

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, April 16, 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, Holly Dansbury, Brendan Murnane, Joy Barcome, John Whitney, Zoning Administrator, Pamela Kenyon and Counsel, Michael Muller

Absent: Jeff Anthony and Alternate; Lorraine Lefevre

The meeting was called to order at 6:06 pm.

Jason Saris asked if there were any corrections or changes to the March 19, 2019 minutes.

RESOLUTION:

Motion by Carla Cumming to approve the March 19, 2019 minutes as presented. **Seconded by,** Joy Barcome. **All in Favor. Motion Carried.**

1. **PASSARO, FRANK.** Seeks to appeal the Zoning Administrator's determination, whereby determining that a use variance is required for a marina at that property designated as Section 200.06, Block 1, Lot 21. Zone RM1.3. Property Location: 4410 Lake Shore Drive known as Cool Ledge Resort. This item was tabled at the March 2019 meeting pending additional information.

Frank Passaro presented the following:

- He is asking for a reversal of the determination made by the Zoning Administrator.
- The Town Attorney from 20 years ago stated in the minutes that Town Ordinance #15 was controlling and that was a total misinterpretation of the law. His land was exempt from that ordinance.
- Ordinance #15 was for the south end of Basin Bay.
- Ordinance #9 was for the north end of Basin Bay.
- He was denied due to this misinterpretation.

Jason Saris stated that the discussion last month was to see what kind of proof Mr. Passaro had that he had been leasing boats for many years. Mr. Passaro stated that the Board should have received letters from his dock renters. Jason Saris said they had received a couple of letters. Mr. Passaro said he was here due to the LGPC coming up with the rule that all boat docking on the lake had to be done at marinas, which they have now started enforcing. Mr. Passaro stated they had been commercial since 1953 when his parents bought the property.

Jason Saris stated that to be grandfathered in for an activity meant you must have been doing the activity prior to the ordinance being in effect that prohibited that activity. Doing it in violation after the ordinance had already been enacted did not give a grandfather status. It must have existed prior to the ordinance coming into existence. Mr. Passaro said his parents had been renting docks since 1954. Isadore Breslaw comes to his mind. Jason Saris asked when the ordinance that prohibited this activity was enacted. Atty. Muller said the current ordinance says it was adopted on December 6, 1988. Zoning Administrator, Pamela Kenyon said that there was an earlier ordinance from 1979. She explained that a marina was not a permitted use in that zone in 1979, 1988 or in the current ordinance. Jason Saris asked if that meant that Mr. Passaro would need to demonstrate that this activity existed prior to 1979. Atty. Muller said this was correct if they were only talking about the narrow issue of grandfathered, they would need to show that there was a pre-existing use that would establish his pre-existing right. These zoning ordinances recognize that if a prior use exists where the zone no longer permits it, the activity would be grandfathered. Jason Saris said that the only reason that Mr. Passaro would not need a use variance would be if the activity on that property had been going on prior to it being prohibited by the ordinance. Atty. Muller replied he believes this is true. He thinks Mr. Passaro's challenge is that he criticizes the Zoning Administrator's determination based on some prior right. The Zoning Administrator not only relies on an analysis on how she would apply the current ordinance for her determination, she also looks back historically and in 1988 Cool Ledge made an application for permission to operate a marina. The Zoning Board made a determination in 1989 and again in 1999 saying that no they could not have a marina there. Now, Mr. Passaro will not only need to overcome the 1999 and the 1989 determination, which basically considered all of these factors, but he will also have to establish with some credible evidence that he has prior existing use as a marina. The information he submitted certainly doesn't come from permits issued by LGPC, copies of leases or rental agreements. It seems to come from letters that have been specifically requested and generated and submitted by somebody's recollection, saying that they have been docking their boats there as a dock renter. Ordinarily there would need to be some substantial proof to establish this pre-existing, grandfathered right.

