

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, March 26, 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, Jeff Anthony, Don King, John Famosi, Tony DePace, David Ray and Counsel Michael Muller

Absent: Pam Kenyon and John Michaels

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

1. WALLER, RICH & WAUNEATA, KRONENWETTER, JOHN & MCBAIN, JAY. In accordance with an order of the Warren County Supreme Court in the action John A. Lavender II Plaintiff against ZBA for the town of Bolton et.al. Index 57523. The matter is referred to the ZBA for a determination as to the specific finding by the Board and relied upon in support of the resolution dated June 19, 2012. Section 171.10, Block 1, Lot 7, Zone RL3. Property Location: 18 Skyline Drive.

Counsel Muller explained the procedure. He stated that since he was named in the litigation the Town hired Brian Reichenbach of Stafford, Carr, McNally to defend the Town. Per Supreme Court Judge Krogmann's remand, he returns the matter to the Board for further action. The ZBA has quasi-judicial powers which means that you are in a position to exercise decision making, discretion, weigh and balance the code as you can best interpret it and make decisions.

Counsel Muller stated that the Board did make a decision on this matter upon the event of a public hearing on June 19, 2012. The challenge was brought by several neighbors regarding the interpretation of the ZA. Per her interpretation, Mr. Lavender was found not to violate the code. After ample proof was presented by both sides a motion was made but it resulted in a tie vote and did not result in any action. After a brief adjournment it was again before the ZBA and Mr. DePace made a motion, which was seconded by Mr. King, to not support the ZA's interpretation. The resolution was done in simplified terms, but the reasoning behind it was based upon the ample record that had been created. In remanding it, the Court wants to know what facts the resolution is based upon.

Counsel Muller stated that he asked the Zoning Office to assist in compiling the record in its entirety which resulted in the 575 pages he provided to each Board member. Although this is not a public hearing, he would like the Board dig into the facts and figures in the record and create the findings of fact that support the reason for the resolution of June 19, 2012. Counsel Muller stated that he also prepared some proposed findings of fact that supplement the Board's recollections, which are always best. He based these findings of fact on the record. Additionally, he asked Brian Reichenbach

and the Board to review the record and add any additional thoughts. Counsel Muller stated that it is important to note that this is merely an interpretation to act as a guide.

Brian Reichenbach stated that he went through the proposed findings of fact and compared them with the record. Everything in the proposal is supported in the record in written form or verbal testimony. Counsel Muller stated whatever the Board does decide to do with the findings of fact we are obligated by law to present it back to Judge Krogmann within the proper time limitations. Mr. Lavender and his Counsel will have an opportunity to respond and make comments for review by the Court. Counsel Muller stated that his recollection of the June 19, 2012 vote was that it had 4 in favor and 2 opposed; Jason Saris and David Ray. He doesn't anticipate that their votes will change. However in the event that they support the facts but not the resolution we will need to address that.

Jeff Anthony stated that at the prior meeting he provided the Board with some comments that he came up with after reading the record. Since then he has expanded upon them. He stated that he also participated in discussion with Counsel Muller and Counsel Reichenbach about their findings of fact. He stated that he has read the entire 575 pages of record and is ready to make a motion.

John Famosi stated that he has read the record and the suggested findings; he is in agreement with the findings and feels it summarizes the way he feels on the important issues. Don King stated that he has gone through the findings several times but he did not read through the entire 575 page record but did reflect upon the record and his recollection and it compares favorably to his position on the night of June 19, 2012. Tony DePace stated that he has read through the findings and find them agreeable.

RESOLUTION

Jeff Anthony moved the following:

The decision and order of the Warren County Supreme Court has returned the matter of a Zoning Board of Appeals (ZBA) determination back to the ZBA for further proceedings. It is the duty of this Board to support the Resolution of June 19, 2012 with these findings of fact.

After careful consideration of all relevant information presented by all interested parties, at the conclusion of the public hearing, the determination of ZBA Resolution of June 19, 2012 is supported by the following:

Findings:

1. John Lavender is the record owner of real property in the Town of Bolton at 18 Skyline Drive, tax map parcel number 171.10-1-7. The Lavender parcel is included in a 19 lot residential subdivision commonly known as the Highlands of Bolton. The Highlands of Bolton subdivision is in a "RL 3 Residential Low Density" zoning district established by the Town of Bolton Zoning Code. The Town of Bolton Zoning Code is an approved local land use ordinance which

requires approval by the Adirondack Park Agency (APA) and compliance with APA regulations.

