

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, February 16, 2016
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: Jason Saris, Jeff Anthony John Famosi, Holly Dansbury, Alternate Lorraine Lefevre, and Counsel Michael Muller

Absent: Zoning Administrator Pamela Kenyon, Tom McGurl, John Whitney & Joy Barcome

The meeting was called to order at 6:00 pm.

Jason Saris asked if there were any corrections or changes to the January 19, 2016 minutes.

RESOLUTION:

Motion by John Famosi to approve the January 19, 2016 minutes as presented. **Seconded by,** Holly Dansbury. Jeff Anthony Abstained. **All others in Favor. Motion Carried.**

Jason Saris stated that there were only 5 Board members present this evening, meaning they would need 4 out of 5 votes in favor for approval, so any applicant that wanted to table their application at any point during the meeting they were welcome to do so

1. **V15-47 MASHUTA, ANTHONY.** Represented by Spectra Engineering. For the construction of a proposed seawall/stairs approximately 100' in length and 4' in height, seeks area variance for deficient setbacks. Shoreline: 75' is proposed from the mean high water mark, 2' is proposed. Side: 20' is required, 10' is proposed on both sides. Section 200.10, Block 1, Lot 9, Zone RM1.3. Property Location: 21 Cotton Point Road. Subject to WCPS and APA review. This item was tabled at the December 2015 meeting pending additional information.

Jason Sableski of Spectra Engineering presented the following:

- They have made some adjustments on the wall since they were last before the Board.
- They have shortened the wall up a little bit on the north and south side to protect some of the existing trees.
- They have also stepped the wall back 1' to accommodate DEC and ZBA concerns.
- The Army Corp of Engineers stated that they had no jurisdiction over the wall because it was behind the mean high water mark.
- They are waiting to hear from DEC in regards to a permit.
- He detailed the plans and renderings to the Board.
- A.P.A. has stated they do not have jurisdiction over the wall at this time.

Jason Saris asked to be walked through the reason they wanted the wall. Mr. Sableski stated it was mostly for aesthetics but it was also for scour along the shoreline. The client feels it would give an appealing look in front of his property. The adjacent property to the north has a stone type wall and they feel it would be a continuation of that wall.

Lorraine Lefevre inquired if it would be natural and built of stone made of rocks. Mr. Sableski replied yes opposed to precast blocks or square stones.

Holly Dansbury asked if they had looked at alternatives and other less obtrusive walls. Mr. Sableski stated aesthetically they thought this was the best choice. They looked at just using rip rap in front but they feel they have accommodated some of the Board's previous requests by layering the stones back along the shoreline 1' so it is not a vertical wall.

Holly Dansbury asked where they had added natural vegetation. Mr. Sableski stated that it was not shown on the diagrams, but the applicant was going to put perennials just behind the wall.

Lorraine Lefevre asked about the disturbance of the soil and rocks that are already there. Mr. Sableski stated they would be going in with a small trackhoe with a small bucket and dig 2' behind the mean high water mark to minimize the disturbance on the front. Jeff Anthony stated that is not what the drawings show, the payload for excavation is right to the water line, not 2' back. Mr. Sableski stated the front face of the wall would be 2'. Jeff Anthony replied the excavation pay limit is at the waterline on the drawing in front of him. He is concerned with how they plan to get even a small trackhoe with an outrigger which is more than 2' wide, and they plan to excavate along the shoreline without disturbing the water. He knows they received letters from the Army Corps of Engineers and DEC, and this drawing shows they are not going past the mean high water mark, but other than hand excavation he has no idea how they are going to do this. Mr. Sableski replied they would construct the wall at the lowest elevation possible in the spring time, last year the lake was 10" lower. Jeff Anthony stated it could be 10" higher this year. Mr. Sableski stated construction alone will be dependent on the water elevation and the first thing will be to establish 322' so they don't encroach upon it. As a safety precaution they will put a turbidity fence in the water and possibly sand bags along there so any overspill into the water will be captured. It will possibly be dewatered. There will be no excavation below that elevation.

