



# BELMONT LAND USE OFFICE

## ZONING BOARD OF ADJUSTMENT

Wednesday, October 24, 2007  
Belmont Corner Meeting House  
Belmont, NH 03220

Present: Chairman P. Harris; Members N. Patten, P. Oberhausen, L. Couture; Alternate E. Hawkins.  
Staff: C. Daigle.

The Chairman opened the meeting at 7pm, welcomed everyone in attendance and appointed E. Hawkins as a voting member for the evening.

### **ABUTTERS' HEARING – Estate of Anna Bedard:** Requests for:

1. A Special Exception of Article 10.A.3.d. of the Zoning Ordinance to allow a deck closer (26') to the front property line (Moonshine Drive) than allowed (50') but not closer than the existing building. ZBA #5807
2. A Special Exception of Article 1.0A.3.d of the Zoning Ordinance to allow a deck closer (45.9') to the front property line (Sleepy Hollow Lane) than allowed (50') but not closer than the existing building. ZBA #6107

Property is located at 32 Sleepy Hollow Lane in an "RM" Zone, Tax Lot 121/055.

At least three members of the Board have viewed the site. Attorney Peter Millham was present for this application. Mr. Millham explained he was acting as the executor of the estate of Anna Bedard. This is a 1968 subdivision with very small lots, primarily 100' x 100'. This lot is even smaller. From speaking with Mrs. Bedard's children, he has learned that the Bedard's bought this unit with the house on it in 2003. Mr. Bedard died within a year or so and then Mrs. Bedard died just in the late winter of this year. When they purchased the house, there were steps leading directly up to the door along the side of the building. The Bedards had fallen down the steps several times particularly in the winter and she finally had built this small landing with the steps leading up to it and a roof over the landing with a railing. At some point the Town made her aware that she needed a building permit. She applied in November of 2006. It was denied for the need of a Special Exception. She was not in very good health at that time. Mr. Millham became aware when the estate appraiser found the notice in the door. So he immediately filed for this Special Exception. Referring to the plan Mr. Millham noted that under current zoning you would not be able to put anything anywhere except in a small square at the south corner of the lot because there are two front setbacks. From a practical point you cannot do anything on

the lot. The plan shows that all of the building extends further towards Moonshine drive than does the landing. It also shows that the entire house is closer to Sleepy Hollow Lane than is this structure. When you look at the Ordinance, it allows a nonconforming structure to be enlarged by a special exception and the deck has been interpreted by the building department to be an expansion. However, the Ordinance allows it by special exception as long as the total square footage does not exceed 40%. The staff has determined this expansion to be 3%. It's apparent from the plan that this qualifies as a permitted expansion under the Ordinance. There is no change in use. It's strictly a dimensional matter.

Mr. Millham stated that all the criteria are covered and he reviewed the special exception points on the application. The use is permitted and is grandfathered and the expansion is permitted as a special exception. The site is appropriate for this use. It's part of a development that was designed for this use. Putting a better looking improved stairway and entrance to the house will not adversely affect other properties, particularly where it is pretty well enclosed by the existing buildings. Abutters will be allowed to speak, but he does not believe it will impact abutting property values. No nuisance or hazard is involved. In fact, the International Building Code prefers landings on exterior doors. It's a much safer situation. It also has a roof which will keep that area from having ice. It also has a gutter to keep some of the rain from coming down from the roof onto the steps. Facilities are not a factor, but the unit is connected to municipal water and sewer. It's obvious that this is something that the Ordinance intended the Board handle and it meets the requirements of the Ordinance.

The chairman noted that no abutters were in attendance and no objections had otherwise been submitted to the Board. P. Oberhausen noted that the use is allowed, but not grandfathered. The deck is not grandfathered; it is required to meet the Ordinance. Mr. Millham noted that the buildings are grandfathered. He's only asking for the allowed exception that allows an expansion by a special exception. P. Harris confirmed that it's the 5'x6' deck being considered as shown on the plan. Mr. Millham confirmed that was correct.

There being no further questions or comments the chairman closed the public hearing.

