

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, October 20, 2015
6:30 p.m.**

SEQR = State Environmental Quality Review
PB = (Town of Bolton) Planning Board
WCPS = Warren County Planning Staff
APA = Adirondack Park Agency
LGPC = Lake George Park Commission
DEC = Dept. of Environmental Conservation

Present: Jason Saris, Holly Dansbury, John Whitney, Tom McGurl, Jeff Anthony, Joy Barcome, Alternate Lorraine Lefevre, Zoning Administrator, Pamela Kenyon and Counsel Michael Muller

Absent: John Famosi

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

Jason Saris asked if there were any corrections or changes to the September 15, 2015 minutes.

John Whitney stated he wanted to clarify his motion for Derek & Yvonne Winnie on page 4 to read as the patio on the south side.

RESOLUTION:

Motion by, John Whitney to change the 2nd resolution for Derek & Yvonne Winnie, at the top of page 4 of the September 15, 2015 to read as follows; Now, upon motion duly made by John Whitney and seconded by Tom McGurl, it is resolved that the ZBA does hereby deny the setback variance request for the patio *on the south side*. **Seconded by**, Holly Dansbury. **All in Favor. Motion Carried.**

RESOLUTION:

Motion by, Jeff Anthony to approve the September 15, 2015 minutes as presented with the above referenced change. **Seconded by**, Holly Dansbury. **All in Favor. Motion Carried.**

- 1. V15-35 FORSHAY, DAVID & JUDITH.** To alter carriage house apartment (tourist accommodation), specifically to add a 16' x 16' second story deck, seek area variance for 1) a deficient front yard setback. 75' is required, 36' is proposed; and 2) to alter non-conforming structure in accordance with Section 200-57B1b. Section 200.18, Block 1, Lot 6, Zone RM1.3. Property Location: 4204 Lake Shore Drive known as Chelka Lodge. Subject to WCPS review.

David Forshay presented the following:

- There are 4 structures on the property.
- The carriage house that they would like to put the deck on is up by the road and was built in 1800's, long before zoning.
- They actually tore down half of the motel this year that was between the carriage house and the lake.

- In doing this they eliminated about 3,000 sq. ft. of the footprint.
- They are proposing putting a 200 sq. ft. deck, which is a lot less impact.
- The deck will be off the back giving the carriage house a view of the lake.

Jeff Anthony asked if the part of the motel that is left will be staying. Mr. Forshay replied yes, for now. Jeff Anthony stated the deck would be on the south side of the carriage house looking out at the lake. Mr. Forshay agreed.

John Whitney stated that it does not seem to encroach any further on the setback than the carriage house. Mr. Forshay stated it was actually less.

RESOLUTION

The Zoning Board of Appeals received an application from David & Judith Forshay, (V15-35) for an area variance as described above.

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

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

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

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: The variance is within a pre-existing setback. They have already made reductions to the square footage.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties.
- 3) The request is not substantial; this is a relatively small request.
- 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 fairly insubstantial request.

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

Now, upon motion duly made by John Whitney and seconded by Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

2. **V15-36 SCHEIBER JR., EDMUND.** To alter single family dwelling, specifically to remove a 2'x 4' landing and stairs and replace with a 14' x 21' deck/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.

Ed Scheiber presented the following:

