

**Town of Bolton**  
**ZONING BOARD OF APPEALS**  
**MINUTES**  
**Tuesday, Sept. 13, 2022**  
**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:** Chairman Jason Saris, Jim Senese, Robert Kennedy, Holly Dansbury, Dan Sheridan, Joy Barcome, Acting Planning & Zoning Director - Joshua Westfall, AICP & Town Counsel – Brian Reichenbach

**Absent:** David Kneeshaw, Alternates - Lorraine Lefevé & Henry Caldwell

The meeting was called to order at 6:00 p.m.

**Minutes Approval:** Jason Saris asked if there were any changes or corrections to the August 9, 2022 minutes.

**RESOLUTION:**

Motion by James Senese to approve the August 9, 2022 minutes as presented with the following correction: *Holly Dansbury was absent from the August 9, 2022 meeting.* Seconded by Robert Kennedy. **All in Favor. Motion Carried.**

- 1. V22-22. Efstathiades;** The applicant seeks an area variance to construct a 26' x 30' garage within the shoreline setback. Per §200-13. 75' is required, 56' is proposed; 19' of relief requested. Zoning District RL3. SBL 124.00-1-9. Location: 600 New Vermont Road. Subject to APA, WCPS, SEQRA and LWRP Review.

Tom Hutchins of Hutchins Engineering presented the following:

- They own a 5-acre parcel where the home is located and an adjoining 11 acre parcel.
- There is a small intermittent stream that bisects the 5-acre lot.
- They are looking for shoreline relief from the intermittent stream for a proposed garage.
- After careful consideration this is the most logical area to place the garage.
- If they move the garage further back, they would be on a steep rocky slope that would need excessive blasting.
- They looked at different options to be more compliant, and this was the most logical area to place the garage.

Jason Saris asked what the practical difficulty was. Mr. Hutchins detailed more compliant areas and explained why they would not work or would be very difficult to use. The slopes are extremely steep and would need significant disturbance to the west. To the north the stream is closer, and they would need a greater variance. This is the most logical and appropriate place

for it. To the east would not be near the area of the house and is a lower and wetter area and would not make sense.

Jason Saris asked if the house met the setbacks from the stream. Mr. Hutchins stated that the porch and steps did not, so this is a pre-existing non-conforming structure.

Robert Kennedy asked for the size of the culvert in the driveway. Mr. Hutchins replied at least 18'.

Jason Saris asked if they had any plans for mitigation of stormwater from the garage and any impact on the stream. Mr. Hutchins replied yes, and he detailed them on the plans. He stated they would be capturing all the runoff from the roof and putting it into the ground. Holly Dansbury asked if there were any additional driveways that would require stormwater mitigation. Mr. Hutchins stated all stormwater from the small additional area of the driveway will be captured and put into the ground.

Joy Barcome asked if the house was pre-existing and non-conforming. Jason Saris replied yes.

No County Impact

## **RESOLUTION**

The Zoning Board of Appeals received an application from Efstathiades (V22-22) 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.

The benefit could not be achieved by other means feasible to the applicant besides an area variance. If they moved to the west, they would create major disturbance to the land, and this appears to be the best spot. Keeping the garage closer to the owners makes more sense. There will be no undesirable change in the neighborhood character or to nearby properties. It's about 600' from the road.

The request is not substantial.

The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. This is a small garage.

The alleged difficulty is self-created. The client proposes a project that does not meet the current shoreline requirements.

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 Dan Sheridan 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. **V22-23. Beale / Audette;** the applicant seeks an area variance pursuant to §200-37(B)(6) related to the construction of multifamily triplex units. Applicant seeks to clear up to ACOE wetland, 10' clearing limitation applies; relief requested 10'. Zoning District RCM1.3.SBL 213.13-1-33. Location: Lake Shore Drive. Subject to APA, WCPS, SEQRA and LWRP Review.

Brandon Fergus from EDP presented the following:

- They are seeking to develop an existing vacant 3-acre site on Lakeshore Drive.
- They would like to subdivide it and construct 2 multi family structures on the site.
- They are working with the Army Corps of Engineers for wetlands on the site.
- These wetlands do not meet the definition of APA jurisdictional wetlands.
- They need a variance for the project as they will be clearing within 10' of the wetlands.
- They need to construct the driveway across a portion of the wetlands which is the cause of this variance.

