

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, March 19, 2007
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, Jeff Anthony, Tony DePace, Kam Hoopes, Meredith McComb, Bill Pfau, Tom McGurl, Jr., Town Counsel Michael Muller, Zoning Administrator Pam Kenyon

Absent: None

Chairman Greg Smith opened the meeting at 6:30 pm by asking for corrections to the February 26, 2007 ZBA minutes.

1. K. Hoopes said on page 8, last paragraph, sentence six should read as follows: "Counsel said that (1) he is not saying that—he is saying that it is not a choice on his or the ZA's or the *CEO's (Code Enforcement Officer's)* part—they must follow the rule of Bethon...".
2. K. Hoopes said on page 20, third paragraph, last sentence should read as follows: "K. Hoopes said that he recalls it started out as *tent* platforms and things have progressed."
3. M. McComb said on page 2, last paragraph, sentence two should read as follows: "M. McComb said that (1) past practice has been that a structure that *has* a variance is not compliant—it is legal...".
4. M. McComb said on page 5, second paragraph, sentence two should read as follows: "... (5) she is in agreement with G. Smith and K. Hoopes that if you have a lot and you build something on it that is not compliant with the setbacks, if you get a variance for that, the question then becomes whether it then does or does not mean that the entire *legal* building envelope is also available to you."

RESOLUTION

Motion by Tony DePace to approve the February 26, 2007 minutes as amended. Seconded by Kam Hoopes. **Five in favor. Two recused** (Jeff Anthony and Bill Pfau, as they were not at that meeting). **Motion carried.**

- 1) **V07-08 MILVANY, HELEN.** To demolish and rebuild pre-existing non-conforming single-family dwelling, seeks area variance for deficient setbacks. 1) Front: 30' is required, 9.24' is proposed, and 2) Shoreline: 50' is required, 35.76' is proposed. Section 186.10, Block 1, Lot 21, Zone RCH5000. Property Location: 23 Sunrise Shores Loop off of Route 9N. Subject to WCPB and APA review.

Jack Milvany, representing Helen Milvany, gave an overview and said that (1) he is proposing to make a change to a small nonconforming existing camp by increasing the size from 1,375 square feet to 1,452 square feet—a 77 foot increase, (2) they reduced the size of the overall structure from the original proposal, and (3) they have moved the footprint of the camp slightly by taking 1 ½ feet off of the camp on the lakeside and by narrowing the deck on the lake side, which keeps the existing deck and camp structure at the same distance that it currently is from the lake, so as proposed it would not be any closer to the lake than it is now.

G. Smith asked if it is correct that they took 2 feet off the deck and 1 ½ feet off the camp. Jack Milvany replied by saying (1) yes, and he also took 6 inches off the one side to move it farther away from the road and (2) this new plan takes the camp down to 1,003 square feet, so it reduces the square footage of the actual camp in addition to the reduction in the deck—it is reoriented in an effort to move as far away from the lake as possible.

T. McGurl asked if the roof design would be similar to what currently exists and if the pitch direction will be changing. Jack Milvany said that (1) it is correct that the height is not getting any higher and (2) the gable end will rotate 90%. T. McGurl asked if the neighbors will be looking at a wall rather than the slope of the roof and Jack Milvany said yes, depending on where you stand and who is looking at, some people will be looking at a gable end versus the pitch of the roof.

P. Kenyon asked if the camp is presently seasonal and Jim Milvany said yes, and it will have to remain seasonal.

No correspondence.

The WCPB determined there was no county impact.

B. Pfau asked if the original project was 1,800 square feet plus the original proposal and Jack Milvany said that the original proposal was 1,814 square feet between the camp and the deck. B. Pfau asked what the last proposal was and Jack Milvany said that (1) the camp itself was not reduced, (2) he took probably about 140 square feet off the deck, (3) he has now taken a fair amount of additional space off the deck plus the additional space off the camp and (4) this proposal equates to a 6% increase over what he has currently. T. McGurl said that he is more comfortable with the size of this floor plan now than in the applicant's previous two plans, but he is a little concerned with the pitch of the roof changing, because anything behind the applicant's camp will look right at the back of the applicant's house—unless they are up on the hill directly behind him—as more of a wall than kind of a sloping structure. Jack Milvany replied by saying that (1) his house actually sits down pretty far, so if there is a house behind him you are really looking over the top and (2) with a gabled end, you actually have more of a view of the lake in that direction off the edges as opposed to today where you see nothing because you are looking at the ridgeline. T. McGurl said that in the near future you are still going to see a higher wall as opposed to right now where it is a one-floor wall—it is now going to be a floor plus. K. Hoopes said that (1) the nearest neighbors that would be affected view-wise are all elevated above the house, so they are looking at the top of the roof no matter which way you face it, (2) to actually get that up close and personal view is pretty much on the right-

