

Zoning Board of Appeals- Minutes February 25, 2008
State of New York
Warren County
Town of Bolton

Present: Chairman Greg Smith, William Pfau, Kam Hoopes, Jeff Anthony, Zoning Administrator Pamela Kenyon, Counsel Michael Muller.

Absent: Tony DePace, Meredith McComb and Tom McGurl, Jr.

The meeting was called to order at 6:38 PM.

G. Smith asked if there were any corrections to the January 14, 2008 meeting.

Motion by Jeff Anthony to accept the January 14, 2008 minutes as written. Seconded by Kam Hoopes. **All in Favor. Motion carried.** W. Pfau abstained as he was not present at that meeting.

Chairman Greg Smith stated that there were only four ZBA members present, which is the necessary quorum for voting purposes and requires a unanimous vote for all approvals. He stated that if any applicant was concerned they could have their project tabled. He continued that Item # 1 Lagoon Manor Homeowners Association could not be heard because J. Anthony would have to recuse himself due to a conflict of interest.

G. Smith stated that Items #3 and 4 would be heard before Item #2 at the applicant's request due to a scheduling conflict.

- 1) **V07-82 LAGOON MANOR HOMEOWNERS ASSOCIATION.** Represented by the Dock Doctors. In accordance with Section 200-93A (Other regulations applicable to planned unit developments), seeks area variance to demolish and reconfigure the docks. Section 157.05, Block 1, Lot 88.1, Zone PUD. Property Location: Brookhill Drive. Subject to WCPB, PB and APA review. This item was tabled at the January 2008 meeting pending a recommendation from the Planning Board. The Planning Board recommended approval with the following conditions: 1) 35 slips are allowed and 2) lighting that is to be located on the docks and the shore is to be downward facing and shielded with low wattage bulbs used.

RESOLUTION

This item was tabled due to a lack of quorum available.

- 2) **V07-81 HIGGINS, ANNE.** Represented by Hutchins Engineering and Atty. Michael O'Connor. 1) To demolish and rebuild existing garage with storage, seeks area variance for deficient front yard setbacks. a) 75' is required from the edge of the right-of-way from Route 9N, 58.6' is proposed; and b) 50' is required from the private right-of-way on the south side, 30.5' is proposed. 2) To alter pre-existing non-conforming single family dwelling, specifically to construct steps and retaining walls, seeks area variance for a) a deficient front yard setback. 75' is required from the edge of the right-of-way from Route

9N, 41' is proposed, and b) to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 213.17, Block 1, Lot 17, Zone RCM1.3. Property Location: 1 The Mooring. Subject to WCPB review.

Michael O'Connor representing Anne and Bob Higgins gave a description of the proposed changes of demolishing an existing detached garage and building a larger garage in closer proximity to the home. They are looking to add a retaining wall and some stairs to get into the house. He stated that the setback is different from the old because the new garage is measured from the eaves as opposed to the building itself.

M. O'Connor stated that they have had Tom Hutchins from Hutchins Engineering look at the stormwater on the site and although they will not be disturbing that much of the site with the construction, they have done a full stormwater analysis and plan for handling the stormwater and have a letter from Tom Nace approving same. He stated that there was a slight modification, T. Nace asked for an additional area of retention along the driveway that goes through the lot and that was put on the maps.

M. O'Connor stated that the new garage will be of the same architectural style as the existing house. It will have a slate roof, with cedar trim, stucco walls, Andersen casement windows, stone veneer on the exposed foundation and retaining walls. They are trying to make it look like it was already part of the original house. He stated that in the balancing act, they could make this more compliant by putting it further back on the lot, but if they did that there would be more lot disturbance and it wouldn't fit and attach to the house as much as the other. G. Smith agreed that it would blend in better being closer to the house especially with the architecture. Mike O'Connor stated that the entrance on the south side of the garage will be used only for personal storage and no vehicles will be stored on that level.

Mike O'Connor stated that he understands there is a letter from neighbor Stephen Sills concerning the prohibition of this construction by the deed covenants and restrictions. He stated that the HOA held a meeting last week and 12 of the 13 lot owners were represented in person or by proxy. He continued that at that meeting the lot owners and the HOA approved what they have proposed on this lot and have sent letters in support to P. Kenyon. He continued that Mr. Sills is the most remote lot from this property and will be the least affected other than having to drive by it. He stated that the closest neighbor is Bill and Dorothy Truesdale and Mr. Truesdale was at the meeting and was very supportive of it. G. Smith stated that he has spoken to Mr. Truesdale as well and understands that he has sent a letter in support. Mike O'Connor stated that in May or June before construction begins it is the intention of the HOA to have a meeting to amend the declaration for the HOA, which will take care of any issues of the restrictive covenant nature that Mr. Sills has raised. He continued that the restrictive covenants have not been looked at since the early 70's and they will be updated for a number of reasons.

