

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday March 17, 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, Jeff Anthony, Kam Hoopes , John Michaels, David Ray, Zoning Administrator Pamela Kenyon and Counsel Michael Muller.

Absent: Tony DePace

Meeting was called to order at 6:33 p.m.

Greg Smith asked if there were any changes or corrections to the February 24, 2009 minutes:

Motion by John Michaels to accept the February 24, 2009 minutes as written. **Seconded by David Ray.** Jeff Anthony and Kam Hoopes abstained. **All Others in Favor. Motion Carried.**

Note: Item #2 of the agenda was heard first.

1) V09-04 WACKS, DANIEL. In accordance with Section 200-38B, seeks area variance for a boathouse width greater than 30'. 30' is allowed, approximately 36' exists. Section 156.16, Block 1, Lot 15, Zone RCM1.3. Property Location: Timberlane Road and known as Timberlane Cottages. Subject to WCPB and APA review.

Daniel Wacks provided pictures of the current boathouse and the plan that was approved previously in 2002. He stated that the approval was for a 30' wide boathouse. However, he added an additional 6' past the original boundary that extends towards the shoreline. He stated that the additional 6' were added to 1) provide additional bracing to the structure, 2) provide coverage over the dock, from the sun and rain and 3) incorporate the storage closets so the guests can keep their belongings at the dock. He stated that the additional area is not seen from the lake. He indicated with a picture that this part of the structure can only be viewed when looking from the north to the south. He stated that he has not changed the natural embankment of the property which also provides additional shielding when viewed from the south. He stated that you enter the boathouse from the north parallel to the shoreline. He provided pictures of the area before the boathouse was built which included the dock and a storage shed, which was enlarged but incorporated into the structure. He also provided a picture of the original boathouse that existed on the property that came down in the 1970's. He noted that he tried to mimic the roof contours.

John Michaels asked how the 6' were added when he was only approved for 30' back in 2002. Daniel Wacks replied that as the boathouse was being built he realized that it needed bracing because it was susceptible to movement in the east/west direction. He originally added brackets at all of the joints, but it still had some movement so they decided that if brought it over 6' and reconstructed the storage closets into a more substantial structure they could

anchor the rafters to it for wind bracing. He stated that they also realized by doing this there were added benefits of supplying more storage space and a place to duck out of the sun or rain. John Michaels asked who was the engineer or contractor. Daniel Wacks replied that he was. John Michaels asked if he thought about covering the dock when he first was building it. Daniel Wacks replied no. Greg Smith asked if he ever thought to return to the Town for permission to add the 6'. Daniel Wacks replied no, it got lost when a few family issues with his son came up and when they finally got started on the boathouse, they got wiped out in 2005 when the dam broke. Greg Smith asked when the boathouse was completed. Daniel Wacks replied a year ago.

John Michaels asked what is the requirement or language for posting signs for these variances on applicant's properties. Pam Kenyon replied that they ask the applicants to post the signs but it is not required. John Michaels asked Daniel Wacks if he posted any signs. Daniel Wacks replied no.

William Pfau stated that the maximum width allowed is 30' based on 135' of shore frontage. He asked if the 30' refers to the width of boathouse along the shoreline. Pam Kenyon replied that she had been discussing this with Kam Hoopes because at one point the ZBA had an interpretation that they would measure the width of the boathouse where you enter the boathouse. She stated that they enter this boathouse from the north which is different from most boathouses. She stated that it is over 30' along the shoreline, so either way it is over the allowed width. William Pfau stated that if they choose to measure the boathouse the way they did then the applicant could build this boathouse as long as he wanted to along the shoreline as long as he meets setbacks. Pam Kenyon stated that the code states that the width shall be parallel to the shoreline or as viewed from the lake. Kam Hoopes stated that he brought this up because they measure the length of the shoreline and limit the width of the boathouse as it is relative to the lake view of the shoreline. William Pfau stated that they are not really doing that by interpreting it the other way. Kam Hoopes stated that from now on they will need to evaluate it differently when dealing with boathouses that have entrances parallel to the shoreline. He stated under the circumstances this is replacement of what was there before and he thinks that they should grant him the variance for the 38' measurement and not the 36' measurement for the entrance and thereby re-setting a precedent because the whole idea is to limit the amount of shoreline taken up. Greg Smith agreed.

