

**Town of Bolton  
ZONING BOARD OF APPEALS  
MINUTES  
Tuesday, April 22, 2014  
6:30 p.m.**

SEQR = State Environmental Quality Review  
PB = (Town of Bolton) Planning Board  
WCPS = Warren County Planning Staff  
APA = Adirondack Park Agency  
LGPC = Lake George Park Commission  
DEC = Dept of Environmental Conservation

**Present:** Jason Saris, John Famosi, Matthew Slaughter, Tony DePace, John Michaels, Donald King, Zoning Administrator, Pamela Kenyon and Counsel Michael Muller

**Absent:** Jeff Anthony & David Ray

The meeting was called to order at 6:30 pm.

Jason Saris asked if there were any corrections or changes to the March 18, 2014 minutes.

**RESOLUTION:**

**Motion by** Matthew Slaughter to approve the March 18, 2014 minutes as presented.

**Seconded by** John Famosi. **All in Favor. Motion Carried.**

1. **MARKI, BERNARD & PATRICIA.** Represented by the Atty. Thomas Ulasewicz. In accordance with Section 200-72 of the zoning ordinance, seek to appeal the Zoning Administrator's interpretation whereby determining that wildlife rehabilitation undertaken on those parcels designated as Section 171.07, Block 2, Lots 37 & 38 is not considered an artisan activity. If the Board determines that an artisan activity exists 1) are the cages in excess of 100 square feet considered an accessory use structures? And 2) Is wildlife rehabilitation and its facilities (cages in excess of 100 square feet) customarily incidental and subordinate to a residential use where the residents are bona fide trained, skilled and licensed wildlife rehabilitators? Zone RCM1.3. Property Location: 2 Braley Point Road.

**\*\*\* THIS ITEM WAS TABLED AT THE APPLICANTS REQUEST\*\*\***

2. **V14-08 SALAMONE, CAROL.** Represented by, Bret Winchip. To demolish and rebuild single family residence and garage, seeks area variance for deficient setbacks. 1) Side: 30' is required, 10.5' is proposed for the house on the south side; 2) Shoreline: 75' is required, 49.5' is proposed for the garage. Section: 141.00, Block 1, Lot 22, Zone RCL3. Property Location: 5666 Lake Shore Drive. Subject to WCPS and APA review.

Zach Monroe from Winchip Engineering stated the following:

- The existing structure on the lot is from the 1800's and in desperate need of reconstruction.

- They are proposing to tear down both the existing home and detached garage and replacing them with new structures.
- The setbacks will be increased from what they currently are at this time.
- They would like to replace existing wastewater system which is currently less than 100 ft. from the brook and the new system will meet all requirements and setbacks.
- Stormwater for the site will be directed to the proposed rain gardens.

Jason Saris stated he did not believe this property could be in complete compliance and asked if there was any other way it could be done while utilizing already developed areas that are existing. Mr. Monroe replied due to the existing stream on the north side of the property it makes it extremely difficult. He stated the setback from the lake is not an issue. He explained they would be using the existing driveway and turn around area, and the proposed house and garage would be essentially in the same areas.

Jason Saris stated that the stormwater looked very effective as the new structure did not seem to have any effect on the stream. Mr. Monroe stated the stormwater would be directed to the proposed rain garden, which would be a big help as there is currently no stormwater implementations at this time.

John Michaels stated the existing plan was at one scale and the proposed was at another. He would like these to be the same in the future. He asked if they would need to blast for the septic. Mr. Monroe replied if any blasting was needed, it would be for the tank only.

Jason Saris asked if the applicant stated that the project was subject to A.P.A. approvals and asked about the practical difficulties. Mr. Monroe stated they had a non-jurisdictional letter from the A.P.A. Mike Phinney of Phinney Design stated that they explored many different options and this seemed the best from an environmental standpoint to meet all of the requirements. He said the only way to become more compliant would be to move the house closer to the lake, which they did not want to do. He stated using footprints from previous non-conforming structures and development on the lot has proved difficult.

Chris Navitsky stated the following:

- They recognize that the applicant has worked in keeping the construction basically within the existing developed area which is a benefit.
- They have concerns with the extent of disturbance required for the development and the impacts to water quality.
- They do not believe all variances required have been identified for the project, specifically a shoreline variance for the rain garden.
- All streams tributary to Lake George are designated class AA special the same as Lake George.
- The proposed rain garden has significant environmental impacts with the excessive removal of trees, the installation of a 2 to 1 slope down to the stream and 8' to 10' of fill within the stream corridor.
- They believe there are alternative measures to reduce the size of the rain gardens.

- They believe the applicant has the ability to reduce the size of the garage which would reduce the size of the shoreline variance.

Frank McDonald stated pertaining to the rain gardens it seems as though you're damned if you do and you're damned if you don't.

Jason Saris queried the Zoning Administrator if the Town requires variances for rain gardens. Pamela Kenyon replied she did not believe so and that the Town Engineer had signed off on these plans. She also stated that the stormwater would be going before the Planning Board. Atty. Muller brought up a case in Queensbury and the requirements that they judge had for stormwater. Chris Navitsky sighted the ordinance, stating for stormwater devices that take runoff paved areas have a 100 ft. setback for infiltration. He explained that people have lined the stormwater devices to get away from infiltration in the past. He believes there are alternatives for the stormwater on this parcel. Jason Saris stated that there are always alternatives, but the Zoning Board is not comprised of stormwater engineers and they rely on the ordinance and town engineer. He asked if the Town Attorney if the Board had jurisdiction over stormwater. Atty. Muller replied no, unless a requirement for relief from stormwater regulations. Jason Saris stated it did not meet the criteria of a structure. Atty. Muller stated he did not believe a rain garden was well identified in the stormwater regulations, never the less a court interpretation is out there that Bolton should be guided by and if the criteria are satisfied here, the Zoning Administrator is going to check with the Town Engineer to see what is appropriate for required setbacks. He explained that on Thursday night if they have a clear answer that it is not necessary they can move forward, if not they will be back before the Zoning Board. Mr. Monroe stated that he had spoken to the LGPC and the Town Engineer about this and they both said that the setback is not required due to the type of stream that it is.