John Whitney asked if it was specified in the code what the required level was that was used for granting grandfathered rights. Atty. Muller replied that it was not, but there was plenty of case law stating that it must be established, relevant, clear and convincing. John Whitney stated that most people with multi dock systems on Lake George since the 1950's rented them. He inquired if the fact that this was a normal activity for people with large dock systems would this have any bearing on their determination. Atty. Muller stated that he thought it was relevant and it was entirely possible that when there were no regulations everything was permitted. John Whitney said that a cottage colony with a set of docks was a very reasonable assertion that they were doing that activity since 1954. There is plenty of circumstantial evidence of people renting Mr. Passaro's docks at some point in time. He is wondering if the standard Atty. Muller is setting for lease agreements, cancelled checks or bank statements dating back to 1954 or 1978 is a huge reach for a small business. Atty. Muller asked what about advertising. John Whitney asked if they were supposed to get a newspaper from 1954. Atty. Muller stated anything, advertising, insurance policies that insures that risk. Holly Dansbury said that from day one it was a cottage colony that rented slips to its customers that were staying there. Jason Saris said that in reading the 1989 minutes from the ZBA, Mr. Passaro clearly states that he rented docks to outside people. He also said he launched boats even to people off the street. Jason Saris said he did not know if the question was ever asked if he was grandfathered in, which would have been much easier to substantiate at that time. Admittedly 1989 is not 1979 and it needs to be established that this activity was occurring before 1979. Holly Dansbury said that lots of cabin colonies probably did that activity, but to her, it is what the main use of the property was at that time which was a tourist accomodation. Jason Saris said if he did that, then potentially he could be grandfathered in and

continue doing so, but it needed to be demonstrated that he did do these activities. Atty. Muller asked how this Board considered the findings of the Board in 1989. The application came out with a denial, not to grandfather the use. John Whitney said if you ask the wrong question, you get the wrong answer. The question is when you read the record in 1989, did they consider the issue of grandfathering. Atty. Muller stated that the applicant had the opportunity to challenge that decision in a court of law with an Article 78 and argue that none of the grandfathered evidence he produced was considered and he was denied. Jason Saris said he does not believe that was the question at that time. John Whitney said it wasn't considered. They did not tell him that he would not get a use variance unless he could show them that he was grandfathered for this use. They asked the questions, but they did not ask the question as to whether this was a use on this property prior to the code. He believes this is the question here, they are not questioning the conclusion, he believes that their conclusion that a use variance is warranted had not been established. The real question is whether or not, in this extensive record, the previous boards failed to consider whether there was a prior use that was before the code existed and he believes the record shows this. Atty. Muller said that if the Board failed to consider this and it was certainly discussed, it would be capable of a challenge. John Whitney asked if they discussed the grandfathering or just the use variance. Atty. Muller stated that they had discussed that there was a prior rental of boat slips to people who were not in the tourist accommodation and if that has not been properly developed on the record and not considered and the Zoning Board was free to say you don't need a use variance, you are grandfathered. This was not done, and it was followed by a denial. Mr. Passaro needed to challenge this in a court of law within a 4 month time period which he did not do, so we are stuck with that answer. John Whitney said that one of the principals they talk about a lot is that when the rules are not really clear, it falls to the favor of the applicant. So in this case, given the fact that they actually did not really consider the grandfather issue explicitly and this individual, not being an attorney, did not understand that he could ask for it to be grandfathered, and the Zoning Administrator did not tell him that he could ask for this, due to these circumstances, would this rule sort of fall to the applicant or would he say that Article 78 equals administrative denial and there is no further action allowed. Atty. Muller said he believes the rule still applies in that if it is a close question based on an ambiguity then the result should be favorable to the applicant. In this instance though, they are talking about very important procedural requirement here that is that; whatever it is that was discussed or was failed to be discussed, whatever questions were reached or they failed to reach and whatever relief was given or denied or not even considered, presumably Mr. Passaro did like the outcome in 1989 or he should have appealed it. One of the strongest appeals would have been that there was no consideration to the points that he had grandfathered rights. But he did not and so we rest with a denial and no consideration of the grandfathered rights. Atty. Muller said he believes they went over the whole thing again in 1999 and again it is denied. John Whitney said that the question of being grandfathered was never considered until now. Jason Saris stated that he never challenged Mr. Deppe's determination that he needed a use variance. Zoning Administrator, Pamela Kenyon stated that Mr. Passaro never challenged Mr. Deppe's determination and he actually applied for the use variance and on June 12, 1989 a use variance was granted and after receiving a lot of information in July and August from the neighbors, it went back to the Board on September 28, 1989 and the Board rescinded the approval. Mr. Passaro had the opportunity to come back at that time and he never did until 1999 when he reapplied for the variance and it was denied. In between all that time there was an Article 78 that was brought about, and it was dismissed. Atty. Muller said there was a challenge. To clarify, they are no longer talking about 1989. This is a second go around application for a use variance permission to operate a marina and it was denied at the town level. Mr. Passaro is at the town asking for a use variance for a marina because the LGPC informed him that he could not get a marina permit unless he was square with the Town of Bolton. The Town of Bolton requires a use variance. Mr. Passaro stated that the LGPC told him he in order for his dock permit to go forward he had to drop the marina permit application. That is in the LGPC minutes. He believes he was not given any choice. Atty. Muller

