

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, May 16, 2017
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, Joy Barcome, John Whitney, Holly Dansbury, Lorraine Lefevé, Alternate, Zoning Administrator Pamela Kenyon and Counsel Michael Muller

Absent: Jeff Anthony, Carla Cumming

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

Jason Saris asked if there were any corrections or changes to the April 18, 2017 minutes.

RESOLUTION:

Motion by Holly Dansbury to approve the April 18, 2017 minutes as presented. **Seconded by,** John Whitney. Joy Barcome abstained. **All others in Favor. Motion Carried.**

- 1. V17-14 VOGELSANG, NANCY.** To alter single family dwelling, specifically to replace current deck with a screened porch and add a new deck, seeks area variance for 1) deficient setbacks. Front: 50' is required, 14' is proposed. Side: 20' is required, 10' is proposed; 2) Lot coverage. 15% allowed, 25.8% is proposed; and 3) to alter a nonconforming structure in accordance with Section 200-57Blb. Section 186.18, Block 1, Lot 29, Zone RM1.3. Property Location: 85 Rainbow Beach Road. Subject to WCPS review.

Nancy Vogelsang presented the following:

- Her project is to replace an existing deck with a screen porch and add a smaller deck.
- It is 2' wider and 6' longer than the existing deck.

Jason Saris asked if she was part of an association. Ms. Vogelsang replied that she was part of the Rainbow Beach Association and had association approvals.

Lorraine Lefevé asked if she would have two screened in porches. Ms. Vogelsang replied that she would have the existing screen porch and this new one. She explained that she could not extend the existing one because there was a grinder pump there.

Jason Saris asked for the dimensions of the new deck. Ms. Vogelsang replied 10' wide and 22' long at the longest. Jason Saris asked if the corner was cut off to accommodate all of the setbacks. Ms. Vogelsang said it was partly due to that and partly for aesthetics.

John Whitney inquired about numbers for distances and setbacks on the site plan. Ms. Vogelsang replied it was 225' from the corner of her site to the water line.

Holly Dansbury asked if there were other options that would not require as much of a variance. Ms. Vogelsang replied that the Rainbow Beach Committee had concerns with the original set of plans and so this is what they ended up with.

Jason Saris asked if there were any compliant structures in Rainbow Beach. Ms. Vogelsang replied that she did not know.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Nancy Vogelsang, (V17-14) for an area variance as described above.

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

And, whereas the Warren County Planning Staff determined that there was no County impact; And, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application; this Board makes the following findings of fact:

The application of the applicant is as described in Item #1 of the agenda.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: The grinder pump location made this the only feasible area to place this addition.
 - 2) There will be no undesirable change in the neighborhood character or to nearby properties.
 - 3) The request is not substantial. Although it encroaches on the setbacks the size is small.
 - 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 home.
- 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**, Joy Barcome it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion Carried.**

2. **V17-10 McCaffrey, Frank.** To alter single family dwelling, specifically add a 10'x 15' deck, seeks area variance for 1) deficient setbacks. Front: 50' is required, 16' is proposed. Rear: 20' is required, 6' is proposed; and 2) to alter a nonconforming structure in accordance with Section 200-57B1b. Section 200.18, Block 1, Lot 41, Zone RM1.3. Property Location: 11 Lone Tree Loop. Subject to WCPS review.

Frank McCaffrey presented the following:

- He is adding a deck to provide a place to go where there is an existing slider.

Jason Saris asked if there was a need for HOA approval. Mr. McCaffrey stated it was in the packet.

Lorraine Lefevé asked if they would need to remove the trees next to his cottage. Mr. McCaffrey stated he would be trimming the Cedars, not removing them.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Frank McCaffrey, (V17-10) 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.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: There is no other feasible level area for the deck. This already has an existing slider in that location.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. It is keeping with the other decks in the area.
- 3) The request is not substantial. It is only a 15' x 10' deck.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. This is a simple deck.
- 5) The alleged difficulty is not 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 Holly Dansbury and **Seconded by**, Lorraine Lefevé it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion Carried.**

- 3. V17-11 SCHEIBER JR. EDMUND.** To alter single family dwelling, specifically to remove a 2' x 4' landing and stairs and replace with a 12' x 17' deck and stairs, seeks area variance for 1) a deficient shoreline setback. 75' is required, 35' is proposed; and 2) to alter non-conforming structure in accordance with Section 200-57B1b. Section 200.18, Block 1, Lot 47, Zone RM1.3. Property Location: 51 Hemlock Point Road.