- He has modified his plans from his previous proposal in 2013.
- In 2013 he proposed a 364 sq. ft. deck without the stairs.
- His new request is 294 sq. ft. which is smaller and includes the stairs.
- This is a 70 sq. ft. reduction in size.
- He wants to replace a 2' x 4' existing landing with stairs and deck.
- It will be attached to the front, which is the East side of his house.
- He currently has the approval of the Hemlock Point Association membership.
- He has tried 3 other placements for this deck but they encroach on other setbacks and he does not believe they are feasible.
- He detailed the variance questions as how they related to his proposal.
- This will not create any structural change and will be the same as the other homes which all have decks.
- The existing structure was built before any setbacks were required.
- This will not interfere with any views for the neighbors.
- He detailed on a map the other homes in the neighborhood.
- This is not a substantial request; he only needs a variance for one setback.
- In the 1980's a significant ice event moved his shoreline back 3' to 4'.
- He never recovered the 4' to 5' from this event.
- He will be doing a bed of native plantings to help with the absorption of any stormwater.
- He has installed and maintained a shoreline buffer to protect the lake from any runoff.
- His lot is extremely level and does not pose a threat to stormwater.
- The Waterkeeper has reviewed his planting plan along with his current plantings and they are a positive impact to stormwater runoff.
- The deck will not affect any views, and is in keeping with the neighborhood.
- The 14' depth is to accommodate the bow window on his home.
- The original house is pre-existing and was built prior to the setback requirements.
- The existing home was built on the existing footprint.

Jason Saris asked if Mr. Scheiber understood that the A.P.A. had different standards than the Town and would he agree that the practical difficulty was that the house is a pre-existing and non-conforming structure that is on a site that was developed prior the 75' setback being put in place. Mr. Scheiber replied yes.

Jason Saris stated it certainly looked consistent with all the other decks in the neighborhood.

Atty. Muller read letters of support from Bob Stupp, George & Mary Jane Adams and The Hemlock Point Association President.

John Whitney asked if the Hemlock Point Association President, Robert J. Stupp and Bob Stupp happened to be the same person. Mr. Scheiber stated they were.

Jason Saris stated that if Mr. Schieber put the deck on either sides of the house he would be encroaching on two setbacks instead of one, making the proposed spot the most practical location.

John Whitney inquired about the two prior denials for basically the same setback. He stated one of them looked like it was less. Jason Saris stated that from his perspective he did not vote against the last two requests, but he believes the prior Board's rationale was that the previous request was too substantial.

Holly Dansbury stated that he had since reduced his original plans. John Whitney asked if the previous denials of the prior similar requests had any bearing on their decision. Atty. Muller stated that it is relevant in consideration but it is certainly not controlling. He explained that this application stands on its own merit and they are free to accept or reject it based upon what has been presented here. Mr. Scheiber stated he did not know how to measure to the mean high water mark. John Whitney explained that his point was the application was about the same. Mr. Scheiber stated he had not previously reduced the size of the deck. John Whitney stated the problem was not the width, but the shoreline setback. Tom McGurl stated that he was building his decks further than the neighbors who had received their variances in the not too distant past. Jeff Anthony asked the side yard setbacks for Bolton Code. Zoning Administrator, Pamela Kenyon said it was 20' setback. Jeff Anthony asked if this was the same as the HOA. Zoning Administrator, Pamela Kenyon stated that she did not know. Holly Dansbury stated that they were both 20'.

Jeff Anthony inquired if the porch on the side was heated for year round use. Mr. Scheiber replied that it was not.

RESOLUTION

The Zoning Board of Appeals received an application from Edmund Scheiber Jr., (V15-36) for an area variance as described above.

The application of the applicant is as described in Item#2 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: Putting it in any other location would be detrimental to the neighbors, and this is the best location.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. This is fitting with the other decks in the neighborhood.
- 3) The request is not substantial in the nature of the variance being requested.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the applicant has addressed this with the lake buffers in the front to help with this.
- 5) The alleged difficulty is not self-created; this is a non-conforming structure and this is the best location for the deck.

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

Now, upon motion duly made by Holly Dansbury and seconded by Joy Barcome, it is resolved that the ZBA does hereby approve the variance request as presented with the condition that the deck is never to be enclosed or covered. Jeff Anthony opposed. **All others in Favor. Motion Carried.**

3. **V15-37 FERGUSON, AMY & KEITH.** Represented by Susan Davis. To alter single family dwelling, specifically to remove existing kitchen and exterior porch roof and replace with a new kitchen, half bath, deck and exterior shower that will extend out 5' from the existing footprint, seek area variance for 1) A deficient shoreline setback. 100' is required, 85' is proposed; and 2) to alter non-conforming structure in accordance with Section 200-57B1b. Section 172.01, Block 1, Lot 2, Zone RR10. 2 Oahu Island. Subject to WCPS and APA review.

