house has been the way it is now forever, (2) it has never needed any other property, (3) it is surrounded by trees and it is natural, and (4) that in his eyes, it doesn't change a thing. Matt Steves said the lot lines are based on the current usage that surrounds them.

From the public, Chris Navitsky, Lake George Waterkeeper, said that while he is not against the application that has been submitted, he would like the ZBA to consider a condition requiring stormwater management on the site, as it might be exempt from the stormwater regulation. B. Pfau asked if the property is currently exempt from stormwater management and Counsel answered by saying that (1) there are only line changes proposed right now and (2) there is no land disturbance contemplated yet.

Several ZBA Members were in agreement that more information would be needed before imposing such a condition. M. McComb said (1) she is sure the applicant would conform to anything that was required, (2) since the site is so flat and close to the lake, if it is not going to be a big hassle and will be implemented anyway, then maybe its not a bad idea to add the condition of stormwater now, as something may be there and (3) it seems like an intense place and a minimal trade-off to her for granting the 7,700 square foot additional lot. K. Hoopes said (1) there are no numbers before the ZBA, so he doesn't know what the trade-off is, but there will be numbers before the PB and (2) he is not prepared to add a condition of stormwater at this time. G. Smith said (1) if the Town is going to build something, then they will have to implement stormwater controls, (2) he doesn't see why the Town wouldn't implement stormwater controls, since it would be better for Lake George and (3) more than likely, if there is any new construction, it will come back before the ZBA, (4) he thinks the ZBA can trust it's own Town, (5) he doesn't think it is something the ZBA needs to sit here and argue about and (6) he doesn't feel it is necessary to make it a condition of approval.

B. Pfau asked if the PB would be the more appropriate board to place the condition of stormwater control and Counsel answered by saying (1) he is sure the PB will have Chris Navitsky's letter and make that decision and (2) his comment to the PB would be the same in that if construction is undertaken the stormwater regulations must be complied with.

G. Smith said (1) he does not see where this is a real large variance, (2) all of the main parts of the property are pretty much going to remain the same, (3) the lot along Sagamore Road, even though it is small, that is the way it always has been, it is surrounded by trees and it doesn't seem to him that it will need any additional room, (4) there are four center lots that are privately owned at this time and Mr. Lamb owns the other ones behind those, (5) in making one lot a little bit larger, the Town will end up with five other buildable lots that won't get built on and the little bit of increase on the front lot is not going to change much either, because it doesn't interfere with the property that is being used to run the marina as it is now.

The following correspondence was received:

- Letter from Chris Navitsky – regarding stormwater control, addressed as part of the discussion

No County impact.

## RESOLUTION

The Zoning Board of Appeals received an application from Town of Bolton Local Development Corp. (V05-37) for area variances as described above.

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

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #2 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than area variances, it is strictly dimensional changes;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, these are dimensional changes only and any further changes would come back to the ZBA;
- 3) The requested variance is not substantial, because these are minor lot line adjustments;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by K. Hoopes and seconded by T. DePace, it is resolved that the ZBA does hereby grant approval for said project as presented conditional upon conveyance to the Local Development Corporation as shown on map entitled "Town of Bolton Local Development Corporation" prepared by Van Dusen & Steves Land Surveyors, dated 04/04/05, last revised 05/20/05. If conveyance does not take place, this variance shall be null and void. **All in favor. Motion carried.**

**3) V05-32 SENDROWITZ, EVA MARIE.** Represented by Charles Ligon. To alter roofline of existing single-family dwelling, seeks area variance for 1) deficient side yard setback: 30' is required, 3' is proposed; 2) deficient shore frontage: 75' is required from the mean high water mark on Trout Lake, 64' is proposed; and 3) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 185.19, Block 1, Lot 66, Zone RCL3. Property location: 15 Lake Side Lane. Subject to WCPB & APA review.

Charles Ligon, representing Eva Marie Sendrowitz, gave an overview, saying (1) the applicant is looking to relieve the forward two roof sections of snow removal by extending the highest roof line over the two lower roof sections, (2) no square footage is being added to the house and (3) the existing setbacks are not to be changed.