Subject to WCPS and APA review. See V13-19, V03-36 & V00-37 for previous denials and V15-36 and V16-13 for reversal by the APA.

Edmund Scheiber Jr. presented the following:

- This application represents a revision to previously proposed deck addition/location to his home. Since his home is already in a non-conforming, pre-existing situation and was built in the location of the original home, it is now impossible to move the home away for the lake. In addition, when the variance application was submitted for the new home, a request for a deck on the east side was not included. It was left off the application at the direction of the Zoning Administrator. It was suggested that since he had previously built a deck on the original home without approval, putting another deck in the application would jeopardize the approval of his request for construction of the new home. Therefore, he did not include a deck in the original variance application.
- Therefore, he wishes to remove the existing 2ft x 4ft landing and stairs and construct a 12ft (revision/reduced from 14ft) by 21ft structure (which includes a deck size of 12ft by 17ft and stairs of 4ft by 6ft) attached to the front/east side of the house to replace the existing set of steps from the front door. It would encompass the area from the house front door to just before the first set of sliders nearest to the house that faces the lake off the enclosed porch. The stairs off the deck would be located to the south side. The construction would place the deck at +/- 37ft from the mean high water mark. This change will require a variance to the 75ft setback from the mean high water mark. (See the mark-ups on the plot plan). He currently has the approval of the Hemlock Point Association membership for this construction.
- How can the benefit that you desire not be achieved by other feasible means?
There are three possible locations for the proposed deck:
 1. The deck could be placed on the north side of the house; however, there are four difficulties in so doing.
 - a. The 12ft dimension would encroach on the association 20ft set-back and to comply, would reduce the 12ft dimension to 8ft.
 - b. A 1000gal propane tank is buried just north of the foundation and the heating/air-conditioning compressors are also on the north side.
 - c. There are no doors on the north side of the house; therefore, no house access.
 - d. The north side of the first floor is occupied by a bedroom; therefore, not suitable for access to a deck. He stated that he included an inside and outside photo.
 2. The deck could be placed on the south side of the house; however, there are three difficulties in so doing.

- a. The dimension would encroach on the association 20ft set-back and to comply, would also reduce the 12ft dimension to 8ft
 - b. In addition, the south side of the house faces the north side of the Reickert house and the location of their bedrooms causing the potential for disturbances.
 - c. He continued to discuss the propriety of putting a deck on the south side of the house. His neighbor, Mr. Reickert has verbally indicated that due to the proximity of his bedroom side of the house that he not locate the deck on the south side so as not to infringe on their privacy.
3. The west side of the house is not suitable for his intended purpose as well due to it not facing the lake. It also would be in a location that would be outside the kitchen wall which contains wall cabinets, a pantry, sink, stove, oven and dishwasher.
4. The east side of the house is the only location that is suitable for my intended purpose for locating a deck and allows for the dimensions that will accommodate the placement of a round table on a flat surface, four table chairs, a gas grill and a lounge chair. The industry deck design standards provide specific guidance/recommendations for the size of a deck; to include:
- a. Allow for enough space for your furniture and to comfortably circulate.
 - b. If you plan to use a dining table, allow for enough space to move around. Spaces around 12ft by 14ft tend to work well. Measuring your table and allowing for a minimum of 3ft around the table for circulation and safety.
 - c. It is very important to plan in advance for saving space for table, chairs and walking around the table, generally less than 11ft deep is too tight for even a modest sized table.
 - d. 12ft to 16ft are good starting points and will allow room around the table and chairs to breathe.

It is his position that a deck smaller than the 12ft dimension would be unsuitable for his intended purpose and the dimension represents the minimum acceptable.

- How will your project not produce an undesirable change to the neighborhood?

