

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, June 14, 2022
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: Chairman Jason Saris, Joy Barcome, Robert Kennedy & Holly Dansbury, Alternate - Lorraine Lefevre, Dan Sheridan & Jim Senese, Acting Planning & Zoning Director - Joshua Westfall, AICP & Town Counsel – Brian Reichenbach

Absent:

The meeting was called to order at 6:00 p.m.

Minutes Approval: Jason Saris asked if there were any changes or corrections to the May 10, 2022 minutes.

RESOLUTION:

Motion by Holly Dansbury to approve the May 10, 2022 minutes as presented. Seconded by Jim Senese. All in Favor. Motion Carried.

Jason Saris explained that there was a problem with the noticing of the May 10, 2022 meeting so they would be rehearing the agenda items from last month.

1. **V22-09 Anderson;** The applicant seeks two area variances per §200-15 to construct a 10' X 13' addition to protrude 10' from the western side of the existing structure and 5' from the northern side of the existing structure. Requests are as follows: • Applicant seeks 6.5' side-yard setback; 15 side-yard setback required; applicant seeks 8.5' relief from side-yard setback requirements. • Applicant seeks 34' and 47', north and south respectively, front-yard setbacks for new addition; 50' front-yard setback required; Applicant seeks 16' and 3' relief from front-yard setback requirements. Zoning District RCM 1.3. SBL: 156.20-1-21. Location: 7 Cottage Lane. Subject to APA, WCPS and LWRP Review.

Wendy Anderson presented the following:

- They would like to back off the side of their cabin about 10' and extend the back side about 6'.
- On the side it is an encroachment to the 10' setback.
- Their neighbor Bill Nutland is fine with this.
- This is to expand the bedrooms and bathroom to make them more usable.
- There will be no height adjustments.

Holly Dansbury asked if the reason they were expanding in this area and not a more compliant area was due to the fact that the rooms they needed to expand were located here and this is the only area that would work. Mrs. Anderson replied yes, they did not want to do anything to the existing log section of the structure, and this is the only feasible area to place this expansion.

Robert Kennedy asked if they were keeping the same roof structure and would not impede the height limitations. Mrs. Anderson replied this was correct.

Robert Kennedy asked if the HOA was in favor of the project. Mrs. Anderson said that they all received a letter, and no one had responded.

Correspondence: No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Anderson (V22-09) 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 benefit could not be achieved by other means feasible to the applicant besides an area variance. This makes sense for the applicant for their existing floor plan.

There will be no undesirable change in the neighborhood character or to nearby properties.

They are making it visually in line with what they have.

The request is not substantial.

The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The alleged difficulty is self-created. This is just adding square footage to the existing building.

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 Jim Senese, 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.**

2. **V22-10 Somma / Jaeger;** The applicant proposes to construct a pool and patio area adjacent to existing home. The applicant seeks approval for constructed 10' high retaining wall in accordance with §200-46(B)(3). Zoning District: LC25. SBL: 139.00-1-13.2. Address: 413 County Route 11. Subject to APA, WCPS and LWRP Review.

Kurt Jaeger presented the following:

- They were requesting an *after the fact* variance for a landscape wall.
- When originally constructing the house the grade of the land behind the house did not have much holding the soil there, so they put rocks in to stabilize while excavating.
- They put a small wall down the side, which they did after asking, and were told it was not a problem.
- They then decided to put a pool in, and they extended the wall further off the house and came across the front, which was on the pool permit plans.
- When they applied for a pool, they were told they needed to get a variance for the wall because it was not on the original approved plan.

Jason Saris asked about engineering on the wall. Mr. Jaeger stated he had an engineer submit documentation signing off on the wall construction. They are complying with the suggestions from the engineer for the back fill portion of the project.

Jason Saris stated this was project compliant with the town's cut and fill regulations.

Robert Kennedy inquired if the wall was done. Mr. Jaeger replied, yes, the pool is a few weeks out.

Correspondence: No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Somma/Jaeger (V22-10) 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 benefit could not be achieved by other means feasible to the applicant besides an area variance.

There will be no undesirable change in the neighborhood character or to nearby properties.

