

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, August 14, 2012
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, Jeff Anthony, Donald King, John Michaels, Tony DePace, David Ray, John Famosi and Counsel Michael Muller

Absent: Zoning Administrator Pamela Kenyon

The meeting was called to order at 6:35 pm.

Jason Saris asked if there were any corrections or changes to the July 17, 2012 minutes.

RESOLUTION:

Motion by Don King to approve the July 17, 2012 minutes as written. **Seconded by Jeff Anthony.** Tony DePace and David Ray abstained. **All Others in Favor. Motion Carried.**

1. V12-22 HAVENICK, BARBARA. Represented by the Phinney Design Group. To alter pre-existing non-conforming single family dwelling, specifically to add an addition on the south side and alter the lakeside, seeks area variance for 1) length. 120' maximum length allowed, 148' exists and 144' is proposed; and 2) to alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.19, Block 1, Lot 13, Zone RM1.3. Property Location: 30 Isle Harbor Drive. Subject to WCPB review. *Note: This application was tabled at the July meeting pending a revised plan.*

Note: Jeff Anthony recused himself.

Mike Phinney stated that after the last meeting he and the applicant took all of the Board's comments, concerns and suggestions into consideration and were able to come up with the current design. The proposed design works within the existing length of the house and makes use of the historic office, maid's quarters and small bathroom. This area will have the master bedroom, dressing room, sitting area and master bathroom. He provided further details of the design.

Don King stated that he is very much in favor of the new design. It is a creative solution to reconfigure the house and get the applicant what she would like without altering the integrity of the house. John Michaels agreed.

Mike Phinney reviewed the variance criteria requirements. With regard to alternatives, he stated that currently all of the bedrooms exist on the 2nd floor of the house. The elderly owner

wishes to add a main level bedroom suite that will allow her to reside at the property without having to navigate stairs in order to access the sleeping areas. There are no other feasible means of providing a main level sleeping accommodation without compromising existing utilized space on the ground floor. The applicant has recently agreed to modify some existing historic space to provide a 1st floor accommodation within the existing length of the house.

Mike Phinney stated that the project will not produce an undesirable change to the neighborhood as the change is minor. It maintains the historic aesthetic of the existing house and it is completely screened from the neighboring properties and view shed from Lake George by a large thickly forested area that will remain. Additionally they have taken the architectural elements that exist and just extended them out.

Mike Phinney stated the request is not substantial, the updated design does not propose to exceed the existing length. It is a single story addition that will not exceed the height of the house.

Mike Phinney stated that the existing residence and proposed addition are over 250' from Lake George. The project does not propose any substantial moving of earth or modifications to the existing grade and therefore will not affect the physical or environmental conditions of the neighborhood or district.

With regard to this being self-created, Mike Phinney stated that the applicant did not cause the existing house to exceed the maximum width allowed. The house was built in 1913 and very little has been done to the house since then other than restoration. This is a slight modification to the house.

John Michaels asked if the septic system can handle the increased size of the living space. Mike Phinney stated that they did have IBS inspect the system. The system was updated approximately 10 years ago when the applicant did some major renovations. Additionally, the total number of bedrooms has been reduced as part of this new design; they are losing a bedroom and small bathroom. John Michaels stated that even though it is a reduction they require verification when there are any changes to lake front homes. He stated that he would like to see that as a condition of approval.

There were no comments from the public in attendance.

Jason Saris asked if there was any correspondence.

Counsel Muller stated that Warren County Planning Staff issued a no impact statement based upon the previous application with the following comments: "Staff has concerns regarding the amount of building mass visible from the lake. The lake is a significant County resource and visual concerns are a legitimate issue. The renderings appear to show the new addition will be obscured from view by trees. Staff would ask the local board to be sensitive to this issue. Staff recommends no county impact with the previously noted concern based on the information

submitted to the suggested review criteria of NYS General Municipal Law Section 239L applied to the proposed project.”

Counsel Muller noted that this approval was based on the previous proposal. Jason Saris stated that they were sensitive to that concern as well.

