

**Town of Bolton
PLANNING BOARD
MINUTES
Thursday May 17, 2018
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: Herb Koster, John Gaddy, John Cushing, Gena Lindyberg, Sandi Aldrich, Ann Marie Somma, Zoning Administrator, Pamela Kenyon & Atty. Michael Muller.

Absent: Kirk VanAuken and Alternate; Jessica Rubin

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

Herb Koster asked if there were any changes or corrections to the April 19, 2018 minutes.

RESOLUTION:

Motion by Gena Lindyberg to accept the April 19, 2018 minutes as presented. **Seconded by,** Sandi Aldrich. **All in Favor. Motion Carried.**

PUBLIC HEARING

1. **SPR17-15 PARROTTA, ROBERT. Revised application.** Represented by Atty. Greg Canale. **1)** Seeks to amend conditions of approval set forth by the Planning Board on November 20, 2008 when approving SPR08-25 for a marina/tourist accommodation on that parcel designated as Section 171.11, Block 2, Lot 12. The conditions read as follows: There shall be no pumping of gas on site. There shall be no more than 12 rental boats. The hours of operation, including maintenance, are to be between the hours of 8:00 am and 5:00 pm. **2)** Seeks Type II Site Plan Review to create a marina on that parcel designated Section 171.11, Block 2, Lot 11. Currently two 550-gallon gas tanks exist and are in use. One is located on Lot 12 and the other is located on lot 11. 21 boats are proposed between the two parcels. The proposed hours of operation are between the hours of 8 am to 6 pm. Zone RCM1.3. Property Location: 5102 & 5104 Lake Shore Drive. Subject to WCPS review. Subject to SEQR. This item was tabled at the April 2018 meeting pending a public hearing.

Atty. Josh Silver of the Murray Law firm presented the following:

- Since last December the Board's position with respect to DEC preemption relative to fuel tanks and LGPC preemption with respect to upland portion of the marina use of Mr. Parrotta's property has been reversed.
- This is a fundamental change.
- The code is very specific for Type II Site Plan Review with 4 distinct categories.

- There are residential lots all around the property and the applicant cannot meet the dimensional requirements of the neighborhood.
- The answer is no, to whether the proposed use complies with dimensional requirements.
- The second criteria is §200-31(B). The use would be in harmony with the general purpose and intent of this chapter, specifically taking into account the location, character, and size of the proposed use and the description and purpose of the district in which such use is proposed, the nature and intensity of the activities to be involved in or conducted in connection with the proposed use, and the nature and rate of any increase on the burden of supporting public services and facilities which will follow the approval of the proposed use.
- The neighborhood has been developed for residential use.
- The applicant's property is the only lake front commercial use in the surrounding area.
- He detailed a tax map to the Board of all the residential properties.

Herb Koster asked to list the zone of the area. Atty. Silver stated that this was an RCM zone and the way this zone has been developed is such that someone coming in can never be sure a commercial use is coming in but they should be able to be totally confident that gas pumping will not come in because it is prohibited within 500' of residential developments.

- Proposed fuel tank storage is in complete opposition to the "general purpose and intent" of the zoning code, which expressly seeks to prohibits fuel tanks in residential neighborhoods.
- The Code would permit fuel tanks on the property only if it were much wider OR if the neighboring properties had been developed commercially. This is not the case.
- §200-3 l(C) The establishment, maintenance or operation of the proposed use would not create public hazards from traffic, traffic congestion, or the parking of automobiles or be otherwise detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to the property and improvements in the neighborhood or the general welfare of the Town.
- This is not hypothetical.
- The record before the Planning Board is stacked with specified objections from neighboring property owners who have been negatively impacted by the applicant's illegal fuel pumping operation at the property. A summary of the correspondence is as follows; gas sheen, gas odor, vapors and fuel spillage, boaters crash into docks.
- This is 7 neighbors all saying the same thing.
- The final requirement for the Board to make is §200-3 l(D) The project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space to provide supporting facilities and services made necessary by the project - taking into account the commercial, industrial, educational, residential, recreational or other benefits that might be derived from the project. In making this determination, the Planning Board shall consider those factors pertinent to the project contained in the development considerations set forth hereof, and in so doing, the Planning Board shall make a net overall evaluation of the project in relation to the development objectives and

general guidelines set forth in § 200-28 of this article.

