

**Town of Bolton
PLANNING BOARD
MINUTES
Thursday Oct. 19, 2017
6:00 p.m.**

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

Present: Gena Lindyberg, Ann Marie Somma, Sandi Aldrich, Herb Koster, John Gaddy, John Cushing, Alternate; Jessica Rubin, Zoning Administrator, Pamela Kenyon, and Atty. Michael Muller.

Absent: Kirk VanAuken

The meeting was called to order at 6:05pm.

REGULAR MEETING

- Herb Koster asked if there were any changes or corrections to the September 21, 2017 minutes.

RESOLUTION:

Motion by Gena Lindyberg to accept the September 21, 2017 minutes as presented. **Seconded by,** Sandi Aldrich. **All in Favor. Motion Carried.**

1. **SPR17-15 PARROTTA, ROBERT.** Seeks to amend condition of approval set forth by the Planning Board on November 20, 2008 when approving SPR08-25 for a marina/tourist accommodation. The condition reads as follows: There shall be no pumping of gas on site. A 550-gallon gas tank currently exists and is in use. Section 171.11, Block 2, Lot 12, Zone RCM1.3. Property Location: 5102 Lake Shore Drive. Subject to WCPS & APA review. Subject to SEQR. See V17-29 associated with this project.

Robert Parrotta presented the following:

- When he first came to the Board in 2008 he never foresaw the business taking off like it did.
- He is asking for 2, 550-gallon gas tanks.
- He has 300' of lake front and 51/4 acres between the two properties.
- He is also looking to be open later.
- He went to the LGPC and received permits for 18 boats as long as he had a place to dock them.
- He has 3 people that rent the space privately.
- It came to the point where it became an issue getting gas at Norowal and Lake George Camping with the long line of boats there.
- It is such a small bay that it became dangerous and sometimes it took until 7pm to get the boats refueled.
- He looked into it and the State of New York law is that you can have up to 1,100 gallons on your property for use in your equipment without requiring any permits.

- That's on each property so technically he could have 2,200 gallons.
- The LGPC upheld this when Mr. Cossman called them. They explained that it is DEC approved as long as you adhere to their very stringent rules.
- He detailed the NYS rules and regulations that he had to follow.
- He feels that he resolved the problem that his boats were creating in the small bay.
- He is not doing this to make money on the gas, he is doing it for safety and the convenience to his customers.
- He is asking to increase his period of operation to 6pm.
- He did not realize he needed to ask the Board to increase the number of boats he has because he thought the LGPC was in charge of the water and they increased the number a few times.

Zoning Administrator, Pamela Kenyon asked how many boats were on the two lots. Mr. Parrotta stated that he could have 21 in the water. Zoning Administrator, Pamela Kenyon stated that Mr. Parrotta was before the Board tonight for the southerly lot only and that is why she only had 1 gas tank listed on the agenda. She believes that if he is going to be having boats and gas on the other parcel he should come before the Board for approvals for a marina on that lot too. Mr. Parrotta stated the LGPC was fine with it.

Herb Koster stated there was a condition of approval of no pumping gas, and that is why Mr. Parrotta is here. Mr. Parrotta stated when he was before the Board before they asked if he was going to pump gas and he said no, because he had no idea that he would have the need. Herb Koster explained that it was an original condition of approval and that is why he is in front of them this evening. Herb Koster asked if a variance was required. Atty. Muller stated a variance was needed due to the location of the tanks. Zoning Administrator, Pamela Kenyon explained that it did not meet the setbacks. Herb Koster asked why it was considered a structure. Zoning Administrator, Pamela Kenyon explained that it was a resolution passed by the Zoning Board a quite a few years ago that any above ground tank greater than 250 gallons will be treated as a structure. Herb Koster asked if that was even if the structure was under 10' x10'. Zoning Administrator, Pamela Kenyon replied that this was correct.

John Cushing asked what the setback was. Zoning Administrator, Pamela Kenyon said 75' from the lake and 15' from the side property lines.

Herb Koster asked if propane tanks were allowed within 75' of the lake. Zoning Administrator, Pamela Kenyon replied only if they were less than 250 gallons. Ann Marie Somma asked if he needed a variance for the setback, and if he also needed something regarding the no pumping of gas on the site. Atty Muller stated that he was seeking a change from previous Site Plan Review approvals. He believes that they just discovered this evening that they are not talking about enough of his property. John Gaddy asked if their discussion this evening was limited to the one lot. Zoning Administrator, Pamela Kenyon stated it was only the southerly lot tonight. Atty. Muller stated that procedurally this put the Board in an uncomfortable position, they should be talking about the project comprehensively. Zoning Administrator, Pamela Kenyon stated they were dealing with a condition of approval on the southernly lot. Atty. Muller suggested that the Board tell Mr. Parrotta what they wanted to see so he could get his application amended to show what they are looking for.