T. McGurl asked what is going on inside the house and Charles Ligon answered by saying (1) nothing will be going inside, (2) overall square footage will be added, but not living space, (3) there will be no crawl space or cathedral ceiling, there will be no access to it, (4) the existing roof will remain and the exterior walls will be framed up above the existing walls and (5) the shingles of the old roof will be stripped in order to facilitate snow removal.

B. Pfau asked if the new construction will encroach any further on the existing side setbacks and Charles Ligon answered by saying (1) no, they will just be extending the wall lines and overhangs straight up. K. Hoopes felt it would be an aesthetic improvement.

T. McGurl asked how many roof lines there would be and Charles Ligon answered by saying (1) there will be two roof lines, one extending all the way to about 12' from the north end of the house, which will not change and (2) just the roofline to the south will be changing.

B. Pfau said he noticed the applicant does not get a whole lot of support from the neighbors on the proposal and M. McComb said this could turn into a behemoth, but it isn't a behemoth before the ZBA tonight. K. Hoopes said the only letter he recalls was from the neighbor next door (Nancy Gallagher) and it seems the ZBA granted them a variance for a very similar thing not too long ago.

M. McComb asked if this new plan will enclose the outside shower and Charles Ligon answered by saying no, he is not aware of any outside shower. K. Hoopes said the only

thing he could think the Gallagher letter is referring to as an outdoor shower would be the bathrooms in the two odd buildings, but they are fully enclosed.

There was no County impact with the condition that the appropriate stormwater and erosion control measures are taken. P. Kenyon said since it is less than 1,000 square feet, the applicant is exempt, but the Zoning Office does encourage them to take the measures if possible. The ZBA Members agreed that while the surface footprint is not changing, it would be good to encourage stormwater and erosion control measures.

No public in attendance.

The following correspondence was received:

- Letter from Nancy Gallagher – concerns, addressed as part of the discussion

#### RESOLUTION

The Zoning Board of Appeals received an application from Eva Marie Sendrowitz (V05-32) for an area variance as described above.

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

and, whereas the Warren County Planning Board determined that there was no County impact with the condition that the appropriate stormwater and erosion control measures are taken;

and, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #3 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, it is a modest proposal on a small lot;
- 3) The requested variance is not substantial, there is no change in either the height or the existing footprint of the building;

- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and the ZBA will go along with the WCPB recommendation that stormwater management measures be taken;
- 5) The alleged difficulty is not self-created, there is a small chopped up space and this is a modest consolidation of what is there, which doesn't seem in any way out of line with the neighborhood.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by M. McComb and seconded by T. McGurl, it is resolved that the ZBA does hereby grant approval for said project as presented with the condition that stormwater management be utilized on the new addition. **All in favor. Motion carried.**

**4) V05-33 DANIGER, DANIEL & CROMWELL, SHELLY.** For the construction of a proposed 14' x 32' carport/carriage house, seek area variance for deficient setbacks: 1) Front: 75' is required, 40' is proposed; and 2) Shoreline: 75' is required from the mean high water mark from the stream, 65' is proposed. Section 213.13, Block 1, Lot 6, Zone RCM1.3. Property location: 73 Coolidge Hill Road. Subject to APA & WCPB review.

Daniel Daniger gave an overview by saying (1) he is looking to build a carriage house/carport that is separate from the original colonial home, (2) he would like to go out over the stone wall, (3) if he moves it towards the well head, he will go inside the 75' setback from the brook and (4) on the front side, he would like to be able to back into the existing u-turn.

M. Murray asked if the applicant needs a third variance for a 20' side setback in that zone and P. Kenyon answered by saying it is an RCM1.3 Zone wherein a 15' side setback is required. Daniel Daniger said (1) he can go to 20' on the side setback without a problem and (2) he can also eliminate the variance for the brook by swinging the carriage house/garage to the right instead of going over the stone wall, which he may do, since he wants to build a breezeway there connecting the existing part of the structure. G. Smith said the ZBA needs to know what the applicant wants to do, because if the ZBA grants a variance, that is where the applicant has to build it.

K. Hoopes said (1) the proposed location seems logical, because there are no trees to be dealt with, (2) the one corner seems to be infringing on the 75' with the suspended corner only, (3) the neighboring property immediately adjacent to this property is relatively unusable, so there is very little chance the neighbor would be inconvenienced and (4) it makes sense to move it that far over so the applicant maximizes the use of his own property.

