

Town of Bolton
ZONING BOARD OF APPEALS
Minutes
Monday, April 21, 2008

Present: Chairman Greg Smith, William Pfau, Tony DePace, Meredith McComb, Jeff Anthony, Tom McGurl, Jr., Zoning Administrator Pamela Kenyon, Counsel Michael Muller.

Absent: Kam Hoopes

The meeting was called to order at 6:35 PM.

G. Smith asked if there were any corrections to the March 17, 2008 meeting.

Motion by Meredith McComb to accept the March 17, 2008 minutes as written. Seconded by Tony DePace. **All in Favor. Motion carried.**

- 1) **V08-14 BENEROFFE, JUNE.** Represented by William Hotaling. To alter pre-existing non-conforming single family dwelling, specifically to construct a handicap ramp, seeks area variance for 1) a deficient front yard setback. 50' is required from the edge of the right-of-way, 0' is proposed; 2) lot coverage. 15% is allowed, approximately 20% is proposed; and 3) to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 200.18, Block 1, Lot 36, Zone RM1.3. Property Location: 16 Island View Loop. Subject to WCPB review.

RESOLUTION:

This item was withdrawn at the applicant's request.

- 2) **V08-12 HUMMEL, PAUL.** Represented by Chris Gabriels. To alter pre-existing non-conforming boathouse, specifically to reconfigure the stairs, seeks area variance for 1) deficient side line setback. 20' is required, 10' is proposed; and 2) to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section: 186.15, Block 1, Lot 29, Zone RM1.3. Property Location: 20-24 North Point Road. Subject to WCPB and APA review.

Chris Gabriels stated that the applicant was proposing a very minor modification to a pre-existing non-conforming structure. He was permitted to have the steps and is now seeking to create a landing and turn the steps to better access the boathouse. He stated that it will not increase the non-conformity or the usage.

RESOLUTION:

The Zoning Board of Appeals received an application from Paul Hummel (V08-12) for an area variance as described above.

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

this Board makes the following findings of fact:

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

The 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; it is a change to a pre-existing non-conforming structure.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is essentially what has already been approved with a slight reconfiguration.
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is self-created, but in no way prohibitive.

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 Meredith McComb and seconded by Jeff Anthony, it is resolved that the ZBA does hereby approve the variance request as presented. All in Favor. Motion Carried.

- 3) **V08-15 WILSON, DAVID.** To alter pre-existing non-conforming single family dwelling, specifically to place a 12'x 8' covered entry on existing deck, seeks area variance to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section: 199.00, Block 1, Lot 27.2, Zone RL3. Property Location: 959 Wall Street.

David Wilson stated that he is proposing to add an entranceway over a pre-existing deck as a safeguard from snow and ice. The pre-existing deck is only 96 feet from the road, but the entryway that he is proposing will meet the required 100 ft setback from the road. M. McComb asked if this is a 100 ft front yard setback in a scenic corridor. G. Smith replied yes.

RESOLUTION

The Zoning Board of Appeals received an application from David Wilson (V08-15) 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 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 public comment being heard regarding the application;

this Board makes the following findings of fact:

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

The 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; because the house is a pre-existing non-conforming structure.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is part of the existing deck.
- 3) The request is not substantial; it is the definition of a minimal variance 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 not self-created, because of the non-conformity of the house.

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

Now, upon motion duly made by William Pfau and seconded by Tony DePace , it is resolved that the ZBA does hereby approve the variance request as presented. All in Favor. Motion Carried.

- 4) **SWEET TONEY LLC, (CLAIRVIEW SUBDIVISION)**. Represented by Atty. Jonathan Lapper and/or Atty. Stefanie DeLallo Bitter. In accordance with Section 200-72 of the zoning ordinance, seeks to appeal the Zoning Administrator's determination that 1) the variance (V82-5) granted on July 29, 1982 associated with the Clairview Subdivision (SD84-10) was for the transfer (shift) of density from the RL3 zone to the LC25 zone only, not building rights; and 2) A cluster subdivision was not approved. Simply put, a major subdivision was approved after a variance was granted to transfer density. Section 199.04, Block 1, Lots 19 through 43 and Section 212.2, Block 1, Lot 12. Zones RL3 & LC45.