The request is not substantial.

The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

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 Robert Kennedy and seconded by Joy Barcome, 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.**

3. **V22-08 DePace;** The applicant seeks to add a second story to existing non-conforming structure pursuant to §200-57. The existing first floor use will remain the same use. The second story will include a 1,250 sq./ft. guest house and 1,785 sq./ft. enclosed storage space. Zoning District RM1.3. SBL: 186.06-1-10.1. Location: 14 Belle Lodi Lane. Subject to APA, WCPS and LWRP Review.

Tony DePace stated that they are asking for relief for the northern end of the existing building that has a 20' setback. They have 14' 9".

Holly Dansbury asked if they were changing any of the existing footprint. Mr. DePace replied no, they are just going up to a second floor. The existing building has been there for about 35 years. Jason Saris stated the existing footprint would not change. Mr. DePace agreed.

Robert Kennedy asked if this is a pre-existing, non-conforming structure. Mr. DePace agreed. Jason Saris said the expansion was only going up. Ms. DePace replied exactly.

Joy Barcome asked for the new height of the building. Ms. DePace replied, it would be in compliance with the Town of Bolton height variance. Mr. DePace said it would be less than the mandated 35'.

Lorraine Lefevre stated they would be changing the use of the building. Mr. DePace replied yes, part of the building.

Atty. Karla Buettner of Bartlett, Pontiff, Stewart & Rhodes, P.C. representing Mark and Kristine Dawson, owners of 18 Belle Lodi Lane presented the following:

- Thanked the Board for reading their issues in respect to the notice.
- The application is incomplete and should not be heard. It does not have the required drawings with setback requests and heights.
- The application does not identify 200-64 C 3-7.
- This is a change of use of a storage/barn structure to a guest cottage.
- The code does not allow for a kitchen in guest cottages.
- The lot already has a number of guest cottages which would make this a cabin colony.

- The variance standard requires the Board to measure and balance the benefits to applicant and the detriment to the neighborhood.
The Dawsons live right next door and are adjacent property owners and have been there for 20 years.
- There are property rights issues at play here and pending litigation for adverse possession of property.
- The Dawsons maintain an easement over the driveway next to this property and an area of land within this 20' setback which is being disputed in Warren County Supreme Court.
- In granting the variance they may be granting a variance on property that the applicant may not even own.
- Indicating that this is as simple as just putting up a second story is not true.
- This project will need to go to the Planning Board for site plan review as an expansion over more than 1,200 sq. ft along with lights and traffic.
- There are other feasible alternatives to this project, and they have not even looked at any other feasible alternatives.
- There are property rights at issue here and the roof of the guest cottage will be 14.9' off from the neighbor's house.
- The stormwater will run right down the property that already has horrendous stormwater issues.
- There was a fatality due to stormwater on this property.
- The variance is substantial as it requires the change of use and doubling the footprint from 3,000 sq. ft to 6,000 sq. ft.
- This difficulty is self-created.
- At the end of the day, she hopes the Board looks at all the issues and deny the application outright.

Jason Saris asked about the property line dispute and if the structure is on the neighbor's property. Atty. Buettner stated that they contend that the setback might be owned by her clients, and this will potentially make the setback even greater. Holly Dansbury asked for clarification of the size of the easement. Atty. Buettner stated she was not clear on whether they were looking for 14.9' of relief or if they wanted the setback to be 14.9'. She stated that the easement area is shown on the survey and this area is her client's driveway where they park their cars. Holly Dansbury stated this was on the opposite side of where the applicant is looking for relief. Atty. Buettner said this is not solely for the 14.9' variance they are going up and changing a storage building to a structure. This is a change of use.

William Lameroux of 20 Belle Lodi Lane stated this project is not changing the character of the neighborhood and he does not see how it is affecting anyone behind them because there is no one behind the structure. Stormwater has been a major issue on this whole area and raising this structure will not change that. This will be similar to what exists and overall, he is in favor of it.

Chris Navitsky, Lake George Waterkeeper said he had concerns of the potential wastewater septic system environmental impacts. On the environmental assessment form this was left

empty, and he had questions. He wondered if there was any information on the mitigation of this. Jason Saris stated that they did not deal with septic at this Board, and he is assuming that they will be required to be compliant by the Director of Planning and Zoning.

