

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, July 20, 2021
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, Brendan Murnane, Holly Dansbury Joy Barcome, Jim Senese, Alternate; Lorraine Lefevre, Planning & Zoning Director; Richard Miller, PE

Absent: Jeff Anthony, Dan Sheridan and Counsel; Michael Muller

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

RESOLUTION:

Motion by Lorraine Lefevre to approve the June 15, 2021, minutes **Seconded by Jim Senese.** Holly Dansbury abstained. **All others in Favor. Motion Carried.**

1. **Appeal:** Tony DePace has requested to present an appeal of the Zoning Administrator Stop Work Order and the determination that the property owned by 14 Belle Lodi LLC, should have been subject to a Major Project Stormwater Evaluation prior to the disturbance of over 15,000 sq ft of surface area. Section 186.06, Block 1, Lot 10, Zone RN1.3 Property Location: 14 Belle Lodi Lane.

Tony DePace presented the following:

- Handed out a packet to the Board.
- This was always a major parking lot for the marina and the Algonquin.
- This has been parking cars there for over 50 years.
- The only thing they have done to it has been maintenance to this road every few years for the past 30 years.
- This year they did maintenance on the center parking lot.
- This parking lot has always been gravel, and grass has been growing through it.
- Nothing has been changed other than the maintenance on this lot.
- The parking is for about 100 to 120 vehicles, boats and trailers.
- A good deal of parking is used by the Algonquin restaurants staff and the rest is theirs.
- He is here to defend his parking lot.

Jason Saris inquired how the Planning & Zoning Director determined that the parking lot was slightly used. Mr. Miller stated that he was there for a site visit, and it did not appear to be used much.

Jason Saris asked if the lot was used by. Mr. DePace asked stated that every nice day the lot is full to its capacity (about 100 vehicles) by employees of the Algonquin, Chic's Marina staff and customers of the marina. Jason Saris asked how frequently they had to do maintenance work on this lot. Mr. DePace stated they do maintenance every couple of years. They chose not to blacktop this lot, so they are constantly filling ruts and cleaning up stone.

Jason Saris asked about the storage of boats in that area. Mr. DePace said they store some boats in the barn up above and some boats on the side, but they prefer to use the site on County Route 11.

Holly Dansbury asked what changed on this lot. Mr. DePace said that they did not change it, they just re-graveled it and re-leveled it. They had wanted to plant some trees and vegetation but had received a Stop-Work-Order. Holly Dansbury asked if they have done maintenance on this lot over the years. Mr. DePace replied yes, they have been maintaining it for over 40 years. They did not gain or lose any parking.

Jim Senese asked if the work was all done except for the trees. Mr. DePace replied yes. Jim Senese wanted to know what Mr. Millers concerns were with the project. Mr. Miller stated that the main issue was that they did the major excavation for the house they built, blasting all the rock and crushing it. They took this crushed rock up to the lot and put down larger rock and topped it with smaller rock. It was over 15,000 sq. ft. of disturbance now and it is his feeling they are making a "really impervious surface" now and it should have had a stormwater plan. The other issue is a lot of the water that comes off that lot ends up on another property which is not allowed by the stormwater regulations. This is how he came up with this.

Holly Dansbury asked if there was something more, they could do to mitigate the runoff. Devin Dickinson stated they have added some stone trenching at the bottom of the parking lot to try and control some of the stormwater runoff. This parking lot has not been expanded at all; it is really just a resurfacing. The area in general is shallow bedrock with a high-water table.

Jason Saris said the previous Zoning Administrator's stance was if it was traveled and had been graveled and or ran over enough it enough times with a car it was already impervious surface. If they wanted to pave it, she did not consider this an increase of impervious surface. He asked Mr. Miller if his interpretation was different than this. Mr. Miller replied no, his interpretation was the same. He believes this was a disturbance and requires a stormwater permit per our stormwater regulations. Jason Saris asked what the difference is between maintenance and disturbance. Mr. Miller said that he would call maintenance the blading off or grading of a parking lot. They put in an extensive amount of stone with an extensive amount of type 4 material over the top of this.

Holly Dansbury asked if the addition of trenches helped with the remediation of stormwater. Mr. Miller stated that it was a good idea, but it fills up and flows onto someone else property which is a violation of the stormwater regulations. Ruben Ellsworth said that the stormwater has been running on to that neighboring property for many years and they did a substantial improvement with removing the culvert, paving the road and changed the course of the water. The water has been coming out of the ground forever. He did resurface and stone the lot, but it is still the same whether you regrade or resurface. He has done this many times.

