

ZONING BOARD OF ADJUSTMENT

Wednesday, September 26, 2007
Belmont Corner Meeting House
Belmont, N.H.03220

Members Present: Chairman P. Harris; N. Patten, P. Oberhausen and L. Couture.
Alternates Absent: E. Hawkins (E).
Staff: E. Murphy.

The chairman opened the meeting at 7p.m. He explained that the Board usually consists of five voting members and that an affirmative vote of three is necessary to pass any motion or approval. The applicants have the option of going with a short Board or postponing. A short Board is not a reason for a rehearing.

Abutter's Hearing – Jeff and Joyce Baker for Winnisquam Beach Campground: Requesting 3 Variances to construct a 3-season room at 115 Dolphin Drive in an “RS” Zone, Tax Lot 117-015-000-115.

- a. Wetlands Ordinance Article 4: closer (41’) to the highwater mark than allowed (50’) ZBA # 4907.
- b. Zoning Ordinance of Article 5 Table 2 & 7.C.: closer (9.4’) to the interior road than allowed (15’) ZBA #5607.
- c. Zoning Ordinance of Article 5 Table 2 & 7.C.: closer (13.8’) to Unit 114 than allowed (15’) ZBA # 5707.

Mr. Bryan Bailey presented the application and agreed to a short Board.

Mr. Bailey explained the property is located in Winnisquam Beach Campground on the north side of the rail road tracks on the western edge the campground. It is the last road in the campground and there are only two units past them on the beach side of the tracks. There is an existing travel trailer on the site and the proposal is to convert an unpermitted deck into a three season enclosed living space. The existing deck is on the ground and they want to replace it with a floating slab and a new 9’ x 20’ wood frame structure. The floating slab will move with the travel trailer. The variance is to allow the three season room to be 41’ to the high water mark instead of the allowed 50’ and 9.4’ to the interior road instead of the required 15’ and closer 13.8’ to the adjacent unit to their west than allowed 20’. Their RV measure more than 320 square feet with the bumpout making it a structure.

Mr. Bailey addressed the criteria for a variance by stating that the proposal is not contrary to the public interest because it will be in keeping with the park use. This is a travel trailer park and units come

and go. The hardship is that this is a preexisting nonconforming lot with limited space situated between the railroad tracks and the water. There is no where on the site that would meet the 50' highwater setback requirement. The lot is laid out in accordance with what is already established and the available land. A significant effort went into grading the area to maintain the maximum setback from the lake by putting in a retaining wall. The spirit of the ordinance is observed because the proposal is consistent with the intended grandfathered and historic use of the campground. There is no threat to the lake or surrounding limited common area. The proposal is similar to other units in the area and will be an improvement to the site both economically and aesthetically.

P. Oberhausen wanted to know if the flood plain and Shore Land Protection documents have been submitted. Mr. Bailey stated that the Shoreland Protection is a separate issue and not done through his office. He stated that there are no outstanding violations on the site and the travel trailer is already being utilized. The retaining wall was put in to protect the water. P. Oberhausen stated that there is no permit for the deck. Mr. Bailey stated that is correct. RVs are not considered structures because they are less than 320 square feet. Park models and manufactured housing units are structures because they are over 320' square feet. P. Oberhausen stated that they are constructing a 20' x 8' addition. Mr. Bailey stated that is adjacent to the unit and attached with rubber gaskets and sealed at the roof line. The travel trailer can be replaced and the structure will stay.

N. Patten wanted to know if the slab was there when they bought the unit. Mr. Baker stated that they bought it in 1998 and the deck was there. The previous owners were there for 15 years and the deck was there. It has been there for a while because they had to replace the decking.