Don King asked if there has been any change to the stormwater off the house. Mark Tabor replied no, there was actually a decrease in the impervious area but rather than change the calculations they left it the way it is.

John Michaels asked about the trees noted on the map; he asked if they will remain. Mike Phinney replied that they will be only impacting a few trees as noted on the plan. John Michaels stated that he would like to be sure that no trees between the house and lake are taken down.

RESOLUTION

The Zoning Board of Appeals received an application from Barbara Havenick (V12-22) 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 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; they are reducing the length of the overall existing structure.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, the house has been there for almost 100 years. This is a facelift to improve it.
- 3) The request is not substantial; given the size of the lot. The applicant is also well beyond the 75’ setback from the lake.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; there is storm water management proposed.
- 5) The alleged difficulty is not self-created, the structure was built over 100 years ago.

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 Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented with the following conditions: 1) an engineer reviews the septic system to determine its adequacy due to the increase in living space, and 2) no trees will be removed between the lake and house other than the one that is noted on the plan. Jeff Anthony recused himself. **All Others in Favor.**
Motion Carried.

2. V12-23 ZWICK, EDWARD. To alter pre-existing non-conforming single family dwelling, specifically to place a seasonal screen room on existing east side deck, seeks area variance for 1) to alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.11, Block 2, Lot 4, Zone RCM1.3. Property Location: 4 Hidden Hills Drive. Subject to WCPB review.

Ed Zwick provided an overview of the proposal. He stated that all of the owners in the association own their own access road but have a shared right-of-way. He stated that his garage is 38' from the corner to the right-of-way. The deck is a 10' deep by 65' long wrap-around porch. He is now looking to create an area on the deck that has a screened area. He will not be further encroaching upon the set back or increasing the building footprint.

Ed Zwick stated that when he built the house in 1988 he was in compliance with the setback but since then the zoning laws have changed. In 1996 he applied for a corner screen room and it was approved. He did the same in 1999 and it was approved again. However in each case it was too expensive to support. He stated that they have used a sun setter screen room for the past 12 years but he is finding it to be a huge hassle putting it up and down especially as he gets older.

Jason Saris asked if they had any interest in expanding the deck area. Ed Zwick replied no.

There was no correspondence or WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from Edward Zwick (V12-23) 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 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 been patient and there have been circumstances as to why he has not completed the project before now. It is the most logical choice for the porch and the applicant is not going beyond the footprint.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the porch is well screened from neighbors.

3) The request is not substantial; there is no infringement on the setback lines, footprint or height.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; no disruption to the yard, natural drainage systems or vegetation.

5) The alleged difficulty is not self-created, this is the only way to expand what is there in a little more finished fashion.

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.**

3. V12-24 NICASTRO, ROBERT. Represented by Kevin Kershaw. To alter pre-existing non-conforming single family, specifically construct a rear addition, front stoop and side deck, seeks area variance for 1) a deficient front yard setback. 75' is required, 11.43' is proposed; and 2) to alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 199.12, Block 1, Lot 7, Zones RL3 & RR5. Property Location: 505 Coolidge Hill Road. Subject to WCPB review.

Kevin Kershaw stated that the house has existed for approximately 60-70 years. It is a small 24' x 24', 2 story home. They have been doing a lot of work on the house including structural work. The applicant is proposing an addition off the back, a deck off the side of that and enlargement of the existing front stoop, which is very small. He stated that everything else structurally will remain the same but they are replacing the windows and siding.

Don King stated that when he initially saw the plan he was concerned with the close proximity

of the road and going any closer. However since inspecting the property and realizing the elevation change it doesn't seem to be an issue. It also looks better having the stoop on the front of the house. John Michaels agreed. He stated that initially he would have thought they could move the stoop to the side of the house but architecturally it looks better on the front.

Jason Saris asked about the purpose of the addition. Kevin Kershaw stated that the house is extremely small and the layout of the home does not provide a lot of area to put furniture. The great room will allow them more room for furniture and use the back of the house. Jason Saris asked if this will increase the number of bedrooms. Kevin Kershaw replied no. He stated that all of the bedrooms are upstairs. Since there are no bathrooms upstairs they are eliminating one of the bedrooms and creating a bathroom. Jason Saris stated that there should be no effect on the septic. Kevin Kershaw replied none at all.

