

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, June 16, 2008

Present: Chairman Greg Smith, William Pfau, Tom McGurl, Jr., Kam Hoopes, Tony DePace, Meredith McComb, Jeff Anthony, and Counsel Michael Muller.

Absent: Zoning Administrator Pamela Kenyon.

The meeting was called to order at 6:35 PM.

G. Smith asked if there were any corrections to the May 19, 2008 meeting.

1. M. McComb, with regard to Leslie Russell (V08-22), page 5, 3rd to last paragraph, the last sentence should read "Don Russell stated yes and that there may be a section where he has to go for a deeper frost wall and will probably have more foundation exposed in the back.

Motion by Tony DePace to accept the May 19, 2008 minutes as corrected. **Seconded by** Tom McGurl, Jr. **All in Favor. Motion carried.**

- 1) **V08-25 ASHBY, BRUCE.** Represented by Chris Gabriels. To alter a pre-existing non-conforming dock, specifically to construct a 20'6" x 47' boathouse, seeks area variance to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 141.00, Block 1, Lot 9, Zone RL3. Property Location: 5952 Lake Shore Drive. Subject to WCPB and APA review.

Greg Smith stated that there is no WC impact.

Chris Gabriels stated that the dock is conforming and meets all of the Town's rules and regulations. However, there are some stairs leading from the house which do not meet the setback to the shoreline and the access to the boathouse will tie into those pre-existing stairs. Kam Hoopes stated that presently any change to a non-conforming structure has to come before the Board. He stated that they are trying to work that out at the re-zoning committee level, but in the meantime they are painting with a broad brush. M. McComb asked if the steps and walkway were 100 sq. ft. Chris Gabriels replied yes. G. Smith stated that the walkway is considered part of the structure and that is what makes the dock non-conforming.

M. McComb stated the following in favor of approving the application: 1) there is a safety issue with not having stairs; 2) it seems to be a minimal approach to the project because large landings are not being added within the 75 ft. setback. K. Hoopes stated that they are not approving the stairs, only the boathouse. Chris Gabriels stated that he could build the boathouse with new stairs, but he would rather utilize part of the structure that already exists and that is why he is before the Board. K. Hoopes stated that he was concerned that could show that it is self-created and that it could be done another way. Chris Gabriels stated that what he is suggesting is to do less construction, which he believes is part of their criteria for consideration. G. Smith agreed and stated that it would make more sense to use what is pre-existing than to add extra. K. Hoopes agreed and stated that this is a very favorable project.

RESOLUTION

The Zoning Board of Appeals received an application from Bruce Ashby (V08-25) for an area variance as described above.

And, due to notice of the public hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning 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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, there are boathouses all up and down that shore.
- 3) The request is not substantial; this is not an increase in the dock system, it is just a covering of that dock.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it is essentially keeping the rain water off of the lake,
- 5) The alleged difficulty is not self-created, there is a dock and they want to put a boat house over it. It is an allowed use.

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

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

- 2) **V08-26 O'CARROLL, JOHN & KAREN.** To enclose existing 26.6' x 17' deck, seek area variance for 1) a deficient shoreline setback: 75' is required from the mean high water mark, 32' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-56A. Section 200.18, Block 1, Lot 5, Zone RM1.3. Property location: 4206 Lakeshore Drive. Subject to APA & WCPB review. NOTE: This variance was previously approved on July 18, 2005 under V05-46 but never acted upon.

Greg Smith stated that there is no WC impact.

John O'Carroll apologized for taking the Board's time again. He stated that they thought they were doing everything right on this since they came before the Board two years ago. A year after approval they were having difficulty getting contractors and they pulled the C of C. He stated that they got the approvals from the APA and they lined up a contractor to begin, but found out that by the time they pulled the C of C the actual approval had expired and they did not know. He stated that their request has not changed and that they again wish to replace the existing deck which is falling down in the existing space and keep as much of the shrubbery as possible and enclose it with a screened in porch.

K. Hoopes stated that this is mostly a formality. They granted this variance before and there has been no change in it. He asked if there were any changes in circumstances. John O'Carroll replied no. Greg Smith stated that one of the previous conditions is that they cannot enclose this and they have to leave it as a screened porch. John and Karen O'Carroll agreed.

K. Hoopes asked if they approve this would they do it with the full balancing act. Counsel replied that they could use the original that determined every factor in V05-46.