2. The Lavender parcel and substantially all of the parcels in the Highlands of Bolton subdivision are improved by single family residences and appurtenant accessory structures on substantially large lots accessible only by a narrow private road which is utilized, improved and maintained exclusively for the residences in the Highlands of Bolton.
3. Lavender's single family residence is a permitted use pursuant to the Town of Bolton Zoning Code.
4. Lavender's single family residence use is authorized by Adirondack Park Agency Permit #85-85 for single family residence only.
5. Beginning in 2010 Lavender began offering his single family residence to the public as a venue available for special events and intended to serve as a location available for private weddings, corporate meetings, family reunions and similar gatherings of large groups of people for specific purposes of private entertainment, parties and social and professional gatherings. The record before this Board and as presented in the public hearing amply demonstrated numerous examples of internet advertisements in which the Lavender residence, marketed the "Highland Castle" by Lavender and through wedding planners, and internet website event consultants, invites the public to consider the Lavender residence as a place to hold a special event. The record also demonstrates that the Lavender residential premises are marketed and advertised upon a pricing structure specific to the type of event that may be of interest to the consumer.
6. Lavender suggests that his activities in advertising his residential premises is merely marketing for a tenant who will upon entering into an agreement with the owner occupy the residential premises for a specific fee depending upon the type of event. According to Lavender he permits his tenant to use his single family residence and surrounding properties adjacent to his residence for the tenant's special events such as private parties, weddings receptions, professional or social association meetings and general gatherings of people as a privilege included within the tenant's right of occupancy. Lavender suggests that the arrangement by which he permits events in his residence is simply a landlord tenant relationship by which his tenant is merely holding the same type of event, party or gathering at a single family residence that every residential occupant has a right to lawfully engage in.

There was no evidence presented on this record that Lavender had ever rented the Highland Castle out for use as a "single family residence". In the total absence of such essential proof, how can the use under consideration reasonably be considered "customarily associated and subordinate to" use as a single family residence?

7. On or about March 5, 2012, in response to numerous inquiries and complaints from Lavender's neighbors regarding his practice of renting his single family residence to third parties for special events the Zoning Administrator issued an interpretive determination finding that Lavender's rentals of his single family residence to non-related persons for weddings, corporate meetings, etc. in the Residential Low Density 3 zone of the town was not in violation of the town's zoning ordinance.
8. The Zoning Administrator's "Interpretation/determination" relied on, among other factors, that:
 - "1) Based upon my discussion with the Lavenders, the rental of their single-family dwelling does not involve a commercial use as no sales or rental or distribution of goods, services or commodities are offered by the Lavenders such as catering, photography, wedding/event planners, etc..."
 - "2) Based upon my discussion with the Lavenders, the structure is rented out as a single family dwelling. As with any other single family dwelling, 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."
9. The Zoning Administrator's "Interpretation/determination" specifically acknowledged that *"no visual inspections of the parcel have been made by this office nor has this office witnessed any events."*
10. The Zoning Administrator's "Interpretation/determination" did not refer to any independent investigation of facts apart from specific representations made by John Lavender and his spouse in their discussion(s) with the Zoning Administrator.
11. In response to the Zoning Administrator's "Interpretation/determination", nearby neighbors Rich Waller, Wauneata Waller, Jay McBain and John Kronenwetter filed an appeal of the Zoning Administrator's "Interpretation/determination" on March 20, 2012.
12. Under the provisions of the Town of Bolton Zoning Code one of the ZBA's proper functions is to consider and rule on appeals of interpretations/determinations made by the Town Zoning Administrator (ZA) regarding provisions, application and requirements of the Code.
13. In arriving upon factual determinations which support the Resolution of June 19, 2012 this ZBA has considered all of the relevant evidence presented in the record. Admittedly there are instances where there may be inconsistent facts and possibly a reading of the zoning code's provisions may appear to be ambiguous. In those instances, it is the duty of the ZBA to find favorably to the landowner. Where

the facts presented at the public hearing can be reasonably construed favorably to the appellants who have challenged the ZA's interpretation our decision must be well established by the record and consistent with the spirit and intent of the zoning code and the zoning district in which these premises are located. Moreover, our decision must properly weigh the fundamental rights of the single family homeowner in relation to a proper consideration of the fundamental right of adjacent property owners. This must all be in balance with the Town's interest in upholding the integrity of a fair and reasonable application of the zoning code and the protections which a properly applied zoning code can provide to protect the nature and character of residential neighborhoods.