P. Harris stated that it is similar to others in the area. The difference is it will be 9' from the interior road. Mr. Baker stated that there is no parking there. They park on the other side of the track and walk down the stairway. P. Harris stated that it is just a pass road. Mr. Baker agreed and stated that the road is used for foot traffic to the dock.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

BOARD ACTION – JEFF AND JOYCE BAKER FOR WINNISQUAM BEACH CAMPGROUND:

MOTION: P. Oberhausen moved to grant a Variance of the Wetlands Ordinance Article 4 to construct a 3 season room closer (41') to the highwater mark than allowed (50') as it meets all the criteria.

1. The variance will not be contrary to the public interest.
2. Denial of the Variance would result in unnecessary hardship to the owner seeking it:
 - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property; this is a small lot.
 - B. The benefit sought by the applicant cannot be achieved by some other method

- reasonably feasible for the applicant to pursue, other than an area variance.
3. The spirit of the ordinance is observed.
 4. Substantial justice will be done.
 5. The variance would not diminish the value of surrounding properties.
 6. All property bounds/existing footprint certified during construction as required.
 7. All required floodplain and Shoreland Protection documents to be submitted.
 8. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by N. Patten and carried. (4-0)

MOTION: P. Oberhausen moved to grant a Variance of Article 5 Table 2 & 7.C of the Zoning Ordinance to construct a 3 season room closer (9.4') to the interior road than allowed (15') as it meets all the criteria.

1. The variance will not be contrary to the public interest.
2. Denial of the Variance would result in unnecessary hardship to the owner seeking it:
 - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property; this is a small lot.
 - B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
3. The spirit of the ordinance is observed.
4. Substantial justice will be done.
5. The variance would not diminish the value of surrounding properties.
6. All property bounds/existing footprint certified during construction as required.
7. All required floodplain and Shoreland Protection documents to be submitted.
8. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by N. Patten and carried. (4-0)

MOTION: P. Oberhausen moved to grant a Variance of Article 5 Table 2 & 7.C. of the Zoning Ordinance to construct a 3 season room closer (13.8') to Unit 114 than allowed (15') as it meets all the criteria.

1. The variance will not be contrary to the public interest.
2. Denial of the Variance would result in unnecessary hardship to the owner seeking it:
 - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property; this is a small lot.
 - B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
3. The spirit of the ordinance is observed.
4. Substantial justice will be done.

5. The variance would not diminish the value of surrounding properties.
6. All property bounds/existing footprint certified during construction as required.
7. All required floodplain and Shoreland Protection documents to be submitted.
8. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by N. Patten and carried. (4-0)

Abutters' Hearing – Charles Langton for Mallards Landing: Request for a Variance of Article 4 of the Wetland Ordinance to allow a shed closer (2') to the highwater mark than allowed (50'). Property is located at 90 Mallards Landing Road in an "RS" Zone, Tax Lot 110-002-000-625, ZBA # 5007

Mr. Bryan Bailey presented the application and agreed to a short Board.

Mr. Bailey explained there is no proposal beyond what is already there this is an after the fact variance. This application is similar to the last one as the site is on the water's edge and backs up to the railroad tracks. It is a preexisting nonconforming site that has been in existence for many years. Every structure in Mallards Landing needs zoning approval because it was created prior to zoning. He explained that Mr. Langton was before the Zoning Board in 2000 for renovation of his camp. As part of the improvements he met with Mallard's Board of Directors and explained that he wanted to include a plastic shed on his site. He was not aware that a permit was necessary but in fact the town does require a permit. The 7' x 10.5' plastic storage shed is located at the end of a seasonal dock to the right of the house. The variance is needed because the shed will not be 50' from the highwater mark. The 50' from the high water mark would put them in the railroad ROW. There is no place on site that would meet the 50' requirement. The variance will not be contrary to the public interest because it would benefit the surrounding properties because it will keep the site picked up and clean instead of cluttered with outside storage. The seasonal dock is utilized by others from Mallard's Landing who lease the dock and there is a lot of activity in that communal area. Without the shed there would be a lot of opportunity for vandalism. The special conditions of the site is that there is no location on the site that will meet the setbacks due to the shallow depth of the site. The benefit sought by the applicant cannot be achieved by some other method because there is no location on that site that will meet the setback requirements. The spirit of the ordinance is observed because there will be no damage or harm to the wetlands or lake by allowing the shed to remain in its present location. Substantial justice will be done because they cannot meet the setbacks on that site due to the size and shape of the site. The shed is needed for security, to keep the lot neat in appearance and is similar to other sites in Mallards. A cleaner site will enhance surrounding property values. It is a reasonable use.

