

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, April 17, 2018
6:00 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: Joy Barcome, Holly Dansbury, Jason Saris, John Whitney, Lorraine Lefevre, Carla Cumming, Jeff Anthony, Zoning Administrator, Pamela Kenyon and Counsel Michael Muller

Absent:

The meeting was called to order at 6:00 pm.

Jason Saris asked if there were any corrections or changes to the March 20, 2018 minutes.

RESOLUTION:

Motion by Holly Dansbury to approve the March 20, 2018 minutes as presented. Seconded by, Joy Barcome. Carla Cumming and Jeff Anthony abstained. All others in Favor. Motion Carried.

- 1. V18-07 SHULL, CAROL.** In accordance with Section 200-38D, seeks area variance for the construction of a proposed dock. 20' is required. -0' is proposed. Section 185.00, Block 1, Lot 42, Zone RCL3. Property Location: 555 Trout Lake Road. Subject to WCPS and APA review.

Carol Shull presented the following:

- When they purchased the home, there was an approval for a dock already set up.
- It was to go in the same location as the existing dock.
- They hired "Adirondocks" and planned to put the new dock in.
- When they surveyed to put the dock in where the existing dock was, they noticed it was not quite the way the APA had laid it out.
- She went to the APA and they stated they wanted it where the existing prior dock was located.
- They started over and the new dock is going where the prior dock was and that is what is represented in this new application, and this plan has been approved by the APA.
- They understand that this does not have the 20' setback in the water rights.

Jason Saris asked if there was a conceivable way to have a compliant dock, but that it would not be approved by the APA. Ms. Shull stated this was correct. She stated they would be in the middle of a wetland and only about 1' of water.

John Whitney asked if there had been a 60' dock there that was removed. Ms. Shull stated yes, and the previous owner was starting to put the new dock in when he sold the property.

Holly Dansbury asked if this proposed 60' dock was where the old one was. Ms. Shull stated yes, essentially it was, the angles had been changed and it was extended to take them into deeper water for less disturbance.

Atty. Muller read an email between Tom Kuster and Zoning Administrator, Pamela Kenyon with questions about the application.

Ms. Shull stated she spoke with Mr. Kuster to understand his concerns. She stated that Mr. Kuster basically was trying to understand where the dock was being placed, he had no problem with where the other dock was. His major concerns were that the dock would impact his beach or swim area. She stated that they would not be boating in front of his property and her dock would not impact his beach or dock area. The dock would be coming straight out from the wetlands. She stated he was comfortable with this. Holly Dansbury inquired if they would be able to come straight out from the wetlands. Ms. Shull stated they were able to go straight out and they should be at about 4' of water if they go out 108'. They would maintain the wooded area between themselves and the neighbor.

Tom McGurl of 539 Trout Lake Road stated that he was also speaking for his father at 525 Trout Lake Road presented the following:

- The previous dock was in the lake for 2 or 3 years before it was crushed.
- It had a boat on it at 60' during that time.
- Even coming out to 108' you won't have 4' of water in the summer.
- They are concerned about riparian rights, there is no way to avoid this.
- This is the first time that a 100+' dock has been in Trout Lake.
- He appreciates that everyone wants a dock, but this will not be removed, and he believes that the Board needs to carefully consider this request.
- This whole area is wetland.

John Whitney asked if this was a negative 0 setback. Zoning Administrator, Pamela Kenyon stated it was. It is not all within their riparian rights. John Whitney asked how far they extend past the applicant's riparian rights. Zoning Administrator, Pamela Kenyon stated that it showed on the maps how far they were encroaching on the neighbor's riparian rights

Jason Saris asked if they could grant a variance on somebody else's riparian rights if they could not grant a variance crossing on to someone's property. Atty. Muller stated the same rights would apply. Atty. Muller stated the Board did not have jurisdiction to grant this relief. John Whitney stated this was a concern, the applicant would need to work it out with their neighbor.