Chris Navitsky stated that he did not know the history of the parking lot and he agrees with the previous Zoning Administrator's determination that gravel driveways do become compacted and lead to runoff. He does not know the extent of work that was done, but if a significant amount of material was brought in, it is substantially a disturbance. This bay has been impacted by a lot of runoff. He believes anything they can do to improve stormwater to would be a benefit for the lake and the marina. He believes that just by planting trees on this lot will be a benefit for everyone in the area. If there are 100 spots, they could be greatly helped by 10 trees and landscaping buffer will greatly reduce the runoff. Mr. DePace said that he agrees with Mr. Navitsky, and he planned on adding at least 4 trees and shrubbery around the corners. The water runoff has been coming off that hill for over 40 years. The house Mr. Miller is speaking of has had water issues forever. He and his wife lived there 40 years ago, and they had to drill holes in the cinder block constantly empty buckets of water from the basement all spring long due to the water table. Water has been coming out of that house every year. They have not contributed water to any property in this area. He would love to meet with Mr. Navitsky in the fall to get a planting plan together.

Brendan Murnane said that every box they have asked them to check in terms of vegetation or runoff plans have been either done or there are plans to take care of them. The actual use of the lot was a question but as a prior worker at Chic's Marina he can attest to the fact that the parking lot was used and packed for many years. Jason Saris explained that they were here tonight for an appeal of Mr. Millers determination. The DePaces' are not here asking for a variance or permission for a parking lot, this lot has clearly been here for over 40 years. He stated with all due respect he disagrees with Mr. Miller's interpretation of maintenance and disturbance. If this area was a field that was occasionally used it may be a change of use and disturbance. But this is maintenance and sometimes more maintenance and material are required.

Holly Dansbury this sounds like a parking lot that has been maintained, and it is still a parking lot, and she would like Mr. DePace to add some more trees to help with the stormwater.

Lorraine Lefeeve asked Mr. Miller what he was looking for. Mr. Miller stated that he was looking for a major stormwater project. Lorraine Lefeeve asked if there was a stormwater plan in place. Mr. Miller said he has done some stormwater work but basically the problem is that water is still going onto other people's property.

Jason Saris stated that basically if it is not a disturbance then it is not required. this parking lot predates the ordinance and any stormwater requirements. If it is routine maintenance on a pre-

existing parking area, then Mr. Miller can't require this. If Mr. DePace can voluntarily offer to do whatever he wanted.

Brendan Murnane asked if Mr. Miller had any reason to believe that there was an increase of runoff from this project than there was prior to the project. Mr. Miller stated he did not know.

Jason Saris stated that they needed to follow the ordinance.

Mr. Dickinson stated that they had done some remediation with stone trench at the bottom. He said doing a major stormwater plan does not mean that there will not be any runoff. Joy Barcome said it seemed to her that there has been a thought process to remediate some of the stormwater. Mr. Dickinson stated that they had.

Mr. Ellsworth said that stormwater has been greatly improved by removing an existing culvert that was sending water on to the property in question. They are more than willing to do the right thing to help with the stormwater.

Jason Saris reminded the Board that they were here to decide whether or not this was a disturbance or maintenance.

RESOLUTION

Now, upon motion duly made by Holly Dansbury and seconded by Brendan Murnane, it is resolved that the ZBA does hereby overturn the determination by the Planning & Zoning Director for 14 Belle Lodi LLC., Section 186.06, Block 1, Lot 10, Zone RN1.3 **All others in favor. Motion Carried.**

2. **V21-17: Toni Case;** Represented by Daniel Szesnat. Seeks variances for garage rear setback 30 feet is required, 20 feet is proposed. Section 198.04, Block 1, Lot 15.2, Zone RR10. Property Location: 24 Stone Place Road. Subject to LWRP review.

Daniel Szesnat presented the following:

- They started the work and sort of got the dimensions wrong.
- They followed the plot plan they had drawn up and assumed that it was it laid out properly according to code.
- This is only a setback from the rear and his neighbor on the adjoining property has no issues with it.

Lorraine Lefevre stated she went to the site and this and did not see much of a disturbance and has no problems with it.

RESOLUTION

The Zoning Board of Appeals received an application from Toni Case (V21-17) 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. This was a mistake, and it does not negatively effect anyone.

2) There will be no undesirable change in the neighborhood character or to nearby properties. This will not effect any of the neighbors in fact they have written letters stating this.

3) The request is not substantial.

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. This was a simple error, and it will not negatively effect anyone.

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 Jim Senese, 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. V21-18: Home Place Corp;** Represented by Ethan Bixby. Seeks variances for moving beach changing house back from shoreline 30 feet and set on sonotube piles, shoreline setback 75 feet required, 30 feet is proposed. Section 186.07, Block 1, Lot 3, Zone RM1.3; Property Location: 4860 Lake Shore Drive. Subject to WCPS, APA and LWRP review.

Jason Saris stated that this looks more like they are taking the beach house out of the lake.

Ethan Bixby presented the following:

- There has been erosion here and they would like to pull it back and secure it.
- The building is about 20' long.

Jason Saris asked if they would be moving the building or build a new one. Mr. Bixby stated that they plan on moving the building.

Jason Saris said it is rare that they have someone trying to move building away from the lake. He believes this will be a big improvement, moving the building out of the lake back onto land.