No public in attendance.

No correspondence.

No County impact.

## RESOLUTION

The Zoning Board of Appeals received an application from Daniel Daniger and Shelly Cromwell (V05-33) for an area variance as described above.

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

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #4 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance, the applicant is squeezed by his well casing and the lay of the land;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, with the addition of the garage/carriage house and there are no objections from the neighbors;
- 3) The requested variance is not substantial, the applicant minimized his request;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district, it will fit in well with the neighborhood and is still quite a distance away from the stream;
- 5) The alleged difficulty is not self-created, due to the land.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by B. Pfau and seconded by K. Hoopes, it is resolved that the ZBA does hereby grant approval for said project as presented. **6 in favor. 1 (M. Murray) opposed. Motion carried.**

**5) V05-34 ASTRUC, EDITH.** Represented by Atty Robert McNally. For the construction of proposed 10' x 16' enclosed porch, seeks area variance for 1) a deficient side yard setback: 30' is required, 24' is proposed; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 156.12, Block 1, Lot 1, Zone RCL3. Property location: 7 Indian Brook Drive. Subject to WCPB review.

This item was tabled at the request of the applicant.

**6) V05-35 FATTA, PETER.** Represented by Attorney Michael O'Connor. In accordance with Section 200-56A (Continuation), seek area variance to demolish the rear wood frame portion of pre-existing non-conforming structure. Section 200.18, Block 1, Lots 18, 19 & 20 (combined), Zone RM1.3. Property location: 4168 Lakeshore Drive formerly known as McCauley's Ranch House. Subject to WCPB review.

A lengthy discussion took place among ZBA Members and Counsel regarding the need for a variance to demolish a portion of a pre-existing non-conforming structure, which is summarized by the following:

G. Smith said (1) he thinks this is something the ZBA needs to look at and send to the TB for review, because he thinks if it is already a non-conforming building and an applicant wants to make it less non-conforming and if the applicant is not going to rebuild this and just wants to tear it down, then it is less of an impact and the applicant doesn't need to be in front of the ZBA, (2) he doesn't feel an applicant can just tear something down, (3) the applicant should come to the Zoning Office and get a demolition permit and (4) if Zoning Administrator P. Kenyon feels it is something the ZBA needs to look at, which he doesn't think it is in this case, then the applicant would need to be here.

K. Hoopes said (1) at the last meeting, there was a long discussion on whether something can just be torn down, (2) the wording says any alteration to a non-conforming structure and (3) even though the demolition is an allowable alteration, the wording is in there.

Counsel responded by saying (1) Section 200-56A of the Zoning Ordinance says that if there is any alteration in a pre-existing non-conforming structure, that it requires review and a variance and (2) Section 200-56A was amended in 1997, because the ZBA and the TB wanted to make sure they have oversight of any alteration of a non-conforming pre-existing structure.

Peter Fatta gave an overview of the project by saying (1) he is proposing to remove the wooden addition that was put on the original block structure, (2) it was actually two additions, one was an addition as a storage area and the other one expanded that and (3) the wooden structure has deteriorated substantially and it needs to be taken down,

because it is not practical to rebuild it as it is. G. Smith said (1) he has no problem with this application and (2) the applicant just has to take all safety measures in tearing it down. M. Murray said this is a positive step. Peter Fatta said the plan is to use the existing footprint and convert the former restaurant into a single-family dwelling. K. Hoopes asked if the property is in three separate sections and Peter Fatta answered, yes, it is presently three parcels that will be combined into one.

From the public, Ken Parker, resident of 21 Boon Bay Road and President of Boon Bay Association, said (1) they welcome Mr. Fatta's ideas and his intent to improve, but they would be interested in knowing more about the development of the planned residence and (2) ask if any of the future process will have to come before the ZBA. K. Hoopes said the project will probably need to come before the ZBA again and G. Smith said that while the applicant has already explained what he wants to do, he could give a brief detailed description of his plans.

Peter Fatta gave an overview of the building by saying (1) the Glens Falls architect will use the existing footprint and he will work with her to come up with something aesthetically pleasing and (2) they haven't drawn up any plans, because they needed to take care of this first.

