

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, September 18, 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, David Ray, John Famosi and Counsel Michael Muller

Absent: Tony DePace and Zoning Administrator Pamela Kenyon

The meeting was called to order at 6:35 pm.

Jason Saris asked if there were any corrections or changes to the August 14, 2012 minutes.

RESOLUTION:

Motion by Donald King to approve the August 14, 2012 minutes as written. **Seconded by** Jeff Anthony. **All in Favor. Motion Carried.**

1. V12-27 FOY JR., EDWARD. Represented by Gary Hughes. To demolish existing dock and replace with a relocated dock/boathouse, seeks area variance for 1) a deficient shoreline setback. 20' is required, -6' is proposed; and 2) boathouse width. 15' is allowed, 32' is proposed. Section 171.15, Block 3, Lot 73, Zone GB5000. Property Location: 15 Allen's Way. Subject to WCPS review. This item was tabled at the August meeting pending approval from the LGPC. To be heard this month only if approved by the LGPC.

Note: V12-27 was withdrawn at the applicant's request.

2. V12-31 FOY JR., EDWARD. Represented by Gary Hughes. To convert an existing single family dwelling into a Bed and Breakfast, seeks an area variance for deficient shore frontage in accordance with Section 200-39D. 100' is required, approximately 86' is proposed. Section 171.15, Block 3, Lot 73, Zone GB5000. Property Location: 15 Allen's Way. Subject to WCPS review.

Jason Saris stated that he realizes that renovations have been taking place and asked if there was an expansion planned. Gary Hughes replied yes they are proposing an expansion of the building but it does not decrease the setbacks or change the height of the building. It was purchased as a residential home and the applicants want to convert it to a bed and breakfast. The structure is located in the GB5000 zone so the proposed use would fit in this zone. Jason Saris asked how many people can be accommodated. Gary Hughes replied that there are a total of 5 bedrooms in the proposed building accommodating approximately 10 people. Additionally there are common areas of a kitchen, dining room, bathrooms and bar area.

John Michaels asked why the applicants needed 100' shoreline. Gary Hughes replied that is what is required for commercial use. Counsel Muller explained the minimum shoreline requirement for the GB5000 zone is 100' for accommodations for up to the first 10 rooms, this parcel only has 86'.

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

Kathy Spahn, Congers Point, stated that this is a very private area and with the new use she hope that it can stay that way. She asked if the fence and foliage could be required to remain between this property and the Congers Point Association. Gary Hughes replied that both the fence and foliage will definitely remain. This is a very private and secluded site and the applicants would like to keep it that way. Don King stated that he feels as though there is enough vegetation on both sides of the property lines to provide for the buffer. There was discussion regarding ownership of the fence. The neighbors had it surveyed recently and the fence was shown to be 2" on the applicant's property.

Jason Saris stated that this is the appropriate zone for this type of activity. Bolton has such a small GB5000 district now so it is an asset when it remains commercial. He feels that this is a good project.

Mike Stafford, representing Buddy and Kate Foy stated that this property has existed for a long time with the same deficient lake frontage. This lot is in the center of the commercial part of Bolton and might be the only project that is seeking to convert residential into commercial. They have so many properties that are changing the opposite way. Mike Stafford stated that this project will be beneficial to all of the businesses in the downtown area.

RESOLUTION

The Zoning Board of Appeals received an application from Edward Foy, Jr. (V12-31) 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; this is an existing property and building, they are modifying the footprint but are staying within the general boundaries of the house; the additions are just squaring up the house. They will be adding a deck where there is adequate yard space.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the house has been in existence for some time and it is being updated and modernized. This is an attractive and secluded property.

3) The request is not substantial; the only issue is that there is a requirement of 100' on a commercial property. The 86' has existed for a long period of time so this is not a substantial change.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; there will be a little more use but they have provided for adequate parking and the property is fairly isolated and secluded. They have the former Nirvana property which is now owned by the Sagamore to the north and Congers Point is well vegetated to the south.

5) The alleged difficulty is self-created, the applicant wants to make the conversion but the 100' shoreline deficiency is pre-existing and not a significant change.

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 Michaels, it is resolved that the ZBA does hereby approve the variance request as presented with the following conditions: 1) that the applicant maintains the vegetative buffer on the southern border to the extent that it is on the applicant's property and 2) the applicant will maintain the fence in an upright and viable condition on the southern border. **All in Favor. Motion Carried.**

3. V12-29 PELLI, JOSEPH & GAIL. Represented by Gerald Flynn. To alter pre-existing non-conforming single family dwelling, specifically to demolish a deck and construct an 18'x 20' addition, 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 WCPS review. See V12-21 for previous approvals.

