

**Town of Bolton**  
**ZONING BOARD OF APPEALS**  
**MINUTES**  
**Tuesday, July 17, 2018**  
**6:00 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:** Joy Barcome, Holly Dansbury, Jason Saris, John Whitney, Lorraine Lefevre, Carla Cumming, Zoning Administrator, Pamela Kenyon and Counsel Michael Muller

**Absent:** Jeff Anthony

The meeting was called to order at 6:02 pm.

Jason Saris asked if there were any corrections or changes to the June 19, 2018 minutes.

**RESOLUTION:**

**Motion by John Whitney to approve the June 19, 2018 minutes as presented. Seconded by, Joy Barcome. All in Favor. Motion Carried.**

- 1. V18-07 SHULL, CAROL.** In accordance with Section 200-38D, seeks area variance for the construction of a proposed dock. 20' is required. -0' is proposed. Section 185.00, Block 1, Lot 42, Zone RCL3. Property Location: 555 Trout Lake Road. Subject to WCPS and APA review. This item was tabled at the April meeting pending additional information.

Carol Shull presented the following:

- They were requested at the April meeting to get an easement from their neighbor for the placement of the dock.
- They are looking for a dock that extends into the riparian water rights of their neighbor.
- They have received this easement and are here to move forward with the project and have done all the proper paperwork.
- There was an existing dock which will be placed in approximately the same location.

Jason Saris asked if after discussion with the A.P.A. this was the location that was approvable by them. Ms. Shull stated this was correct, because the other previously approved location would go through the wetlands which the A.P.A. did not like. Jason Saris said he understands that the dock interferes with the neighbor's riparian rights but is it on her property. Ms. Shull stated that it was well within her property bounds.

Atty. Muller stated that it was a well-defined easement, and they should condition it to be recorded in the Warren County Clerk's Office if this application is approved.

## RESOLUTION

The Zoning Board of Appeals received an application from Carol Shull, (V18-07) 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.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: It is clear from the information provided, that this was the only feasible location for the placement of the dock due to the presence of sensitive wetlands and the guidance from the A.P.A. in terms of the location of the docks.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. Clearly having a lakeside dock does not present an undesirable change.
- 3) The request is substantial. It crosses the riparian boundaries of the neighbor.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. These are addressed by the placement of the dock from the guidance of the A.P.A.
- 5) The alleged difficulty is self-created; The house was purchased with a dock in need of repair, but in weighing the factors, 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, Lorraine Lefevé it is resolved that the ZBA does hereby approve the variance request as presented with the following condition; The easement is to be recorded in the Warren County Clerk's office. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

2. **PARROTTA, ROBERT.** Represented by Atty. Gregory Canale. In accordance with Section 200-72 of the zoning ordinance, seeks to appeal the Zoning Administrator's interpretation whereby determining 200-45 (Storage of volatile liquids) applies to the two 550-gallon tanks located on those parcels designated as 171.11-2-11 & 12. Zone RCM1.3. Property Location: 5102 and 5104 Lake Shore Drive.

Attorney Canale presented the following:

- He gave a slide show presentation to appeal the determination by the Zoning Administrator related to §200-45.
- He believes this ordinance should be ruled unenforceable on the grounds that it is vague or overbroad.
- He read the criteria of this ordinance to the Board.

- He is contesting this section of the code because there is no clear definition of what constitutes storage, which is fatal to this section.
- He read Blacks Law and the American Heritage dictionaries definitions of storage.
- Mr. Parrotta is not storing gasoline in his tanks, he has them filled every other day and fills up the boats immediately. It is there for immediate consumption.
- He read the definition in §200-8 of a Storage Shed.
- He said this ordinance could not even be defined as there are no ascertainable standards.
- He said a Zoning Ordinance may be declared unconstitutionally vague if it fails to give a person of ordinary understanding, prior warning of the conduct prescribed there in.
- He believes this ordinance does not properly give an ordinary citizen notice of what is good and/or what is bad. There is no fair warning.
- He read some Supreme Court case rulings that he thought were relevant to this appeal.
- This section is too vague for storage area.
- Ruling that this ordinance is overbroad or too vague does not open the floodgates to people putting petroleum tanks on their property.
- Everyone knows that they would have to go to the Planning Board first, so they can impose conditions and rules on any approvals they may give.
- His point tonight is strictly whether or not this statute is unconstitutionally vague and overly broad.
- Because there is no definition as to what constitutes a storage area and because it is left to the unbridled discretion of the Zoning Administrator, and because each citizen has to guess whether or not they are in compliance, he requests that this Board find that this statute as written is unenforceable and unconstitutional.

Jason Saris asked if Atty. Canale was asking the Board to overturn the Zoning Administrators determination. Atty. Canale replied yes, to overturn her decision on the grounds that it is too vague and overly broad.