From the public, Bill Fishner, adjacent property owner, asked that assuming the ZBA gives Mr. Fatta permission to tear down the deteriorated wood section and he is left with a masonry building that he is going to alter and he is still on a non-conforming lot and (2) asked if Mr. Fatta would then still need to appear before the ZBA with a set of plans for the home. G. Smith said (1) no, if Mr. Fatta is not going to add anything to the outside of the building or make the footprint larger, he is allowed to go ahead and reside the building, repaint the building, etc. and (2) if there is going to be one more foot of living space added after destruction, then Mr. Fatta will need to come back to the ZBA.

K. Hoopes said this a little sketchy now, because this is again, an alteration of a non-conforming building. Counsel said (1) the ZBA needs to take a stand on the question of, as a matter of policy, when the ZBA implements it so that the next alteration, even if it is merely the façade, will be required to come back. K. Hoopes said according to the strict reading, then yes, the applicant would have to come back. P. Kenyon asked if the ZBA would want the applicant to come back to incorporate a garage on the existing structure and B. Pfau said (1) painting the building is altering the building and (2) the ZBA needs to decide where it wants to stop this and (3) he feels it's going too far. G. Smith and M. Murray both agreed that for cosmetic changes, such as paint, garage door, etc. the applicant would not need to come back in front of the ZBA. Peter Fatta said only cosmetic changes are proposed—no structural changes. G. Smith said in his eyes, the applicant is okay. B. Pfau said P. Kenyon makes these decisions and P. Kenyon responded by saying she already has made the decision, which is that cosmetic changes can be made, for example a garage door, windows, etc. as long as the footprint is maintained, but he can't enlarge the footprint without a variance.

From the public, Ken Parker said (1) he put up two pieces of lattice work on the end of his deck, (2) his neighbor called P. Kenyon, M. Nittmann came to his house and he had to take down the two pieces of framed lattice work on the end of an existing deck on a house that stood there for 100 years and (3) he is asking for a level playing field.

K. Hoopes said it is P. Kenyon's decision and if Mr. Parker doesn't like her determination, he can appeal it. M. McComb said it sounds like the lattice is where something was where it wasn't before. G. Smith said he does not know anything about Mr. Parker's situation, so he cannot comment on it.

From the public, Bill Fishner said (1) the bottom line is that as far as they are concerned, it is a great improvement because the property is a disaster and (2) he feels if any major work is being done on a non-conforming structure, it should come before the ZBA and the ZBA should see the plans before anything is done. G. Smith said P. Kenyon will determine when the plans are brought to the Zoning Office, if they need to come before the ZBA.

No correspondence.

No County impact.

## RESOLUTION

The Zoning Board of Appeals received an application from Peter Fatta (V05-35) for an area variance as described above.

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

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #6 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance;

- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance, it will be to the positive;
- 3) The requested variance is not substantial, in fact the non-compliance is becoming less substantial as we speak;
- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, because the situation is as is.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by K. Hoopes and seconded by M. McComb, it is resolved that the ZBA does hereby grant approval for said project as presented. **All in favor. Motion carried.**

**7) V05-36 DELARM, MICHAEL.** For the construction of a proposed 9' x 19' addition, seeks area variance from Section 200-56A to alter a pre-existing non-conforming structure. Section 171.19, Block 1, Lot 83, Zone GB5000. Property location: 4935 Lakeshore Drive. Subject to WCPB review. Note: This variance, V01-04, was initially granted on March 19, 2001 and never acted upon.

G. Smith asked why the variance was never acted upon and Michael DeLarm responded by giving an overview and saying (1) the location is where he and his wife live and where they operate their gift shop, Lakeview Trading Company, (2) they want to tear off an old existing 9' X 12' porch and enlarge it to utilize the space for living quarters and to enlarge the gift shop area, (3) in 2001 the ZBA granted a variance, which they realized was only good for 1-2 years if an extension was filed for, (4) at that time, they weren't in a real hurry and were waiting, and are still waiting, for the Town of Bolton to figure out how their property could be hooked onto the Town of Bolton sewer, and (5) they wanted to do everything at once, but are at a point now where they need to do the addition.

