

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, September 15, 2015
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, Holly Dansbury, John Whitney, Alternate Joy Barcome, Tom McGurl, Jeff Anthony, Zoning Administrator, Pamela Kenyon and Counsel Michael Muller

Absent: Michael Calautti

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

Jason Saris asked if there were any corrections or changes to the August 18, 2015 minutes.

RESOLUTION:

Motion by John Whitney to approve the August 18, 2015 minutes as presented with the following corrections; the last two sentences in item 4 on page 6 need to be removed. **Seconded by**, John Famosi. Jeff Anthony abstained. **All others in Favor. Motion Carried.**

- 1. V15-21 WINNIE, DEREK & YVONNE.** Represented by Stephen Jung. To alter single family dwelling, specifically to allow second floor balcony, patio and stairs to remain in their present location, seek area variance for **1)** Deficient setbacks. Front: 50' is required, 37' is proposed for the deck and 34' is proposed for the patio. Rear: 20' is required, 6' is proposed for the balcony and 0' is proposed for the stairs (note a portion of the patio is located on a neighboring parcel, for which there is no authorization); **2)** to alter non-conforming structure in accordance with Section 200-57B1b. Section 156.20, Block 1, Lot 52, Zone RCM1.3. Property Location: 106 Rock Cove Road. Subject to WCPS review. This item was tabled at the July meeting.

Stephen Jung presented the following:

- The project was tabled 2 months ago for a stormwater management plan which has now been installed.

Jason Saris asked about the portion of the patio that is on the neighboring property and if it has been resolved. Mr. Jung stated that to his knowledge it had not and he is not here to represent that item at this time.

John Whitney asked if part of the variance request was for the patio to have a 0' setback from the property line. Zoning Administrator, Pamela Kenyon replied yes, and they are not here for a variance for the portion of the patio that is on the neighboring property.

Jason Saris asked the Zoning Administrator if her office had approved the implemented stormwater, and she replied yes.

Tom McGurl asked how the Board can move forward with the project without the issue of the patio on the neighboring property being resolved at this time. Atty. Muller replied that the Board can only give relief from what is a restriction or prohibition of an ordinance. Mr. McGurl asked if that meant they were only giving relief for the piece right up to the 0' setback and the rest is some other problem. Atty. Muller stated that it was a civil problem and it is one that cannot and should not be addressed by the ZBA. John Whitney stated that by no means does the Board need to give a variance to the 0' setback. Atty. Muller replied that this was correct.

Atty. Muller read a letter in opposition from Marc Hess and Al Franz.

Jason Saris asked about a retaining wall mentioned in the letter. Zoning Administrator, Pamela Kenyon asked Stephen Jung what this was referring to. Mr. Jung detailed it on the map. Jason Saris asked if it was built by the applicant. Mr. Jung replied yes.

Atty. Muller stated that on this application it has been a long standing effort in the Code Enforcement Office to try to get the Winnies into compliance. He stated that by operation of law once the application is made for a variance, all the enforcement proceedings are stayed so that the Board can judge it on its merits. He stated that they will fulfill whatever the Board decides.

Stephen Jung stated that part of what he is trying to do is to address and resolve the issues in the affidavit the applicant received from the Town.

Holly Dansbury asked if they could minimize the variance in any way. Mr. Jung stated that the problem is that there is a discrepancy in the surveys. He stated that they are here trying to resolve some of these issues.

John Whitney stated that there are two issues, the first being the improvements to the porch and the second variance being a 0' setback for a patio which he has not heard any hardship from the applicant. Jason Saris stated that he is uncomfortable with anything that is a 0' setback. John Whitney stated that he does not see any hardship to approve a setback.

Jeff Anthony stated that there is no way they could prove a hardship for the patio because there is no practical difficulty shown to the Board. He asked Mr. Jung if the Board approved part of the application would his clients be willing to remove the stone retaining wall back a ½ foot from the property line as a condition of approval. Mr. Jung replied he would need to consult the Winnies. Jeff Anthony stated he is not willing to approve anything on anyone else's property.

Jason Saris stated he has no problem with the porch and stairs but he thinks it is unreasonable to be on the property line and he could not look at it favorably.