Kam Hoopes stated that the applicant is going to have to go back to the LGPC because this is not the plan that they approved either. Jeff Anthony stated that they will also have to go back to the APA. William Pfau asked if the LGPC had their own standards for the size of the structure. Pam Kenyon replied that the LGPC bases it on square footage.

Kam Hoopes stated that he does not have a problem with the additional shed roof going off the back side because it is an improvement to the boathouse and it is away from the public view. He stated that the applicant has also already paid the \$150.00 civil fee. John Michaels stated that he does not like that the applicant is asking for a variance after it has already been done. He stated that he also has a problem with the fact that the applicant did not post signs at the property so that the neighbors and Board members could properly view it, especially since this is a request for relief after it has already been done. He stated that he had a very hard time finding this site because there are 11 "No Trespassing" signs but nothing posted for this.

Kam Hoopes asked if this replaces a boathouse that was destroyed. Daniel Wacks replied no but it does replace a boathouse that once was there prior to him owning the property. He stated that he only provided photos of that old boathouse to show the layout because they couldn't turn it in the other direction because the existing configuration of the dock. Kam Hoopes stated that the original plan that he brought to the ZBA and the LGPC in 2002 was 38' in length along the shoreline which has not changed.

William Pfau stated that he understands John Michaels' concern, because the "after the facts" are always difficult to deal with, but usually it is when they find the project itself offensive not the fact that they have added to the project. John Michaels stated that he does not want to require the applicant to remove the additional 6', all he is asking is that they table the application a month so that he and others can get down there to see the site and make an appropriate inspection. He stated that he is sure that it is fine based on the pictures he provided, but he would like to see the site especially since the applicant is seeking relief after the project has already been done. Daniel Wacks apologized for not posting any signs for the site location. John Michaels stated that he feels that these types of applications should be held to a higher standard and that a \$150 fine can't be the standard because why would people come back if that is all it will cost to stray from the original plan. He stated that he would have liked to have had the opportunity to view the project and he doesn't feel that he was.

William Pfau asked if the TB decided the amount of the fine. Pam Kenyon replied no the Zoning Office issued the fine. Counsel explained that if all the applicant needs at the time they are going to correct the problem is the certificate of compliance then the fee would be \$150.00. He stated that if the applicant is not granted the variance he will have a lot of problems, but if he gets the variance then he gets the certificate of compliance and the \$150 civil penalty. William Pfau asked if that would be true regardless of how big the violation is. Counsel replied yes because the ZBA has the authority to break the code and with permission this would be in compliance. Kam Hoopes stated that the TB sets a fine/recommendation based on the nature of the violation. Counsel stated that he and Pam try to their best to communicate with Supervisor Simmes to come to a solution especially on complex issues. However he feels that this could be a very simplified resolution if the applicant has the benefit of the variance. Daniel Wacks stated that he submitted the plan with what he thought was for the correct variance at the onset of it but he just got interrupted by several circumstances.

Jeff Anthony asked why the LGPC has plans that show the boathouse to be 27'9" and not 30'. Pam Kenyon replied that she did not know. Kam Hoopes stated that is why the LGPC is going to want to see this again. Daniel Wacks stated that 2 people from the LGPC came to the site last week. They had no issue with the boathouse proper and since the addition is over the shoreline he feels that there was some ambiguity whether it even needed a permit from them for the structure that is on shore. These storage sheds went back to where the original ones were.

Kam Hoopes asked if he built this boathouse on the original cribs. Daniel Wacks replied yes and stated that if he were to turn the boathouse it would stick out even more noticeably. Kam Hoopes stated that it makes more sense to go with the docks that were there than to move the cribs and re-align the dock with the shore. He stated that this is an example of why the ZBA exists. For instance, if it is in deep water, then the entrance would have to go parallel with the shore and they are there to grant that variance.

There were no comments from the public in attendance.

RESOLUTION:

The Zoning Board of Appeals received an application from Daniel Wacks (V09-04) 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; noting that this area variance has already been granted I will try to keep my remarks for approval to the ways in which this finished boathouse differs from that which this finished boathouse differs from that which was previously approved. The critical condition is the width as it is seen from the lake. This dimension has not changed.

2) There will be no undesirable change in the neighborhood character or to nearby properties, again, the added square footage is towards the land and visible primarily from the applicants property only.