N. Patten wanted to know what will be stored in the shed. Mr. Langton stated that they will store their grill and snow blower. P. Oberhausen wanted to know if gasoline would be stored in the shed. Mr. Langton stated that it would not be because they are too close to the water. P. Oberhausen wanted to know what kind of floor the shed has. Mr. Langton stated that it is a plastic shed with a plastic interlocking floor. P. Harris wanted to know if the floor is capable of containing spillage. Mr. Langton stated that it is not. The Board discussed requiring the applicant to meet DES requirement for containing

spills. They discussed requiring a membrane floor that goes up 4' to contain spillage. Mr. Langton stated that this is an after the fact variance but he can put in a membrane floor if required. P. Harris stated that spillage is a safety issue. Mr. Langton stated that he has no problem with putting in a single sheet of membrane material to prevent spillage. N. Patten stated they could put a condition on the approval that would not allow gas to be stored in the shed.

P. Oberhausen wanted to make sure that the Shoreland Protection document are in place for the after the fact permit. Mr. Bailey stated that the area is confined to what they already have. L. Couture stated that the Shoreland Protections permits would have been submitted when the house was built.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

P. Harris stated that the spirit ordinance is observed because this is a preexisting nonconforming lot and there is no other area to locate the shed. This is not a new structure. He supports this proposal.

BOARD ACTION – CHARLES LANGTON FOR MALLARDS LANDING:

MOTION: N. Patten moved to grant a Variance of Article 4 of the Wetland Ordinance to allow a shed closer (2') to the highwater mark than allowed (50') as it meets the criteria.

1. The variance will not be contrary to the public interest.
2. Denial of the Variance would result in unnecessary hardship to the owner seeking it:
 - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property; No other place to locate it.
 - B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
3. The spirit of the ordinance is observed.
4. Substantial justice will be done.
5. The variance would not diminish the value of surrounding properties.
6. No structures or additions that do not meet setback, except for those approved herein are allowed.
7. No storage of gas or hazardous material.

The motion was seconded by L. Couture and carried. (4-0)

Abutters' Hearing – Daniel Babineau for Mallards Landing: Request to reconstruct a single family seasonal camp located at 74 Mallards Landing Road in an "RS" Zone, tax Lot 110-002-000-6611 requiring:

Zoning Ordinance Special Exceptions:

- a. Article 10.A.3.c. adding useable space (2nd story) in a preexisting nonconforming footprint ZBA # 5107.

- b. Article 10.A.3.d. being closer (25.7') to the highwater mark than allowed (50') but not closer than the existing structure ZBA # 5207.
- c. Article 10.A.3.d. being closer (18.3') to an unrelated structure than allowed (20') but not closer than the existing structure ZBA # 5307.

Zoning Ordinance Variances:

- d. Article 5 Table 2 being closer (10') to the interior road than allowed (15') ZBA # 5407.
- e. Article 5 table 2 being closer (18.8') to an unrelated shed (Unit 609's) than allowed (20') ZBA # 5507.

At least three members have viewed the site.

Mr. Dan Babineau presented the application and agreed to a short Board.

Mr. Babineau explained that he purchased the building a year ago and went to DES with his plan. They had him move the camp back an additional 5 ½' feet from the water. The proposal will widen the camp, square it off and add a second story. The site is completely outside of the railroad property. The existing structure is 14.6' x 46' and is 19.7' from the highwater mark. The new proposal will be 20' x 40' and 25.7' from the highwater mark. They will keep the existing walls of the camp on the side closest to unit 613 and the one wall on the roadside. By moving the structure back 6' they will be more conforming to the highwater setback. They are not going any closer to unit 613.

