

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, July 17, 2012
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, Jeff Anthony, Donald King, John Michaels, John Famosi, Zoning Administrator and Counsel Michael Muller

Absent: David Ray, Tony DePace

The meeting was called to order at 6:31 pm.

Jason Saris asked if there were any corrections or changes to the June 19, 2012 minutes.

RESOLUTION:

Motion by John Michaels to approve the June 19, 2012 minutes as written. **Seconded by** Don King. **All in Favor. Motion Carried.**

- 1) **V12-11 BOGERT, MICHAEL.** Represented by Justin Remington. To alter pre-existing non-conforming single family dwelling, seeks area variance for **1) Deficient setbacks. Shoreline:** 50' is required, 23' is proposed from Trout Lake Brook; **Front:** 30' is required, 26' is proposed; **Rear:** 15' required, 5' is proposed and **2) To alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). Section 186.14, Block 1, Lot 70, Zone RCH 5000. Property Location: 60 Beckers Drive. Subject to WCPB and APA review. NOTE: This is an amendment to V11-33 approved on 9/20/11. This application was tabled at the June meeting at the applicant's request.**

Michael Bogert stated that this addition was approved in September 2011. However when reviewing the plans he realized that he was unhappy with the roof line and the minimal pitch. He explained that he had an architect revise the plan whose suggestion was to peak out the center of the building but not exceed the existing ridge line.

Jason Saris asked if this changed the footprint. Michael Bogert replied no.

There was no correspondence or WC impact.

RESOLUTION

The Zoning Board of Appeals received an application from Michael Bogert (V12-11) 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 #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, you cannot see this from anywhere and the one neighbor expressed no problem with it.
- 3) The request is not substantial; the original addition was only 112 sq. ft to begin with and this request will not change the original variance that was granted.
- 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 applicant caught this issue before construction and came back before the Board to ask for permission.

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

- 2) **V12-19 BOLTON LANDING MARINA, LLC.** Represented by Bartlett, Pontiff, Stewart & Rhodes PC. To alter pre-existing non-conforming building, specifically to allow a retaining wall to remain in its present location, seeks area variance for 1) a deficient shoreline setback. 50' required, 37.5' is proposed; and 2) to alter pre-existing non-conforming structure in accordance with Section 200-57 B (1) (b). Section 171.19, Block 2, Lots 3, 10 & 11 combined. Property Location: 4932 Lake Shore Drive. Subject to WCPB review. *This item was tabled at the June meeting at the applicant's request.*

Note: Jason Saris recused himself. Jeff Anthony acted as Chairman.

Jon Lapper stated that this is an unanticipated after the fact variance request. He stated that

the applicant was unaware that replacing the rotted railroad ties that existed would require a permit. However since it is within 50' of the lake it does require a permit. Jon Lapper explained that the applicant replaced the railroad ties with a split block wall that is less non-conforming since it sits further back from the lake. The new wall is more aesthetically pleasing and creates a safe walkway for pedestrians to stay out of the line of traffic flow. The applicant also removed asphalt and replaced it with the blocks that lie on sand and provide some natural infiltration between the blocks.

John Michaels stated that it seems that the new wall is a little higher than the prior. Jon Lapper replied that if they look at the old wall in front, it is higher. However because this was stepped up it gets to the same level. John Michaels stated that he agrees that this is more aesthetically pleasing but the applicant should have realized that he would have needed a variance because the design was changed and the wall was made slightly higher.

There was no correspondence or WC impact.

Jason Saris, speaking as a neighboring property owner, stated that he has no problems with it. He feels that they did a nice job and it is attractive. Jeff Anthony agreed that it is a nice job and good renovation. The applicant not only took out the rotted wall but put something that is attractive and incorporated some stormwater management as well.

RESOLUTION

The Zoning Board of Appeals received an application from Bolton Landing Marina, LLC (12-19V) 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 was obvious that the wall needed to be replaced in some form or fashion and that it is within 50' of the lake. Additionally anything larger than 100 sq.ft or more than 2' in height would require a permit. The wall in constructed in a good stable fashion in the same basic location or a more improved location.

2) There will be no undesirable change in the neighborhood character or to nearby properties, it has improved the neighborhood with the look and stability.

3) The request is not substantial; there was a wall there and there is one now. However it could have been brought to the Town in the first place.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; it is safer, more attractive physically and an improvement over the rotting walls that previously existed.

5) The alleged difficulty is self-created; although there was an existing wall, the applicant failed to come to the Town for permission prior to construction.