Counsel read the following into the record:

1. Letter from Stephen J. Sills to P. Kenyon, which included a letter from Stephen J. Sills to Emily Bailey Berry, President EBHOA c/o Racemark International, LP both in opposition.

2. Little & O'Connor to P. Kenyon- enclosing consents and approvals for the proposed addition from the Edmunds Brook HOA and The Moorings Property LLC.
3. Letter from Ginger Bailey, Member of The Moorings Property LLC to the ZBA in support of the project.
4. Letter from Edmunds Brook HOA, Inc to ZBA in support of the project.

W. Pfau felt that it was important to review the findings of the ZBA in 2000. Previously it was found that there would be an undesirable change in the character of the neighborhood because the neighborhood was treed and asked if they are removing any more trees for this project. M. O'Connor stated no. W. Pfau stated that the second finding was that there are other portions of the property that could be used for this project so that it doesn't encroach on the setbacks. M. O'Connor responded that they choose to keep it in the same area not only for less land disturbance but also to have the stormwater in the back of the property to capture and treat more of the stormwater from the entire site. W. Pfau stated that they also found that the request was substantial and asked how much larger this new structure was in comparison to the old. M. O'Connor stated that the old structure was approximately 500-600 sq. ft. and the new structure would be substantially larger in comparison to the previous building, but not as far as the ordinance goes. G. Smith stated that with regard to the setbacks, it would be 3 feet closer to 9N and it would be 1.5 ft closer to the right-of-way. K. Hoopes stated that they are limited in looking at other locations of the property for the structure because of the septic system and could potentially invade the ROW to the lower lots. Tom Hutchins agreed and stated that it would require a fair amount of reconfiguration of the driveway access. G. Smith stated that he felt where they are proposing to locate it is the best place on the property not only for disturbance, but also for aesthetics. W. Pfau agreed. He continued that the only recommendation that he would have is that if they are encroaching 1.5 ft closer to the ROW that they move the garage 1.5 ft away so not to encroach. K. Hoopes agreed.

J. Anthony stated he had no problem with the application but was concerned that on the south side they have a main entrance to the development and that is where all the traffic for the home will be and as Mr. Sills brought up, asked if it will be a conflict in terms of driveway use and the ROW. M. O'Connor stated that there is enough room there (30 ft) to be entirely off that ROW. He also commented that the fence is there for a reason and if it were not there the snow removal debris would end up on the house.

RESOLUTION

The Zoning Board of Appeals received an application from Anne Higgins (V07-81) 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 default approvals were granted by the Warren County Planning Board due to a lack of a quorum;

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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, the proposed architecture is in harmony with the existing building and structure and is compatible with the surrounding architecture.
- 3) The request is not substantial; with regard to the setback deficiency, the proposed garage is going to be using the footprint of the existing garage,
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; in fact it will have positive effects, because stormwater management will be incorporated into the site planning for the project which was not there before.
- 5) The alleged difficulty has some self-created aspects, but it is nothing of major concern,

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

- 3) **V08-01 BURNS, THOMAS.** Represented by Chris Gabriels. To alter pre-existing non-conforming structure. Specifically to reconfigure the dock. Seeks area variance to alter a pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 200.14, Block 1, part of Lot 10, Zone RM1.3. Property Location: Cotton Point Road, House 11. Subject to WCPB and APA review. *Note: This is an amendment to V06-10 approved by the Board of April 25, 2006.*

Chris Gabriels stated that this is a smaller request than originally approved and that the LGPC has already approved it. The applicant is rearranging square footage of his existing dock in order to widen the slip. He stated that there is no change to any portion of the dock as far as the 20 foot setback. G. Smith asked for some clarification of what was previously approved and what is being requested now. K. Hoopes stated that they were especially interested in this because the rearrangement of the dock had some bearing on their granting of the variance in the first place. Chris Gabriels stated that it is a grandfathered dock, which the applicant has the right to maintain it in its original location. K. Hoopes stated that when the applicant came before the board for the variance for the modifications to the house part of the swap of structures was that the dock was going to come out and therefore several people on the Board felt that it made the project much more acceptable. C. Gabriels stated that the dock is totally unrelated to the house. K. Hoopes asked P. Kenyon if this came as part of the parcel of the variance as they were granting it, the removal of the dock in favor of the variance. P. Kenyon

stated yes. C. Gabriels stated that the house was well under construction before any consideration of the dock was brought before the Board. W. Pfau stated that the variance for the dock realignment was in 2006 and the variance for the house was before that. C. Gabriels stated that the house was almost complete when they came before the Board for this variance. K. Hoopes asked why the ZBA needed to issue a variance for the removal of the dock. C. Gabriels stated that although technically he didn't have to, it made sense to connect it to the pre-existing non-conforming house. Therefore a change to a pre-existing non-conforming house would require a variance. G. Smith asked if they are changing the application to not increase the dock as originally requested and keep the other dock. C. Gabriels stated that he was correct.