P. Harris stated that the use is allowed and wanted to know if the expansion would interfere with abutter's views of the lake. Mr. Babineau stated that the abutters approved the proposal when it went before the Mallard's Board of Directors. It will not interfere with anyone's view. They will all still have a view of the water. Mr. Robert Shepherd, an abutter, stated that he has no problems with the proposal. Mr. Babineau stated that he has met with others in Mallard's Association and his request is not out of proportion with other requests in the Association. The proposal meets his needs. He provides foster care for three handicap people and he did not want to ruin his parking because he has to use a van to transport them and needs to get close to the camp.

P. Harris wanted to know if there would be any additional bathrooms. Mr. Babineau stated there would be a handicap shower room downstairs. The existing structure has slopes and is not safe and doesn't accommodate them. P. Harris stated that they could rebuild the floor. P. Oberhausen stated that the proposal is for a 20' x 40' building with a second floor does that include the overhangs. Mr. Babineau stated that the size is the same size. The overhang is the eaves for the roof. L. Couture wanted to clarify the height of the building. Mr. Babineau stated that it is 18.6', Mallard Landing has a height restriction. P. Harris stated that if the external dimensions with the overhang are different then they will have to come back to the Zoning Board for additional approvals.

Mr. Babineau stated that the house is on Town sewer so the additional bathroom is not a problem. There is no nuisance involved because they are in the same footprint. L. Couture wanted to know if there is adequate parking. Mr. Shepherd wanted to know how many parking spaces there would be. Mr. Babineau stated that there will be three or four spaces. Two vehicles side by side and one in

front. Mallards Landing also has overflow parking. N. Patten wanted to know if Mallard's had any restrictions or how many vehicles can be parked on site. Mr. Babineau stated that they do not as long as they are not blocking the road.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

BOARD ACTION – DANIEL BABINEAU FOR MALLARDS LANDING:

MOTION: P. Harris moved to grant a Special Exception of Article 10.A.3.c. of the Zoning Ordinance to construct a single family seasonal camp adding useable space (2nd story) in a preexisting nonconforming footprint as it meets all the criteria.

1. The use is allowed in the district
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.
9. All property bounds/existing footprint certified during construction as required.
10. All required floodplain/Shoreland Protection documents to be submitted.
11. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by P. Oberhausen and carried. (4-0)

MOTION: P. Harris moved to grant a Special Exception of Article 10.A.3.d. of the Zoning Ordinance to construct a single family seasonal camp closer (25.7') to the highwater mark than allowed (50') but not closer than the existing structure as it meets all the criteria.

1. The use is allowed in the district
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.
9. All property bounds/existing footprint certified during construction as required.
10. All required floodplain/Shoreland Protection documents to be submitted.
11. No structures or additions that do not meet setback, except for those approved herein

are allowed.

The motion was seconded by N. Patten and carried. (4-0)

MOTION: P. Harris moved to grant a Special Exception of Article 10.A.3.d. of the Zoning Ordinance to construct a single family seasonal camp closer (18.3') to an unrelated structure than allowed (20') but not closer than the existing structure as it meets all the criteria.

1. The use is allowed in the district
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.
9. All property bounds/existing footprint certified during construction as required.
10. All required floodplain/Shoreland Protection documents to be submitted.
11. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by L. Couture and carried. (4-0)

Mr. Babineau addressed the need for a variance. The outside wall is 10' to the interior road and they are not looking to change that wall but to stay in the existing footprint but widen the structure. The proposal is not contrary to the public interest because it will be constructed to meet or exceed State and local building codes. It will enhance the surrounding area and increase property values. The distance between the proposed unit and the road will remain the same and the Board has approved similar requests in the park. The proposal is not contrary to the public interest and will not hinder or disturb adjacent unit 609.