John Whitney asked if in placing these 550-gallon tanks for no more than overnight retention of the volatile liquids was Mr. Parrotta required to obtain any other permits or jurisdictional approvals. Atty. Canale stated that DEC required permits for anything over 550 gallons so technically no. He does believe that the Planning Board would require safety measures when the applicant applied for Site Plan Review. John Whitney asked on what basis, if they are not storage. Also, what would be the basis for DEC requiring a permit if it was 551 gallons if it was only for overnight use. Atty. Canale said it would be due to it being 551 gallons. John Whitney asked what they are permitting at 551 gallons. Atty. Canale stated that he believed they required permits, so they can assert jurisdiction over the petroleum use on the property. John Whitney asked if it was not for the retention of the volatile liquid in a sealed container surrounded by a concrete wall. Atty. Canale stated he raised a great point. He said DEC's regulations seemed to be more directed at petroleum facilities. John Whitney asked if it was based on the bulk part or the storage facility part of it. Atty. Canale stated he thought both, he did not know why DEC drew a line at 550, before they regulated it.

John Whitney asked if the 550-gallon steel tanks were surrounded by a dyke capable of containing the fluid. Mr. Parrotta said there was a concrete barrier and the tanks were double walled. He said DEC allowed 11,000 gallons before they considered it bulk storage. Atty. Canale said all these questions go to the safety to putting and allowing these tanks on the property, which they are grappling with the Planning Board. This is their jurisdiction and they hope to produce a petroleum engineer who can install and inspect it all, so they can ensure the Planning Board that it is all properly and safely done.

Jason Saris asked the Zoning Administrator if the determination that the applicant was looking to overturn was the application of the section that causes them to require an area variance. Zoning Administrator, Pamela Kenyon replied in part. The other section was, based on the interpretation from the Zoning Board back in September 2004. She read the resolution to the Board regarding above ground tanks. She stated this was the second part of the variance request.

Jason Saris asked if they would still require an area variance if this was determination that they were asking for here was overturned. Atty. Muller stated that they would, and it is pending before this Board. Atty. Canale said the reason for this is because structure has a definition, it was defined by the Zoning Board and this definition was made prior to their application. They are just saying that the issue they are here for tonight is not properly defined.

Atty. Joshua Silver of the Murray Law Firm stated that this is certainly fuel storage. It is two 550-gallon fixed fuel drums on his property. This is a land use ordinance it does not pertain to portable storage items as Atty. Canale is portraying. The DEC ordinance is called the bulk petroleum storage program and if this fuel tank was 1 gallon larger it would absolutely 100% be subject to the bulk petroleum storage program. This is the storage of fuel. They would have to have a tanker with a hose filling the boats for it not to be storage.

Gary Gadinis asked if there was anything that can be done about the spillage or prevention of the pollution of the water. He asked if there was anything they can do to prevent it. Jason Saris explained that they were here tonight for the appeal of a determination from the Zoning Administrator.

Atty. Canale stated that in response to Atty. Silver, there is a reason why it is called bulk petroleum storage, which is because it is petroleum that is stored not for consumption or immediate use, just like defined in Blacks Law dictionary. This is why DEC requires regulations for people that are storing large quantities of petroleum for long periods of time. Mr. Parrotta is storing it for immediate consumption. As to the statute only applicable to fixtures, if that is the way they want to define it, then define it that way. §200-45 says nothing of the sort. It says no proposed storage area can be within 500' of any residential development. That could include a shed, lawnmower or gas tank.

Jason Saris asked who's favor the Board needs to lean toward when the ordinance is hard to interpret, vague or in conflict with itself. Atty. Muller stated that zoning ordinances and land use codes, the courts say that when it comes to zoning ordinances it has been a long held standard that if it has some ambiguity they must act favorably to the applicant. When the

Zoning Administrator makes a determination, they are authorized by statute and by case law to make this interpretation. The storage of volatile liquids within 500 ft. of a residence requires the ZBA members to discuss the legal issues of the interpretation of the Codes section as to “void for vagueness” and “overbroad”. The language of the Code must be construed reasonably. Where the language is ambiguous, the construction and the application must be construed favorably to the applicant. Void for Vagueness means that the code when read does not clearly specify what sort of conduct is limited or prohibited. Overbroad means that the code section is so excessive or inclusive that it purports to regulate or limit activities well beyond the intended purpose of the ordinance. It’s a lot like vagueness, but court cases mention both in criteria when considering and testing the language in the Code. This appeal is not about the other pending issues that Mr. Parrotta has with the Town and his marina operations. This appeal stands on its own. The Board needs to worry about the section of code.

