

Town of Bolton
ZONING BOARD OF APPEALS
Minutes
Tuesday August 18, 2009

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, William Pfau, John Michaels , Jeff Anthony, David Ray, Zoning Administrator Pamela Kenyon and Counsel Michael Muller.

Absent: Tony DePace and Kam Hoopes

Meeting was called to order at 6:30 p.m.

Greg Smith stated that since there were only 5 members present each applicant would need 4 votes of approval. Each applicant was provided the opportunity to table their application until a full board was present.

Greg Smith asked if there were any changes or corrections to the July 14, 2009 minutes:

Motion by Jeff Anthony to accept the July 14, 2009 minutes as written. Seconded by Bill Pfau. All in Favor. Motion Carried.

1) V09-20 VITALE, JOSEPH & AMELIA. To alter pre-existing non-conforming single-family dwelling, specifically to replace a set of stairs with an approximate 32 sq. ft. deck extension, seek area variance for 1) Deficient setbacks. a) Rear: 30' is required, 19' is proposed, b) Shoreline: 75' is required, 48' is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 185.20, Block 1, Lot 22, Zone RCL3. Property Location: 64 Millstone Drive. Subject to WCPB and APA review. After the fact.

Joe Vitale stated that the deck in question was there prior to when they purchased the house. He stated that the original deck had a set of stairs which were replaced with the addition of a 3' x 3' section of deck. He provided pictures of the deck. Bill Pfau asked if there was an existing deck prior to this deck. Joe Vitale replied yes, but this replaced the old deck and the previous owner decided not to replace the staircase and decided to make it all deck and make it 3' wide. He stated that he would like to leave the deck as it is.

Joe Vitale stated that he thinks that the measurements are a little off on the distance away from the lake and believes that they have closer to 65'. Greg Smith stated that he did not measure it but the application states that it is 48' away from the lake. Joe Vitale stated that the deck is 49' from the property line but there is another 11' to the shoreline which brings their total to 60'. Pam Kenyon stated that the survey shows that the cabin itself is 49' from the property line but the deck is 39' and with the additional 11' it would be 50'.

Counsel read a letter from the Lake George Waterkeeper that applies to all applications on the August Agenda. In the letter the Waterkeeper requests that at least stormwater management to mitigate the effects on impervious surfaces existing and proposed from pre-existing non-

conforming structures or lots with deficient shoreline setbacks from water bodies in the Lake George watershed.

With regard to the Lake George Waterkeeper's letter, Joe Vitale stated that they keep an 11' section where they keep the grass high between the lake and their house. They don't cut this area to provide a buffer zone for stormwater run-off. He also stated that they do not use any fertilizer or pesticides on their property.

Pam Kenyon stated that there was WC default approval for all applications due to a lack of quorum.

Jeff Anthony stated that recently they have received a denial from the APA and asked Counsel if he had any advice on how to better handle this application before it is reviewed by the APA. Counsel stated that they should do their best to hit all 5 findings of fact. He stated that he would guide them if he felt that they may not be adequately discussing any particular fact.

RESOLUTION

The Zoning Board of Appeals received an application from Joseph and Amelia Vitale (V09-20) 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 granted default approval due to lack of a quorum;

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; this is the minimum relief necessary to relieve this hardship. This is an area for the applicant to sit and enjoy the view which is a reasonable use for the deck on this piece of property. The new deck is taking up part of the space where stairs had previously existed.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this small deck has been on the structure for at least 3 years without any issue.

3) The request is not substantial; it is a deck within 48' of the lakefront. A 9' wide deck is the minimum amount of use for a deck.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; The deck has been there for at least

3 years. The deck is taking up part of the space where the stairs previously existed. It is in a flat area, attached to the home.

5) The alleged difficulty is not self-created, because the deck was in existence when the applicant bought the property.

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 Bill Pfau and seconded by John Michaels, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

2) V09-21 TEESE, HAZEL. Represented by Herb Teese. For the construction of a proposed 317 sq. ft. porch addition on existing garage, seeks area variance for a deficient shoreline setback. 75' is required, 70 ½' is proposed. Section 124.00, Block 1, Lot 33, Zone RL3. Property Location: 851 New Vermont Road. Subject to APA review. After the fact.