M. McComb stated that she still feels that it is a walking of the house to the shore and the next owner may want an open deck there. She stated that they have had many cases where one deck gets enclosed and then there is a proposal for another deck. She stated that she stands by her objection to it the first time around. W. Pfau stated that he also voted against this application in 2005 and will remain opposed tonight. G. Smith asked if M. McComb and W. Pfau would be agreeable to adding a condition that no further decks would be added. W. Pfau stated no and that he was opposed to the removing of the original condition to build the deck back in 1985. M. McComb stated that a condition of approval in 1985 was that they could not enclose the deck. W. Pfau stated that is what he objects to. M. McComb stated that putting a condition that they cannot enclose it, considering the history, doesn't really seem to be worth much. W. Pfau stated that his reasoning was that the applicants agreed to the condition not to enclose the deck when they built the deck within the setback and he doesn't feel that there was a good reason given to remove the condition. K. Hoopes stated that he supported the applicants at the time because this was essentially a total rebuild of the house and in that case he felt they were erasing the platform of the previous condition and starting with a blank slate. He stated that there is a similar footprint and area coverage, but a different profile. W. Pfau stated that he understood K. Hoopes point, but he still felt that the deck was added on in 1985 and there is a difference between built in the setback and an enclosed structure with a roof on it in the setback. M. McComb stated that there was an addition that was enclosed and then a deck was added with the condition of not enclosing the deck and rather than tidying it up, it is an extension of this area of the structure to the lake. It is not filling in a nook, in fact it will create a nook to be filled in with a future deck possibly.

Karen O'Carroll stated that 1) they enjoy sitting outside but they cannot because the bugs are ferocious and 2) they are next to a commercial property, Chelka Lodge, to the south. Chelka Lodge serves breakfast every morning on their deck which is right next to them and they have no privacy to enjoy their deck. From a visual impact she feels that it will improve the area because there wouldn't be umbrellas or towels hanging out on the deck. John O'Carroll stated that they have no intention to add another deck. He stated that they renovated the boathouse

that was there a couple of years ago which includes a deck that overlooks the lake now and that is their primary deck. The deck attached to the house is literally falling down. They have no intention of enclosing it; it is just a summer porch to get away from the bugs and enjoy the lake. He continued that they intend on keeping the 25 year shrubbery around it and just want to improve the property. He stated that they came before the Board 2 years ago in good faith and nothing has changed other than that they made a mistake in letting the approval lapse.

RESOLUTION

The Zoning Board of Appeals received an application from John and Karen O'Carroll (V08-26) for an area variance as described above.

And, due to notice of the public hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning 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 could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There still will be no undesirable change in the neighborhood character or to nearby properties, the new architecture and fresh construction of the house will be an improvement,
- 3) The request is not substantial; it is a 12' x 27' deck, especially considering the whole project and footprint is not moving any closer to being non-compliant as far as being closer to the lake.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created, the applicants bought the house and they are trying to improve it.

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

Now, upon motion duly made by Kam Hoopes and seconded by Tom McGurl, Jr., it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: That this screened-in porch always remains a screened-in porch and is never to have windows or heat. Meredith McComb and William Pfau opposed. **All others in Favor. Motion Carried.**

- 3) **V08-05 ROE MANAGEMENT.** Represented by James Roemer. To alter pre-existing non-conforming single family dwelling/docks, specifically to construct a 440 square foot sundeck and increase the length of the docks, seeks area variance to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.11, Block 2, Lot 1, Zone RCM1.3. Property Location: 1 Braley Point. The WCPB determined no county impact. Subject to APA. This variance was approved by the Board on March 17, 2008 and reversed by the APA.

Greg Smith stated that the reversal is because the APA does not like that this is connected to the applicant's non-conforming house and that the deck is going to be at the same height as the house. The APA feels the deck is an extension of the deck that is physically and functionally attached to the house and it increases the non-conformity of the house. W. Pfau stated that he thought the APA reversed it because they could not show practical difficulty. K. Hoopes stated that Zoning Administrator Pam Kenyon is determined that this deck is not attached to the house and the APA can't really use that non-compliance in their favor. However, he spoke with Jeff Anthony who says that it doesn't matter if it is attached or not, it is still going to be a structure and the APA can hold that card. Counsel stated that he spoke with Brian Grisi of the APA about this application. In that conversation Brian Grisi stated that although he could not speak for the APA in terms of what they will ultimately decide, this matter must go back to the APA and he encouraged the ZBA and applicant to give considerable input on the issue of granting the minimum relief necessary to alleviate the hardship. Counsel stated that the APA is now aware that the structures are not connected and there is a 2 foot separation between and when it goes back to the APA it will be viewed in a different light. However, should this Board grant the requested relief tonight be prepared that the APA could still, on its appeal, reverse it. Counsel stated that if there is some expansive discussion on the minutes of this hearing with respect to these issues perhaps that would be considered sufficient factual evidence for the APA

K. Hoopes stated that the applicant is expanding two of the existing docks. The applicant is extending the docks because the water is too shallow near the shore that there barely is any water. He continued that if the docks were to be any smaller the sundeck would fall into the lake.

