

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, January 15, 2019
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: Jason Saris, Carla Cumming, Joy Barcome, Holly Dansbury, Brendan Murnane, Zoning Administrator, Pamela Kenyon and Counsel, Michael Muller

Absent: Jeff Anthony, John Whitney and Alternate; Lorraine Lefevre

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

Jason Saris asked if there were any corrections or changes to the November 13, 2018 minutes.

RESOLUTION:

Motion by Holly Dansbury to approve the November 13, 2018 minutes as presented. Seconded by, Carla Cumming. Jason Saris abstained. All others in Favor. Motion Carried.

1. **V18-28 MITCHELL, KATHRYN.** To alter single family dwelling, specifically to allow a 9'x14' deck with stairs to remain in their present location, seeks area variance for 1) Deficient setbacks. Front: 75' is required, 70' is proposed. Shoreline: 75' is required, 65' is proposed; and 2) to alter a nonconforming structure in accordance with Section 200-57B(1)b. Section 213.13, Block 1, Lot 3, Zone RCM1.3. Property Location: 49 Coolidge Hill Road. The WCPS determined no county impact. Subject to APA review.

Kathryn Mitchell presented the following;

- She would like to build a 9' x 14' deck off from her screened in area.
- She apologized for getting a head start on it.

Jason Saris asked if there was any way that they could have put this deck on in a more compliant area. Ms. Mitchell explained that this was the most feasible and compliant area.

Atty. Muller said Ms. Mitchell's application stated this could not be achieved by any other feasible means as the house itself, where it sits was, a non-conforming structure in terms of setbacks because it was built in 1911 when there were no setbacks. Ms. Mitchell said this was correct and she considered it a practical difficulty.

Atty. Muller stated that the application said that this deck would not produce an undesirable change to the neighborhood because the deck was small in scale and modest. Ms. Mitchell replied that this was correct. Zoning Administrator, Pamela Kenyon stated it was going no

closer to Coolidge Hill or Edmunds Brook than what already exists.

Atty. Muller asked if the variance request was substantial. Ms. Mitchell stated that it was not.

Atty. Muller asked if would not impose any negative impacts on a neighbor or a body of water. Ms. Mitchell stated that it would not.

Ms. Mitchell stated that it was a hardship as well as a practical difficulty to build the steps and the deck if they could not attach it to the non-conforming house that was built prior to any zoning codes.

Carla Cumming asked about a short fence on the application. Ms. Mitchell stated that the fence was not being requested at this time.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Kathryn Mitchell, (V18-28) for an area variance as described above.

And, due to notice of the Public Hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Staff;

And, whereas the Warren County Planning Staff determined that there was no County impact; And, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application; this Board makes the following findings of fact:

The application of the applicant is as described in Item #1 of the agenda.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: As discussed, this is the best location for the deck to be placed in order for it to be attached to the non-conforming house.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. It fits in well with the neighborhood.
- 3) The request is not substantial. This is a small deck.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The deck fits in nicely with the neighborhood.
- 5) The alleged difficulty is self-created; It is being attached to a pre-existing, non-conforming structure.

In weighing the factors, 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 Holly Dansbury and Seconded by, Joy Barcome it is resolved that the ZBA does hereby approve the variance request as presented. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

2. V18-29 SURIAN, STEVEN & REISCHE, SUSAN. Represented by Curtis Dybas.

To alter single family dwelling, specifically to remove existing 10'2" x 12'4" north addition and replace with a 18'4" x 16' north addition, add a 12' x 20'6" east addition and replace existing (west) enclosed porch, seek area variance for 1) deficient front yard setbacks. 50' is required, 43' is proposed from the crushed stone roadway and 26' is proposed from Rainbow Beach Road; and 2) to alter a nonconforming structure in accordance with Section 200-57B(1)b. Section 186.18, Block 1, Lot 29, Zone RM1.3. Property Location: 71 Rainbow Beach Road. The WCPS determined no county impact.