stated that this was not entirely true and read the following Appellate Division of the Supreme Court of the State of New York, Third Department decision from November 15, 2001.

“In January 1999, Mr. Passaro applied to the LGPC for a permit to operate a class A marina and for a permit to modify existing wharfs and moorings at his family's lakefront resort located on Lake George in the Town of Bolton, Warren County. In connection with the marina project, he also applied to the Town of Bolton Zoning Board of Appeals (hereinafter ZBA) for a use variance. In February 1999, the ZBA denied Mr. Passaro's application for a use variance to establish a class A marina. Thereafter, in March 1999, the LGPC informed Mr. Passaro that, based on the ZBA's denial of the use variance, he should withdraw his application for the marina permit inasmuch as the LGPC could not segment its review by holding the marina permit in abeyance while processing the wharf and mooring permit. Mr. Passaro subsequently withdrew the marina permit application and, in November 1999, the LGPC issued a wharf and mooring permit.

In February 2000, Mr. Passaro commenced this CPLR article 78 proceeding seeking to challenge the manner in which the LGPC reviewed his application for permits to operate a marina and reconfigure existing dock structures at his resort. Specifically, Mr. Passaro asserted, *inter alia*, that the LGPC's suggestion that he withdraw his marina permit amounted to a de facto denial of the permit which was arbitrary and capricious, that the LGPC changed the rules during its review of the wharf and mooring permit application thereby denying Mr. Passaro due process, and that the LGPC's selective enforcement of its administrative authority violated Mr. Passaro's right to equal protection moved to dismiss the petition on the grounds of, *inter alia*, untimeliness and lack of justiciability. Supreme Court granted the motion and this appeal ensued.

We affirm. Initially, we agree with Supreme Court that Mr. Passaro's challenge to the "denial" of his application for a permit to operate a marina is barred by the Statute of Limitations. To the extent that Mr. Passaro argues that the LGPC's March 1999 letter, suggesting that he withdraw his marina permit application, is a denial thereof, he had four months from the date of such denial to commence a proceeding pursuant to CPLR article 78. As such, Mr. Passaro's commencement of this proceeding in February 2000 was untimely with regard to his marina permit application.

With regard to his wharf and mooring permit application, Mr. Passaro asserts that during its pendency the LGPC twice engaged in reinterpretations which necessitated changes requiring him to construct a larger and more costly dock and boathouse than originally proposed, and that the LGPC's application process deprived Mr. Passaro of knowledge of the applicable standards to be applied to a permit application. As relief, he sought a directive requiring the LGPC to promulgate a clear application procedure specifically enunciating the standards governing permit applications. Notably, Mr. Passaro accepted the wharf and mooring permit issued to him without challenging any of its terms or conditions. Under these facts, Mr. Passaro has failed to demonstrate that a genuine legal dispute exists or that, if the requested relief were granted, any benefit would accrue to him. Thus, we agree with Supreme Court that no justiciable controversy exists.

