

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday – March 16, 2010
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: Jason Saris, William Pfau, David Ray, John Michaels, Kam Hoopes, Pamela Kenyon and Counsel Michael Muller

Absent: Jeff Anthony and Tony DePace

The meeting was called to order at 6:37pm.

Jason Saris asked if there were any changes or corrections to the February 23, 2010 minutes.

RESOLUTION:

Motion by John Michaels to accept the February 23, 2010 minutes as written. **Seconded** by Bill Pfau. **All in Favor. Motion Carried.**

1) V09-55 SISCA, FRANCIS. Represented by John Shafer. To alter non-conforming structure, specifically to construct a second story addition, porch roof and dormer, seeks area variance for 1) Deficient setbacks. a) Front: 50' is required, approximately 2' is proposed, and b) Side: 30' is required, 25.5' is proposed on the north side; and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 157.05, Block 1, Lot 4, Zone RLC3. Property Location: 39 Horicon Lane. Subject to WCPB and APA review. *Note: This item was tabled at the November 2009 meeting pending additional information.*

John Shafer stated that he would be presenting the additional information requested at the November 2009 meeting and asked the ZBA to approve their request based on the additional information.

John Shafer stated that the Board requested to have confirmation that the stormwater that had been installed was functioning properly as attested to by a professional engineer. He stated that he provided a letter from Spectra Environmental Engineering Group dated February 11, 2010 stating such. John Michaels stated that there was also a question regarding the septic. John Shafer stated that he thought they took care of that at the November 2009 meeting and this was the only additional information needed. John Michaels stated that Spectra also wrote about the septic. Jason Saris stated that the application was tabled in November, pending information from a licensed professional engineer regarding stormwater and septic. John Michaels stated that the letter did address both items he just felt that both should be mentioned for the record. John Shafer stated that he provided a letter at the November meeting in which Spectra wrote a letter approving the additional space based on the flow rate and design that was done at the

original installation. John Michaels stated that they have that letter but it was not received before the November meeting. Counsel Muller read the letter from Spectra Environmental Group regarding the November 2009 request for additional information on the waste water system. Jason Saris stated that Pam Kenyon noted on his copy that the septic system will require a 1,250 gallon tank. Bill Pfau asked if these plans were reviewed by Tom Nace. Pam Kenyon replied no she reviewed the letter.

John Michaels stated that he feels that the applicant has provided adequate information to their request. Bill Pfau agreed.

Jason Saris asked if there were any comments from the public in attendance.

Kathy Bozony, Lake George Waterkeeper, stated that she submitted comments regarding the on-site waste water treatment system but was unaware of the new stormwater report.

With regard to stormwater, Kathy Bozony stated water quality is impacted by stormwater run-off. The alteration of a structure located on a steep parcel with lawn to the lake should be conditioned with appropriate stormwater management and require the planting of a vegetated shoreline buffer to infiltrate stormwater run-off flowing by the property. The stormwater reports submitted by Spectra dated February 11, 2010 concluded that the added living space will have no bearing on stormwater flows and the driveway grading, catch basin and the stone filled pit was operating properly. She stated that the stormwater management added to the site in 2006 may not be adequate for the proposal. Kathy Bozony feels that a renovation of a single family dwelling on shoreline property should require a stormwater management plan and be brought into compliance with the existing code in order to reduce the negative impacts associated with construction within close proximity of the lake.

Kathy Bozony stated that the February 11, 2010 Spectra stormwater report states that the property is steep and slopes down to the lake and has no substantial vegetation between the house and lake and consists of grass. She suggested using more natural vegetation with different heights of native plants, trees and shrubs. She also suggested a restriction on the use of pesticides and fertilizer on this property as a condition of approval.

Kathy Bozony stated that a site plan review should be required to alter a non-conforming structure in order to thoroughly review the on-site waste water treatment system, stormwater management plan and native species shoreline buffering plan.

Jason Saris asked if there was any more correspondence regarding this matter. Counsel asked Kathy Bozony if she would like her letter read. Kathy Bozony replied no.