Jon Lapper representing Jack Toney gave an overview of the property and project. He stated that the subdivision belonged to Bob and Claire Sweet who were Laddie Toney's parents and Jack and Laddie Toney are the current owners and is owned under the name Sweet Toney LLC. These 10 lots have been assessed as single family building lots since it was approved and the Toney's have been paying taxes on them as they were assessed for all of these years. The applicants were disappointed to find out that these 100 ft wide lots have 50 ft side line setbacks which creates a zero building envelope. After the Zoning Administrator's decision, he stated that he and his partner met with Pam and poured over all of the facts and got a thorough understanding of what happened 26 years ago.

Jon Lapper read his letter to Zoning Administrator Pam Kenyon dated January 31, 2008 which explained their appeal to her decision. He stated that the Zoning Administrator determined that the variance granted by the ZBA on July 29, 1982 only allowed for a transfer of density since there was no retention of the transfer of building rights. She also claimed that in her opinion a cluster subdivision was not approved, only a major subdivision with a density variance. He feels what she failed to address is that her conclusion would provide for the approval of a non-compliant subdivision since 10 of the lots would have a zero building envelope. He stated that he and his clients disagree with her conclusions. First, the variance application was prompted by a letter from the Zoning Administrator Kevin Connerty who referenced the Town of Bolton Zoning Code Section 3.020G, which at that time not only addressed density but specifically stated "building rights may be transferred from contiguous districts which have the same density and have one ownership." He stated the two zones at issue are LC25 and RL3 which do not have the same density. However under a provision in the Bolton code, if you have adjacent zones that have the same density you are allowed to apply to switch the requirements with the PB, but if they have different densities you cannot and that is why it was required to go to the ZBA for a variance to allow the switch. He stated that an area variance was required to allow for the transfer of building rights between districts with different density standards which would be a variance under Section 3.020G. If in fact the variance provided relief for the individual lots as to a minimum lot width and size but not setbacks, as the Zoning Administrator Pam Kenyon claims, the Board would have had to identify these lots, which they did not. Due to the fact that the Town of Bolton had cluster subdivision regulations in effect at the time this application was approved, he feels that it is inappropriate to assume that it was not reviewed by the PB as a cluster subdivision simply because the minutes do not state such. The minutes provided at the time of these applications are vague and minimal. Dennis Dickinson's original application for the variance states that it is a cluster home development. He feels that clearly both Dennis Dickinson and Kevin Connerty were reviewing this subdivision as a cluster subdivision from the start. In addition Dan Smith, as Counsel for Robert and Clair Sweet, submitted a letter dated July 9, 1984 to Chairman William Thompson which identified "I believe that at this time that we have requested that this project be considered as a cluster development and would like your records to so indicate." More evidence to show that this is a cluster is that there common area owned by a HOA which can only occur in a cluster subdivision. He mentioned that in P. Kenyon's letter of determination she mentions that at the June 28, 1984 PB meeting the Board noted to Mr. Dickinson that "minimum dimensions" for the RL3 zone must be used for the lots and she concludes that the "minimum lot dimensions would only include lot width and depth", however he feels that the lot width and depth are not the only dimensions mentioned in the RL3 zone and setbacks are also included and, in their opinion, is what they were referring to. He stated that his clients believe that at the time they applied to use the standards of the RL3 zone of 20 ft side setbacks and if that were not the case this would not have been approved at that time and they would have required a variance. Town law section 277 (3) imposes a requirement that the lots shown on the subdivision plat "at least comply with the requirements of the Town zoning law if one has been adopted. It has been held at in approving a subdivision plat a PB must disapprove a plat which fails to comply with a Town zoning law and may not waiver or excuse compliance with such restrictions". As a result, to claim that the subdivision was approved with lots that did not at the time comply with the setbacks requirements is in violation of Town law 277 (3). This law has not changed and an applicant must seek a variance from the ZBA for non-compliance before moving forward to the PB for approval. There was a notice from then Supervisor Frank Leombruno from April 8, 1985 to the APA indicating that all that was required for the 26 lot subdivision

was approval under the subdivision regulations and not the zoning ordinance. This letter was issued after the zoning variance was granted for switching the zones but before the PB had rendered final approval. The APA permit 85-90, paragraph 5, authorized the construction of one single family dwelling per lot. He read the permit which indicated that the project sponsors were allowed to shift the density of development from the RL3 to the LC25 area to accommodate the proposed subdivision configuration. He stated that nowhere in the APA permit nor in the amended APA permit does it mention that lots 1-10 require variances for side setbacks. In their opinion, these APA permits confirm their position that not only did his clients obtain a variance for the subdivision, their efforts were coupled with the PB approval of a cluster subdivision and to state otherwise due to vague minutes would defeat the documentary evidence as well as the meaning and significance of a filed subdivision map.