Finally, Mr. Passaro asserts that the LGPC improperly engaged in selective enforcement of its administrative authority and requested an order directing the LGPC to treat all applicants equally. To the extent that this claim is based on the LGPC's "denial" of his marina permit application, it is barred by Mr. Passaro's failure to commence the proceeding within the applicable period of limitations. To the extent that this claim is asserted in connection with the wharf and mooring permit application, it is nonjusticiable.

Mr. Passaro's remaining contentions have been examined and found to be either lacking in merit or not properly before this Court.

Ordered that the judgment is affirmed, without costs.”

Atty. Muller stated that this was the Appellate Division decision that Mr. Passaro speaks of where he says the LGPC forced him to do so. Definitely, I'm sure that is his perspective, but the court says otherwise. That is from 1999 into 2001. Jason Saris stated that this has to do with his use variance application, but he does not know that it has to do with his grandfathering, and this is the Board's first order of business.

Zoning Administrator, Pamela Kenyon stated she had sent out a letter on July 27, 1999 stating that ordinance #15 did apply to Mr. Passaro. On July 29, 1997 she sent out a correction letter stating that it did not apply. On September 23, 1999 Mr. Passaro applied for Site Plan Review to modify his existing resort and at that time mentioned that he had no intention of renting out dock spaces. One of the conditions set forth by the Planning Board was that dockage was to be for Cool Ledge guests only.

Jason Saris asked if everyone understood that they were doing the grandfathering part right now and not the use variance portion of the application. Holly Dansbury asked if they were just reviewing the Zoning Administrator's determination at this time. Jason Saris said this is correct, Mr. Passaro is saying that he has been doing this activity pre-dating the ordinance and he should not need a use variance. Brendan Murnane stated that it appears that Mr. Passaro stated in 1999 that he was not doing that. Jason Saris stated this was contradicted in earlier minutes where he stated he was. The key is if this activity was going on pre-dating the 1979 ordinance. Any of these activities going on after 1979 would be in violation and would not give Mr. Passaro grandfathered status. Brendan Murnane asked if you ceased to do an activity for a period of time, wouldn't that make you no longer able to fall into a grandfather status. Atty. Muller said that the grandfather vested right could be lost if it was not continuous. John Whitney stated that he would submit that the applicant learned to start giving the right answers just to get through the tangle of the town zoning. Mr. Passaro stated that before he could move on with his dock permit application, he had to remove most of his docks leaving an empty waterfront at that point. John Whitney said he was compelled by the need to rent to get some sort of permit to do something, anything for his business. Jason Saris stated it was a catch 22 situation. The town made a mistake, by not allowing Mr. Passaro to continue renting his slips and now he lost the right.

John Whitney said it seems like there is evidence in the record that this has been going on since the 1950's which Mr. Passaro has testified to. Jason Saris said it is certainly consistent today with what Mr. Passaro was saying in 1989. Clearly in 1989 it does not mean he has grandfather status though. It needs to pre-date 1979. He asked if this Board had discretion to decide what evidence was enough for them to make a decision on this appeal. Atty. Muller stated that it was incumbent on the Board to get all the evidence the applicant can muster and see if it is relevant and if it is enough.

Jason Saris said he would like information predating 1979.

Atty. Muller explained that he and the Zoning Administrator did not have an elaborate discussion about the interpretation. He had indicated to the Zoning Administrator that Mr. Passaro was coming in after he had submitted his application for a use variance to indicate that he was really having an issue with his grandfathered rights. In the earliest version of what Mr. Passaro needed from the town, the Zoning Administrator made the determination that if he needs to operate a Class A Marina there, because the LGPC requires him to do so, he needs to have a use variance. He agrees with this determination. Now,

