

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, April 17, 2012
6:30 p.m.

SEQR = State Environmental Quality Review
PB = (Town of Bolton) Planning Board
LC-LGRPBB = Lake Champlain-Lake George Regional Planning Board.
APA = Adirondack Park Agency
LGPC = Lake George Park Commission
DEC = Dept of Environmental Conservation

Present: Jason Saris, Donald King, John Michaels, Jeff Anthony, John Famosi, David Ray, Counsel Michael Muller, Zoning Administrator Pamela Kenyon

Absent: Tony DePace

The meeting was called to order at 6:30 pm.

Jason Saris asked if there were any corrections or changes to the March 20, 2012 minutes.

RESOLUTION:

Motion by Don King to approve the March 20, 2012 minutes as written. **Seconded by John Famosi.** Jeff Anthony abstained. **All Others in Favor. Motion Carried.**

Jason Saris indicated that they would be short one Board Member this evening. He stated that if any applicant would rather be heard in front of a full Board they may choose to table their application at any time.

- 1) **V12-01 SAGBOLT, LLC.** Represented by Atty. Benjamin Pratt. In accordance with Section 200-93A (other regulations applicable to Planned Unit Developments), seeks area variance (PUD Amendment) to amend V11-23 to berth the Morgan at the dock extending from the north end of the former boat museum rather than parallel to the shore. Section 171.16, Block 1, Lot 16, Zone PUD. Property Location: 110 Sagamore Road. Subject to LC-LGRPBB, ZBA, PB, APA and TB review. Subject to SEQR. This portion of the application was tabled at the February meeting pending additional information.

This item was tabled at the applicant's request.

- 2) **V12-06 MATSON, LAURA.** Represented by George Guercio. For the construction of a proposed 39'x 32' garage/carport, seeks area variance for a deficient front yard setback. 75' is required, 25' is proposed. Section 171.11, Block 1, Lot 41, Zone RM1.3. Property Location: 166 Horicon Avenue. Subject to WCPB review.

George Guercio stated that the applicant is seeking to locate the garage in this particular area of the property due to it being a dryer section of the yard. Additionally, it would

make it easier to get to the house. John Michaels asked for more details regarding the driveway location and plan. George Guercio replied that he was not sure exactly what he was going to do but he did have an engineer out to look at the property who suggested a turn-around. George Guercio stated that he plans to do minimal blacktopping to cut down on the expense and the amount of impermeable surface. Don King stated that the reason for the suggestion of the turn-around is so they don't have to back out onto Horicon Ave. George Guercio stated that there is an area that is currently used for parking where he thought he might use pavers for a turn-around.

John Michaels asked how many curb cuts there will be. George Guercio replied that the width of the building will be 26' wide by 30' deep and he is planning on a 16' wide door with the carport off to the side. He stated that he doesn't imagine that they would need access much wider than 15-16'. John Michaels stated that there is nothing on that street that meets the 75' setbacks. The 25' is actually in character with the neighbor plus there is less impervious surface. However he does feel that it is important to understand how the traffic is going to work in and out of the property. George Guercio stated that he feels they will keep it to a single point. Laura Matson stated that she cannot imagine that there would be any more of a traffic concern than they have now. Currently she backs out onto Horicon Ave. and that is not going to change from what they have been doing. George Guercio stated that he can provide a more detailed plan but noted that he plans to keep the access to a minimum.

Pam Kenyon stated that there was no correspondence and she has not heard back from the WC Planning Department staff as of yet. There were no comments from the public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Laura Matson (V12-06) 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 Department;

And, whereas the Warren County Planning Board determined that there was no County impact;

And, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item#1 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is in keeping with the neighborhood. Most of the houses and garages are within the setback from the road.
- 3) The request is not substantial; in relation to the size of the property.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; by moving the garage closer to the road there will be less impervious driveway and less run-off to deal with.
- 5) The alleged difficulty is not self-created, everyone on Horicon Avenue in this area are close to the road.