- a. These additions will not create any structural changes that are out of the architectural character or décor with the existing HPA homes. Currently, all of the seven homes have either decks and/or covered porches. Four of the existing decks/porches are on the east side of the home and face the lake. He has presented his proposal to membership and has received the approval of the Hemlock Point Association membership for this construction. He has also received approval from the association president.
 - b. The existing neighborhood of Hemlock Point Association (HPA) consists of seven (7) individual one and two story homes on lots of approximately 20,000 sq. ft. Each home faces an exposure to the lake of 100 feet on the shoreline. The existing zoning variation was not self-created since the initial home was constructed in the 1955-56 time period, when there was no setback requirement relative to the distance from the lake that a structure must be built. The proposed variance will not change the current setting of the home; nor will it perturb the existing character of the neighborhood or interfere with the views of the adjacent neighbors.
 - c. The two homes to the north of the property each have approved decks on the east side of the house. The Passaretti property has a 48ft x 16ft deck with a setback of +/- 30ft (see Google map) from the mean-high watermark. Immediately to the north of my property is the Adams residence which has a 21.6ft x 12ft deck with a setback of +/- 34ft (see Google map) from the mean-high watermark. The Kenny home also has a combination of covered as well as open air porch/deck also within the setback requirement.
- Is the requested area variance substantial? NO
 - d. The degree of change relative to the ordinance is not substantial as the request only seeks a variance to one of four requirements; specifically, the requirement for the 75ft setback from the mean high water mark. The remaining requirements for ride-of-way, side setbacks and percentage of dwelling to lot size currently meet the zoning requirements and do not require a variance. It should be noted that in the mid-1980s, the spring ice pushed the shoreline back approximately 3-4ft and created a 4ft high “berm.” The berm was eliminated; however, the shoreline loss was never recovered. The term “substantial” is subjective and given that only one of the four possible variances is required, this request is not deemed substantial.
 - Will there be an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? NO
 - e. The lot is extremely level and poses no threat to runoff from stormwater. However, to assist with any water from the proposed deck, there will be a bed of native plantings immediately surrounding the proposed deck to help with the absorption of rainwater from the deck and house roof. Currently there are

plantings across the front of the house to assist with the absorption of rain from the house roof. He has also installed, expanded and maintained a shoreline buffer to protect the lake from any runoff (see photo). The LG Waterkeeper has reviewed the planting plan and concurs with its positive impact on stormwater runoff.

- f. The proposed deck is reasonably sized with regard to the other homes with decks; will not be visually intrusive from the lake as the shoreline buffer that they have planted over the last 6 years will block its view from the lake; and the deck plan, its location, and height are in keeping with the neighborhood. The request for the 12ft depth to the deck is to accommodate the bow window which protrudes approximately 2ft into the proposed deck space. The remaining 10ft is minimally acceptable to accommodate the proposed round table and chairs around the table. According the building industry standards and architectural design standards, “10ft is less than that used to accommodate the area covered by a 48-inch table and four chairs and their access.”
 - g. It has been asked why a patio of some to be determined material would not be suitable. First, this request would also require a ZBA variance to be granted. Second, and perhaps more importantly, a patio of stone or masonry would have a greater, much more negative impact on the environment because of the environmental impact from run-off caused by the impervious surface and preventing the greater absorption of rain/run-off.
- How is the alleged difficulty self-imposed?
 - h. Due to the original house being constructed +/- 53ft from the shoreline in 1955/56 prior to setback requirements, he must seek a variance in order to build the deck; therefore, the alleged difficulty has been imposed by the now existing setback requirements. The new home was built on the existing footprint. It was decided to leave the location of the home in the existing location because the original foundation was to be used and the original fieldstone fireplace was also saved. Additionally, in the late 1980s, the shoreline was pushed up and back approximately 4ft to 5ft due to the ice movement; therefore, the shoreline is now approximately 4+ feet closer to the front of the house. When the shoreline was repaired, the loss of setback was not recovered.
 - He has modified the application and is seeking approvals.

Jason Saris asked if this application was substantially smaller than his prior applications. Mr. Scheiber replied that it was. Jason Saris asked if this deck would be the least compliant deck in Hemlock Point. Mr. Scheiber replied that it would not, there are other decks closer to the lake.

