

Town of Bolton
ZONING BOARD OF APPEALS
AGENDA
Tuesday July 14, 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, William Pfau, Kam Hoopes , Jeff Anthony, David Ray, Zoning Administrator Pamela Kenyon and Counsel Michael Muller.

Absent: Tony DePace and John Michaels

Meeting was called to order at 6:34 p.m.

Greg Smith asked if there were any changes or corrections to the June 16, 2009 minutes:

Motion by Jeff Anthony to accept the June 16, 2009 minutes as written. Seconded by William Pfau. All in Favor. Motion Carried.

1) V09-17 SPERANZA, MICHAEL & MARY. Represented by James Palazzo. For the construction of a proposed garage with storage, seek area variance for deficient setbacks. 1) Front: 75' is required, 1' is proposed from the edge of the right-of-way, and 2) Side: 20' is required, 10' is proposed. Section 171.07, Block 2, Lot 44, Zone RL3. Property Location: 52 Braley Hill Road. Subject to WCPB review.

Jim Palazzo stated that the applicants are proposing a garage/storage area. The applicants have moved from New Jersey and are currently renting 3 storage areas in Lake George. This proposal would allow them to consolidate everything at their home. He stated that it will be a 3 car garage with just dry storage space upstairs. Greg Smith asked if they will be putting any plumbing or heating upstairs. Jim Palazzo stated that there will be power for the entire building but there will only be heat downstairs and neither floor will have plumbing.

Greg Smith asked what they planned to use for fill around the building. Jim Palazzo replied that they will need to fill the backside in and plan to put some netting up and then hydro-seed the area when the construction is complete to prevent erosion. Mike Speranza stated that the back wall of the garage will be built into the ground which will supply a lot of the support.

Kam Hoopes stated that it looks like they need 2 side setbacks which is not stated in the agenda. Pam Kenyon agreed that a variance is required for a deficient rear yard setback; 20 ft. is required, 18 ft. is proposed, and asked that the ZBA review that as well. Bill Pfau asked if 25' setbacks from the center of the road typical for Braley Hill Road. Jim Palazzo replied yes it the Town and County right-of-way.

Kam Hoopes stated that although this is a small lot and there are a lot of things going on in it, the back bank does not amount to anything useful and there is parking in this spot anyway. He stated that he doesn't see how this would encroach on any of the neighbors at all.

Bill Pfau stated that there is no other place on the lot for a garage this size. Even though it is a large structure he does not feel that reducing its size would improve anything on the lot. Kam Hoopes asked if there was enough room to maneuver to get out of the driveway. Jim Palazzo replied yes there is plenty of room to maneuver in and out. Kam Hoopes asked if they planned to keep the carport. Jim Palazzo replied no. The Board agreed that would be a large improvement.

Bill Pfau asked why the applicants didn't try to put this garage to the back of the house. Jim Palazzo stated that there is a set of stairs that have been welded in place to reach the upstairs of the house structure.

Pam Kenyon stated that there was no WC Impact.

Kathy Bozony, Lake George Waterkeeper, asked if there was going to be any stormwater management applied to this project. Jim Palazzo replied yes, they will need to go for Site Plan Review before the PB.

Greg Smith reminded the applicant that the density will not allow for any further development on this lot. He stated that the code won't allow it and neither will the ZBA.

RESOLUTION

The Zoning Board of Appeals received an application from Michael and Mary Speranza (V09-17) 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;
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a garage with upstairs storage on a residential road.

3) The request is substantial; but it will not have any negative affects on the neighborhood.

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, the lot is sub-standard.

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

2) V09-18 CLARKE, ROSAMOND. Represented by Jeffrey Tennent, To alter pre-existing non-conforming structure, specifically to construct a proposed deck and enclose a lower level, seeks area variance for 1) deficient setbacks. a) Front. 50' is required, 18' 2 1/2" is proposed, b) Side: 30' is required, 17.97' is proposed, c) Rear: 30' is required, 13' 9 1/2" is proposed, and d) Shore: 75' is required, 41' 5 1/2" is proposed, and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 185.15, Block 1, Lot 26, Zone RCL3. Property Location: 63 Three Oaks Drive. Subject to WCPB and APA review. Partially after the fact.