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 Don King, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) that there only be one curb cut for the driveway exiting onto Horicon Avenue. **All in Favor. Motion Carried.**

- 3) **V12-07 DAL ASSOCIATES.** Represented by Mark Langdon. To demolish and rebuild 85 year old log cabin on the lake shore, seeks area variance for a deficient shoreline setback. 75' is required, -0' is proposed. Section 186.10, Block 1, Lot 9, Zone RM1.3. Property Location: 28 Sweet Briar Lane. Subject to WCPB and APA review.

Brian Reichenbach of Stafford, Carr & McNally stated that they just recently sent in a representative authorization form to the Planning Office indicating that they would be representing the applicant.

Brian Reichenbach stated that if they are to look at the statutory criteria, each is satisfied by the application. There will be no detriment to the health, safety or welfare of the community or environment. This proposal would provide a significant net gain for the neighborhood and community. The applicant is taking a dilapidated building that is at risk of falling into the lake and rebuilding it with modern building techniques and materials. There will be only 2 cribs under the structure and they will replace the 2' x 4' roof rafters with 2' x 8' roof rafters. There is a net height gain of approximately 2' that is measured from the current leaning structure to the level structure that will be there when completed.

Brian Reichenbach stated that there will be no undesirable change to the character of the neighborhood or nearby properties. The structure will be rebuilt using the same chestnut materials to keep with the character of the rest of the neighborhood.

Brian Reichenbach stated that the benefit cannot be achieved by any other method that is

feasible to the applicant. There are only 2 ways to achieve this goal; 1) is to put the building where it is now or 2) put it in an area that won't really support a foundation. There is an area beyond the setback but it is not suitable for construction at this point.

Brian Reichenbach stated that this is not substantial; it is a minor request. The applicant is staying with the same square footage with less than 2' increase in height. The footprint will stay the same and there will only be 2 cribs used in the support. They have received the approvals from DEC. They are waiting on non-jurisdictional letters from LGPC and APA.

Brian Reichenbach stated that the proposed variance will have a beneficial impact on the community, as it will replace a dangerous building with a safe and attractive building.

Brian Reichenbach stated that this difficulty was not self-created. The building was erected in 1927 and only designed for one lifetime not three or four.

Brian Reichenbach stated that they have considered alternatives and found none that are feasible. This the only one that is within a reasonable price range. Moving the structure back would create environmental concerns. This will satisfy the neighbors by having a nice structure that fits in with the neighborhood.

Jason Saris asked why the structure needed to be 2' taller the original structure. Brian Reichenbach replied that there is a steel internal structure which is required to be 6" from grade to the combustible materials to the wood. The steel will have to be 6" and currently the foundation isn't 6" off. Additionally by replacing the roof rafters with 2' x 8's it will raise the roof slightly.

Jason Saris asked if the building weren't leaning over, would it be any taller. Adam Pelky replied that currently the floor structure has sunken and the 7' wall is from grade to the top of the structure. They are lifting the floor and by code they are required to be 6" from grade, then they have the 12" of the floor structure that is in the ground and the 4" to the rafters. They will have the same roof slope and wall height. Jason Saris stated that essentially the new structure is 2' higher than the sagging structure and not the original. Pam Kenyon stated that essentially it will be approximately 6" higher than the original structure.

Counsel Muller read the following correspondence:

- Letter from Chris Navitsky, Lake George Waterkeeper, indicated that he was not opposed to the application but recommended the following: 1) an alternative design for the support structure for the proposed building be analyzed to reduce impact to the lake and 2) it should be determined if this structure requires a permit from the LGPC.
- Email from Bill and Kathy Horne in support of the application.
- Letter from Deborah D. and William J. Hoffman, Jr, in support of the application.

Melissa Vito stated, in the spirit of John Apperson, preservationist who lived and worked

almost next door to this property, it would be best for the lake and its natural landscape to just remove the old building and not build a new one. If the applicant chooses to go forward with the project she would hope that there would be no cribbing introduced to the site as support for the structure. Cribbing is known among the knowledgeable people about lake functioning as an environmental disaster because it kills everything underneath and disrupts natural water flow. In many lakes in the northeast, cribbing is not allowed at all and its time and past time for Lake George to join that group of lakes that have given up this detrimental practice. Melissa Vito stated that there is the alternative support method of using galvanized steel pipes with piles that go straight down in the soil and cause virtually no disturbance. However due its installation expense most local dock contractors cannot offer this service to construct the piles but one contractor can; the Doc Doctors. She hopes that the Board and applicant will agree that this is a better method over the cribbing option.