Herb Teese stated that he has built a porch in which the corner of the porch is not in compliance with the setback to the stream. He stated that the project does not impact either of the neighbors. When they laid out the project they planned to build a 16' x 16' porch. He stated that they were not aware that roof overhangs would be included in the size of the structure. He stated that when they put the base plate, uprights and siding on they realized their mistake. He stated that ultimately 4 sq. ft are in violation of the setback. To fix the problem at the time would have cost additional money and time.

John Michaels asked if the applicant was aware that they were in violation when they built the structure. Herb Teese replied yes but it was only 4 sq. ft. Plus he was not aware that the roof was in violation as well. He stated that he turned himself in for the violation.

John Michaels asked if they can assess a civil penalty. Pam Kenyon replied that they can recommend that the application go to the TB to be heard for alternative remedy. Bill Pfau stated that he feels that it is important to set some ground rules for these "after the fact" applications. He feels that they should be treated all the same way. It is up to the ZBA to recommend whether or not these applications will be heard before the TB for remedial action or alternative remedy. Counsel stated that the ZBA can refer it to the TB if they feel that enforcement is appropriate or they can deal with the application on its merits at their level. Bill Pfau stated that he is trying to look at these applications as if they were not "after the fact". However, he is not going to give the applicants any leeway because the project is done already.

Counsel further discussed the details of applying the code regarding violations or after the fact applications. He stated that Pam Kenyon could only assess a civil penalty and handle the process for after the fact applications only if they do not require a variance. If they require a variance but not site plan they will be heard before the ZBA. The ZBA can choose to either deal with it at their level or recommend alternative remedy at the TB level.

John Michaels stated that he agrees with Bill Pfau about looking at these applications as if they were not after the fact. However, he is a bit more concerned about those that might be in

violation with the APA as well. Counsel stated that he understood his concern but they need to look at each application on a case by case basis.

John Michaels stated that the applicant is not asking for much of a variance. Greg Smith agreed and stated that if he came for a regular variance he would have gotten it without a problem. Counsel stated that Bolton does not have a “fudge factor” in the code, an applicant is either beyond the set back or they have violated it. However the APA has at least a 2’ differential that allows for some give and take. He stated that this application is a little over the 2’. However, justification could be that this is the minimum relief necessary for such a minor deviance from the setback requirement of 75’. He stated that the applicant was not aware that the overhangs counted in his calculation. Another point is that most applicants create buildings that are square or rectangular and chopping off a corner would not make sense.

Kathy Bozony, Lake George Waterkeeper asked if a building permit would need to be issued for the addition of this deck or any of the other applications. Counsel stated that in Bolton, in order to build something, the individual needs to apply for a certificate of compliance. That certificate of compliance then goes to the County where a building permit will be issued. The County issues building permits based on NYS building code and there are things that do not require building permit so certain individuals may not need to go to the County. He stated that in this case this applicant would receive a building permit because it is an increase in the existing structure.

Kathy Bozony stated that her letter that Counsel read gave a blanket approach to the issues of stormwater management. She stated that she realizes that these properties vary greatly from one another and she did not have the opportunity to see all of the properties, including this one. She encouraged that since this is a setback from the stream that she would recommend some discussion of stormwater management and buffering of that stream. She stated that disturbance is irreversible and she is not recommending taking these projects down, but she is recommending that whatever stormwater management measures that could be taken. Kathy Bozony also stated that if the ZBA decides that this is a TB issue, the money from the civil penalties could be put towards a fund for water quality improvement.

Kenyon Simpson, neighbor of the applicant addressed some of the Lake George Waterkeeper’s concerns. He stated that there was minimal site disturbance, it is only 1 corner within the 75’ setback. The project site is landscaped with indigenous species. The stream is still a natural habitat. He stated that as a neighbor he would encourage the ZBA to look favorably on the application. He stated that he would answer any questions regarding the stream quality in this area. Bill Pfau agreed that the project site has not been disturbed. John Michaels and Greg Smith agreed that there was plenty of buffering between the corner and the stream.