Jeff Anthony stated that there was nothing on the drawings showing silt fence or anything else for the protection of erosion and sediment getting into the water. At the last meeting they asked for alternatives and they have not been shown any tonight. Mr. Sableski stated they are not graphically showing it, they did an analysis internally. Jeff Anthony stated they had wanted to hear it. Mr. Sableski stated that they had looked at just stone rip rap along the shoreline and they had looked at utilizing precast blocks but decided that in the end the client likes the look of the large stones. The rip rap has a tendency to look unnatural, and there are many areas along the lake that use large stones for a setback wall. They felt this was the best alternative and this is how they would like to proceed. Jeff Anthony asked if they had looked at geo fabrics and natural vegetation. Mr. Sableski said they had not primarily because this is

mostly for aesthetics and some erosion control. The client feels that the rock wall is most pleasing in his eyes. Jeff Anthony asked if they did not think a natural looking shoreline would be more aesthetically pleasing than a rock stone wall. Mr. Sableski stated it was basically a matter of opinion and he liked the rock look. The stone was nice looking and coming from a quarry in Vermont.

Atty. Muller read letters with many questions and concerns of the application from the Lake George Waterkeeper and Warren County Soil and Water.

Warren County Planning Department: Denied Without Prejudice.

Jason Saris asked if this meant the applicant would need a majority plus one vote. Atty. Muller stated that the Board needed to procedurally make that determination. Denial of course would require a super majority of 5. He is not sure that denial without prejudice even exists, it is either a denial or an approval.

Mr. Sableski stated many of the comments had been addressed on this last submittal. They had provided a new cross section showing the existing slope. The wall is stepped back so it will help with ice and wave action along with being aesthetically pleasing. He believes they have handled most of the comments from Warren County Soil and Water.

Atty. Muller explained to the applicant that if they do not receive an approval from Warren County Planning Office it requires a super majority of more than 4 favorable votes. Mr. Sableski asked if this meant at the town level. Atty. Muller replied yes. Jason Saris explained that the importance of this is that they do not have a full board here tonight so they would need all 5 votes as favorable. Mr. Sableski could table the application if he would like for the next meeting with a full board, because tonight he would need all 5 votes to be affirmative. Mr. Sableski asked if they would need to start the process all over again. Atty. Muller stated they could come back, but that they would have to start the process all over again. He stated another concern was that DEC has not been favorably inclined to vertical seawalls. Mr. Sableski stated DEC had told them that they would like to see more of a stepped back wall which they have addressed in the newest layout and they don't like walls encroaching on the mean high water mark, which they are slightly above technically. Regardless they would need a permit, but he has not been able to get a firm answer in regards to that yet.

Jason Saris asked if Mr. Sableski would like to proceed. Mr. Sableski replied in the interest of his client he would like to proceed.

Atty. Muller stated the Board would have to make a determination of what they determine that Warren County has done. This will be for all applications that come in like this. This will be the ZBA's rule. Jeff Anthony stated that he has always determined denial without prejudice to mean that the applicant is welcome to come back with revised information to consider, but still it is a denial and they still need a majority. Atty. Muller replied ok, but he is still concerned what the phrase without prejudice means. Jeff Anthony stated he believes that without prejudice means that if you change something come on back and we will reconsider it. They

are not telling him to never come back. Jason Saris stated he tends to agree with this and for the Board's purpose the important thing is denied. Jeff Anthony stated that the Warren County denial was not whimsical, they had 6 or 7 points or concerns, and this Board does not have anything in front of them addressing them. Mr. Sableski said he would like to state for the record Warren County had not seen the latest plans.

Now, upon motion duly made by Jeff Anthony and seconded by Holly Dansbury, it is resolved that the ZBA does hereby determine that a denial without prejudice means that a super majority is required to pass the resolution. **All in favor. Motion Carried.**

RESOLUTION

The Zoning Board of Appeals received an application from Anthony Mashuta, (V15-47) 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 to deny without prejudice;

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:

Now, upon motion duly made by Jeff Anthony and seconded by Lorraine Lefevé, it is resolved that the ZBA does hereby deny variance request as presented based on the following facts; 1) The Board asked for alternatives to be considered and evaluated at the last meeting and there is nothing in front of them showing an alternative analysis including an analysis of natural solutions to stabilize the shoreline. 2. There is no DEC letter or anything from DEC on this project. **All in favor. Motion Carried.**

2. **V16-01 O'CONNOR, JOHN & SCUMACI, DOREEN.** Represented by Dean Howland. To alter single family dwelling, specifically to construct a 12'x 18' addition, seek area variance for 1) a deficient side yard setback. 20' is required, 16.2' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-57B1b. Section 171.15, Block 1, Lot 48, Zone RM1.3. Property Location: 40 Stewart Avenue. Subject to WCPS review.