Adam Pelky stated that they did talk to the Doc Doctors, who recommended 27 piles. After talking with them and the structural engineer they felt that it was in their best interest to go with a crib dock; they are less of an impact. They have their permit from DEC and are awaiting permits from the Army Corp of Engineers and feel that they are within their legal rights to use cribs.

John Michaels asked if there will be any plumbing. Adam Pelky replied no, there is no heat, plumbing or water, just electric. Jeff Anthony asked who the structural engineer was. Adam Pelky replied Roland VanDyke.

Jason Saris stated that this application will be subject to APA review and they will need to address practical difficulty. He stated that this is a pre-existing non-conforming structure which is an acceptable practical difficulty. They will also have to be sure that the applicant looked at all feasible alternatives and demonstrated that a variance is the only way that this can be done.

Brian Reichenbach stated that they are trying to meet more modern codes and make a safe building. With a pre-existing structure the location has already been determined and to move it back beyond the 75' wouldn't be practical because there wouldn't be an area to build a proper foundation. With regard to the pilings, it would be cost prohibitive and they felt that it would be less of an impact with the cribbing.

Jeff Anthony asked if this is an in-kind replacement to the exact footing and foundation that is there now. Brian Reichenbach replied yes with the exception of the use of modern materials.

RESOLUTION

The Zoning Board of Appeals received an application from DAL Associates (V12-07) 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 Department 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; this building has existed for almost 85 years, it is a pre-existing non-conforming structure and the intent is to replace it in an in-kind manner.

2) There will be no undesirable change in the neighborhood character or to nearby properties, it is in complete character of the neighborhood as existing and as proposed.

3) The request is not substantial; it is an exact replacement of an existing structure and the applicant has all the rights to replace an existing structure in-kind.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; having been in the business for over 40 years of developing water related structures and other projects in the Adirondacks, crib docking is not a negative environmental impact. The new standards for crib docking require open cribs with spacing between the cribs to allow for free water flow as well as other environmental protections. As compared to the cost ramifications of piles and other types of construction, it is probably the most practical method of approaching this project.

5) The alleged difficulty is not self-created, this structure was probably inherited or assumed ownership by the current owners. The structure has gone through its lifecycle and is in need of replacement.

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

- 4) **V12-08 CUMMINGS, DAVID.** Represented by Paul Cummings. To allow single family dwelling to remain at its present height, seeks area variance for a height greater than 35'. 36' 7.5" is proposed. Section 171.00, Block 1, Lot 5, Zone LC25. Property Location: 156 Elgecomb Pond Road.

Paul Cummings stated that the applicants are in the process of building their house and have come into realization that they are above the height allowance for the zoning district. He provided a history of the construction. The property is located in the LC25 zone but it is unique because it is a small pre-existing lot. With all the setbacks in the LC25 zone there was limited opportunity to develop the house in any location. Through the site plan review process the applicant and PB selected this site as the best site for the house. However when they started construction the applicants realized that they were going to hit a significant amount of bedrock and modified the foundation on the spot. When the inspection came they realized that there was going to be code related issues about the height of the foundation above grade and that resulted in some increases in the foundation height. Paul Cummings stated that the applicant, as a layperson, was not aware of the implications at that point so they continued with construction.

Paul Cummings stated that the applicants planned to build a timber frame structure, so while they were building the foundation the frame was being built as well. When they raised the building frame and got to the roof system they found that the plans called for an insulation system in the roof that was in between the beams which was going to be an issue with the R-value with heat loss, so they were approved by an engineer to modify the design to put the insulation layer above the beam system. With these changes, it resulted in a building being 1.75' over the height limit.

With regard to that statutory requirements, Paul Cummings stated that while some portions might have been self-created, the site characteristics and the compliance of the code created some unique hardships.

