

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, June 13, 2023
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, Dan Sheridan, David Kneeshaw, Jim Senese, Joy Barcome, Willie Bea McDonald, Robert Kennedy, Director of Planning & Zoning - Joshua Westfall, AICP & Town Counsel – Brian Reichenbach

Absent: Alternate - Lorraine Lefevre

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 May 23, 2023 minutes.

RESOLUTION:

Motion by Robert Kennedy to approve the May 23, 2023 minutes as presented. Seconded by David Kneeshaw. Joy Barcome & Willie Bea McDonald abstained. **All others in Favor.**
Motion Carried.

New Business

1. **V23-13 7 Belle Lodi LLC.** Applicant seeks an area variance from §200-57 related to removing existing residence to construct a new residence in the same approximate footprint. There are current deficiencies in front and rear setbacks. Zoning District RM1.3. APA Land Use Classification: Hamlet. SBL 186.06-1-4. Location: 7 Belle Lodi Lane. Subject to APA, WCPS, SEQRA and LWRP Review.

Tony & Kristen DePace presented the following:

- They will be building in the existing footprint.
- They purchased the log cabin that has been there for 60 years.
- The existing septic has been in failure for many years.
- They have been approved for an updated wastewater system by the Local Board of Health.
- They would like to build in the same footprint with the same number of bedrooms and a full second story.
- The height will be 34.9’.
- This would be similar to the other buildings they have done in this area.

Willie Bea McDonald asked if it would continue to be a 2 unit structure. Mr. DePace stated no, it would be a single family dwelling.

Jason Saris asked about stormwater measures. Mr. DePace stated that he has spoken to the LG Waterkeeper and got some ideas on what to do.

Willie Bea McDonald inquired about parking. Ms. DePace explained that parking already exists and will not change.

Mr. DePace stated that they would not be obstructing any of the existing views. This will definitely be an improvement to what exists.

No County Impact

RESOLUTION:

The Zoning Board of Appeals received an application from 7 Belle Lodi LLC, (V23-13) for an area variance as described above.

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

And, whereas the Warren County Planning Staff determined that there was No County Impact.

And, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application; this Board makes the following findings of fact:

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

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance. This is a pre-existing non-conforming structure that will be rebuilt in approximately the same footprint.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. It will be an improvement.
- 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. This will be an improvement with the new wastewater system.
- 5) The alleged difficulty is not self-created. This is a pre-existing non-conforming structure. In weighing the factors, the benefit to the applicant is not outweighed by the potential detriment to health, safety and welfare of the community.

Now, upon motion duly made by Jim Senese 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. **V23-16. Sweet Briar LLC.** Applicant seeks relief from §200-16 related to the construction of a single-family dwelling and retaining wall. The site currently includes two apartments. Specific variances include:

- *Density Variance: 35,000 square feet required (20,000 sq. ft. for Single-Family Residence, 7,500 sq. ft. for Apartments). 23,958 square feet proposed. Relief Requested 11,042 sq. ft.*
- *Front Yard Setback (retaining wall): Required 30'. Proposed 10.5'. Relief Requested 19.5'.*

Zoning District RCH5000. APA Land Use Classification: Hamlet. SBL: 186.06-1-18. Location: 4768 Lake Shore Drive. Subject to WCPS and LWRP review.

NOTE: Previously approved as V19-27, Variance Expired November 2020.

Tony & Kristen DePace presented the following:

- There are no changes to the previously approved plan.
- They did not realize they had to build within a year.
- They did not start the building when they received approvals due to Covid-19.
- They are here to renew the previously approved variance.

Willie Bea McDonald inquired about the garage and docks. Mr. DePace stated that they would remain the same and the docks are for long term rental. The dock parking continues to be at the top of the road. He said once the house is constructed there would be 2 additional spots.

David Kneeshaw said they were only showing 4 parking spots. Mr. DePace replied that those were for the house. He stated that there is room for all the dock spaces at the top of the road. He detailed the plans for the house parking.

Chris Navitsky, Lake George Waterkeeper stated that they understand this variance request was approved back in 2020. They feel the current application does not reflect the actual site conditions. The previous variance had a condition that the existing shoreline vegetation was not to be disturbed. The applicant's agent stated they would preserve this vegetation however it appears that there has been a walkway and retaining wall along the shoreline. He has discussed this with Mr. DePace, and they just want to make sure this condition is followed.