Jeff Tennent stated that the applicants are proposing to add a deck to the cottage and enclosing the lower portion of the cottage for storage and laundry. He reviewed the existing conditions and what the proposed plans were. He stated that the decks will not be any closer to the lake than what already exists. Jeff Tennent stated that currently on the property there is no place to sit outdoors to enjoy the view of the lake. He stated that they are enclosing the lower portion to take care of a large gap between the camp and parking area plus it will add storage and laundry space. Greg Smith stated that the 32" gap between the camp and parking space is a major hazard that absolutely needs to be filled in no matter what.

Greg Smith asked for some clarification of why this application is coming partially after the fact. Jeff Tennent stated that Rosamond Clarke, who originally owned the property, hired a contractor to start some work. Unfortunately the contractor didn't do much in the way helping Mrs. Clarke. He did not obtain the proper permits and there is another issue regarding the septic. Jeff Tennent stated that the septic issue is being resolved by the TB. He stated that this project works in tune with the septic replacement because of the placement and setbacks. He stated that he got the impression from the TB that they were accepting of the proposal for the septic. However, there was a mistake in the publication and they needed to notice everyone again. He felt that it was just a formality and that they should be receiving approval on July 21st. Counsel agreed. Jeff Tennent stated that once Rosamond Clarke died, her daughters received the property and have been trying to remedy the situation. He stated that he has only been involved with this application for about 6 or 7 months.

Greg Smith stated that he agrees that currently there is no where to sit outside to enjoy this property. He feels that the proposed deck will not intrude on anyone's view and it will definitely improve the look of the existing building.

Bill Pfau asked if the portion of the lower cottage under the deck would be enclosed as well. Jeff Tennent replied no only the lower portion of the existing cottage would be enclosed and the portion under the deck would remain open.

Jay Verme, neighbor of applicant, asked how long this project would take. He stated that this project has been ongoing for several years and the road is in disrepair. They have requested that the applicant do some sort of temporary repair until the project is complete but nothing has been done. Pam Kenyon commented that this has been an issue in the past. Jeff Tennent replied that there have been a few test holes dug in that area and then a pipe was repaired but was never fully filled in but that was not something that he did. He stated that the timeframe will depend upon the approval process with the Town. Jay Verme asked if anything could be done with the road in the meantime. Jeff Tennent replied that the road is passable but could be graded smoother. Kam Hoopes asked who owns the road. Jeff Tennent replied Three Oaks Colony. Kam Hoopes stated that it sounds more like an HOA situation.

Kathy Bozony, Lake George Waterkeeper, stated that in her letter she made a comment about the extra windows in the lower portion of the house and thought there was an increase in bedrooms but understands that is not the case. With regard to increased impervious surfaces, she stated that the application states that there is no increase. However, she asked if putting floors and walls in would be considered increasing the impervious surfaces. Even though there was a building over it there was permeable ground existing. Kathy Bozony also commented that she feels that stormwater could be added to this site since it does not currently exist. She suggested rain gardens or infiltration of some sort.

Jeff Tennent stated that he did not appreciate Kathy Bozony submitting a letter at the meeting. He stated that it does not allow him time to review it and prepare answers or comments to her questions. He stated that if the Waterkeeper wants to improve projects, they really should give the applicant time to respond.

Jeff Anthony asked if the APA is dealing with this application under the new rules of expansion of non-conforming uses within the shoreline setbacks. Pam Kenyon replied that she is assuming it is but they will make that call when the application goes through. Jeff Anthony stated that they should not be dealing with it because there is no increase in sleeping area or living space. Jeff Tennent stated that the lower portion could not be considered habitable space because it does not meet height requirements. Kam Hoopes stated that they would only be concerned with the shoreline setback. Jeff Tennent stated that he didn't think that the APA would be involved since this site is considered in the hamlet, which would be Town jurisdiction. Jeff Anthony looked at the APA map and stated that this site would be considered APA jurisdiction in the low intensity.

Jeff Anthony asked Counsel if they are bound by the safety factor to discuss practical difficulty and unnecessary hardship. Kam Hoopes stated that they are precluded by law use those terms. He stated that as long as they have talked about the elements of practical difficulty and hardship they should be okay but does not feel that they should use the actual language in the motion. Counsel replied that they are both right. The APA wants them to include those terms which are no longer applied by this Board. He stated that they will want to include them for the applicant so that it has less of a chance of being reversed.