Gerald Flynn explained that the applicants would like to remove the deck that doesn't meet setbacks and put an addition that would meet the setbacks and enable them to expand their house. They are taking 2 bedrooms inside and making it one master bedroom and below it would be a family room off the kitchen.

John Michaels asked if the applicants were going to take down the one car garage. Gerald Flynn replied no. Originally the plan was to remove this garage and put another garage on the other side with a similar addition but the cost got to be too much for the value of the property. This is an alternative way to expand the home.

Jason Saris stated that the addition will not increase the encroachment of the setback but they still

need the variance because they are expanding a non-compliant structure but they are not increasing the encroachment in any way.

Jeff Anthony asked if we are making the previous approval null and void or letting them have both. Counsel Muller replied that we would be letting them have both unless there is an understanding that one is to be done instead of the other and it should be done so on record. Gerald Flynn stated that the applicants are not here to agree to that but he believes this alternative will achieve everything they want it to do.

RESOLUTION

The Zoning Board of Appeals received an application from Joseph & Gail Pelli (V12-29) 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; as from the previous approval we saw that there is another way to achieve this benefit but this will have less frontage on the road and is a better alternative.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the backyard is all to their own.

3) The request is not substantial; given the size of the lot. The applicant is well beyond the 75' setback from the lake.

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 minor storm water. .

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 John Michaels and seconded by David Ray, it is resolved that the ZBA does hereby approve the variance request as presented with the following conditions: 1) minor storm water is required and 2) this variance will replace the V12-21 approval. **All in**

Favor. Motion Carried.

4. V12-30 LAVOY, GARY & ANNEGRET. In accordance with Section 200-38B, seek area variance for a boathouse width. 30' is allowed, 33' is proposed. Section 186.06, Block 1, Lot 1.1, Zone RCH5000. Property Location: 4762 Lake Shore Drive. Subject WCPS review.

Gary Lavoy stated that he is seeking a 2 slip boathouse with a deck on top. He has already received a permit from the LGPC. In order to provide for the lifts he would like the steel beams across the top have to have such height to allow for the appropriate space which creates the need for the variance. He stated that if he were to cut off 1.5' overhangs from each side it would not be as aesthetically pleasing.

Gary Lavoy stated that this will not impact the neighborhood. This was not self-created due to the depth of the water; the mean high water goes right up to his retaining wall and there isn't enough room for the lifts in the water.

Jason Saris stated that last month we discussed the court ruling that essentially takes away local jurisdiction on these matters. In this situation basically the entire structure except the staircase is beyond the mean high water mark. He asked if we even have any jurisdiction over this. Counsel Muller agreed that the Town does not have jurisdiction on anything past the mean high water mark. Jason Saris stated that the applicant already has his approval from the LGPC so he doesn't need a variance from the Town of Bolton. John Michaels stated that he doesn't see the harm in doing an approval in the event that the court order is reversed. Gary Lavoy agreed that he wouldn't mind going forward with the approval from the ZBA anyway.

RESOLUTION

The Zoning Board of Appeals received an application from Gary and Annegret Lavoy (V12-30) 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; the 1.5' overhangs will be insignificant. There is no other way to achieve the look of the boathouse and the space that is needed.

2) There will be no undesirable change in the neighborhood character or to nearby properties,

3) The request is not substantial; the room on this is very limited.

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 the way the lifts are designed require the extra 1.5'.

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.**

5. V12-32 TAFT, WILLIAM. To allow an approximate 390 square foot deck to remain, seeks area variance for 1) deficient setbacks. a) shoreline: 75 ft. is required from the mean high water mark, 57.7 ft. is proposed; b) front: 50 ft. is required, 26 ft. is proposed; and c) side: 30 ft. is required, 11.5 ft. is proposed; 2) To alter pre-existing non-conforming structure in accordance with Section 200-57B(1)(b); and 3) lot coverage 15 % allowed, 24 % proposed. Section 185.19, Block 1, Lot 14, Zone RCL3. Property Location: 19 Trout Lake Club Road. Subject to WCPS & APA Review. See V07-61 for previous approvals.

Bill Taft stated that in October 2007 the ZBA approved a project request to replace a lakeside porch on his cabin. Part of that request included a wrap around deck to the side of the cabin. However the ZBA was concerned with this part of the proposal and he withdrew that part of the proposal and the project was approved. Since they have retired they spend 4-5 months up here and each year they have had to hunt around and dig holes to find the tank cover. So the following spring they hired a landscaper to build an accessible cover to their septic system located on the southern part of the cabin to improve protection and access to the tank.