Jason Saris asked about a use variance and if this was an allowable use in this zone it would only require an area variance. Acting Director of Planning and Zoning Josh Westfall stated this was correct.

Jason Saris asked if the Acting Director of Planning and Zoning thought this was a complete application. Acting Director of Planning and Zoning Joshua Westfall stated that this was deemed a complete application by the previous Director of Planning and Zoning Richard Miller. Atty. Reichenbach stated that all the applications the Board receives are reviewed by the Planning Office and are deemed complete and sent to the Board. This does not tie the Boards hands. They are free to say they need additional information if they feel it is necessary.

Jason Saris asked about pending litigation and the possibility of it reducing the amount of setback the applicant has. Atty. Reichenbach stated they should be cognizant of this, but they should not let this be determinative of their acts tonight. Until a court says differently, the deeds and real property conveyances say what they say. If the applicants want to bring an application forth with this risk, they can. This is something they should consider and put on the scales when they weigh the application. Jason Saris asked if they granted the variance and the applicant lost their court case, would they need to come to this Board again. Atty. Reichenbach stated that if this happens this may stop the building process in its tracks.

Correspondence:

- Atty. Karla Buettner of Bartlett, Pontiff, Stewart & Rhodes, P.C. representing Mark and Kristine Dawson in opposition.
- Doreen Bennett in opposition.

Tony DePace said they are asking for 5'3" of relief on the north side which is 100' away from the Dawsons property and the easement that the Dawsons were given to park 2 cars and a boat trailer, they do not own this. This has nothing to do with the right-of-way and will not obstruct the Dawsons from getting to their driveway. The second issue is that Atty. Buettner mentioned that there were several houses on this property. This is incorrect, they are on different parcels with different deeds.

Holly Dansbury asked about stormwater runoff and a septic system. Mr. DePace stated that there is plenty of room to put stormwater and a septic system on this parcel and he will be adding stormwater to a building that does not have any existing stormwater. He stated they have not gotten that far yet as they were waiting to receive approvals from this Board before they moved forward. He is only looking for 5' and this property is entitled to a guest cottage. Holly Dansbury asked if he was willing to add the necessary stormwater mitigations. Mr. DePace replied yes, he is all for stormwater controls.

He stated that all his buildings on his adjacent properties in this area have new septic and compliant stormwater.

Jason Saris asked if this would have any lake rights. Mr. DePace replied, no. He does not know where the Bennet's are coming up with 50 additional users, they have lost a motel unit to the north and one to the south with a total accumulation of almost 100 rooms within a ¼ mile of this location.

Ms. DePace asked for clarifications of the kitchen in a guest cottage. Acting Director of Planning and Zoning Josh Westfall stated that the Town Board had updated the code so that full kitchens were allowed in guest cottages.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from DePace (V22-08) 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 benefit could not be achieved by other means feasible to the applicant besides an area variance. They are using a pre-existing, non-conforming structure. They are only building upward for a second story.

There will be no undesirable change in the neighborhood character or to nearby properties. It will look similar to what already exists.

The request is not substantial. They are not changing the footprint.

The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. They will be adding stormwater to a site that does not have any.

The alleged difficulty is not self-created. 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.

Now, upon motion duly made by Holly Dansbury and seconded by Robert Kennedy, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) Minor stormwater is to be submitted and approved by Acting Director of Planning and Zoning Josh Westfall. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. Lorraine Lefevre Opposed. **All others in favor. Motion Carried.**

4. **V22-11 McCarthy;** The applicant seeks an area variance per §200-15 to construct a 24' X 24' garage with a second floor accessory office. Applicant seeks 1' side yard setback; 8' side yard setback required; Applicant seeks 7' relief. Zoning District GB 5000. SBL 171.15-1-38. Location: 13 Horicon Avenue. Subject to APA, WCPS and LWRP Review.