Bill Pfau asked if minor stormwater was part of the application. Pam Kenyon asked if they would be adding more than 1,000 sq. ft of new impervious area. John Shafer replied that they are using the existing footprint of the home, there will be no excavation or disturbance of existing soils and the addition is less than 1,000 sq. ft of roof. Pam Kenyon replied that the applicant would not have to provide minor stormwater. Bill Pfau

asked if it would be appropriate to add minor stormwater to the project. Jason Saris stated that if he felt it would be appropriate, then they could add that but he does not see any indication of an existing problem. Kam Hoopes stated that he remembers that they had considered adding this in November. John Michaels stated that he is happy with the plan because they were not expanding the footprint.

RESOLUTION

The Zoning Board of Appeals received an application from Francis Sisca (V09-55) 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 applicants have provided the necessary information that was requested by the ZBA with regard to septic and stormwater.

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 house itself does not meet setbacks.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is a second story addition to a home, with a dormer and a porch roof. There are no objections from the neighbors near this property.

3) The request is not substantial; the minimal relief is being sought. The applicants are using the exact same footprint or confined within it.

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 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 Bill 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) V10-05 KOSAKOWSKI, KEVIN & CAROLE. For the construction of a proposed single-family dwelling, seek area variance for deficient setbacks. 1) Front: 50' is required, a) 14.5' is proposed from the edge of the right-of-way for Millstone Drive, and b) 45' is proposed from Three Oaks Drive, and 2) Sides: 30' is required, a) 26' is proposed on the northwest side, and b) 17.5' is proposed on the southeast. Section 185.20, Block 1, Lot 25, Zone RCL3. Property location: Three Oaks Drive. Default approval from the WCPB. See V08-17 granted on May 19, 2008 for previous approvals. *Note: This item was tabled at the February 2010 meeting as no one was present to present the application.*

Kevin Kosakowski stated that they had a previous variance granted (V08-17) for this same site plan. However this is a new variance request. They found that they did not like the original layout of the house and decided to hire a new architect to design a new layout. Everything on the site plan has remained the same, including the number of bedrooms, but they have reduced it by a few square feet.

Kam Hoopes asked if they get approval tonight when they would start construction. Kevin Kosakowski replied immediately because they have the funding from the bank. Kam Hoopes asked why they would need a new variance if the old variance was still in effect until April. Pam Kenyon replied that she felt that the old variance was null and void since the proposal changed. Bill Pfau asked if the applicant's applied for the same request. Pam Kenyon replied yes within a couple of feet. Jason Saris stated that the previous structure called for construction of a 54' x 26' single family dwelling with setbacks proposed front 14.5' from ROW Millstone Drive, 48' from Three Oaks Drive and side setbacks of 17.5' He stated that the requests are very similar but slightly larger request.

Kam Hoopes stated that he recalls seeing plans for this lot from previous owners. He stated that he does not see anything alarming in this or the previous plans.

Jason Saris asked if there were any comments from the public in attendance. Counsel Muller read an email from Nancy Hahn-Morrie and James Hahn in opposition to the proposal.

Bill Pfau stated that this is a very unique property because it is backed in between 2 roads with 50' setbacks from each. Jason Saris stated that it seems that variances are somewhat representative of the character of the neighborhood down there. Kam Hoopes agreed. He also commented that the ZBA does not handle the septic issues that were raised in Nancy Hahn-Morrie's letter.

RESOLUTION

The Zoning Board of Appeals received an application from Kevin and Carole Kosakowski (V10-05) 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 there was default approval from the Warren County Planning Board;

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, it has been pointed out that all of the properties share a similar scope.
- 3) The request is not substantial; taking into account the various other properties struggling with the same limitations.
- 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 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.**

3) V10-06 COSTAS, BARBARA. Represented by Atty. Michael O'Connor. To alter nonconforming structures, specifically to relocate the boathouse stairs, realign and repair existing 10'x 22' patio/ 6'x 6' stairs/retaining wall and install a 175' seawall, seeks area variance for 1) Deficient setbacks, a) Shorefront: 75' is required, 0' is proposed, and b) Side: 20' is required, 0' is proposed on both sides; and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.19, Block 1, Lot 3, Zone RM1.3. Property Location: 112 Homer Point Road. Subject to WCPB and APA review.