Curtis Dybas presented the following;

- This is one of the old Rainbow Beach cottages down by the tennis courts.
- The existing addition that was put on years ago is a bedroom that is too small.
- They want to remove it and put in a new addition for a larger bedroom and an outdoor storage area and outdoor shower.
- The 12' x 20'6" addition will be a dining area and kitchen.
- There will be a bath tucked under the eaves on the second floor.
- The existing porch is rotting and will be removed and replaced in kind.
- The cottage is pre-existing and non-conforming.
- They will be re-siding the entire building with a shingle siding that is similar to 3 other cottages in the neighborhood.
- The place has not been updated in 40 to 50 years.
- They would like to fix this structure up and make it more usable.

Jason Saris asked if they had considered any other options when designing the expansions. Mr. Dybas stated they tried 3 different scenarios (which he detailed to the Board), and this worked the best. This is a very wet area in the spring, and they will be adding eve trenches to try to mitigate some of the water coming off the building. The deck shown on the plans will probably be constructed of some sort of permeable pavement.

Holly Dansbury asked if they were changing a deck to living space as part of the request. Mr. Dybas said yes, they are going to demolish it and start all over.

Carla Cumming asked if this would be a year-round residence. Mr. Dybas stated it would not, they would be using it in the summer months.

Joy Barcome asked for some clarification of the plans and Mr. Dybas detailed them for her.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Steven Surian & Susan Reische, (V18-29) 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 #2 of the agenda.

1) The benefit could not be achieved by other means feasible to the applicant besides an area variance:

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

3) The request is not substantial. It is a very small encroachment on the setback.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. It will actually enhance the look of the neighborhood and improve what exists.

5) The alleged difficulty is self-created; It is a pre-existing, non-conforming building that would require a variance for any changes.

In weighing the factors, 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 Carla Cumming, and Seconded by Brendan Murnane it is resolved that the ZBA does hereby approve the variance request as presented. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

- 3. V18-30 FORTUNA, CHRISTOPHER.** Represented by Richard Fortuna. To allow a 8' x 40' storage container to remain in its present location, seeks area variance for a deficient front yard setback. 50' is required. 0' is proposed. Section 186.00, Block 1, Lot 40.111, Zone RL3. Property Location: 18 Brookside Parkway. Subject to WCPS.

Richard Fortuna presented the following;

- The container was put on the property to store their home goods and construction products while building their home.
- They are ¾ of the way finished.
- It has recently come to their attention that the placement of the container was put in the wrong spot approximately 3 years ago by a contractor.
- They plan on moving the container in the spring when they can empty it.
- They are hoping to empty it between February or March and remove it from that location.
- They have no intention to leave it in that location permanently, so they are looking for a temporary variance.

Jason Saris asked if they had an area on the property that would be compliant. Mr. Fortuna replied yes, and it would be out of site as they have 10 acres.

Jason Saris inquired if the Board could grant relief if there was no practical difficulty and could they put a time limit on a variance. Atty. Muller stated that there was no such thing as a temporary variance. To put a time limit on a variance does not fit within the four corners of what the ordinance contemplates, or the town law anticipates. A variance is granted upon grounds that are sufficient to make an exception from the zoning ordinance, and then it follows the property. Mr. Fortuna is here at the encouragement of himself and the Zoning Department. Mr. Fortuna was advised that he could as a matter of right, apply for a variance to stay the enforcement process.

Jason Saris asked if this item was tabled until April, would the enforcement be staid, and if this would also allow that a variance would not have to be granted to allow a container to stay in that area forever. Atty. Muller said tabling the item would be a procedural opportunity to serve the interest of the Town of Bolton and the applicant in terms that he would be in the position to come to the first meeting in April and demonstrate that the problem is solved, because he chose a feasible alternative that does not require a variance.

Brendan Murnane asked if the applicant would need to reapply in April. Atty. Muller replied that he would not.