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

- 3) **V12-20 MARANVILLE, JON.** In accordance with Section 200-14 & 15, seeks area variance, specifically to allow expanded rear porch/stairs to remain, seeks area variance for 1) a deficient side yard setback. 8' ft. required, 1'6" ft. is proposed on the south side and 2) to alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.15, Block 3, Lot 31 Zone GB 5000 Property Location: 4988 Lake Shore Drive. Subject to WCPB review. *Note: This is an amendment to V10-39 approved on 10-21-10.*

Jon Maranville stated that his steps are 2' past where they should be. Jason Saris stated that it would be hard to move at this point. John Michaels stated that it is a big improvement overall to the building and the Town. Jeff Anthony agreed that it has been a great improvement to the community.

Pam Kenyon stated that she has not heard from Warren County. Jason Saris asked if they can proceed. Counsel Muller stated that as long as the County was noticed than they can proceed.

There was no correspondence or comments from the public in attendance.

RESOLUTION

The Zoning Board of Appeals received an application from Jon Maranville (V12-20) 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; this is a minor request and the only way to solve the problem is with an area variance. It is only 2' difference from what was approved.

2) There will be no undesirable change in the neighborhood character or to nearby properties, this is to the rear of the property facing a paved blacktop area, not very visible from the street or adjacent neighbors. It is in character with the existing house and improvements.

3) The request is not substantial; it is a 2' variance from what previously existed.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; there is no impact at all in any way to stormwater management or any other conditions on the property.

5) The alleged difficulty is not self-created, it is an improvement that had to be done as part of the reconstruction of the house and it is in character with the house.

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

- 4) **V12-21 PELLI, JOSEPH & GAIL.** Represented by Gerald Flynn. To alter pre-existing non-conforming single family dwelling, specifically to demolish existing garage on the north side and construct an addition on the south side, seek area variance to alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 200.06, Block 1, Lot 6, Zone RM1.3. Property Location: 4458 Lake Shore Drive. Subject to WCPB review.

Gerald Flynn stated that this is a pre-existing non-conforming structure. The applicants are trying to expand their home and replace the old garage. The proposed design will make the garage less non-conforming. They will remove the gravel driveway leading to the old garage and put an addition on the south side which would consist of a garage, bedroom and family room area. Additionally in the existing house they are removing a bedroom to make one large bedroom.

Jason Saris asked if they will be putting in another gravel driveway leading to the new garage. Gerald Flynn replied yes they will and the existing driveway will become grass.

John Michaels asked about the other building that looks like a garage. Gerald Flynn replied that they would like to store some of their other items such as lawn equipment and their sea-doo. They will not be putting cars in there it will be used for storage.

Don King stated that the reason the applicants need a variance is due to the fact that the house is a pre-existing non-conforming structure. They are moving the garage to be more in compliance with the setbacks but the house itself is still causing the need for the variance.

Chris Navitsky, Lake George Waterkeeper, stated that most of their concerns were addressed during the presentation. There does not seem to be a change in the number of bedrooms. He stated that they are not opposed to the proposal but would like to see stormwater management required for the addition, driveway extension and existing impervious surfaces.

Jeff Anthony agreed that he would like to see minor stormwater required for the project.

RESOLUTION

The Zoning Board of Appeals received an application from Joseph and Gail Pelli (V12-21) 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 will be a more conforming structure than exists now.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties, it is private in this area and the neighbors will have a building further away from them.
- 3) The request is not substantial; they are removing the other garage which is commendable.
- 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, it is a pre-existing non-conforming structure that they are looking to improve and the new structure fits within the zoning.

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 Don King, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition:

1) that minor stormwater is required. **All in Favor. Motion Carried.**

- 5) **V12-22 HAVENICK, BARBARA.** Represented by the Phinney Design Group. To alter pre-existing non-conforming single family dwelling, specifically to add an addition on the south side and alter the lakeside, seeks area variance for 1) length. 120' maximum length allowed, 148' exists and 179' is proposed; and 2) to alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 186.19, Block 1, Lot 7, Zone RM1.3. Property Location: 30 Isle Harbor Drive. Subject to WCPB review.

Note: Jeff Anthony recused himself

Jason Saris stated that in light of the fact that they had 2 absences and 1 recusal the applicant has the option to table the application at any point and wait for a fuller Board.

Mike Phinney provided an overview of the project. He stated that the applicant would like to have a first floor master suite. Her family purchased this property over a decade ago and they have very carefully restored and maintained the property to preserve the historic nature of the structure. Most of what can be seen in the house is original. It is one of the more historical properties on the lake that is still intact in accordance to how it was built at the turn of the century.

Mike Phinney explained that the applicant owns this lot as well as the surrounding lots. The family is growing and the applicant is seeking to make a final round of renovations to allow for more space for their expanded family, meet her needs to live all on one level and to have some modernization for the family moving forward. This application includes a porch renovation and master suite addition.