T. DePace asked why the applicant is not hooked onto Town of Bolton sewer and Michael Delarm answered by saying (1) he is not sure, (2) his partner bought the property 10 years ago and tried unsuccessfully to get on the Town sewer at that point, because their understanding is that there was a moratorium, (3) 5 years ago, he bought the property from his partner and (4) his understanding is that Mrs. Rogers, who used to own the property, she didn't want to be on the Town sewer system and was never put on it.

G. Smith said (1) one of the problems the applicant is having in connecting to the Town sewer system is that on one side of him, the sewer system runs right through the parking lot across from House of Scotts and on the other side it is right next to the sidewalk to the

bank and (2) he thinks the Town isn't sure which direction to go when hooking the parcel to the sewer system.

K. Hoopes said the applicant has a septic tank now and Michael DeLarm agreed by saying, yes, they have a 100 year old septic system now. K. Hoopes said (1) he made the original motion, (2) doesn't see anything that has changed and (3) he is ready to make the motion again.

No public in attendance.

No correspondence.

No County impact.

## RESOLUTION

The Zoning Board of Appeals received an application from Michael Delarm (V05-36) for an area variance as described above.

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

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #7 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than an area variance, as the applicant is following the general shape of the structure, essentially filling in a void;
- 2) There will be no undesirable change produced in the character of the neighborhood, nor will there be any detriment created to nearby property owners by the granting of this variance;
- 3) The requested variance is not substantial, given the size of the building;

- 4) The request will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created.

The benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by K. Hoopes and seconded by T. McGurl, it is resolved that the ZBA does hereby grant approval for said project as presented. **All in favor. Motion carried.**

**8) V05-38 SWEET, KENIS & VICKI.** For the construction of a proposed single-family dwelling, seek area variance for deficient setbacks: 1) Front yard: 75' is required from the edge of the right-of-way, 29' is proposed; and 2) Shoreline 75' is required from the mean high water mark of the stream, approximately 36' is proposed. Section 213.13, Block 1, Lot 2, Zone RCM1.3. Property location: west side of Coolidge Hill Road, approximately 900' from Route 9N intersection. Subject to APA & WCPB review.

Kenis Sweet gave an overview of the project and said (1) they are seeking a variance because the piece of property is very narrow, (2) there is no way to build a structure and have it be 75' back from the scenic corridor on Coolidge Hill Road and 75' from Edmunds Brook, (3) their effort is to build a single-family home with an attached garage and basement and build it as a two-story building in an effort to cut down on the amount of disturbance and (4) the goal is to minimize the amount of impact.

T. McGurl asked if it is a modular home and Kenis Sweet answered yes.

K. Hoopes said (1) having visited the site, it is not only a narrow piece of property, but a steep piece of property, (2) Edmunds Brook is a year-round brook, (3) at this point stormwater should be looked at to not only protect the environment, but to protect the people from the environment, (4) it is a sensitive area, (5) these are very sizable variances, (6) the distance from the edge of the right-of-way at 29' is right up close and personal, (7) 36' from the high point of the stream is way too close and (8) there are several trees that would have to be dealt with.

Kenis Sweet said (1) several people have tried to buy this lot and have been rejected and (2) engineers recommended to the people to not buy the lot. K. Hoopes said (1) the applicant is not yet the owner of the lot, (2) he cannot overlook that this is self-created, and (3) in some cases, certain pieces of property are really hard-pressed to find a suitable place to build on. M. Murray said this lot originally belonged to the house below it and when it was split up, it was recommended that this narrow piece stay with it, but it was separated to make more money. K. Hoopes said (1) that was in 1967, before the APA, (2) this is usually seen in the privatization of a cabin colony and (3) he agrees that this is one that is going to have to be very special.

B. Pfau asked how large the house would be and Kenis Sweet answered by saying the footprint is 1100 square feet. B. Pfau said (1) this isn't a huge house, (2) the ZBA should see what the PB has to say about this before it basically makes the determination that this lot that has existed since 1967 is a useless residential piece of property and (3) the ZBA will be making the decision on whether this lot is buildable. The consensus of P. Kenyon and the ZBA Members was that the PB should check it out. M. McComb said (1) she thinks the topic of unbuildable lots should go to the PB for their thoughts, but not this particular application, (2) the PB has made that determination as far as establishing substandard lots, and (3) she was at a PB meeting where they swapped two lots at Chic's Marina where they created a new lot and basically said they would do the lot swap, but were not promising it was a buildable lot.