There was no correspondence or WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from Robert Nicasro (V12-24) 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 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; this is a pre-existing non-conforming structure and the applicant is seeking to put a porch on it.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this will be an improvement architecturally it will look better from the road.
- 3) The request is not substantial; except for the front porch and the fact that it is pre-existing non-conforming the applicant would not have to be here. The applicant has a 1.7 acre lot, the house footprint is very small in comparison to the lot.
- 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, it is a pre-existing non-conforming structure. The covered stoop adds to the architectural design and it is a safety feature.

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. **All in Favor. Motion Carried.**

4. V12-25 KRONENWETTER, JOHN & KAREN. To alter pre-existing non-conforming retaining walls/residence, specifically to demolish two 2 retaining wall and with one, seeks area variance for 1) a deficient front yard setback. 50' is required, 0' is proposed; and 2) to alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.10, Block 1, Lot 11, Zone RL3. Property Location: 70 Upper Highland Drive.

John Kronenwetter stated that he is seeking to replace an existing 6' x 6' retaining wall. Currently it is a hazard and he is concerned that the lower portion could give way. The wall is stable and he would like to save that and replace it with cement block. He provided more details to the proposal.

Don King asked for some clarification; it seems that the applicant is seeking to make one plane, one wall versus the stepped wall. John Kronenwetter replied that he did this to improve the drainage from other issues coming down the hill.

John Michaels asked if they were interested in widening the driveway. John Kronenwetter replied no. He stated that he is pulling the one wall out to replace the existing wall and put soil and plantings in the place where the existing wall is.

John Michaels asked about the height of the new wall. John Kronenwetter replied that it is 75". John Michaels stated that he will need a railing. John Kronenwetter replied that he intends to put a wrought iron railing through the top. There was further discussion on the height of the wall. John Kronenwetter stated that he intends to put some soil so he can put in some planting to visually buffer the wall. The Board agreed that would be helpful in buffer the large wall.

There were no comments from the public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from John and Karen Kronenwetter (V12-25) 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 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#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; even though there are alternatives but with the drainage issue they applicant wants to have sufficient stone behind the wall.

2) There will be no undesirable change in the neighborhood character or to nearby properties, it will polish it up a little bit with the rotting landscape ties. Additionally the applicant has indicated that they are willing to soften the look with landscape screening. To raise up the ground a bit by a foot or couple of feet it will reduce the visual impact.

3) The request is not substantial; two walls already exist and they are being replaced by one wall. The overall length and height of the walls is similar.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; this is wall and some vegetation that will be put as a buffer.

5) The alleged difficulty is not self-created, a wall has existed and the applicant is looking to improve the condition of the wall for the long term.

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 Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented with the following conditions:

1) a vegetative screening is required in front of the wall to provide a visual buffer, and 2) if required by Warren County building codes, a railing is installed. **All in Favor. Motion Carried.**

5. V12-26 PANZARDI, PETER & SHERRY. Represented by Con Burke. For the construction of a proposed garage, seek area variance for a deficient side yard setback. 15' is required, 13.67' is proposed. Section 156.16, Block 1, Lot 21, Zone RCM1.3. Property Location: Pioneer Village Road.

Con Burke stated that the applicants have come up with a house design. However the envelope on this piece of property is posing difficulty with getting the house and garage in

while still allowing them space to get in between the two. The relief is being sought for the garage building.

John Michaels stated that currently this is a vacant lot and the applicants have a ton of design options available to them. He does not understand how they can get around this not being self-created given that it is a vacant lot. This is a good size lot and he feels that unless there is some sort of hardship like rock or topography driving the design.

Con Burke stated that one option is that the garage could be done at a later date. The applicants want the house to be built but don't want to limit the idea of a garage. He stated that it could always be re-visited. John Michaels disagreed and stated that it should be addressed now. He wouldn't want the applicants to create the hardship and have to come back to get a variance. He doesn't understand why less than 2' is so difficult to overcome; the applicants could make the garage shorter or change the overhangs.

