

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, August 20, 2013
6:30 p.m.

SEQR = State Environmental Quality Review
PB = (Town of Bolton) Planning Board
WCPS = Warren County Planning Staff
APA = Adirondack Park Agency
LGPC = Lake George Park Commission
DEC = Dept of Environmental Conservation

Present: Jason Saris, John Michaels, Donald King, John Famosi, David Ray, Matt Slaughter, Zoning Administrator Pamela Kenyon and Counsel Michael Muller

Absent: Jeff Anthony and Tony DePace

The meeting was called to order at 6:31 pm.

Jason Saris asked if there were any corrections or changes to the July 16, 2013 minutes.

RESOLUTION:

Motion by Don King to approve the July 16, 2013 minutes as written. **Seconded by John Famosi. All in Favor. Motion Carried.**

V13-27 SMITH, VICTOR & MARY. Represented by Gary Hughes. To alter non-conforming single family dwelling, specifically to remove existing attached garage, add a 28'x 13.4' 1st floor family room, bath & laundry, 2nd floor bath and bedroom, remodel kitchen and add a 16'x 16' deck/retaining wall, seeks area variance for 1) Deficient setbacks. Front: 75' is required, 18.9' is proposed. Sides: 20' is required, 8.7' is proposed; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.19, Block 1, Lot 10, Zone RL3. Property Location: 38 Mohican Road. Subject to WCPS review.

Gary Hughes represented the application and asked the Board if they had any questions.

John Michaels asked how many trees were going to be removed for the placement of the new septic. Gary Hughes stated that the plans showed 2 maple trees in the swale, but there was no indication they were coming down.

Jason Saris asked if there were any other alternatives considered for the addition project. Gary Hughes stated that it was not feasible to go in any other direction. The existing garage on the back is in bad condition and they could demolish and replace it with the addition. John Michaels stated that the addition was in a perfect spot and would be an improvement to the house, but he questioned if the leach field could be moved closer to the house to save some trees. Gary Hughes said that the applicants engineer had done perc tests and found this to be the best spot. John Michaels stated that they did not do any perc tests closer to the house. Mrs. Smith stated that he had done smaller ones.

Don King said he was concerned with the septic bed build up and the trees would have to come down as it was very narrow going down the hill and the root structure would be impinged

upon. He feels it would have been logical to put the septic in the same spot. Victor Smith stated that they had given Devin Dickinson flexibility for the placement of the septic, and they were willing to do anything that was good for the lake. John Michaels said he thought the septic design was good for the lake, he just thought it would be good to take another look. Mr. Smith said that their intent was to always replace the septic, and they decided now was a good time while they were doing their new addition.

Pam Kenyon stated that she had sent the septic plans to Town Engineer, Tom Nace for his review due to all the runoff from the bank and they could give him any suggestions. She also stated that there had been a lot of drainage work done there and she knew there were many pipes underground on this property. Mr. Smith stated that the pipes had already been accounted for in Devin's plans.

John Michaels asked if Ruben Ellsworth would be doing the work and Mr. Smith replied yes.

Town Counsel Michael Muller read a letter suggesting the need for stormwater management from the Lake George Waterkeeper into the record.

John Michaels asked about providing stormwater management on the addition. Mr. Smith replied that they were open to it. Gary Hughes stated that the Smith's were open to anything that would protect the lake.

Jason Saris stated that although stormwater may not be required by zoning it may benefit the project. Gary Hughes stated they had no objection to rain gardens or implementing stormwater controls to protect the lake.

There was no WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from Victor & Mary Smith (V13-27) 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 Staff;

And, whereas the Warren County Planning Staff 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, the addition is in the back and not seen by the neighbors.
- 3) The request is not substantial; minor addition.

- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; Applicant doing minor stormwater plan.
- 5) The alleged difficulty is not self-created, the applicants have accommodated our requests. 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 Matt Slaughter, it is resolved that the ZBA does hereby approve the variance request as presented with the following conditions; 1) a minor stormwater plan is incorporated for the addition and 2) the applicant confers with Town Engineer regarding the possible relocation of the proposed septic system to save trees if possible. **All in Favor. Motion Carried.**

V13-28 FOUR HORICON AVENUE, LLC. Represented by Atty. Jon Lapper. For a proposed two lot subdivision, seeks area variance for 1) Lot size: 15,000 square feet is required for lot 2 (two apartments exist), 1,979 square feet is proposed. 20,000 square feet is required for Lot 1 (two apartments and a commercial space exist), 7,636 square feet is proposed. 2) Setbacks: Sides: 8' minimum is required, 0.04' is proposed for Lot 2 and 2.5' is proposed for Lot 1. 3) Lot Width: 50' is required, 20.20' is proposed for Lot 2. 4) Lot depth: 100' is required, 66.48' is proposed for Lot 2 and 74.22' is proposed for Lot 1. 5) Lot coverage: 40% allowed, 90% proposed for both lots. Section 171.15, Block 2, Lot 36, Zone GB5000. Property Location: 4 Horicon Avenue. Subject to WCPS review. See V10-16, V08-08, SPR08-06 for previous approvals.