Susan Davis presented the following:

- This is not a highly visible area.
- There is already a structure there.
- They are preserving the original house.
- The seasonal shed structure roof is very low and does not meet code.
- It is close to the grade and does not allow ventilation.
- They are requesting to remove this structure.
- It houses the seasonal kitchen used mainly during the summer months.
- They would like to rebuild a new kitchen and expand upon it slightly.
- They will be also requesting a new outdoor shower.
- They are essentially removing what is there and replacing it with a more code compliant structure.
- It will not infringe any closer on the setbacks than what is there now.
- They have already been to the A.P.A. and received non- jurisdictional inquiry approval from them.
- The septic system was fully engineered and put in place 5 years ago and they plan to tie any plumbing into this.

Jason Saris asked if the new structure would be 5' larger. Ms. Davis stated that it would be extending out 5' from the extension and they would be changing the roofline to create a gable roof in that area to extend out just a little bit more than what is already there. This is to allow a little more usable space in the kitchen area.

Tom McGurl asked if they could build the gable on top of the existing footprint or would they have to extend it the extra 5'. Ms. Davis stated they could keep it the gable but it would not provide the necessary space requirements.

Jason Saris read a letter in support from Jerry and Maddie Malovany

RESOLUTION

The Zoning Board of Appeals received an application from Amy & Keith Ferguson, (V15-37) for an area variance as described above.

The application of the applicant is as described in Item#3 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: This is clearly a simple area variance and this is the only way to get substantial relief.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties.

- 3) The request is not substantial; this is not significant in terms of the dimensions of the building and the existing site. Most of this building is going on the existing footprint.
 - 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 replacement project and not new construction and minor stormwater will be implemented.
 - 5) The alleged difficulty is self-created; they are making the building slightly larger but it is not substantial.
- 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 Whitney, it is resolved that the ZBA does hereby approve the variance request as presented with the condition that a minor stormwater plan be implemented and approved by the Zoning Administrator. **All in Favor.**
Motion Carried.

4. **V15-38 BARRACATO, THOMAS, MARYBETH & MARTHA.** For the construction of a proposed 28'x 34' garage/storage, seek area variance for a deficient front yard setback. 100' is required, 74' is proposed. Section 170.00, Block 1, Lot 33, Zone **RR5** & LC25. Property Location: 1 Hickory Hollow Road.

Thomas Barracato presented the following:

- He co-owns the property with his wife and sister.
- The property is about 7.5 acres and mostly unbuildable do to the steep slopes.
- The flat area on the property is between the home and existing driveway and Edgecomb Pond Road.
- He detailed his plot plan to the Board.
- This will serve both as an area for their cars and boat storage.
- This is the best location for this structure.
- He detailed how he did his measurements.

Jason Saris asked if it could be seen from the road. Mr. Barracato stated you could see the roof and part of the structure when the leaves were down in the winter.

John Whitney inquired if they would need to add to the driveway. Mr. Barracato stated he planned to put stone around the perimeter in addition to the foundation for stormwater drainage.

Mary Beth Barracato stated the structure will be somewhat visible from the road when the leaves are down, but the position of the garage will enhance the property by containing everything in their yard.

Holly Dansbury asked if the garage would be serviced by the existing driveway. Mr. Barracato stated yes.

Jason Saris suggested they put in a tall door for the boat storage.

RESOLUTION

The Zoning Board of Appeals received an application from Thomas, MaryBeth & Martha Barracato, (V15-38) for an area variance as described above.

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: The building is within the setback from Edgecomb Pond Road and there is no other way of siting the structure without receiving a variance. There is already an existing pad there and with access and this is a practical use.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. This will most likely not be visible most of the year and there is a good buffer to reduce visibility from the road.
- 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; This is a completely developed site and minor stormwater will be required.
- 5) The alleged difficulty is not self-created; the area is very steep and this is the only location that would not require substantial environmental disturbances.