Jason Saris asked if a variance could be granted when the applicant has stated that he truly does not need it. Atty. Muller said the Board could grant any variance they wanted, but it would not have been on sound grounds, which would be difficult to uphold if it was challenged.

Holly Dansbury asked why the container couldn't be moved right now. Mr. Fortuna stated that in order to move it at this time, they would have to empty it and they have no place to empty it to at this time. He had checked into this and was informed that it could not be moved when it was full. They are so close to being finished and then they can move the items out of the container into their new home in the next couple of months.

Atty. Muller read letters of opposition from:

Wayne Rich

Susan and Robert Strange

Atty. Schwenker summarized portions of his letter of opposition to the Board as follows:

- They request that the Board take action on the variance application tonight.
- They would object to tabling the application as the shipping container has been in this location for some time.
- The 5-factor test set forth in town law weighs favorable in denying the variance application.
- This is a very substantial variance requiring a 100% variance.
- There are more compliant areas to place this container which would be more feasible.
- This is not consistent with the character of the neighborhood. The existence of the

storage container on the property line is the antithesis of the attributes of the RL3 zoning district.

- This container has existed for nearly 4 years which far surpasses the definition of short term.
- Considering the 5-factor test the need for the variance was entirely self-created by the applicant and the Board is well within its rights to deny it on that basis alone.

Mr. Fortuna said that they have addressed the shipping container and it was put there merely by mistake. They were not from around here and had sat down with the Zoning Administrator to make sure they were doing things correctly. They bought the property from Mr. Kincaid and it was his suggestion to buy the container and then sell it or sell it to him when they finished with it. They asked Mr. Kincaid to meet the shipping container contractor and place the container for him. Mr. Kincaid met the contractor and used his equipment to clear an area on their property and placed it. Mr. Fortuna said he thought they were doing everything correctly and they are not trying to get away with anything. They currently have legal issues with Mr. Kincaid, and he feels that Mr. Kincaid is making this complaint due to this. They only want to leave the stuff in the container so they can finish their house and empty it and remove the container.

Jason Saris asked if they discussed the placement of the container with the Zoning Administrator. Mr. Fortuna stated that they had not.

Holly Dansbury asked when they found out that the container was non-compliant. Mr. Fortuna stated it was sometime this past fall. Holly Dansbury asked if they could have moved it then. Mr. Fortuna replied no, for the same reason they can't move it now.

Brendan Murnane asked when they could empty the container. Mr. Fortuna replied as soon as the weather breaks, they were hoping for March. Brendan Murnane asked if the container would be removed once everything was emptied. Mr. Fortuna said that was correct.

Brendan Murnane inquired about the wood siding. Mr. Fortuna said the idea was that they were contemplating the option of moving it from the present location to an area near his home and use it as a storage shed. Joy Barcome asked if he was going to sell it or keep it. Mr. Fortuna said they would try to sell it but if it did not, they would be keeping it as a shed for storage.

Mr. Fortuna addressed some of the concerns in the letters.

Holly Dansbury said the storage container looked like a dumpster to her. Mr. Fortuna said it was certainly a shipping container, but keep in mind it is off the main road and in the woods. It is not an eyesore. He agrees with Mrs. Strange that it looks bad from her property and he has assured her that it will be removed.

Holly Dansbury asked if there was anything in the code for temporary. Zoning Administrator, Pamela Kenyon stated that there was not.

Holly Dansbury asked how significant it would be if they postpone this application vs. any action tonight. Atty. Muller stated the neighbors may find it significant, but he would say it is January 15th and if they were to deny it, the process would take at least until April to litigate. He does not see them losing any time by tabling it.

Holly Dansbury asked Mr. Fortuna if he thought this was a time period they could meet. Mr. Fortuna said absolutely.

Mr. Fortuna requested that they table his application so they could diligently work through it and not cause any more hardship on the neighbors.