Atty. Stephanie Bitter represented the project stating the applicants were seeking to subdivide this pre-existing non-conforming parcel. It maintains 2 structures, one is a multi family residential structure and the other a multi use commercial structure. They are seeking to allow the two buildings to maintain their own individual parcel. She stated that this would give the applicants some flexibility with proposed sales or proposed financing. She understands they are seeking many variances, but there is no other alternative and there would not be any physical changes, only paper.

Jason Saris asked if granted were there any plans to implement right of ways for access or shared utilities for the two owners. Atty. Bitter stated yes, they would have to look into that.

Jason Saris asked if there were any plans to modify the building. Atty. Bitter replied not at this time, there are vacancy signs looking for tenants.

Don King stated that this was an interesting application because only ownership changes and this makes good business sense in an economic standpoint, and it would be less of a financial strain.

Jason Saris stated that it was tough with .4 setback. John Michaels stated that he believes with it separated there would be a much better chance of the properties being maintained at a higher level in the long run.

Jason Saris said he had no conceptual issue, he just has concerns about the neighbors working together.

There was no correspondence or WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from Four Horicon Avenue, LLC (V13-28) 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 Staff;

And, whereas the Warren County Planning Staff 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; The applicant has no other choice.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, There is no change the buildings will stay the same.
- 3) The request is not substantial; no alternative.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; No physical changes.
- 5) The alleged difficulty is not self-created, the applicants have accommodated our requests. The benefit to the applicant is not outweighed by the potential detriment to health, safety and welfare of the community. Buildings exist, and have for a long period of time.

Now, upon motion duly made by Don King and seconded by Matt Slaughter, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

V13-01 F.R. SMITH & SONS. Represented by Chris Gabriels. For the construction of three additional commercial boat storage buildings, seeks to amend V13-01 to include an area variance for **Density** : 20 acres is required. 4.92 acres exist. Section 171.00, Block 1, Lot 10, Zones **RR5** and LC45. Subject to PB, LGPC, WCPS, DEC and APA review. *NOTE: See approvals granted on May14, 2013 for deficient setbacks and length. See SPR87-08 approved by the PB on 4/30/87 for commercial boat storage.*

Atty. Frederick Killeen provided affidavits and documents to the Board. He stated that F.R. Smith and Sons Marina is the oldest marina on Lake George and has been in operation since 1921. He stated that they needed to make modifications to their storage facility on Edgecomb Pond Road that has been there for approximately 25 years. Atty. Killeen said that the modifications they propose involve the construction of some additional buildings, and the construction of a boat wash station to facilitate the moving of boat washing away from the lake. He stated that there will be no material change to the neighborhood other than the construction because the facility is well screened now and will be screened in accordance with the plans that have been submitted previously and have been in front of the Planning Board. He stated that the documents he provided tonight showed that in trying to mitigate their situation, they had reached out to multiple property owners with significant tracts of land, with none of them willing to provide development rights. He said that they had contacted the Nature Conservancy and the Lake George Land Conservancy and both indicated that if they did have any tracts of land available, the process would take a significant amount of time to give them a definitive answer. Mr. Killeen stated that this is an important project to them as the marina depends on the ability to store clean boats in an efficient manner in order to continue its operation. In addition to not impacting the area in a negative way, he believes it is a positive development as they will be moving the boat washing away from the lake, limiting the outside storage of boats and shrink wrapping of the boats. He believes that the increase is a minimal impact as they are only increasing the storage of boats by 15%. There is no feasible alternative, as the marina site itself has no additional space.

Jason Saris asked if the plan had changed from the one that had previously been approved by the Board. Atty. Killeen stated that it had not. Jason Saris asked why they were here. Pamela Kenyon, Zoning Administrator replied that they needed an additional variance for density. She stated that they had a conference call with the A.P.A. and the A.P.A.'s opinion was each of those structures would constitute a principal structure so they would need 20 acres. Jason Saris asked if that was their opinion. Town Counsel, Michael Muller stated that initially it was not. He explained that in early August the Zoning Administrator had alerted him to the possibility that the A.P.A. was interpreting our Zoning Code in a matter that was not consistent by us. He explained that during a staff meeting they called Mr. Grisi of the A.P.A. his explanation made reference to the original permit granted in 1986-1987 where it states this is the principal building, and only one principal building is allowed per 5 acres. Town Counsel, Michael Muller said after that meeting he had instructed the Zoning Administrator to have the applicant look to see if they could find any large track of parcels in the same zone that they could use to transfer the density as the A.P.A. would not be involved with this. This transfer could basically allow up to 4 separate buildings on this parcel. He said that his discussion with Atty. Killeen was to follow the whole path of procedure and make an exerted effort to find those development rights because this was the type of issue that if there is a local grant of variance for density the A.P.A. had the automatic right to review the application from the beginning all over again and evaluate it if they choose to. He stated that all feasible alternatives had to be exhausted so Board members could give consideration to the granting of the variance being appropriate.

