

Town of Bolton
ZONING BOARD OF APPEALS
Minutes
Tuesday – July 20, 2010
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- Jason Saris, Tony DePace, John Michaels, David Ray, Kam Hoopes, Jeff Anthony, Counsel Michael Muller and Zoning Administrator Pamela Kenyon

Absent- William Pfau

The meeting was called to order at 6:34pm

Jason Saris asked if there were any corrections or changes to the June 15, 2010 minutes.

RESOLUTION:

Motion by Jeff Anthony to accept the June 15, 2010 minutes as written. **Seconded by** Kam Hoopes. **All in Favor. Motion Carried.**

1) V10-20 BENNETT, DAN & TURNER, RUTH. Represented by Atty. Brian Reichenbach. To demolish and rebuild 2 bedroom cabin, seek area variance for a deficient shoreline setback. 50' is required, 16.4' is proposed. Section 186.10, Block 1, Lot 6, Zone RCH5000. Property Location: 4750 Lake Shore Drive. Subject to WCPB review.

2) V10-21 BENNETT, DAN & TURNER, RUTH. Represented by Atty. Brian Reichenbach. To alter 1 bedroom cabin, specifically to rearrange the footprint, seek area variance for a deficient shoreline setback. 50' is required, 14.8' is proposed. Section 186.10, Block 1, Lot 6, Zone RCH5000. Property Location: 4750 Lake Shore Drive. Subject to WCPB review.

Note: Items 1 and 2 were heard together.

Jason Saris stated that there was some concern over where the RCH5000 line was. Pam Kenyon stated that this issue has been resolved and they have made the decision to put the entire parcel under the RCH5000 zoning. She stated that this seems to be consistent with the APA zoning as well. Counsel Muller added that wherever there is ambiguity they try to construe it favorable to the applicant. Kam Hoopes stated that they usually also try to match zone lines with property lines. Counsel Muller replied that is the norm, but in this case they were not.

Brian Reichenbach represented the applicants in the project. He introduced project engineer, Adam Pelky. Brian Reichebach went over the balancing test and statutory factors related to the project.

Brian Reichenbach stated that the benefit to the applicant is that by replacing the deteriorating buildings, they are going to get the best use of the property and the property value will increase. The applicants are seeking to keep these properties as seasonal camps for their family. In doing that they

plan to use like materials and some recycled materials. There is no detriment to the health, safety and welfare of the community and neighborhood by granting such a variance. The entire neighborhood will benefit from the increased property values and the aesthetically pleasing nature of the construction. The applicant will take on a voluntary stormwater management plan to protect the lake. The cottage community that exists now will be maintained.

Brian Reichenbach reviewed the project submission with the Board members including pictures of the property as it exists today and photo shop pictures of the proposed project.

Brian Reichenbach stated that there will be no undesirable change to the character of the neighborhood or nearby properties. This will be a benefit to the surrounding neighborhood and properties in regard to property values. The voluntary stormwater plan will help protect the lake and the cottage community character will be maintained. The plans call for vertical cedar siding as it exists today.

With regard to feasible alternatives, Brian Reichenbach stated that compliance with zoning regulations would require two things; 1) To replace the buildings "as is" or 2) complying with the setback. Replacing the buildings "as is" would not result in the benefit that the applicant seeks because it would not allow them to bring the stairways in both camps to fire code. Additionally the current configuration of the upstairs is awkward. He stated that the two bedrooms in the one camp are back to back so one of the bedrooms does not have immediate access to the ladder that exists now. Complying with the setback is not a feasible option either. The setback is 50' and if they were to move back the 50' they would be very close to two springs on the property. They do not want to put the structures any closer to the springs than they have to. Additionally there is already good functioning septic system and infrastructure in place, which includes electric, water, etc., and they do not want to dig any of this up to start over again given the cost and time involved.