Holly Dansbury asked what all the reasons were that the APA over turned this application. Jason Saris stated a lack of photographic evidence among others. The APA has mentioned that

one of their red flags is someone coming back again and again with the same application hoping to get approvals from a different board, but this application is substantially different. Holly Dansbury stated that the applicant had gone into detail as to why he could not place the deck in a different area.

John Whitney stated this plan would be enhancing the stormwater controls on the property. It gets to the question of is it reasonable to have a small deck on your house. Is there any reason why you shouldn't be able to have that? The only issue is the encroachment on the one setback which seems to be offset by the accommodation of the proposed stormwater. It is not visible, obtrusive or out of character to the neighborhood, there is nothing that says it is not a reasonable request. Jason Saris stated that a house without a deck is out of character with the neighborhood. He stated that the APA felt decks were not a necessity and they are a recreational device. John Whitney stated that the standard is not whether they are recreational or not, the standard is whether it is a practical difficulty or not. Jason Saris stated that with lake front properties and properties in the Adirondacks people want to be able to enjoy the outdoors on their decks.

Joy Barcome stated that they have had discussion about taking care of any runoff. The property is extremely flat.

Holly Dansbury asked if this deck would be level with the front door. Mr. Scheiber replied it would.

Mr. Scheiber stated he had written a letter to the APA challenging some of the reversal decisions and the rationale for them. He said they asked him if he was so concerned about stairs, why did he build a two-story house. He did not know what that had to do with wanting a deck. He was 17 years younger when he built the house. He has a first-floor suite on the first floor. He said they seemed to be digging for reasons and rationale to overturn the previous approval.

Lorraine Lefevre stated that it was not like they were setting a precedent. Everyone else has a deck in the area.

Atty. Muller read an email of support for the application from George and Mary Jane Adams.

Zandy Gabriels of Green Island stated that he supported Mr. Scheiber's application. He stated the new application had many changes was more minimal and much more supportable by this Board and hopefully the APA. This was not a case of leap frogging out toward the lake, that has already been done. Mr. Scheiber is the only one without a deck. He stated that anyone can be hit with physical ailments at any time of life.

John Whitney stated that he thought the applicant's submission and presentation were very compelling in the 5 factors that they typically consider.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Edmund Scheiber, (V17-11) 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 #3 of the agenda.

1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: They have walked around the house and seen why it was not practical to place the deck in these other areas.

2) There will be no undesirable change in the neighborhood character or to nearby properties. The deck makes no difference whatsoever to the character of the neighborhood or nearby properties.

3) The request is not substantial. This is a very small deck in size and a deck is a normal accommodation to make and it is not substantial on the setbacks to the lake.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Not only would the deck not have adverse effects or impact on the physical or environmental conditions, the applicant is actually seeking to improve the conditions with plantings around the deck and plantings at the water.

5) The alleged difficulty is self-created; this is a pre-existing non-conforming structure with the house being re-built in the same footprint and it was made worse by the loss of lake front due to ice several years ago.

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

The practical difficulty as to whether a deck is a necessary part of a lake front home is irrelevant, a deck is a normal and typical request of a lake front home. The requested deck is an incredibly small and very minimal accommodation. It has no visual impact, no impact on the lake and it has been more than adequately demonstrated by the applicant in the presentation and submission to the Board that there is no other place to put it on the property, so it is absolutely a practical difficulty. It is his strong recommendation to approve the deck.

The Board agreed to adopt and accept all of Mr. Scheiber's representations as the findings of fact for the application to support the motion.

Now, upon motion duly made by John Whitney and **Seconded by**, Holly Dansbury it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion Carried.**

4. **V17-12 VANDYCK, MAUREEN & LOUIS.** Represented by Eric Whiting. To alter single family dwelling, seek area variance for 1) deficient setbacks. Front: 50' is required. 37' is proposed. Shoreline: 75' is required, 28' is proposed; 2) Height. 35' is allowed, 39' is proposed; and 3) to alter non-conforming structure in accordance with Section 200-57B1b. Section 171.19, Block 1, Lot 58, Zone RM1.3. Property Location: 19 Evergreen Lane. Subject to WCPS review.