Dean Howland presented the following:

- They received an area variance in 2003 but only the foundation was put in.
- At that time they had 20' setback, but when they did the survey they found out was less than that.
- They want to put a 12' x 18' addition on top of the existing foundation.
- They have had it covered because the water has been leaking under the house for years.
- It will be a great room addition.

Lorraine Lefevé inquired about the height of the addition. Mr. Howland replied it is less than what exists now, about 13' above the foundation that exists right now. It is not as high as the roof it ties into.

Lorraine Lefevé inquired when the work would be started. Mr. Howland replied immediately upon approvals. They have already been doing work on the inside.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from John O'Connor & Doreen Scumaci,

(V16-01) 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.

1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: The foundation is already in place so this is the only realistic place to build the addition.

2) There will be no undesirable change in the neighborhood character or to nearby properties. It will be an improvement to the existing house.

3) The request is not substantial; this addition is several feet from the sideline.

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 size and shape of the lot do not work with the placement of the house.

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 Jeff Anthony, it is resolved that the ZBA does hereby approve variance request as presented. **All in favor. Motion Carried.**

- 3. V16-02 SLINGERLAND, TODD.** To alter single family dwelling, specifically to add a 33'7"x 16' extension on existing deck and construct a set of stairs, seeks area variance for 1) a deficient side yard setback. 20' is required, 0' is proposed (Approximately 2' of the proposed stairs is located on the common property) ; and 2) to alter a non-conforming structure in accordance with Section 200-57B1b. Section 171.11, Block 1, Lot 23, Zone RM1.3. Property Location: 27 Woodland Ridge. Subject to WCPS review.

Todd Slingerland presented the following:

- They are seeking to add a deck to an existing balcony.
- The stairway will come down onto the existing driveway which had been granted an easement by the HOA and deeded as such 30 years ago.
- The HOA has written a letter agreeing to allow the stairs to land on the driveway.
- There are no encroachments to the setbacks on the right, and he has spoken to him about the lighting concerns.

Jason Saris asked if this would be attached to the existing deck. Mr. Slingerland stated it would be. Jason Saris asked how large the existing deck was. Mr. Slingerland replied that it was a 5' balcony that goes around the first and second floor. He would be guessing about 55'. The area he would be impacting would be the main part of the house, the middle 33'.

Jason Saris asked if it would be a total of 21' x 33'. Mr. Slingerland replied this was correct.

Holly Dansbury asked if the steps had to be out that far creating a 0' setback. Mr. Slingerland stated there was no other place to put them; this was the only practical place. The house was originally built, basically lot line to lot line, with a two car garage added beneath there. The HOA granted them the driveway and it is deeded as such in the easement. These stairs would simply land 2' on the corner of the existing driveway. Holly Dansbury asked why they couldn't configure them so they did not extend that far. Mr. Slingerland replied it is steep and there is no other place to locate the stairs for access. Holly Dansbury asked if this was the only practical place to put them. Mr. Slingerland stated it clearly was.

Lorraine Lefevre asked if he had discussed it with the HOA in case there was a problem of another homeowner getting past the stairs. Mr. Slingerland replied it was his driveway that was deeded to them years ago by the HOA, they basically own it.

Jason Saris asked why they needed egress from this balcony if they do not have it now. Mr. Slingerland stated it is unworkable the way it is now. The only egress off the deck is the existing stairs, which dump you down into the weeds and it is very steep. Jason Saris asked if the stairs that are there presently are unusable. Mr. Slingerland replied that they could be used but they are highly impractical. Jason Saris asked if they could access it by going through the house. Mr. Slingerland stated they could.

Holly Dansbury asked if this deck would tie into the existing deck with the steps. Mr. Slingerland replied it would.

Jason Saris asked if it would need a variance without the stairs. Mr. Slingerland replied he did not believe so, but he was not sure. The Board decided that it would due to the house being to close.

Atty. Muller read an e-mail from Bill Peterson requesting all lighting be dark sky compliant.

Willie Bea McDonald stated the balcony is very, very tiny. There is no variance required going toward the lake, it is strictly required for the easement granted for the garage and parking. The stairs end up there due to the way the drain is there. She explained that every home in Woodland Ridge is non-compliant. She explained that the stairs are a very minor issue for this piece of property.