with 20/20 hind sight being perfect, going back to look at the 1989 determination by Mr. Deppe, she is consistent in that he needs a use variance. Going back to 1999 she is consistent with herself, when she said that a use variance was required. These are very relevant points for her in establishing her determination. He believes if the ZBA makes a decision or Mr. Passaro wants to challenge it, he believes the court will be asking him what is it that gives the ZBA of 2019 the jurisdiction to override or over rule the determinations made by prior zoning boards of appeals, where the parties are identical and the issues are the same. Those determinations rest because no appeal was taken from them or if an appeal was taken from any version of what was done in Bolton, it was determined unfavorable to the applicant. The question is, what new material information that substantially departs from the original facts and the original parties was considered in 2019. If the Board says that it was not fully considered in 1989 and 1999 that the applicant may be grandfathered, he believes the judge will ask him where in the record did the Board fail to consider the grandfathering, as it is mentioned and followed by a denial. The decision stands. This ZBA of 2019 is not an appellate review of what happened in 1989 and 1999. It has to stand on its own facts. If the facts are different, then they are well within their rights to come up with a different decision. If it is the same thing, it doesn't look good. Jason Saris said he believes that is a valid discussion of the use variance request. In 1989 and 1999 the application looked for a use variance for a marina, which is very similar to the use variance application tonight. None of them asked for an appeal of the Zoning Administrator's determination that a use variance is required, so that is rather different. Atty. Muller stated that it was. John Whitney stated that the 1989 record clearly established that the property had been operating docking systems, renting boats and there was signage for dry docking. He sees the discussion of, show us what happened in the past, in the minutes but he does not see the question of whether it constitutes the grandfathering level of activity in the minutes. Atty. Muller said he understands that Mr. Whitney would feel better if he saw some discussion in the 1989 and 1999 minutes showing that there was some discussion about grandfathering and a fact of finding that the ZBA of 1989 and/or 1999 made a determination there was insufficient evidence that established grandfathering. John Whitney stated that would make him very happy, but it was not done. Atty. Muller stated with that point, it was incumbent on Mr. Passaro to do something within 4 months of that determination and if he did not appeal it, the record rests in complete and unfavorable to him. He can't bring it up again. Oddly enough he does bring it up again in 1999. In 2019 it is in some respects a closed book. If the ZBA wants to open it up, they need to ask the applicant how his application is different from 1989 or 1999.

Jason Saris said they had asked Mr. Passaro that he provide some documentation that he had rented docks out, but he is not sure they were particularly clear in asking for documentation prior to 1979. Atty. Muller said that if his point was that they wanted the applicant to have another chance, then give him another chance and specifically explain to him what they expect from him.

Frank Passaro asked if there would be any consideration that ordinance #15 was misinterpreted by the town attorney at the time. Atty. Muller said that he has not read or considered an ordinance that doesn't exist and he is not clear on how it pertains to this instance. Mr. Passaro said that the attorney said it was controlling, it was in the minutes. John Whitney explained that it split up Basin Bay allowing different things to be done in certain parts of it. It was applied as though it was, he was part the residential part of the bay which was not the case. Zoning Administrator, Pamela Kenyon stated that in both cases in 1989 and 1999 the agenda item was written up for a marina in the RM1.3 zone and there was no mention of ordinance #15 on the agenda item. She said Atty. Krogmann did bring it up in the minutes.

Jason Saris said as far as part of his application goes, which is what they are supposed to be looking at right now, is the Zoning Administrator's determination. He said that Atty. Muller has pointed out and is correct that the determinations are consistent with the previous Zoning Administrator, but that does not necessarily mean that they are both correct. This is the question that Mr. Passaro has brought before

them and he does not believe they have anything to do with ordinance #15. Atty. Muller said he thinks that ordinance #15 heads off in the wrong direction, whatever the discussion was and to whatever extent Atty. Krogmann was correct or incorrect and whatever extent Mr. Passaro complied with or failed to comply with, it is closed in the context of the 1989 decision. The statute of limitation has run, you can't yank it out and start all over saying he was misled in 1989. If indeed he was misled in 1989, he should have appealed it. Now if you say he did not know he was misled, that still closes the case as the statute has run. If you don't exercise your rights because you did not think of it or didn't know it, it is still foreclosed.

John Whitney said that you have a resident telling them that they have a family business, which everyone agrees to and they have been doing this forever and does not seem to have ever been considered. He gets stuck on this point.