of-way as you drive by, (3) he has never really had a problem with this plan and it just keeps getting smaller, (4) he thinks it is an admirable endeavor to try to bring this thing into the 21st century and (5) he doesn't fault the applicant for asking for a little bit more space—if the applicant was going in the other direction, he (Hoopes) would find more shocking.

M. McComb said that (1) she finds herself going back to why there isn't an arrangement for the septic. K. Hoopes said that P. Kenyon mentioned they are still working with the engineers on this item. G. Smith agreed and said that is what was reflected in P. Kenyon's staff notes. M. McComb asked if the plan still involves blasting and sinking it into the ground and P. Kenyon answered by saying that she doesn't know what the plan is right now, (2) she met with the engineers, they are going over ideas, but no decisions have been made at this point in time and (3) chances are that the applicants are going to require a variance from the Local Board of Health, no matter what they choose to do, but she is not prepared to talk further on the subject at this time.

B. Pfau said that he agrees that the further reduction in the size of the project and the fact that it is not moving closer to the water are positive aspects. G. Smith asked if it is correct that it is going to stay the same distance from the water that is now and Jack Milvany said yes.

From the public, Pearl Rockwell, adjacent camp owner, said that a major concern of hers is any blasting that may take place, because there is a considerable amount of ledge rock all the way up the hill even beyond her location. K. Hoopes said that he believes the Sunrise Shores Board went over the plan very, very carefully to the point where they have the applicant actually posting a performance bond on almost all the aspects on this, especially concerning the blasting and any collateral damage to anybody else's property. The ZBA members provided a copy of the letter written to the applicants from Sunrise Shores Board President Stuart Moore referencing this specific topic to Pearl Rockwell for her review.

M. McComb said that as before, she has not been in favor of approving something where something else needed to be approved after it, and considering the other camps on fragile concrete blocks nearby, if there is a specific solution to what she agrees is a septic system that needs a solution of some kind, then she wouldn't have a problem with this much expansion on it, but before it is clear if that is going to be another whole amount of construction, she guesses that she would not be in favor of it.

P. Kenyon said that the Town Board acting as the Local Board of Health in the past has not wanted to deal with septic issues on what requires a variance for septic until the ZBA members make a decision on the variances they have before them. Counsel said that (1) there is a catch 22 situation, (2) the preference is for the ZBA to go first, (3) it is entirely possible that if the ZBA offers an approval to this applicant, it is in the realm of possibility that the applicants may not have a plan that awards them approval at the Town Board level for their non-conventional or unconventional septic system or holding tank—that would be the Local Board of Health's call, not the ZBA's call. G. Smith asked if it is correct that until that is all up to specifications that the applicants can't get a certificate of occupancy or a building permit and Counsel said that the applicants aren't going to get a certificate of compliance, which is their ticket to getting a building permit, which won't happen until all is done first.