Jeff Anthony asked if they would consider making a 90 degree turn with the stairway instead of one straight shot. Mr. Slingerland stated it would not work, they had looked into it. Jeff Anthony stated he should look into a landing too because there are a number of stairs you cannot exceed without having a landing. Holly Dansbury asked how long the run would be. Jeff Anthony stated the plans say 12 steps.

Jason Saris stated it would seem that if they had a little landing on top and the stairs went down toward the front they would diminish the amount they would be sticking out. Mr. Slingerland stated he was lost on how that would work. Holly Dansbury asked if he would still need a variance. Jason Saris stated anything he did would require a variance because the house was pre-existing, non-conforming structure, but anything would be better than 0'. Holly Dansbury replied this is why she was asking if it was steep by going that way and with a landing it may not have to go that far over. Mr. Slingerland stated that it will have to go where that corner of the stairs will go out 2' out on to the driveway otherwise it wouldn't work.

Jeff Anthony stated he believed they could design them so that they did not go past that line.

Lorraine Lefevre asked if they were opposed to reconfiguring these stairs. Mr. Slingerland stated he honestly does not know how they can do it without going past that line and still be useful; it would either land on un-level area or on the foundation. Jason Saris stated it was hard to tell this from the drawings they were presented. Mr. Slingerland stated there was an existing deck on that side that they have to clear to get down, and that may be the issue. Jason Saris stated the birds eye view drawing does not show it. Mr. Slingerland detailed a different drawing. Holly Dansbury asked if they were coming back toward the house due to terrain. Jeff Anthony stated he did not have those drawings in his packet. Jason Saris stated they did not represent the other drawings and they really ought to be the same. He asked Mr. Slingerland to come look at his drawings with him and showed him how two landings would help it not to be 2' over the line. He stated he is concerned with the lack of specifics to the plans and he is having a hard time understanding why they can't incorporate a design that would end up with a little bit of a setback. He stated maybe it can't be done, but he would like to see why it can't be done any other way. He has a hard time understanding why the expansion needs to have a 0' setback.

Atty. Muller stated that the Board must consider if there are feasible alternatives that would demonstrate that the variance sought is not necessary or could be less than what the applicant is seeking. As an applicant they should consider if there are other feasible alternatives and specifically address them. It is possible that after considering these, there are no other feasible alternatives and this is the only way this can be done, but these should be well thought out. Mr. Slingerland asked if personal preference had any play he believes aesthetically speaking this was the only way to go. There is a driveway there now that has been there for 30 years

encroaching on something that has already been deeded to the property. Jason Saris explained the Board has to balance whether the benefit to the applicant can be achieved by some means other than an area variance. In this case it clearly can't, because no matter what he does, he would need a variance to expand his home. Along these lines of thought, is it the minimum that is needed to achieve the benefit to the applicant. Just because there is one spot of the house that has a 0' setback, it does not mean everything else needs to be run up to the edge if there are alternatives. If there is not, then there is not. Mr. Slingerland stated he had looked at alternatives, but he can't prove that to the Board. Jason Saris said to tell him why it won't work. Mr. Slingerland stated the slope of the land, aesthetically, usability. There are many reasons why this is the best scenario. There are other ways to make this work, but are they optimal, no, but he can't prove that to them. Jason Saris stated that the Board would like to see why they won't work.

Holly Dansbury stated that having looked at it the slope is really the issue. This is probably the most practical place to put them. Jason Saris stated he did not understand why it could not be 2' shorter. Jeff Anthony agreed. Mr. Slingerland stated even if they made it short, they would still have to do some kind of a walkway to it.

RESOLUTION

The Zoning Board of Appeals received an application from Todd Slingerland, (V16-02) 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.

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: As discussed the terrain is an issue.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. It will match what is pre-existing.
- 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; 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 John Famosi, it is resolved that the ZBA does hereby approve variance request as presented with the following condition; any lighting on the rear of the house, both new or existing, be dark sky compliant. Jeff Anthony opposed. **All others in favor. Motion Carried.**

4. **V16-03 PAUL GOLLHOFER IRREVOCABLE & GOLLHOFER, JOHN & LORIE.** Represented by Hutchins Engineering. To alter single family dwelling, specifically to add an attached garage with living space above, seek area variance to alter a non-conforming structure in accordance with Section 200-57B1b. Section 186.14, Block 1, Lot 69, Zone RCH5000. Property Location: 56 Beckers Drive. Subject to WCPS review.