Bill Taft stated that in discussing the construction of the cover the landscaper suggested leveling the adjacent ground level to address the steep uneven slope that goes down to the shoreline. His suggestion was to create a patio adjacent to the septic cover that would tie into the steps of the new porch. The landscaper felt that the zoning permits would not be necessary since it was at ground level and there wouldn't be any visibility issues with the neighbors. Bill Taft stated he now knows that it was a mistake to rely solely on the landscapers opinion and to not seek further information from the Zoning Office before proceeding with the project.

Bill Taft stated that the cabin is situated within the Trout Lake Club. The property was purchased by his parents in 1951. The entire site is very steep with hazardous sloping terrain down to the shoreline. He described the boundaries and setbacks.

Bill Taft stated that this application is to allow the patio to remain in place. It is a slate patio that is approximately 17' x 22'7" with wood retaining walls; it is not attached to the building. Part of the patio contains a wood cover for the septic system. The patio ties into the stairs that lead into the new porch. It starts at grade on the driveway side; the ground was filled in and leveled up and a retaining wall was installed. This was done to counter the steep and unsafe slope and make the area usable. He stated that drainage was installed under the patio.

With regard to the benefit, Bill Taft stated that it is an improved property that is safe and usable; it halts ground erosion. This patio does enhance the property and compliments the character of the neighborhood and surrounding properties. Bill Taft stated that they feel this is minor request to level a hazardous slope and enables them to use this area safely while creating access to the porch stairs and some protection to the septic system. The patio does not adversely affect the environmental conditions. Surrounding neighbors, including Andy Roden, owner of Trout Lake Club have been very supportive and believe it enhances the property. Bill Taft feels that the patio addresses a hardship caused by sloping and eroding terrain on a pre-existing and non-conforming parcel. This is an effort to eliminate a safety hazard and create usable space while protecting the septic system.

Jason Saris asked about the height of the retaining wall. Bill Taft stated that it starts at grade and ends about 4'8" above grade on the lake side to maintain the level ground. Jason Saris asked if that was the only retaining wall that was part of this expansion. Bill Taft replied that the other retaining wall was pre-existing.

John Michaels stated that in 2007 application for the porch addition the ZBA did not want the wrap-around porch and it was withdrawn from the application. Bill Taft stated that at the time there were concerns about visibility from the neighbors. John Michaels stated when he received his approval in 2007 the applicant accepted the fact there was nothing to be built in this area. However he is now here with the exact same plan, but bigger and it is already built. Bill Taft stated that there is a difference between a deck and a patio, a patio is on the ground. Jeff Anthony stated that the point is that there are 11 boards that look like they are 6" x 6" which makes the wall approximately 5-6' tall. John Michaels stated that the applicant left with the understanding that nothing was to be built here. He stated that the applicant went ahead with the patio thinking that it would have been approved. However this structure is a lot more intense than just a deck. He feels the applicant skirted the zoning ordinance. Bill Taft stated that this was not to skirt the zoning code, it was done under the recommendation of the landscaper.

Don King asked if this patio was in place before the porch was completed. Bill Taft replied that the deck was in place before the patio. Don Farley stated that he built the deck and porch. The applicant had to address the situation of the erosion around the septic tank and down the bank. The landscaper recommended to expand the cover that he was creating for the septic and cover the whole area to take care of the erosion. He doesn't feel the applicants were trying to skirt the zoning, the landscaper told them that this was a patio at grade which wouldn't require approval.

Jason Saris stated that the problem is that they are not a grade; they changed the grade significantly. He stated that if they change the grade by over 6', they need a variance for that.

Additionally, a retaining wall is a structure itself and requires a variance. Jason Saris stated that he has not seen a patio that is on grade that has a railing around it. He understands that the railing is necessary because if someone were to fall off they would get hurt; therefore it cannot be considered on grade. Don Farley stated that the railing was put in for the grandchildren. Jeff Anthony stated that the railing is required by code because there is more than 30" drop.

John Michaels stated that the applicant admitted that he wanted this deck/patio and didn't get it but still went ahead and did it with just a patio. He does not see how this is justified. Bill Taft stated that this truly was not done to circumvent the system. It was recommended by the landscaper and they felt as though it was not an issue but now know that it is not the case.

RESOLUTION

Motion by John Michaels to deny the application as presented. This is an as built, there was plenty of notice that this was not something that the Board was going to endorse. We cannot fully anticipate the undesirable change in the neighborhood or character because it is an as built. The request is substantial, it is not a small deck at almost 400 sq. ft with a 5' retaining wall and railing. We cannot judge the adverse impact to the environment because it is already existing and there is no chance for this Board to evaluate the previous Board's decision. The difficulty is self-created, the applicant was noticed that this area was not to be built on. The applicant did not provide enough justification to grant the variance. **Seconded by** Jeff Anthony. **All in Favor. Motion Carried.**

Bill Taft stated that he feels the Board has mischaracterized the consideration and discussion of the 2007 Board with regard to their request and removal of that part of the application. He also feels that they have confused the difference between a deck and a patio to the detriment of this application.