Mr. DePace stated that they already have stormwater on the parcel from when they renovated the existing buildings. He is open to any suggestions for plantings by the Waterkeeper at the shoreline. The house will have rain gardens as detailed in the plans. They have placed a gravel walkway along the shoreline where there were rocks and boulders. They did not plan to add any vegetation until the house was built so that it was not destroyed.

No County Impact

RESOLUTION:

The Zoning Board of Appeals received an application from Sweet Briar LLC, (V23-16) 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 #2 of the agenda.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance. This was previously approved and as described, this is consistent with town codes.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties.
- 3) The request is not substantial. It is not substantial in relation to other buildings in the area.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. There will be new updated septic and stormwater and the owner is willing to accept recommendations from the LG Waterkeeper.
- 5) The alleged difficulty is self-created. This is a pre-existing, non-conforming building in need of alterations.

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 Robert Kennedy and seconded by Jim Senese it is resolved that the ZBA does hereby approve the variance request as presented with the condition: 1) A stormwater mitigation plan for revegetation at shoreline is to be submitted and approved by the Director of Planning & Zoning. 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. V23-15 POV Dock, LLC Subdivision.** Applicant seeks an area variance from §200-15 related to minimum lot size for LC45 Zoning District. Other lots within the proposed subdivision conform to area requirements as outlined in §200-15. Zoning District RCH5000/LC45. APA Land Use Classifications: Resource Management and Hamlet. SBL 186.18-1-31. Location: 75 Shallow Beach Road. Subject to APA, SEQRA and LWRP Review. Additional approval for subdivision will be required from the Town Planning Board.

Atty. John Lapper & Jeff Anthony presented the following:

- The applicant bought this parcel for mainland dock space as they own a home on Clay Island.
- This parcel is subject to many rights that run with the land.

- They will not be changing anyone's rights, but it is a liability issue that was done before these requirements.
- Part of the issue they are trying to address are for the beach and dock rights on a .48 acre lot with the hope that the owners with the rights will buy it and separate it for liability issues.
- The 2.39 acre lot requires a variance because it is not 5 acres, and this would be for the owners to park and dock.
- The remaining 48 acres would be sold to the LGLC.
- They could have made the 2.39 acres a 5 acre lot but that would be less to sell to the LGLC.
- Absolutely nothing would change for the neighbors.

Jason Saris asked if there were structures on this lot. Atty. Lapper replied no, and they were not proposing anything.

Willie Bea McDonald asked if they would be leaving the existing brown canvas covered structure. Atty. Lapper replied that it was for storage and garbage. Jason Saris asked if the structure would be grandfathered or require a use variance. Atty. Reichenbach replied that it would be grandfathered if it was there before the enactment of the code. Willie Bea McDonald stated that it was not that old. Jason Saris stated that if they were to build any other structures, they would definitely require variances.

Michael Elliott, neighbor of the applicant said he was totally against what he sees in the application as of now. He does not feel comfortable with what they are proposing. There are 12 families that use this right of way, and they want to protect their deeded rights. The applicant bought this property knowing the liabilities. They are just trying to protect their rights here tonight.

Jim Splonskowski asked about the structure again. Atty. Reichenbach stated that if the structure was in place prior to the enactment of the code it would be grandfathered in, if not it would not be. He said if it was over 100 sq. ft. it would be a non-conforming structure. Jason Saris stated that it would seem that it was not grandfathered in, but that determination is up to the Zoning Administrator to research this to see if it qualifies as a pre-existing non-conforming structure. If it was not, the property owner would have the opportunity to get a variance or remove it.

Mr. Splonskowski asked for clarification of the plot plan. He went down the list of questions for a variance. He stated that any hardships were self-created as the applicant knew what he was buying. This will be a definite hardship to all the deeded neighbors. They can leave the property the way it is which would not require a variance. This is a substantial variance request.

Atty. Lapper explained that the rights they had were deeded rights and they would not be changed. Nothing they are proposing would change the access, parking or beach rights. They are protected as a matter of title. They would like to subdivide and sell a large portion to the

LGLC. They are just here for the subdivision. He said that they do not believe the tent qualifies as a structure, but that is not why they are here tonight.

Jason Saris said that his gist of the situation is that the neighbors' rights include access to a large piece of property and if it is subdivided their rights would now be to a smaller piece of property. Atty. Lapper stated they would continue to have the same rights. Jason Saris asked about parking. James Healy said the deed allows access across the 20' road to the 200' beach front, it does not say anything about parking.

Jeff Anthony detailed the plans showing the parcel the applicant would retain, stating it essentially contained the road. He stated there are no requests to build on this lot.

Willie Bea McDonald asked about APA approvals. Mr. Anthony said it would require an APA Class A regional permit. He said that they have already submitted an application for this.