Con Burke stated that they were trying to leave access to the rear of the lot. He also doesn't know if it is worth reducing the size of the garage and make it less usable for a 2 car garage to leave access between the 2 buildings. Con Burke stated that the buildings could be put closer together but then it limits the access to the rear of the lot. He stated that the topography would make it difficult to get around the structures. Additionally they may have to take down some trees in order to allow for access. Con Burke stated that they would also be dealing with snow and ice build-up if the buildings are too close.

Don King stated that with a 1.33' variance on a vacant lot seems to indicate that there is some other solution that would not require a variance. Con Burke stated that they are trying to avoid having to take down trees. Jeff Anthony stated that they will have to take those trees down anyway because of the storm water and they will need to do some grading. He stated they could move the garage up to the house and save the additional 8' on the other side of the garage to get through. John Michaels stated that the applicants could put a garage door on the back on the garage to drive through it.

Con Burke stated that they have a design for the house and garage. They were hoping to get a variance for aesthetics because the applicants think it looks better separated. John Michaels stated that it seems that they picked these designs for the house and garage and put them on the lot and created a hardship. Con Burke stated that the house has been in the design process for a long time. Then the stormwater became an issue, the applicants want a garage in future and they want to construct the stormwater and size everything appropriately for the 2 buildings at the same time rather than come back later.

Tony DePace asked if they could move the garage up closer to the driveway in front of the house. Con Burke stated that they would be encroaching on the 50' setback to the front of the lot.

John Michaels stated that the applicants could consider reducing the size of the garage. He

stated that 20' x 20' is the minimum for a 2 car garage which is plenty of room for 2 cars. There was further discussion about other designs that allow for the applicants' design without needing a variance.

Jason Saris explained to the applicants that the benefit could be achieved by other means. He stated that if they are seeking to have additional storage space, they could make the garage narrower but increase the length. Sherry Panzardi stated that she is concerned that it would affect the walkout from their basement. Jason Saris stated that he understands the benefit of wanting a garage but this is a vacant lot and it is hard to answer that this is the only way to achieve the benefit they are looking for.

Con Burke stated that the applicants own the neighboring lot, they could also seek to have a lot line adjustment to get the additional foot. John Michaels stated that it seems that would not be necessary if they were willing to decrease the size of the garage. After further discussion, Con Burke indicated that he would like to table the application so that he may have the opportunity to go over options with the applicants.

RESOLUTION

Motion by Tony DePace to table application V12-26 pending further information. **Seconded by** Jeff Anthony. **All in Favor. Motion Carried.**

6. V12-27 FOY JR., EDWARD. Represented by Gary Hughes. To demolish existing dock and replace with a relocated dock/boathouse, seeks area variance for 1) a deficient shoreline setback. 20' is required, -6' is proposed; and 2) boathouse width. 15' is allowed, 32' is proposed. Section 171.15, Block 3, Lot 73, Zone GB5000. Property Location: 15 Allen's Way. Subject to WCPB review.

Gary Hughes stated that the applicant is proposing to move an existing dock away from the neighbors' property; a point of the dock goes onto Congers Point HOA land. They are proposing to move the dock over roughly 12' at the end. This will increase the beach of the Congers Point Association. They are proposing a boathouse over the dock. The roof of the boathouse will be approximately 12.5' above the mean high water. They will put a pipe rail with glass railing with a sundeck over it. There is a lot of beach equipment and the boathouse would allow them the space to store that.

John Michaels asked if the LGPC has looked at this. Gary Hughes replied yes, he is going before the LGPC on August 28th. He stated that it is for a setback variance. John Michaels asked if they had enough lakefront to build 2 docks. Gary Hughes stated that the existing docks are going to be taken down and replaced. Jeff Anthony asked if the LGPC has given any indication to their thoughts on this project. Gary Hughes replied no they asked for similar plans with the mean high and low water on the crib plan.

Jason Saris asked how much shoreline they have. Gary Hughes replied that there is approximately 90' and approximately 80' tie lined.