Jason Saris stated the Board could not grant this variance request. Ms. Shull stated she understands but this is their only option. They have looked at different options, but this is the only place they can put this in order to have a dock. Jason Saris stated he understands this and sympathizes with her. Atty. Muller suggested she table the application and get relief from Mr. Kuster and then come back for a variance approval. Jason Saris explained that the Board did not have authority to grant her permission to allow her to go use her neighbor's riparian rights. If she would like to table the application to get a written agreement with Mr. Kuster to go into his riparian rights, she can then come back to the Board with a variance request.

Jeff Anthony asked if the LGPC had jurisdiction over Trout Lake. Atty. Muller stated just Lake George.

Jason Saris asked how the ZBA was lead agency if the APA had already reviewed it and made a judgement. Atty. Muller stated the APA could not give the setback relief that has been requested of the ZBA. This is what the APA is dealing with the wetlands. Zoning Administrator, Pamela Kenyon stated that the APA has not made any decisions on any variances. Jason Saris stated that it appears that the APA has already told the applicant that they would not be getting any dock in the wetlands, and this was their only option. Atty. Muller said this was exactly one of the strong reasons that the answer to "are there any other feasible alternatives" is no as the APA kind of closed this alternative by saying no. He stated that he understands this, but there have been so many times in the past, if they had given an applicant some help as to what they were thinking, this Board would have done something different. This is the first time he can remember that this Board had the APA's input prior to going through the whole process. Atty. Muller replied that this may be a new beginning. Jason Saris stated he is curious as how this came to be. Ms. Shull stated that when they realized the survey was incorrect, and what the APA had approved was slightly changed, which they were unaware of until they went to put the dock in, they realized they had to go to the APA to approve the wetland first before they came before this Board.

No County Impact

RESOLUTION

Now, upon motion duly made by Holly Dansbury and **Seconded by**, John Whitney it is resolved that the ZBA does hereby table the variance request as presented for the applicant to get relief from the neighbor to cross their riparian rights. **All in favor. Motion Carried.**

- 2. PARROTTA, ROBERT.** Represented by Atty. Gregory Canale. In accordance with Section 200-72 of the zoning ordinance, seeks to appeal the Zoning Administrator's interpretation whereby determining that Section 200-45 (Storage of volatile liquids) applies to the two 550-gallon tanks located on those parcels designated as 171.11-2-11 & 12. Zone RCM1.3. Property Location: 5102 and 5104 Lake Shore Drive.

THIS ITEM HAS BEEN TABLED

3. **PETER COSSMAN & BARTLEY FAMILY TRUST.** Represented by Atty. Joshua Silver. In accordance with Section 200-72 of the zoning ordinance, seeks to appeal the Zoning Administrator's interpretation whereby determining that "Type II Site Plan Review" is equivalent to "Special Use Permit" as it pertains to the marina activity located on those parcels designated as 171.11-2-11 & 12. Zone RCM1.3. Property Location: 5102 and 5104 Lake Shore Drive owned by Robert Parrotta.

Atty. Joshua Silver presented the following:

- This appeal concerns an interpretation letter from the Town of Bolton Zoning Administrator in response to Mr. Cossman's inquiry of what was approved for Mr. Parrotta's property in 2008.
- Mr. Parrotta received a site plan approval to rent boats on this property that was used for various purposes over the years.
- Mr. Parrotta received Site Plan approval and started renting boats. He came back for an expansion of these rentals.
- Mr. Cossman inquired what exactly was approved in 2008 and the response from the Zoning Administrator was a marina use and they object to this.
- Their position is that Mr. Parrotta did not receive a marina permit in 2008 Site Plan Review, he received the right to rent the 12 boats he had asked for.
- The application is evidence of this. He did not request a blanket marina approval in the application.
- The distinction is between a blanket marina or simply being approved for the requested relief of renting 12 boats.
- The letter stating that site plan approval in 2008 gave him a marina was a surprise to them and this is what they are asking the Board to make a decision on.

Jason Saris asked if they were appealing the 2008 approval. Mr. Silver stated that he was appealing the interpretation dated November 16, 2017 stating that the Site Plan approval that Mr. Parrotta received is actually a marina use approval. He stated that before this interpretation they had no notice to the landowners that a marina had been approved, let alone applied for. They knew that there was a specific kind of rental of boats that was being approved. If they had known this then, they would have objected. What they are saying is, that if Mr. Parrotta wants to do any other marina use activity, he needs to comply with the code.