RESOLUTION

The Zoning Board of Appeals received an application from Hazel Teese (V09-21) 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 granted default approval due to lack of a quorum;

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; this is the minimum relief necessary to relieve this hardship. It is a 4.5' relief from the 75' setback to the stream. It is a covered porch that has been in existence for many years.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the character remains the same, it is an additional covered porch to an existing camp that has been there for many years. It is not visible from the road or any neighbors.

3) The request is not substantial; it is the minimum relief necessary to achieve what the applicant's goal.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it has been discussed that this project is still over 70' away from the river. The land is completely undisturbed between the building site and river.

5) The alleged difficulty is self-created, but it is a minimal amount of relief sought.

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

The addition to the pre-existing building is in line to conform since it is 16' bump out is in the shape of a rectangle, reasonably and rationally attached to the existing building. Practical difficulty would be creating a setback that required no variance but has an irregular, odd and un-useful addition to the building.

Moving the location of the building from this optimal space would have created a hardship for the applicant.

Now, upon motion duly made by Bill Pfau and seconded by John Michaels, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

3) V09-22 WERNER, GARY & MICHELE. Represented by Jeff O'Connor. To alter pre-existing non-conforming single-family dwelling, specifically to add an approximate 216 sq. ft. screened porch, seek area variance to alter a pre-existing non-conforming structure. Section 186.14, Block 1, Lot 72, Zone RCH5000. Property Location: 11 Beckers Drive. Subject to WCPB review.

Jeff O'Connor stated that they are proposing an open screened in porch. He stated that overall the actual additional space is 176', but with the overhangs it will be 216'. Greg Smith asked if the one tree would need to be taken down. Jeff O'Connor stated that the tree is approximately 15' away from the structure, so there is some concern of the proximity to the proposed structure. However, the applicants are still deciding on what they want to do. Greg Smith stated that otherwise the space is open. John Michaels asked about the propane tanks. Jeff O'Connor stated that they will be moving one of the tanks around back.

Jeff O'Connor stated that the gate house has their own architectural committee who has provided a letter granting their approval for this project.

Bill Pfau stated that project itself does not meet the 20' side yard setback and asked if it should be added to the review of the application. Pam Kenyon stated that the plot plan is wrong and it does meet the side yard setback.

John Michaels asked if they remove the large tree would the applicants be willing to plant a tree in its place. Jeff O'Connor stated yes.

RESOLUTION

The Zoning Board of Appeals received an application from Gary and Michelle Werner (V09-22) 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 granted default approval due to lack of a quorum;

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 could not be achieved by any other means feasible to the applicant besides an area variance; it is a non-conforming pre-existing structure.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, there are no objections by nearby neighbors. It is an addition to an existing building in a residential area.
- 3) The request is not substantial; the area itself is not substantial the addition itself does not meet setbacks.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it is flat land in a cleared area

5) The alleged difficulty is not self-created, the building itself does not meet setbacks.

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 Bill Pfau and seconded by Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition(s): 1) The applicant agrees that if the existing pine tree is removed a new tree will be planted. **All in Favor. Motion Carried.**

4) V09-23 O'MEARA, ROBERT & ANITA. To alter pre-existing non-conforming single family dwelling, specifically to replace a closed porch and deck with an approximate 256 sq. ft. deck, seeks area variance for 1) Deficient setbacks. a) Front: 50' is required, 45' is proposed, b) Side: 20' is required, 19' is proposed, and 2) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 2, Lot 2, Zone RM1.3. Property Location 72 Horicon Avenue. Subject to WCPB review. Partially after the fact.

Anita O'Meara stated that when they bought the house there was a 6' x 18' porch on the back of the house. Attached to the porch was an 8' x 18' open deck. The porch was not attached to a header board but was instead nailed into house through the house shingles. Neither the porch nor the deck was built on footers. Both structures had collapsed in the middle and were extremely unsafe. Her husband was in the process of dismantling the structures and the porch completely separated from the house.