Jason Saris asked if the Board members were comfortable that they had an ample opportunity to go through all the information they have been given and review it. Atty. Muller said that they have received a bunch of information on the very last day and he is concerned that they did not all get to go through it. Jason Saris said he has not. He understands that the Mr. Passaro is anxious to have this acted on, but the Board can table it if they are not comfortable with the fact that they have had enough time to review everything. Joy Barcome stated to be fair, she would like more time to review the information.

Jason Saris said that he would like to be perfectly clear to Mr. Passaro that they need information dating prior to 1979 demonstrating that the marina activities were going on. Mr. Passaro stated that Mr. Breslaw did rent from them prior to 1979 and he has a letter that was submitted to the Board by the Breslaw/Resnick family. Jason Saris stated the Board would like to table the application for a chance to consider all the new information they were given, which also would afford Mr. Passaro the opportunity to come up with more documentation to bolster his statement that this activity has gone on pre-existing the 1979 ordinance. He wants Mr. Passaro to understand that this information is important to substantiate that the activities were going on prior to 1979.

Brendan Murnane asked if there were any photo albums showing any of these activities. Mr. Passaro said he never kept any records from that time and he does not know where any of the photo albums are. They would be difficult for him to find.

Holly Dansbury asked if Mr. Passaro had anything original prior to 1979 stating it was being run as a marina, like advertising etc. Mr. Passaro said you never had to advertise because people came off the street all the time.

Atty. Muller explained that Mr. Passaro would need the following type of proof to establish his right for the Zoning Board to consider his use variance:

1. That the property is incapable of earning a reasonable return on initial investment if used for any of the allowed uses in the district (actual "dollars and cents" proof must be submitted); often times a statement from an accountant or tax returns showing business loss.
2. That the property is being affected by unique, or at least highly uncommon circumstances in the zoning district.
3. That the variance, if granted, will not alter the essential character of the neighborhood; such as nearby properties.
4. That the hardship is not self-created.

The law in New York State is that if any one or more of the above factors are not proven, under NYS law the Zoning Board of Appeals must deny the variance. This is a tough obligation on the applicant to prove their position.

Now, upon motion duly made by Holly Dansbury and Seconded by Carla Cumming, it is resolved that the ZBA does hereby table items 1 and 2 on the agenda for additional information to demonstrate and substantiate that these marina activities have been occurring and that they predate 1979. **All in favor. Motion Carried.**

2. **V18-16 PASSARO, FRANK.** 1) Seeks use variance for a marina; and 2) to place a 12'x 20' canopy over existing ping pong table, seeks area variance for a deficient side yard setback. 20' is required, 7' is proposed. Section 200.06, Block 1, Lot 21, Zone RM1.3. Property Location: 4410 Lake Shore Drive known as Cool Ledge Resort. Subject to WCPS review. Subject to SEQR. In accordance with Section 200-66, the Planning Board offered on advisory opinion on August 16, 2018 as it pertains to the use variance. Subject to the LWRP. This item was tabled at the March meeting.

****This item was tabled by the Zoning Board****

3. **V18-30 FORTUNA, CHRISTOPHER.** Represented by Richard Fortuna. To allow an 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. This item was tabled at the January 2019 meeting.

Richard Fortuna presented the following:

- They have a company scheduled to pick up the container, but due to the snow pack and mud from the thaw they will not move until it is completely dried out. They provide updates to the company on a week by week basis and are almost ready for them to move it.

Jason Saris asked if it could be done by next month. Mr. Fortuna replied absolutely.

Now, upon motion duly made by John Whitney and Seconded by, Joy Barcome to table the application to the May 14, 2019 meeting. **All in favor. Motion Carried.**

4. **V19-09 HAMILTON, GERALD & MICHELLE.** To alter single family dwelling, specifically to replace an existing 288 square foot office with a 480 square foot bedroom/bathroom, seeks area variance to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 184.02, Block 2, Lot 17, Zone RR5. Property Location: 826 East Schroon River Road. Subject to WCPS and LWRP review. See SPR19-04 associated with this project.