M. McComb stated that she would like to address some of the APA's misconceptions of reading the record which may have impacted their decision. She asked the applicant if the structure next to the water was a single family dwelling or a resort. James Roemer replied that it is a bed and breakfast. M. McComb stated that the APA thinks that this is a home adding on to the deck but actually it is a tourist accommodation. She stated that Bolton has a comprehensive plan that says that we value our tourist industry and we should try to promote it by helping business owners with things that make their operation more feasible. M. McComb asked Counsel if the APA is against building a sundeck or because it is part and parcel of the non-conforming structure. Counsel stated that he did not know. M. McComb stated that she visited the property and the space between the house and the proposed structure is larger than 2 feet. James Roemer stated that it is approximately 5 feet from the bulk head to the existing porch. He stated that there are stairs that are closer but there is no egress to the existing sundeck. He stated that proposed stairs go away from the existing sundeck and he is not in favor of any egress from the existing porch to the proposed deck. He continued that there are separate units in the building and the front end of the building use the existing sundeck and the

other accommodations in the other parts of the building would use of the proposed sundeck. Counsel stated that this proposal facilitates separate occupancies for reasonable aspects of privacy.

M. McComb stated she thinks that in their conclusions of law in granting the variance, conclusion # 1 states that the dock and proposed deck are part of the structure that does not meet setbacks from the lake. However, in point of fact they are two different structures and that may have been their error in lumping them together and the APA looks at this and sees one expansion of a non-conforming structure. She stated that they also discussed that having the docks at the same height would have less visual impact and she thinks the APA read this as saying it is continuing from the house and it is connected. Counsel stated that Brian Grisi also mentioned that the proposed deck had a high profile off the actual water line at 12 feet. Counsel urged the Board and applicant to discuss why the height is necessary. James Roemer stated that he could lower the deck but the aesthetic appeal would not be there. Counsel stated that the applicant at the minimum is asking to have an aesthetically pleasing look to it and that is one of the requirements. M. McComb stated that she felt that the ZBA was trying to establish that the height the applicant was proposing would have less of a visual impact than if it were lower. K. Hoopes stated that they need to focus on the fact that this is not part of the non-conforming structure and this is part of the dock complex and it is not subject to the same scrutiny that it would be if it were coming off the structure.

M. McComb admitted that the last time they reviewed this she did not look at the property but did look this time and noted some additional things that are in favor of the project: 1) She stated that because of the topography of the applicant's lot, it puts him substantially below the closest house. Additionally, there is substantial screening between that house and this structure which also minimizes the visual impact. 2) When the Board determined that the request is not substantial and we neglected to say that the proposed sundeck does not cover the entire length of the proposed docks. The proposed sundeck goes out only 20 feet, which is less than half the length of the dock and is quite a minimal approach to doing this. The sundeck is only over two of the docks and not the whole dock complex and in her opinion it does meet the criteria of the applicant seeking the minimum relief necessary. 3) The tourist industry is important to the Town of Bolton Landing and she is happy to see someone putting money into maintaining a tourist accommodation while others are trying to convert to residential homes. She feels this project deserves their support based on Bolton's comprehensive plan

K. Hoopes stated that he feels that they are making their same argument when dealing with APA reversals and the use of practical difficulty and unnecessary hardship, language which they have been told not to use as criteria. Counsel stated that the Board needs to go through their regular discussions and findings of fact, which he feels they are on track, but warned that it may not be enough. The APA still uses the older standard of practical difficulty or unnecessary hardships and he encouraged the Board to give their explanation as to what constitutes the practical difficulty or unnecessary hardships for this project. He stated that they need to make some findings and conclusions that the APA will support. M. McComb stated that they also need to correct the record because their motion states that it is a home and it is not a home. Counsel stated that she was correct and Brian Grisi acknowledged that but it should be part of the record tonight. K. Hoopes stated that there are practical difficulties with the applicant's present set-up. The applicant is proposing to alleviate the hardship of shallow water and no dock space with this project, but they are precluded from using that kind of

