

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, December 20, 2011
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, Kam Hoopes, Zoning Administrator Pamela Kenyon and Counsel Michael Muller

Absent- Jeff Anthony, Don King and David Ray

The meeting was called to order at 6:34 pm.

Jason Saris asked if there were any corrections or changes to the November 15, 2011 minutes.

RESOLUTION:

Motion by Kam Hoopes to approve the November 15, 2011 minutes as written.

Seconded by Tony DePace. **All in Favor. Motion Carried.**

1) V11-51 SENESE, JAMES & ANN MARIE. For the construction of a proposed 14' x 20' garage with storage above, seek area variance for a deficient front yard setback. **1) Front:** 30' is required, 12' is proposed. Section 171.15, Block 3, Lot 77, Zone GB5000. Property Location: 3 Congers Point Way. Subject to WCPB review. This item was tabled at the November meeting pending additional information.

Jim Senese stated that at the last meeting he tabled the application to explore the feasibility of placing the structure on the west side of the property which would not require a variance. He stated that he invited John Michaels and Don King to visit the site to review the option with him. Don King was able to make it down to the site and he hoped that Don had reported back to the Board because he did agree that the alternative site was not feasible.

Jim Senese stated that he also asked several neighbors to provide letters with regard to their thoughts on the alternative site. He stated that there are 3 letters attached; one of which is from the HOA Vice President, which reflects the HOA's stance. He stated that the critical letter is from Dan and Jean Carnese. The Carnese's spend quite a bit of time out on their deck and they are very opposed to the placement on the alternative site.

Jim Senese stated that the alternative site is largely considered not feasible due to the fact that his utilities run up Dan Carnese's driveway and up the embankment. Placing a

permanent building there would block some access to his water and sewer lines. Kam Hoopes stated that they also are dealing with the electrical generator over there which is fueled by propane and the propane tank is buried under the driveway.

Jason Saris stated that his opinion on this matter has not changed. He feels that end of the property is where a lot of properties come together and putting something there would affect a lot of other properties and the overall view and feel of the community. The proposed location is a better location because it is out of the way and hidden from view. Kam Hoopes agreed that it would be hidden behind the sign and part of the ledge rock.

John Michaels stated that he did go out there and does agree that the proposed location is the better location. He stated that at the time he was concerned that there was even another option let alone the fact that it did not require a variance. Jim Senese apologized for not bringing it to their attention before. He stated that he just eliminated it as an option from the start.

Counsel Muller read the following:

- 1) Letter from Kathleen Spahn who indicated that she was in support of the proposed location of the garage.
- 2) Letter from Richard and Barbara Moccia, Vice President of Congers Point HOA, who are in support of the proposed location for the property on the west side of the property.
- 3) E-mail from Jean and Daniel Carnese in opposition to the placement on the easterly side but in support of placement on the westerly side of the property.

Pam Kenyon indicated that there was no WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from James and Ann Marie Senese (V11-51) 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; it is a very tight and narrow lot, and in an effort to keep the house from looking overly long it needs to be angled and that compromises the setback.

2) There will be no undesirable change in the neighborhood character or to nearby properties, these places in Congers Point are all in the GB5000 zone and they seem happy to be a close knit neighborhood.

3) The request is not substantial; this is a GB5000 property; 40% of the property can be covered and with this addition only 21% will be covered.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the applicant is taking great pains to install storm water management.

5) The alleged difficulty is not self-created, but this is a long narrow lot that was existing. The ledge rock precludes it from having a basement and there is no attic space. This will be valuable storage for the applicant.

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) V11-50 CAVANAUGH, WILLIAM & DONNA. To demolish existing garage and replace with an 18' x 27' garage with storage above, seek area variance for deficient setbacks. **1) Front:** 50' is required, 5' is proposed; and **2) Sides:** 30' is required, 23' is proposed on the north side and 20' is proposed on the south side. Section 185.19, Block 1, Lot 32, Zone RCL3. Property Location: 24 TLV Road. Subject to WCPB review.