6. V12-33 DUGGAN, LEO. Represented by Eugene Baker. To alter pre-existing non-conforming single family dwelling, specifically to demolish and rebuild handicap ramp, seeks area variance for 1) a deficient front yard setback. 75' is required, 45' is proposed; and 2) to alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 171.06, Block 1, Lot 21, Zone RL3. Property Location: 94 Valley Woods Road. Subject to WCPS review.

Gene Baker stated that the applicant is looking to replace the existing handicap ramp that is pre-existing non-conforming. They will be building an ADA compliant ramp so he can better access the house. It will also be replacing a deteriorating ramp.

Jason Saris asked what the difference is between the existing and proposed ramp. Gene Baker stated that the old ramp came straight off the house and doesn't even have a level area by the door. The existing ramp is actually closer to the road by 5-7'. Additionally they need to be able to turn the ramp to get the proper drop. He stated that although it less encroachment, it will be more visible.

RESOLUTION

The Zoning Board of Appeals received an application from Leo Duggan (V12-33) 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# 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; this is improving the condition of a straight handicap access ramp to accommodate the user.

2) There will be no undesirable change in the neighborhood character or to nearby properties, visually this will not create any difference in visual impact to any of the neighboring properties. Additionally neighbors are distant from this piece of property. Visibility from the street will not really change.

3) The request is not substantial; it is a simple small ramp.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; the existing ramp is on the lawn of the existing building and the new ramp will essentially be in its place but improved.

5) The alleged difficulty is not self-created, there is a ramp now and the applicant is attempting to improve an existing situation that is not working as it should be.

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

7. V12-34 J. BUCKLEY BRYAN JR. Represented by Don Russell. To alter pre-existing non-conforming single family dwelling, specifically to add a second story addition, seeks area variance for 1) a deficient shoreline setback. 75' is required, 47' is proposed; and 2) to alter non-conforming structure in accordance with Section 200-57B(1)(b). Section 156.12, Block 1, Lot 8, Zone RCM1.3. Property Location: 61 Bell Point Road. Subject to WCPS and APA review.

John Michaels stated that the 9' addition is still keeping the structure well below the 35' height

variance. Buck Bryan stated that this property sits in somewhat of a valley. He is not blocking anyone's view and they are not affecting the character of the neighborhood. This extension will not exceed the footprint in anyway. Additionally, because of the forestation that he has brought in and allowed to grow it cannot be seen from the lake.

Jason Saris stated that this will also be reviewed by the APA and although this Board does not require a practical difficulty or hardship the APA will require it. He asked the applicant when the house was built. Buck Bryan replied that it was built in 1946. Jason Saris stated that the practical difficulty is that the house pre-dates any zoning.

John Michaels asked where the septic system was located. Buck Bryan stated that in 2003 they did an alteration to the house and at that time they put in a 1000 gallon concrete tank to replace the metal one. He pumps the tank every other year. He provided further details of the septic system. Don King asked if the leach field was upgraded or just connected to the new tank. Buck Bryan replied that it is pretty much the same they did have to replace one pipe but otherwise was connected through a distribution box that connects to the new tank.

Jason Saris asked if other options were considered. Buck Bryan replied yes but it would have exceeded the footprint. He stated that the current house has 4 bedrooms and the proposal is not to increase bedrooms. They just need some additional space so they decided to go up. Jason Saris stated that this is the least intrusive way to expand. This is also the most feasible alternative.

RESOLUTION

The Zoning Board of Appeals received an application from J. Buckley Bryan Jr. (V12-34) 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# 7 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 expansion of the building will increase the building square footage as desired by the applicant. However it will not increase the 4 bedroom existing capacity of the house. Space will not be increased in excess of the existing footprint.

2) There will be no undesirable change in the neighborhood character or to nearby properties, the building will not exceed the 35' height limitation as mandated by the Town Zoning Law.

3) The request is not substantial; it is the least intrusive approach to increasing space in the building for the applicant as possible.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; There will be no increase in storm water management or storm water generation on the property since the increased building capacity will be above existing structure and not beyond the square footage.

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.

This does not meet the criteria of hardship. However from a practical difficulty perspective, this is the least intrusive options that are available to the applicant.

Now, upon motion duly made by Jeff Anthony and seconded by Don King, it is resolved that the ZBA does hereby approve the variance request as presented. **All in Favor. Motion Carried.**

The meeting was adjourned at 7:45pm.

Minutes respectfully submitted by Kristen MacEwan.