Tom Hutchins of Hutchins Engineering presented the following:

- They are proposing to expand the existing residence.
- It is a dual purpose expansion.
- This will be for a garage and living space with one bedroom on the upper level.
- The house is pre-existing and non-compliant with respect to the front setback.
- They have attempted to lay out the garage to be completely conforming to the setback and ordinance; however they are here due to the home being non-conforming.
- He detailed the plans to the Board.
- There is a right of way across the property for the HOA to access the lake.
- They have incorporated some stormwater measures and he detailed them on the plans.
- They will have an infiltration trench along the side of the garage and the drive.
- They intend to landscape and vegetate.

Jason Saris inquired what the living space would be for and if it was an apartment. Mr. Hutchins replied no. John Gollhofer explained it would be adding on a bedroom and space for his father. They are making it one large compound for all of them to live in due to his father's health condition. It will all be attached and one dwelling.

Lorraine Lefevre asked about the attachment of the addition. Mr. Hutchins detailed it on the plans.

Holly Dansbury asked if they had looked at putting the garage next to the road. Mr. Hutchins replied that the wastewater system was in that area.

Richard Simonson property owner adjacent to the applicant stated:

- His concerns are with the stormwater created by the applicant.
- He does not see where they will be addressing all the stormwater.
- He detailed all the flooding in areas on the plans and inquired what the stormwater plans were for addressing these issues.
- He asked if they were upgrading the septic system for another bathroom and if it had been looked at to see if it could handle another bathroom. Jason Saris replied that the ZBA does not deal with septic systems.
- Mr. Simonson inquired about the setbacks from the wetlands. Jason Saris asked if the water coming from the applicant's property was stormwater. Mr. Simonson stated he did not know what it was, but it is not rain water, if you go there when it has not rained in a couple of weeks, you will still see it is all full of water and running over his road. Atty. Muller replied then it was ground water if it was not from rain.

- Mr. Simonson detailed this area of water to the Board and asked why they would have ground water coming out now. He believes it needs to be addressed.

Pat Callahan representing the Gate House stated the following.

- They have no problem with the enhancement of the property.
- They do have a problem with the water.
- The water comes out of the Gollhofer property and runs across a small part of the Gate House property, ending up on the Simonson property causing all the damage he has.
- Where they plan on building the house is wet as of today and even though the last 3 days have been well below 0 degrees, it is running as powerful as it could.
- There needs to be some kind of a comprehensive plan to address all this water.
- The Association does have a tunnel, which the water follows from a system of tunnels starting at Melody Manor and runs to the Gollhofer's in the area where they plan to build their addition.
- He showed several photos to the Board.
- It is not the fault of the Gollhofers, but it is an issue.
- He stated that DEC stated the water appears to go from the stream ending on the Gollhofer property.

Lorraine Lefevre asked how long this has been an issue. Mr. Callahan replied it has picked up intensity in about the last 5 years. He took a sample to RPI and they stated it had a lot of minerals in it.

Mr. Callahan stated it was no fault of the Gollhofers and they have no problems with them enhancing their property but there has to be a plan to address this water that runs through the property and sheds onto other property.

Tom Hutchins stated the water issue is a historic issue and he detailed on the plans the tunnels and culverts that he knew about. Their position is to take the up gradient runoff from their project and divert it around the project, maintain the drainage flow and manage the stormwater they create from their building. It would be great if someone could solve this problem but this is a complex situation with a number of people involved. Mr. Gollhofer stated if water was coming from Melody Manor that was an issue that needed to be taken up with them, they are just trying to get their structure in place. Jason Saris stated it could potentially effect whether or not his stormwater measures would work or not.

Jeff Anthony asked if any test pits or perc tests had been done yet. Mr. Hutchins replied he had not. Jeff Anthony stated no matter what kind of infiltration device they put in, if there was high ground water or water around, it would just runoff and not infiltrate. Mr. Hutchins stated that it would infiltrate within the fill area. He stated that perhaps there were some enhancements they could work out. It is a double edge sword, they are trying to keep their disturbance area low and keep things tight, but they will look into it.

Jason Saris asked if he had dug test pits. Mr. Hutchins stated he had not, but he had walked it and it was soggy. A test pit within that channel will be wet.

