

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, June 18, 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, Holly Dansbury, Brendan Murnane, Carla Cumming, John Whitney, Joy Barcome, Alternate; Lorraine Lefevre and Counsel, Michael Muller

Absent: Jeff Anthony & Zoning Administrator Pamela Kenyon

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

Jason Saris asked if there were any corrections or changes to the May 14, 2019 minutes.

RESOLUTION:

Motion by Lorraine Lefevre to approve the May 14, 2019 minutes as presented. **Seconded by,** Joy Barcome. Carla Cumming & John Whitney abstained. **All others in Favor. Motion Carried.**

- 1. 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 May 2019 meeting.

Richard Fortuna presented the following:

- They had two different trucking companies come out to give them a quote on moving the container.
- The trucking company will not be able to move the container to the location that it will be going.
- They will not have enough room to turn around.
- They are moving the container when the excavator comes to do the stormwater. He was told by the rental company that it would be available this Thursday or Friday.
- They are just waiting for the equipment to show up.

Jason Saris stated it was going to be moved months ago. Mr. Fortuna stated that they first had an issue with the mud and rain and then his dad died. The trucking company was supposed to take care of it, and then they decided they could not turn around, so they won't be doing it now. The excavator is the only way to move it. This was supposed to happen last Friday, so this is his only short coming at this point. Jason Saris said no, the short coming is that he is over two months late.

Holly Dansbury asked why the trucking company didn't know they would not be able to move the container months ago. Mr. Fortuna replied that it was site unseen. They don't come out to do an estimate.

Brendan Murnane asked when they were booked. Mr. Fortuna replied two or three months ago. He had to send them pictures weekly and due to the snow and mud they could not move it. When they did finally come out, they said that they could not move it to the required location because they would not be able to turn around. He is making every effort; he is just passing along to the Board what he is dealing with.

Holly Dansbury stated she would have assumed that they would have gone through all of this with the trucking company months ago. Mr. Fortuna stated he had done everything the company had requested of him. His only other option is to move this container with the excavator that is coming to do his stormwater. He is not looking for a month, he is looking for a couple of days.

Barry Kincaid from a neighboring property said this container has been here for months. He plows snow for a living, and it was not that hard to move the snow while the ground was frozen. Advanced rental does not have an excavator large enough to move that container. He highly recommends that the Board does not approve this as it has been months.

Mr. Fortuna stated Mr. Kincaid is his neighbor and they have pending civil issues. He does not believe that Mr. Kincaid's opinion on the excavator is professional. The rental company has said it will be sufficient. For Mr. Kincaid to say he does not think it is a good idea is hard for him to understand because they are trying to resolve this.

John Whitney said the whole thing lacks any documentation and he asked if there were any records of the requests from the trucking company or receipts. Mr. Fortuna said he could probably pull something from his phone records. He said he lost an entire month when he lost his father. There was no negligence on his part. He did not drag his feet and he works hard every day. He is not doing anything malicious to cause hardship on anyone, including Mr. Kincaid. He is literally down to days here.

Jason Saris asked what the consequences were if they did not approve this variance request.

Atty. Muller asked Mr. Fortuna what day he was going to move the container. Mr. Fortuna replied Friday. Atty. Muller said he would suggest to the Board that they agree to the Friday deadline and if it is not moved, he will deliver a citation that imposes a \$350.00 fine which is a civil remedy that is prosecutable in Justice Court. Town Law §268 (1) says it is a minimum of a \$350. John Whitney asked if the fine was on a daily basis. Atty. Muller replied it was a weekly basis. Atty. Muller stated it actually reads "punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both for conviction of a first offense". Then it goes up exponentially. The fine gets up to \$700.00 and then the fine goes up to \$1000.00. John Whitney asked if this was each week or each interval. Atty. Muller stated each week. John Whitney asked if there was a way for the Board to waive the fine if Mr. Fortuna was compliant within the week. Atty. Muller stated if they told him so, sure. They could take it up next month and waive the fine. Mr. Fortuna stated he was fine with that. Atty. Muller said he would do a complaint effective tomorrow for the first week and if it is gone on Friday, they would have one fine for one week with one citation and they could do what they wanted at the next meeting. They would need to make sure that Mr. Fortuna was on the agenda for the next meeting because they would not

take any action one way or another unless he has the opportunity to be present. He explained the procedure to the Board, stating he would present everything that he does to the Board next month at the regular meeting and they can decide what to do.

John Whitney said that he believes the point of this is more to say enough is enough and put some teeth in it and hopefully it will resolve itself. If not, so be it.

RESOLUTION

The Zoning Board of Appeals received an application from Christopher Fortuna, (V18-30) 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, 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: There are alternative places for this container to be placed that are compliant.
- 2) There is an undesirable change in the neighborhood character or to nearby properties.
- 3) The request is substantial.
- 4) The request will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- 5) The alleged difficulty is self-created.