Brendan Murnane inquired if they were to deny the request, if April would be the time line. Atty. Muller stated he would assume so and detailed the process. Brendan Murnane asked if they came back in April, they would start this process all over again. Atty. Muller replied the applicant said he had every intention to have this removed by April 1. He would then contact the Planning Office and they would verify this. It would then be taken off the agenda. Holly Dansbury asked how they ensured that it would not be postponed forever. Jason Saris said they could say there would be no further extension. They could take action whether or not the applicant showed up to the meeting.

No County Impact

RESOLUTION

Now, upon motion duly made by Holly Dansbury and Seconded by, Carla Cumming it is resolved that the ZBA does hereby table the variance request as presented until the April 16, 2019 ZBA meeting with the expectation that the applicant is in compliance by April 1, 2019. There will be no further adjournments at the April 16th meeting. **All in favor. Motion Carried.**

- 4. V18-31 MCHUGH, PATRICK & MARTI.** Represented by Daniel Ryan. To alter single family dwelling, specifically to construct an addition and make modifications, seek area variance to alter a nonconforming structure in accordance with Section 200-57B(1)b. Section 186.10, Block 1, Lot 22, Zone RCH5000. Property Location: 29 Sunrise Shores Loop. Subject to WCPS review.

Daniel Ryan presented the following;

- This property is located in Sunrise Shores Loop.
- It is the parcel closest to the lakeshore within this condominium project.
- There is a restriction on this neighborhood that all the properties are seasonal.
- They would like to make modifications to the existing building for improvements.
- They would like to add to this existing structure in a compliant way.
- The reason they are here is that due to the existing structure being a non-conformant structure requiring an area variance for any modification.

- They are not adding any additional variances for non-conformity to the structure.
 - This is a seasonal 3-bedroom camp.
 - Currently it is built on elevated piers and posts about 3' or 4' high.
 - It is the closest structure to the lake at approximately 65' from the shoreline
 - The existing building does encroach on the required setbacks.
 - They focused the expansion on the family room, enlarging a bedroom and a small outside uncovered deck.
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- The existing sewage would remain in its current state.
 - The loft that is currently being used as a bedroom will be converted to utility and storage space.
 - Currently the structure is about 700 sq. ft.
 - They are adding 365 sq. ft. of living area which is a fairly small expansion.
 - This will include a small landing for the entrance and a 156 sq. ft. deck.
 - They considered quite a few alternatives.
 - They decided not to expand vertically as it would be very evident in the neighborhood and more intrusive to the neighbors.
 - They thought of expanding more frontward, but it would impact the neighbor's views.
 - They feel that they took into account some design aspects that are fitting with the existing neighborhood.
 - There will be very little impact to the site itself, and they will be adding stormwater mitigation which does not exist at this time.
 - All of the expansion areas fall within the zoning, and it only requires an area variance due to fact that the existing structure is non-conforming.

Jason Saris asked if it met the lake front setback. Mr. Ryan stated that it did.

Jason Saris asked if it would share the same general appearance that presently exists on the home. Mr. Ryan stated the entire structure would be updated with a log siding and uniform on the entire structure.

Brendan Murnane asked if this would be similar to the existing structures in the neighborhood. Mr. Ryan said that there was a mix of sidings in the neighborhood and it would fit in with them.

Andy Tatel, a neighbor, asked if the colors would be the same as the neighboring homes. Ms. McHugh stated they would like to keep it in the brown tones like the other homes in the neighborhood.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Patrick & Marti McHugh, (V18-31) 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 #4 of the agenda.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: This is a pre-existing non-conforming structure, so any changes need a variance.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. This will be an improvement which they have put a lot of thought into how it will fit in without adding to the nonconformity.
- 3) The request is not substantial. This is a relatively small request.
- 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 minimal site work and they are adding stormwater aspects to mitigate water.
- 5) The alleged difficulty is self-created; but this is a pre-existing, non-conforming structure. In weighing the factors, 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 Joy Barcome and Seconded by, Carla Cumming it is resolved that the ZBA does hereby approve the variance request as presented. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

The meeting was adjourned at 7:15PM

Minutes respectfully submitted by Kate Persons