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 Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented with the condition that a minor stormwater plan be implemented and approved by the Zoning Administrator. **All in Favor. Motion Carried.**

5. **V15-39 ANN M. SHEEHAN TRUST.** Represented by Atty. Frederick Killeen and Bret Winchip. To demolish and rebuild single family dwelling, seeks area variance for deficient setbacks. 1) **Front:** 50' is required, 8.2' is proposed from Stewart Avenue and 5.4' is proposed from Brook Street; 2) **Rear:** 20' is required, 10.2' is proposed; 3) **Side:** 20' is required, 11.2' is proposed; 4) **Shoreline:** 75' is required, 17.9' is proposed; 5) and Lot coverage. 40% allowed, 44% proposed. Section 171.15, Block 1, Lot 91, Zone RM1.3. Property Location: 39 Stewart Avenue. Subject to WCPS review.

Atty. Killeen and Bret Winchip presented the following:

- They are seeking multiple area variances for the proposed project.
- The existing building is about 75 to 100 years old and is not code compliant.
- This cannot be economically addressed.
- They would like to rebuild a year round residence.
- All the existing non-conformities are greater than those that are proposed.
- They will not be changing the character of the neighborhood.
- The property exists as it is in its present condition with structural issues.

Jason Saris asked if they were replacing the existing structure with a rectangle that was not larger than what already exists, as it pertains to encroaching on the setbacks. Atty. Killeen replied that was correct and in some instances it would not encroach as much as what exists now.

Lorrain Lefevre asked if the area would still be available for parking on the side of the home. Mr. Winchip stated it would not be defined parking area but it would still exist as a drive through. He stated that by paving or graveling this would create more impervious area.

Jason Saris stated that there were not any compliant structures in this neighborhood. He stated this project would be an improvement to the neighborhood. Atty. Killeen agreed.

RESOLUTION

The Zoning Board of Appeals received an application from Ann M. Sheehan Trust, (V15-39) for an area variance as described above.

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

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: the applicant is reducing the setbacks and this is a reasonable request.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. It will be an improvement.
- 3) The request is not substantial as this will be less substantial on the setbacks from the existing structure.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it is close to stream but, it will be about the same distance as the existing structure.
- 5) The alleged difficulty is not self-created; this is pre-existing, non-conforming older structure in need of repair.

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.**

- 6. V15-12 LOUBRIEL, RICHARD (ROGER MONROE).** Represented by Bret Winchip Engineering. For the construction of a proposed single family dwelling and associated driveway, seeks area variance for 1) In accordance with Section 125-10.B.2.c of the stormwater regulations, a 100' separation between an infiltration device for a roadway and a wetland is required. 53' is proposed for area #2 and 4' is proposed for area #3; 2) In accordance with Section 200-46B(10) Soil Erosion Standards, 6' maximum cut and fills are allowed for all construction with the exception of a basement, a 9' maximum cut is proposed and 7.5' maximum fills are proposed; 3) In accordance with Section 200-51C(2), 20' clearing limits are allowed outside the area of the foundation. 70' maximum is proposed. Section 199.00, Block 1, Lot 13.12, Zone LC25. Property Location: Wall Street across from Monroe's auto shop. This item was tabled at the April 2015 meeting pending additional information. See SPR15-05 associated with this project.

Zach Monroe presented the following:

- The last time they were here the Board had requests to reduce the amount of clearing around the house and some test holes.
- They have now rotated the house to help reduce the clearing limits and maximum cut and fill requests.
- They have also dug 3 additional test holes in the area of the proposed waste water.
- Test hole labels 4 and 5 were originally transposed that caused the discrepancy on the depth of the ground water table.
- This is a 50+ acre lot on Wall Street with an existing wetland crossing.
- The proposal is for a 3 bedroom single family dwelling on the opposite side of the wetlands.
- The proposed driveway will cross the existing wetland crossing and access the house site.