P. Oberhausen wanted to know what the affects would be of moving the bumpout further from the lake and putting it on the opposite side. Mr. Babineau stated that DES had concerns about the runoff from the impervious surface and by moving back the runoff would be directed away from the lake which will correct any current runoff problems. The spirit of the ordinance is observed because the proposal is a benefit to both the town and themselves. It will also benefit the neighbors by adding value to the neighborhood and increasing the tax base. There will be no negative impact to the neighbors or surrounding area. Substantial justice will be done because the new construction will adequately suit his needs and space requirements for the handicap individuals he takes care of. It will provide a safe environment for wheelchair accessibility and allow adequate room for adaptive equipment. The variance would not diminish the value of surrounding properties because it will allow him to conform with DES requirements. It would be similar to units in the area and increase the values of surrounding properties.

P. Oberhausen wanted to know if they would be using propane to cook and where the tank would be located. Mr. Babineau stated that it is on a slab facing unit 613. It is away from the road and plows in the same location where it has been. P. Oberhausen wanted to make sure that the applicant is aware that they need to fireproof the walls. Mr. Babineau stated that they would be using 5/8" fire rated sheetrock. E. Murphy stated that the plans have been reviewed by the Building Official and the Fire Department has reviewed the application and have no concerns.

MOTION: P. Harris moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single family seasonal camp closer (10') to the interior road than allowed (15') as it meets all the criteria.

1. The variance will not be contrary to the public interest. It is similar to others in the area.
2. Denial of the Variance would result in unnecessary hardship to the owner seeking it:
 - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property; Similar to others in the area.
 - B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
3. The spirit of the ordinance is observed. Allow to upgrade for a safer building.
4. Substantial justice will be done.
5. The variance would not diminish the value of surrounding properties. Will not affect lake views or create a visual hardship on abutters.
6. All property bounds/existing footprint certified during construction as required.
7. All required floodplain documents to be submitted.
8. Shall comply with all NH DES Shoreland Protection Waiver conditions.
9. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by N.Patten and carried. (4-0)

MOTION: P. Harris moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single family seasonal camp closer (18.8') to an unrelated shed (Unit 609's) than allowed (20') as it meets all the criteria.

1. The variance will not be contrary to the public interest. It is similar to others in the area.
2. Denial of the Variance would result in unnecessary hardship to the owner seeking it:
 - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property; Similar to others in the area.
 - B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

3. The spirit of the ordinance is observed. Allow to upgrade for a safer building.
4. Substantial justice will be done.
5. The variance would not diminish the value of surrounding properties. Will not affect lake views or create a visual hardship on abutters.
6. All property bounds/existing footprint certified during construction as required.
7. All required floodplain documents to be submitted.
8. Shall comply with all NH DES Shoreland Protection Waiver conditions.
9. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by L. Couture and carried. (4-0)

OTHER BUSINESS:

BOARD'S ACTION - MINUTES:

P. Oberhausen made a motion to approve the minutes of August 22, 2007. N. Patten seconded. Carried (3-0-1) L. Couture abstained.

BOARD VACANCY:

It was the consensus of the Board to place ads in the Laconia Citizen and the Laconia Sun newspapers for the one member and four alternate member vacancies on the Board.

DEPARTMENT INPUT:

The Board discussed the benefit they would get by having all the Town departments give their input on all the applications. Some additional input concerning where fuel/propane tanks can be located would be beneficial as well as if any additional fire safety requirements would be necessary. They value the knowledge that the departments have and would like more input from the departments so they can make a more informed decision.

ADJOURNMENT:

MOTION: On a motion by N. Patten, seconded by P. Oberhausen, it was voted unanimously to adjourn at 8:45p.m. (4-0).

Respectfully submitted,

Elaine M. Murphy

