

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, May 20, 2014
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 Famosi, Matthew Slaughter, Tony DePace, John Michaels, Donald King, Jeff Anthony and Zoning Administrator, Pamela Kenyon

Absent: David Ray and Counsel Michael Muller

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

Jason Saris asked if there were any corrections or changes to the April 22, 2014 minutes.

RESOLUTION:

Motion by Don King to approve the April 22, 2014 minutes as presented. **Seconded by Tony DePace. All in Favor. Motion Carried.**

V14-12 JENSEN, ROY. To demolish and rebuild single family dwelling, seeks area variance for deficient setbacks. Front: 30' is required. 18' is proposed on the north side and 11' is proposed on the south side. Sides: A total of 20' is required. 7.6' is proposed on the east side and 6.6' is proposed on the west side. Section 171.15, Block 3, Lot 42, Zone GB5000. Property Location: 36 Norowal Road. Subject to WCPS review.

Mr. Jensen presented his project as follows:

- He is in the Norowal Cabin Owners Assoc.
- He would like to knock down his existing cabin and replace it with a new modular home.
- He has approval letters from the Association.

Jason Saris asked for plans of the proposed new building. Mr. Jensen showed them to the Board.

John Michaels asked what the first floor square footage is. Mr. Jensen replied 1,367 sq. ft. John Michaels asked what the existing square footage is. Mr. Jensen replied 720 sq. ft.

Jason Saris stated the existing cabin had been added on to. Mr. Jensen stated that he had bought it 34 years ago and he had built a 10' x 24' addition on the front and a deck on the back 34 years ago. He said he is looking to expand as he is retiring up here now.

John Michaels inquired about a map with the existing neighboring cabins shown on it. Mr. Jensen stated he only had the old map that did not show the expansions on these neighboring cabins. He detailed on the map the additions to the Board.

Jason Saris asked if the new construction would be taller than what the existing cabin was. Mr. Jensen replied definitely. Don King stated it looked like it was 32'.

Jason Saris inquired if there was a deck involved with this application. Mr. Jensen replied yes. He stated the house was classified as a one story cape cod.

John Michaels asked if there was anything upstairs. Mr. Jensen replied it was cathedral ceiling in the front and an unfinished attic storage area in the back. Don King asked if the storage area was closed off from the living area. Mr. Jensen replied yes. Mr. Jensen stated that the specs are all within the Association rules.

Don King stated that the applicant was pushing the various setback requirements on all four sides of the house. Mr. Jensen replied the main house was going to continue the same as the old on the sides not counting the decks and stairs. Don King said the Board was more concerned with the farthest dimension to the property line, which would be the decks and stairs on both sides.

Matt Slaughter stated that it seemed like a fairly substantial change and if they offered a reason more than they want this space it would be helpful. Mr. Jensen replied he moved up here full time and the space he is requesting is not even double.

Jason Saris inquired about the rain water runoff of the new roofline. Mr. Jensen stated he had surfed the net and he has gravel in the front of his property and there is a lot of ground water there and he is not sure what the Board wants him to do with it. Jason Saris stated that he was not an engineer and the Board is looking for a design that is not going to cause problems. Mr. Jensen said it was all gravel in the front and the road is gravel. Jason Saris said if the water coming off the roof is eroding the ground it would not be good. Mr. Jensen stated the builder is looking to taper the dirt up so the water runs down to his front lawn to be absorbed and not into his basement. He stated he was not really sure what they were looking for. Jason Saris explained that when you are close with setbacks the Board would like to see the stormwater to be handled on his property and not be a problem to the neighbors or into the road. Jeff Anthony stated that gravel has the same coefficient as black top and it does not absorb water, and there has to be some sort of stormwater management designed for the runoff.

Tony DePace stated he thought they should also look into a roof over the entrance way and possibly moving a door to front or the rear of the house to help with his side variances. Mr. Jensen showed on the map how he would be utilizing the doors under the deck in the winter time so he would not need a roof. He also inquired about eliminating one of the entry doors on the side of the house although it was an excellent means of egress from his house in case of a fire. Tony DePace agreed but stated that a door in the back would do the same and help with the one of the variance requests. Mr. Jensen said if need be he could eliminate the deck on the left side. Don King explained that the Board had to analyze if there were any other ways to

reduce the variance request and they are required to bring it up and ask these questions to see if there are any other alternatives. Mr. Jensen stated he could change the door into a window.

Mr. Jensen was curious what his neighbor had to do as they had the same issues. Tony DePace asked Zoning Administrator, Pamela Kenyon if this project would need a stormwater regulation as it was a total new rebuild. Pamela Kenyon replied it would not if it was not more than 1,000 sq. ft. of new impervious.