Eric Whiting presented the following:

- They have a large extended family in the area and purchased the home in hopes of adding on to it.
- This house was built in the 60's.
- This is a very non-conforming home inside and out.
- They would like to add on for more room and better egress.
- They are very interested in green technology.
- They will be adding rain gardens to offset any additional stormwater.
- They have had the APA out to survey the property.
- Any addition to the home would be non-conforming.
- They tried to go up and back for the smallest footprint.
- The current property is completely within the 75' of a waterbody.
- He detailed the setbacks to the Board.
- The basement door and chimney are what put the height of the building over the limit.
- He submitted a photo for the Board to review.

Jason Saris asked what the height would be from the front. Mr. Whiting replied it would be about 30'. Mr. Whiting explained that the applicant wanted a wood burning fire place which required a higher chimney.

John Whitney asked if there was access from the basement inside the house. Mr. Whiting replied that there was not, it was a full basement with access from the outside only. John Whitney asked if they removed this walk out door and added an access inside the house they would not have the need for a height variance. Holly Dansbury agreed and stated she had a concern with the height. Jason Saris suggested a Bilco type door. Mr. Whiting stated they could look at this, but they really did not want to add a bunch of fill to this side of the house toward the pond. He stated it was challenging because they would also like to add a pitch to this flat roof for the snow. Holly Dansbury stated she appreciated the dilemma, but they count the height from the walk out and she believes that eliminating this they would lower the height of the request. Mr. Whiting stated that he could look at a combination of things to lower this.

Jason Saris asked if they would require a variance if the grade was brought up more than 6'. Zoning Administrator, Pamela Kenyon replied they would not because that section of the code does not pertain to single family dwellings.

Jason Saris stated that the plan is nice and a huge improvement from what exists, but it is hard to understand how this cannot be designed within the height requirements. Variances are supposed to be minimums.

John Whitney asked if there would be any additional encroachment on the shoreline setbacks. Mr. Whiting replied that there would not be.

Kate VanDyke stated that the applicant is very excited to be in Bolton Landing and she believes they will be able to work something out as they are very caring of the environmental issues.

Jason Saris said they could amend the application now if they would like to eliminate the height variance. Mr. Whiting stated that he had some concerns with changing the plan right now and detailed them on the plans to the Board. The Board discussed approving all the variance requests except the height variance. Jason Saris suggested that they changed the plans and show them to the Zoning Administrator after they received the approvals, if they needed more relief than what was granted they would have to come back before the Board. Zoning Administrator, Pamela Kenyon asked if the Board would prefer to table the application so they could take a look at the final design. Jason Saris stated if they could do it and it was compliant he personally had no problem. Ms. Kenyon stated she was not comfortable making a decision for the Board for the structure. John Whitney asked if they approved the area variance and the applicant came back with a design that did not require a height variance there should not be any issue. Atty. Muller stated it would fit. Jason Saris stated the only thing would be that Board would not know what the applicant's solution would be.

Zandy Gabriels said he appreciates what the Board is trying to do and this seems like bifurcation of an application before them and this variance falls within 75' of the pond. He does not know what the APA jurisdiction is with this. Zoning Administrator, Pamela Kenyon replied that it was not within the APA jurisdiction due its location within the hamlet. Mr. Gabriels said this is still a bifurcation of an application. Atty. Muller stated this was a bifurcation of an application if the height is the unresolved wild card and the applicant is going to continue to come back for a variance. If the applicant resolves it with approvals all around and comply with the height variance, he is good. They can approve it. Zoning Administrator, Pamela Kenyon asked the Board if they were saying that if the applicant submits a design to her that meets the setbacks they approved, they are saying they would not care what it looks like. John Whitney stated existentially he agrees with that, but practically he has questions. Atty. Muller stated that this was a very good question. Holly Dansbury stated she had concerns with this and she believes they should come back. Jason Saris stated he believes that the conceptional drawings that they have are generally good because whatever they do will improve on what is existing. Mr. Whiting stated he was sure they could resolve the height issue. John Whitney stated that they could include setback limits in the resolution. Holly Dansbury stated she personally believed that they should postpone it so it did not put the onus on the Zoning Administrator. Jason Saris stated if the Board approved it and said it was ok, then it would be ok, the only thing the Zoning Administrator would be required to look at would be compliance with the ordinance. Holly Dansbury stated the applicant would need to change his plans. Jason Saris stated they would need to do it and meet all the setbacks that the