In weighing the factors, the benefit to the applicant is 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 deny the variance request for the container to remain in its present location. **All in favor. Motion Carried.**

Now, upon motion duly made by John Whitney and Seconded by, Carla Cumming it is resolved that the ZBA does hereby recommend that they revisit the application next month to reconsider the prosecution of the zoning violation noncompliance and that the Zoning Administrator put this item back on the agenda for the July 2019 meeting. **All in favor. Motion Carried.**

2. **V19-15 GRANGER, GAIL.** Represented by Rick Granger. To alter single family dwelling, specifically to add a 14'x 16' porch, seeks area variance for 1) Deficient side yard setback. 20' is required, 10' is proposed; and 2) to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 171.19, Block 1, Lot 36, Zone RL3. Property Location: 7 Heritage Lane. See V17-34 for previous approvals.

Rick Granger presented the following:

- They were here about a year and a half ago to request approvals to add a screened porch off the back of the existing deck.
- Through the evolution of the project they ended up doing a 14' x 16' screened porch in place of the existing deck.
- They are requesting 39' as opposed to the 41' that was approved.

Jason Saris said they had originally asked for a 29' setback which they were granted and then changed their plan and are now asking for a 39' setback. Mr. Granger replied that this was correct.

John Whitney asked if this is more compliant than the original approval but less compliant than what he had permits for. Jason Saris said yes.

RESOLUTION

The Zoning Board of Appeals received an application from Gail Granger, (V19-15) 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, 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: This is a non-conforming structure and it is improving on a previously granted approval.
 - 2) There will be no undesirable change in the neighborhood character or to nearby properties. It is improving the approved setback and is in keeping with the neighborhood.
 - 3) The request is not substantial. It is smaller than what was previously approved.
 - 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. This is within the same area that had a deck.
 - 5) The alleged difficulty is self-created. It is adding to 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, 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. V19-16 LARKIN, RICHARD.** Represented by Atty. Stefanie DiLallo Bitter. To allow an existing barn to remain in its present configuration, seeks area variance for 1) Deficient front yard setback. 50' is required, minus 11' is proposed; and 2) to

alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 184.02, Block 2, Lot 6.1, Zone RR5. Property Location: 863 East Schroon River Road. Subject to WCPS and LWRP review.

Atty. Stefanie DiLallo Bitter presented the following:

- Mr. Larkin had a 100 year old structure that collapsed which he wanted to restore.
- It was determined that the reason it collapsed was because of the pitch of the roof.
- The north wall was receiving a lot of weight from the snow.
- The way that the land is contoured the drainage from the mountain was hitting the north wall too.
- In good faith he changed the pitch of the roof so that the weight of the snow would be minimized.
- In doing that, he did not change the footprint of the structure, so the footprint of the structure has always been the setback, which is demonstrated on the plans.
- He did change the height of the roof when he changed the pitch which triggered the area variance.
- The benefit to the applicant out ways any detriment to the community because the barn was in very rough shape and an eyesore.
- It is an incredible improvement to the area now.
- It is not substantial because the setback has not changed, it has been here for 100 years.
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Jason Saris asked about the -11' setback. Atty. DiLallo Bitter stated this was relative to the way the road has been configured over the years. Jason Saris stated that it sounds like it is on somebody else's property by 11'. Atty. DiLallo Bitter said if that is the case it is the property of whomever owns the road. Jason Saris replied that means it is in the right of way.

Atty. DiLallo Bitter agreed.

Lorraine Lefevre asked what the height of the new structure was. Atty. DiLallo Bitter stated 23' +/- . She stated the height did not impact anyone.

John Whitney asked if the Board could do a negative variance. Jason Saris stated it was from the right of way and it was entirely on the applicant's property. John Whitney asked if the Board has the right to grant a variance into the right of way and if there were any steps that they needed to take such as inquiring if there was an authority that needed to weigh in on whether or not it is acceptable. He is not sure if it is a state or county road, but it seems like there is someone that has an interest in the 11'. For whatever reason it has been triggered now, it is not the Board's doing and he does not know if they can just grant a variance for this. Atty. Muller replied that they could not give a negative setback, he believes it has been accurately measured and conceptionally the setback comes from the property line, not beyond the property line and he believes the applicant should be favored with a variance. In terms of improving a setback he does not see it as something this board can do. The best setback they can give him is what he had which is 0'. By giving this a 0' line setback you have not given any permission to encroach and the Town of Bolton has not given up anything. Atty. DiLallo Bitter said most importantly the applicant would be compliant. Atty. Muller agreed saying the

Board could not give relief except measured from a boundary line.

Lorraine Lefevre inquired about segmentation. Atty. DiLallo Bitter replied that they were just following instructions as they were told they needed to come and address this before they could move forward with the other plan.

Brendan Murnane asked if it matters that there was no correspondence from the town weighing in on this. Atty. Muller said obviously no one weighed into object.

RESOLUTION

The Zoning Board of Appeals received an application from Richard Larkin, (V19-16) 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 #3 of the agenda.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance: It is a non-conforming structure that will be improved.
 - 2) There will be no undesirable change in the neighborhood character or to nearby properties. They are improving the structure.
 - 3) The request is substantial. Due to the age and condition of the structure it is necessary.
 - 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 not self-created; It is the same non-conforming building.
- 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 Brendan Murnane and Seconded by, Holly Dansbury it is resolved that the ZBA does hereby approve the variance request to alter a non-conforming structure in accordance with Section 200-57B where a setback of 50' is required and 0' is proposed. 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 6:44 pm.

Minutes respectfully submitted by Kate Persons