From the public, David Rockwell, neighbor, said that (1) on the current plan in terms of the definition of the orientation of the camp with respect to the water, he thinks the changes Mr. Milvany has made cut back from the beach-side from the lake and there has been no withdrawing back from the water on the dock-side, just from the beach side, so sometimes within their group it has been difficult to see how the layout is and where the changes will most impact and (2) on the diagram it shows a stairway from the left side of the camp as you look out to the water (indicated on the plan as being optional), which would most likely involve going through some substantial rock—he talked with Mr. Milvany about this and it was understood the stairway was put on the plan as something possible to consider, but not a definite, so they consider that the stairway at this point is not part of the plan that is going to go ahead, because that would involve rock removal. M. McComb said asked if the stairway is actually part of the plan to be approved and Jim Milvany said that the stairway shown on the diagram is just representative of one way to get down underneath the deck—where it actually goes is to be determined on site. G. Smith asked if it is accurate that there is uncertainty as if the steps will be going where they are located on the plan and Jim Milvany said that (1) yes, that is what it says on the plan—it is kind of a feel thing, as they are trying to make sure there is a way to get down underneath and (2) if they can't do the stairs, they won't do it, but they were looking for a safer approach than the slippery rocks that are there now. K. Hoopes asked if this is anything the ZBA members need to concern themselves with and G. Smith said yes, he believes so, because the ZBA can't just give the applicant an open-book as to where they want to place the stairs. K. Hoopes said that if the stairs do have to be moved and require a variance, the applicants have to come back for a variance. Jack Milvany said that it is loose rock in that particular spot that could be taken out with a backhoe. G. Smith said that the ZBA could amend the variance to make the change in the steps if their exact location is not known at this time, which would require the applicant to come back before the ZBA for a variance, but not a new application, as has been past practice of the ZBA in other cases.

M. McComb asked if this is still about a 20% increase in the size of the entire structure and Jack Milvany said no, it is a 6% increase—the entire structure went from 1,375 to 1,452 square feet. G. Smith asked if it is 201 square feet larger than what is existing including the decks and Jack Milvany said no, the camp itself is going from 802 to 1,003 square feet and the deck is being reduced in size. M. McComb asked if it is then a 20% increase in the camp and something of a reduction in the deck and Jack Milvany said yes, so it is a 77-square-foot increase overall. T. McGurl said that he is fine with the footprint, but is still hung up with the roofline.

G. Smith said that the Sunrise Shores Association gave the applicant the okay last month and Jack Milvany said that with this reduced plan, he still has the go ahead form the Sunrise Shores Association. G. Smith noted that the applicant removed the office on the interior and turned it into a bathroom/facility room on the third floor, so it no longer looks like a third bedroom and Jim Milvany said yes, the fact that the camp itself is smaller, it is not possible.

G. Smith asked the height difference in this proposal from the old one and Jack Milvany said that the height of the roof is exactly the same, but it is just changed around. M. McComb asked the height from the deck to the peak of the roof and Jack Milvany said that it is probably

13 or 14 feet, because the plan shows 23 feet 9 inches from the bottom, so it is about 10 feet up to the deck.

RESOLUTION

The Zoning Board of Appeals received an application from Helen Milvany (V07-08) 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 #1 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, these are all dimensional issues;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, that he can see—it will be an improvement on a building that has fallen a little bit on hard times;
- 3) The request is not substantial, especially given the open space up there;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, nothing has been established to that effect;
- 5) The alleged difficulty is not self-created, because he thinks time has had its way with this building and it is time to freshen it up.

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

Now, upon motion duly made by Kam Hoopes and seconded by Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented. **Tom McGurl and Meredith McComb opposed. All others in favor. Motion Carried.**

Note: ZBA member Tony DePace recused himself from the ZBA for the following item, as he is the applicant.

2) V07-09 DEPACE, ANTHONY & GAIL. To alter pre-existing, non-conforming structure. Specifically to attach a 10 ft. x 13 ft. proposed carport on the north side. Seeks area variance for deficient setbacks. 1) Shoreline; 75 ft. is required, 13 ft. is proposed. 2) Side; 15 ft. is required, 3 ft. is proposed. 3) Front; 50 ft. is required from the edge of the right-of-way on Braley Point Road, 10 ft. is proposed. 4) To alter a pre-existing, non-conforming structure in accordance with Section 200-56A. Section 171.08, Block 1, Lot 11.2, Zone RCM1.3. Property Location: 30 Braley Point Road. Subject to WCPB and APA review. *Note: This is an amendment to V05-59.*

G. Smith asked if the motion goes through if it could be an amendment to the previous variance and Counsel said yes, based on the same type of findings.

Tony DePace gave an overview and said beyond the building (barn) they are working on right now there is a Quonset hut that he proposes to take off the property and replace it with a carport attached to the building, which would look nicer on that side of the building to the neighbors to the north.