Jon Lapper stated that he and the applicant have been unsuccessful in persuading the Zoning Administrator to seeing it this way. However, upon meeting with the Town Counsel they provided this documentation and he has written a letter in support of the evidence for the applicant. He read the letter from Counsel Muller to Zoning Administrator Pam Kenyon dated March 17, 2008 which supports the applicant's position. In his letter Counsel indicated that the ZBA must honor the original approvals obtained by Sweet Toney in accordance with the application of Town law section 277 (3). Counsel also indicated that the Town of Bolton must be guided by requirements of this section. Accordingly what was originally approved by the PB as a subdivision should, in this instance, constitute "approved building lots" and each building lot should be required to conform with the setback requirements that would be imposed in a RL3 zone. Counsel continued that it is Sweet Toney LLC's intention to locate structures on the lots in the subdivision in conformity with requirements imposed by the RL3 zone. It is his recommendation that the interpretation for the Town of Bolton constitute a finding that the applicant's prior subdivision approval incorporated requirements of the local zoning ordinance applicable to the RL3 setbacks. By application of Town law section 277 (3) the subdivision approved for Sweet Toney LLC should not be required to obtain setback variances on approved building lots when the placement of a structure can satisfy RL3 setbacks.

W. Pfau asked what the significance of the cluster subdivision aspect. Jon Lapper stated that P. Kenyon determined that this was not a cluster subdivision but he has found documentation to show that a cluster subdivision was applied for and approved by the WCPB. He stated that it is their contention that when the ZBA transferred building rights it included the side setbacks as well. He continued that in reviewing a cluster subdivision the PB could have granted the leeway in dealing with side setback issues if it had not been addressed by the ZBA. Cluster subdivisions allow some changes of the dimensional requirements of a lot.

J. Anthony asked if there was an approved plat with the subdivision. Jon Lapper replied yes. J. Anthony asked if there were any building footprints, side yard setbacks, etc on the plat. Jon Lapper replied that there were typical house and septic locations but it did not include envelopes.

P. Kenyon commented that she was willing to compromise to a cluster subdivision as long as the applicant followed what was on the filed subdivision map, but the applicant did not choose to do that. She stated that she was concerned that this was a cluster subdivision because at the time, and as it is today, it is required that you show the location of the buildings, septic and

setbacks. M. McComb stated that in the records the APA requested that the plat show the location and specifically the spacing of the houses. Jon Lapper replied that does not mean that it has to go out to the maximum amount, but just typical lots. He continued that there are only two choices 20 ft side setbacks in the RL3 zone or 50 ft setbacks in the LC25 zone. J. Anthony stated that if it was reviewed and approved as a cluster subdivision then there should have been setbacks related to the cluster provision at that time. Jon Lapper replied that there was nothing in the minutes or record that addressed it in the cluster provision and feels it was probably one of the first clusters in Bolton.

M. McComb stated that she reviewed information and maps in the Assessor's office because she felt that the assessment and the fact that his clients paying taxes on these assessed lots was a good argument. However, in her research she came across a map that shows the two zones and it appears that there are only 37 acres and not the 75 acres presented in RL3 and 54 acres and not 18 acres in the LC25. Jon Lapper stated that he was not aware of this and that he could not comment on this since it has just been brought to his attention. M. McComb apologized to Jon Lapper and his clients for not providing more notice but she has just come upon the information herself. She stated that she does not expect him to be able to comment at this time nor can the ZBA act without further investigating. Jon Lapper suggested that the zones could have changed since that time. M. McComb stated that the zones have not changed. J. Lapper stated that this is not issue and that the issue brought forth is the previously approved subdivision by the ZBA, PB and APA. P. Kenyon agreed with M. McComb and stated that she too will need time to review it. G. Smith stated that both the Zoning Administrator and the applicant will need to review this new information. He continued that it is possible that a mistake was made. Jon Lapper stated that it was unlikely that a mistake was made due to all of the agencies and Boards reviewing it.

With regard to Jon Lapper's statement that she determined that these lots were unbuildable, P. Kenyon commented that she never stated that they were unbuildable, only that they would require a variance. Jon Lapper stated that he was characterizing what she said and if the result that a 50 ft setback applies, has a result of creating unbuildable lots. P. Kenyon stated that she believes when the variance was granted it was to shift the density, but this does not mean to shift the building rights. W. Pfau stated that Jon Lapper made a good point that since no mention was made as far as potentially non-buildable lots when this was approved that maybe they assumed that the density and building rights shifted together. T. DePace agreed.