Mike O'Connor introduced John Mason who is the contractor for the project. He stated that they are requesting 3 different variances. The first variance is to move stairs on the boathouse deck from the side to the back. He stated that the new stairs will have a platform extension from the deck to create a space for people to walk underneath to get to

the side of the boathouse. He stated that the railing will match the railings on the house. The movement of the stairs should improve the view shed of the neighbor to the south.

Mike O'Connor stated that the second variance involves the existing patio which is on the back of the boathouse. He stated that the patio is not a manufactured shape and they would like to reconfigure it. He stated that it is probably slightly smaller than the existing patio and one step above the deck of the boathouse. He provided further details regarding the patio.

Mike O'Connor stated that the third item on the application is to build a sea wall. He stated that they understand that there is more than one agency that is involved with that. He stated that in early February they sent a letter to DEC who seems to be the controlling agency with regard to the sea wall. The applicants had a permit for the sea wall shown on the plan that was issued in 1998 and renewed through 2000 or 2001. He stated that his letter of February 2, 2010 was sent to the DEC requesting to renew the permit. He stated that they have not heard from the DEC but understand that Mark Migliori who issues permits was on a brief leave of absence but has since returned but they have not had the opportunity to meet or talk with him.

Mike O'Connor stated that the sea wall is 45.25' from the south line of the property to south line of the dock structure. There is no wall under the dock structure. To the north of the dock to the north line there is an 84.5' of seawall, 9.8' of that is an existing staircase which they are going to realign. However, this will all need to be worked out with the DEC.

Mike O'Connor stated that this did go before the WC PB on March 10, 2010 and they determined that there was no WC Impact. However, they did recommend consulting with Dave Wick of WC Soil and Water. He stated that they did submit information to Dave Wick regarding the sea wall and he has indicated that this is a DEC issue and was not sure why the County referred them to him.

John Michaels asked who issued the permit for the seawall. John Mason replied that DEC is the one that issues the permit.

Mike O'Connor stated that the shoreline is eroded every year and they are hoping that this will remedy the situation. He stated that currently they have the area rip-rapped but every year the front part of the lawn sifts down through the rip-rap. John Michaels stated that he has a hard time understanding that since the grade in this area is relatively flat. Mike O'Connor stated that it does happen every year. He stated that since they have to go before the DEC for their permit he suggested that they table the part of the application that has to do with the seawall.

Kam Hoopes stated that they could separate that issue out. However, he stated that he is less interested in seeing seawalls on Lake George because it is a harsh demarcation between the land and water. He stated that he understands the applicant's desire to do something to prevent the erosion. Kam Hoopes stated that he spoke with Jimmy (?)

about another possible solution which is to move the rip rap back against the seawall once it is built and make it flush with the top of the seawall. This would alleviate all of the questions and concerns that he would have. John Mason stated that the applicant would actually prefer to have the rip rap pulled back to help with the aesthetics of the property from the lake.

Jason Saris asked if the Board would be willing to segment the seawall from the project. John Michaels stated that he liked that idea. Kam Hoopes agreed. Jason Saris stated that he feels that it is a good idea given the fact that they will still have to deal with all of the other agencies and he would rather have their input. Kam Hoopes stated that the APA will definitely be involved in this process as well. Mike O'Connor stated that they have seen a couple of APA approvals for seawalls and those proposals were not all that dissimilar to what they are proposing. He feels that it is something that could be worked out. Jason Saris asked if they should have a resolution to table the seawall aspect of this project. Counsel Muller replied yes and he would ask that if they did table it that they refer those letters that pertain to that part of the project for another night. The Board agreed.

RESOLUTION

Motion by John Michaels to table the review of the seawall and all aspects pertaining to the seawall for application V10-06 pending further information. **Seconded by** Kam Hoopes. **All in Favor. Motion Carried.**

Jason Saris stated that the review would continue on only the relocation of the boathouse stairs and reconfiguration of the patio. Jason Saris read a portion of the letter from Philip L. Defliese, on behalf of the Marylawn Trust in support of the project.