Michelle Hamilton presented the following:

- The office on the first floor was originally a bedroom, and they would like to convert it back to a bedroom.

- With this alteration, they will no longer be using the upstairs bedroom because she and her husband are getting older and the stairs are very steep.
- They have a son who is paralyzed and at the present time can not use any of the bathrooms as the doors are too narrow and there are steps.
- They would like to make the office into a master suite with a bathroom that not only will be for their benefit, but also for their son.
- They basically will only be adding 8' to the southern side of the house.

Jason Saris asked how long they owned the property. Mrs. Hamilton stated 48 years. Jason Saris asked if there was any other place, they could put this addition that would be more conforming. Mrs. Hamilton stated that due to the setbacks from the Northway and East Schroon River Road, this was the most conforming area to place the addition. It would not be increasing the encroachment of any of the setbacks.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from Gerald & Michelle Hamilton, (V19-09) 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: The house as it sits is a non-conforming structure so the benefit cannot be achieved in any way without addressing this.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. It is a very small addition.
- 3) The request is not substantial. This is a small addition and seems like a good idea for the family needs.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- 5) The alleged difficulty is self-created; It 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 John Whitney 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.**

- 5. V19-10 4933 LAKE SHORE DRIVE, LLC. (BOLTON LANDING BREWING COMPANY.** Represented by Hutchins Engineering. To alter pre-existing structure, specifically to add a 15.5' x 28' addition with stairs, a deck addition to the front of the building to increase their outdoor seating capacity, increase size of rear deck, an exterior cooler, a chiller, etc., seeks area variance for 1) Deficient setbacks in the GB5000 Zone. Front: 30' is required from the edge of the ROW for 9N, 25.9' is proposed for the front deck. Side: A total of 20' is required. 9.4' is proposed for the stairs; 2) Deficient setbacks in the RM1.3 zone. Front: 50' is required, 6.7' is proposed from Neuffer ROW for the rear deck and addition and 16.4' is proposed from Dula parking area for the stairs and concrete pad. Side: 20' is required, 8' is proposed on the south side; 3) Parking; 31 spaces required – 0 is proposed; 4) Lot coverage. 40% is allowed in GB5000. 46% is proposed. 15% is allowed RM1.3. 18.5% is proposed; and) 5 to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 171.19, Block 1, Lot 64, Zones GB5000 and RM1.3. Property Location: 4933 Lake Shore Drive. Subject to WCPS and LWRP review. See SPR19-05 associated with this project.

Brendan Murnane recused himself.

Lucas Dobie of Hutchins Engineering presented the following:

- In 2016 they received approvals to convert the building into a microbrewery and tavern.
- This is essentially a redevelopment of the site.
- They are proposing a small building addition on the south side of the property toward Neuffer's Deli for storage and a small increase of their production.
- They are proposing to reconfigure the deck to allow for a larger walk in cooler.
- They will need to reconfigure the stairs for the fire safety codes for second floor deck.
- On Route 9N they will infill a little bit of deck over a planting area to meet up with the current outdoor seating area.
- This is in a split zone.
- There is a town parking lot to the north.
- They are proposing a new larger outdoor cooler to serve their needs.
- Presently there is a small cooler with a deck above it.
- On the south side they will replace the existing stairs with a new set and landing to fit with the new addition.
- This will have a minimal visual impact from Lake Shore Drive.
- They will be implementing some new stormwater management at the eave line for the addition with an eave trench.
- The outdoor lighting will be recessed LED light with a flush face.

Jason Saris asked if they had considered any other options or if this was it. Mr. Murnane replied that this was the largest space on the plot of land available to them. It is tucked away in the back and had the least obstructive view. The expansion out front is only creating 6 more seats. This was the only place possible to do this work.

Carla Cumming asked why they were not filling in the planter areas. Mr. Murnane replied one

reason was that the Town of Bolton Ordinance prohibited the sale of liquor through a window and the bar was in that area and he does not want any of his bartenders trying to serve out that window.