Mike Phinney stated that the applicant, as another renovation, is seeking to replace the existing garage/tool shed with a garage/storage and family/rec room. This building has been moved to comply with side yard setbacks for accessory buildings. They will be replacing the garage/storage shed with a garage and storage, rec room/playroom area. It has been moved to meet the side line setbacks.

With regard to visual impact, Mike Phinney stated that the addition was carefully placed to

shield it for privacy and minimize any impact from the lake. Mike Phinney stated that although the existing house is of a decent length, they feel that putting the suite in this location and having only 1 story prevents any effect the visual impact from the lake and any potential neighbors in the future.

Jason Saris asked if any of the screening will be removed. Mike Phinney replied a few trees closest to the proposed structure will need to be removed, but most of the screening will remain. He stated that the proposed location is already an open cleared area.

Jason Saris asked if any other options were considered to not increase the overall length. Mike Phinney replied yes, but they kept coming back to the fact that this is such a historic piece that has been left intact and this would be the best way to preserve that. He stated that the existing house would not fit in the allowed 120' x 120' box either. Jason Saris asked why they couldn't add onto the other side. He stated that he can understand where they are coming from. However it is not so sacred that they are never going to add onto it. He stated that the building is already non-compliant and the applicant is seeking to make it less compliant. Mike Phinney stated that the house was a pre-existing non-conforming structure. With regard to the flow of the house, this is what made the most sense. He stated that there are no bedrooms on the first floor and they did not want to affect the flow and circulation of the existing house. They are being sensitive to both the outside and inside with regard to circulation and flow. They studied this and found that it needed a variance and they felt that based on inside/outside, site planning, view sheds to and from the lake that it has very little impact. This is a large lot; and even though it is a long house, compared to other houses on the lake, they feel this is an appropriate request and accommodates the applicants needs.

John Michaels stated that he does not recall any house being 180' long historically. Mike Phinney stated that this request is specific to this house. He stated that they feel that this is the most appropriate space, given the size of the lot, the fact that they are 300' from the lake and it is screened from the lake. John Michaels stated that the applicant has 3.5 acres of land and he does not feel that they should be seeking a variance for a house that already is 28' longer than what is allowed. He feels that there are other places that the addition can be located without seeking a variance; he does not see any hardship.

Don King stated that it seems that the sunroom was not original. Mike Phinney replied that it was part of the house originally. He stated that there is an article that is in Barbara's home that shows the original floor plan and picture of the lot and home; almost everything that was there is intact.

Don King asked how much square footage they are adding. Jonathon Haines, Phinney Design group, replied that it would be approximately 800 sq. ft for the master suite, 1500 sq ft for the garage/playroom and 1200 sq. ft for the porch. He provided more details to the design of the porch/dining area.

Don King stated that he agrees with John Michaels. He stated that the Board is not in the business of taking a non-conforming structure and making it more non-conforming when there

is plenty of land to achieve the same benefit.

Mike Phinney stated that if they were to use the 120' x 120' box allowed by Town code, he stated that they could not find another spot in the house for this without affecting the flow and circulation or historical value. John Michaels stated that the applicant is already changing the front of the house with the porch addition. Mike Phinney stated that it is not just for the outside aesthetics, but also for the inside. John Michaels stated that within the 140' length, the applicant could find another spot for the master bedroom. He feels that it is an unreasonable request and that there is no hardship that is being shown.

Don King stated that they could build towards the lake and still retain the traditional historical look they could duplicate the sunroom and from a sheer elevation view not change the look of the house at all. Mike Phinney stated that currently that sunroom is being used quite a bit.

Jason Saris stated that variances are supposed to be in minimums. He stated that the master suite footprint is almost 1,000 sq. ft which is the same size as some people's houses. Additionally it is extended off the sunroom with the breezeway which further extends it. He stated that this is not keeping the variance to a minimum. Mike Phinney stated that they looked at all of this but they felt that they were balancing the needs of the applicant and being sensitive to the house and land. They felt that it was reasonable request to preserve the existing house. It is also reasonable because it is only one level. There are no neighbors to the south side and they are 300' from the lake. They feel this is a very sensitive way of planning this.

Mike Phinney stated that if they were to decide to table this application and come back with another plan they would have to change something significantly to the inside or potentially the outside of the house from what exists today which has existed since 1913. They feel that it is hardship to change something on the inside.

John Michaels stated that they are already changing the front of the house with the screened in patio so he doesn't understand why they keep talking about not changing the aesthetics of the structure. Mike Phinney explained the floor plan and flow of traffic in the house. Given this site and its impacts, this is the most appropriate place for this addition.