W. Pfau asked how they move ahead on this approved subdivision if the zoning acres are not correct. Counsel replied that he cannot challenge what M. McComb is saying until they can review the factual information. However, if this is the case, then they will have to revisit the subdivision and find out what the Town's position will be. He stated that in his letter of March 17, 2008 he tried to guide the Town in their interpretation which is not based on the cluster subdivision argument but rather referring to the Town Law section 277 (3) which says that this subdivision was to be in compliance and therefore must be in compliance in terms that there must be building lots. He stated that ideally when someone wants to purchase a lot in this subdivision the route followed should be that they need to come before the PB for Site Plan Review, and it should not be that they need to have a variance to build on the lot and then have Site Plan Review.

J. Anthony stated that he feels this goes beyond Town law and beyond ZBA or PB review. He feels that this goes back to the APA permit 85-90 and their conditions which specify the building locations, septic systems and construction on slopes. This is a typical APA review and they look at the map and pin down where these structures and things can go on these properties. He stated that he would like to hear from the APA as to what their feelings are because he feels that the APA has already told the applicant that the Site Plan rules. Counsel stated that he would certainly defer to the APA with respect to that. J. Anthony stated that the APA does not have setbacks in their law and regulations and when they write their criteria or special conditions which includes requirement that the project sponsor must send a Site Plan anytime a house is to be built on any of these lots for them to review and approve to be sure that it complies with their conditions. He feels that the Town saw that the APA set the proper conditions and they just acted on the APA's blessing. Jon Lapper disagreed and stated that J. Anthony is describing how the APA handles a typical subdivision. However, this had preliminary approval by the Town before it went to the APA.

M. McComb stated that she was concerned with special condition #6 in APA permit 85-90 which requires that before six of the lots are sold the APA be sent a specific location for the septic field with a 50 ft buffer on all sides, which is also impossible to meet on a 100ft wide lot. Jon Lapper commented that it only concerns lots 4, 6 and 7 because they are the only lots that are 100ft wide lots. He read the following from special condition #6 from APA permit 85-90: "The project sponsor shall provide the agency, prior to the sale of those lots, with a plot plan of the lot to be sold, showing the specific location of the onsite sewage disposal system and 1 ft topography contours of the area upon which the system will be constructed plus a 50 ft buffer zone around the system in order to show that the sewage disposal system can be constructed on existing slopes that are not greater than 10%". Jon Lapper stated that he feels that this proves the point that what was on the map were just conceptual locations of septic systems and it would be in the Site Plan that they would have the actual septic system that they would design specific to the number of bedrooms. M. McComb asked how they are going to construct a 50 ft buffer on all sides on a 100 ft lot. Jon Lapper replied that the 50 ft buffer could mean 50 ft from another system. T. McGurl agreed with M. McComb that it is on the same lot and that they can't include the ability to construct a septic system based on the neighbors' lot and septic system. Jon Lapper stated that he felt that the 50 ft buffer is on all sides from any slope greater than 10%. J. Anthony and M. McComb agreed that was possible.

Jon Lapper stated that he would like to review the latest facts brought to his attention and requested an adjournment until the next meeting.

J. Anthony requested that P. Kenyon contact the APA for a ruling on this request and see if it is consistent with this permit. M. McComb stated that the cluster subdivision regulations require 5 times the minimum lot size for clustering and asked if that would be of either zone. She stated that by her reading of it they would have 5 times the minimum lot size in each zone but by the 75 acre/18 acre split that was presented they did not have 25 acres in LC25 and it would be completely appropriate for the ZBA to not consider it as a cluster subdivision. The only mention in the record of clustering comes from the application and is mentioned in the letter but was not brought up in the minutes and she wonders if it was considered but did not go further with that approach and instead got a variance to transfer density. Jon Lapper stated that he feels that regardless of the record, everyone believed that this was an approved subdivision and these lots were approved building lots. He stated that he would like some time to review

the latest facts, he is sure there is a simple answer because he is sure it didn't get approved without having the density.

RESOLUTION:

Motion by Meredith McComb, seconded by Tony DePace to table this application until next month. All in Favor. Motion Carried.

Meeting was adjourned at 7:14 PM.
Minutes submitted by K. MacEwan