William Cavanaugh stated that the existing structure is a 16' x 24' garage and the one proposed is exactly the same size, however there is a 1' overhang in the front and a 1' overhang in the back. He will reuse the same concrete slab. He provided pictures of the proposed structure.

Jason Saris asked what color they will be using. William Cavanaugh replied that it will be brown including the trim.

Pam Kenyon indicated that there was no correspondence or WC impact.

Colleen Kless, stated that the HOA president could not be there but he does not have a problem with the proposal at all. She stated that it is a really beautiful building and there

are no impacts on anyone.

John Michaels asked when they will start the project. William Cavanaugh replied that they will start in the spring. The new building will come in two sections and they will drop it on the existing slab.

RESOLUTION

The Zoning Board of Appeals received an application from William and Donna Cavanaugh (V11-50) 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; they are putting a garage right on top of the same slab that was pre-existing non-compliant.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this will be an improvement.

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; this is flat ground and the concrete slab already exists.

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

3) V11-52 JONES, STEVE. Represented by Chris Gabriels. To alter non-conforming carriage house, specifically to add a back entry, patio and solar panels, seeks area variance for deficient setbacks. **1) Front:** 75' is required from Route 9N, 60' is proposed. 50' is required from the private right-of-way (Walker Point Lane), 0' is proposed; **2)** to alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 141.00, Block 1, Lot 13, Zone RL3. Property Location: 4 Walker Point Lane. Subject to WCPB review.

Chris Gabriels stated that this is the old Loines estate carriage house. It is a pre-existing non-conforming structure. The applicant is seeking to refurbish the building and would like to add 2 elements to the back corner of the building. First they would like to add separate entry with a small 3' x 3' deck with some steps and a roof and secondly they would like to consider the option of installing some solar panels on the roof. Chris Gabriels stated that he is not sure how much the architect has looked at the solar panel installation but he is seeking approval to have the ability of the installer to tilt those panels.

Kam Hoopes asked what the primary use will be for the building. Chris Gabriels stated that he is not sure but it seems to be for a recreation/game room.

John Michaels stated that the applicant plans to install the solar panels only on the south side of the building. Chris Gabriels replied that the applicant does not want to alter the look of the building so the panels are strictly limited to the back of the building. Additionally they won't let the installer recommend anything that would affect the visual aesthetics of the building from the roadway.

Counsel Muller read a letter from the Chris Navitsky Lake George Waterkeeper who is not opposed to the application but did encourage applying reasonable conditions of approval as follows: 1) require a stormwater management plan, 2) require site plan review for proposed project and 3) demonstration of a suitable location for the on-site waste water treatment system.

Counsel Muller read a letter from Michael Hill of Miller, Mannix, Haffner and Schachner, representing neighbors Victor and Yvette Hershaft who are in support so long as the proposal does not include transformations that would take away from the character of the building and that the applicant follows the plan so that no bedrooms are added. They also encouraged the Board to get more information regarding the septic system.

Kam Hoopes asked if they are removing the shed. Chris Gabriels replied yes they will be removing the shed which will reduce the size of the building. Kam Hoopes asked if the application will require site plan review. Pam Kenyon replied that if it is over 1500 sq. ft of new floor space it would require it. Chris Gabriels stated that they are only adding 12

sq. ft.

Jason Saris stated that the applicant will still need to go to the Town for septic. Pam Kenyon agreed. John Michaels asked if the applicant would accept a condition of septic approval by the TB. Chris Gabriels stated that he just assumed that they would pump the septic into the existing approved system for the house. John Michaels stated that they have to be sure that the system can handle that. Chris Gabriels stated that the system was designed for the house 10 years ago and they are not adding any more bedrooms or capacity. Jason Saris stated that it will still need to be reviewed by the Town and if they are satisfied then it will be okay. John Michaels stated that was why he was suggesting the condition of approval.