John Whitney asked if it was a single story residence. Mr. Winchip replied yes with attic trusses over the garage. John Whitney asked if they had any thoughts of building up to reduce the requested variances. Mr. Winchip stated the setbacks to the stormwater would be there no matter what.

Holly Dansbury inquired about the change to the structure. Mr. Winchip stated they did not change the structure; they repositioned it so it fit the contour of the land and reduced the clearing limits which reduced the maximum cut and fill requests.

Jason Saris asked if the clearing was now to accommodate the grading. Mr. Winchip replied yes, they were trying to build a level area around the house and to accommodate a pool.

Jason Saris asked if there were any plans for replanting. Mr. Winchip replied he did not know. Jason Saris asked if they would even let it grow back in. Mr. Winchip stated maybe on the hillside.

Tom McGurl asked how many sq. ft. the house was. Mr. Winchip stated he did not know. Tom McGurl stated they were building a very large sprawling house on a challenging lot which does not seem to go together. He said if they want a large sprawling house perhaps they should buy a lot that it would go on that did not require an arm's length of variances or design a house that fits better. Jeff Anthony stated he agreed, if they had built a two story house with a basement walkout, they would reduce all the variance requests along with stormwater and grading. He stated he had not really heard any compelling evidence for why they would need to live on one floor. He stated that the practical reason is they could develop a smaller footprint and eliminate or substantially reduce all the requested variances.

Holly Dansbury asked if he knew any of the answers for not building a two story lot. Mr. Monroe replied he did not, he was working with what they had requested. Jeff Anthony stated you could design a smaller house that accommodated single story living with a second story for guests and visitors and a basement walkout for the same.

Jason Saris stated he was more concerned with the pool than he is the house design. Jeff Anthony stated there was a significant amount of site disturbance with this proposal. He stated that this was a significant amount of variances that had alternatives that could be looked at.

Holly Dansbury asked if some of the setbacks were for the wetlands. Mr. Monroe replied that the first two were located close to the wetlands and they were for stormwater retention areas to catch as much of the stormwater runoff from the driveway. If they move them 100' away there would be 200' of driveway running into the wetlands. They are trying to capture and treat as much of this as they can. Holly Dansbury asked if they could move the crossing. Mr. Monroe stated that this was an existing crossing that had Army Corp. of Engineers approval and was before the APA.

Jason Saris stated when you go through the code questions the Board needs to ask, he believes this project can be achieved with less of a variance by different designs. He does not believe this project fits the neighborhood and he does not believe they have met the standards they need to grant the variance.

John Whitney asked if the soil erosion standards are Planning Board purviews. Jason Saris stated that they do not administer the stormwater regulations but it is if he thinks it pertains to the variance. John Whitney stated he feels this is a really big disruption and they did not go about trying to reduce the project to fit the property. Mr. Monroe said they were making sense, but they had to proceed with what the client wanted and that's what they submitted.

Holly Dansbury asked if the cutting and fills could be minimized any more with the proposed home. Mr. Monroe stated they had already reduced this substantially and they could not and he detailed the changes they had made to the Board.

John Whitney stated the pool creates the need for the fence and the garage creates the need for the cut and fill, so they would be reduced if the design was done differently.

Jason Saris informed the applicant that they could table the application or proceed with a motion. Mr. Monroe stated that from the general consensus of the Board he should table the application and come back with a revised plan reducing the size of the variances.

RESOLUTION

Now, upon motion duly made by Jeff Anthony and seconded by Tom McGurl, it is resolved that the ZBA does hereby table the variance request as presented. **All in Favor. Motion Carried.**

- 7. V15-40 THE GROVE ON LAKE GEORGE, LLC.** Represented by Brett Linn & Christine Bevilacqua. To alter single family dwelling, specifically to replace existing roof and construct a covered deck area, in accordance with Section 200-19, seeks area variance for 1) Deficient setbacks. **Front:** 75' is required from Cotton Point Road. 28'5" is proposed. 20' is required from the private right-of-way, 16' is proposed; and 2) to alter non-conforming structure in accordance with Section 200-57B1b. Section 200.14, Block 1, Lot 2, Zone RM1.3. Property Location: 89 Cotton Point Road. Subject to WCPS review.