Kam Hoopes stated that the proposal of a deck will improve the property because the deck would allow for usable space outdoors, which the current cottage is lacking. It will provide a place for people to sit which currently does not exist. Greg Smith stated that the proposal will also enhance the overall look to the property and will address a major safety issue. He stated that filling in the hole behind the camp will not only improve the look but will provide for a much safer environment.

Jeff Anthony stated that the practical difficulty is that the cottage is located on a steep slope. Therefore the applicants really do not have any room to logically sit or enjoy their view. Greg Smith stated that the only flat area between the cottage and the lake is the by the water which is a path that common property shared by other homeowners. Jeff Anthony asked what would be considered the hardship factor. Kam Hoopes replied that he thinks the hardship is part and parcel with the practical difficulty. He stated that if the applicants can't enjoy the outdoors at the living level of their house they would be required to climb stairs and ladders to get to the outdoors.

Bill Pfau stated that they still risk having this decision reversed by the APA. Jeff Anthony stated that he does not feel that it would be reversed given the discussion. He stated that since they have added these discussions the APA has not been reversing their decisions.

Jeff Anthony suggested that they add a statement to the resolution that it is understood that the applicant's request for the septic variance has provisions for some sort of stormwater management. Kam Hoopes stated that he feels that should fall under the TB's jurisdiction in granting the septic variance. Jeff Anthony stated that they are close to the lake and they are working within the shoreline setback. He stated that in the past they have been imposing stormwater management for situations like this. He has no problem stating that would be handled by another Board but he would like that to be part of the motion. Kam Hoopes stated that he would add that to the motion.

RESOLUTION

The Zoning Board of Appeals received an application from Rosamond Clarke (V09-18) 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; these are dimensional considerations.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this is an improvement of this particular property with no infringement upon anyone else's views.
- 3) The request is not substantial; considering the amount of space that they have that can't be used.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the footprint remains the same and the deck is the only new construction.
- 5) The alleged difficulty is not self-created, in anyway that this board is interested in, it is an improvement of a difficult kind of building on stilts.

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: 1) recommend to the TB that the septic variance include provisions for stormwater management. **All in Favor. Motion Carried.**

3) V09-19 HERRMANS, HAKAN & JOAN. Represented by Jarrett Engineers & Creative Construction. For the construction of a proposed retaining wall, seek area variance for a deficient setbacks. 1)Shore: 75' is required, 52' is proposed, and 2) Side: 20' is required, 5' is proposed. Section 186.10, Block 1, Lot 14, Zone RM1.3. Property Location: 28 Huddle Lane. Subject to WCPB & APA review.

Tom Jarrett stated that this is a fairly large waterfront project proposed. The proposal was created because the applicants wished to dredge to remove muck and clay from the front of the property. However, included in that the applicants are submitting an application for waterfront improvements. He stated that they have a permit pending in front of the DEC and APA for removing some of the lawn in front of the house and installing a berm to trap stormwater from the lawn and there is significant plantings proposed on the berm. As part of the project they are planning access along the south side of the house between the house and property line. There is a well and a propane tank in that area now. There are also significant plantings along that property line as well. They would also like to place a dry laid stone wall close to the property line in lieu of a flat landscape wall. The steeper wall, which constitutes a structure would better support that access way for trucks and contain stormwater on the property and allow for room for plantings outside the area of the well and propane tank.

Bill Pfau asked if this project would be back filled. Tom Jarrett replied yes at approximately the same grade as exists now. Bill Pfau stated that the retaining wall will not be visible to the applicants but could be visible to the neighbors. Tom Jarrett stated that he feels that the vegetation between the homes would probably buffer that. Bill Pfau asked what height the wall will be. Tom Jarrett replied at a maximum of 3'; then intend to use large rock which should result in 2-3 courses high. He stated that the wall will start 50' from the lake and will

go back from there. Greg Smith stated that there is a lot of growth in between the homes and does not feel that it will be a visibility issue.

Greg Smith asked for some clarification of the wall along the lake front. Tom Jarrett explained that it is a berm that will be built up approximately 18" to trap the water from the lawn. This berm will have perennials and shrubs plantings. He stated that it would be considered more of a landscape berm rather than a wall. Pam Kenyon agreed and stated that they did not classify it as a wall.