Zoning Administrator, Pamela Kenyon stated that it is on the agenda for the decision as to whether Type II Site Plan approval is a special use permit only, not a marina. Mr. Silver stated that ultimately this Board will need to approve whether Type II Site Plan approval is a special use permit, and he believes there are no findings that back this up. What they are requesting today is that if the applicant is requesting additional marina activity, he needs to comply with the code. He has permission to rent boats only. If he would like to do more, he needs to come back before the Board.

Jason Saris said whether or not it requires Type II Site Plan Review is not on the agenda, it appears that Mr. Silver indicates he is looking to see 2 things here. The one is whether Type II

Site Plan Review is considered a special use permit, and the other is whether or not the Zoning Administrator, based upon previous Site Plan Review and approval if she believed marina activities expanded past the rental of boats as allowable activities. He asked if she had been asked to make a determination on the second item. Atty. Muller stated that he believes that the reason that Mr. Parrotta is currently before the Boards is because he did wish to have more permission than what was granted in 2008 and the Zoning Administrator made him apply and he was cited for a violation.

Mr. Silver stated that he believes they are saying the same thing. He also thinks that record should be clear that Mr. Parrotta does not have blanket marina approval.

Holly Dansbury stated in reading the minutes, it was her understanding that there was a Class A Marina in place and also the minutes refer to a Type II Site Plan Review for a marina.

Jason Saris stated that a Class A marina does not mean a lot, it means that any home owner that wants to rent dock space to 3 members of the public has to have this marina permit and has to supply parking, bathrooms and garbage disposal. He stated every resort on the lake was a Class A marina. If they want to rent boats, they have to come to the town for Site Plan approvals.

Mr. Silver stated at the 2008 meeting Mr. Parrotta stated that he did not need any marina type permits from the town because he had a LGPC Class A Marina license and LGPC preempts the Town. He does not believe this is the case and it appears that the Board proceeded as though this is true in 2008. What they are saying is, if Mr. Parrotta wants any additional marina type uses beyond what was approved in 2008, he should be required to come in line with the code. Atty. Muller stated they agree, with this and in 2017 they decided that Mr. Parrotta had exceeded the limits approved in 2008 and was informed that he was in violation. The violation in its earliest stages was that Mr. Parrotta had exceeded his number of boats and he that was not permitted to store gasoline for the use of his renters at that time. Zoning Administrator, Pamela Kenyon stated the stop work order was basically for the gas tanks and then everything else came into play. Atty. Muller stated that Mr. Parrotta somewhere along the way perceived that the LGPC Class A marina permit preempts the town in every way which is incorrect. He stated the LGPC now has, by court decision exclusive jurisdiction over that water. This does not preempt the Town of Bolton to regulate the portions of the upland such as parking. The Planning Board specifically prohibited Mr. Parrotta from dispensing gasoline. The ZBA has told Mr. Parrotta that they will not grant any relief for setbacks on the gasoline tanks until he gets relief from the Planning Board to dispense gasoline. What they are here for tonight is as the agenda says: seeks to appeal the Zoning Administrator's interpretation whereby determining that "Type II Site Plan Review" is equivalent to "Special Use Permit". This is an important issue, because looking through the code you will see references to a special use permit, and there is nothing in the structure of the code that talks about having to issue one. It has been a long-standing interpretation of the Zoning Administrator that a Type II Site Plan Review hits all the markers required. This interpretation has at least 2 decades on it and she stands by it today. How do you get permission to do what you need to do to get marina permission such as leasing or renting boats? That answer would be to present Type II Site Plan Review to the Planning Board. Jason Saris stated he agrees, through his entire tenure on the