Brett Linn presented the following:

- They purchased this cabin in this cabin community in June of 2014.

- The underlying property is owned by a limited liability company.
- They require consent from the managing member of the liability company for the project.
- A large tree fell on the roof creating significant structural damage.
- The roof has a very low pitch with asbestos shingles allowing the snow to sit on it.
- They would like to raise the roof line and replace it with a metal roof to about 14' to reduce the snow load.
- This will not increase the footprint of the cabin itself.
- They are asking for a slight overhang over an existing corner of the structure.
- This will make the cabin safer and beautify the cabin itself.
- This is not self-created.
- This is in a Scenic Corridor and requires these setbacks.
- This is the minimal change that they can do to make the cabin safe and more productive.

Jason Saris ask if the increase of pitch to the roof would increase the living space inside the structure. Mr. Linn replied that it did not.

Lorrain Lefevre asked if the extension of the roof would be also to cover an outside picnic table. Mr. Linn replied yes.

Jason Saris asked if the new metal roofing is supposed to be colored. Mr. Linn replied he believes it will be green to match the trim.

Atty. Muller read a letter of approval from Craig Rivers, The Grove on Lake George LLC.

Zoning Administrator, Pamela Kenyon recommended that the Board require a survey for this parcel with all the cottages depicted correctly on it before they accept any new application for this property.

RESOLUTION

The Zoning Board of Appeals received an application from The Grove on Lake George, LLC. (V15-40) for an area variance as described above.

The application of the applicant is as described in Item#7 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: This was a damaged structure and this will make it safer for the snow load.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. It will improve the look of the neighborhood.
- 3) The request is not substantial; this will simply be to change the roof line with a small overhang.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is not self-created; This is a result of roof damage and it will improve the cabin.

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

- 8. V15-41 DOBERT, MARVIN.** To alter pre-existing non-conforming single family dwelling, specifically to allow a porch approved on the west side but constructed on the east side to remain in its present location, seeks area variance for **1) Deficient Setbacks. Front:** 100' is required, 57' is proposed. **Rear:** 50' is required, 25' is proposed; and **2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 139.00, Block 1, Lot 69, Zone RR10. Property Location: 426 County Route 11. Subject to WCPB review. See V11-03 for previous approvals.**

Marvin Dobert presented the following:

- They applied for a variance to change a single story to a two story structure.
- The approval was for a porch on the west side.
- They decided to move the porch from the west side to the east side.
- Aesthetically they believe it is much more pleasing to have the porch on the east side of the house.

Jason Saris asked if they understood that they needed relief to place it where they had applied, why they didn't think they would need relief to move it. Mr. Dobert stated that they decided that the porch would look better on the east side and he believes they would have gotten approval if they had initially applied for a porch all the way around the building. He said he should have notified someone.

John Whitney asked if it encroached on the side setbacks. Zoning Administrator, Pamela Kenyon replied that it did not. John Whitney stated that the structure is what needs the variance, the porch is within the setbacks. Zoning Administrator, Pamela Kenyon agreed.

Jason Saris said he agreed it does look nice on the east side, but.

Holly Dansbury asked what happens when someone does this. Atty. Muller said from an enforcement standpoint it doesn't conform with what was approved, but they certainly allow the applicant the opportunity to rectify it. By submitting a variance application, all enforcement proceedings are staid and they come asking for relief from the Zoning Board. He explained that they would also have to pay an after the fact fee of \$150.00. Holly Dansbury inquired as to what would happen if the Board did not approve the variance request. Atty. Muller replied the applicant could challenge this in a court of law with an Article 78 proceeding. He believes the court of law will find favor with the Zoning Board decision as long as it was rational and based on fact. The applicant would then have to remove it. Atty. Muller said it stands on its own merits here. It does not encroach or create any further setback issues, it just happens to be attached to a pre-existing non-conforming structure. He stated it looks like something the Board would have approved in the first place.