- Undue adverse impact has been established.
- The Lake George Waterkeeper opposes the removal of conditions and wrote several letters and is the only engineer to weigh in. As such his conclusions are unrebutted.
- The applicant's benefit has not been established to outweigh its negative impact.
- The applicant's problem is by his own account, self-created.
- The inconvenience he experiences is heightened by the fact that his fleet of 16 boats already exceeds the permitted number (12).
- Increasing that number to 21 defies common sense.
- The applicant is not without options to refuel his boats - There are four marinas with gas docks between the property and Town.
- The applicant has operated successfully for 10 years without pumping gasoline.
- It has been developed as residential use.
- The facts are established that the pumping of gas has impacted the general welfare of the community.
- They are asking that the Board reach the same decision they had on 2 previous occasions, that fuel pumping not be allowed on this property.

Atty. Canale and Robert Parrotta presented the following:

- This Board's hands are not tied, and their vote is not predetermined as Atty. Silver suggests.
- Because this project does not meet dimensional requirements, does not mean the Board must vote no.
- The whole purpose of the variance is to ask the Planning Board for its approval subject to the Zoning Board's variances, which contemplate many different elements.
- There is an important reason people are allowed to apply for exemptions to dimensional requirements via the variance process.
- The fuel tank issue must get a variance.
- They have an appeal on the issue, they don't necessarily believe that Section 200-45 is necessarily applicable in this case.
- It states that no proposed storage area can be within 500' of any residential development.
- It does not prohibit pumping or using fuel or gas tanks.
- There are some serious problems with the statutory interpretation of this section. It is too vague.
- This is commercial property and it has been.
- People know full well this is a commercial zone when they buy property.
- Pumping gas is allowed as a commercial use.
- Pumping gas is not illegal.
- This is a very viable use for this property.
- People pay premium money for commercial property on the lake.
- Other marinas have indicated that it will be safer to have the boats gas up at Mr. Parrotta's.
- This is a very safe solution, which prevents congestion in front of the other marinas.

- This is the opinion of the fire commissioner, who is an expert, and has inspected it and said it was being done safely,
- The neighbors are not experts and are using a “not in my backyard” attitude.
- This is commercial property.

Atty. Silver responded by saying they are aware that it is commercially zoned, however, neighboring landowners ought to be able to rely on the 500’ setback from their residential properties. The Board did prohibit gas pumping and its in the code. With respect to safety, they can’t have it both ways, they are saying it is too congested and now they are asking for even more boats.

Wayne Smith of Tow Boat Lake George LLC stated the following:

- He has worked closely with Mr. Parrotta and allowing pumping of gas will make this area so much less congested and safer.
- There have been multiple accidents between his fleet and Mr. Parrotta’s fleet.
- The congestion of this area is too much.
- It is a burden to the other marinas.
- He would like to see Mr. Parrotta be allowed to pump gas and keep his boats at his property.
- Do not put the burden of pumping the gas in their laps.
- It is procedural to tell people to wait in the bay, but they don’t always listen.
- He is asking that the Board give Mr. Parrotta his gas or else take away his rental boats.

Peter Cossman

- The question of why someone would buy property in a commercial zone if gas was going to be possibly pumped in that zone.
- The fact is, not all the property in the zone is zoned commercial.
- Certain commercial uses are allowed with Type II Site Plan approval.
- The Board granted Mr. Parrotta the right to rent boats in 2008 but conditioned him not to pump gas.
- Mr. Parrotta should have known that there was an ordinance prohibiting the storing of gas without a 500’ buffer from residential properties when he started a boat rental.
- For 10 years he operated and rented 12 boats with no problem.
- Now he wants more relief.
- There is nothing that says he has to be in the boat rental business.
- If there were commercial properties on either side of him, he would be in compliance.
- This is not the case. This 500’ buffer is not being met for the residential properties.
- If, Mr. Parrotta goes to the ZBA and gets approval, he can come back to this Board.
- This is the reason they take the position they do.
- Mr. Parrotta’s attorney takes the position that gasoline in the water is untrue, and there are at least 7 neighbors stating that there is.

Atty. Canale stated that you can tell the intensity of opposition this neighbor has and you can be rest assured that if there was gasoline in the lake to such an extent that little children were getting it on their bodies you had better believe they would have proof of it.

Motion by John Gaddy to close the public hearing for SPR17-15. Seconded by, Sandi Aldrich. All in Favor. Motion Carried.