Holly Dansbury asked if there was a way that the stormwater controls that they put in could improve this long term problem. Mr. Simonson stated they have pipes now that divert the water toward his property. There is a pipe on the Gate House road. Mr. Golhoffer stated this was a right of way and that they were pre-existing culverts installed by the previous homeowner. Mr. Simonson stated Mr. Gollhofer was pointing to culverts on his property and they were not put in by the previous homeowner. Mr. Hutchins stated according to his survey and field inspection they were there. Their approach has been to divert the water to keep it going in the same general direction and manage the new stormwater that they are creating. Jason Saris stated it sounded like there is a problem that is certainly not of their creation, but his concern is that knowing how sensitive this area is, he would hate to see this create another possibly larger problem with the right of way. Mr. Gollhofer stated they had no intention to impact anyone. Jason Saris replied he is sure they don't, but the concern is that it does not sound like a whole lot of research has been done to see if there might be an issue. Mr. Gollhofer asked how they would research a 5 year issue that no one else has taken on until they have decided to do something and it's being impacted by another entity. Jason Saris stated he was not an engineer so he could not tell him that, but if you have water flowing and you dig a hole and put a foundation there in what would normally be its path of migration, it will choose another path, it won't just stop. Mr. Hutchins stated they can't solve that problem alone; there are a lot of parties involved. Jason Saris stated he understands this but they want to make sure their problem is successful and does not cause an issue somewhere else.

Holly Dansbury stated it would be nice if they can do the addition, but the Board would like to know how they can not only take care of what they are creating but maybe also make sure that it is not going to make the environment worse.

Mr. Hutchins asked what the Board would like them to do. Jason Saris stated he could see the infiltration trench going around the area that is wet. Jeff Anthony stated if the infiltration material is in ground water and its feet were all wet there would be no water going into it. They would have to account for treating the additional 3,000 sq. ft. or more of new impervious. They are technically responsible for what is there now, but they need to know that the new impervious surface is being treated properly. Somehow they have to find a place to take it.

Lorraine Lefevre asked how they would have stormwater retention. Jeff Anthony stated it was explained on the plans, but they do not know anything about the soil as there were no test pits or perc tests done.

Jeff Anthony asked if this item would be going to the Planning Board for Site Plan Review. Atty. Muller replied that it would not; this Board needs to take into account the character of the neighborhood and any negative impacts that are concerns and figure out how this site can handle the addition. Jason Saris stated that under normal circumstances what they have proposed here would be quite adequate, but they do not know if this will work given the nature of the property. He said they had not dug any test holes and it was difficult to approve something when they do not know if it will work or not. Mr. Hutchins stated he understood. Jason Saris asked what they would do if they ended up with a trench filled with water when

they went to install this stormwater device. Mr. Hutchins stated they would be using control fill materials. He said he could see that the Board was looking for a hard look at the stormwater and he was ok with that. Mr. Gollhofer asked if the Board wanted a formal stormwater plan, because everything else is dry on the property other than what was coming through and what they are addressing with the construction. At this point there is no other water issue with the current house. Jason Saris replied that from the pictures he saw, everything was not dry on the property, and it seems it is a consensus that it is a wet piece of property. Mr. Hutchins replied it was a wet area on a large piece of property. They discussed the plans.

John Gollhofer stated they were dealing with two different issues. The groundwater is a pre-existing condition that they will be leveling off so they can match the proposed structure up to the existing one. The second thing they will be dealing with is that any of the stormwater created by this structure will be filtered by the fill they will be putting in, along with the use of the additional property for dispersion. The groundwater that they are seeing is historic pre-existing, and when they change the elevation to match the building, and grade it out any rainwater will disperse evenly improving the situation. He can't control what is currently there. Jason Saris stated for a stormwater device to work it can't be filled with ground water. Mr. Gollhofer replied that it would not be filled with ground water. If you look at the current plans it shows the mitigation of this. It is taking the existing flow and directing it to the pre-existing culverts where it is currently going. The water is still going to flow, whether they construct or not. The stormwater proposed will enhance it and reduce the amount of flow that occurs. They can't stop the existing, but they can control the stormwater because they are adding the fill. He detailed this on the plans to the Board.

Jason Saris stated that he is not an engineer, but he knows he had to dig a test pit to show the stormwater was going to function as designed when he proposed a project to the Board. Mr. Hutchins stated they would provide a test pit if that is what the Board was looking for. He detailed the stormwater control to the Board. He asked how they should handle the off gradient that is coming into their project. Holly Dansbury asked if they could use this time to improve it. Mr. Hutchins stated what was coming in was not really stormwater because it flows continuously.