### **BOARD ACTION – Estate of Anna Bedard:**

**MOTION:** P. Oberhausen moved to grant the application for a Special Exception of Article 10.A.3.d. of the Zoning Ordinance to allow a deck closer (26') to the front property line (Moonshine Drive) than allowed (50') but not closer than the existing building, ZBA #5807, on property located at 32 Sleepy Hollow Lane in an "RM" Zone, Tax Lot 121/055, on the following basis:

- a. The Ordinance specifically allows the use when a Special Exception is granted.
- b. The specific site is appropriate for the use.
- c. No factual evidence is found that property values in the district will be reduced. There are no abutters in attendance.
- d. There is no valid objection from abutters based on fact.
- e. No nuisance or hazard is involved.
- f. Adequate and appropriate facilities will be provided.

- g. There is adequate sewage disposal.

And with the following conditions:

- a. Structures must otherwise meet all dimensional requirements of the Ordinance.
- b. 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. (5-0)

**MOTION:** P. Oberhausen moved to grant the application for a Special Exception of Article 10.A.3.D. of the Zoning Ordinance to allow a deck closer (45.9') to the front property line (Sleepy Hollow Lane) than allowed (50') but not closer than the existing building, ZBA #6107, on property located at 32 Sleepy Hollow Lane in an "RM" Zone, Tax Lot 121/055, on the following basis:

- a. The Ordinance specifically allows the use when a Special Exception is granted.
- b. The specific site is appropriate for the use.
- c. No factual evidence is found that property values in the district will be reduced.
- d. There is no valid objection from abutters based on fact. No abutters are in attendance.
- e. No nuisance or hazard is involved.
- f. Adequate and appropriate facilities will be provided.
- g. There is adequate sewage disposal.

And with the following conditions:

- a. Structures must otherwise meet all dimensional requirements of the Ordinance.
- b. 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. (5-0)

**ABUTTERS' HEARING –Fred & MaryAnn Folsom:** Request for:

1. A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a porch closer (42.1') to the front property line (Durrell Mountain Road) than allowed (50'). ZBA #5907
2. A Variance of Article 4 of the Wetlands Ordinance to construct a deck closer (28') to the wetlands than allowed (35'). ZBA #6007

Property is located at 85 Durrell Mountain Road in an "R" Zone, Tax Lot 212/022.

Mr. & Mrs. Folsom and their contractor Bryce Carey were present for this application. P. Oberhausen recused himself from this application as he is an abutter. The chairman explained that there are only four members to sit on the application; the applicant is eligible to be heard by

five members. The applicant has the choice of tabling to the next meeting where the Board will try and sit five members or moving forward to be heard by four members. It takes an affirmative vote of three members to pass any motion. However, if the applicant is heard by four members and wishes to appeal the decision, a four-member board is not, itself, a basis for the Board to grant a rehearing. Upon inquiry C. Daigle also noted the applicant can't just reapply for the same thing if they get denied. Any further application would have to be significantly changed in some way. The Folsom's indicated they would proceed with four members. The chairman reviewed the history of the property included in the staff report and the construction of the existing structure.

Mr. Folsom showed pictures that were included in the application. He explained that he is on the corner of Swallow and Durrell Mountain Roads. The proposed 31' front deck will be in the center of the front of the house. The original design of the house called for a farmer's porch, but because of setbacks it couldn't be built. It makes a difference because the front of the house is very open and there's no seating in the summer time to get out of the sun and it doesn't look good without a porch. Lack of the porch takes away from the potential marketability of the house.

As for the rear deck Mr. Folsom noted that only the corner of the deck would encroach on the wetlands. So they're only talking about that one section. It causes a certain hardship because they need someplace to do outside cooking and without that deck they don't have place to do that. As far as abutters it can't be seen from the street or from abutters. Both of the modifications would improve the value of the house and add to the looks of the house which would be a benefit to the community and the neighborhood.

Mrs. Denise Naiva asked whether any trees would be cut to put the deck on. Mr. Folsom stated no. He added that because of the elevation they are at least 10' above the level of the wetlands area. Mrs. Naiva asked about the deck footings. Mr. Carey stated that they will use 10" sona tubes, a total of six. They will also use them on the front of the building. They will be at ground level so they won't be seen. The deck won't extend any further than the garage. No one will be able to see it. The front deck will have 8 sona tubes. You won't see them. It will have 6" x 6" posts, a typical farmers porch. It will be gray decking with white vinyl posts. The problem is that the lot is only .89ac so once the house was put in place there was no more room. The Folsom's did not know there was going to be a problem. There's no room to get out to their grill. No place to put their grill. The back deck will be 10' x 17', unroofed with a 4' catwalk where the doorway is. That will be the back deck. It will be even with the garage.