REGULAR MEETING

- 1. SPR17-15 PARROTTA, ROBERT. Revised application.** Represented by Atty. Greg Canale. 1) Seeks to amend conditions of approval set forth by the Planning Board on November 20, 2008 when approving SPR08-25 for a marina/tourist accommodation on that parcel designated as Section 171.11, Block 2, Lot 12. The conditions read as follows: There shall be no pumping of gas on site. There shall be no more than 12 rental boats. The hours of operation, including maintenance, are to be between the hours of 8:00 am and 5:00 pm. 2) Seeks Type II Site Plan Review to create a marina on that parcel designated Section 171.11, Block 2, Lot 11. Currently two 550-gallon gas tanks exist and are in use. One is located on Lot 12 and the other is located on lot 11. 21 boats are proposed between the two parcels. The proposed hours of operation are between the hours of 8 am to 6 pm. Zone RCM1.3. Property Location: 5102 & 5104 Lake Shore Drive. Subject to WCPS review. Subject to SEQR. This item was tabled at the April 2018 meeting pending a public hearing.

Zoning Administrator, Pamela Kenyon stated that an anonymous letter had been submitted.

Robert Parrotta presented the following:

- He detailed the parking plan showing 27 spaces lined out by the old restaurant.
- They additionally have an extra parking area if needed.
- There is a total of over 50 parking spots.
- The motel has parking spaces for each unit and 4 spots for the office.
- He was told by the Warren County Fire Marshall that the southern tank is placed in the safest spot it could be.
- The Marshall stated that everything was being done correctly with a few minor adjustments like signs and changing the hose.
- Dave Wick of the LGPC wrote a letter stating that allowing Mr. Parrotta to pump gas is the safest way to alleviate congestion in the area.
- He detailed the filling of the boats process.
- There is very little gasoline in the water and the statement that there is gas in the water is ludicrous.
- They will be putting fencing around the tanks.

Herb Koster asked about shielding and plantings around the tanks. Mr. Parrotta stated that fencing could be put around it up, he has been waiting for this to all be done.

Zoning Administrator, Pamela Kenyon stated that the Warren County Fire Marshall's concerns were the hoses and the nozzles, warning signs and portable fire extinguishers.

John Cushing stated he was at the property in the spring and double checked everything. Since he walked the property, he has changed his vote to a no for the pumping of gas, as he was

unhappy with various things he saw on the property which includes the hoses and nozzle which had a leak. It is his opinion Mr. Parrotta does not take care of the place.

Sandi Aldrich stated that a good share of the parking by the restaurant is in the NYS DOT right of way and inquired if he had written relief to use this right of way. He stated they do not park in the state right of way. Herb Koster stated that there are a lot of businesses in town that park in the state right of way. They do not seem to mind as long as it does not block the flow of traffic. Sandi Aldrich stated the code requires 10' x 20' for each vehicle and he does not have this according to the plan. They looked at the plans and decided that the scale was off.

Atty. Muller stated that the Board is here tonight to decide whether or not to relieve the applicant from the condition that they had previously prohibited which was dispensing gasoline. Sandi Aldrich asked if this would come back to this Board for all of the other concerns if they gave him the relief he is seeking tonight. Atty. Muller stated absolutely. He explained how the jurisdiction has changed since the approvals in 2008 giving the LGPC jurisdiction. The town has no say in the amount of boats Mr. Parrotta can have, LGPC makes that call. If Mr. Parrotta wants to expand his marina, the town has some say in this because a marina has land use aspects to it such as parking, hours of operation and the dispensing of gas. He will be back to this Board to amend his Site Plan Review. The ZBA made the decision to hear from the Planning Board before they approved or denied the applicant relief from the 500' buffer. Herb Koster stated he was here in 2008 and it was his recollection that they asked Mr. Parrotta if he had any intentions of selling gasoline and he said no. He thinks the condition was put in because Mr. Parrotta indicated that he would not be dispensing gas.

Sandi Aldrich stated that she believes there are 2 Site Plan Review requirements that are not being met at this time. One is the parking and the other is a 5' wall around the tanks to capture everything in case they explode.