With regard to any environmental impacts, Paul Cummings stated that the building is very green. It is a timber frame with straw bale walls; it is completely off the grid. The applicant has all the appropriate permits for stormwater requirements and have gone to great lengths to make this a green development project. From an environmental perspective beyond the site, Paul Cummings stated that it is not visible from anywhere on the lake, the Conservation Club or any other adjoining properties. It is built into the hillside and looks as if it is only one story from the road.

From a neighborhood perspective, Paul Cummings stated that the architectural style is in keeping with the Adirondack and Bolton style. He understands that several neighbors and residents have written on behalf of the applicants in support. This is a minimal impact overall.

Paul Cummings stated that the applicants thought that with the driveway and leach fields yet to be installed that once completed it might bring it up to meet the requirement. However since that time they have finished that phase of the project and realized that it is still an issue. With regard to alternatives, Paul Cummings stated there are concerns with bringing in more fill because of erosion and the steep slopes. Additionally, people would have to walk down into the house and it would be cost prohibitive. The only other alternative is to tear apart the entire roof system and walls and rebuild the 2nd floor which would also be cost prohibitive.

Jason Saris asked what the original height called for in the design. Paul Cummings replied 35'. Jason Saris stated that given the topography proposing the maximum was leaving no room for error. Paul Cummings stated that it was not the intention of the applicants to go over the 35' but given the site and field changes it caused the issue.

Jeff Anthony stated that he is not opposed to the building location, its setting, aesthetics, etc. however he does agree with Jason Saris about designing for the maximum. Paul Cummings stated that even though the applicants are talented individuals and have put a lot of effort into building their own house they are not experienced contractors. There was further discussion about how the measurement was taken and where it was taken from.

Don King stated that by getting a variance like this it continues to open the door for others who do this intentionally. He stated that he can sympathize with the applicants and understands that they were not trying to do this on purpose. David Cummings stated that he can understand the thought of the Board members. However he did not intentionally try to go over the allowable height nor did he gain anything from it. His wall height and ceiling heights are the same, he has not gained view or anything. The timber frame was milled on site so the dimensional lumber lends itself to grow or shrink the overall. Paul Cummings stated that it is important to also reflect on the unique characteristics of the site. There are very limited building opportunities with a steep slope site and there are a lot of variables to deal with regarding bedrock. Don King asked if ledge rock was removed. David Cummings replied no, it was not in the budget.

Jason Saris asked how high the interior ceilings were. David Cummings stated that the basement is 9', the 1st floor is 8, the 2nd floor is 8' and the loft is 7'6" to the interior peak.

Counsel Muller read the following correspondence:

- Chris Navitsky, Lake George Waterkeeper, would indicated that he was not in opposition of the project but recommended determining if stormwater has been done.
- Ted and Jane Caldwell, in support of the application.

With regard to the Waterkeeper's letter, Pam Kenyon stated that the applicants have a stormwater plan.

Jason Saris stated that this is completely self-created which is not a reason not to grant the variance but it needed to be stated; there are a lot of ways to avoid this. Jeff Anthony agreed, he stated that time and time again applicants cut these dimensions so close and this is what happens.

RESOLUTION

The Zoning Board of Appeals received an application from David Cummings (V12-08) 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 Department 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; there could have been some adjustments in the structure or the way the interior of the house was constructed, however it is already in place and would be difficult and cost prohibitive to change the structure at this point.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, the house is extremely suited for the community and environment of the lot.
- 3) The request is substantial; this is a 5% increase above what is allowed. It is significant but can understand the topography of the land and difficulty of trying to locate a site on it. This is substantial but less significant because of the surrounding land.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the Waterkeeper's letter does address stormwater however it does not fall under their jurisdiction but rather the PB. With regard to erosion control he did not notice anything in place.
- 5) The alleged difficulty is self-created, however it was not engineered to be in violation of the code.

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 Don King 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) **V12-09 JUMBO REALTY, LLC. (CAMP WALDEN).** Represented by Peter Loyola of CLA Site. For the construction of a proposed soccer field, softball field and administration area, seeks area variance from Section 200-46B(10) cut and fills. 6' maximum is allowed. Soccer field: a 7' cut and 7' fill is proposed. Softball field: a 15.5' cut and 17.16' fill is proposed. Administration area: a 12' is proposed. Section 185.00, Block 1, Lot 32, Zone **RCL3**, LC25 and LC45.