3) The request is not substantial; the six foot shed roof expansion has been shown to be an improvement to the structures usefulness as well as its stability. The addition is a small proportion of overall square footage, and largely on land.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; nothing has been shown to be such a threat.

5) The alleged difficulty is not self-created, this is a self-created type problem only if you think boathouses are solely a luxury item and not a wholly reasonable addition to a dock. The case has been made here sufficiently to refute self creation.

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. John Michaels opposed. All Others in Favor. Motion Carried.

2) V09-05 LYNCH, STEVEN. Represented by Bruce Mowery. To demolish and rebuild cottage, seeks area variance for deficient side yard setback. 20' is required, 8.4' is proposed. Section 186.15, Block 1, lot 30, Zone RM1.3. Property Location: 177 Homer Point Road. Subject to WCPB review.

Bruce Mowery stated that this project involves an existing guest cottage that is located on the property that has fallen into disrepair. He indicated the location of the project site on the plan. He stated that it is a 2 story structure that is currently set up as a two family dwelling, with 2 separate kitchens, floors and entrances. Currently the stairs go up to the second floor on the southeastern side, there is a porch/deck in the front as well as on the southeastern side. The applicant is hoping to begin the project in the spring. Bruce Mowery indicated that they will be adding a screened in porch on the lower level with a deck on the upper level. He stated that the applicant is seeking to increase the amount of space available on his property to allow for family and guests to stay.

Bruce Mowery stated that this is a 3 bedroom structure and it will remain that way, but it will be changed to a single family dwelling. He stated that there are several things that will be addressed with this project: 1) that there will be an engineered stormwater management system installed for the entire project and 2) the existing septic system will be replaced. He indicated where the proposed new septic would be installed. He stated that once the snow melts they will be able to test the area and provide an engineered septic system design. He stated that both the stormwater and septic systems could be contingent upon approval.

Bruce Mowery stated that the LG Waterkeeper submitted a letter in which they were concerned about the location of the septic system and whether there is enough property to install a new system without a variance. He stated that the applicant also owns 3.5 acres immediately adjoining the property to the back, so if the proposed area does not have enough room to accommodate a new septic system they can work within additional parameters by an easement or lot line adjustment with his other property. Kam Hoopes asked what the setback is for the septic system. Pam Kenyon replied 10' from the property line. Kam Hoopes stated that the applicant has plenty of room between the structure and the property line and should be able to accommodate the new system.

Bruce Mowery stated that the applicant decided not to move the structure from its current location to meet the setback because it has less visual impact from the shoreline or neighboring properties in its current location. He stated that the neighbor directly behind the applicant, who would be most affected, has submitted a letter in which he supports keeping the structure in the same location.

William Pfau asked how many square feet is being added to the structure. Bruce Mowery replied that the living space will remain the same and all they are adding is the porch. William

Pfau asked how large the additional porch will be. Bruce Mowery replied that there is a 16' x 16' deck there now and the new deck with covered porch will be 20' x 20'. Kam Hoopes stated that it would be only a 4' x 4' difference from what is there now.

Jeff Anthony stated that Irving Metzger wrote a letter in opposition to this project and asked where his property was located in relation to this project. Bruce Mowery replied that he is across the bay and he cannot even see this structure from his house and can only see it from his dock. He stated that apparently there was some history involved because Dr. Lynch had some opposition to a dock that Mr. Metzger was building a few months ago.

Counsel read the following letters:

- 1) Irving Metzger in opposition to the project.
- 2) Brad Irvine in support of the project.
- 3) LG Waterkeeper Kathy Bozony requesting a) that stormwater management/shoreline buffers be addressed, b) a special use permit be required because it is an accessory structure larger than 1,500 sq. ft. and c) a septic variance be required.

John Michaels stated that the LG Waterkeeper's letter states that this is a 4 bedroom structure. Bruce Mowery replied that it is only 3 bedrooms and further explained the layout on the plan provided.