Christine McCarthy presented the following:

- They built here in 2005.
- They are looking to move here full time and would like a garage with a loft for office space.
- They will be using the existing asphalt that currently leads to an existing shed and deck area.
- They will be removing a free-standing deck and shed and place the new garage in this area.
- They will retain the existing gravel area with a fire pit.
- There is a stream located to the west of the property.
- The property line veers to the east and they are trying to square it off.
- The neighbor at 19 Horicon has stated he has no problem with the application.

Jason Saris asked if this would interfere with any of the neighbors' views. Ms. McCarthy replied no, she has placed it so it would not affect any neighbors.

Jason Saris asked if there was a more compliant area to place the building. Ms. McCarthy stated this area offers the least amount of disturbance to the property.

Lorrain Lefevé asked about the distance to the stream. Ms. McCarthy stated at the closest point it would be 15' from the front corner of the garage to the stream. She passed out some photos.

Lorrain Lefevé asked about mitigation for stormwater on the new building. Ms. McCarthy stated that there are already had drywells in the asphalt, but they have not moved forward with this as they are waiting for Planning Board review to do this. Lorrain Lefevé asked where the stormwater would go off the rear of the roof toward the stream. Ms. McCarthy stated it was bordered by evergreens and natural drainage.

Chris Navitsky, Lake George Waterkeeper said they recommend that they keep the natural buffer to protect the stream and he feels that there are alternative areas to move the building to reduce the variance request and maintain the natural buffer.

Ms. McCarthy stated that they will not be removing any large trees or vegetation for this building. They already have the area for the building cleared and they would not be doing any

future clearing for this building. She has not determined whether this will be a prefabricated building or stick built. Holly Dansbury said this seems to be the best location for minimal disturbance. This seems better than moving it to the rear of the property. Lorraine Lefevre stated she liked the idea of the prefab garage.

No County Impact.

RESOLUTION

The Zoning Board of Appeals received an application from McCarthy (V22-11) for an area variance as described above.

And, due to notice of the Public Hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Staff.

And, whereas the Warren County Planning Staff determined that there was No County Impact.

And, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application; this Board makes the following findings of fact:

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

The benefit could not be achieved by other means feasible to the applicant besides an area variance. They would need to clear cut if they pushed the building back whereas the site they chose is already cut.

There will be no undesirable change in the neighborhood character or to nearby properties. They are placing the garage behind the adjacent house to avoid any issues.

The request is not substantial.

The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The alleged difficulty is self-created. This is the best place without creating any disturbance. 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 Dan Sheridan and seconded by Robert Kennedy, 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. **V22-12 Syska**; Represented by Studio A. Applicant seeks Area Variances related to the demolition of an existing single-family residence, to construct a new residence on similar footprint. Applicant seeks the following Area Variances: • 23' front yard setback (Nellie Ln.), 25' existing. Required front yard setback is 50'; 27' relief requested. • 23' side yard setback, 38' existing. Required front yard setback is 30'; 7' relief requested. • 15' rear yard setback, 17' existing. Required setback 30'; 15' relief requested. Pre-existing non-conforming garage structure will remain, no variances for

garage structure required. Zoning District RCL 3. SBL: 185.19-1-22. Location: 1 Nellie Lane. Subject to APA, WCPS and LWRP Review.

Matt Huntington of Studio A presented the following:

- He detailed the existing structure and garage on the plans.
- The whole site is pre-existing, non-conforming because the setbacks overlap each other.
- The septic is currently serviced by 2 seepage pits.
- They would like to demolish and rebuild the existing residence and keep the garage.
- He detailed the plans.
- They have implemented stormwater management and a new enhanced wastewater treatment system which will significantly improve effluent quality coming out of it.
- The water currently comes out of the lake, but they will be drilling a new well.
- The intent is to make this a 4 season residence.
- They are currently going before the Local Board of Health for the enhanced system.

Lorrain Lefevre asked for the house elevations. Mr. Huntington stated they would be 34' from lowest point to the highest. He detailed this on the plans.

Holly Dansbury asked where the driveway was located. Mr. Huntington stated that there currently was not a driveway and he detailed where the existing parking is on the plans and stated they were proposing to put in a stabilized turf in that area.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Syska (V22-12) 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 #5 of the agenda.