John Michaels stated that by reducing the size of the building they do not need to really address stormwater but he does feel that they need address the septic. Kam Hoopes stated that they are losing quite a bit of roof here but the applicant could just add some gutters to the roof and it would handle stormwater.

Clarence Linder, neighboring property owner stated that he is in full support of the application because it is in need of repair. With regard to the setback from 9N, when the barn was built it was only 10' from 9N and the easement of 0' setback post dates the structure of the barn. With regard to the solar panels, if the engineer suggests to put them on the north side, he doesn't feel that it would be doing anyone any justice, but on the south side they will be well hidden. Overall he is looking forward to seeing it restored.

Pam Kenyon indicated that there was no WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from Steve Jones (V11-52) 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; the building will be reduced in square footage.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is a great building and will be great to see it restored. This should be a benefit to the entire neighborhood.
- 3) The request is not substantial; these are small steps to the building.
- 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 reduction in the total square footage.
- 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 John Michaels and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented with the following conditions: 1) septic plan is approved by the Town and 2) the solar panels are kept to the rear or south side of the building. **All in Favor. Motion Carried.**

4) V11-53 VITALE, JOSEPH. Represented by Atty. Scott Olson. To alter non-conforming single-family dwelling, specifically to add 58 square feet to the dining area, 170 square feet for a new family room and 202 square feet for a new porch addition, seek area variance for **1) Deficient setbacks. Rear:** 30' is required, 0' is proposed; **Shoreline:** 75' is required, 49.9' is proposed; **Front:** 50' is required, 21.7' is proposed; and **Side:** 30' is required, 7' 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.

Scott Olson stated that the applicant owns an 850 sq. ft. cabin off Millstone Drive and would like to add a 400 sq. ft addition. The current structure has 2 bedrooms and 1 bath, with minimal living space. He would like to increase the dining area by approximately 2' 9" to get close to 11' in width. He would also like to use the existing deck to build upon. He will enclose it and create a new family room. The third portion of this would be to add a porch addition on the front of the house of approximately 202 sq. ft. There is no increase in bedrooms or bathrooms.

Scott Olson stated that the applicant has worked with an architect to see if there were other alternatives for better function. However, the only other alternative was to gut the entire place which is not practical nor would it have been any more functional. Currently the structure is within all setbacks. The applicant is not increasing the encroachment on

the setbacks except for the front porch. The applicant feels that this is about all he can do with the property to expand it without going two stories which he does not want to do.

John Michaels stated that the porch setback is due to the steps. Scott Olson replied yes just the steps encroach upon the setback. Pam Kenyon stated that the steps are already there and that is why she changed it to 49.9' because she didn't include them.

Kam Hoopes stated that when he went down there today it seems that this is the last cabin to be restored and updated. Jason Saris stated that this is a tough piece of property to work with. Kam Hoopes agreed and stated that he believes at some point these were just for rental purposes.

Jason Saris stated that this will be going before the APA so it is important to talk about the fact that there are no other alternatives for this project. There is an existing deck there so the addition of filling in the notch is squaring the building off. It offers the least amount of impact of any type of expansion that they could do here and it is the least encroachment of any setback.

John Michaels stated that they will be increasing the roof slightly and asked if the applicant has any plans for stormwater measures the applicant is willing to take. Scott Olson stated that the property has a lot of grass that slopes down to the lake. As you get closer to the lake there is approximately 4-5' of natural vegetation of native grass, plants and shrubs. The applicant has not experienced any issues with stormwater run-off and does not feel that this additional impervious surface will cause much concern.

Kam Hoopes stated that this is an existing footprint and the setback is virtually not going to change. The stairs are already there. There is a very gentle slope to the lake and the water has to travel quite a distance before getting to the lake. John Michaels stated that minor stormwater measures can help. Scott Olson stated that the applicant plans to incorporate a rain garden and to make part of the slope more aesthetically pleasing. John Michaels stated that he would like to see this conditioned with minor stormwater which can be handled by the Zoning Office. Pam Kenyon stated she does not have a problem with that but the Board has to understand that minor stormwater in these areas does not always meet the regulations for separation so they work with what they have.

