

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday January 20, 2009
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, John Michaels, David Ray, Jeff Anthony, Zoning Administrator Pamela Kenyon and Counsel Michael Muller.

Absent: William Pfau

Meeting was called to order at 6:31 p.m.

Greg Smith asked if there were any changes or corrections to the December 15, 2008 minutes:

- 1) Kam Hoopes, for Salamone V08-54 resolution, under #1 of the Conclusions of Law, should read as follows: "The benefit could not be achieved by any other means feasible to the applicant besides an area variance; it is a dimensional consideration. Taking into account the LG Park Commission's issuance of a permit and the particular way that the Town of Bolton measures the shoreline, it makes a *mitigating* case for creating the variance."
- 2) Kam Hoopes, under Padanarum Park, the agenda read that Melissa Lescault was representing the applicant. However, Dennis Dickinson did the presentation and it should be noted as such.

Motion by Kam Hoopes to accept the December 15, 2008 minutes as corrected. Seconded by Jeff Anthony. All in Favor. Motion Carried.

Greg Smith welcomed the two new ZBA members, John Michaels and David Ray.

1) **V08-57 FOY, EDWARD.** To convert retail store (Blueberry Basket) into a restaurant, seeks area variance for deficient parking. 14 spaces required. 8 spaces exist. Section 171.15, Block 3, Lot 91, Zone GB5000. Property Location 4950 Lake Shore Drive. Subject to WCPB review.

Edward Foy stated that the Blueberry Basket is currently a retail store that has a variance for parking. He stated that they are changing from a retail store to a restaurant which puts in under different criteria and he needs to change the variance for parking. A restaurant requires that they have 1 space for every 2 employees. He stated that they will have a few employees working in this building and they will need 2 more spaces added onto the current variance. Greg Smith stated that this is the same situation for most businesses on Main Street.

John Michaels asked if the pizzeria will be open year-round. Edward Foy replied that for the first year no, but they will evaluate the situation as things progress through the summer. He stated that they may eventually winterize the building, but as it stands keeping one place open in the winter is tough enough.

John Michaels asked how many people the building will accommodate. Edward Foy replied according to BOH, they cannot exceed 40 and they have 36 seats. He gave an overview of what the layout will be for the pizzeria. He stated that they will be able to walk out the rear door near the bar at Cate's through a breezeway and into the new building. He stated that they are not putting a kitchen in this new building and the main kitchen at Cate's is sufficient for both. He stated that when it rains he loses the whole patio so this may be a great opportunity to put people in this room. He stated that he wanted to do this 15 years ago but he could not get the building at the time. However, things worked out last year and they are trying to finish off what they originally started 15 years ago.

There were no comments from the public in attendance. Pam Kenyon stated that there was no correspondence or Warren County Impact.

RESOLUTION

The Zoning Board of Appeals received an application from Edward Foy (V08-57) 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#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; this is a matter of parking spaces and every business on Main Street is up against the same problem, and our regulations cannot embrace everybody with that.

2) There will be no undesirable change in the neighborhood character or to nearby properties, it is one business turning into another business.

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, because the applicant did not build the street.

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

2) V08-56 BOTTO, JAMES & MONICA. Represented by Tom Hutchins of Hutchins Engineering. In accordance with Section 125-10B(2)(d) of the stormwater regulations, seeks area variance to allow well to remain in its present location. 100' separation is required between the well and stormwater controls. 0' exists. Section 185.20, Block 1, Lot 4, Zone RCL3. Property Location: 185.20, Block 1, Lot 4, Zone RCL3. Property Location: 34 Acorn Drive.

Lucas Dobie of Hutchins Engineering gave a background of the project. He stated that this project received Site Plan Review approval in February 2007 for a major stormwater project due to the disturbance. However, during construction they had an issue because they drilled the well in a different location than shown on the plans, which was about 8' off the garage. He stated that they ran into trouble with the major stormwater regulations which require 50' of horizontal separation for the well to any infiltration device from a house and 100' of horizontal separation to driveway stormwater management devices. He stated that currently there is a trench along the south side of the driveway which essentially butts up to the well, giving 0' separation from the well.