Zoning Board and Town Board, they have considered the special use permit as Type II Site Plan Review. It is definitely worded poorly in the ordinance and it is unfortunate that it has gone on this long without being changed or user friendly. He stated that a type II Site Plan Review has been considered an equivalent of a special use permit for the last 20 years. You can't write an ordinance giving certain things allowable uses without having anyway to allow them. Any time that something is not clear, the tie goes to the runner. They have to take the least restrictive interpretation, which is that there had to be some intention of allowing this because it says it's allowed. Atty. Muller stated that the ambiguity is definitely going to be interpreted as favorable to Mr. Parrotta. He thinks that it starts with the Zoning Administrator and she had a couple of choices. One would be that there isn't any special use permit in the code and she could determine that he doesn't need any permission at all, but they don't feel comfortable with this. The place to go would be the Type II Site Plan Review, because it doesn't differ markedly in any way from what would be the analysis of a special use permit. He wishes the code made this clearer. He stated it was a valid question and a valid appeal, but they still need to have the ultimate question answered by the Planning Board as to whether or not Mr. Parrotta will be allowed to dispense gas on his property. If the answer is yes, then the ZBA has more jurisdiction, if the answer is no, they are no longer in play. Holly Dansbury asked what the conclusion of the first meeting of the Planning Board was. Atty. Muller stated that they had closed the Public Hearing and the applicant was kind enough to agree in writing to extend the time on the clock for the required decision from the board.

Jason Saris asked if there was any correspondence pertaining to this appeal. Zoning Administrator, Pamela Kenyon replied, there was not.

Peter Cossman stated the following:

- They are not contesting Mr. Parrotta's right to rent 12 boats.
- They understand this issue has been resolved years ago.
- The genesis of all the meetings that have taken place has been focused on Mr. Parrotta pumping gas on the site.
- They are focused on Mr. Parrotta not being allowed to pump gas on site.
- Mr. Parrotta was given a restriction on pumping gas when he was given permission to rent boats, and he went ahead and did it anyway.
- The main reason they are here tonight is that he has asked the Zoning Administrator is that in the exchange of correspondence he has had with her over 2017, he has asked for an explanation as to when, where and how Mr. Parrotta's property was approved as a marina.
- As a marina is defined under the code, there is a whole host of activities that Mr. Parrotta can engage in.
- The property is not zoned for marina use unless he has a special use permit which leads to the issues they have been talking about.
- In the absence of a special use permit, there is nothing in the code that says Mr. Parrotta can use his property as a marina.
- Their position is going to be that it is not a permitted use, so it can not be used for this purpose.

- The Zoning Administrator stated in her letter that the marina use for the property was granted with the 2008 approval.
- This gives Mr. Parrotta rights that he would not have if it had not been given marina approvals.
- They are asking the Board to confirm that Mr. Parrotta's property was never approved for a marina, based on the 2008 application, which did not request a marina nor did the minutes or language of the resolution reflect that a marina was approved.

Zoning Administrator, Pamela Kenyon stated she was only prepared to discuss this evening was what presented on the agenda.

Atty. Greg Canale presented the following.

- He was understanding that the only issue to be addressed today was to determine whether the criteria for Type II Site Plan review was the same as for a special use permit.
- The 2008 permit approval of the Site Plan by the Planning Board speaks for itself.
- The Zoning Board does not need to interpret a 2008 action.
- If this 2008 approval was contrary to what others felt was permitted, that would have been the time to appeal it.
- They could have asked the Planning Board for an interpretation of their actions at that time.
- To gratuitously come to the ZBA and ask them to please declare that a 2008 action does not mean what they want.
- He respectfully submits that this exceeds the jurisdiction of the Zoning Board.
- He detailed town law 267a-4 his letter to the ZBA specifying the jurisdiction of the Zoning Board.
- He thought Ms. Kenyon's letter was merely an explanation as to what took place in 2008 and not an interpretation.
- When Mr. Parrotta says that he has a Class A Marina license, he is referring to LGPA having jurisdiction over the water and he certainly concedes what takes place on the land is subject to zoning rules and regulations.
- This is where he is at right now. There some are issues that need to be clarified and voted on.
- He has tabled his appeal to this board until after the Planning Board makes its decisions.
- They are not here tonight for any of this, they are here to determine whether or not the criteria used for Type II Site Plan Review is the same as criteria as for a special use permit.
- The Town Attorney has confirmed that it has been used that way.
- He detailed a letter from Atty. Silver and stated they were claiming that the Site Plan Review was using improper criteria.
- Article V of 200-25 of Site Plan Review specifically says that the purpose of this article is to allow the proper integration of commercial and industrial uses into the community which are listed in Articles 4 and 7.