Ann Marie Somma stated that she finds that he does not meet the 500' buffer to his neighbors, and she is sticking with the recommendation of the prior Board. She believes that the expanding beyond the allotted 12 boats is what is causing the congestion issue. It is her opinion that the other marinas are more capable in dispensing gas than Mr. Parrotta appears to be and she will be voting no. Mr. Parrotta asked if she realized that not one of the marinas on the lake meet that 500' setback. This area was always commercial when he first came to town. Ann Marie Somma stated that as a member of the Board it is her responsibility to find an adequate balance and this is her decision.

Atty. Muller read the minutes from the 2008 meeting. He stated the resolution was as follows

Gena Lindyberg asked about the motel guests using docks for their boats. Mr. Parrotta stated that when they do, he takes one of the rental boats out of the water. Gena Lindyberg asked if he rented out dock spaces. Mr. Parrotta replied not anymore.

Atty. Canale said he understood Ms. Somma's concern with the amount of boats that Mr. Parrotta was approved for. He has received approvals and it is the LGPC province. Her concern with the storage of the of volatile liquids is a valid concern and he would like to assure her that

they will all be addressed by the Board and adhered to by Mr. Parrotta, to protect the public. They will follow any and all directives. They have a situation where a man has been approved by a government agency to have this amount of boats. Now the question is how to make sure this business needs to make sure this is maintained in a safe and efficient way. These legitimate concerns can be addressed when Mr. Parrotta comes back for Site Plan Review.

Gena Lindyberg stated that they requested the parking plan back in October. Mr. Parrotta stated that he did this for them. She stated this map seems to be inaccurate. Mr. Parrotta detailed all the parking stating that there was more than enough parking.

Herb Koster stated that there are propane tanks all over town right next to buildings and he finds no difference.

Sandi Aldrich stated that she sat on this board in 2008 and she thought the condition of no pumping gas was a good one at that time and she still does due to the topography and challenges in that area.

Atty. Muller stated the ZBA has asked a fair question as to how the Planning Board would advise them to the condition of approval stating there is to be no pumping of gas.

John Gaddy stated that the nature of the business has changed with more traffic, noise and gas spills. No matter how careful they are, there is going to be gas spills. The past seasonal rentals did not have the same impact to the neighborhood that this new rental business has. They have to take a look at the health, safety and welfare of the surrounding properties. The levels that other marinas have to adhere to are much higher than what is expected of Mr. Parrotta as he is gassing his own boats and does not have to adhere to the same standards. The site has steep slopes, thin soils and the chances for a spill that would affect the lake and the town as a whole is high. Without a full containment of the fuel, he is not comfortable allowing it to be dispensed here. The idea that this fueling operation could be a potential source of pollution and problems that has him not supporting the project.

Tony DePace stated his system is monitored by the state and is regularly inspected. It is completely different from what Mr. Parrotta has. He does not understand why the tanks on Mr. Parrotta's are not regulated like his and the other marinas.

Atty. Muller stated they need to make a motion as to whether or not they were lifting condition #6 in the 2008 approvals.

RESOLUTION:

Motion by John Gaddy to uphold the 2008 condition #6 for SPR08-25 stating there shall be no pumping of gas on the site. **Seconded by**, Sandi Aldrich. Herb Koster opposed. **All others in Favor. Motion Carried.**

- 2. SPR18-07 FOY SR., EDWARD.** Represented by Gary Hughes. To connect two structures (Cate's Italian Garden and Cate's famous pizza) with an 815 sq. ft. addition and replace existing porch and awning with 1,527 sq. ft. of porches and decks, seeks Type II Site Plan Review for a commercial use involving more than 3,500 sq. ft. 6,444 sq. ft. total is proposed. Section 171.15, Block 3, Lots 90 & 91, Zone GB5000. Two separate parcels exist. Property Location 4948 and 4950 Lake Shore Drive. Subject to WCPS review. Subject to SEQOR. See V18-10 associated with this project. To be heard only if a successful variance is granted.

Zoning Administrator, Pamela Kenyon read the conditions of approvals granted by the Zoning Board for this project. John Cushing asked if there were setbacks that required variances. Zoning Administrator, Pamela Kenyon replied yes, there were a lot of them. They were all granted with conditions. Atty. Muller read V18-10 to the Board.