Tom McGurl stated that he agreed with Jason.

Jason Saris asked the Town Attorney if they could segment the application. Atty. Muller replied yes. Mr. Jung asked if this would segment out the back patio, the stormwater, the screened in

balcony covered area, the new back deck and west stairs. Tom McGurl agreed with the stuff that pertained to the house.

RESOLUTION

The Zoning Board of Appeals received an application from Derek & Yvonne Winnie, (V15-21) 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, 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: the decking and balcony are an improvement of the functionality of the house.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. They have now implemented stormwater to the project.
- 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 on the decking.

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 Whitney and seconded by John Famosi, it is resolved that the ZBA does hereby approve the variance request to allow the back patio, the stormwater plan, the screened in balcony area, the new back deck and west stairs. **All in Favor. Motion Carried.**

The Zoning Board of Appeals received an application from Derek & Yvonne Winnie, (V15-21) 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, 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: It is unclear what benefit is sought.
- 2) There will be undesirable change in the neighborhood character or to nearby properties. The encroachment is undesirable.

- 3) The request is substantial.
- 4) The request will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is self-created; the patio did not need to encroach upon the property line. 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 Whitney and seconded by Tom McGurl, it is resolved that the ZBA does hereby deny the setback variance request for the patio. **All in Favor. Motion Carried.**

2. **V15-30 WARD, ROBERT MARK.** To alter single family dwelling, specifically to add a 16.4'x 30' bedroom/bathroom addition, seek area variance to alter a non-conforming structure in accordance with Section 200-57B1b. Section 199.07, Block I, Lot 8.1, Zone **RL3 & RR5.** Property Location: 999 Wall Street.

Robert Ward presented the following;

- He detailed on the map where the house was located.
- They live in a Scenic Corroder.
- They are proposing an addition and need a variance.
- He detailed his plans to the Board.
- The addition at its closest point will be 97' back from the road having no effect on the 75' limitation.
- They need a variance due to the house being a pre-existing non-conforming structure.

Jason Saris asked if they chose the location for the addition because it was the furthest spot away from the road, or was it a coincidence. Mr. Ward stated it was actually because of the convenience to the house.

Tom McGurl asked if this house was constructed predating any zoning laws. Zoning Administrator, Pamela Kenyon replied this was correct. Tom McGurl stated that the location of the addition would be buffered.

RESOLUTION

The Zoning Board of Appeals received an application from Robert Mark Ward, (V15-30) 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, 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 addition is on the rear of the building and does not encroach on the setback.
- 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; there will be no tree removal, and there will be no visible impact.
- 5) The alleged difficulty is not self-created; this is a pre-existing non-conforming structure. 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 Famosi and seconded by Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

3. V15-31 GCW PROPERTIES & AKERSON ADVERTISING & MARKETING.

Represented by Atty. Stephanie Ferradino & Atty. John Hartzell. For a proposed lot line adjustment between those parcels designated as Section 157.05, Block 1, Lot 20 (owned by GCW) & Section 157.05, Block 1, Lot 21 (owned by Akerson), seek area variance for **1) Deficient lot size.** 1 acre minimum is required, 7,334 square feet is proposed for the GCW parcel; **2) Deficient front and side yard setbacks** for the boaters' restroom (noted as shed on drawings) located on the GCW parcel. 30' is required, 2' is required for both; **3) Deficient Lot width.** 175' is required; 105' is proposed for the GCW parcel. Zone RCL3. Property Location: 4 Rose Lane. Subject to WCPS and APA review.

Jeff Anthony recused himself.

Atty. Hartzell stated he was here as a representative of GCW Properties and they were not advocates but were here as an applicant of legal necessity not advocating the application.

Atty. Stephanie Ferradino gave a power point presentation to the Board detailing what they were proposing. Some of the items she touched are as follows:

- Substandard lots 5 and 7 were created in 1972.
- They predated APA (1973).
- They are in the RCL-3 zone.
- 2005 storm damage because a dam broke on hill above properties.
- Debris, sediment, erosion all went into Lake George.
- Slope stabilization was required between properties.
- Due to existing slopes, natural vegetation was insufficient to stabilize.
- Topography and lot size required combined effort to stabilize.
- Lot 7 paid for improvements on both lots.
- The lot line adjustment will resolve issues between property owners and the maintenance of structures protecting the slopes.
- No change in density.
- No physical change to lots.
- Location and size of existing structures is same.