Brian Reichenbach stated that if they have to move the camps back closer to the steep slope of the hill there are 2 detriments, 1) due to the slope they would have to disturb more land than by putting them on the same footprints and 2) it would cause a decrease in privacy between the neighbors.

Brian Reichenbach stated that he understood that some Board members expressed their concern over the visibility of the camps from the lake. He stated that as they get further from the shore and up on the hill, they would become more visible than if they were to leave them in their current location. They also feel that the stormwater plan will be more effective in place where it is because all of the water will channel into the rain garden if it is to remain closer to the lake as designed.

Brain Reichenbach stated that they do not feel that this request is substantial. The southern camp measures 16.4' at its closest point to the lake and 24.6' at the furthest point for an average distance of 20.5 feet. The northern camp measures 14.8' at the closest point, 30.9' at the furthest point with an average of 26.6 feet. The southern camp will have a reduction of the footprint from the original submission because they have eliminated the screened in porch and are now proposing a hanging porch so there will be no foundation which will allow more room for vegetation. On the northern camp they have rearranged the footprint to make the building look smaller from the lake. They will be moving the appendages from the north and south sides of the building to the west side so it will not be seen from the lake.

Brian Reichenbach stated that these variances are the minimum necessary. They explored moving the camps back just a little bit. However, as the pictures show, there is ledge very close behind the camps. He stated moving back 6' would result in dealing with ledge 18" above the floor level. He stated that this is not a rock that can be moved without blasting.

Brian Reichenbach stated that this project will not have any adverse environmental effects or impacts on the physical or environmental conditions of the neighborhood. All of the effects will be beneficial. Physically they are replacing the deteriorating structures, they will be disturbing the ground minimally and they will have a smaller footprint on the southern camp.

With regard to the trees on the property, they had Stan Hunt, a licensed arborist, come up and look at the trees. Brian Reichenbach stated that they plan to leave all trees but three. Stan Hunt identified three trees that are in poor health due to root exposure. Brian Reichenbach stated that Kathy Bozony, of the Lake George Waterkeeper's office, has raised the concern that the applicants will be taking more trees down than indicated in their plans. He stated that is not factual, the applicants only intend to take down the three trees, none of which are in front of the camp.

Brian Reichenbach stated that if no variance is granted it opens up the possibility of creating 7,100 sq. ft structure up the hill in compliance with the regulations. He stated that the applicants do not want to do that, they would like to keep these camps in the family and if he is allowed to do this project it will insure that these properties will remain in his family.

With regard to the increase in structure height, Brian Reichenbach stated that they do not believe the added height is an adverse impact. The character of the neighborhood shows that this height falls in line with the neighborhood properties as noted in the pictures.

Brian Reichenbach stated that this difficulty was not self-created in any way; these camps have been in existence since 1923. They have existed as is and they need attention and reconstruction, which is what they intend to do.

With regard to Kathy Bozony's letter, Brian Reichenbach stated that there are many factual representations in the letter that are incorrect. Mr. Bennett is a good steward of the lake, he will agree to fertilizer and pesticide restrictions, if the Board feels that it is appropriate, but he intends to do that anyway. The letter also makes many references to APA regulations, which do not apply because they are in the hamlet. However, they know that the APA has every right to review any variance granted and they will do that.

Brian Reichenbach stated that this is a good project. It will result in a benefit to the applicant, the neighborhood and the Town as a whole.

John Michaels asked if the applicant would be agreeable to the condition of not removing any trees in front of the camp as proposed. Brian Reichenbach replied yes the applicant would agree to that. John Michaels asked if the total height increase was 9 feet. Brian Reichenbach replied yes. John Michaels asked if the applicants ever discussed the option of rebuilding the cottages in one footprint. Adam Pelky replied no not at the current location. Kam Hoopes stated that one of the reasons for keeping them separate is to keep the same feel as to what already exists. Dan Bennett replied that it was considered but they felt it would be the worst case scenario. Kam Hoopes stated that they don't look at proposals as being grandfathered but typically they look favorably upon improvement of the

2 buildings as opposed to combining them because they are working with what they have. He stated that if they were to change this to one footprint, they need to start considering disturbing new ground and that defeats the purpose to work on the same footprint. Dan Bennett stated that their family's goal was to be able to drive down the driveway a year from now and have it look the same but with new updated buildings.