Trevor Flynn of Flynn Design Studios presented the following:

- The structures are roughly 250' from the road.
- Their goal is to maintain as much existing vegetation and minimally disturbing the site for the driveway, septic and grading around the structures.
- He detailed the existing and proposed vegetation on the plans.
- These buildings are set back, and they plan on screening them from the neighbors with existing and proposed vegetation.
- Due to the steep nature of the site, the building is tucked into the slope so as not to impact the view shed to the west.
- There will be minimal impact to the view shed from the north and south.
- They have created a minimal footprint with 3-bedrooms & 3.5 baths per townhome.
- They kept the height of the building under the maximum allowed.
- They will be using natural materials, dark siding, and non-reflective glass along with dark sky compliant lighting.

Jason Saris asked if they were townhomes. Mr. Flynn stated they are classified as townhouses by NYS Code, but by the Town of Bolton code they are classified as multi family homes. Jason Saris stated therefore they do not require variances from each other.

Robert Kennedy asked the height of the buildings. Mr. Ferguson stated they were about 34.10'

Jason Saris asked Acting Director of Planning & Zoning Josh Westfall if they met all the other setbacks and density for this zone. Mr. Westfall replied yes.

Lake George Waterkeeper, Chris Navitsky stated he had concerns about the wetlands and the LWRP. He believes that they need to look at alternatives which he does not feel they have adequately done. He stated they had incorrectly completed the LWRP form pertaining to the wetlands. They are proposing to clear 60% of the lot and removing a lot more vegetation. He also questions the density and the 10' cut in the back of the building. He recommends that this variance be denied as they have many alternatives rather than sacrificing the wetlands.

Mr. Ferguson stated that the definition of the wetlands for the Town and the APA are the same, and state that a wetland is an acre or more in size and/or connected to an adjacent water body. This wetland is less than a tenth of an acre in size and does not connect to an existing water body. They have looked at alternatives for this site and, but they need to get the driveways up to the structures which are located where they are not only for the view sheds, but because the wastewater and stormwater mitigations need to be in front of the units. They need to meet both the Town of Bolton & DEC stormwater regulations. He explained that all stormwater is being handled on the site. They will need a permit from the Army Corp of Engineers for the wetlands.

Trevor Flynn stated that the wetlands are currently taking stormwater from adjacent sites which they plan to fix. The 10' cut Mr. Navitsky spoke of in the back of the buildings is for retaining walls and would not be violating the overall height of the 6'. Jason Saris said that he understood that anything greater than a 6' cut or fill required a variance. Mr. Flynn stated they were stepping them up the slope so they would be under the 6'.

Mr. Navitsky stated looking at the submitted site plan, the math says it is a potential 12' cut. Mr. Ferguson stated they talked to Mr. Westfall about the retaining walls height being under 6', and he believes they are compliant. Jason Saris said that the numbers on the plan indicate more than a 6' cut which would need a variance. Mr. Ferguson stated they were stepping it back so that it would not be a full 10' cut. He said the cut is about 7'. Jason Saris stated that the code is 6'. Mr. Ferguson said they would need to look at this. Jason Saris explained that if they could not rectify this, they would need to come back to this Board for another variance. Mr. Ferguson stated he understood.

Holly Dansbury asked for clarification as to why they could not direct the driveway in such a way so that it did not go through the wetland. Mr. Ferguson detailed the plans saying on the one lot it would affect all the easements and on the other lot it would affect the wastewater and stormwater mitigations. Holly Dansbury asked if they could add additional vegetation between the driveway and wetland area. Mr. Ferguson stated this was something they could definitely do to better protect the wetland area.

Robert Kennedy asked what material they would be using for the driveway. Mr. Flynn stated they would eventually be using macadam.

Correspondence:

**No County Impact**

**RESOLUTION**

The Zoning Board of Appeals received an application from Beale / Audette (V22-23) 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.

The benefit could not be achieved by other means feasible to the applicant besides an area variance. The applicant has reviewed the site, and this is their best option for what they are proposing.

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

This project will include stormwater management for this site and the adjoining properties.

The request is not substantial. They are addressing the 10' wetland setbacks.

The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. They are addressing stormwater.

The alleged difficulty is self-created. This is new construction, but the applicant has addressed the necessary regulations.

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 Jim Senese and seconded by Robert Kennedy, it is resolved that the ZBA does hereby approve the variance request as presented. 1. The cuts in the back are to be looked at and addressed to the Zoning Administrator. 2. Additional vegetative planting be included around the wetland area. 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. V22-24. Abbott;** the applicant seeks an area variance pursuant to §200-15 related to the area bulk and height controls, shoreline restrictions min. lot width. Applicant requested relief is 135 feet vs. the 150 feet required. Zoning District RCM1.3. SBL 213.17-1-38. Location: 3794 Lake Shore Drive. Subject to APA, WCPS, SEQRA and LWRP Review.