Herb Koster asked if Mr. Foy had any intention to join the lots. Mr. Hughes said no. Herb Koster asked if you could leave a property line down the middle of a restaurant. Atty. Muller stated that Mr. Foy seemed to think it would cost thousands of dollars to combine the lots and he tried to make him understand that was not the case, but he lost that argument. Herb Koster stated it would not cost anything at all, he could just go to the Zoning Administrator. Atty. Muller said Mr. Foy made another argument that this was his plan right now because he was an old man. Ann Marie Somma stated the cost of combining the properties was a small fraction of what he would be laying out for this project. Atty. Muller said he was trying to get it so that if there was a feasible alternative to granting the variances, that was the path to take. It seems as if merging them was one, but this is not for this Board to question. Herb Koster said that if there is a wall on the property line, you can fire proof it, but he can't fathom how to put a property line down the middle of a restaurant. He does not understand the hardship of joining them. Atty. Muller said he was not comfortable with it, but the ZBA allowed it. They are beyond this now. Herb Koster stated that this is a precedence here. Atty. Muller stated he tried and lost. Ann Marie Somma stated she did not understand how this would not impact their discussion here tonight, stormwater in particular. Atty. Muller stated it impacts Mr. Foy only.

Sandi Aldrich stated she was not comfortable with one restaurant on two lots.

Herb Koster asked how the assessor taxes the property. Atty. Muller stated it could be done. Mr. Hughes stated in reality if they needed to be sold, they would need to be sold as a whole. Herb Koster stated he sees lots of problems down the line with this. Atty. Muller stated that there will have to be a bunch of easements at this time.

Gena Lindyberg asked about the parking. Zoning Administrator, Pamela Kenyon stated that they had been granted a variance for parking. They needed relief for 7 additional spaces. Herb Koster stated he had no problem with the parking. This is a small town and people park all over. Atty. Muller stated he tended to agree.

John Gaddy asked how stormwater would be addressed. They discussed stormwater and how it could be addressed. Zoning Administrator, Pamela Kenyon stated it was a minor stormwater plan and it was a condition of approval by the ZBA that they submit a plan for stormwater. Herb

Koster stated that this Board could also make a condition pertaining to stormwater and he would like the Town Engineer to look at it.

John Gaddy asked if the metal framing and awning would be used at the pizza area. Mr. Hughes stated it would not.

John Gaddy said they made mention in trying to save the trees. He would like it if any of those trees do not survive they are replaced with trees of similar size

Ann Marie Somma asked how they planned on approving a plan that diverts stormwater on another piece of property. Mr. Hughes stated that they would all be contained on the one parcel. Zoning Administrator, Pamela Kenyon stated that this project would actually be exempt as the areas are already impervious. Any stormwater mitigation they get will be an improvement in her opinion.

John Cushing asked if the new porch stone wall would be 4' from the road. Mr. Hughes stated this is correct. John Cushing stated his concern was how close to the road this will be. Mr. Hughes detailed the plans for Mr. Cushing and the Board.

The Board discussed the concern of setting a precedent. Zoning Administrator, Pamela Kenyon stated that it already is connected.

No County Impact

RESOLUTION:

Motion by John Gaddy to declare the Bolton Planning Board as lead agency for SPR18-07.
Seconded by, Sandi Aldrich. **All in Favor. Motion Carried.**

Motion by John Gaddy to accept SPR18-07 as complete; after having a Public Hearing with no public comments, having met the criteria set forth in the code, grant final approval of the project as presented. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented with the following conditions; 1) the two substantial trees in front of Cate's must be protected or replaced with the similar sized trees in the event that they do not make it. 2) The maple tree in front of the Pizza Shop is to be protected or replaced with a similar sized tree if it does not make it. 3) Lighting is to be downward facing and shielded. 4) The stormwater plan is to be reviewed and commented on by the Town Engineer prior to any final approvals. **Seconded by,** Ann Marie Somma. Sandi Aldrich and Gena Lindyberg opposed. **All others in Favor. Motion Carried.**

3. SPR18-08 STEVEN HORNSBY CONSULTING SERVICES. Represented by Winchip Engineering. For the construction of a proposed single family with attached garage, seeks Type II Site Plan Review for a major stormwater project to remove more than 15,000 square feet of vegetation. 32,500 sq. ft. is proposed. Section 171.06, Block 1, Lot 19, Zone RL3.

Property Location: 45 Horicon Valley Lane. Subject to WCPS review. Subject to SEQR.
See V18-11 associated with this project. To be heard only if a successful variance is granted.
This item was tabled by the applicant

The meeting was adjourned at 8:10

Minutes respectfully submitted by Kate Persons.