Jeff Anthony stated that without perc tests and test pits, you don't know what you are doing. Mr. Gollhofer asked if they were backfilling how they would serve a purpose. By adding soil they would be improving the situation. Jason Saris stated they would also be adding 3,000 sq. ft. of impervious surface.

Jason Saris asked if the Zoning Administrator would require more stormwater. Atty. Muller stated that he was leaving her a note stating that she should read these minutes and take into consideration that although in size and dimension this is probably a minor stormwater project, if she feels as the Zoning Administrator that it requires a little bit more complexity and if she determines so in writing, it could become a major stormwater and erosion control project. This is her determination and what the code says she should be doing. The neighborhood and the applicant agree that there is ground water. The applicant does not create it but it passes

through. That in of itself is a Zoning Board issue as they have to take into account if this project is going to adversely impact neighboring properties. The Board does know that yet. Jeff Anthony asked if this would go before the Planning Board if it is raised to a major stormwater project. Atty. Muller replied that this would be correct. Jason Saris asked if the Zoning Administrator would sign off on this without the test pits even if it was a minor project. Atty. Muller stated he could not answer that, if she had called or e-mailed he would ask her why she would not get test pits. They need to find out more about the ground water.

Jason Saris asked if the Board could approve this with a higher level of stormwater. Atty. Muller replied that they could but the conservative course would be to ask the applicant to do some test pits to see exactly what the conditions are in ground water and allow the Zoning Administrator to make the determination as to whether it should be kicked up to major or not.

Mr. Gollhofer stated they wanted to do this right; they wanted to be good neighbors and not impact anyone. If the Board feels they need a better plan for the stormwater, this is what they will do, but he also believes there is a responsibility of the town to see why that water is coming through from the neighbor. Jason Saris stated this may be a valid request but it would probably need to be made to the Town Board. They all discussed the channel of water on the plans. Mr. Calahan stated that there are 12 families that have no problem with the addition, they question the groundwater. The addition could actually antagonize the problem. This is not a small amount of water that comes from Melody Manor and he detailed it on the map. He stated it may very well be a town issue. Jason Saris stated the town obligation is to bring the water to the edge of the homeowners property for everyone in the water district. Mr. Calahan showed the Board a video of the amount of water running there.

Jason Saris inquired if the applicant would like to table this. Mr. Hutchins replied that if the Board would like them to do further research they were fine with it. Mr. Gollhofer agreed. Mr. Hutchins asked if they would be able to be on next month's meeting. Jeff Anthony stated that would be up to the Zoning Administrator.

Mr. Gollhofer stated he really had concerns with delay because he really needed a solution to take care of his father. They will try to do whatever the Board asks.

Jeff Anthony stated that they would like to see the conditions of the soil and the issue is whether the stormwater is going to work or not for the added impervious. He said you usually don't do test pits in March to see where the seasonal high water mark is. Holly Dansbury asked if there were alternatives to satisfy the concerns. Mr. Hutchins stated he hopes to address this, but he is not sure the Gollhofer's alone are going to be able to handle all of it.

Mr. Gollhofer asked if they were in compliance with the stormwater, what the problem would be. Jason Saris explained that he understood that they were not asking for a variance from the stormwater, their concern is the stormwater controls may not be adequate to handle it with the other issues that exist. Mr. Gollhofer asked if the Zoning Administrator would be the one to approve the stormwater plan. Atty. Muller stated he has counseled her not to do this, they actually have an engineer consultant and the two engineers figure out the best plan. John Gollhofer asked if they could get an approval for the construction pending stormwater

management. Atty. Muller stated that he was hoping the Board would give consideration to having the applicant do these test pits and come back with a better analysis and clearer understanding as to where the ground water is and how they would address the issue if it was a problem. This is a corollary with how to deal with stormwater; the stormwater issue is subordinate to the ground water problem.

Now, upon motion duly made by Holly Dansbury and seconded by John Famosi, it is resolved that the ZBA does hereby table variance request as presented in order for the applicant to take a harder look at the stormwater, including test pits and looking into remedies for the groundwater. **All in favor. Motion Carried.**

5. **V16-04 HENSLER JACK & DORIS.** Represented by Chris Gabriels. Seek area variance for 1) commercial boat storage greater than 2,500 square feet. 3,289 square feet is proposed; and 2) deficient front yard setback for a boat maintenance facility. 50' is required, 26' is proposed. Section 139.00, Block 1, Lot 76.1, Zone RIL3. Property Location: East Schroon River Road. Subject to WCPS, APA and LGPC review. See SPR16-02 associated with this project.