Bill Pfau asked if the dredging has been completed. Tom Jarrett replied no they have an application pending. He stated that DEC has met with them on-site and they have offered their suggestions on how to improve their application which is what was submitted to the ZBA for review.

Counsel read the following letters:

Kathy Bozony, Lake George Waterkeeper, made the following comments:

- 1) Regarding the use of limestone for the retaining wall, she feels could create an issue with calcium leaching into the lake which could cause more issues with zebra mussels and algae.
- 2) Adding a berm and vegetative would prove to be beneficial to the project. However, she does feel that it should be more substantial. She feels that it will not only increase infiltration but will also deter geese from habituating on this property.
- 3) DEC, Army Corp of Engineers and APA approvals and permits are required for alterations of the shoreline. The APA will require the property owner to mitigate and remove the cause for the perceived need to dredge. A mucky lake bottom due to algae and plants could be reduced by not allowing nutrients from entering the lake. This would entail curbing the use of pesticides and fertilizers for the lawn as well as increased vegetative buffers along the shore.

Email from Suzanne Brett, neighbor, who voiced her concern about the water quality in this area. She suggests not allowing the use of the limestone retaining wall and increasing the vegetative buffer along the shore.

With regard to the use of limestone and how it might be detrimental to the lake, Kam Hoopes commented that the natural ledge at Fish Point, Cotton Point, Homer Point and Long Island all have limestone ledges and bottoms. He stated that if the limestone was leaching calcium they would have zebra mussels and algae all over the place which is not the case.

David Ebeoglu, southern neighbor, stated that he is pleased to see all of the parties involved with this project. He is pleased that Tom Jarrett is working on the project because he feels that he has more of a concern for the lake than he does. He stated that initially he was very concerned over the project but since having heard the plans and suggestions from the Lake George Waterkeeper and Suzanne Brett he feels more at ease that the situation is being addressed.

David Ebeoglu gave a history of the parcel. He stated that initially that this entire area was ripped along the shore. Since the Herrmans have owned the property they have made several changes to the waterfront which have continued to create problems along the waterfront including the continued issue with the geese. He stated that the effort that the applicant is showing with this proposal should be applauded. However, he does feel that the Lake George

Waterkeeper should be involved with planning for the vegetative buffer so that they achieve the goal of improving the water quality of the lake.

Kathy Bozony, Lake George Waterkeeper, stated that her comments about limestone may be valid. She stated that it may leach, but they are not sure where it is coming from. She stated that the Lake George limestone may be just fine and the lake can handle it. She is just suggesting that there are other stones that could be used that don't have calcium in them. Kathy Bozony provided a sample of the algae blooms around the docks in this bay. She stated that there are massive amounts of the algae in this area. She stated that the geese have enjoyed using the property because it had two open areas of the lawn. With regard to what is potentially being dredged, is the fact that if you use fertilizers to feed the algae and then you use pesticides and kill all the aquatic invertebrates and fish everything else that feeds on the algae and plants they end up with dead and decaying organic matter that piles up year after year. This is what has happened in this area. She stated that she has met with some landscaping companies who indicate that all of the pesticides are extremely toxic to invertebrates, fish and estuary green life. She stated that they are really doing damage to the lake by allowing the use of pesticides and fertilizers on the shoreline. Kam Hoopes stated that another nutrient for algae and plant growth is goose droppings and that is why they have such a high concentration in Huddle Bay and Bolton Bay. Kathy Bozony stated that is why she is encouraging a better vegetative buffer.

Tom Jarrett stated that he does not oppose any of the comments that have been stated or read. However, he feels that they have to admit that what they are proposing is much better than what is there. He stated that he is willing to work with the Lake George Waterkeeper to find something that is more amenable to the owners but also to preventing geese migration to this property and nutrient run-off to the lake. Greg Smith stated that he would think the homeowners would want to do this as well. Tom Jarrett replied that they do but they do not totally understand the gravity of the issue. He stated that they are making great strides in that direction and the homeowners are starting to understand the need to change their habits.

Kam Hoopes stated that they are only dealing with the retaining wall in the setback. He asked if this would be a red flag to the APA. Tom Jarrett replied he did not think so because it is a moderate intensity zone and they are 50' from the lake. Jeff Anthony stated that since they are not expanding their non-conforming use within the setback that they would not be required to review practical difficulty and hardship. Counsel stated that they would not apply. Bill Pfau stated that practical difficulty would be pretty easy to define with this project. The improvements will greatly improve the lake. Kam Hoopes stated that the dredging would be the part that would be improving the difficult situation. Tom Jarrett stated that the applicants do not want to do this again nor do they want to pass this issue along to their grandchildren.