John Whitney said that it was clear boat storage was a permissible use under certain circumstances, and then to say oh but wait, their fuel storage and that is in conflict and they would find in favor of the applicant. Jason Saris said another thing at odds is that there is an exemption for home heating oil, but what about propane. He can understand having a certain size and calling it a structure. John Whitney stated that it stated home heating fuels. Propane is a home heating fuel. Jason Saris stated if Mr. Parrotta had diesel outboards he could put “heating oil” in them. Atty. Canale stated a common man should not have to guess.

Holly Dansbury stated that common sense says its being stored in some fashion to be dispensed. 48 hours is not immediate.

Jason Saris stated he did not have a problem with the storage aspect of it. His problem is with how poorly defined this is. They did not choose any size. Even DEC has a certain size. What size is it that this should be applied to. Holly Dansbury stated the size was not her concern, it’s the term storage. Jason Saris asked if the ordinance intended it to mean 50 gallons. Joy Barcome stated she thought 550 gallons. Jason Saris stated he tended to agree with her, but it is their obligation to give someone the option to put whatever is the compliant size tank in. John Whitney stated the applicant had that opportunity to seek the clarification when he went to the Zoning Administrator. Jason Saris stated he is uncomfortable with the way it is written as there is no guidance. It is clear as to whether or not he needs an area variance for the tank, but not this. John Whitney stated he believes that is why they are here tonight, to make this determination. He believes it is a question of being overbroad. He has no doubt in his mind that this is storage. The definition of volatile liquids includes gasoline and the section is titled storage volatile liquids. It is clearly storage of volatile liquids. There is no question in his mind that any reasonable construction of the language by a typical person would agree that two 550-gallon double steel walled tanks surrounded by concrete reinforced barriers constitutes storage of volatile liquids. With these facts presented tonight he has no doubt in his mind that it does. The Board discussed this among themselves.

Atty. Silver stated they are looking at the Zoning Administrator’s decision from February 1, 2018 and whether or not she got it right or wrong.

Joy Barcome asked if they are not tanks storing volatile liquids, what are they? She is not sure else how to define this. Jason Saris stated he does not argue that at all, his only hesitation is that there are other ones that still fit this definition, which they clearly do not take enforcement action against. He has discomfort with this. Joy Barcome said their job tonight is to decide whether or not they agree with the Zoning Administrator's determination.

Atty. Canale stated that the Board's job was not necessarily isolated to the particular facts. In any decision they make, they have to decide whether the zoning ordinance is overly broad. If it is overly broad, even though in all practical senses it may be perfectly applicable, the fact is that an overly broad ordinance is unenforceable. They have to ask themselves is it overly broad, and like the chairman has pointed out, this statute would be legal for the use or storage of petroleum that was designed for cooking. There is no if ands or buts about it. This is not how you go about enforcing ordinances. The fact that they are having this debate on all sides indicates that for a common man to look at this, it is vague. The Board can make a specific interpretation tonight for everyone going forward. They need to designate a quantity.

John Whitney stated that the question whether or not the Zoning Administrator's decision was correct. Atty. Canale said this was not necessarily true, there job was to determine first and foremost whether this ordinance was enforceable.

Atty. Silver stated that he disagreed, the Board is here tonight to figure out whether the Zoning Administrator got it right or not. There are other methods to determine whether or not an ordinance is constitutional, specifically going to the Supreme Court and ask for a judgement.

Now, upon motion duly made by John Whitney and Seconded by, Carla Cumming it is resolved that the ZBA does hereby uphold the Zoning Administrator's determination that the double walled steel 550-gallon gasoline tanks with concrete reinforced barriers located on parcels 171.11-2-11 & 12 constitute volatile storage of liquids as per §200-45. Jason Saris opposed. **All others in favor. Motion Carried.**

**3. V18-17 CARMAN, LEE & REBECCA.** Represented by Curtis Dybas. To alter single family dwelling, specifically to remove existing deck/steps and replace with a 24' x 14' three season porch, with second floor roof terrace, seek area variance for 1) Deficient front yard setback. 50' is required, 16.1' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 156.00, Block 1, Lot 12, Zone RM1.3. Property Location: 4 Lake View Hill Road. Subject to WCPS review.

Curt Dybas presented the following:

- They purchased this property last January.
- The existing deck is dated and in need of repair.
- They would like to replace it with a 14' x 24' 3 season porch, with a roof terrace to be accessed by the second story bedroom.

Holly Dansbury asked if they were improving the setback by putting the steps on the side. Mr. Dybas said the 50 ft. setback runs through the middle of the house and they would be in need of a variance for anything they did. He said it did improve the setback from what exists by putting the stairs on the side.

Holly Dansbury asked how high the railing would be. Mr. Dybas stated they would be using a cable rail system 3' above the deck by code.

Lorraine Lefevre asked if they would be replacing all the railings. Mr. Dybas said they will not need railings for the porch and they would be using the cable rail system on the deck.