Kathy Bozony, Lake George Waterkeeper, stated that she wanted to speak regarding the seawall since this was a public hearing and many people were present to discuss this issue. She stated that DEC is required to issue a permit for the construction of a seawall. Contrary to the application a retaining wall is not an erosion prevention measure. Based on DEC recommendations vertical structures such as retaining walls may accelerate erosion of the foreshore “and create unsuitable habitat for many species in front of the structure as a result of increased turbulence and scour from reflected wave energy. Vertical walls reduce the area of littoral and eliminate the important habitat between the aquatic and upland environment. Therefore vertical break walls will only be approved under the most unusual circumstances. In lieu of construction of a seawall in Lake George, it is recommended that the property owner plant a substantial mixed height vegetated buffer on the shore to restore the natural shoreline and prevent stormwater sediment, nutrient and pollutants from eroding into the lake.” She stated that the DEC, APA, as well as other agencies, recommend planting mixed height vegetation to provide better soil stabilization.

Frederick Killeen southern neighbor, stated that he has no objection to the stairway and reconstruction of the patio. He is happy that this project will be completed before this season because this seems to have been a perpetual construction project.

With regard to the LG Waterkeeper's comments about the DEC not allowing seawalls, Mike O'Connor stated that the DEC does not prohibit vertical walls. In fact Mr. DeFliese supplied the Board with its' guidance to the members. He stated that on page 4 it talks about seawalls being permitted on a site by site review. John Michaels stated that what DEC approves or doesn't approve will not necessarily influence this Board.

RESOLUTION

The Zoning Board of Appeals received an application from Barbara Costas (V10-06) 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; it will benefit the property and lake.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, as attested by the letters from the neighbors.
- 3) The request is not substantial; both the patio and stairs are existing.
- 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, although the location of the stairs was in the wrong location to start with is probably self-created but the benefit far out weighs that.

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 John Michaels and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request for the relocation of the

boathouse stairwell and the repair of the 10' x 22' patio as presented. **All in Favor.**
Motion Carried.

Mike O'Connor stated that he will submit new information regarding the seawall in time for the May 2010 meeting. However, if necessary he may request additional time. Jason Saris suggested that the applicants not come back until they are fully prepared.

4) V10-08 GEORGE, LORI & JAMES. To alter nonconforming structure, specifically to demolish and rebuild a portion of existing garage, seek area variance for 1) Deficient setbacks, a) 50' is required from the edge of the right-of-way, 41' is proposed, and b) Side: 20' is required, 12' is proposed; and 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 2, Lot 8, Zone RM1.3. Property Location: 14 Second Street. Subject to WCPB review.

James George stated that they would like to improve and expand their garage which is a pre-existing non-conforming structure. He stated that they would like to expand to provide more storage.

Jason Saris asked if they could create any other means of storage or expand in any other manner to reduce the relief being sought. James George replied no. He stated that they are now permanent residents and they are lacking storage that they are accustomed to. He stated that this is the best location for the expansion and it has the least impact. He stated that they do not have to remove any trees and it does not have any impact on the neighbors.

Bill Pfau asked if the height of the structure will remain the same. James George replied no it will be a little lower. However, the roof pitch may vary slightly.

There were no comments from the public in attendance. There was no Warren County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Lori and James George (V10-08) 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; the existing building does not meet setbacks.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is well screened addition onto an existing garage.
- 3) The request is not substantial; it is the minimum relief necessary.
- 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, being that it is an addition to a pre-existing non-conforming structure.

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

5)V10-09 LYNCH, STEVEN. Represented by the Michaels Group. To demolish and rebuild storage building, seeks area variance for deficient side yard setback. 20' is required, 7.4' is proposed. Section 186.15, Block 1, lot 30, Zone RM1.3. Property Location: 177 Homer Point Road. Subject to WCPB review.

(Note: John Michaels recused himself)

Jonathon Bunker and Tony Lacascio presented the proposals. He stated that they have two variance requests but they choose to separate them. Jonathon Bunker stated that the first request is to demolish an existing storage building and replace it with a storage barn. The owner would like to maintain the existing setback as the existing shed if possible.