Mike Phinney stated that he would also like to add that impervious pavers need a certain amount of separation from bedrock to be effective, and this area does not have it.

Tony DePace asked if the garage could be smaller then what is proposed or turned. Mr. Phinney replied they looked at this but the angle had to be where it is. He also stated that the owner would like the ability to store her boat and two vehicles in this area.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Carol Salamone (V14-08) 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 Staff;

And, whereas the Warren County Planning Staff 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; It is a difficult sight with a lot of bedrock and they did a good job. The existing house is in desperate need of repair.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it will improve the properties
- 3) The request is not substantial; they have not tried to encroach on the lake, and there is already an existing detached garage.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the stormwater and new septic will improve the impact.
- 5) The alleged difficulty is not self-created; it's a tough site and it is pre-existing non-conforming property.

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 Tony DePace, it is resolved that the ZBA does hereby approve the variance request as presented. A variance for stormwater controls is not part of this approval. **All in Favor. Motion Carried.**

**3. V14-10 VITALE, JOSEPH.** Represented by, Joseph Castiglione. To alter pre-existing non-conforming single family dwelling, specifically to add 58 square feet to the dining area, 170 square feet for a new family room, 202 square feet for new porch addition and a proposed 10' x 22' deck, seeks area variance for 1) Deficient setbacks. Shoreline: 75' is required, 44' is proposed. Rear: 30' is required, .63' is proposed. Front: 50' is required, 44' is proposed. Side: 30' is required, 6.9' is proposed; and 2) To alter non-conforming structure in accordance with Section 200-B(1)(b). Section: 185.20, Block 1, Lot 22, Zone RCL3. Property Location: 64 Millstone Drive. Subject to WCPS and APA review.

Atty. Joseph Castiglione presented the following:

- There is a pre-existing, non-conforming single family dwelling of approximately 850 sq. ft.
- It has been used historically as a seasonal structure.
- There is an existing deck on south side of the property that is about 10 x 20 sq. ft.
- They have 65 to 70 ft. of lake frontage, with 4 or 5 ft. of dense vegetation along the shoreline.
- The property is located in RCL3 zoning district.
- The owner is seeking a modest addition with deck.
- They believe the proposed modifications are reasonable and consistent with the other homes in the area.

Don King stated that this project had been before the Board twice before. He explained that he had problems with it before due to the deck and the options for alternatives. He stated that he has read the letter submitted and he has reconsidered the project and the

significance of the impact it would have on the environment after taking into consideration the situation Mr. Vitale lives in on a daily basis with his physical conditions. He stated he is prepared to change his position and is prepared to approve this project.

Jason Saris stated that the practical difficulties seem to be that there are no compliant options in which to put this deck. He said there seems to be only one possible place to put the deck on this pre-existing non-conforming structure.

Don King stated the mitigating circumstances were well documented in the March 3, 2014 submission to the Zoning Board by Atty. Joseph Castiglione and that the letter is to be sent with the packet to the A.P.A.

## **RESOLUTION**

The Zoning Board of Appeals received an application from Joseph Vitale (V14-10) 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 Staff;

And, whereas the Warren County Planning Staff 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; there were very few options for placement.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties,
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) The alleged difficulty is self-created; there are very few options to modify anything else with the property and the one deck will not have significant impact.

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 Don King and seconded by Matthew Slaughter, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

**4. V14-11 IRWIN, JAMES & SHIRLEY.** Represented by, Greg Bonath. To alter pre-existing non-conforming single family dwelling, specifically to add a 16'x 24' deck, seek area variance to alter non-conforming structure in accordance with Section 200-B(1)(b). Section: 171.15, Block 1, Lot 36, Zone GB5000. Property Location: 9 Maple Street. Subject to WCPS review.

Janice Pfau presented the project stating the following:

- They would like a 16 x 24 deck on this pre-existing single family dwelling.
- The house was built in 1910 before zoning and is non-conforming.
- The deck meets all the other requirements and the setbacks are met.
- This will conform to the neighborhood.

Jason Saris stated it looked as though the deck would not be increasing any non-conformities. Mrs. Pfau replied that is true. She stated they would be tearing down a shed and putting the deck on the back of the house with shrubs on the side.

Jason Saris asked if they explored other options in the placement of the deck. Mrs. Pfau replied that they had but it would not give them the room they were looking for.

John Michaels stated that if you were going to hide a deck from the street, you could not hide it any better than this one.

## **RESOLUTION**

The Zoning Board of Appeals received an application from James & Shirley Irwin (V14-11) 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 Staff;

And, whereas the Warren County Planning Staff 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; this is a pre-existing non-conforming structure and this is the most desirable.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, there will be minimal impact.
- 3) The request is not substantial; it is not changing the non-conformance.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it will not be seen from the road.
- 5) The alleged difficulty is not self-created; it is 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 Matthew Slaughter and seconded by John Michaels, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

The meeting was adjourned at 7:12pm.

Minutes respectfully submitted by Kate Persons.