B. Pfau asked if they wanted to keep the configuration the way it is now, but make the western part of the dock a bit wider. C. Gabriels stated yes. J. Anthony asked if this would decrease the total square footage. C. Gabriels stated yes and that they are not increasing the non-conformity or changing that portion of the dock, he is rearranging square footage within the dock system itself. B. Pfau stated that he is doing that by making the deck area smaller. C. Gabriels stated yes and that portion has already been done, and nothing else in this dock has changed. K. Hoopes stated that there is one change, because they are invading the property line. C. Gabriels responded that he is not invading that property line, he is maintaining that pre-existing grandfathered dock.

P. Kenyon stated that the variance sought and granted in 2006, was partially to alter the dock and also to make alterations to a deck. G. Smith asked if it was just the dock and deck or in addition to the alterations to the house. P. Kenyon stated that she believed it was everything. C. Gabriels stated that they didn't have to attach the dock to the house, which would have allowed the ZA to give a permit for what they were trying to do, but realistically they were going to attach it and the house is pre-existing and non-conforming therefore needing a variance.

G. Smith asked if this plan was going to be the final decision and plan for the dock. C. Gabriels responded that he hoped so and that the applicant's have lived with the plan for a year and this is what they are happy with. C. Gabriels stated that they will be seeing more of this type of reconfiguration of square footage on dock systems due to large boats used on Lake George. He stated that the general premise of the LGPC is if indeed it does not make the non-conformity any worse, it is generally accepted.

B. Pfau stated that he agreed with K. Hoopes that that it was nice that originally the dock was pulled in from the setbacks, but the other part of the dock is being decreased to its original length which is a good trade off. G. Smith added that the square footage is also decreased.

G. Smith asked if anyone in attendance wished to speak on the matter or if there was any correspondence. P. Kenyon stated that WCPB did not have a quorum and therefore it was default approval.

W. Pfau asked P. Kenyon that since this is an amendment, is it being treated as an amendment or a separate variance. P. Kenyon stated that to her it is always a separate variance. G. Smith stated that they have not done anything with the last variance, so it would be an amendment. P.

Kenyon stated that she believes the previous variance has expired or is about to expire. Counsel stated that they should still make their findings using the criteria.

RESOLUTION

The Zoning Board of Appeals received an application from Thomas Burns (V08-01) for an area variance as described above.

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

And, whereas default approvals were granted by the Warren County Planning Board due to a lack of a quorum;

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; it is a dimensional consideration.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, one large dock is going to be reduced in size and the existing dock will remain where it is.
- 3) The request is not substantial; it is a shrinking of a previous square footage.
- 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 has some self-created aspects to the project but they do not overwhelm the request for a variance,

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

- 4) **V07-70 JONES, STEWART & DIANE.** Represented by Chris Gabriels. To alter pre-existing non-conforming single family dwelling. Specifically to construct deck, bathrooms, and kitchen additions. Seek area variance for 1) a deficient shoreline setback. 75' is required, 15' is proposed; and 2) to alter pre-existing non-conforming structure in

accordance with Section 200-57B(1)(b). Section 186.15, Block 1, Lot 43, Zone RM1.3. Property Location: 160 Homer Point Road. Subject to WCPB and APA review. This item was approved by the ZBA on November 17, 2007 and subsequently reversed by the APA.

Chris Gabriels stated that they are looking at a very small portion of this project. He stated that the APA has indicated concern over the deck on the front which he hoped would be a reassurance that the elderly couple could have a second egress from their master bedroom. The APA is concerned that the deck is unnecessary. C. Gabriels does not think that the APA saw the 2-3 ft drop shown in the elevation and felt that they could just put a door there to get out. Basically, the concern is that a 3' by 3' portion of that deck is closer to the lake than any other portion of the house. C. Gabriels stated that he requested the APA confirm that in writing so that he could present that to the Board, but they have not done so. He stated that if the Town is concerned over this issue as well, he will do whatever is requested of him.