Anita O'Meara stated that they started to replace the porch and the deck with an opened 16' x 16' deck. She described the materials used and the deck itself. She stated that the new deck will be about 4' narrower and at most 4' longer than the previous structure. The height of the new deck is approximately the same. She stated that overall it is in the same footprint.

John Michaels asked how long the applicants have owned the house. Anita O'Meara replied 5 years. She stated that the old deck was there up until last year. Greg Smith asked if the applicant thought that since they were replacing the deck in kind that they would not need anything from the Town. Anita O'Meara replied that she was not aware that they needed anything from the Town until she received a call from the Zoning Office.

Bill Pfau stated that from a setback aspect, it is in a perfect location. It cannot be seen from the road and it is only 1' off the side yard setback. Greg Smith agreed and stated that it is pretty much the same size as what was previously there. He stated that they have had a lot of applications like this. Even though it is replacing in kind they really need to come to the Town first.

RESOLUTION

The Zoning Board of Appeals received an application from Robert and Anita O'Meara (V09-23) 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 granted default approval due to lack of a quorum;

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#4 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; the house itself is non-conforming.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a deck going on the back of the house.
- 3) The request is not substantial; it is the minimum relief necessary. The side yard setbacks are missed by 1 foot and the project is completely screened from the front yard and road. It is a re-build on the footprint of a pre-existing porch and deck.
- 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, because the house is pre-existing non-conforming.

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 Bill Pfau and seconded by Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

5) V09-24 NEWKAM, KEITH & ILEANA. 1) To alter pre-existing non-conforming single family dwelling, specifically to enclose an approximate 236 sq. ft screened porch, seek area variance for 1) a deficient front yard setback. 50' is required, 8.2' is proposed, and 2) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). 2) For the placement of an approximate 144 sq. ft. shed, seek area variance for deficient front yard setbacks. 50' is required, 15.5' is proposed from Three Oaks Road and 43' is proposed from Millstone Drive. Section 185.20, Block 1, Lot 29, Zone RCL3. Property Location: 11 Three Oaks Drive. Subject to WCPB review. After the fact.

Keith Newkam stated that they purchased this property 10 years ago in a foreclosure. He stated that the property was in disrepair and the house has been an ongoing project. He stated that this is the existing screened in porch, which is still the same size and in the same location. The only difference is that they got storm windows for the existing windows and enclosed the interior walls of the porch.

John Michaels stated that the porch looks as if it has been there for a while. Keith Newkam stated that there is a letter from the previous owner requesting permission for the porch, but he is not sure if a variance was ever issued. Keith Newkam stated that they have 2 access roads around the building which makes it difficult to meet the setbacks from those roadways. He stated that the house itself does not even meet compliance.

Greg Smith stated that the only difference between what existed and what it currently in place is that it is fixed up and the screens have been replaced with glass. He asked if the windows open to be a screened porch. Keith Newkam replied yes they do slide open. He stated that there is no insulation and it is not going to be livable space. He stated that he thought he was just improving what was there and did not know that he was in violation of the Town code.

Pam Kenyon asked what the porch is considered since it is not considered livable space. Greg Smith stated that he was confused as to why this was on the agenda since it really hasn't changed the use of the porch and nothing more has been added to the structure. Counsel stated that the ZBA is in the position to decide that the applicant does not need a variance for the porch. Pam Kenyon agreed that the applicant does not need a variance for the porch. The ZBA determined that the applicant does not need a variance for the porch and they would only deal with the shed in this application.

With regard to the shed, Keith Newkam stated that since it was not a permanent structure he was not aware that he would need to have approval from the Town. He found out he was in violation when Mitzi Nittmann was on site reviewing the porch. Bill Pfau asked when the shed was placed on the property. Keith Newkam replied approximately 3-4 years ago. Greg Smith asked if there have been any complaints about the shed. Keith Newkam replied no.

Philip Butland owner of 5 Three Oaks Colony stated that he was in support of the project. He stated that there is no encroachment on the shorelines and neither part of the application is unsightly nor would it disturb what he purchased 12 years ago.

David Ray stated that he was concerned about the retaining wall. He stated that he noticed that it was pushing out a bit and asked if it was created by the placement of the shed. Keith Newkam stated that it was that way when they purchased the property and he does not feel that the weight of the shed did that. He stated that they will be replacing the retaining wall eventually.