Chris Navitsky, Lake George Waterkeeper stated that they did not oppose the application, but they did ask that stormwater management be added.

Jason Saris asked if there was any stormwater management proposed. Mr. Dybas stated they were reducing the footprint, but they could look at adding eve trenching or gutters.

Carla Cumming asked about the railing on the sliding doors and Mr. Dybas explained it to her.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Lee & Rebecca Carman, (V18-17) 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.

1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: This is the most logical location for the 3-season room which is replacing an existing structure.

2) There will be no undesirable change in the neighborhood character or to nearby properties. This is similar to the existing structure.

3) The request is not substantial. They are reducing the actual square footage.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. They are reducing the actual surface.

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 Holly Dansbury and **Seconded by**, Joy Barcome it is resolved that the ZBA does hereby approve the variance request as presented with the condition that eve trenches for stormwater management is to be implemented. It is hereby

determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

**4. V18-18 HIPPELE, RAYMOND & CLAIRE.** To alter single family dwelling, specifically to add a porch and garage with second floor, seek area variance for 1) a deficient shoreline setback. 75' is required, 27' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 185.19, Block 1, Lot 57.2, Zone RCL3. Property Location: 50 Acorn Dr. Subject to WCPS and APA review. See SPR18-11 associated with this project.

Raymond & Claire Hippele presented the following:

- This is for a garage with a second floor.
- It meets all of the setbacks requirements and is sited in the center of the property.
- They are not proposing the porch that is indicated in the description on the agenda.
- He believes this was on the site plan from a previous approval. This has already been built.

Jason Saris asked if it was attached to the house, which did not meet the setbacks. Mr. Hippele stated this was correct.

Joy Barcome asked if the second story living space above the garage would be an apartment. Mr. Hippele stated it was not an apartment it was an extension of their living area.

Carla Cumming asked if this was a seasonal residence. Mr. Hippele stated they have been on the property for 20 years and they live here year-round.

Chris Navitsky, Lake George Waterkeeper questioned the stormwater management and if it was proposed or if it was already in place as it was required on the previous approvals and if the septic system was certified for the additional bedroom. Mr. Hippele stated there is certification from Mr. Dickinson stating that the septic system is adequate for what they are building. He stated that with the addition they are finishing now, they are putting trenches in for the stormwater mitigation. He said they have proposed stormwater mitigation for the new garage in the plans.

Carla Cumming asked where they would be putting the soil to be removed or the garage. Mr. Hippele stated he had 17 acres on another piece of property that he would be putting it. Carla Cumming asked if he would be using any of it for berms. Mr. Hippele stated very little.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Raymond and Claire Hippele, (V18-18) 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.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: The addition of a garage is a benefit to the applicant and allows them to enter the home without going out in the weather.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. They are the neighborhood.
- 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. They are including stormwater which will help the area..
- 5) The alleged difficulty is self-created; They are adding a garage to a house without one. 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 Lorraine Lefevé and **Seconded by**, Carla Cumming it is resolved that the ZBA does hereby approve the variance request as presented. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

**5. V18-19 GADINIS, GARY.** To alter single family dwelling, specifically to convert a portion of existing deck into a 10' x 20' 3-season porch, seeks area variance for 1) a deficient front yard setback. 50' is required, 23.5' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 156.00, Block 1, Lot 6, Zone RM1.3. Property Location: 28 Lake View Hill Road. Subject to WCPS review.

Gary Gadinis presented the following:

- He would like to convert his deck from 8' wide to 10' wide and 20' long.
- The deck is already there, and he would like to make a 3-season room on it.
- It will increase his property value and the property value of his surrounding neighbors.

Joy Barcome asked if he was using what already existed and turning part of it into a 3 season room. Mr. Gadinis said that it was 8' wide now and he was going to make it 10' wide. He would be replacing the existing deck.

Carla Cumming asked if he would be tearing down the whole deck. Mr. Gadinis stated only the portion that they would be building on. They would be refurbishing the other end of it.

Lorrain Lefevre asked if he was changing the pitch of his roof. Mr. Gadinis stated only where the 3-season room was proposed.

Chris Navitsky, Lake George Waterkeeper stated they do not oppose the application, but they do suggest that stormwater management be implemented.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Gary Gadinis, (V18-19) 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 #5 of the agenda.

1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: They are using what is already there and adding only 2'.

2) There will be no undesirable change in the neighborhood character or to nearby properties. They are replacing what is already there and this enhances the character of the home and neighborhood.

3) The request is not substantial. They are building on an existing deck.

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; This is a 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 Joy Barcome and Seconded by, Carla Cumming it is resolved that the ZBA does hereby approve the variance request as presented with the condition that stormwater management implements are to be added. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

The meeting was adjourned at 7:40pm

Minutes respectfully submitted by Kate Persons