Jason Saris asked if there was any correspondence. Counsel Muller read the following letters:

1. DAL Associates, LP, Arlene Langdon, Douglas Langdon in support of the project.
2. Kathy Bozony, Lake George Waterkeeper, expressing many comments, concerns and suggestions for the applicant.

John Michaels asked the applicant if they would be keeping the fern area to the right of the driveway and wetlands to the back of the property. Dan Bennett replied that he is planning to keep it as is. Jason Saris stated that although these proposals are segmented they have been discussing them as one unit. Counsel Muller stated that if the applicant would consent, the Board could consider these at once. Brian Reichenbach replied that they would be agreeable. Jason Saris read the other proposal item.

There were no comments from the public in attendance.

RESOLUTION

The Zoning Board of Appeals received applications from Dan Bennett and Ruth Turner (V10-20 & V10 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 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 Items #1 and 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; these are dimensional considerations and pre-existing area deficiencies.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this small cabin colony cluster will remain as a small cabin colony cluster. It will also be heavily screened as well.

3) The request is not substantial; in the 21st century these are considered minimal increases in what was built back in 1923 with makeshift items and articles.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; Stormwater management measures will be taken and modern materials and methods will be used. This should be an improved property.

5) The alleged difficulty is not self-created, these structures were placed on the property in the 1920's, and it is high time that it is brought into the 21st century.

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 John Michaels, it is resolved that the ZBA does hereby approve variances V10-20 & V10-21 as presented with the following condition(s): 1) That no trees are to be removed between the cabins and lake and 2) that the wetland area behind the cabin would remain undisturbed. **All in Favor. Motion Carried.**

3) V10-22 FOY, EDWARD. To alter pre-existing non-conforming structure, specifically to enlarge the patio, seeks area variance for 1) deficient setbacks, a) front: 30 ft. required, 0 ft. proposed, and b) side: a total of 20 ft. required, 0 ft. is proposed on the north side; and 2) to alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 3, Lot 91, Zone GB5000. Property Location: 4950 Lake Shore Drive. Subject to WCPB review.

Buddy Foy stated that he is here asking for his money back. He didn't feel as though this was necessary since he has already been before the Board for the first addition of connecting the buildings, and the second time for the parking and patio. He stated that he was approved for 90 seats outside and he only has 34 seats right now. In this project they tore up 4'x 6' slabs leading up to the building and in the front of the building they took out a 6' slab all the way across. He stated that last year when he came before the Board he had seats along both sides on the dirt. He did not feel that they need a permit since it was not a change of use. However, under advisement of Counsel Muller he came in to get approval. He feels that this is redundant. He took up dirt and rocks and beautified the front of his building. He spent \$8,000 in paver bricks and laid them down properly. According to the research that he did, this was just landscaping. He had the tables and chairs on the dirt as it was which was a mess when it rained. He feels that he cleaned up his property, and that this has gone too far. He stated that because he is located on Main Street, he is very visible and everything he does he requires a permit. With all due respect he feels that they already addressed these issues when he was here for the other variances.

Kam Hoopes stated that he makes a good point, he has been here a long time and he is just across the street from the Zoning Office, so it wouldn't hurt to come over and discuss his plans before he starts the work. Buddy Foy stated that he probably should. However, he felt that he and Bruce Mowery, Jr. read the books and did not find this necessary. He stated that it doesn't matter because if he would have walked over to talk to the Zoning they would have found something that needed a variance. Kam Hoopes stated that the Zoning office is not there to create problems even though he may not see it that way.