Board approves or he would need to come back. Zoning Administrator, Pamela Kenyon stated she was not comfortable with this. Atty. Muller stated he suggests that they table this application. John Whitney stated the Board really needed to understand what they were approving, and by approving it in this manner that they have talked about, they would not be certain as to what they were approving. Joy Barcome stated she believed this was better for the applicant too. Mr. Whiting asked if the height was the only variance the Board had concern with. John Whitney stated it has been shown that the height variance can be changed to eliminate it.

No County Impact

RESOLUTION

Now, upon motion duly made by Holly Dansbury and **Seconded by**, Lorraine Lefevre it is resolved that the ZBA does hereby table the variance request as presented for additional information. **All in favor. Motion Carried.**

5. **V17-13 BARRY, MICHAEL.** To expand existing pub, seeks area variance for 1) Parking. 28 additional parking spaces required, 6' spaces total proposed; 2) Setbacks. Side: A total of 20' is required – 3' is proposed on the north side and 1' is proposed on the south side. Front: 30' is required, 2' is proposed; and 3) to alter non-conforming structure in accordance with Section 200-57B1b. Section 171.15, Block 2, Lot 46, Zone GB5000. Property Location: 4983 Lake Shore Drive. Subject to WCPS review.

Michael Barry presented the following:

- He handed out photos and new site plans to the Board.
- He is excited to come to Bolton and reincarnate an existing pub.
- They have an exciting concept and their brand is the First and Last Tavern.
- Their market is from the ages of 28 to 54.
- They would like to do farm to table food that changes every week.
- He detailed the handout to the Board citing the separate segments.
- They would like to do an outside wine garden with propane heaters, wall waterfall and umbrella tables.
- He would like to segregate the cocktail porch off the application tonight as the neighbors are not in favor of it at this time.
- He is looking for a parking variance like every other restaurant in town. Historically there has never been enough parking for this business in the past.
- He feels that if he needs to implement valet parking he would be willing to offer that feature.
- They are really not trying to change the neighborhood. They are trying to interject energy, presence and fun in an adult atmosphere which visitors and residents can enjoy together.
- The area variance is not substantial, they are only trying to enhance the property and they are not proposing to add any other structures than what currently exists.
- They are trying to clean up the back area and turn it into a Tuscan wine garden.

- They would run a 52' cedar fence that would be no higher than 6' with Arborvitae along it and back behind Ron's Hardware.
- There will be no adverse impact to the neighborhood.
- This is not a self-created difficulty as parking has never existed for this Pub.

Jason Saris asked if they were not considering the cocktail porch to the north at this time. Mr. Barry replied this was correct, they do not have the access of the neighbor's driveway at this time.

Holly Dansbury asked about the location of parking and the amount of spaces. Mr. Barry detailed the 6 angled spots along the fence and he detailed on the plan where it would be located. Holly Dansbury asked if he planned on parking the cars two deep. Mr. Barry stated they could only do this if they valet park.

Joy Barcome asked if his plan was to use public parking in town. Mr. Barry stated that was correct. Jason Saris stated that most restaurants in town did not have parking and could not meet this standard. He stated that there is on street parking allowed in the downtown area.

Lorraine Lefevé asked for information on the tables he would like to place in front of the building. Mr. Barry stated there would be two counter height tables with chairs on either side of the entrance for curb appeal. They have noticed that the sidewalk café environment adds an extra flair to the dining experience.

Lorraine Lefevé asked about signage depicted on the fence in front of the tables. Mr. Barry stated that they could screen print the name on the canvas of the rail in the front.

Jason Saris asked if there would be outside entertainment in the back. Mr. Barry stated that they were not planning on any at this time. They may have a piano person inside.