Counsel Muller read the letter from Chris Navitsky, Lake George Waterkeeper, who is not opposed to the proposed project but does request that the following reasonable conditions are applied: 1) require stormwater management for the building 2) require a vegetative buffer along the shoreline and 3) require site plan review by PB.

There were no comments from the public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Joseph Vitale (V11-53) 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# 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 part of a cabin colony that is challenged with property line setback issues. Although they share so much green area in between it renders the setbacks less important physically.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this will be a great improvement with new construction and new materials.

3) The request is not substantial; these are modest improvements and none of the previous setbacks are being increased.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the applicant will incorporate minor stormwater.

5) The alleged difficulty is not self-created,

The practical difficulty is that this is a pre-existing non-conforming structure and there are no other feasible alternatives for any expansions on this site. This is the same footprint being reconfigured.

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 with the following condition: 1) that the applicant install minor stormwater. **All in Favor.**

Motion Carried.

5) V11-54 McPARTLAND, FRANCIS. To allow single family dwelling approved under V09-41, but relocated slightly on the property, to remain in its present location, seeks area variance for deficient setbacks. 1) **Front.** 50' is required, 3.5' is proposed on the west side and 31.5' is proposed on the east side, 2) **Side:** 15' is required, 8' is proposed on the north side and 13' is proposed on the south side. Section 156.20, Block 1, Lot 20, Zone RCM1.3. Property Location: 11 Cottage Lane. Subject to WCPB. See V09-41 for previous approval.

Francis McPartland explained that he is learning a lot from his experience. Jim Hutchins has since retired and his builder has moved out of the area. He found out that in order to meet the septic setbacks they had to go with a smaller pump tank and shift the house slightly. He was told when they did that all the measurements were perfect and within the variance allowed which was 7' from the right-of-way. However, the builder took that 7' from the property line which is the center of the road and would have given him plenty of distance. So now they find out that they are only 3.5' from the right-of-way which is further than the edge of the road. The roof overhang sticks out 3.5' from the right-of-way instead of the 7' granted in the variance.

Francis McPartland stated that Mitzi Nittmann came out and measured everything and found that was the only corner where there was a problem. However he included another corner because if that one was out of whack maybe Jim Hutchins took the foundation instead of the roof line for his measurements. Francis McPartland stated that the home was constructed up in Ontario with handmade logs and roof panels. Even though they were provided measurements, they found that the roof panels were longer than they expected which added to the problem.

Francis McPartland stated that his neighbors are happy with the end result. He also has a letter from the HOA in support of the proposal and he has no objections to date.

John Michaels stated that the house looks really nice. Francis McPartland stated that he has not received any complaints. He plans to make some more aesthetic additions to the house and yard with flowers. John Michaels stated that he did not see the porch on the revised print. He stated that he would like to see that on a revised plan if this is to be approved.

Jason Saris stated that it still amazes him that construction professionals have specific variance numbers for approval and then go ahead and change the plans. He stated that this is why he would like to see these professionals licensed here in the Town. Tony DePace agreed. John Michaels stated that in many other towns they accomplish this in a different way; when you get your foundation in you have to have a surveyor come out and locate it and compare it with the plan before you can start framing. In that scenario

this would have been brought up to us before all of the lumber was on. This is a good option because otherwise it makes it harder to say no to the variance when the house is already built.

Francis McPartland stated that he trusted his surveyor and builder to do the right thing because he was not around while the construction was occurring. Jason Saris stated that a lot of deeds describe property to the center of roads. It was done that way because if the road was ever abandoned the property owner would get their property back. However all setbacks are from the edge of the right-of-way and not from the center of the road. Tony DePace stated that they also deal with the issue of repaving the surface and adding additional inches to the road so measuring from the center line will change the setbacks. Francis McPartland stated that is exactly what happened in his case, when they repaved and it added 1.5' to the road.

