

Town of Bolton
ZONING BOARD OF APPEALS
AGENDA
Monday, November 13, 2006
6:30 p.m.

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

Present: Chairman Greg Smith, Tony DePace, Kam Hoopes, Meredith McComb, Tom McGurl Jr., Bill Pfau, Zoning Administrator Pam Kenyon, Town Counsel Michael Muller

Absent: None

Chairman G. Smith opened the meeting at 6:32 pm., asking for corrections to the September 19, 2006 ZBA minutes.

1. K. Hoopes said on page 1, number 2, the last sentence of the amendment should read as follows: "...He also said that the motion language should be amended to say that the ZBA amended the application to an *area variance*—it should be reflected in both the application and the motion."
2. K. Hoopes said on page 11, first paragraph, the last sentence should read as follows: "...M. McComb said that she still has problems with the boat maintenance facility and her concerns with that will not go away with figures of what the applicant is going to do, because it is a fundamental change from how the applicant got his first *area variance*."
3. B. Pfau noted that he was absent at the September 19, 2006 meeting.

Motion by Meredith McComb to approve the September 19, 2006 minutes as amended. Seconded by Tony DePace. **Five in favor. One abstained (B. Pfau, as he wasn't present at that meeting). Motion carried.**

- 1) **V06-42 BAKER, EUGENE & LAURA.** For the placement of a proposed 12 ft. x 20 ft. portable garage, seeks area variance for a deficient front yard setback. 30 ft. is required from the edge of the right-of-way, 1 ft. is proposed. Section 186.14, Block 1, Lot 35, Zone RCH5000. Property Location: 22 Windy Lane. Subject to WCPB Review.

Eugene Baker gave an overview and said that (1) he has been putting the portable garage up each year for the last five years in the same location. He has been and proposes to continue putting it up in the fall and taking it down in the spring and (2) he wants to make sure he is abiding by the new ZBA rules/laws regarding portable garages.

G. Smith asked if there were any neighbor complaints and Eugene Baker said no. M. McComb said there is one neighbor who would have a view of this who also has a

portable garage much bigger than this one. B. Pfau asked why the applicant wasn't grandfathered on this matter and P. Kenyon said it was because the structure was taken down before the ZBA made the change in the rule/laws. Eugene Baker said that he takes the entire structure down in the spring—including the metal.

Counsel said that the ZBA made the decision to treat portable garages as structures, so Eugene Baker is in a perfect safe harbor for what he is asking. G. Smith said that most people leave portable garages up year-round.

K. Hoopes asked if a ZBA ruling granting this variance would run with the land and be the first variance of this kind to be granted. Counsel responded by saying (1) yes, a variance granted on this matter would run with the land and (2) the structure was already taken down when the ruling that portable garages are structures was made by the ZBA, which is why the applicant is before the ZBA now for a variance.

K. Hoopes said (1) he a bit uncomfortable with this because he hates to think the ZBA is going to open a can of worms in the terms of people promising to take down the structures then not taking them down, where there will be an issuance of variances all over the countryside then having to enforce it for the one person who doesn't take it down and (2) the ZBA has required these things be called structures because the ZBA thought that people were treating them as less than structures. G. Smith said that if the ZBA grants a variance in cases like this then the applicant wouldn't have to take it down if he/she doesn't want to and K. Hoopes said that is exactly his point. Counsel said that (1) if the ZBA's choice was that portable garages were not structures then portable garages would be totally unregulated (no setback requirements, no limit, etc.), (2) the ZBA chose to classify them as structures, so now that they are being regulated, portable garages are under the guise of structure and (3) there is no definition or distinction in the Zoning Code differentiating between permanent and temporary structures—they are just considered structures.

T. DePace asked if the ZBA should be concerned with size if the applicant wishes to put up a larger portable garage in the future and G. Smith said that the applicant would have to come back before the ZBA. Counsel agreed and said that the granted variance would run with the land.

K. Hoopes asked what would happen if an applicant wants to put the portable garage into a different location. G. Smith replied by saying that (1) whatever area the applicant is asking for would be the only area the portable garage could be put in with the granted variance and (2) if another location for the portable garage is sought then the applicant would have to come back before the ZBA.

M. McComb asked if there is any difference between this structure and an applicant's desire to replace it with a permanent garage. P. Kenyon said yes, the applicant would have to come back before the ZBA because the requested variance is for this specific portable garage only. K. Hoopes said that would be altering a non-conforming structure

and G. Smith agreed, adding that the applicant would need to come before the ZBA to do that.