Don King stated that they could keep the same footprint of the proposed bedroom design but put it off to the west side of the sunroom. This would also not change the interior or exterior view from the lake. This would not increase the non-conformity.

Barbara Havenick stated that the house was a pre-existing non-conforming structure. She stated that this house was in deplorable condition and instead of ripping it down and rebuilding a larger structure she decided to renovate and restore it. She stated that she has 4 children and wants room for them and their children upstairs. The reason the master suite works here is because it is a quieter area for her office and bedroom. The size of the bedroom is not important. Jason Saris stated that it has to do with the relief they are asking for. Barbara Havenick asked if she put all the properties together would she still have this problem. Don

King replied yes it is still a non-conforming structure. Barbara Havenick stated that she could build another structure closer to the lake but she knows that is not what people want to see and it is not what she wants. This addition is not going to be seen. Jason Saris stated that even houses that will not be seen still need to be compliant.

Barbara Havenick stated that she likes this location because there are a lot of kids and grandkids at her house. She would like to have a private area to work and rest and be away from all of the noise. Additionally there is a basketball court and vegetable garden that would need to be adjusted or moved.

Mike Phinney stated that even with the relief being requested they are well beyond the side yard setback required; they will be 34' from the property line which should be considered. All of the buffer will remain in place. Additionally the property owner is seeking to maintain a historic structure and would like to leave it and alter it minimally which is the hardship and why they are asking for relief. Mike Phinney stated that there are many ways that they could have a 1st floor bedroom without going beyond this length, but this is the location is the most sensitive to the existing house and impacts from the lake.

Chris Navitsky, Lake George Waterkeeper stated that he likes the approach that the Board has taken. He stated that they are not opposed to the variance as proposed. However, they did have some concerns about the waste water system; they did not see any floor plans and was not sure if there would be increased flows and that should be evaluated. They feel that a minimal shoreline buffer should go along with this project. They feel that it is one of the larger lawns on the lake and it should have a natural vegetative buffer to soften the impacts.

Leslie McNulty, stated that this reminds her of Victorian Village which was a huge beautiful structure that was sold, demolished, subdivided and replaced with larger non-historic structures. She stated that if they don't work with the people trying to restore the historic houses they won't have these structures.

Mark Perry, stated that he has worked for the Havenicks for 10-12 years. He understands that there are other places that this addition could go in. However, the applicant raised a great point that she would be in higher traffic areas which she was hoping to avoid. There is a lot of activity on the west side of the house. He doesn't understand why you would want to change the view of the property from the lake. This is the best for her privacy and to maintain the integrity of the property.

Nancy Shane, friend of the applicant, stated that the applicant has taken such great care of this home. It is a historical property and is admired from the lake. This proposal will not affect the overall view from the lake and will be in keeping with the beauty of the house as it stands right now. Even though the house was non-conforming it was that way before the applicant purchased it.

Mike Phinney stated that they did volunteer to do a stormwater plan for the property. With regard to the Waterkeeper's concern about the wastewater, they did investigate the septic

design and there is no net increase in bedrooms. They are actually removing a bedroom upstairs. The septic was upgraded 10 years ago but there are no plans for it. They did have IBS inspect the settling tank and distribution box and found they were in good working condition.

Don King stated that he would like to see this project brought back with another alternative that doesn't lengthen the house. Mike Phinney stated that he would like to table the application but would like to with the permission of the applicant to invite the Board to the house to see how they arrived at this preferred design. He stated that it seems that there is a difference in opinion. If you were to look at NYS guidelines this is what they would recommend to lightly touch the façade and make it clear what is new and existing. They considered all of those.

John Michaels stated that he agrees with Don King. He stated that he is not sure he can be convinced that it couldn't be done any other way or within the 148'. Jason Saris stated that he understands that this is a pre-existing structure and it is grandfathered in. The Board has a history to help those in this situation however they also have a history of not increasing the non-compliance. He stated that maybe this is the only spot but he has not been convinced or shown that this is the best alternative. He stated that even if it is the only spot, he is not sure that the size is not an issue.

Mike Phinney replied that he understands the comments being made. However there is an emotional impact as well because the applicant's late husband used this office which they will be connecting through and minimally impacting that is important to her. There is a lot of emotional attachment to how the house is right now and asking them to change that is a hardship. He asked the Board to look beyond just the code and see that there is a desire to preserve the history both inside and outside.

RESOLUTION

Motion by Don king to table application V12-22 pending further information. Seconded by John Michaels. All in Favor. Motion Carried.

The meeting was adjourned at 7:53pm.

Minutes respectfully submitted by Kristen MacEwan.