Kam Hoopes stated that he understands that there have been some architectural changes to the house from the previous variance and asked how those architectural differences were affected by the proposed storage building. Counsel Muller stated that they could choose to join these applications if the applicant consents. Kam Hoopes asked if the applicant would be interested in marrying the two applications to be heard and reviewed as one. Jonathon Bunker stated that they felt that since the house variance was a modification of an existing variance that it would be more likely to be affected if they put this additional variance request in with it. Kam Hoopes stated that since they are short a few Board members it might be in their best interest. Jonathon Bunker stated that they do not wish to join the applications. He stated that there is not connection between the 2

structures. He stated that there is some landscaping that the homeowner wanted to avoid by pushing the shed in the other direction.

Bill Pfau asked why they could not build this storage building in a more compliant place. Jonathon Bunker replied that the applicant did not want the storage building to be visible from the lake. He did not want a cluttered look from the house or the lake. Bill Pfau asked if the applicant could move it further from the property line and still keep it hidden from the lake. Jonathon Bunker stated that the viewpoint from the lake is almost dead-on the house structure. The house sits in a manner in which the corner blocks the view of the storage building. Kam Hoopes stated that the structure seems to be deep in the shadow of the guest cottage and feels that they could move it out before it would be visible from the house. Jonathon Bunker stated that it would be visible from the lake. Kam Hoopes stated that the view from the lake is essentially parallel with the lot line that they are trying to get away from.

Kam Hoopes stated that one of the major criteria that they deal with for approval is whether or not there are other feasible options. He stated that if the proposed storage shed could be moved out further from the lot line it would be significant concern. Jonathon Bunker stated that the applicant indicated that he was not interested in disturbing some landscaping in this area if at all possible. Kam Hoopes stated that he feels that this would be an issue for him. Bill Pfau agreed that the applicant does seem to be adding a lot of building space inside that sideline setback. Kam Hoopes suggested that the applicant table the application for further consideration of placement of the storage building. Jonathon Bunker stated that he would request that the application be tabled.

RESOLUTION

Motion by Kam Hoopes to table application V10-09 pending further information.

Seconded by Bill Pfau. John Michaels recused himself. **All Others in favor. Motion Carried.**

6) V10-10 LYNCH, STEVEN. Represented by the Michaels Group. To demolish and rebuild cottage, seeks area variance for deficient side yard setback. 20' is required, 7.4' is proposed. Section 186.15, Block 1, lot 30, Zone RM1.3. Property Location: 177 Homer Point Road. Subject to WCPB review. See V09-05 for previous approvals.

Jonathon Bunker stated that they made some modifications to the footprint of the home that was proposed last year. Therefore they are seeking a new variance. They would like to keep the same setback that was originally approved but they do wish to slide the building 10' to the north. Kam Hoopes stated that this seems to be a similar size building replacing the existing building. Jonathon Bunker stated that the difference is approximately 40 sq. ft. Kam Hoopes stated that architecturally it is a fine looking structure and moving it to the north does not really affect any of the variances. Bill Pfau agreed. He stated that there is not an increase in the amount of construction going on inside the setback. Kam Hoopes stated that this is a very awkward position on the neighbor's property, but there is very little invasion of view because they are higher and

it is screened. Jonathon Bunker indicated that those neighbors gave a letter of support at the last variance application.

Jason Saris asked if there were any comments from the public in attendance. George Goodwin stated that he did not have a particular comment on this project. However, he suggested that the applicants put plans up so that the public may view the project. Kam Hoopes stated that they have standards for applications and that applicants are not required to put the plans up on the board. However, all of this information is available for viewing in the Planning Office.

Kathy Bozony, Lake George Waterkeeper, stated that the first issue with the on-site waste water treatment system came up in March 2009 and the variance that was approved at the time was conditioned with a new leach field. The applicants stated at that time that once the snow melts they would be able to test the area and provide an engineered septic system design. She stated that at that meeting the ZBA also discussed the new regulations in which 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. In this case the applicants stated that the existing on-site waste water treatment system would be replaced in an unknown location. She stated that the Waterkeeper urges the Board to uphold those conditions. Specifically that this variance application should not be accepted unless all conditions granted for the previous variance are adequately addressed.

Kathy Bozony stated that Bolton Zoning Code Section 265 states that the ZBA has the authority to impose reasonable conditions as are directly related to the proposed use of the property. Those that would minimize any adverse impact such variances may have on the neighborhood or community. Variances for any new structure on a shoreline parcel should include conditions to plant a shoreline buffer. She stated the Waterkeeper also suggests that a restriction on fertilizer and pesticide use be a condition placed on this property.