No public in attendance.

No correspondence.

The WCPB determined no County impact.

RESOLUTION

The Zoning Board of Appeals received an application from (V06-42) Eugene and Laura Baker for an area variance as described above.

And, due 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 Board;

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and there being no public comment 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 other means feasible to the applicant besides an area variance, this is a dimensional consideration;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it has been established that this portable garage has been there for some time;
- 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 not self-created, this is something the ZBA created in designating these things as structures.

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

Now, upon motion duly made by Kam Hoopes and seconded by Tony DePace it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion carried.**

Eugene Baker asked if he would have to come back each year or if this ruling would carry on as long as he owns the property. G. Smith said that this ruling would hold for Eugene Baker as long as he owns the property and for whomever else owns the property in the future.

2) V06-43 ARNOLD, KENNETH & ROSEMARIE. Represented by Chris Gabriels. Seeks area variance to alter existing structure. Specifically to replace an existing 4 ft. x 35 ft. stake dock with an 8 ft. x 40 ft. articulating dock/stairs. Section 156.20, Block 1, Lot 18, Zone RCM1.3. Property Location: 110 Pioneer Village Rd. Subject to WCPB Review. Subject to APA Review.

Chris Gabriels, representing Kenneth and Rosemarie Arnold, gave an overview and said that (1) the Arnolds have a pre-existing dock that doesn't meet setback regulations, (2) they are seeking to replace the existing dock with an articulating dock and (3) the Arnolds are not asking for a variance for the proposed dock itself—it meets all of the ZBA's rules and regulations and also has LGPC approval.

P. Kenyon asked if the applicant has received a permit from the LGPC and Chris Gabriels said yes, it is included in the project packet.

K. Hoopes said that it looks like it will be an improvement in terms of new equipment and a better location as far as zoning is concerned. M. McComb said that it seems a pretty minimal approach to getting down there as opposed to a covered thing with a land bridge or something—it is pretty minor. K. Hoopes asked if the existing dock is ever lifted out of the water and Chris Gabriels said yes—the existing dock is an articulated dock as is the proposed dock.

B. Pfau asked if the hinges on the proposed steps would be parallel to the water when lifted out of the water, because he feels it would be an improvement to how it will look in the winter and G. Smith agreed. Chris Gabriels said the drawing submitted is a generic drawing. M. McComb said the location is very seasonal and no views would be impacted by this project in anyway. G. Smith agreed.

Chris Gabriels asked if this project would still need to go to site plan review since he is not asking for a variance for the dock. Counsel said that (1) the applicant is asking for a variance to expand the pre-existing non-conforming platform at the shoreline and (2) he (Counsel) doesn't think it is or that the applicant needs any variance to do the dock, and (3) he (Counsel) is taking the position that the applicant is asking for a variance to increase the size of a pre-existing non-conforming platform that is at the shoreline. Chris

Gabriels said that is true. P. Kenyon said the dock meets all requirements, but the little platform is what requires the variance.

Counsel said that (1) they (the Town of Bolton) can't say what the APA deems inappropriate in a shoreline area, (2) the ZBA has full authority to grant the variance and is likely to do that tonight then P. Kenyon is obliged to send notice to the APA—who has an absolute right to review it, re-review it, rescind it, or just remain silent on it—and if the applicant takes action within that 30 days, it is a wild card because nobody knows what the APA's stance on the matter will be. Chris Gabriels said that he is not asking for a variance for the dock and Counsel said that he agrees that the applicant is not asking for a variance for the dock. The ZBA members agreed that there would be no need to ask for a variance for the dock because it is not an issue here.

No public in attendance.

No correspondence.

The WCPB determined no County impact.

RESOLUTION

The Zoning Board of Appeals received an application from (V06-43) Kenneth and Rosemarie Arnold for an area variance as described above.

And, due 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 Board;

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding the application;

this Board makes the following findings of fact:

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

The Board makes the following conclusions of law:

- 1) There will be no undesirable change in neighborhood character or to nearby properties, there have been no objections from the neighbors and it would be replacing one dock with another dock;

- 2) The benefit can be achieved by other means feasible to the applicant besides an area variance, but that would not allow the applicant to attach the dock to the existing platform;
- 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, it is a dock on the shoreline replacing another dock;
- 5) The alleged difficulty is not self-created, because the dock existed there already.

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

Now, upon motion duly made by Bill Pfau and seconded by Meredith McComb it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion carried.**

Meeting adjourned at 6:55 pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
11/13/06