M. Murray said (1) when Mr. Deppe was involved, there was a suggestion made that a family propose a two-bedroom, one-bathroom house along with a very sophisticated septic system, which he would make a positive case for, but nothing bigger, because of the volume of water, (2) Mr. Deppe's opinion was that it wasn't an unbuildable lot, but a nearly an unbuildable lot, (3) very similar to this situation, in a nearby town (not in the Town of Bolton) where a house was put on a piece of property and he went to this site two years after the house was built, in the fall after the summer season and found there was sewage leaking in the brook and (4) he doesn't want to see that here. K. Hoopes said (1) another example currently is with the recent storms where land was vaporized and there is a house on New Vermont Road that is in dire straights that wasn't even really in jeopardy, (2) at this point he doesn't feel compelled to say yes to somebody, just because it is there and (3) he feels the topic of unbuildable lots should go to the TB, not the PB.

M. Murray said (1) the lot is not unusable, as it could be sold to a neighbor and (2) it is not a question that if a person can never get their money out of it, but a question of which way they want to get their money out of it. Counsel said (1) if this, hypothetically, was determined to be an unsuitable lot for any building, it still has some value, (2) the Zoning Code says that in that zone, the only permitted use is a detached single-family residence, so the only concern he is going to go over is the house, (3) it is possible to put a house on this lot, when you take into account all of the ZBA's concerns, and this might not be the house, (4) the problem is that it is a very narrow lot, which this owner has not created, (5) the plans have some weaknesses, including shoreline, which the APA will review if the ZBA decides favorably, (6) shrinking, changing, moving things around may make this a lot worthy of a variance some day and maybe this is not the plan, (7) the septic will not be able to meet the setback from the stream, which is a problem and (8) this plan is probably a plan that has lots of problems in it, but he is not in the position to say that includes all plans. M. Murray said he agrees that there may be a plan that would work, but from what he sees here, this isn't it.

From the public, Kathy Abu-Zeid, adjacent neighbor, said (1) her understanding is that the design will butt up very close to her property, (2) it wouldn't be in the center of the property, but closer to the edge which will be right in her view and (3) with the trees being removed the house will not fit the surroundings.

From the public, Melanie Ostberg, of Coolidge Hill Road, said (1) she has huge concerns about the water, as Edmunds Brook is a viable brook year-round and the water is moving and doesn't freeze over, (2) she has concerns with State regulations regarding the water and any kind of septic or holding tank that would be presented on this lot, (3) she has concerns because there is road construction on Coolidge Hill now and concerns with run-off into the brook and (4) she encourages the ZBA to investigate what the State regulations are before making any decisions at all.

M. Murray said the County does not have a right-of-way for the first mile of Coolidge Hill Road, because it was done on a handshake and is not binding, so therefore there isn't one. Kenis Sweet said he spoke with the County Highway Supervisor and he agreed it is not a wide right-of-way, but simply the right-of-way of what is currently in existence of the shoulder.

From the public, Dan Daniger, of Coolidge Hill Road, said (1) he has many concerns also, (2) in 1998 the lot was allowed to have a double-wide, but there were many concerns with viable septic capabilities that came right from the Zoning Office, (3) he agrees with all the storms, the Town of Bolton should have the right-of-way, (4) the lot is very narrow and it seems to be a substantial setback for something to be built there, (5) he believes any kind of system would need to be self-contained, because he has concerns about anything leaching into the brook, (6) he has cleaned up the area around the brook, found there is an old garbage pit on the crest of the hill that is extremely steep and no one knows what is below that, (7) his house is the original colonial that has been there for hundreds of years and since Jeff Tennant put the road in behind them last winter, he has not heard the owls in that inhabited the area, (8) he doesn't feel the Old Brook Forest should disappear from Edmunds Brook, (9) there is a concern for what goes into the brook and then into Lake George.