Jason Saris said he did not want to hold the applicants hostage and he was confused with the fact that the A.P.A. was interpreting the Town of Bolton Zoning. Town Counsel, Michael Muller said to a degree yes and to a degree no, on the issue of density yes, they raise it in their

letter correspondence, which he read into the record. Town Counsel, Michael Muller explained that, this is where the town became concerned that there may not be the sufficient density on this parcel to construct the proposed buildings. He stated that they called Mr. Grisi to explain his position. Town Counsel, Michael Muller stated he thought Mr. Grisi gave an excellent explanation, one principal building per 5 acre lot. Jason Saris asked if we had changed our interpretation and Town Counsel, Michael Muller said yes. Jason Saris said there has been past practice. Town Counsel, Michael Muller read the zoning code it is on page 200 attachment 3:1 and said it makes total sense that they are capped at one building. He then read another section 200-8 principal building 1 subsection e. Jason Saris says this has not been their interpretation in the past and there are other boat storage facilities in this town that have quite a few principal buildings on them without variances. Town Counsel, Michael Muller replied that the Board interprets the code to which Jason Saris said it does not seem that way, it seems as though the A.P.A. does. Town Counsel, Michael Muller stated that the A.P.A. is coming up with something that is in our code and in fairness to them it is not much of an interpretation, and if you look at the original permit it is the principal structure. Jason Saris stated that was per the A.P.A. not Bolton and that the Board looks at their own code, not the A.P.A.'s and for the record he finds it troublesome that the way they have always done it and has been their past practice and they were already done with it and it gets called up and because the A.P.A. questions it, the Town does an about face. Jason Saris stated that the other boat storage areas have many storage buildings. Town Counsel, Michael Muller said his concern was that they get it right because the A.P.A. can start it all over again if they don't and he did not want to go backwards. Pamela Kenyon stated one of her concerns was the definition for principal structure for the 11,000 ft. space. Jason Saris agreed,

Atty. Killeen, stated that they did attempt to make the substantial attempts to acquire the rights, and based on the Boards interpretation of Bolton's ordinance this plan was reviewed and approved and sent to the Planning Board. The applicant has expended substantial efforts and funds and developed significant plans for this project that are pending approval from the Planning Board. This after the fact interpretation from the A.P.A. and the applicant has tried to make every effort to address the concern in another way. Jason Saris stated he did not have a problem with the application 3 months ago and he still did not. Atty. Killeen stated he assumed that by the fact that the application had been approved.

John Michaels said they never talked about density. He stated that the variances presented to the Board were not for density. He does not know how the Board can issue segmented variances, they need the whole project. Atty. Killeen responded that the original application with respect to the variances requested was phrased "town to determine" and the Zoning Board acted and determined what variances were needed. He does not believe it was segmented. John Michaels stated he did not know they needed a density variance and he would like a fresh look at all the variances needed. Atty. Killeen stated that this project is the same as the one the Board approved, it is simply here because they were told after the fact that it was issue they needed to address. Don King says that it is a difference. Atty. Killeen stated that they relied on the Board's approval and spent significant resources in carrying out the plan as approved.

John Michaels asked what the hardship was in resubmitting the application with all the variances listed for next months meeting. Atty. Killeen replied they had a number of boats and

that construction of the boat washing station needed to be undertaken. Don King stated due to A.P.A. there would be no way they could be ready for this season. He asked Town Counsel, Michael Muller if this was going to be kicked to the A.P. A. no matter what decision the Board made. Town Counsel, Michael Muller replied yes. Atty. Killeen asked what would be the reasonable purpose in coming back again, when the only change that is needed is a density variance. Jason Saris stated he thought it was a waste of time, and they knew how many buildings were going to be there. He did not want to see them get hung up in a technicality on whether the A.P.A. determination was right or not. Town Counsel, Michael Muller said that all variances that have been granted so far, are non appealable, they need a density variance or they can transfer density in. It turns out this is an alternative that is not available and if that's the case one of the avenues for relief is a density variance. He then read the A.P.A condition of approval in the original permit. Matt Slaughter asked about the principal building and 11,000 sq. ft. Town Counsel, Michael Muller explained that he and the Zoning Administrator, Pam Kenyon went through the code, believing this was the case, but after speaking with Mr. Grisis they were directed to one principal building per 5 acres.