Carla Cumming asked if they would be replacing the decking if he would be replacing all of it. Mr. Murnane said he was planning on making it as cohesive as possible.

Jason Saris asked if the 31 parking spaces required was for everything and if it was just being reviewed because of the expansion and the deck space. Zoning Administrator, Pamela Kenyon replied yes. Jason Saris asked if he had already been granted a variance for a certain amount of parking spaces. Zoning Administrator, Pamela Kenyon replied yes. Mr. Murnane stated that they were only expanding 6 extra seats. Jason Saris stated that his understanding of parking requirements was basically not intended for down street businesses where there was off street and on street parking available.

Holly Dansbury asked about additional stormwater mitigation. Mr. Dobie detailed the stormwater stating they would be using stone eave trenches.

No County Impact

RESOLUTION

The Zoning Board of Appeals received an application from 4933 Lake Shore Drive, LLC. (Bolton Landing Brewing Company, (V19-10) 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 #5 of the agenda.

1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: This is a non-conforming structure on a small existing lot and this is the best location.

2) There will be no undesirable change in the neighborhood character or to nearby properties. They have done a good job improving the site and she believes they will continue to do that.

3) The request is not substantial. They are not increasing the impervious area.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. They will be adding stormwater mitigation to the project.

5) The alleged difficulty is self-created; This is a 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.**

- 6. ELLSWORTH, DANNA.** Seeks informal discussion with the Board regarding the possible placement of 2 triplexes on that parcel designated as Section 171.15, Block 1, Lot 28. Zone RM1.3. Property Location: 57 Horicon Avenue

Dana Ellsworth presented the following:

- Her parents own the property in front of the barns that used to be Bradley Stables.
- There were 2 barns there, and they tore one down at the request of the town.
- She presented pictures to the Board showing barns.
- This lot was never intended for this project, but due to unforeseen circumstances she has had to move the project from Lake George to another property that they owned.
- She believes this would be a perfect for rentals in the Town of Bolton.
- She would be using them as year round rentals, not vacation rentals.
- She is here to see if this would be a project that they could possibly approve before she puts a whole bunch of money into lawyers, engineers and applications.
- This project would need variances.

Jason Saris asked if this would require a density variance. Atty. Muller replied that it would. Jason Saris explained that if it was outside of the hamlet, the APA could overturn it. Zoning Administrator, Pamela Kenyon stated she believed it was in the hamlet. Jason Saris stated that it is critical to determine whether or not it is in the hamlet. Jason Saris explained that in the RM1.3 zone you need 1.3 acres for every dwelling. Putting a triplex on it would mean they need 1.3 acres x 3. Dana Ellsworth asked if this could be considered for a variance or would the Board not even entertain it. Jason Saris said that if it is not in the hamlet, they could grant it and the APA can come back and reverse it. That would be a potentially a very difficult hurdle to overcome if it is not in the hamlet and she understand that.

Atty Muller asked how many units they were looking to put on the 1.3 acres. Dana Ellsworth replied it would be 2 units which equaled 6 dwellings. Atty. Muller explained that the challenge would be that they would be applying for a variance that would basically ask for 5 additional residences where 1 is allowed right now. He explained that it was not appropriate for the Town to say don't bother submitting your application because we would never approve it. They will always give consideration on merits of any application, but he wants to point out that it is a big challenge. In order to get that variance, they will have to show that they have considered other feasible alternatives and that this is likely the most likely and best choice for development. He said the practical difficulty has to be linked to the land.

Jason Saris asked if she was going to keep ownership of these individual units and not sell them. Dana Ellsworth said absolutely.

Jason Saris asked if the units were under 35' high. Dana Ellsworth stated they were.

Jason Saris stated that it would be nice to see something done with that lot, and there definitely is a housing shortage in the Town of Bolton, but there are some of things that will need to be considered such as adequate parking or will this project create a problem by not having what it needs to support it. The Board will need to see that the property is able to support what they are proposing.

The meeting was adjourned at 7:45 pm.

Minutes respectfully submitted by Kate Persons