- No new structures are proposed.
- Maintenance of retaining walls and other improvements will be responsibility of one owner, no cooperation or joint payment required.
- Lot line adjustment clarifies ownership interest of each and a common boundary line.
- There will be no adverse change to the property.

Jason Saris stated this was also a pre-existing non-conforming situation which is a practical difficulty. He asked if when the stabilization improvements were made after the storm they had permission from the owner to do the work. Atty. Ferradino replied this was true, but the owner had since passed away. Atty. Hartzell stated that the difficulty here now is that owner at the time is now deceased so there are different views as to whether permission was granted to do the work. He stated that there is a lot of dispute back and forth between the parties and this would be a civilized alternative to a situation that otherwise would be in years of litigation.

Holly Dansbury asked if both parties were in agreement with the lot line adjustment. Both attorneys replied yes. Holly Dansbury asked if nobody was maintaining the area in dispute, then this lot line adjustment would remedy this situation. Atty. Ferradino agreed and stated that the owner would be maintaining it. Atty. Ferradino replied that the property line runs right down the middle of the patio and retaining walls.

John Whitney asked if there was a variance required for the improvements in 2007. Atty. Muller replied that there were not because they were not deemed to be structures.

Tom McGurl asked if the yellow rope was there permanently at this time and if it would remain if they were approved. Atty. Ferradino replied no and stated they would be putting in a hedge.

John Whitney asked if both lots were applying for the same variance. Zoning Administrator, Pamela Kenyon replied that all the variances were for lot 5 only.

The Zoning Board of Appeals received an application from GCW Properties & Akerson Advertising & Marketing, (V15-31) 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, 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: It is clear from the presentation that this cannot be achieved without a variance
- 2) There will be no undesirable change in the neighborhood character or to nearby properties.
- 3) The request is not substantial. It will address issues that potentially affect the lake.
- 4) The request will not have an adverse effect or impact on the physical or environmental

conditions in the neighborhood or district; nothing is changing.

5) The alleged difficulty is not self-created; It is a result of a big storm on the lake in 2005, and it is a pre-existing non-conforming structure.

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

Jason Saris added that as a special note the practical difficulty had been demonstrated as the structure is pre-existing and non-conforming.

Now, upon motion duly made by John Whitney and seconded by John Famosi, it is resolved that the ZBA does hereby approve the variance request as presented. Jeff Anthony recused himself.

All others in Favor. Motion Carried.

- 4. V15-32 MAXIM MANAGEMENT.** Represented by Walter Lamb Jr. For the construction of a proposed 29'x 34' two car garage, seeks area variance for deficient setbacks. Front. 100' is required, 20.4' is proposed. Side. 30' is required, 21.6' is proposed. Section: 185.00, Block 2, Lots 17 & 18 (to be merged), Zone RR5. Property Location: 860 Coolidge Hill Road. Subject to WCPS review.

Walter Lamb Jr. presented the following;

- He would like to add a garage to the property.
- He detailed his setbacks on the map.
- He explained that most of his available space is not buildable on the lot.
- This is the only area where it could be built.
- He is requesting a garage for his boat and his pickup.
- He bought the house in disrepair and has fixed it up.
- This will not affect his neighbors.

Jason Saris asked about the garage dimensions in the application being different then what he is stating. Zoning Administrator, Pamela Kenyon stated she includes the overhangs. Jason Saris stated that means that it is 29'x 34'.

Tom McGurl stated that he agrees that there is no place else on the property to build a garage, and normally he would not be thrilled with putting a secondary structure that close to the road, but this is the only place to locate it.

Holly Dansbury asked if they could shift the structure over little to make it more conforming. Mr. Lamb stated that it drops off so they could not.

The Zoning Board of Appeals received an application from Maxim Management. (V15-32) 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, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application;
this Board makes the following findings of fact:

The application of the applicant is as described in Item#4 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: There is nowhere else to place it on the property due to the lot slopes, any place else would require a bunch of fill.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties.
- 3) The request is substantial. The front variance is substantial but there is no other feasible place to put it on 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; Due to the nature of the lot and the slopes this is the only realistic location for the garage.