RESOLUTION

The Zoning Board of Appeals received an application from Keith and Ileana Newkam (V09-24) 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 granted default approval due to lack of a quorum;

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# 5 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; the shed has been in the same location for over 3 years. This is the minimum relief sought to allow the applicant to do what they would like on their property.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is not much bigger than what is allowed as of right. There is no practical way to make it smaller since it is pre-built.
- 3) The request is not substantial; The request is reasonable by today's standards.
- 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 self-created, the applicant was unaware of the 100 sq. ft. limitation on sheds and accessory structures.

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 John Michaels and seconded by Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented for the shed. As noted in the minutes a variance is not required to enclose the screened porch. **All in Favor. Motion Carried.**

6) V09-25 SYMANNEK JR., ROLF. To alter pre-existing non-conforming single family dwelling, specifically to add an approximate 15 sq. ft. addition, seeks area variance for 1) a deficient shoreline setback. 75' is required, 50' is proposed, and 2) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 185.15, Block 1, Lot 43, Zone RCL3. Property Location: 70 Pine Tree Lane. Subject to WCPB and APA review. After the fact.

Ralph Symannek stated that there should be a change to the shoreline setback distance. Mitzi Nittmann re-measured the corner of the chimney to the shoreline and it should be 61'. He stated that the structure was built in 1941 and they have owned it since 1997. The roof was in extreme disrepair. He stated that they repaired it a few times but it was hard to stop the bats from entering. They also had mice coming in from the shed, which then went away because they had snakes living under the refrigerator. He took down the shed which was toe-nailed to the side of the house. He planned to put new plywood over the roof and build a new shed, but it didn't make much sense so he just squared off where the shed was which included 15 extra sq. ft. He did not think he needed building permit for the additional 15 sq. ft. since it was already in existence as a shed. He stated that he actual project or improvement occurred 85' from the lake.

Ralph Symanek stated that his family has 3 camps on Trout Lake and they have had 3 generations coming to Trout Lake. He stated that they would never do anything to damage the area or the Lake. He just tried to enclose the area to include the refrigerator into the kitchen and remove the bats, mice and snakes living in the house.

Pam Kenyon stated that the applicant does meet the setback for the 75' setback. However, they will need a variance for the alteration of a pre-existing, non-conforming structure. Jeff Anthony stated that the APA is no longer involved in this application. Counsel replied that was correct. Bill Pfau asked if they would be notified of this project. Counsel replied that they may be noticed but they have no interest because the new structure is within the 75' setback.

Counsel read an email from W. Mark Dale who opposed the application. Ralph Symanek stated that this individual is not even a neighbor. He has never met him nor has he even seen his house.

RESOLUTION

The Zoning Board of Appeals received an application from Rolf Symanek, Jr. (V09-25) 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 granted default approval due to lack of a quorum;

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 could not be achieved by any other means feasible to the applicant besides an area variance; since the house is a pre-existing non-conforming structure.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is a minor addition not facing the lake.
- 3) The request is not substantial; it is the minimum relief necessary. The addition itself does meet the setbacks to Trout 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, due to the location of the home.

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 Bill Pfau and seconded by Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as amended. **All in Favor. Motion Carried.**

7) V09-26 DAWSON, MARK & KRIS. To alter pre-existing non-conforming single family dwelling, specifically to enclose an approximate 171 sq. ft porch, seeks area variance for 1) a deficient side setbacks 20' is required, 5' is proposed on the north side, and 2) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.06, Block 1, Lot 8, Zone RM1.3. Property Location: 18 Belle Lodi Lane. Subject to WCPB review. After the fact.

Kris Dawson stated that she purchased the house in 2002 which included a deck on 3 sides of the house. She stated that the laundry facilities were outside under cover for 6 years which was fine as a summer home. However, it became their permanent residence in 2007 and they then decided to enclose the area so that they could do laundry in the winter time. Mark Dawson stated that there was an existing roof and one wall and they enclosed the east and west walls. He stated that it is now enclosed, insulated and heated.