Lucas Dobie stated that they are proposing to remove 45' of the infiltration trench and take that setback out to 20'. They believe this is reasonable and have received a letter from Town Engineer Tom Nace supporting this variance as long as the applicant installs a UV Disinfection Unit on the water supply, which they are prepared to do. He stated that the well is 165' deep with 146' of driven casing and the well logs have 126' of sand and boulders above bedrock. The BOH requires 50' minimum of casing so they have almost 3 times that. He stated that after they remove the trench, the driveway is crushed stone and is pitching away from the well.

Kam Hoopes asked Counsel if this presentation should be heard before the ZBA or TB as the local BOH. Counsel replied that in their code, a variance may be granted on the stormwater, so by virtue of interpretation that is what they are doing. Greg Smith stated that aside from that there is a solution that the applicant can do which will not involve the BOH. Counsel agreed and stated that procedurally they are in the right place.

John Michaels asked why they are required to have the 100' buffer. Lucas Dobie replied that the requirement originated from the LGPC stormwater regulations that were adopted by all of the Towns in the LG drainage basin. He believes the rationale behind this regulation was designed more for commercial projects for major stormwater especially in dealing with parking lots where there might be oil or chemical run-off. Unfortunately, a lot of the residential projects which would normally be minor are triggered into major based on exceeding 15,000 sq. ft. of disturbance. Counsel agreed that this is a mandate that was established by the LGPC. John Michaels stated that he was trying to establish whether or not the buffer is set up to ensure the water quality and asked if that is why Tom Nace was proposing the UV Disinfection Unit. Lucas Dobie replied yes. John Michaels stated that the home is a beautiful new structure in a great location. However, he is concerned that if it were to go on the market, he wants to make sure that the UV System is disclosed to potential buyers and that it is essential to water quality.

Counsel stated that they could incorporate that into a deed covenant and should be a condition of approval.

Kam Hoopes stated that he sees a difference between this stormwater plan and a catch basin that might sit on top of the well. These stormwater devices, which is a stone filled trench, slopes away from the well. The driveway also slopes away from the well. Lucas Dobie stated that they both slope away from the well at a 3-8% slope. Kam Hoopes stated that most of the water traffic with the exception of the back part of the garage slopes away from the well. He suggested that they get rid of the stone trench behind the garage and place a gutter on the back part of the garage and around the corner towards the house to be consistent with the water flow.

There were no comments from the public in attendance.

Counsel read a letter from Chris Navitsky, Lake George Waterkeeper, who had the following comments for the applicant: 1) the possible use of infiltration basins along the driveway which may allow for the necessary separation distance from the well; and 2) the possible relocation of trenches.

Greg Smith stated that the applicant has basically taken care of the issues raised and he is satisfied with the proposal.

RESOLUTION

The Zoning Board of Appeals received an application from James and Monica Botto (V08-56) 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; the 20 feet of distance, where 100 feet is required, due to the stormwater treatment device, some leniency can be applied here.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a water quality issue for the owner alone.

3) The request is substantial; but due to the mitigating circumstances of the type of stormwater device they are talking about and the depth and casing of the well, this can be overlooked.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; if in fact the UV Disinfection Unit is applied, this will be rendered unnecessary.

5) The alleged difficulty is self-created, and it is all a matter of mistakes on the builder's and homeowners' reading of the maps and plans. However, this solution is a more reasonable solution than trying to move the garage or pull up the road to move it somewhere else.

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 with the following condition(s): 1) That a deed covenant be placed on the existing deed notifying any future owners that the UV Disinfection Water Treatment Device cannot be disabled to ensure the water quality of the well water.

All in Favor. Motion Carried.

The meeting was adjourned at 6:50 pm.

Minutes submitted by Kristen MacEwan

The ZBA members decided that due to new APA regulations adopted December 31, 2008, all applicants requiring a shoreline variance to alter a non-conforming structure, shall be required to have an engineer evaluate and verify that the existing septic system is up to code and working properly, before a variance shall be granted by the ZBA.