



SHERMAN CRAIG
Chairman

TERRY MARTINO
Executive Director

Draft Minutes
Regulatory Programs Committee
June 8, 2017 Agency Meeting

MINUTES OF THE REGULATORY PROGRAMS COMMITTEE MEETING June 8, 2017

The Committee meeting convened at approximately 9:15 a.m.

Regulatory Programs Committee Members Present

Arthur Lussi, John Ernst, Daniel Wilt, Lynn Mahoney, Barbara Rice.

Other Members and Designees Present

Robert Stegemann, Karen Feldman, Bradley Austin, Chad Dawson, Sherman Craig

Agency Staff Present

Terry Martino, James Townsend, Richard Weber, Jennifer Hubbard, Sarah Reynolds, Elizabeth Phillips, Ariel Lynch, Shaun LaLonde, Aaron Ziemann.

Approval of Draft Committee Minutes for May 2017

A motion to approve the draft committee minutes was made by Mr. Wilt and was seconded by Mr. Ernst. All were in favor.

Deputy Director Report

Richard Weber briefly reviewed the status report and the high profile report.

Project (Ariel Lynch)

P2016-0182
Estate of Genevieve M. Garrant
Fort Ann: Washington County
Low Intensity Use

The project is a variance request for construction of a single family dwelling, garage and OSWWTS on a lot having less than 125 ft. of shoreline width on Hadlock Pond.

Ms. Lynch presented the property location and history, as well as the variance record. Mr. Lussi asked if local approvals were obtained for the subdivision creating the lot in 1973. Ms. Lynch responded that no local controls for variances were in place at that time.

Ms. Feldman stated that in 1973, contiguous parcels were merged via the Adirondack Park Agency Act and people did not understand that provision of the regulations. Ms. Martino noted that staff are monitoring subdivisions now via a Real Estate Sales Website for these types of merger issues. Mr. Lussi noted that the applicant brought this particular subdivision to the attention of the Agency.

Ms. Lynch then reviewed the applicant's proposal. Mr. Craig stated this project is a variance due to the lot size being too narrow. He stated that the applicants are requesting approval to build a house so that they may sell the parcel of land. He asked if the variance approval included approval for the house site, septic system and well. Ms. Lynch answered affirmatively. Ms. Feldman asked if a separate permit was necessary for the proposed dwelling. Ms. Lynch stated no. Mr. Lussi asked if the variance approval runs with the land. Ms. Lynch answered affirmatively.

Ms. Lynch stated that 26% or 5 trees greater than 6 inches in diameter at breast height (dbh) within the mean high water mark are proposed to be cut. She noted that additional trimming of branches is proposed by the applicants. She noted that staff are requesting that the cutting and trimming of trees be conducted after the dwelling is built to ensure that a filtered view is developed. Mr. Monroe asked if the trimming of branches outside of the 35 feet of shoreline width is jurisdictional. Ms. Lynch responded for a stand-alone lot that does not require a variance, it would not be jurisdictional, however, for this particular proposal it is due to the potential impacts to the shoreline.

Ms. Lynch reviewed the variance criteria and the staff recommendation.

Mr. Dawson asked if the variance approval is lost if the conditions are not met by the applicant or if the proposal is not undertaken. Mr. Townsend responded there is a time limit of four years to undertake the project. If the project is not undertaken within the allotted time frame, the applicant would have to come back to the Agency for further approval due to the potential for the proposal to change. Mr. Craig asked if the renewal process was the same for a variance as it is for a permit. Mr. Townsend responded affirmatively.

Mr. Stegemann noted that in 1973 the lot size had a legal width. In 1975 the applicants took action and created a substandard sized lot which is the subject of the variance. Mr. Stegemann asked if the applicant's actions of creating the substandard sized lot are taken into consideration during the variance review process. Mr. Townsend responded it is part of the consideration and in this proposal the hardship is considered self-created.

Ms. Feldman noted that staff seemed to have addressed potential for erosion impacts relating to the long driveway and the removal of the 5 trees along the shoreline. Ms. Lynch responded affirmatively. Mr. Lussi asked if plans were included for how the applicant traverses the land from the house to the water. Ms. Lynch responded that the

applicants do not intend to make a particular path and there are no wetlands that would be impacted.

Mr. Thomas asked if the approval includes the proposal for a floating dock. Ms. Lynch responded affirmatively.

Ms. Mahoney stated that staff had presented two alternatives to the applicants but upon discussion with the applicants, neither alternative was acceptable to them. Ms. Lynch responded affirmatively. Ms. Reynolds noted that no alternative existed for a dwelling that would not require a variance.