Mark Dawson stated that he was not aware of any neighbors having complaints. Greg Smith asked how they ended up here. Kris Dawson stated that the neighbors are building a house and in the process of their inspection Mitzi Nittmann found the violation at their home.

Greg Smith asked if this would even be considered an addition to living space. Counsel replied that technically yes. He stated that this application is seeking approval to alter a pre-existing non-conforming structure. Counsel stated that in the past they have interpreted that enclosing open space even with the existing roof and porch that it would, in appropriate cases, require review. Pam Kenyon stated that the ZBA could proceed as they wanted tonight but she wanted to give this further consideration.

RESOLUTION

The Zoning Board of Appeals received an application from Mark and Kris Dawson (V09-26) 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 granted default approval due to lack of a quorum;

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#7 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; the expansion of a non-conforming use mandates the use of a variance and an area variance is the only means to grant this approval.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the roof was in existence prior to enclosure as well as portions of the walls. The enclosure of the space will not change the character of the neighborhood.

3) The request is not substantial; the space already existed with the roof and a portion of the walls. The variance in terms of an expansion is not substantial in any way.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; visually it is compatible to the building and it is not objectionable to the neighborhood. It does not add any significant site disturbance since it is included in the existing deck.

5) The alleged difficulty is marginally self-created, the space was there and being used for laundry to begin with and it is perfectly reasonable to expect the laundry to be in the enclosed space.

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 Jeff Anthony and seconded by John Michaels, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

Mark Dawson asked if they decide to extend the roof higher and wider. Greg Smith replied yes they would need a variance.

8) V99-41 DRAUTZ, KENNETH. To discuss variance granted by the ZBA on October 18, 1999 for a screened in porch. The screened in porch has been enclosed. Section 185.20, Block 1, Lot 21, Zone RCL3. Property Location: 75 Millstone Drive.

Pam Kenyon stated that this before them because the conditions of approval in 1999 stated that this was not to be enclosed for permanent living space. She asked Walter Law what this space would be considered now.

Walter Law stated that 10 years ago the applicant took an existing deck and extended the roof and screened it in. He stated that it received a roof and walls. The application stated that it would be a screened porch and the minutes from that meeting indicate that the applicant received approval for a screened porch and it was not to be used as permanent living space.

Walter Law provided pictures of the current structure. He stated that the screens were falling out due to the wind so the contractor suggested using single pane windows over the screens. Even though the contractor was at fault for not checking with the Town, the applicants relied on the contractor.

John Michaels stated that the structure is not insulated and not heated so he asked how it could be considered permanent living space. Bill Pfau agreed and stated that unlike storm windows the glass actually pops out. Walter Law stated that this house is part of an association that has a common water system, which is turned on May 15th and shut off October 15th, so there is no chance for year round living.

Walter Law stated that a previous applicant put in storm windows to his screened in porch and received approval and Pam Kenyon and Counsel seemed to indicate that they would not even need a variance. He is requesting that the ZBA look at this application in the same way. John Michaels stated that they are discussing it because of the previously applied variance and approval. The interpretation that they have to make is whether it is permanent living space or not. With no insulation, water or heat it would be difficult to say that this is permanent living space. Counsel agreed and added that the exterior entryway is still on the house and this is not part of the living space.

Bill Pfau asked how this came before them. Pam Kenyon replied that Dennis Murphy brought this to their attention and she thought it might be worth reviewing.

The ZBA determined that the applicant has not created permanent living space therefore is not in violation of the approval from 1999.

John Michaels asked if they could suggest increasing the application fee for after the fact applications. Pam Kenyon stated that she is afraid that this would give the impression that individuals could just do what they want and then just pay for the application fee to get the variance. John Michaels stated that an increased fee for after the fact would at least assess some sort of penalty in the beginning and might deter some individuals from doing it in the future. Greg Smith agreed that it would be a good idea.

9) To discuss the September meeting date. The scheduled date is the 15th but interferes with Primary election. Possibly change the date to the 14th.

The Board agreed to move the meeting to Monday, September 14, 2009.

The meeting was adjourned at 8:11pm.