John Michaels asked if they even have authority based upon the recent court case. Counsel Muller stated that according to the recent case, the Town of Bolton has no jurisdiction beyond the mean high water mark and LGPC has full control. John Michaels asked if they should be making it a policy of this Board to wait until after the LGPC has reviewed the application and rendered a decision. Jason Saris stated that if the part of it that is considered a structure is attached to the ground on the other side of the mean high water mark, then it is jurisdictional for the Town. Counsel Muller stated that the key word is structure. John Michaels suggested that they go to the LGPC first so that they are not wasting the applicant's time. Jason Saris stated that regardless of whether we have any jurisdiction or not the LGPC clearly has most of it and should be reviewed by them first. He added that this may not be the final plan once the LGPC is done with it.

RESOLUTION

Motion by John Michaels to table application V12-27 until after it has been reviewed by the Lake George Park Commission. **Seconded** by Tony DePace. **All in Favor. Motion Carried.**

7. V12-28 DEPACE, TONY. Represented by Eugene Baker. To allow a single family dwelling to remain in its present location, seeks area variance for a deficient rear yard setback. 20' is required, 1.7' is proposed. Section 186.06, Block 1, Lot 2, Zone RM1.3. Property Location. 4767 Lake Shore Drive. Subject to WCPB review.

Note: Tony DePace recused himself.

Eugene Baker stated that they were recently informed by Pam Kenyon that they needed a variance for a side yard setback which she had previously granted a certificate of compliance for. They also had Warren County permit. He stated that he is not sure what changed but they are seeking to get a variance on the construction they have already started on. John Michaels asked if a certificate of compliance was issued. Eugene Baker replied yes. Jason Saris stated that even if it is issued by mistake, the Planning Office has no authority to grant relief.

Eugene Baker stated that this was an existing building. It is the same footprint but they did change the elevation from 14' to 19' tall to make it more of a camp. He thought that as long as it was the same footprint they didn't need to seek a variance.

Jason Saris stated that they are here because they increased the intensity of the building on the same footprint. Tony DePace stated that he didn't have time for this project so he turned it over the Eugene Baker. He stated that he wanted to stay on the same footprint so he wouldn't need a variance. They provided all of the plans to Pam Kenyon who returned it once but then approve the plan. Additionally he replaced the septic system.

Tony DePace stated that he received a call from Pam indicating that there was a problem. He

stated that she admitted that it was her fault. Jason Saris stated that the applicant should have known better. John Michaels stated that if Pam Kenyon issues a certificate of compliance he too would take it to the bank. Jason Saris stated that if you know the zoning ordinance you should know that additional changes to the pre-existing structure would require a variance. Tony DePace stated that he feels that not changing the footprint so it would not require a variance. Jason Saris appreciates that this is not after the fact and the applicant at least got a certificate of compliance.

John Michaels stated that based on the merits of the application this is an improvement over what existed. Jason Saris agreed and added that this isn't a substantial change.

Jeff Anthony stated that he agrees that the footprint counts 90% and adding a foot or two to the peak of the building is not an issue nor is it exceeding the height limitations. It is a modification to a pre-existing structure but it is insignificant issue; the footprint and setbacks stayed the same.

RESOLUTION

The Zoning Board of Appeals received an application from Tony DePace (V12-28) 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 Board;

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#7 of the agenda.

The Board makes the following conclusions of law:

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance; this is the only way to rectify the situation is through an area variance for a modification of any non-conforming structure and adding a couple of feet to the roof height ridge line.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the building has existed for a long time and this is an improvement over what existed. Adding a foot or two to the roof will not have an impact on the neighbors.

3) The request is not substantial; it is only a 1-2' height difference of the building and well below the maximum 35' height permitted.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the building footprint does not change, it is not changing storm water management or any other potential impact on the environment with the exception of the visual and the visual is so minor.

5) The alleged difficulty is self-created, because the applicant did add height without permission but it is such a minor condition in relation to the overall project. 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. Tony DePace recused himself. **All Others in Favor. Motion Carried.**

The meeting was adjourned at 8:10pm

Minutes respectfully submitted by Kristen MacEwan.