Jason Saris stated the Board can't design the stormwater and they had to look and see if the benefit could be achieved by any other means feasible to the applicant besides an area variance, which could not be done if Mr. Jensen increases the size of the living space on the lot it's presently on. He stated that this is not the minimum that could be asked for and if he eliminated the deck and stairs to the laundry room it would certainly help, as this was the smallest setback that he is asking for relief from.

Jeff Anthony stated that Mr. Jensen had to find some way to take the roof water off the roof and put it into the ground before it erodes. They do not want to see a situation where a neighbor is inconvenienced by roof water runoff. He explained that the Board has the right to impose reasonable conditions on a variance and accommodating stormwater is a reasonable condition. Mr. Jensen stated there is water seeping all over the front of his property. Jeff Anthony said this shows that there needs to be a stormwater plan. John Michaels stated that Mr. Jensen may need to have an engineer design a stormwater plan. Don King stated that it was imperative to have an engineer design a system that would deal with and contain the runoff on his property. Tony DePace agreed.

Jeff Anthony stated that this application did not have to go to the Planning Board, so it is the job of the Zoning Board to make sure that all environmental conditions are taken care of. Mr. Jensen asked if he removed the one deck and steps and had an engineered stormwater plan drawn up, could he move forward with the project. Don King stated that if he eliminated the deck and stairs he would have at least one out of four setbacks that conformed.

Jason Saris stated that it was to Mr. Jensen's benefit to have the stormwater engineered by a professional, and the Board would feel more comfortable with an engineered plan. He explained to Mr. Jensen that they Board had concerns and they can act on it now or Mr. Jensen can table it and come back next month with these concerns addressed. Mr. Jensen stated he needed to order this modular so that's why he started early. John Michaels asked Mr. Jensen if he would agree to the conditions of removing the one deck and stairs, and to have an engineered stormwater plan signed off by the Town Engineer prior to construction. Mr. Jensen replied yes.

Attorney Art Pasquariello, representing, Mike and Sandy Pachucki and Joyce Snedeker, the owners of the cabins directly behind this project, stated they oppose the application. They feel it is a substantial change to this building. This will be a 10 ft. wider building and it will be 50 ft. long with a peak that is 32ft high, which seriously affects them.

Atty. Pasquariello briefly went through the requirements of an area variance. He stated that the applicant did not meet the requirements to be granted an area variance. He also said that the variance application was not sufficient in its answers to these questions.

Atty. Pasquariello stated he also spoke to the Town of Bolton Assessor, Dave Rosebrook and was told that his clients were in a 601 neighborhood which is lake front housing having lake rights and an influence code of 450 which means that the ability to view the lake is at a category of 450 and the houses in front of them on the lake are at a 500 code. Assessor Rosebrook explained that if the view was diminished it would definitely affect the value and assessment of those properties.

Atty. Pasquariello stated when his clients bought this property they paid for the view and that should be protected and preserved. He passed out photographs of the homeowners view now and what it would be after the home was built.

Mike Pachucki, homeowner behind Mr. Jensen wanted the Board to consider the overall height of the building. He did not want Mr. Jensen not able to build, but he would lose a substantial portion of his view.

Mr. Jensen stated they all signed the Association rules that state that stairs and eaves are exempt from setbacks and a height of 34 ft.

John Michaels asked if the compelling reason for height of the roof was for design only. Mr. Jensen replied he would be using it for storage.

Jason Saris stated the Association specs are not what the Board goes by. Mr. Jensen replied that he does not understand why other people in the Association have complaints when they all signed the paper with these rules. Jason Saris explained that is not for the Board to consider, but they do need to consider the neighbors view.

Mary Dougherty stated they had thought of other designs but due to the age of the cabin they needed to update. She stated they had also considered a full two story building but decided not to.

Jason Saris inquired about the rear relief that Atty. Pasquariello had mentioned. Zoning Officer, Pamela Kenyon stated the property had two front yard setbacks, not a rear setback due to the road loops around. Atty. Pasquariello stated the back was elevated and it would seem like a rear. Zoning Administrator, Pamela Kenyon stated that any right of way was considered a front yard. Atty. Pasquariello stated that there was no access. Jeff Anthony replied that the Zoning Administrator was correct by definition. He also stated his concerns were not only stormwater but the effect on people's views of the lake and mountains.

Tony DePace asked if it was going to be a full basement and what the height was. Mr. Jensen replied yes and it would be 8 ft. Tony DePace stated it would seem as though they could use the basement as the first floor and make it much better. He also stated that Mr. Jensen needed to start with a stormwater plan.

Mr. Pachucki commented on the ongoing stormwater problems that are occurring right now.

Jason Saris asked if Mr. Jensen still wanted to move forward with the application or to table it. Mr. Jensen replied that he would like to continue and he did not see how anyone from the Home Owners Association could complain about his project, as they all signed the same agreement that allows what he is applying for.