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

5. **V15-33 HALL, ANTHONY & LISA.** Represented by D.L. Dickinson Associates. To alter single family dwelling, specifically remodel and add an addition/attached garage, seek area variance for **1)** a deficient front yard setback. 75' is required, 8' is proposed; and **2)** to alter a non-conforming structure in accordance with Section 200-57B1b. Section 140.00, Block 1, Lot 89, Zone RL3. Property Location: 492 Federal Hill Road. Subject to WCPS review.

Devin Dickinson of D.L. Dickinson Associates presented the following;

- They have an existing farmhouse that they would like to remove a portion of and reconstruct with a two car garage.
- The current house sits at 11.7' from the front property line setback.
- They are proposing a slight increase in the size which would result in an 8' setback.
- This proposal has very minimal land disturbance and it fits well on the property.
- They have included stormwater.
- He detailed the changes on the site plan to the Board.

Tom McGurl asked about moving it further back from the road. Devin Dickinson replied that they would need to disturb more land and remove more trees if they did that.

John Whitney asked what the change in encroachment on the lot lines would be. Devin Dickinson stated it currently was 11.7' and they were proposing 8'.

Holly Dansbury asked if the reason for 8' was because they were building a bigger structure. Devin Dickinson replied yes and detailed it on the site plan.

Tom McGurl stated from a zoning stand point they are looking to make it more conforming and this would be a good opportunity to move it back. Devin Dickinson stated they are trying to maintain the essence of the house that they have. Jason Saris stated that if they keep any part of the home, it will always be non-conforming.

Jason Saris asked if they were keeping the same character of the home. Devin Dickinson replied yes.

Jason Saris asked if it would still have the same character. Mr. Dickinson replied yes.

No Correspondence.

The Zoning Board of Appeals received an application from Anthony & Lisa Hall. (V15-33) 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, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item#5 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: this is a pre-existing structure.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties.
- 3) The request is substantial, but the house is already situated in this area.
- 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; This is a pre-existing

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 Holly Dansbury and seconded by John Famosi, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

- 6. V15-34 EPSTEIN, BRIAN.** Represented by Ryan Stevens. To alter single family dwelling, specifically to allow a 12'x 12' deck/stairs to remain in their present location, seeks area variance for **1)** Deficient setbacks. Front: 75' is proposed from Route 9N, 45' is proposed; 50' is required from the private drive, 42' is proposed. Shoreline: 75' is required, 52' is proposed; and **2)** to alter a non-conforming structure in accordance with Section 200-57B1b. Section 171.11, Block I, Lot 62, Zone RL3. Property Location: 3 Northbrook Drive. Subject to WCPS and APA review.

Brian Epstein presented the following;

- They have had the house for 5 years.
- There is a creek that runs behind with a steep drop off.
- The fence and deck are for security and safety reasons.
- They put up a small 12' x 12' deck and a fence.
- This is safety precaution for the kids.
- The home is a pre-existing non-conforming structure.

Jason Saris asked why they built it first before coming to the Board. Mr. Epstein replied that he hired ASCO Fence to secure all the permits and did not realize that they had not. He stated that he had no intention in bypassing the Board and he is here to try and keep his deck and fence.

Jason Saris asked if they have any other improvements planned. Mr. Epstein replied that he did not. He stated that they had done a bunch of work to improve it already. He said he did plan to put some shrubs near the road to block it.

Jason Saris stated that the fence was attractive. Mr. Epstein stated that they had approvals from the HOA as they needed it for safety reasons.

No Correspondence.

The Zoning Board of Appeals received an application from Brian Epstein. (V15-34) 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, 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#6 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: There are clear safety benefits that cannot be achieved by any other feasible means.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. It is a nice looking structure.
- 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 self-created; but it certainly makes sense balancing it with the safety of the parcel. The challenge of the safe use of the property due to the way the parcel sits and it is pre-existing non-conforming.

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 Whitney and seconded by Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

The meeting was adjourned at 7:47 pm.

Minutes respectfully submitted by Kate Persons.