language. Counsel stated that in all fairness to Roe Management's application this has to be properly addressed. They have to struggle with the possibility that there will be a review by the APA and they will need to see that this record has been substantiated by facts that constitute practical difficulty. For example, Counsel read from the APA reversal, "Replacement of existing docks with new ones without the addition of the sundeck would be the minimum variance necessary with the issue of the sedimentation that has affected the depth of the docking area". He stated that the APA is showing that they could solve the problem of siltation by extending the docks without the addition of the sundeck. M. McComb stated that was true, but on the other hand the APA is looking at this as a home, and not as a tourist accommodation. She feels that tourist accommodations have different expectations about waterfront usage and different practical difficulties in attracting customers in today's market if they cannot offer the best accommodations or amenities. She stated that the proposal is minimal because the applicant is not looking to extend over the entire length of the dock complex, but merely over the first 20 feet of one portion of it. If the difficulty is that having a set a steps up to a boathouse roof is going to provoke the APA to overturn every variance then that is something the APA needs to be clear about because it is a practical difficulty if you cannot get up to the sundeck. The applicant is pretty clear that he shouldn't put an access of the existing sundeck, but she feels the APA read the minutes and incorrectly assumed that it was a home and that it was to be a contiguous deck. K. Hoopes stated that he doesn't see a significant differentiation between a single family dwelling and a resort because they review each project with an even eye. M. McComb disagreed. G. Smith agreed with M. McComb and stated that one of the suites is in the front of the building which is pretty much connected to the deck they use in the front and the other two suites are in the back and they want this proposed deck to accommodate them. T. DePace stated that the proposed deck is to be used by the guests to sit in the sun because there isn't really any alternative spot on the property to sit out in the sun and relax. M. McComb stated that he has two suites that do not have decks and they have granted additional decks to other people to make their tourist business more viable in a difficult economy, which goes along with their comprehensive plan.

Counsel suggested that before they make their motion that they discuss the following APA statement and make some determinations or state facts: "The sundeck was concluded by the members of the Board to be the same height of the pre-existing deck and it would blend in with the house, which supports their conclusion that it is at least functionally attached to the existing house and deck. As such the 440 sq. ft. sundeck increases the non-conformance of the existing structure significantly by extending the rest of the structure 20 ft out on the lake". M. McComb stated that they have covered that and she will include it in her motion.

RESOLUTION

The Zoning Board of Appeals received an application from Roe Management (V08-05) for an area variance as described above.

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

1. The application of the applicant is as described in Item# 3 of the agenda.
2. This is a tourist accommodation and not a single family dwelling. Therefore, the benefit that the applicant is trying to achieve is different from a single family dwelling.

The Board makes the following conclusions of law:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; The applicant has a suite that has a deck on it. He is seeking this minimal addition to provide a sundeck for his additional tourist accommodations. The Town of Bolton has a comprehensive plan that suggests that the tourist industry is useful for Bolton Landing's economy and this motion takes that into account. His difficulty in not having sundecks for his other accommodations is part of our balancing act in this motion.

2) The undesirable change in the neighborhood character or to nearby properties is mitigated by the specifics of this lot. It is a steeply rising lot with heavy vegetative screening, of a tree buffer, between it and the lot to the south of it, which means that the house that exists will in no way see this additional sundeck.

3) The request is not substantial; the sundeck covers less than half of the length of the additional dock that is going out and it is 20' in width. The applicant is not proposing to cover the entire new structure, but only this portion of it. Further, it is not connected to the existing tourist accommodation and will not be connected to the existing tourist accommodation. There is 5 feet between this structure and the existing structure, other than a set of steps leading up to the sundeck, which is typical and normal for all sundecks on Lake George. The deck could be lower, but the Zoning Board of Appeals feels that would increase the visual impact of the sundeck rather than decreasing it.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; Any other sundeck has not been found to provide an environmental hazard and there is no reason that this one will either.

5) The alleged difficulty is self-created, but the applicant is running a tourist business and trying to make a go of it. The benefit of the applicant outweighs that because of the minimal, if any, impact on surrounding homes and users of the lake and the very great benefit to the applicant of being able to offer this minimal area to his customers.

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

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

Meeting was adjourned at 7:12 p.m.
Minutes submitted by K. MacEwan