Zoning Administrator, Pamela Kenyon stated he would have to address the boats and gas on the northerly lot.

Herb Koster stated he did not have a problem with having gas as it was a safer situation than loading the boats by hand and trucking it back and forth. Mr. Parrotta stated that the pumps he had, do have pumps and meters and are not a gravity fed system like Mr. Cossman was stating. There is a pump on the top of the tank along with a meter. It shuts off like any other gas pump. He is not selling gas to the public, it is for his boats only. Sandi Aldrich asked if the garden hose was gasoline rated. Mr. Parrotta stated that the hose was a gasoline hose. The garden hose was for pressure washing only.

Gena Lindyberg asked if other people besides his customers could come in for gas. Mr. Parrotta stated he did not sell gas to anyone, he only pumped it into his boats. He does not even sell to the people that paid to dock there.

Sandi Aldrich asked if the two pumps had been certified by Warren County Weights and Measures. Mr. Parrotta stated that they were there and said it was fine, along with DEC and LGPC. The tanks are double walled for a catch inside and then they built a catch around it to catch any spillage. Sandi Aldrich stated it would never hold 550 gallons of gasoline. Mr. Parrotta agreed.

John Cushing stated that the regulations in Bolton says a dedicated wall that could contain the entire store of volume must surround the storage facility and in no case, shall the height of the dyke be less than 5'. Mr. Parrotta stated he understood this, but none of the marinas pumping gas meet this requirement. John Cushing cited Lake George Camping and stated that some of the other marinas bury their tanks. Mr. Parrotta stated that he could build the wall taller if need be.

John Cushing stated a buffer needs to be in place too with existing vegetation as a visible screen and it needed to be 500' from a residential development. Mr. Parrotta stated that he did not believe any of the marinas fit that criteria. He stated this is a tourist area.

Ann Marie Somma asked if the property was zoned commercial. Zoning Administrator, Pamela Kenyon stated that it is a residential/commercial zone. Atty. Muller stated that it was also a pre-existing non-conforming lot.

Jessica Rubin asked if they were open later, wouldn't that give his renters time to fill up. Mr. Parrotta stated that most of the marinas were closed at 5pm. Norowal stayed open to 7pm. Sandi Aldrich stated that F.R. Smiths stayed open until 6pm. Mr. Parrotta stated sometimes. It was a real problem.

Herb Koster asked about the 500' from a residential area. He stated that the ordinance did not make sense. Zoning Administrator, Pamela Kenyon stated this was for volatile liquids. Herb Koster asked what people with propane did. Zoning Administrator, Pamela Kenyon stated that it did not pertain to residential. Herb Koster stated that it does not make sense to him that you could have 1000 gallon propane tanks 15' from the property line, but you had to have a 550 gallon tank 550' from the property line. Zoning Administrator, Pamela Kenyon stated that this section of the ordinance does not pertain to residential. Atty. Muller stated his point was well taken.

Herb asked what they were supposed to be making a recommendation to the Zoning Board. Atty. Muller stated that the Zoning Board decided they could not reach the question of whether a variance could be granted until Mr. Parrotta was granted permission to have the gas first. Tonight, they realized that they were only talking about half of the site. In fairness to the whole project it needs to be looked at comprehensively. They can ask all the questions they want and let Mr. Parrotta know what they are looking for when he comes back. Zoning Administrator, Pamela Kenyon stated that this was a condition of approval, it is not an actual project that he is here. Atty. Muller stated that the LGPC has adequate jurisdiction to approve a marina and Mr. Parrotta has been granted all that he needs from them. The Town of Bolton has its jurisdiction as well and Mr. Parrotta is in the right zone for this. The question is what did the Board approve. Mr. Parrotta is here before them to change this.

John Gaddy stated that as they have changed the responsibilities of the Town and Bolton and the LGPC this issue was rather confusing to him. He spoke with Mr. Saris about the regulations for the storage of volatile liquids as it would seem as though there were probably no marinas in compliance with these regulations in the Town of Bolton. He asked who had top priority with this issue, is it the LGPC or NYSDEC. He spoke to the LGPC and Mr. Parrotta was in compliance and had all of his permits. NYDEC concerns were not triggered until there was 1,000 gallons or more. Atty. Muller stated that Mr. Parrotta was compliant with DEC. It is only Town of Bolton regulations they should be dealing with. Zoning Administrator, Pamela Kenyon stated that they were only here for the southerly lot which was related to the 2008 approvals. John Gaddy stated that he recalled Mr. Parrotta stating that he had long term seasonal storage and he would like to get rid of the long-term rentals.