Jason Saris stated it was unfortunate that the applicant gets caught in the middle of this with the A.P.A. John Michaels said that Town Counsel, Michael Muller agreed with the A.P.A. in this case. Town Counsel, Michael Muller explained to the board what the A.P.A was looking for in this application. Jason stated that if the Board's interpretation did not agree with the A.P.A, they would kick it back to the Board.

Atty. Killeen, stated that they had a wetland specialist document the property.

Town Counsel, Michael Muller read letter from Henry Heller Smith in opposition of the project.

Atty. Killeen stated the letter was addressing facts that were clearly for the Planning Board and not the Zoning Board.

Atty. Cathy Radner, representing Hawkins Investment LLC and Harold M Bixby Inc. She stated that substantial variances were required for this application in a rural residential zone. She said that the applicant wants to turn this site into a marina which exceeds what is allowed in this zone. She said they were requesting a more than 75% variance which is very substantial. She stated that this project is completely out of character for this zone. She believes they need a use variance along with the area variance for this application. She stated that this project will now impact the environment, the stream and potentially the ground water of the neighbors.

Henry Smith stated they had not received any correspondence from F. R. Smith on this project and they live directly across from the property. His concerns were as follows:

- Property has only natural screening.
- He believes they had water treatment elsewhere that had been sold.
- No water is allowed on this premise, when it is only supposed to be used for storage.
- With storage buildings you double the setbacks and size of the lot in Town of Bolton code.

- A.P.A. says one storage building as opposed to three.
- Concerned with the entrance to Potter Hill and the screening of trees.
- 52 to 55 ft. setback from the stream as opposed to the 100 ft. required for the other buildings.
- Extreme change to the neighborhood.

He stated that he hopes the Board takes into consideration what the zoning really is in this community.

Pam Kenyon stated that when the applicant applied for the variance for setbacks, it was based on twice the size of the normal requirements as required and this only applies to setbacks and not lot size in this case. She also stated that they had determined that the quick launch is not part of a boat storage facility. Town Counsel, Michael Muller agreed with this. Jason Saris asked if boat storage was an allowable use in this zone. Pam Kenyon stated that was correct through Site Plan Review. Jason Saris said that is why a use variance is not required.

Atty. Killeen stated that many of the comments made tonight were based on Site Plan Review and not for the Zoning Board to make determinations on. He wanted to remind the Board this was not a fly by night business and this was vital to them.

Mark Roden neighbor to the project spoke his concerns and said that Scott Andersen had contacted him about development rights. He is wondering if the Board is considering throwing out the RR5 density rules and regulations for density. He stated that if they did it for one they would have to do it for all. He suggested the alternative solution of going back to the original A.P.A permit. He also suggested they use another access to the property on an old farm road. He stated one of his main concerns was for the wildlife. He does not see any easy answer.

Lee Harrison property owner within 500 ft had concerns with the unlimited amount of boats to be left out at one time, and the traffic increase would be a huge change for the neighborhood.

Atty. Killeen said that he believes that the application is very straightforward and he believes that most of the concerns stated have to do with Site Plan Review and not the requested variance. He explained they were not building houses, and the storage buildings were to put the boats inside.

Jason Saris stated that the A.P.A. permit was between the applicant and the A.P.A. He stated that the Board needed to make a determination upon the request that is in front of them. He suggested any contingencies that they put on, should only deal with our own code and not the A.P.A.'s.

There was no WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from F.R. Smith & Sons (V13-01) 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 Staff;

And, whereas the Warren County Planning Staff 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,
- 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 applicants have accommodated our requests. 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 Matt Slaughter to deny the application as presented. No second. No Action Taken.

Town Counsel, Michael Muller explained if there was no second the motion dies.

John Michaels stated that he would like a chance to relook at the property to better understand the neighbors concerns. He was not ready to deny the application but he was also not ready to approve it.

Jason Saris asked what Mr. Michaels would like them to come back with. John Michaels said he really wanted to go back and walk the property and check the views along with other concerns by the neighbors brought up at tonight's meeting.

Pam Kenyon asked John Michaels if he was anticipating that they list all the variances again for next month's meeting. He said no he would like to rehash what they had approved.

Now, upon motion duly made by John Michaels and seconded by Don King, it is resolved that the ZBA does hereby table the variance request as presented for further review. Jason Saris and Matt Slaughter opposed. **All others in Favor. Motion Carried.**

The meeting was adjourned at 8:15.

Minutes respectfully submitted by Kate Persons.