Ms. Feldman asked for a condition requiring the planting of native plants be added.

Mr. Monroe noted that in terms of the self-created hardship, most landowners feel if they have 3 deeds they have 3 parcels so most are unaware of the merger rule. He stated that currently there is a case before the Supreme Court involving a merger rule.

Mr. Dawson noted that the applicant retained legal counsel who should have known about the merger rule. Mr. Lussi responded that in practice, most lawyers were not and are not aware of the merger rule.

Mr. Lussi called for a motion to move to the full Agency a recommendation to approve the variance request with the noted changes by the Committee. Mr. Wilt moved the item with stated changes. Ms. Mahoney seconded the motion. All were in favor.

Project (Ariel Lynch)

P2016-0100
Camp Majano, LLC
North Elba: Essex County
Rural Use

Mr. Craig sat on the Committee as Chair for this project. Mr. Lussi was recused.

Mr. Weber stated that as this project involved a current Board Member's variance request, an Administrative Law Judge (ALJ) was used for the public hearing. He noted that a staff recommendation was not provided due to the involvement of said Board Member. He added that this is the first non-conforming boathouse expansion that has come before the Board since the regulation changes to the boathouse definition undertaken in 2010. He noted that feasible alternatives appear to exist, and staff recommends careful deliberation be given as to whether other factors would outweigh the important consideration of alternatives in this instance.

Ms. Lynch presented the record and noted this is a shoreline setback variance. Mr. Craig asked what the definition of the current structure is. Ms. Reynolds stated that it is considered a lawfully nonconforming boathouse due to it being in existence prior to

1973, the enactment date of the Adirondack Park Agency Act, but that it is also a single family dwelling because it contains a dwelling unit.

Ms. Lynch then reviewed the objectives of the applicants. The proposal is to increase the footprint of the structure which lies within the shoreline setback requirement.

Mr. Stegemann asked if the proposed deck on the east side of the structure, highlighted in pink on the map, was over an existing deck. Ms. Lynch responded that the proposed deck will be over an existing dock.

Mr. Thomas asked why the established gables were considered nonjurisdictional but the proposed decks are considered jurisdictional. Ms. Lynch responded that the gables are within the existing footprint of the structure; however the proposed decks, which each expand the footprint by 100 feet, are not.

Mr. Wilt asked if the existing dock is a permanent or removable structure. Ms. Lynch stated there is no proposal to remove the dock. Mr. Craig asked if the dock is permanent, it is not a removable structure, would the proposed deck to be placed over the dock expand the existing footprint. Ms. Lynch responded that the deck is proposed to be built over the dock, however, under Agency Regulations the proposed decks are considered an expansion of the existing footprint. Mr. Townsend explained that the dock is not considered in the calculation of the existing footprint because under the Shoreline Regulations, docks are exempt.

Ms. Reynolds further explained the history of the nonconforming structure and the Agency Regulations Rule Change that occurred in 2008 and how it applies to the current proposal.

Ms. Lynch reviewed staff's suggested alternatives which were rejected by the applicant.

Mr. Dawson asked if anything could be placed on the structure that would change the original footprint and still be considered nonjurisdictional. Ms. Lynch responded no. Mr. Dawson stated that placement of the two gables with doorways by the applicant onto the structure prior to the approval of the variance request seemed presumptive to him.

Mr. Wilt noted the neighboring boathouse to the left in the staff photo and asked whether a deck was attached to that structure. Ms. Lynch responded affirmatively but noted that under current regulations the structure would also be considered nonconforming.

Mr. Dawson asked if the 17 trees referenced by the applicant as needing to be removed to meet staff's suggested alternative had been identified. Ms. Lynch responded no, the trees were not identified by the applicant.

Ms. Lynch then reviewed the public hearing record. She noted that no public comment was offered at the hearing and no public comment was received by the Agency.

Ms. Lynch discussed the structure's eligibility for listing in the State and National Registers of Historic Places as a contributing resource to Buck Island Camps Historic District. She noted that the proposed work will not have any adverse impacts upon the historic resource. She stated that the alternatives proposed by staff were not presented to OPRHP for review.

Ms. Lynch noted that a building permit was issued by the Town of North Elba for the proposal. She stated that the NYS DEC did not require a Protection of Waters Permit for the proposal.

Ms. Lynch then reviewed staff's analysis of the variance factors. She noted that the variance request is minimal; there would be no substantial detriment to neighbors; feasible alternatives exist but related tree cutting is unclear; difficulty was self-created by the applicant and further aggravated with placement of gables; the tree cutting related to variance or suggested alternatives is uncertain and therefore it is difficult to assess potential impacts; and if granted, staff recommend conditions prohibiting enclosure of the decks and tree removal within 50 ft. of the structure.