John Gaddy stated that they needed to look at this comprehensively and he believes they should have a Public Hearing due to all of the public concern. Some of his concerns, are the distances of the tanks from the shore and the neighbors and he wonders if they could be moved. He believes that the screening needs to be put up too.

John Gaddy asked if the number of boats was any concern of the town now that the LGPC has control of the water. Atty. Muller stated that after 2008 the LGPC took over the number of boats in the lake, but if part of the marina operation relates to the land, then Bolton has some jurisdiction. He recommends that they defer to what the LGPC has permitted based on their analysis of the marina aspects in the water. The Board has some say about the storage of the boats if they are being stored on the land along with parking.

Ann Marie Somma asked if they needed to address the different number of boats from what was approved. Atty. Muller replied that they did.

Gena Lindyberg inquired if the fire company had been contacted for their input. Zoning Administrator, Pamela Kenyon stated she sent the Fire Chief, Jeremy Coon a copy of the agenda and he asked for a copy of the application as he thought he may want to chime in on this application, but she has not received any response from him.

Ann Marie Somma asked if it was possible to limit the time periods in the day that he pumped gas. Mr. Parrotta stated they only pumped gas usually between 5:00 and 6:00pm. Once in a while they pumped some at 1:00pm.

John Gaddy stated he spoke with Norowal Marina manager, John Mooseburger and was told that these inexperienced boaters were not worth their time. Herb Koster stated he believes the operation Mr. Parrotta is looking for is much safer than doing it any other way and he does not see the problem. He does not understand why they have to rereview the whole project. Atty. Muller stated that Mr. Parrotta was asking them to rereview it. The first thing he is asking for is an amendment. The man wants to have the number of boats that the LGPC permits. They will want to know how the increased boats affects the land. He is also asking for relief of the gas. He stated that the resolution is what they have to go by. He can only get a change from this Board. There is an aspect of expansion, you want to include the other piece of property if he is using it, which it seems he is asking for now. He has DEC exemption and LGPC marina approval, but he needs something from the Town of Bolton that either limits him to the 12 boats and no gas or allows him to increase the boats and pump gas.

Gena Lindyberg stated the project needs to be amended to include both parcels of property and for the parking, increased boats and the pumping of gas. She would be more comfortable with seeing the permits from DEC and LGPC. Atty. Muller told her that he did not need a permit from DEC but she could request the permit from the LGPC. Gena Lindyberg stated she would also like a letter from the fire company stating it was safe. Atty. Muller stated it is the Town's burden to send someone out that is qualified to make those decisions. Herb Koster stated that they had requested the Fire Company's input before and were told that they did not want any liability that they approved it. Atty. Muller stated they can hire an expert to give them the assurances that they may need at the cost to Mr. Parrotta. They have done this before. Gena Lindyberg stated this would make the Board feel more comfortable.

John Gaddy asked if the 12 boats from the original 2008 approval were all able to be accommodated on the southerly property for docking. Mr. Parrotta replied yes.

Ann Marie Somma stated she would like to see the containment issues that he does not currently meet looked at. Zoning Administrator, Pamela Kenyon stated that he was before the Zoning Board for that section of the code. Atty. Muller stated this was not their purview.

Gena Lindyberg stated she would like to have an engineer to sign off on the containment aspect.

John Cushing showed Mr. Parrotta some photos, and Mr. Parrotta stated it had been changed.

Ann Marie Somma asked Mr. Parrotta if he feels this is as big as the operation is going to grow, or if this feels that there is an opportunity for it to change into something else. Mr. Parrotta stated that it is as big as it can get.

Gena Lindyberg inquired what the maximum boats would be. Mr. Parrotta stated 21 in the water.

Gena Lindyberg asked Mr. Parrotta to amend the drawings to show where all the parking spaces are and number them. She would also like to see where the extra boats for emergency purposes would be parked on the plans as part of the application. Zoning Administrator, Pamela Kenyon stated this was for both parcels.

John Gaddy asked if there had been any complaints on the tanks being filled. Zoning Administrator, Pamela Kenyon stated she had one back in June.

Ann Marie Somma asked that the parking spots for the guests for each of the motel units be included on the plans too. Gena Lindyberg agreed.

John Gaddy asked about requirement 245b and the dyke containment and the regulation stating it would have to be 5' high. Atty. Muller stated he would like to hear what the expert requires before they decide if a variance is required. Herb Koster stated he would rather it go by NYS fire code requirements.