Holly Dansbury asked about a picture depicting a bridge walkway. Mr. Barry stated that was for the cocktail porch that has been withdrawn.

Lorraine Lefevé asked about the depicted rail around the front of the building. Mr. Barry stated that it would have canvas laced in it. Lorraine Lefevé stated it looked like it would need to be drilled into the sidewalk to stand. Mr. Barry stated that would be an option, and it could be removed in the winter time.

Holly Dansbury asked about ingress and egress. Mr. Barry stated that they would come in the front and then they would be able to go out the back to a brick paver patio which is approximately 30' long x 12' wide with a canopy. He stated that the tables in the back are set up to New York State code.

Holly Dansbury inquired about the egress. Mr. Barry stated that they would go back out the door they came from and there would also be a gate in the fence into the parking area to get out. Holly Dansbury stated she had concerns if they were using egress through the fence into a parking lot. Mr. Barry stated this would only be used for emergency egress.

Joy Barcome stated she had concerns with seating in the front and people being able to use the sidewalk. Mr. Barry stated that there was plenty of clearance and detailed it on the plan. He stated that they would be utilizing the area on their existing property. Jason Saris stated it would be like the tables in front of Palazzo Pizza. Zoning Administrator, Pamela Kenyon asked if they were saying that the chairs and the railing portion would not infringe on the town sidewalk. Mr. Barry replied that this was correct.

John Whitney asked how many parking spots would be required with the loss of the cocktail porch. Zoning Administrator, Pamela Kenyon stated her calculations included the cocktail porch and she would have to recalculate this.

John Whitney stated there were a lot of loose ends in this application. The ingress and egress along with the parking spots are not clear. He had concerns with the entry and exist of the driveway. He does not understand all of the detail of the plan and he finds the submission to be very confusing. Lots of what is being mentioned tonight is not on the plan. It would be great to have a plan showing exactly what he is asking for with all the detail he has been expressing. Mr. Barry stated he respected this. Jason Saris said he had no problem with the submitted plans and a waterfall plan does not make or break a variance. John Whitney stated that it was the lack of details. There is a verbal presentation and then some pieces of paper in front of them that don't jive. This is making the Board try to guess what is going on. The other Board members agreed with John Whitney. Jason Saris stated he did not understand what was not jiving.

Holly Dansbury said the 6 parking spaces is very unclear and she has concerns with this and would like it defined. Mr. Barry stated that there is currently parking there for the upstairs apartment and he is trying to just make the parking more uniform. Jason Saris told the applicant that he thought the Board would like to see lines. John Whitney stated he would like to see things all together, not emails 3 days in a row and a submission this evening so there is a moving picture. It would be really nice if they knew exactly what they are voting on and this is his concern. Jason Saris said the man was standing here, just ask him. John Whitney stated they had and they have heard two different systems for the parking. It is not clear to him. Joy Barcome stated that she thought they had a creative piece there, but the confusion is in the details. They need to know concretely tonight what they were looking for tonight. Mr. Barry stated that there is a parking diagram in the original application, not the one submitted tonight. He stated that there is plenty of room for people to pull out.

Zoning Administrator, Pamela Kenyon stated that the required parking without the cocktail porch would still be 27 spaces.

Atty. Muller read a letter in objection to the project from neighboring property owners, Richard and Pam Kimak.

Carol Alcan, neighbor inquired about the many propane heaters and stoves in the back and their proximity to her buildings. Mr. Barry explained they were self-contained and were for warmth and ambiance. Mrs. Alcan inquired about a large oven. Mr. Barry stated that it was a

portable pizza oven and would be placed on the landing of the existing shed. Mrs. Alcan stated her concern was with fire since the building were very close.

John Whitney asked if there would be outdoor entertainment in the back. Mr. Barry stated that there would not. John Whitney stated that they were in close proximity of the school and would need to maintain the screening over time. Mr. Barry stated that there was a chain link fence on the school property, the 6' fence would be on his property. John Whitney stated that for 3 seasons school would be in session and they would need to keep it separate.

John Whitney stated that he thought the application was a mess, the information was dribbled in and it was not all clear.