- Article 7 says the purpose of the shoreline regulations is to promote and protect the public health, welfare and safety, and to protect economic property values, aesthetic and recreational values, and other natural resource values associated with all lakes, ponds, streams, swamps or wetlands.
- His point is that the regulations in Site Plan approval, specifically address the concerns that the town law makes reference to with special use permits.
- When a Planning Board uses the criteria laid out in a Site Plan Review, they are addressing all of the issues that are required for a special use permit and that is why the Planning Board has considered that criteria to be the same for all these years.
- He respectfully requests that the appeal be denied.
- It is not the place for the ZBA to make declarations as to what was meant by a Town Planning Board meeting in 2008.
- It his position is that in 2008 the Planning Board used the correct criteria.

Mr. Silver stated that the reason they are here is that a marina was not approved in 2008. They had no notice that a marina was approved until they received a November 2017 letter from the Zoning Administrator. He believes this was a reinterpretation of what he believes had been approved in 2008. His other point is that a Type II Site Plan approval shares some similarity with a special use permit, but he believes Mr. Parrotta did not get Type II Site Plan approval. He believes there was no intent by the Planning Board to give it Type II Site Plan approval.

Jason Saris stated he was with the Zoning Administrator on this. He is not prepared to consider the other question being posed. He is not familiar with what was specifically said in the minutes. Zoning Administrator, Pamela Kenyon stated she did not know what there was to appeal about 2008. She read the 2008 agenda item SPR08-25 as follows: “Seeks Type II Site Plan Review for a Marina and Tourist accommodations. Section 171.11, Block 2, Lot 12, Zone RCM1.3. Property Location: 5102 Lake Shore Drive and known as the Contessa. The WCPB determined no county impact. Subject to SEQR.” She stated it was specifically on the agenda as a Type II Site Plan Marina. This was in 2008 and they would have had 60 days to appeal any decision that had been made. Nobody appealed this in 2008 and it was specifically noted that it was a marina. She does not know what they want the Board to do.

John Whitney asked under which permitted accessory use by special permit or Type II Site Plan Review were the activities that were approved, approved under. Atty. Silver stated this was a good question. John Whitney stated he did not see anything that fits, accept the marina, which is stated in the agenda. Atty. Silver stated he believes Mr. Parrotta was approved for what he applied for, which was the right to rent boats. This is different from a blanket marina approval. They may be saying the same things because it sounds like the Board and the Zoning Administrator are confirming that any additional marina use activities, require additional approvals, which is why Mr. Parrotta is in front of the Planning Board no for permission to pump gas. They are hung up on the idea that in 2017 the prior 2008 Site Plan approval was deemed to be a blanket marina was approval. Atty. Canale stated he agrees that the using the word marina in the November 2017 letter, it might somehow infer that it gives Mr. Parrotta carte blanche use of being able to, according to the definition of a marina, provide accommodations or services for boats by engaging in any of the following: The sale of marine products or services. They do not contend that this includes pumping gas. The 2008 Site Plan

Review specifically addressed this and they are well aware of the fact that they need to get this amended. If this is why Atty. Silver is concerned, this is not going to happen.

Jason Saris stated in either case this Board is only here to consider the item on the agenda that is in front of them which is on the agenda tonight. If they have more questions, it needs to be discussed with the Zoning Administrator and be put on a future agenda if it fits the criteria.

John Whitney asked if they would be determining if a special use permit is considered a Type II Site Plan Review. Atty. Muller stated this is correct. John Whitney asked if this determination would be specific to this item. Atty. Muller stated no, it would abide by all events in the future too.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Peter Cossman & Bartley Family Trust, 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:

Now, upon motion duly made by John Whitney and **Seconded by**, Jeff Anthony to uphold the Zoning Administrator's interpretation that the Type II Site Plan is considered equivalent to a Special Use Permit. **All in favor. Motion Carried.**

John Whitney stated that this motion was based on the guidance of counsel here today and the long history of that interpretation and practice by the Zoning Administrator and the Zoning Board of Appeals.

The meeting was adjourned at 7:16 pm

Minutes respectfully submitted by Katie Persons