Jeff Anthony stated the applicant still had a substantial distance from the new County right of way as opposed the old County right of way which is certainly not used. Atty. Muller said true, but it certainly exists as a legal fact that they have to deal with.

John Whitney asked if the front and rear setbacks were part of the original approval. Zoning Administrator, Pamela Kenyon stated they were.

Jason Saris stated the house is a pre-existing non-conforming structure and the porch was just added on which makes the house work. He stated he did not believe there was any real issue with it and he agrees that had it been presented originally it would have been approved. Atty. Muller and the Board agreed that it is important that the applicant comes back when what is approved is not as built. He stated these changes could potentially effect an neighbor and or the environment.

RESOLUTION

The Zoning Board of Appeals received an application from Marvin Dobert, (V15-41) for an area variance as described above.

The application of the applicant is as described in Item#8 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: The porch was originally approved for the other side and it probably would have been approved in the current location.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. It is a nice change.
- 3) The request is not substantial, in terms of zoning requests it does not increase the setbacks in anyway.
- 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; if you weigh the benefit and the other factors it is recommended that it is approved.

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

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

- 9. V15-26 DOBERT, MARVIN.** For the placement of a ground mount solar system, seeks area variance for deficient setbacks. **Front:** 100' is required, 54' is proposed. **Rear:** 50' is required, 30' is proposed. Section 139.00, Block 1, Lot 69, Zone RR10. Property Location: 426 County Route II. The WCPS determined no county impact.

Marvin Dobert presented the following:

- Previously the Board approved a solar system for their building.
- It does not offset 100% of their power and they have used all of the available space on their roof.

- They decided to put more power in a ground mounted application to go to net zero.
- They understand ground mount is preferable to roof mount.
- They chose the best spot on their lot to place the system.

John Whitney asked if they had a roof top system now. Mr. Dobert replied yes. John Whitney asked if they did calculations when they installed them. Mr. Dobert replied yes and detailed how it was done. He stated that he did not have enough roof space to zero out.

Jason Saris asked why there was not a more compliant area to place this system. Mr. Dobert stated that their lot backs up to Thomas Mountain and they needed to push the area to the north side of the lot to receive the optimal sun. He stated they used tools to measure the optimal sun.

John Whitney stated that this seems like a pretty big panel and they already have a rooftop panel. He said this was more than he would expect for a single family dwelling. Mr. Dobert stated that the rooftop panel does not cover 100% of their load and explained the average home usage in New York State. He explained the new panel would help to zero them out along with any new energy uses they will have in the future. John Whitney asked how much the proposed system would exceed 100%, and he is concerned that this is a big panel. He worries that there is more in this request than what is needed to zero out. Mr. Dobert stated that it does not pay to exceed their load in New York State, and they are looking ahead at future power usage.

Holly Dansbury asked if there had been a ground mount approval in the original approval. Mr. Dobert replied that there was not. Holly Dansbury asked if the proposed system would be seen when pulling into the driveway. Mr. Dobert replied no, and this was the only feasible place for it.

RESOLUTION

The Zoning Board of Appeals received an application from Marvin Dobert, (V15-26) for an area variance as described above.

The application of the applicant is as described in Item#6 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance: This is the best location on the site and it is not visible from County Route 11.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. There is substantial distance between the array and the new County Route 11, and will not visually affect anyone.
- 3) The request is not substantial; they are looking for minimal setbacks.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; there will be no visual impacts or additional stormwater and it will be environmentally good using clean energy.
- 5) The alleged difficulty is not self-created; the property dimensions are not allowing this to fit in the required setbacks and this is the most appropriate location on the site to place this. 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 Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

The meeting was adjourned at 8:30 pm.

Minutes respectfully submitted by Kate Persons.