Subject to WCPB review.

Peter Loyola stated what began as a relocation of some activities became a complete redesign of the sports program. He provided details to the design. He stated that a lot of these are existing uses that just require relocation.

Peter Loyola stated that the benefit cannot be achieved by any other means. They do not have a lot of flat area and they do have some slopes in certain areas that they have to deal with. With regard to the soccer field there is just a small section of the soccer field that will have a slope and will require installation of a retaining wall on the slope. The administration area also has a slope and will require fill to create a fire pit area and bench area. With regard to the softball area, it is in a fairly secluded area. There is plenty of space and a full stormwater management plan has been developed to handle erosion and sediment control. They will not be impacting any neighbors with regard to the slopes and feel that they meet the requirements with regard to the environmental concerns.

Jason Saris asked if they have done test pits. Peter Loyola replied yes they have great sandy soils and there is enough separation to ground water. John Michaels asked if it will balance the cuts and fills. Peter Loyola replied yes. John Michaels asked if this was subject to site plan review. Pam Kenyon replied yes they will be going before the PB on Thursday.

Pam Kenyon stated that Tom Nace has reviewed the plan and has signed off on it.

There was no correspondence or comments from the public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Jumbo Realty (V12-09) 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 Department 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, this is an improvement to the facility.
- 3) The request is not substantial; The cuts and fills are substantial but in this terrain and slope they may not be substantial and there is really no other way to do it.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; This is a sandy area and the applicants have a full stormwater plan. The cuts and fills may have a little impact on the environment.
- 5) The alleged difficulty is not self-created, the applicant just wants to improve 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 John Michaels and seconded by Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented. Don King recused himself. **All Others in Favor. Motion Carried.**

- 6) **WALLER, RICH & WAUNEATA, KRONENWETTER, JOHN & MCBAIN, JAY.** In accordance with Section 200-72 of the zoning ordinance, seek to appeal the Zoning Administrator's interpretation whereby determining that no violation exists on the subject parcel as it pertains to the rental of the single family dwelling. This determination was based upon reviewing the definition of business, commercial use, dwelling- single family, dwelling unit, family, hotel, inn, motel, principal building, retail services- commercial, rooming house, tourist accommodations in the zoning ordinance and commercial use found in the latest illustrated book of development definitions. See interpretation/determination dated March 5, 2012 for specifics. The Planning Office does not become involved in the activities that are customarily associated with a single family dwelling such as a wedding, wedding reception, engagement party, anniversary party, social gathering, picnic, family reunion, graduation party, etc. Section 171.10, Block 1, Lot 7, Zone RL3. Property Location: 18 Skyline Drive.

John Michaels stated that he has to recuse himself from hearing the application due to his prior discussion with the applicant. At the time he was affiliated with a law firm that was representing the applicant. He stated that the applicant understood that he would have to recuse himself.

Jason Saris asked that there is a public hearing aspect of this application understands that everyone would like to be heard. He requested that if someone has also sent correspondence that they either waive the reading of their correspondence or let them read the correspondence and not speak. He also requested that any and all comments are

directed to the Board. Lastly, he stated that they are specifically discussing the determination and asked that everyone stay on task.

Jason Saris once again explained that the Board is short one member due to absence and another member has chosen to recuse himself. He allowed the applicants to table the application if they should choose to wait for a fuller board.

Dennis Phillips stated that in light of the recusal and absence of Tony DePace he would like to table the application until Mr. DePace returns.

Christopher Langloy, representing John Lavender, asked to know who Counsel Phillips is specifically representing. Dennis Phillips stated that he is representing Wauneta and Rich Waller, Jay McBain and John Kronenwetter.

RESOLUTION

Motion by Jeff Anthony to accept the applicants' request to table the application.

Seconded by Don King. **All in Favor. Motion Carried.**

The meeting was adjourned at 7:53pm

Minutes respectfully submitted by Kristen MacEwan.