In support of the Resolution of June 19, 2012 specific findings of fact found in the record clearly and convincingly establish:

- a) The private access road in the residential subdivision known as the "Highlands of Bolton" is twelve feet in width, wide enough for one vehicle to stay upon the lane of travel while presenting substantial safety concerns and challenging issues for passing motorists in those circumstances where the re-occurring parties and special events at the Lavender residence have attracted numerous vehicles transporting guests, caterers, entertainment, limousines, and extended vans presenting substantial risks to pedestrians and other vehicles that require safe access to their homes and subdivision lots. The record amply establishes by testimony of neighbors that the events at the Lavender residence attract increased traffic, created traffic congestion, guests to Highland Castle were frequently passing along the private way at unreasonable speeds and all of this seriously diminished the quiet nature and residential character of the neighborhood to the detriment of adjacent property owners. Moreover, neighbors stated that the unreasonable vehicular traffic in and along the private roadway raises serious safety concerns regarding accessibility of emergency vehicles to all of the neighbors who rely on that private way for fire protections and emergency services.
- b) The character of the Highlands of Bolton subdivision is an exclusive residential neighborhood characterized by large open and well landscaped parcels developed by well maintained single family residences some of which have commanding scenic views of Lake George and the surrounding mountains while other offer quiet and secluded locations as essential amenities in a development that has been characteristically private and quiet until the premises of Lavender became a location for special events marketed at the Highland Castle as a venue for wedding receptions, social and professional gatherings and similar gatherings of people at the Lavender residence. In permitting the regular and re-occurring occupancies specifically created and intended by Lavender to be a venue available to the public as a rental location for private party events, the quiet and private character of the residential neighborhood is detrimentally affected. At the public hearing neighbors presented competent testimony as evidence that the

parties, events, receptions and similar gatherings of people at the Lavender residence are regular and re-occurring predominately during the seasons of nice weather. Neighbors stated that such events include the broadcasting of plainly audible loud music, announcements and amplified entertainment which unreasonably diminishes the rights of adjacent and nearby occupants of neighborhood properties from enjoying what had been a peaceful neighborhood in periods of time before events were conducted at the Lavender residence.

- c) The residential character of the Highlands of Bolton neighborhood is diminished and negatively affected under circumstances where the Lavender residence is regularly available and offered for re-occurring events and special social or professional gatherings. At the public hearing neighbors of the Highland Castle presented testimony stating that by reason of an overall increase in traffic, and general partying associated with the activities at the Lavender residence the record demonstrates that there is a noted increase in litter and party trash along the sides of the community's private roadway and on neighboring private properties.
- d) The actual use to which Lavender puts his single family residence is not incidental and customary to the reasonable and expected uses of a single family residence. The record does not support Lavender's characterization that his use is merely the rental of a single family dwelling for exclusive occupancy of his tenant who in turn, as Lavender suggests, is in a residential tenancy free to host a private party or event which involves the gathering of large groups of people, caterers, entertainers, vehicular traffic, party noise, amplified sound, litter and similar neighborhood impacts. Neighbors stated at the public hearing that these events are sufficiently frequent during periods of nice weather and if allowed to continue there are simply no limitations on how frequently such events may occur. By virtue of such re-occurring use and the obvious potential that it is conceivable that the Highland Castle has an unlimited availability for the hosting of such events, clearly this negatively impacts upon the residential character of the neighborhood to the detriment of adjacent property owners. The code definitions of "Single Family Dwelling" and "Family" support the reasonable proposition that the Town of Bolton with an APA approved local land use ordinance has enacted a code to protect single family residences from the intrusion from commercialization and business activities. The record at the public hearing including numerous exhibits and ample testimony from neighbors clearly and convincingly establishes that Lavender's intent, as demonstrated by his past conduct, is to secure a consumer who will pay a fee to Lavender for the exclusive right to host a special social or business event at the Highland Castle and such events do in fact create crowds, noise, traffic, litter and raise public safety concerns all of which are a detriment to adjacent residential occupancies. As well, such re-occurring activities at the Highland Castle negatively impact the quiet solitude and private character of the surrounding neighborhood. The primary