Pam Kenyon stated that there was no WC impact.

Francis McPartland provided a letter from Peter and Sherry Panzardi, co-Presidents of the HOA, indicating that there have been no objections.

Zandy Gabriels asked how they will resolve the issue of the porch not being on the plan. Jason Saris asked the applicant to provide a final revised plan to the Zoning Office that shows the location of the building with the porch on it. Francis McPartland agreed.

RESOLUTION

The Zoning Board of Appeals received an application from Francis McPartland (V11-54) 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; the applicant expected the house to be built to the specifications as approved prior however the plan was altered slightly by the builder and the house is already in existence and cannot be moved.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a very handsome building and it is an enhancement to the neighborhood and property values.

3) The request is substantial; because they are cutting the 7' setback in half, but they are in a neighborhood where everything is measured in feet and inches and is considered substantial.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; 3.5' feet setback from the right-of-way is not an environmental issue.

5) The alleged difficulty is not self-created, because the applicant was expecting the professionals he hired to follow the plan as previously approved.

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 with the following condition: 1) that the applicant submits an accurate plan showing the front porch. **All in Favor. Motion Carried.**

6) V11-55 CINNEY, THOMAS. Represented by Jeffrey Tennent. For a proposed lot line adjustment between those parcels designated as Section 171.15, Block 2, Lot 50 (Cinney) and Section 171.15, Block 2, Lot 51(Kenzie Properties, LLC), seek area variance for **deficient density**. 1.3 acres is required, 1.02 acres is proposed on the Cinney parcel. Zones GB5000 and RM1.3. Property Location: 10 Penny Candy Lane. Subject to WCPB review. Subject to SEQOR.

Note: Item V11-55 has been tabled until further notice.

7) V11-49a KENZIE PROPERTIES, LLC. Represented by Jeffrey Tennent. **To alter/convert existing residential/commercial structure into 6 condominium units with proposed decks**, seeks area variance for **1) Deficient density**. 120,000 square feet is required, 19,047.88 square feet is proposed. **2) Deficient Setbacks. Front:** 30' is required, 18.8' is proposed from Route 9N and 16.7' is proposed from Penny Candy Lane. **Rear:** 15' is required, 6' is proposed; and **3) to alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). For the construction of a proposed 4 car garage with storage above**, seeks area variance for deficient setbacks. **Front:** 30' is required, 2' is proposed from Penny Candy Lane. **Rear:** 15' is required, 2.3' is proposed. **Side:** A total of 20' is required, 12' is proposed. Section 171.15, Block

2, Lot 51, Zone GB5000. Subject to WCPB review. Property Location: 5023 Lake Shore Drive. This application is in conjunction with SD11-06 & SPR11-26.

Note: Item V11-49a has been tabled until further notice.

8) MARKI, BERNARD & PATRICIA. Represented by Atty. David Pentkowski. In accordance with Section 200-72 of the zoning ordinance, seeks to appeal the Zoning Administrator's interpretation whereby determining that because animal rehabilitation is not an allowed use in the RCM1.3 zone and no permits (certificates of compliance) were issued for the structures, Bernard and Patricia Marki are in violation of Section 200-21(Application of Regulations) and 200-78A(1) (Building Permits) of the zoning ordinance as a new land use (animal rehabilitation) has been established and is being use in such a manner that is not in conformity with the regulations set forth in the RCM1.3 zoning schedule thus requiring a use variance and no permits(certificates of compliance) were issued to construct the structures in which the wild birds are housed. See interpretation/determination dated October 24, 2011 for specifics. Section 171.07, Block 2, Lot 37, Zone RCM1.3. Property Location: Braley Point.

Note: Marki, Bernard and Patricia application has been tabled until further notice.

The meeting was adjourned at 7:40pm.

Minutes respectfully submitted by Kristen MacEwan.