Lorraine Lefevre stated she had concerns with the outdoor seating in the front, but if it was closer to the building it would not be a problem. Joy Barcome asked if it was encroaching on the sidewalk. Jason Saris replied that Mr. Barry could not encroach on the sidewalk and this Board could not grant them relief to do so. Zoning Administrator, Pamela Kenyon stated the 2' relief that was being looked for was for the cocktail porch that is being removed, not the sidewalk. The front setback is not changing. Jason Saris stated fences can be right on the property lines. The tables and chairs are not structures. Zoning Administrator, Pamela Kenyon said that it would depend on the size and length of the dividers. She stated that she would need that information. She asked if they were still proposing to put the signage on them. Mr. Barry stated he had not designed any signage to date. Zoning Administrator, Pamela Kenyon asked if that meant the original draft with signage on it was not correct. Mr. Barry stated he had removed it and would apply for the appropriate applications for signs when it was decided. He detailed the plans in the front for the fencing to the Board.

Atty. Muller stated that the applicant submitted his plans which were circulated in the correct time frame. Then within 3 days of this hearing there has been some fundamental changes to the plans on at least 3 occasions. If the Board determines that these changes are fundamental and essential to the outcome of the decision tonight, they should table it. He is always concerned that there is a deadline for submissions, but the public also needs an opportunity to be heard as this is a public hearing. When an application changes fundamentally just before or within a hearing it is always a concern. Jason Saris stated that he did not know if it could be considered changes, he feels it is more clarification with better drawings, but he understands Atty. Mullers concerns.

Atty. Muller stated if signage was put on the fences or canvas they would need Planning Board approvals.

Jason Saris asked about the dividers/fence that was proposed out front and if they would be considered structures or fencing. Zoning Administrator, Pamela Kenyon replied that she would treat them as fences that could be placed on the property line. Jason Saris stated that would mean that there were no concerns for setbacks on the front of the building. Zoning Administrator, Pamela Kenyon asked if they would be putting down a new patio or deck in the back and if so would it be larger than what exists. Mr. Barry stated they would be cleaning up all the overgrowth in the back and put down a layer of stone and compacted stone

dust, to make a clean and easily drained. They would not be making it any bigger and he detailed it on the plans. Zoning Administrator, Pamela Kenyon asked what the square footage of that area would be. Mr. Barry stated 1,560 sq. ft. Zoning Administrator, Pamela Kenyon stated that it would require a stormwater permit if it was over 1,000 sq. ft. Mr. Barry stated that there was an existing storm drain already back there. Atty. Muller stated that they would have to go through the process and criteria they would need to follow.

Zoning Administrator, Pamela Kenyon asked about a dumpster. Mr. Barry stated that there would not be any dumpsters.

Jason Saris stated that they were only approving or denying a proposed parking variance and a variance for an awning on the south side of the property.

Lorraine Lefevre asked what the garbage removal plan was. Mr. Barry stated it would be removed daily.

Zoning Administrator, Pamela Kenyon stated that if this project combined with the existing commercial space is greater than 3,500 sq. ft. in total, it will require Planning Board approvals.

John Whitney asked if they could put a restriction on the project to not allow outdoor entertainment during school hours and or functions. Jason Saris stated that they could attach reasonable conditions or requirements to any approvals.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Michael Barry, (V17-13) for an area variance as described above.

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

And, whereas the Warren County Planning Staff determined that there was no County impact;

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

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

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: this is a pre-existing, non-conforming structure.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. It is improving a building that has not been used in town for good purposes.
- 3) The request is substantial. They are working with a non-conforming building.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. No impact is noted.
- 5) The alleged difficulty is not self-created; this is due to it being a non-conforming, pre-existing 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**, Lorraine Lefevé it is resolved that the ZBA does hereby approve the variance request as presented with the following conditions; 1) The parking is to be created as depicted on the originally submitted application. 2) The screening between the school property and the back of this property is to be maintained. 3) There is to be no outdoor entertainment during school hours. **All in favor. Motion Carried.**

The meeting was adjourned at 8:02pm

Minutes respectfully submitted by Kate Persons