purpose of the arrangement between the owner of the Highland Castle and the consumer is that a special event such as a wedding, a wedding reception, a family reunion, a business, professional or a social gathering is to be held at the owner's residence. For the duration of a preplanned event, the consumer enjoys the exclusive right of occupancy for the specific purpose of hosting a private event at the Highland Castle. Such an arrangement is more than a mere landlord and tenant relationship. The primary purpose of the occupancy created by Lavender and the consumer is a commercial activity and for Lavender it is a business enterprise. This fact is supported in the record by inspection of the advertisements which promote the use of Highland Castle. The availability of the Highland Castle for weddings and receptions is promoted in and amongst commercial advertisements offering identical services in commercial facilities. The record also demonstrates that Highland Castle advertises in association with event planners, wedding consultants and similar enterprises that commercially offer wedding venues. Lavender's argument that this tenant holds the special event as an incidental right of tenant occupancy is unconvincing where the materials contained in the record demonstrate that the Highland Castle is being primarily marketed for a pre-planned social event. A marketing strategy offering the public use of the Highland Castle specifically as a place for events clearly and convincingly demonstrates that the owner's intent is to conduct a commercial use of his single family residence. Such a commercial use is not ordinarily incidental to or customary to a single family residential occupancy. The exhibits of advertising and marketing of the Highland Castle presented at the public hearing convincingly demonstrate that the primary purpose of the consumer's occupancy is for the purposes of hosting a gathering and social event.

As such, it is clear that the intended use for events by Mr. Lavender is proposed as a regular occurrence which intensity is not customary or incidental to the use of the property for a single family dwelling. In situations where a homeowner occasionally hosts and event for a family member, it is not a regular occurrence nor is there a fee charged.

Traditional use of a single family residence implies overnight occupancy by a single family. The intended use for events does not involve a single family activity nor does it imply overnight occupancy. It involves multiple non-family members occupying the residence who ultimately do not reside in the residence (for example, the Bar Association cocktail party that was hosted at the Highland Castle).

- e) The intensity of use undertaken by Lavender through re-occurring and successive special events by successive occupants clearly constitutes the commercialization of a single family residential dwelling. Offering a premises for the purposes of special events and marketing a venue for weddings, business and social gatherings and similar private gatherings with music, dining and entertainment amenities is a business enterprise. This type

of business enterprise is not compatible with the ordinary and reasonable expectations of what constitutes a single family residence. The record at the public hearing through testimony of neighbors as well as in review of copies of marketing materials created by or for Lavender and obtained on the Internet convincingly demonstrate that the primary purpose of Lavender's activities is to conduct a business enterprise by offering his single family residence as available to the public and by fee arrangement as a venue for private parties, weddings, and similar special gatherings and events.

On these facts the appellants and challengers to the ZA's interpretation/determination have satisfactorily demonstrated by a clear and convincing presentation in a public hearing that the activities of Lavender at Highland Castle are not ordinary nor customary uses associated with the occupancy of a single family residence in a Residential Low Density zoning district. In fact, as demonstrated in the public hearing and upon this record such conduct constitutes a business enterprise and a commercialization of a single family residence.

Lavender's practice of commercially advertising and linking website advertisements to related and available vendors and businesses associated with entertainment, catering, professional wedding planning satisfies the Code's definition of "commercial use" as involving the sale, rental or distribution of goods, services or commodities, either retail or wholesale.

Additionally, the Town of Bolton Zoning Law has provisions to allow Mr. Lavender relief to use the property for such events. A use variance or site plan review/special use permit would provide such relief.

Such a procedure would allow for the proposed use to be evaluated for extra intensity, effect on sewage disposal, water supply, parking, noise, traffic and safety. Such intensity of use was not anticipated in the design of the Highlands of Bolton subdivision since the roads are not sized for two-way traffic, high volume traffic, nor does the "Castle" have a proven utility system to accommodate such intensity of use, all of which would be evaluate if a use variance and /or site plan review were conducted for such use.

It should be noted that APA Permit #85-85 would also have to be amended to allow for such use.

In conclusion, as stated above, based on the reasons listed and findings of fact included in the record, the ZBA in its resolution of June 19, 2012, is properly supported in determining that the Zoning Administrators determination/interpretation of March 5, 2012, was in error and properly voted to overturn the determination of the Zoning Administrator that the conduct of "events", such as weddings, parties, etc., is an allowable use of Highlands Castle in a Residential Low Density zone.

Seconded by Tony DePace. Jason Saris and David Ray opposed. All Others in Favor. Motion Carried.

The meeting was adjourned 7:11pm.

Minutes respectfully submitted by Kristen MacEwan.