Nick Zeglen, P.E. of EDP presented the following:

- The applicants would like to subdivide their existing 2.5-acre lot into 2 lots.
- Lot 1 would be 1.5 acres and lot 2 would be just over 1 acre.
- They will need relief for shoreline lot width.
- They are looking for 135' of shoreline on lot 2 to protect the development of the shoreline and visual impact.
- He detailed the plans and explained how by keeping the shoreline to 135' the dock/boathouse would be built in the cove and less visible.

Jason Saris asked if they were basically looking for 15' of relief. Mr. Zeglen replied this was correct. Jason Saris asked if it met all other requirements. Mr. Zeglen replied yes. Jason Saris asked if it met density and all other requirements. Mr. Zeglen stated this was correct. Jason Saris stated this was a deep lot.

Holly Dansbury asked if this subdivision could have been done without a variance. Mr. Zeglen stated they were just trying to protect the visual impact from any potential buyer. This would be consistent with the existing lots in the area.

No County Impact

**RESOLUTION**

The Zoning Board of Appeals received an application from Abbott (V22-24) 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.

The benefit could not be achieved by other means feasible to the applicant besides an area variance. This is the best way to minimize the disturbance of the view shed.

There will be no undesirable change in the neighborhood character or to nearby properties. It is consistent with lots in the neighborhood.

The request is not substantial.

The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. This is consistent with the existing neighborhood.

The alleged difficulty is self-created. It is in line with what they are requesting.

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 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.**

### Appeal

- 4. Fortuna;** Mr. Fortuna seeks to appeal a Second Notice of Violation and Order to Remedy from the Zoning Administrator, dated June 23, 2022, related to an Order to remove all items from the Brookside Parkway right of way (trailers, stumps, rocks, etc.) to allow the installation of the storm water management plan as approved by the Town. Zoning District RL3. SBL Location: 18 Brookside Pkwy.

Jason Saris stated that the applicant had requested that this item be put off once again and he asked the Board to read the email that was sent to the Board at 4:07 PM by Mr. Fortuna.

Jason Saris asked about the FOIL requests cited in the email. Atty. Reichenbach stated that it was unclear exactly what the FOIL request was asking for. The Town Clerk gave him everything she had in her file. The documents Mr. Fortuna is complaining that he did not receive are all a matter of public record. There are 3 items that were recorded in the Town Clerks office and the fourth item was a site plan review that was approved by the Planning Board in 2015. Jason Saris asked if there was anything in the Zoning Office that Mr. Fortuna would have not have the ability to access himself pertaining to this appeal. Atty. Reichenbach replied, no.

Atty. Reichenbach stated this is an appeal of the Zoning Administrators determination and order. The burden is on Mr. Fortuna to make his case as to why this order should not be upheld; it is not on the Zoning Administrator or the Town to make his case for him. We do not know what his case is, he has not deigned to come and make it.

Jason Saris asked if this Board could act on this appeal tonight. Atty. Reichenbach replied yes. Jason Saris asked the Board if they would like to decide tonight or put it off until next month. He explained that the applicant had been put on notice since at least back in June and last month they gave him one more month and he was told to be ready this month. **The applicant received all the requested information that was available from the Town.** Holly Dansbury stated this seems like a pattern. The Board stated this seems like the applicant was stalling and they decided to act on it.

Atty. Reichenbach stated that in 2006 there was a road maintenance agreement between the owners of the property which was filed in the Warren County Clerk's office which stated the maintenance would be an obligation of everyone that owned the property then and who subsequently purchased the property. These are clear terms of the road maintenance agreement. It binds everyone that purchases property in that subdivision anytime in the future. In 2014 there was a deed to Mr. Fortuna that included that it was subject to an easement for the roadway and all matters that were matters of public record, which includes the road

maintenance agreement. In 2015 Mr. Fortuna had his own Site Plan Review application SPR15-14 that was a stormwater control facility maintenance agreement for his own property. In 2021 Mr. Kincaid and Mr. Cassell made stormwater management permit application SPR21-18 for Brookside Parkway to the Planning Board which they approved with conditions at a public meeting to allow certain measures to alleviate the stormwater and prevent erosion. These are all matters of Public Record and Mr. Fortuna apparently believes he is not subject to these, and the Town disagrees.

**RESOLUTION**

Now, upon motion duly made by Dan Sheridan and seconded by Joy Barcome, it is resolved that the ZBA does hereby uphold the Order to Remedy from the Acting Director of Planning & Zoning. **All in favor. Motion Carried.**

The meeting was adjourned at 6:57 PM  
Minutes respectfully submitted by Kate Persons