Mr. Craig discussed the balance test of the applicable variance factors.

Mr. Dawson commented that in this particular project the applicant was aware of the applicable variance laws. He added that although the applicant was fully aware of the law, as he is a current sitting Board Member, the applicant chose to knowingly complicate the alternatives.

Ms. Mahoney stated that the gables that were constructed by the applicant during the variance review process were considered to be nonjurisdictional and could have been built at any time and the possible alternatives would still be limited.

Mr. Dawson stated the proposal was under review at the time the gables were constructed and doors and a ledger were put into place prior to approval of the variance. He said the manner and the timing to him is egregious.

Mr. Stegemann said he agreed with Ms. Mahoney's point that placement of the gables is nonjurisdictional and the applicant should not be impugned.

Ms. Feldman concurred with Mr. Stegemann and Ms. Mahoney.

Mr. Ernst stated the applicant was entitled to build the gables even though it obviated an alternative which the applicant rejected.

Mr. Wilt stated the applicant's proposal is less intrusive than cutting trees.

Mr. Dawson asked if a decision on the project could be postponed. Mr. Craig responded that the Committee could accept, reject, or postpone the decision.

Mr. Austin stated that everyone seems to agree that the placement of decks over water does create impacts although minimal. However, the question asked by staff that has not been addressed is why no improvements to stormwater management have been proposed.

Mr. Thomas stated that the tree cutting condition proposed by staff would seem acceptable to the applicant as they have stated they do not want to remove any trees.

Ms. Rice asked why the 50 ft. cutting restriction is proposed as a condition. Ms. Lynch responded that the 50 ft. restriction is relevant to the structure. Mr. VanCott stated that typically the number of trees would be identified on a site plan. As the applicant has not provided a site plan with the trees identified, staff provided a cutting restrictive condition that would apply to the immediate area surrounding the structure.

Mr. Thomas noted that in the original proposal, the applicant indicated that they do not desire to remove any trees, however, the alternative listed by staff would require tree removal. Mr. VanCott responded that the applicant has stated that under alternative B, 17 trees would need to be removed.

Mr. Craig noted that the applicant brought another document to the Agency after the record was closed. Mr. Craig did not look at the document. Mr. Craig then asked staff to consult with the applicant to see if they wanted to postpone bringing the variance proposal to the Board for their consideration to allow for addition of the new document to the record. The applicant responded no, they wanted to proceed.

Mr. Craig then asked to review the feasible alternatives. He noted that alternative B seems reasonable. Ms. Mahoney stated that alternative B would require tree cutting which to her did not seem to be a feasible alternative.

Mr. Thomas stated that the entire area looks to be developed. He stated that no public comment was received. He stated that the variance is not detracting to the area, but rather the proposal seems to fit with the rest of the area.

Mr. Dawson stated that the removal of 17 trees has not been evaluated by staff. The applicant has said to accomplish alternative b, 17 trees would need to be removed but those trees have yet to be identified for the record. It is an irrelevant point as there is no evidence. He encouraged postponement and to open the record so that alternative b can be evaluated by staff. Otherwise, he stated, it is only speculation.

Mr. Stegemann stated that his instincts tell him that there is enough information available here in the record to make a decision today. He stated that he feels more trees would need to be cut with the alternative and the decision could drag on.

Mr. Ernst stated staff has done a thorough job by proposing alternatives even though the applicant has reasons to oppose them. To him, what the applicant wants seems less intrusive than the alternatives.

Mr. Ernst moved to recommend to the full Agency to accept the variance proposal with a condition requiring no enclosure of the 2 decks without prior Agency review and approval, and no tree cutting within 50 ft. of either side of the structure for 5 years. Ms. Mahoney seconded the motion.

Ms. Martino asked if a time limit has been placed on cutting restrictions in the past. Mr. Townsend stated he was not aware of any time limits being implemented in past practice for cutting restrictions.

Mr. Stegemann noted that the shoreline regulations state that less than 30% of trees can be cut. Mr. Weber stated that because the proposal is for a variance, the Board does have the right to add a condition restricting tree cutting, but suggested not to add a time limit to the restriction.

Ms. Mahoney amended the motion to instead recommend granting the variance with only the condition that any enclosure of the proposed decks would require the applicant to come back to the Agency for approval, and no restriction on tree cutting. Mr. Wilt seconded the amended motion. All were in favor of the amended motion. The vote was then cast unanimously.

Old Business

None

New Business

None

The meeting was adjourned at approximately 12:25 p.m.