Kam Hoopes stated that since this a rebuild of an existing single family dwelling it "grandfathered" and only needs a variance for a setback. Pam Kenyon replied yes. He asked it would change the situation if they tried to move the building or would it still be an agenda item that it is now. Pam Kenyon replied yes. Kam Hoopes stated that the applicant could move it without losing their "grandfathered" right. Pam Kenyon replied that they would not lose their grandfathered right because on the tax records it is a single family home. Bruce Mowery stated that Irving Metzger stated that he would like the building moved off the property line, but if they were to do that it would be more in his sight than where it is located now. Kam Hoopes stated that the only neighbor he was concerned with was Paul Hummel because he has a pool house behind there but it is on high ground and he doesn't feel that this will affect him in the least. Bruce Mowery stated that the applicant has taken the proposed plans to Mr. Hummel and he has no problems with it either.

Pam Kenyon asked Bruce Mowery to discuss the height difference. Bruce Mowery stated that the proposed structure will be 4.5' higher than the existing structure which will bring it to approximately 29' total.

There were no comments from the public in attendance.

Pam Kenyon stated that there was no WC Impact.

RESOLUTION:

The Zoning Board of Appeals received an application from Steven Lynch (C09-05) 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; he has a substandard setback from a property line but the other options do not seem to be an improvement for anybody's sake.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a building that exists now which is in terrible condition, this will be an improvement on that existing building.

3) The request is not substantial; it is a pre-existing substandard setback situation.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the applicant has agreed to improve the stormwater run-off situation 100% from what is existing.

5) The alleged difficulty is not self-created, this building has been there for quite some time and needs to be brought up to the 21st century.

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 new leach field and stormwater management system will be incorporated into this project. **All in Favor. Motion Carried.**

3) Memo from Pam Kenyon- regarding Variance/Septic

Pam Kenyon read the following memo that was provided to each ZBA member:

“On January 30, 2009 the ZBA decided that due to new APJA 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 is granted.

I have an applicant who is applying for a variance to allow a front entry to remain. A shoreline variance to alter a non-conforming structure will be required. Does the applicant have to address his septic system? We never really discussed the thresholds for which an applicant has to address the septic.

We don't have to discuss this matter tonight. However, we should have some specifics so that they can be incorporated in the new zoning ordinance."

Greg Smith stated that he feels that anyone who needs a shoreline variance should have to go by this new regulation no matter what kind of variance they want. Kam Hoopes stated that he thought that they approved in theory that in certain circumstances, they agreed that septic should be found and investigated. However, do they want to do this to applicants that want to build a fence or stoop onto a front door. Counsel stated that if the criteria is for habitable space then a fence and/or porch will not fall under this. The Board agreed that it should be for habitable space.

William Pfau stated that he was not present at the January meeting and asked if it was done under a motion and vote. Pam Kenyon replied that there was no motion but it was just part of the discussion they had. Kam Hoopes stated that it has to do with the APA and their new regulations. William Pfau stated that he does not understand what the ZBA had to do with this. Counsel replied that this doesn't start with us, but it seemingly finishes with us. The APA now has a regulation that when an applicant seeks a variance on any structure associated with the shoreline, they have clarified that is something that will require a shoreline variance in all cases. He stated that they no longer have the argument of pre-existing non-conforming structure available. He stated that this now puts the ZBA in the position of needing to know what the existing condition/function of the existing septic system that they don't propose to change. Kam Hoopes stated that the APA does want septic required. Pam Kenyon agreed. Counsel stated that it is getting them into a mess because he wants the TB to have its jurisdiction over the septic variances. Kam Hoopes stated that all they will be requesting is an engineer's study of the system to determine the condition. John Michaels stated that if they grant the variance and they don't ask for the septic information they would not be doing any service to the applicant because they would have to come back. Pam Kenyon agreed and stated that it will be a basis of denial from the APA if we don't follow this new regulation. Kam Hoopes stated that none of them are opposed to reviewing the septic systems. William Pfau agreed but feels that the ZBA is taking on a new function here. Kam Hoopes replied no, it will just be part of the application process. Greg Smith stated that they will require a certified septic system before a variance can be granted. Pam Kenyon stated that when the APA adopted their new rules, one of the rules was that for the APA to grant a variance the applicant has to address the septic system to make sure it is working properly and is adequately sized. She stated that she asked the APA if the ZBA does not address the septic would it be a reason for denial and she got no answer. She feels that if they do not do this, they will not be doing the applicant any favors and the variance could be reversed. Kam Hoopes stated that he just wanted clarification because this does not affect just lake shoreline properties but also those along qualified streams.

The meeting was adjourned at 7:31pm.

Minutes respectfully submitted by Kristen MacEwan.