Jason Saris asked for clarification of the subdivision and the homeowners rights. Atty. Reichenbach explained that the subdivision would not have any effect on the existing deeded rights as he sees it right now. Jason Saris asked if the subdivision was created and the applicant abandoned the lot that the homeowners had the rights to, what would happen. Atty. Reichenbach stated if taxes were not paid on it, the County could foreclose on it for unpaid taxes. Atty. Lapper stated they would like the neighbors to buy that lot. Jason Saris asked why they would want to take on that burden. Atty. Lapper stated that even with deeded rights, the neighbors would need to assist in paying the maintenance. He said this is a liability for the applicant and the neighbors should just buy the lot.

Robert Kennedy asked what the use of the LGLC would be and if they would open it to the public, which would increase the traffic down there. Atty. Lapper stated that he did not know. He said LGLC is not getting the beachfront. Mr. Healy stated that no part of the potential LGLC parcel would include beachfront or the road. The LGLC has indicated that if they opened it to the public, at some point, it would not include the beach or road.

Al Peachy of the Gatehouse Assoc. said they are not opposed but they have concerns with the potential traffic. They would like to make sure there would not be any additional traffic and the buffer remains the same. He would also like to make sure the existing docks remain the same. If everything stays the same, they are fine with it.

Michael Meehan asked if the deeded access and use of the beach and parking area would be limited or change at all or if it could be changed in the future. Jason Saris explained that was not under the jurisdiction of this Board. He stated that the Attorneys have indicated that it can't change, but he can not speak to whether or not any of the activities they have been enjoying would change as he does not know what their deeds entitle them to. Atty. Reichenbach stated that if the rights they are exercising now are not part of the deeded rights, they could change whether the subdivision is approved or not.

Joy Crisafulli stated that if Mr. Healy is concerned about insurance and lawsuits, she is sure they could get insurance to give him peace of mind.

Mr. Splonskowski said that Mr. Healy is taking half of the parking area and land that has been deeded to them. Jason Saris said that regardless of ownership, this will not change their deeded rights. Dan Sheridan explained that they could not impede his deeded rights.

Michael Elliott asked the attorney if the LGLC would pay taxes on the land if they take it over. Atty. Reichenbach replied yes. He said they tried to give the land to the State of New York and they refused it because there was no public access.

Atty. Lapper explained that the rights that were deeded will continue. They are hoping the neighbors would want to buy the lot and reduce any concerns of liability.

Dan Sheridan stated he is concerned with the 2.39 acre lot that would be non-conforming. He asked if there would be any guarantee that there would be no future building on this lot. Atty. Lapper stated they were fine with no building rights on this lot they would be using it for parking.

Jason Saris asked what the benefit would be that could not be achieved by other feasible means. Atty. Lapper stated the benefit would be that they could donate the biggest piece of property possible to the LGLC to keep it forever wild. Jason Saris stated that it would seem as though it was so they had a dock and parking for the house on Clay Island. Atty. Lapper conceded that this would be one of the benefits. Jason Saris stated they would not need a variance for that. Atty. Lapper stated that the buildable area would remain natural if the LGLC bought it.

Jason Saris stated he was troubled with if the benefit was for the LGLC, they would be here asking for it. The benefit to the applicant here is not really criteria for a variance and he does believe it is a substantial request. Atty. Lapper stated they could make it a 5 acre lot but that does not help anyone. Jason Saris stated that it would certainly help the Board in answering the criteria for granting a variance.

Mr. Splonskowski said it seemed as though Mr. Healy was looking for 3 lots and they are being told nothing will change. He does not understand why it could not be a 2 lot subdivision. This would alleviate all the issues.

No County Impact

RESOLUTION:

The Zoning Board of Appeals received an application from POV Dock, LLC (V23-15) 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, 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 be achieved by other means feasible to the applicant besides an area variance. There are several concerns from the neighbors with the deeded rights and the Board has not had all the questions answered.
- 2) There will be an undesirable change in the neighborhood character or to nearby properties.
- 3) The request is substantial. This is almost 50%.
- 4) The request will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. He has heard comments of concerns that have been brought up and he is not sure of what the benefit is to the applicant.
- 5) The alleged difficulty is self-created.

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 Robert Kennedy and seconded by David Kneeshaw, it is resolved that the ZBA does hereby deny 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. Dan Sheridan Abstained. **All others in favor. Motion Carried.**

The meeting was adjourned at 7:15PM
Minutes respectfully submitted by Kate Persons