B. Pfau asked if any of the concerned neighbors have looked into buying the lot and Dan Daniger answered by saying (1) he is not sure if it should be a public right-of-way or a private lot, (2) the value has gone down, (3) there are some places that are just simply not usable to build a building on other than a barn or an addition and (4) the mistake was made when that lot was split off in the 1960s.

From the public, Mike Polyak, who owns the property below, said (1) he is concerned with the placement of the septic system in relation to his well.

M. McComb said if somebody knew when they bought a piece of property that it could not conform then she sees that as a self-created difficulty. Counsel said (1) it can go round and round, (2) that alone would not be the reason to grant the denial and (3) he sees that if this were a productive exercise on how to get a house on a very constrained lot, and if it came out with an approval, he thinks the only way that such an approval would withstand an APA review would be if the ZBA considered every possible or reasonable alternative and so far the ZBA hasn't. M. McComb said this plan has lots of problems.

Kenis Sweet said several of the other homes along Coolidge Hill Road are pretty close to the road and M. McComb responded by saying (1) yes, that excuse can be made, but you can look and always find someplace less compliant in Bolton Landing and (2) what the ZBA is trying to do is make new construction be more compliant. G. Smith said (1) he is really worried about the leach field and (2) the brook is downhill from that and he doesn't think it is going to work. P. Kenyon said the septic would require approval of the TB acting as the Board of Health.

G. Smith said he thinks the ZBA should make the motion on this variance and send it to the TB to get their thoughts on if they think it is a building lot afterwards. Counsel said (1) he is not comfortable with that, (2) the ZBA should make the motion and make the decision, (3) he doesn't think the ZBA needs to refer it to the PB and (4) as for the TB, it is not their call and (5) hypothetically, if this is a no go, he thinks it sends another resounding message that the ZBA has clarified the notion that this might not be a building lot.

From the public, Chris Navitsky, Lake George Waterkeeper, said (1) he wants to express the important of the stream corridor, which he thinks K. Hoopes was strong on, (2) the LGPC is doing a study right now, and (3) it is important to keep that 75' corridor along there for water quality and safety issues as everyone has seen in the last week.

The following correspondence was received:

- Letter from Chris Navitsky – concerns, addressed earlier in this agenda item discussion
- Letter from Rodney and Christine Klami – opposed – read into record
- Letter from Raymond Oliver – opposed

No County impact.

## RESOLUTION

The Zoning Board of Appeals received an application from Kenis and Vicki Sweet (V05-38) for area variances as described above.

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

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #8 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit sought by the applicant cannot be achieved by other means feasible for the applicant, but that does not mean the PB needs to grant this;
- 2) There will be undesirable change produced in the character of the neighborhood and will be detriment created to nearby property owners by the granting of this variance, because of the particular steepness and narrowness of this lot and the location of a year-round stream on the property well within the setback required to build this house;
- 3) The requested variance is substantial on many grounds, as it cannot meet septic setbacks and it seems problematically close to the road, the stream and the steep ledge of land;
- 4) The request is likely to have adverse effects or impacts on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is self-created.

The benefit to the applicant does not outweigh any detriment to the health, safety and welfare of the neighborhood.

Now, upon **motion duly made** by M. McComb and seconded by M. Murray, it is resolved that the ZBA does hereby deny said project as presented. **6 in favor. 1 (B. Pfau) abstained. Motion carried.**

#### **9) To schedule a workshop meeting to address timber-harvesting regulations**

This item was heard after #10.

M. McComb said (1) she had a discussion with a builder who is very eager to have this subject hashed out, (2) this item has been hanging for quite a while and a meeting should be done before Labor Day and (3) asked if there would be limitations on a required quorum. Counsel said there would be no quorum limitations.

K. Hoopes said (1) he would like to offer to get a woodlands manager from Finch Pruyn to be the keynote speaker, since he has a lot of experience with this and deals with surrounding towns and (2) he feels the Town should adopt a program rather than build one from scratch. The ZBA was in favor of these ideas.

K. Hoopes said (1) New York State recently passed a right-to-forestry law, which is similar to the right-to-farm law that says the Town cannot deny or make it excessively

awkward to try to forest and (2) he feels the Town should hire its own forester, like it has a Town Engineer, who could answer questions and give recommendations.