Kathy Bozony stated that an accessory structure requires a special use permit if it exceeds 1,500 sq. ft in the RM1.3 zone. Town of Bolton Zoning Section 214, Schedule of Use Regulations, Type II, "Uses permitted by special use permit is required for an accessory structure containing more than 1,500 sq. ft of floor space". Therefore this project will require a special use permit by the PB. Because this project does require a site plan review for special use permit the total number of square feet proposed for the cottage should be included in the variance application. Kathy Bozony stated that the square footage for the cottage has changed from the previous request in March 2009 and no detailed information regarding the current size or amount of rooms was submitted.

Kathy Bozony stated that the Lake George Waterkeeper recommends compliance with the March 2009 variance approvals regarding on-site waste water treatment system and stormwater management, a planting plan for a shoreline buffer and site plan review for special use permit.

Pam Kenyon stated that this structure is not considered an accessory structure. It is considered a single family dwelling and has been for quite some time. Jason Saris asked if the previous conditions have been satisfied. Pam Kenyon stated that the applicants have not applied for any other permits. Jonathon Bunker stated that the applicants are in the process of obtaining the engineering for the septic and stormwater. Bill Pfau asked if these concerns will be addressed during the permitting process. Counsel Muller stated normally if the applicant were to use the existing system they would need to have a review of the system by a licensed professional engineer to be sure that it is functioning properly and that it can handle the expansion. However, this application will have a brand new septic system which will need to meet the new regulations and requirements of the code or will need a variance from the BOH.

Pam Kenyon asked how many bedrooms the new structure would have. Jonathon Bunker replied that there would be 3 bedrooms and an office. Pam Kenyon stated that at the previous approval the applicant indicated that this is a 3 bedroom structure and that it will remain that way. She stated that they would be exempt from having to install a new septic system. Jonathon Bunker agreed but stated that the homeowner wants to install a new septic system.

RESOLUTION

The Zoning Board of Appeals received an application from Steven Lynch (V10-10) 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#6 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 issues.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties,
- 3) The request has some substantial factors to it but they are mitigated by locations and screenings and the previous location of the building.

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, when the property was bought the existing house was already in place and in a run-down condition.

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

7) Zandy Gabriels stated that he was seeking some guidance on a procedural matter. He stated that he would like to make an appeal to the administrative action taken by the Zoning Administrator and Town Clerk on February 12, 2010 regarding the default approval of the Oberer subdivision.

Zandy Gabriels stated that he was not sure of the timing to place an appeal to this action but he was hoping to have his appeal heard.

Counsel Muller stated that this would not be the proper body for an appeal. He stated procedurally the only appeal that can be taken after a final determination is made is an Article 78. However, it is fair comment about whether or not that action of the ZA and Town Clerk by executing the document that he designed to acknowledge the default subdivision is indeed a final determination. What makes it a tough call is that the applicant and the PB agreed that the presentation would be bifurcated and the stormwater is completing lacking. He stated that the subdivision map has been filed at the County Clerk's office. However, the map does state that it is incomplete and that it is subject to Chapter 125 of the code which is the stormwater regulations.

Counsel Muller stated that they are now in the position of determining if that was the final determination and an appeal would have to be brought to the Supreme Court within the time latitude specified by statute. However he is not sure of the time frame.

Zandy Gabriels stated that Counsel Muller has used conditional words and has clearly indicated that they are still working on the issue and things are not 100% clear and that this is a final administrative action that has been taken. He stated that additional permits will need to be sought before construction can be done. The issue is the mechanism or the interpretation of one particular provision of the zoning code that he feels that Counsel Muller, Mike Hill and Tom Ulasawicz have done because they have not gone back and done research to understand the reason for why the particular provision was there. He stated that there are only a few people still alive that recall the only use of that provision by the Town of Bolton and that occurred under the auspices of Jean Christensen as the ZA which was in the late 70's early 80's. He feels that Counsel has incorrectly interpreted and applied those provisions to this particular application.