Herb Koster said he would make a recommendation to the Zoning Board of Appeals that the requirement of the placement of gasoline tanks 500' from a property line is unfair. Atty. Muller stated that the Board could make a recommendation. Gena Lindyberg stated that this could be addressed at a Public Hearing if they held one. Atty. Muller agreed.

John Gaddy asked if this application would come back to this first Board if there was a Public Hearing. Atty. Muller stated it would.

Gena Lindyberg stated she would like to see the change in hours included in the amended application. Mr. Parrotta stated that he had, and it should have been included in the application. Zoning Administrator, Pamela Kenyon stated she was not aware of that.

Gena Lindyberg asked if there would be any waste removal from the boats. Mr. Parrotta stated there are no toilets on the boats. She asked that he confirm this in the application along with no boat maintenance.

John Cushing asked if Mr. Parrotta had a special use permit. Zoning Administrator, Pamela Kenyon stated that a special use permit is the Site Plan Review approval.

Herb Koster told Mr. Parrotta that he needed to include everything they had requested on the amended application.

John Gaddy asked about looking at any potential alternative potential tank placements on the property. He stated that some of the locations they looked at further away were not conducive to a safe environment.

Herb Koster asked about draining the tanks in the winter. Mr. Parrotta stated that one had already been drained and he was working on the other one.

Gena Lindyberg asked that the expert give his opinion on a safe location of the tanks.

Herb Koster asked Zoning Administrator, Pamela Kenyon to see if she can have the fire code inspector at the property before the next meeting date. She would have to push the meeting to December if this could not be achieved.

Atty. Muller stated that researching NYS Codes and Regulations that apply to boat storage were amended in March of 2017 and state that accept where the department (DEC) has approved a local law

or ordinance, any local law or ordinance that is aimed at establishing and implementing a petroleum bulk storage program is preempted. This means the DEC regulations will apply.

John Gaddy asked if the Bolton regulations was superseded by DEC. Atty. Muller stated it was. It would appear that Mr. Parrotta would not need a variance from the Town of Bolton. He will contact DEC to figure this out. He read the following NYS code: “613-1.6 Preemption (a) Except where the Department has approved a local law or ordinance under section 1.7 of this Part, any local law or ordinance that is aimed at establishing or implementing a petroleum bulk storage program is preempted. The Department retains sole authority to administer and enforce this Part with respect to any public authority created under the Public Authorities Law, any state agency, or any major facility.” Herb Koster stated that this means that he doesn’t need to comply with Bolton code, he needs to comply with the State of New York requirements. It appears that he has half of what he is allowed.

Zoning Administrator, Pamela Kenyon asked if this meant that Mr. Parrotta no longer had to apply for the 500’ setback. Atty. Muller stated that this appears to be the case. Atty. Muller stated that he would contact DEC and explain all of the facts and find out where they stand and what their rules on this are.

Herb Koster asked if Mr. Parrotta had to apply for boat storage for the boats kept on his property. Zoning Administrator, Pamela Kenyon stated this would be all classified under the marina.

John Gaddy asked about the Town of Bolton code 200-45 storage of volatile liquid and if they still stood. Atty. Muller stated that he would be talking to DEC to see what was allowed.

Zoning Administrator, Pamela Kenyon asked if this meant that Mr. Parrotta did not require any of the front yard or side yard setbacks. Atty. Muller stated it would require them as this was being considered a structure. The 500’ setback may be preempted by DEC, which he was going to check into.

The Board discussed the list of items they would like to see Mr. Parrotta to provide at the next meeting.

RESOLUTION:

Motion by John Gaddy to declare the Bolton Planning Board as lead agency for SPR17-15. Seconded by, John Cushing. All in Favor. Motion Carried.

Motion by John Gaddy to hold a Public Hearing for SPR17-15 at the November 16, 2017 Planning Board meeting with the condition that the necessary information is able to be provided for that date and the amended application is to include both lots. Seconded by, Jessica Rubin. All in Favor. Motion Carried.

Motion by John Gaddy Gena Lindyberg to have the following information included in the amended plans:

- 1. A drawing that includes the parking for the entire site, including parking for the number of boats docked and boats stored.**
- 2. The applicant provides a fire inspection from NYS fire code or prove an exemption from that requirement.**
- 3. The applicant provide plan for alternative the placement of the tanks for fuel storage.**
- 4. The applicant provides a screening plan for the proposed tanks.**

5. The applicant provides written documentation that he has approval from the LGPC and DEC stating he meets their requirements.

6. The increased hours of operation are included with the amended application.

Seconded by, Gena Lindyberg. All in Favor. Motion Carried.

The meeting was adjourned at 7:15pm

minutes respectfully submitted by Kate Persons