The ZBA set tentative dates of Tuesday, July 12, 2005 at 6:30 pm at the Bolton Town Hall for a workshop meeting to address timber-harvesting regulations. A secondary date would be Tuesday, July 19, 2005 at 6:30 pm at the Bolton Town Hall. P. Kenyon said she would notify the PB of the dates chosen.

**10) V05-10 DiNAPOLI, JOSEPH.** For the construction of a proposed single-family dwelling, seeks area variance for 1) deficient density: 23.40 acres required, 1.92 acres exists; and 2) deficient shore frontage: 306' required, 180' exists. Section 200.10, Block 1, Lot 2, Zone RM1.3. Property location: 4366 Lakeshore Drive. Known as Porter's Cottages. Subject to WCPB & APA review. This item was approved by the Zoning Board of Appeals on April 18, 2005 and reversed by the Adirondack Park Agency on or about June 9, 2005.

G. Smith said (1) the APA reversed the ZBA's decision in granting the variance to Porter's Cottages, due to not enough information, (2) the APA was concerned with the leach field and (3) the record does not explain as to how much of a personal benefit this would be to Joseph DiNapoli as pertaining to where he lives now and why it would be much better for him to live on-site.

K. Hoopes said he strongly suggests Mr. DiNapoli re-submit the application. Counsel said (1) he tried reading the APA letter several times, (2) his opinion is that eventually the APA comes around to the right conclusion, that this application deserves to be overturned, but they come up with the wrong analysis, (3) he will show how when the APA comes up with the wrong analysis, Mr. DiNapoli can come up with the right application and (4) if the ZBA sticks to the five criteria, chances are that Mr. DiNapoli can have a plan to comply and that it would not need all the variances first thought he would need.

Joe DiNapoli gave an overview of what he'd like to do by saying (1) in all of the buildings he has, he has five buildings that are duplexes, (2) he wants to take the five duplexes and knock them down into singles, (3) he wants to preserve the buildings and (4) he has 11 footprints and 17 units and (5) the confusion is between buildings and units, as he has 11 buildings, not units.

Counsel said (1) in the first instance, Mr. DiNapoli was asking for a density variance for an additional dwelling, which the APA will very rarely allow and (2) if Mr. DiNapoli took one of his 11 buildings and no longer considered it a rental, but its use or utilization the thing he is going to convert into a home for himself on the premises, then Mr. DiNapoli has not changed the density in any way. Joe DiNapoli asked if he would need to then conform to the number of square feet that he would be taking out of service and Counsel answered by saying, no, because Mr. DiNapoli would have to come back before the ZBA with the 200-56A application that he would wish to alter a pre-existing non-

conforming thing and Mr. DiNapoli would not need to go back to the APA for a density variance, but may for a shoreline variance depending on the location of the dwelling.

K. Hoopes said he has a problem with the APA conclusion because (1) they haven't visited the site, (2) they made assumptions, (3) they ignored certain things that the ZBA did as a board, in claiming that he didn't get enough information, (4) something broke down that Joe DiNapoli had a hardship, as he is trying to run a business there and (5) it is treating density of pre-existing non-conforming commercial operation which happens to now be a residential area doesn't seem fair, but seems to be leaning in the direction of putting Mr. DiNapoli out of business. M. McComb said (1) she agrees there are certain things in the letter that don't apply, but there are several cabin colonies with owner residences on site that are located closer to the road, not to the lake, (2) she has no problem if Mr. DiNapoli wants to convert one of these into his residence, but doesn't feel he should have it all and more, and (3) she doesn't feel it is unreasonable to give up a rental for a residence.

Joe DiNapoli, Counsel and ZBA Members continued the discussion of and reiterated several suggestions of what the applicant can hypothetically do with his property to conform to the regulations and the procedures that would need to take place.

**OTHER BUSINESS:**

G. Smith said it was brought to his attention that some Town meeting attendees have expressed concerns of visibility at meetings and have suggested an overhead projector. The ZBA consensus was that the procedure in place now works as is and the Town doesn't need to invest in a projector at this time.

Meeting adjourned at 9:05 pm.

Respectfully submitted by,  
Jennifer Torebka  
Recording Secretary  
07/07/05