RESOLUTION

The Zoning Board of Appeals received an application from Roy Jensen (V14-12) 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 be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be an undesirable change in the neighborhood character or to nearby properties
- 3) The request is substantial; as submitted it requires variances on 4 sides.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; A stormwater plan is necessary to make this determination.
- 5) The alleged difficulty is self-created;

The benefit to the applicant is not outweighed by the potential detriment to health, safety and welfare of the community.

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

V14-13 BERKOWITZ, NED & ROBERTA. 1) To replace existing 8' x 10' shed with a 10' x 14' shed, seek area variance a deficient front yard setback. 30' is required, 21' is proposed. 2) For a proposed 450 square foot patio, seek area variance for deficient setbacks. Front: 30' is required, 9' is proposed. Side: 8' is required, 6' is proposed. Section 171.19, Block 2, Lot 5, Zone GB5000. Property Location: 17 Congers Point South. Subject to WCPS review.

Ned Berkowitz stated the following:

- They are removing an existing 8' x 10' shed very close to the property line.
- They are replacing it with a new 10' x 14' shed of the same color.
- They are placing it 10' away from the neighbor's property line.

- It will have a gravel platform base.
- It will be 450sq.ft. flagstone patio 5' from the marina wall.
- The patio will be ringed by a stone wall.
- A Storm Tec drain retention pipes will be put under the patio.

Jason Saris asked if the applicants were still planning to put a garage on this parcel. Mr. Berkowitz replied no. Jason Saris asked if they had a basement. Mr. Berkowitz replied no he had 2 crawl spaces.

Jason Saris asked why they would like the patio. Mr. Berkowitz replied they did not have any real functional spots in his yard and wanted space to entertain.

Matt Slaughter asked why they would not be moving the shed in further. Mr. Berkowitz replied they were moving it in from the property line. Matt Slaughter asked why he could not move it in of the 30 ft. setback line. Mr. Berkowitz stated that it lined up with the house and aesthetically looked better. Matt Slaughter asked if they would be removing trees for this. Mr. Berkowitz replied no.

Jason Saris read correspondence from Robert and Ann Pierson.

RESOLUTION

The Zoning Board of Appeals received an application from Ned and Roberta Berkowitz (V14-13) 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; They have done an amenable job to be sensitive to the surrounding neighborhood, and the shed and patio are reasonable change.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties.
- 3) The request is not substantial; The shed is a small addition and the patio is contained.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; The shed is moved back on the side yard setback and the design of the patio has a design to retain the surface water.
- 5) The alleged difficulty is self-created;

The benefit to the applicant is not outweighed by the potential detriment to health, safety and welfare of the community.

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

V14-14 McDONALD, TERRI & MARK. To alter pre-existing non-conforming single family dwelling, specifically to allow an enclosed partial basement and 2 sets of stairs to remain in their present location, seek area variance for 1) Deficient setbacks. Shoreline: 100' is required, 6' is proposed. Front: 50' is required, 20' is proposed; and 2) To alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 122.16, Block 2, Lot 12, Zone RR10. Property Location: 179 Sherman Lake Road. Subject to WCPS and APA review.

- Mark McDonald detailed the following:
- They recently purchased this camp from his wife's parents.
- The lower level of the existing camp was enclosed 8 or 9 years ago.
- The stairs that are currently there were constructed over an existing set of retaining wall stairs that went down to the lake a short time later.
- The construction was done by a brother in law.
- There was a significant need for this due to the age of the residents to navigate the stairs safely.

Jason Saris asked if this was an after the fact variance request. Mr. McDonald replied yes. Jason Saris asked why it was an after the fact request. Mr. McDonald replied the project was done 8 or 9 years ago and he did not know if they knew a variance was required. He stated they were just looking to enclose the camp and nothing was added on to staying within the existing footprint of the structure.

Jason Saris asked if Mr. McDonald could expand on the criteria of a variance approval. Mr. McDonald stated the camp was built in the 30's or 40's and the existing stairs did not have any rails and were not safe. The stairs to the dock were just brick and did not have hand rails. Jason Saris asked if the new stairs were following the previous path of the existing stairs. Mr. McDonald replied yes.

Jeff Anthony asked about the height and whether it starts at the lake with the stairs. Zoning Administrator Pamela Kenyon stated it was from the foundation. Jeff Anthony inquired if this is the way they have previously interpreted this. She explained that this is the way it was stated in the code.

Matt Slaughter asked if the south elevation had a deck without rails. Mr. McDonald explained that it was a permanent wall and not a deck.

RESOLUTION

The Zoning Board of Appeals received an application from Terri and Mark McDonald

(V14-14) 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; They made the stairway safer.
- 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 original stairs were not safe.

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. Jeff Anthony opposed.

All others in Favor. Motion Carried.

The meeting was adjourned at 8:03pm.

Minutes respectfully submitted by Kate Persons.