John Michaels stated that every time that the applicant has been in here, he has not had a most receptive Board so he should not be afraid to come in and ask. Buddy Foy stated that he is not

afraid, but feels that it is crazy that he is spending the kind of money he is spending to fix up his property and doing a nice job.

Jason Saris stated that he understands the applicant's frustration. However, if he were to see how difficult it is to write an ordinance that would protect the Town from a similar circumstance that wouldn't be okay, but so well written that it could find that what the applicant has done as no problem, it would be impossible to write. He stated that they have an ordinance that brings anything that could possibly be a problem to get reviewed. He stated that it may be an inconvenience but it is the only way that they can catch the problems and protect the Town. John Michaels stated that if all of the Town decided to remove their lawn and put pavers down it would create a stormwater problem.

Buddy Foy stated that he understands, however, he does not feel that he has done anything wrong. He stated that he has only improved the look of the property. He stated that he even kept the contour of the land. He stated that he has been before the Board 3 times, 2 times not even needing to be before the Board. Tony DePace stated that the Board likes what he has done with his property but he needs to stop putting the Board in this position. Buddy Foy stated that he understands their position and will be sure to come across the street to ask for the Town's procedure or protocol.

Counsel Muller asked the applicant if there was any other feasible means to achieve this benefit. Buddy Foy replied that they have explored all feasible means and this is the best possible solution, it is safe for the patrons to have solid surface for dining. Counsel Muller asked if this would create an undesirable change in the neighborhood. Buddy Foy stated that this is in the business district and it is consistent with the improvement on the property and adjacent properties. Counsel Muller stated that the variance request is not substantial in relation to the area that has already been improved with the stone patio. Buddy Foy agreed that it was minor. He stated that this will have no adverse impact or effect on the environment or neighborhood. It looks much better and appropriate in keeping with the business district and what a restaurant should look like with outdoor dining. Counsel Muller asked if he added this to attain the maximum seating by prior Board approval. Buddy Foy replied yes. Counsel Muller stated that is proof that this was not a self-created hardship, the applicant already had permission to have seating, and he just wanted a solid base under the seating.

There were no comments from the public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Edward Foy (V10-22) 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 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#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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this is the GB5000 business district and it is tidy solution to the problem that the applicant had.
- 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;
- 5) The alleged difficulty is not self-created, the applicant did not create the ledge or difficult landscape challenge.

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

4) V10-23 RICE, PAUL & SANDY. To alter single family dwelling, specifically to add a sunroom, workshop and bedroom addition with attached garage, seek area variance for 1) Deficient setbacks. a) front: 50 ft. is required from the edge of the right-of-way, 47.5 ft. is proposed, and b) side: a total of 20 ft. required, 17.7 ft. is proposed, and 2) to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.11, Block 1, Lot 60, Zone GB5000 & RM1.3. Property Location: Park View Drive. Subject to WCPB review.

Paul Rice stated that he and his wife have been full-time residents for 12 years. He stated that the house is a compact townhome design sitting on 3 acres. They are seeking to add a 8.5' x 17' two story addition. On the second story they are seeking to create a master bedroom that will allow for more usable space and room for normal size furniture. The first floor will be added onto, for a single stall garage for a shop and storage area. In front of the addition there will be a 21.5' x 11.5' carport. He stated that the roof line of the carport goes along the side of the 2 story addition to tie it all in and give it some aesthetic appeal. The setback from the road is 50' and as proposed they would have 47.5' and the property on the other side of the road is owned by them. On the addition, because the road curves around in the middle they are in compliance, but on the ends the addition that they are not in compliance.

The 11' x 12' sunroom addition is deficient by 2.3 feet. The property on the other side of the boundary line is owned by the neighbor Vince Mazzy who has not indicated any concern over the proposed additions. Paul Rice stated that they explored the option of trying to make the structure in compliance with the code. However, they found that the sunroom addition would be so small that it would not even be beneficial to even do. Jason Saris stated that he sees that it would be difficult to shrink the sunroom because it is already small.