K. Hoopes stated that he was glad that this project was revived because it opened up another sixty day window. He stated that they granted a variance on this and the ZBA tried to be very serious, as they always are, to do it properly. He stated the APA has reversed their decision based on the fact that they did not make a finding on any practical difficulties or unnecessary hardships to justify a variance of a legislated mandated fifty foot setback. K. Hoopes stated that due to a change in NYS Law the use of the terms "practical difficulty" and "unnecessary hardship" have been stricken from their vocabulary when talking about an area variance and the APA does not like that they do not use these terms in their findings and occasionally reject the variances requested because of it. Personally he feels that the minutes would reflect that they do discuss the practical difficulties and hardships that the applicant's have, but according to NYS Law they are not to use those terms as active agents for their findings.

K. Hoopes stated that one way to go about this is that the applicant's could sue the APA on an Article 78, meaning that the APA is acting in an arbitrary and capricious fashion and abusing their discretion.

C. Gabriels stated that the applicant's would rather get the permit based on what is agreeable to the ZBA and APA to get approval for this. K. Hoopes stated that they do not know what the APA would accept. J. Anthony suggested that they could reconfigure the decks so that they miss the corner. He stated that they could either shorten the deck or cut it on an angle so that they are behind the setback line and will therefore not have any problems or need to seek a further request. J. Anthony stated that with regard to the APA, they could list all of the hardships and difficulties, but the APA will not budge on the shoreline setbacks. P. Kenyon stated that they have a drawing in front of them showing an angle suggested to avoid the problem. She has spoken to Brian from the APA, and although he could not comment as to if the APA would reverse the decision again, did confirm that the small portion of the deck highlighted on that map was of concern to them.

Counsel stated that they have laid the groundwork for the best argument which is under other feasible alternatives to granting the variance and they have specifically stated that there is one. G. Smith suggested that since the APA is seeking to have them reduce the deck by the 3' by 3' section, then maybe the applicant's should take an extra foot and make it a 4' by 4' section and

run it along that angle. K. Hoopes agreed that they should remove that portion that is of concern to the APA.

Counsel read a letter from Kathleen S. Lindberg Bozony, Land Use Management Coordinator for the Lake George Association to the ZBA concerning the septic system for the modified home. They feel that the septic system should be inspected and brought up to compliance with the code especially due to the close proximity to the lake. They feel that all pre-existing non-conforming system be inspected and required to update or come into compliance as part of the overall comprehensive site plan and that this should be a regulation in the new zoning code.

K. Hoopes stated that the letter was misdirected at the ZBA and should be directed to the TB or re-zoning committee. G. Smith stated that he agreed but feels that it is something the Town should be adopting and that the ZBA could make that recommendation.

RESOLUTION

The Zoning Board of Appeals received an application from Stewart and Diane Jones (V07-70) 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# 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, it is a small camp and the change being proposed is modest;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, hopefully and this ZBA, though it is not binding, encourages this applicant to investigate the septic and make sure it is going to be working well;
- 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, hopefully;
- 5) The alleged difficulty is not self-created, the situation of a 50-year-old camp coping with the twists and turns of Lake George is more an issue and the applicant seems to

have made an effort to keep the majority of the building away from the lakeside of the house.

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 William Pfau and seconded by Kam Hoopes, it is resolved that the ZBA does hereby amend V07-70 approved by the ZBA on 11/17/07 to reduce the size of the deck to a point where it is no closer to the shoreline than the existing structure. **All in favor. Motion Carried.**

5) TOWN BOARD. To discuss proposed amendment to Chapter 125 “Stormwater and Erosion Control” Section 125-5D; Chapter 150 “Subdivision of Land” Section 150-3C; and Chapter 200 “Zoning” Section 200-8C of the Town of Bolton as follows: The definitions provided within the New York State Uniform Fire Prevention and Building Code and the Energy Conservation Construction Code shall be available to supplement and assist in the application of the provisions of this Chapter wherever this Chapter shall fail to provide its own definition or meaning. In the event that local law, town code, town ordinance or zoning board of appeals interpretation defines, authorizes or provides a clear definition, stricter requirement, interpretation or specification, such town code, town ordinance or zoning board of appeals interpretation shall prevail.

Counsel stated he was concerned that since only four Board members were present and two voted against it and two voted for it as a recommendation that maybe they should adjourn the issue until all Board members can be present. G. Smith stated that he felt that adjourning the discussion would be the best idea. W. Pfau also stated that someone from the TB was supposed to be present at this meeting to further explain the proposed change. Counsel recommended that they have a full Board and someone from the TB present to discuss this issue in full.

RESOLUTION

This item was tabled until all ZBA members can be present for the discussion.

Meeting was adjourned at 7:39 PM.

Minutes submitted by K. MacEwan