Chris Gabriels presented the following:

- This is a residential low density industrial zone.
- It is an 8 acre parcel.
- Most of the lot is fully wooded and fairly steep.
- It was most recently a sawmill yard.
- They are looking to repurpose it for greater potential.
- They would like to tidy up the existing saw log area and turn it into a boat storage area which requires no variances.
- They will use the existing sawmill building, clean up the siding and close up the gable entry ways and possibly redoing the roof.
- He detailed some of the issues on the site plan.
- He showed the different ways they had looked at doing this project, and this was the simplest way to repurpose the property.
- They will utilize the existing foot print of the existing building to have a boat maintenance facility.

Jason Saris asked for some clarifications on where the outdoor boat storage area was. Mr. Gabriels pointed it out on the site plan stating it was already cleared and level. He stated they are not suggesting any changes to the existing flat area and are hoping they can leave the sawmill building the same square footage as exists and they are not suggesting any changes to the footprint to the building closest to the road. He detailed a photo to the Board.

Holly Dansbury inquired about where they looked at moving the maintenance building that did not work. Mr. Gabriels detailed this on the plans stating to comply with the 50' setback was too steep in one area and would require a different variance request the other way.

Lorraine Lefevre asked what kind of boat maintenance they would be performing. Mr. Gabriels stated they would have all the activity for the maintenance would be in the back of the building. In essence the front and sides would look like an empty barn. They would be doing whatever boat maintenance they think they should. Boat maintenance is an allowable usage in this area. It just needs a setback variance from the one area. They are simply trying to use the existing footprint and square footage of the improvements that have already been made on the property.

Jason Saris asked if the boat storage would be seasonal. Mr. Gabriels said yes.

Jeff Anthony asked why the A.P.A. and LGPC had jurisdiction over this. Atty. Muller stated that the LGPC takes the position that where there is storage of more than 3 boats for profit, they constitute the activity and define it as a marina. The LGPC takes the position that notwithstanding the locally approved land use ordinance, they will have a superior jurisdiction over the Town of Bolton. Some may think that this is a violation of municipal home rule. No one has tested this. He stated he believes the A.P.A. involvement due to the proximity to the interstate and the Schroon River. He stated the one that is most vexing is the LGPC. Mr. Gabriels inquired why it was in the LGPC jurisdiction when it was not in the Lake George Watershed. Atty. Muller asked Mr. Gabriels if he was certain that it was outside the Lake George geographical area. Mr. Gabriels replied that the Schroon River ran into the Hudson River. Atty. Muller stated he may be right as long as it is outside of the watershed. Jason Saris asked if the LGPC had jurisdiction on marinas outside the Lake George Watershed. Atty. Muller stated they are actually looking at this, he does not believe they should have jurisdiction over a marina in the watershed; he does not know what's going on when you're outside the watershed. Jason Saris stated he agreed with that, but they have used their regulatory authority of marinas to expand past the shorelines of Lake George. Atty. Muller stated well past. He stated he had asked their attorney what the purpose of this was. She had explained to him that the LGPC wanted to make sure they were regulating all quick launch facilities. He then said he had questioned a particular marina/storage facility that had all the boats on trailers and they were shrink wrapped which he would not characterize as a quick launch. She replied that the LGPC deemed it as a potential quick launch. Jason Saris stated the LGPC has even gone as far as usurping the Town of Bolton's administration of stormwater regulations, requiring a different standard which they have imposed, even though it met the town's standards. Mr. Gabriels stated he believes the LGPC has a jurisdictional line and it has to do with the watershed. They can't regulate other lakes.

Jason Saris asked if the Board needed to consider practical difficulty. Atty. Muller replied no, it is not density or shoreline.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Jack and Doris Hensler (V16-04) 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 any other means feasible to the applicant besides an area variance: This project is a practical reuse of an existing facility, there are repurposing existing buildings.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. This is a remote site and is well buffered from the road it will not have much of a visual effect.
- 3) The request is not substantial; all of the additional uses and building modifications are minor.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; they are using the existing conditions of the site.
- 5) The alleged difficulty is self-created; but the buildings are being repurposed. It is a personal change of the property due to the changing economics in the area.

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

The meeting was adjourned at 8:21.

Minutes respectfully submitted by Kate Persons