Paul Rice stated that the only vegetation that they are proposing to remove is one 5” birch tree that would sit in the footprint of the addition. The addition will not require any additional plumbing, it is just adding more usable space.

John Michaels stated that the slope on the carport side is very steep. He stated that he is concerned that they would need to have some sort of retaining wall. He asked if the drawing was just a concept drawing. Paul Rice stated that the slope will not be as high because there is backfill up against the side of the garage wall. John Michaels stated that he is still concerned that they will need to come back for some sort of retaining wall. He stated that the Board would rather see it as one proposal then to have to come back for it. Paul Rice stated that the construction plans have not been developed yet. Kam Hoopes stated that this is one of the smaller variances that they have been faced with in a remote place. Jason Saris agreed and stated that it certainly falls within the minimum category.

No WC impact. There were no comments from the public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Paul and Sandy Rice (V10-23) 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 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#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; this is a minor variance on both sides.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is remotely located so it will have no impact or change to the neighborhood.
- 3) The request is not substantial; it is the minimum required for what the applicants would like to do.
- 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, that is the grade there.

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 David Ray, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition(s): 1) if a retaining wall is required within the setback to accomplish the construction, it is applied for prior to any construction. **All in Favor. Motion Carried.**

5) V10-25 ASHBY, BRUCE. Represented by The Dock Doctors. To alter 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.

Bruce Ashby stated that this was approved a by both the LGPC and Town. He received an extension from the LGPC for 2 years and he did not realize that the Town only had a one year extension that ended this year. Bruce Ashby stated that there are no changes from the previous approval. Everything is the same, he was just delayed in starting the project.

Pam Kenyon stated that the original variance was granted June 16, 2008; she extended it for a year last year. She stated that there were no conditions of approval at that time.

RESOLUTION

The Zoning Board of Appeals received an application from Bruce Ashby (V10-25) 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#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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties,
- 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;
- 5) The alleged difficulty is not self-created,

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.**

6) V10-24 GIKNIS, CHARLES & LISA. Represented by Michael Schusteritsch. To alter existing single-family dwelling, specifically to construct a screened porch/3-season porch, seek area variance to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 185.00, Block 1, Lot 4, Zone RR5. Property Location: 38 South Trout Lake Road.

NOTE: Jason Saris recused himself from this application.

Michael Schusteritsch represented the applicants. He stated that the applicants are seeking to add a 3 season porch on the back of the house. The house itself was not built in compliance with the zoning setbacks. Therefore anytime work or improvements are done on the property they need to obtain a variance. Michael Schusteritsch stated that the applicants are seeking to add the addition on the back so that he is not further encroaching on the setback. He stated that it will not be seen from the road, it is heavily wooded and they have 10 acres behind the house.

Kam Hoopes stated that he familiar with this property and the surveying error that has created this non-complying structure. He stated that this property is heavily wooded and this part of the house will be completely hidden from the road. Jeff Anthony asked if the addition met the front yard setback. Pam Kenyon replied that she thought that it met the setback, it is just that the house is non-compliant.

Jason Saris stated that as a neighboring property owner, he has no issue with the proposal.

RESOLUTION

The Zoning Board of Appeals received an application from Charles and Lisa Giknis (V10-24) 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 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 could not be achieved by any other means feasible to the applicant besides an area variance; due to the factors already mentioned. The area in question is invaded by the existing house and not the new addition. The addition will be built away from the non-compliant part of the structure.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it should be virtually, if not literally invisible.
- 3) The request is not substantial; by anyone's standards.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it is a simple porch. There are no shorelines involved or any delicate environmental devices.
- 5) The alleged difficulty is not self-created, the applicant simply wants a porch on his house.

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 John Michaels, it is resolved that the ZBA does hereby approve the variance request as presented. Jason Saris recused himself. **All others in Favor. Motion Carried.**

The meeting was adjourned at 7:44pm

Minutes respectfully submitted by Kristen MacEwan.