RESOLUTION

The Zoning Board of Appeals received an application from Hakan and Joan Herrmans (V09-19) 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; these are general setback issues
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, this should be an improvement to both the applicant and neighbors.
- 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 seems to be going a long way to improving the situation.
- 5) The alleged difficulty is self-created, but it is also being self-solved.

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

4) CONSERVATION PARK BUILDING COMMITTEE. Represented by committee members Kathy Simmes and Kevin Kershaw. Seeks input from the ZBA and PB as it pertains to the demolition and reconstruction of the Conservation Park Building. Section 171.00, Block 1, Lot 9, Zone LC25. Property Location: 56 Edgecomb Pond Road.

Kathy Simmes stated that this building was acquired back in 1999. They have had a committee that has worked diligently trying to get to be a nice usable building, which has not happened. She stated that they have had a kitchen donated to them and they have remodeled the bathrooms as well. However, renovating the rest of the building has laid dormant for a while. She stated that the building gets a lot of use and feels that once this project is complete it will be used even more.

Kathy Simmes stated that this is an APA Class B Regional Project which falls under the jurisdiction of the Town. She stated that they have gone before the TB who are in favor of moving forward with this.

Kevin Kershaw stated that over the years they have renovated and repaired the existing Conservation Club building. However, they have reached the point where further repair/renovation is too costly and it does not meet the code and will never meet the code. The

proposal is to build a new building that will accommodate 86 people. The proposed building will remain in the exact footprint of the existing building with the exception of a 3' covered porch on the front and a ground level patio on the south side which would increase the possible capacity to 150 people. He stated that they are not encroaching on the side setbacks. The existing front setback is 32' 9 3/8" and the new setback will be 40' 11". The height of the building will not be changed. The overall length of the structure is 62' and depth is 34'.

There will be 2 handicapped parking spaces in the front of the building. The bathrooms, walkways and entries will also all meet ADA standards. There will be a 3' covered entrance with handicapped access.

Kevin Kershaw stated that they are hoping to re-use the existing cabinetry and appliances from the kitchen, since they are in great condition. However the amount re-used will depend on the configuration. Supervisor Simmes stated that they will also try to re-use the bathroom fixtures and stalls as well. Kevin Kershaw stated that they intend to save as much as they can from the existing building for the new building.

The patio will allow increased use to the outdoors and facility. The patio will be built up with 2 retaining walls to build it up to ground level. The doors leading out onto the patio will be double doors which will allow for open air but also provide for an additional fire exit.

Kevin Kershaw stated that they have not decided what siding they want to use for the building. However, they are trying to make this as maintenance as much as possible. They also intend to use earth tone colors.

Kam Hoopes asked if they will be adding a basement. Kevin Kershaw replied yes, but the old building had one as well. Kam Hoopes stated that even if the applicant needed a variance from them, it would fall under the category of replacement in kind, which they look favorably on. Jeff Anthony agreed. He stated that he does not see anything that would trigger a variance from them. It is keeping in the same footprint, moving the back from the road and same height as the existing building. Jeff Anthony asked if the patio would trigger a variance due to the retaining walls. Pam Kenyon replied that they normally they would need a variance for setbacks because they are adding to a non-conforming structure. However since it is owned by the Town, it does not require a variance but they came before the Boards out of courtesy. There was some discussion of transferring the property into a not-for-profit entity to allow for more flexibility in construction. However, it was decided that it would be more beneficial at this time to leave the building under Town ownership. Counsel agreed especially for zoning purposes.

Bill Pfau asked if this project requires a referendum to extend money to this project. Kathy Simmes replied no.

Jeff Anthony asked if this project would also be exempt from Site Plan Review by the PB. Counsel replied that they will required to comply with stormwater but not Site Plan. Jeff Anthony asked who does the SEQR process. Pam Kenyon replied the TB.

Bill Pfau asked who will approve the uses of the building. Kathy Simmes replied that she does. The Board agreed that the project is a great improvement and will be an asset to the community.

The meeting was adjourned at 7:55pm.

Minutes respectfully submitted by Kristen MacEwan.