K. Hoopes asked if the Quonset hut was moved. Tony DePace said that (1) he moved it two weeks ago to the back side of the house, because they had a new service put in so it had to be moved to access the area and (2) right now it is partially on his property and partially on Keeler's property. B. Pfau asked if the Quonset hut location was at the north end of the building and Tony DePace said yes, it had been for the last eight years. K. Hoopes said that with the new ruling on temporary structures, Tony DePace is being a good citizen coming forward and bringing his temporary structure into a permanent one. T. McGurl said that it would fit in and look a lot better. Tony DePace said that it would actually take up less space, because the Quonset hut was right on the property line and the proposed carport would be 2 feet off the property line and it could be further away from the brook also. G. Smith asked if it is accurate that if this is passed then the applicant will get rid of the Quonset hut and never ask to have it on his property again and Tony DePace said yes.

G. Smith asked if the applicant would be incorporating some type of stormwater control with this proposal and the rest of the building and Tony DePace said yes. G. Smith said this would have to go before the APA and that is something they will look for as well.

The WCPB determined there was no county impact.

B. Pfau said that he was assuming that it would be easier to control water coming off the proposed carport roof than it would be flowing over the Quonset hut and Tony DePace agreed. M. McComb said that (1) Tony DePace told her that he would have the tilt of the roof of the carport angled as so it (the stormwater) goes away from the stream, as opposed to now where the stormwater goes down off both sides of it (the Quonset hut), (2) regarding the difference in this proposal as opposed to Mr. English's, request to replace a Quonset hut with a garage is that this is a carport and not a whole building on it and (3) there was a 30 foot expansion on the

original structure that went in and she does have a question as to whether or not underneath the overhang on the opposite end of the building there is room to park two cars underneath that and whether it is appropriate to add further storage on this lot. B. Pfau said that it is important to remember that the Quonset hut will be leaving the lot. T. McGurl said it in not adding, but reorganizing. M. McComb said that one thing Tony DePace told her is that the plan is to landscape and Tony DePace said that (1) when the barn was there with just the guest quarters up there, the whole lot was just red stone gravel and (2) when he is done he will not have as much parking area because he is going to landscape the area between the barn and brook with shrubs and bushes, etc. (there won't be any trailers or snowmobiles down there) which would be more control of the stormwater.

Tony DePace said that he is not sure where M. McComb got the 30 foot expansion from and M. McComb said she pulled it out of reading the minutes on the first thing. Tony DePace said that they are not enlarging the building twice as much, they simply put a 20 X 28 addition upstairs. M. McComb said (1) that was based on the figures and (2) on one of the maps she has, there is a dotted line that is the area that would be landscaped. Tony DePace pointed out on the map the area that would be landscaped and said that (1) there is room to put two cars underneath the carport, but he has always had two cars underneath that before plus several on the left hand side and (2) there won't be any more vehicles there than there have been before.

M. McComb said that (1) she thinks that the elimination of the impervious surface next to the stream on the streamside of the building as a whole is a big improvement and (2) the applicants have added stormwater along that building. G. Smith agreed and added that it is a good-sized area between the shed and the stream, which would be a huge improvement. Tony DePace said that's why he had several recreational vehicles there before, but with this proposal, that isn't going to be there anymore and (2) the septic system was on the corner, but it is not there now because it is into a brand new septic 300-400 feet away. G. Smith said that is another big plus. M. McComb said that in theory she wouldn't be in favor of it, but the particulars of this situation and the plans for the property seem to her to make it a good solution.

No correspondence.

No public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Anthony and Gail DePace (V07-09) 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 #2 of the agenda.

The Board makes the following conclusions of law:

- 1) There will be no undesirable change in neighborhood character or to nearby properties, there have been no objections from any neighbors;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, because the original house now does not meet setbacks from the brook;
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, there will be improved stormwater conditions and shrubbery will be located between the house and the brook;
- 5) The alleged difficulty is not self-created.

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

Now, upon motion duly made by Bill Pfau and seconded by Kam Hoopes, it is hereby resolved that the ZBA does hereby approve the variance request as presented with the following condition: The Quonset hut is to be permanently removed from the property.

All in favor (Tony DePace recused himself as he was the applicant). Motion Carried.

Although not a condition of approval, it was agreed upon that stormwater controls would be implemented and landscaping would be incorporated between the house and the brook.

Meeting adjourned a 7:16 pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
03/20/07