RESOLUTION

The Zoning Board of Appeals received an application from Home Place Corp (V21-18) 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. There are other options, but this will remove the existing building out of the water.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. This is a beautiful old beach house which will be moved back away from the lake.
- 3) The request is not substantial. This is a pre-existing building that will become more conforming by moving it away from the lake.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. This will be an improvement to what exists.
- 5) The alleged difficulty is not self-created. This is a pre-existing non-conforming issue that has been created by shoreline erosion and they will be increasing the setback as opposed to reducing it.

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 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.**

4. **V21-19 Arthur Harris:** Represented by John Harris. Seeking area variances for 1) subdividing a 1.15 acre lot into two equal undersized lots of 0.57 acres in RCL3 zone requiring 3 acre lots, 2) side setback, 30 feet is required, 22.5 feet is requested, 3) waterfront variance, 175 feet is required, 100 feet is requested and 4) to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 157.05, Block 1, Lot 3, Zone RCL3. Property Location 35 & 37 Horicon Lane. Subject to APA and LWRP review.

Jason Saris read an email from Atty. Muller suggesting that the Zoning Board to refer this item to the Planning Board for their recommendations before taking any action. He stated that if they approve the variance beforehand, they would be tying the Planning Boards hands. This is one of the rare circumstances where if the ZBA approves the variance, then the applicant would be compliant and would not need a subdivision. The Board discussed their options.

Holly Dansbury asked if Mr. Miller if he thought it was best to do what Atty. Muller was proposing. Mr. Miller stated he really didn't think they needed to. They could approve it contingent on what the Planning Board wants to do. If the Planning Board says no than the whole thing goes away. Jason Saris said that Atty. Muller has implied that once they have the relief that is required, the Planning Board can't say no. Mr. Miller said if this Board could give them the relief and say that the Planning Board has to agree to subdivide the lot or else, they could not do it. Jason Saris said he believes that Atty. Muller is implying is that if the variances are granted, the Planning Board would not have any grounds to not approve. Holly Dansbury said she thinks they could approve it with conditions because nothing is changing. Jason Saris read Atty. Mullers email to the Board so they could fully understand his suggestion. Jim Senese said he is for following Atty. Mullers suggestion.

John Harris asked for clarification on the information that the current lot was conforming whereas the new lots would not be. He thought the standard was a 3 acre lot and the current lot is 1 acre. Jason Saris explained that the 3 acres is for density. There is supposed to be one principal building for 3 acres in that zone. The minimum lot size allowed is 1 acre. So, the existing lot size is compliant in that zone, but it won't be when they subdivide.

John Harris presented the following:

- He and his wife borrowed money to temporarily buy the second half of the property so they could find a way to continue to live on the half that they have now.
- They are proposing any new construction, the property will stay exactly as it is.
- They are proposing that that a line be drawn on the map to separate the 2.
- Detailed the history of how they came to own this property.
- For 20 years they lived in the 3 existing cottages on the property with two other families.
- In 1992 two of the families bought out the third.
- They demolished the 3 existing cottages and rebuilt 2 new homes with shared wells, septic and driveways.
- In 2003 they were denied a subdivision of the property.
- At the time their neighbor Nick Clesceri opposed this subdivision.
- They have now reached an agreement with Mr. Clesceri, and he is in favor of the subdivision.
- Without the variance and subdivision his family will need to sell their half of the property and leave.
- The other family that shared the property with them stated that they needed to sell their half of the property and they scrambled to buy them out.
- They had to do this within 90 days and now they need to have this subdivided in order to sell the property.
- The bank will not give a mortgage on a shared property, so it is almost impossible to sell the other half of the property.
- They are asking for a line on the map to separate the properties and continue to be used as they have.
- They are seeking three area variances.

- The lot sizes after the subdivision will be larger or equal to 12 of the 15 existing lots in that area.
- This will not create a change to the neighborhood.
- They are not asking to change the structures in any way.
- They just want to draw a line so they can sell the other property and continue to enjoy the property as they always have.

Jason Saris said that townhomes also have some of the same shared infrastructure, but they usually have some kind of ownership agreement. He asked if they were planning to have an agreement drawn up for the maintenance and upkeep of the shared services. Mr. Harris stated absolutely.

Jason Saris asked Mr. Miller if there were any density issues. Mr. Miller stated that he did not really think so. He said he spoke with the APA, and they did not have seem to have any issues with this.

James Senese asked about the dock and if they would be adding any. Mr. Harris stated that they will be going to the LGPC to request a second dock for themselves. The property they are selling will have the existing dock.

RESOLUTION

Now, upon motion duly made by James Senese and seconded by Brendan Murnane, it is resolved that the ZBA does hereby table this application and send it to the Planning Board for their advisory opinion and recommendation. **All in favor. Motion Carried.**

The meeting was adjourned at 7:15PM.

Minutes respectfully submitted by Kate Persons