The benefit could not be achieved by other means feasible to the applicant besides an area variance. For the purposes that have been discussed this makes the most sense.

There will be no undesirable change in the neighborhood character or to nearby properties.

The request is substantial. This is a modernization of the parcel.

The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. This will be a great improvement to the parcel.

The alleged difficulty is not self-created. They are modernizing the property.

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 Jim Senese and seconded by Lorraine Lefevre, 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.**

6. Appeal of Zoning Administrators Determination and Interpretation

Walton, Thomas. Applicant seeks to appeal Zoning Administrators Determination and Interpretation regarding the siting of a “Hot-Dog Cart” in the GB 5000 Zoning District.

Jason Saris recused himself.

Thomas Walton owner of the Indian Teepee Gift Shop and Trees Adirondack Gifts and Books presented the following:

- He wanted to do a hotdog cart on his 85’ boardwalk.
- He would not be near town property.
- He received his approvals and paid for a permit from the NYS Department of Health.
- He came to the Planning Office to be on this agenda and was told it was not an approved use.
- He did not understand why when the Teepee has been selling food for 60 years along with other retail stores.
- He wondered how the Garden Center was allowed to sell food on a private grill and he was not able to do the same with a professional hotdog cart.

Atty. Reichenbach stated that the applicant has sought a permit to place the cart in the location based on it being an accessory use to the retail store. The code states that the use has to be similar and customary to the main use which is the retail store. Acting Director of Planning and Zoning Josh Westfall has made the determination that a hotdog cart is not similar and customary to the main use of the retail gift store. On that basis, he is constrained to deny the application for a permit. The Board's obligation is to determine if his interpretation is reasonable and logical and supportable and defensible or whether he has missed the ball and they have a contrary interpretation to find based on the code that the hotdog stand is customary and similar to a retail gift shop.

Robert Kennedy asked about a 2017 determination of the previous Director of Zoning & Planning and if Acting Director of Planning and Zoning Josh Westfall’s determination was consistent with that. Josh Westfall replied yes.

Holly Dansbury said it all hinges on the whether they agree that it is not customary and incidental to the retail. Atty. Reichenbach stated this was correct. Holly Dansbury asked why the Garden Center was allowed. Josh Westfall answered that the previous Zoning Administrator found that it was allowable due to the fact that the Garden Center customarily

sold jams, cheeses, fresh fruit, etc. and it was established as customarily incidental. Mr. Walton stated he sold all of that and many more food items.

Robert Kennedy asked if the difference was the portable cart, and the other was under a shed. Josh Westfall replied no, he was going off the previous interpretation.

Robert Kennedy asked if this was only for the Indian Tepee. Mr. Walton replied, no.

Jason Saris stated from the public that most of the restaurants in town sell gifts, so how can it be a normal activity for restaurants to sell gifts, but not a normal gift shop to sell food.

Joy Barcome said she is not clear on how the Garden Center could sell food, but this business could not. Joy Barcome asked about the 2017 determination citing a portable stand not being permitted. Acting Director of Zoning & Planning Josh Westfall stated he carried this determination of a portable stand over.

Lorrain Lefevre asked where they would locate the stand. Mr. Walton stated the plan was to be toward the back of the building on the boardwalk. Lorrain Lefevre asked if they would be infringing on the town sidewalk. Mr. Walton replied, no. He said the Health Department stated the Town had to approve it and the Town stated that the Health Department had to approve the portable stand. He said this was not a year round stand, it would be for a couple of months out of the year.

Atty. Reichenbach explained to the Board that they were not here to approve the project, they were here to affirm or overturn the Acting Director of Zoning & Planning's determination logically on the record. They are not here to approve any application tonight.

The Board discussed their thoughts on the interpretation and the fact that other businesses are doing this type of sale albeit not in a hotdog cart.

RESOLUTION

Now, upon motion duly made by Dan Sheridan and seconded by Jim Senese, it is resolved that the ZBA does hereby overturn the Acting Director of Zoning & Planning's determination and interpretation. **All in Favor. Motion Carried.**

The meeting was adjourned at 6:20 PM
Minutes respectfully submitted by Kate Persons