Jason Saris asked why it would not be appealable to the ZBA. Counsel Muller replied that a final determination of the PB is not appealable to the ZBA and it can only make an appeal to a final determination by an Article 78 and it goes directly to the Supreme Court. Jason Saris stated that it seems that Zandy Gabriels is questioning whether or not this is considered a final determination since it was made by the ZA, who does not make final determinations. Counsel provided a history of how the application came to the final point. Counsel stated that the 45 days had run from the inaction of the PB. He stated that the Town Law has the same sections but he believes that it is 62 days.

Zandy Gabriels stated that he is challenging that this was a final determination since the ZA only has the ability to make an interpretation of the code. Counsel Muller asked if he was arguing that this was just her interpretation. Zandy Gabriels replied yes and that is why he feels that he is appealable to the ZBA.

Pam Kenyon stated that if someone appeals her decision they usually do it by an official appeal and she does not feel that they should be listening to this tonight.

Counsel Muller stated that he does not accept Zandy Gabriels explanation that this was the ZA's interpretation. However, if it is, then it is appealable to the ZBA. He does not feel that it was her interpretation because she was not asked to interpret a particular section of the code that was ambiguous. He stated that this determination came out of the PB's inaction followed by 45 days.

Jason Saris stated that he does not want to argue the merits of whether or not it should be challenged, but he does want to answer what the time frame would be for an appeal. Counsel Muller replied that there are 30 day, 60 day time frames in Town Code and 120 day statutes in State law and they are troubled by those issues whenever something like this is challenged. He stated that he usually advises that if someone has an appeal that they get it in within the first 30 days so that there is no argument of time. Jason Saris stated that if Zandy Gabriels wishes to continue down this path that he should put his request in writing.

Counsel Muller stated that if Zandy Gabriels decided to take the approach that the decision that is constituted in that certificate is an administrative decision by the ZA, then his appeal would need to be taken within 60 days of the filing of that document. He stated that this appeal falls under Town Law Section 267a, "The appeal shall be taken within 60 days after the filing of any order, requirement decision, interpretation or determination of the administrative official, and filed with the administrative official and with the ZBA." He stated that the notice of appeal should specify the grounds and the relief that he seeks.

8) Letter from Brian Grisi of the APA.

Jason Saris read the letter for the record. In the letter the APA suggested a meeting to discuss each of their responsibilities in the approved local land use plan. Jason Saris stated that he thinks that they should take them up on this opportunity.

Kam Hoopes stated that he feels that they should wait until they hear back from the APA regarding the Clarke project for the third time. Jason Saris stated that he feels that there is enough information to discuss in the Clark application from the first 2 approvals that were overturned. He feels that it would be good to get a clear understanding directly from the APA. Bill Pfau agreed with Jason Saris that they could challenge the APA on many of the past denials. David Ray agreed.

Kam Hoopes stated that if they overturn the Clarke variance again then the APA is showing very poor faith in the Town. He stated that the APA has been showing a zero tolerance approach. He stated that the point of a ZBA is to offer reasonable relief from zoning regulations. Jason Saris stated that it sounds like he is making a good case to have the meeting.

Kam Hoopes stated that he does want to meet with the APA since, to his knowledge, they have never attended any of their meetings nor have they visited any of the sites in question. Jason Saris that they offered to meet at a regular meeting or during a regular meeting. Pam Kenyon stated that Jeff Anthony suggested having them come an hour earlier. Counsel Muller agreed that might be the best way to handle it. Jason Saris agreed that would be a good decision to hold the meeting a little earlier to better accommodate schedules. However, he does not feel that they should make other applicants have to sit through something that is not of their concern. Jason Saris asked if the Board would agree to meeting at 5:30pm next meeting. He stated this might also be an opportunity for the APA to stay for a meeting to see how they conduct themselves regularly.

Zandy Gabriels asked if it would be open to the public. Jason Saris replied yes, but he does not feel that they would be permitted to participate. The Board agreed to meet with the APA at 5:30pm before the April 2010 meeting.

Motion by Bill Pfau to adjourn at 8:34pm. Seconded by Kam Hoopes. All in Favor. Motion Carried.

Minutes respectfully submitted by Kristen MacEwan.