The front deck is 8' x 31' and will be roofed. The original plan said they were going to get it, and the Folsom's didn't know about the setback problem.

N. Patten noted the Folsom's already had a permit for a deck. They went ahead and built a 3-season room on it. Mr. Bryce explained that happened because of their original general contractor. He's the one that said it was ok. And the building inspector was there many times inspecting the house and he didn't say anything. The previous contractor said once the deck was there they could put on the 3-season room. It's not their fault. They didn't know. Mr. Folsom said they paid the original contractor for a bigger house. They couldn't get it because of setbacks

so the contractor gave them a 3-season room. C. Daigle noted the Folsoms had signed the building permit application for the original back deck, it was not for a 3-season room. Mrs. Folsom said they didn't know what they were signing and it was the contractor's fault. E. Hawkins asked the status of the 3-season room. C. Daigle noted it is an illegal structure as no building permit was issued for it.

Mr. Oberhausen noted he has no objection as an abutter. He can't see it from where he lives, only from Swallow Road. Upon inquiry Mr. Carey stated that there will be no storage underneath the porch, just a gravel area. There will be storage of gasoline or contaminants.

E. Hawkins asked if any consideration was given to reducing the size of the proposed deck. Mr. Carey explained they needed that size to access the 3-season room. The members discussed with Mr. Carey and Mr. Folsom alternative deck configurations that would reduce or eliminate the need for that Variance.

L. Couture asked whether the footing was actually in the wetlands. Mr. Carey explained that the footing was in the setback, but not in the wetlands. C. Daigle pointed out that the Folsoms were aware of the setback issues before the building permit for the house was ever issued because they were informed of the problem by the Town and required to get a survey at that time.

P. Harris asked the applicant to go over the criteria for the granting of the Variances. Mr. Carey stated that they have a .89acre lot and can't use much of it. They don't have room to grill. N. Patten pointed out they had a deck to grill on, but chose to erect a 3-season porch on the deck. Mrs. Folsom said that was because the previous general contractor told them they could. E. Hawkins pointed out that ignorance of the Ordinance is not a reason for a variance. P. Harris noted that sometimes there is a hardship in a preexisting condition, but in this case there's certainly a full-sized building. There's also the issue of precedent when one lot after another comes in to expand outside the Ordinance.

The chairman asked for any further comments or questions. There being no further questions or comments the chairman closed the public hearing.

E. Hawkins noted the two obvious principles involved in the front porch request are the relatively small size of the existing home (approximately 2,500sf) and buildable area given the size of the lot (.89ac); and the fact that the proposed front porch will be an expansion of less than 10% of the existing footprint. Given those two facts he finds perfect reason to grant that one variance.

However, E. Hawkins stated that with the respect to the deck, given the fact that they already had a deck which they chose to enclose and that there is ample room to build a conforming deck that would satisfy those needs he did not find the same supporting evidence for the deck variance. He closed by stating he felt the porch is an allowable situation but with the deck there's every opportunity to construct a conforming structure.

P. Harris stated he felt similar on the requests. He has strong support for water quality measures and feels it's a mistake to ignore those protective measures. He does see an allowable space in a different design to put that deck while meeting the setbacks.

Mr. Carey said it's an issue of coming off the door. They'll give up some of the deck but want to come out of this door off the kitchen. He said it's such a small lot. N. Patten reminded the applicants that they knew that when they built the house and chose to enclose the deck they had.

**BOARD ACTION – Fred & MaryAnn Folsom:**

**MOTION:** E. Hawkins moved to grant the application for a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a porch closer (42.1') to the front property line (Durrell Mountain Road) than allowed (50'), ZBA #5907, on property located at 85 Durrell Mountain Road in an "R" Zone, Tax Lot 212/022, on the following basis:

The overriding facts that support this variance are the relatively small building envelope relative to the parcel size in general and the non-egregious porch size in relation to the total existing building size.

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 because:
  - A. an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property which is the relatively small allowable footprint in relation to total lot size; and
  - 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.

Because it's a reasonable proposal which can't be accommodated within the existing footprint.

3. The spirit of the ordinance is observed because the setback will still be 42' and allow for safety and uniformity of structures that the ordinance calls for.
4. Substantial justice will be done because no greater justice to the public would occur with a denial of the variance.
5. The variance would not diminish the value of surrounding properties.

And with the following conditions:

1. No structures or additions that do not meet setback, except for those approved herein are allowed.
2. The existing structure must be brought into compliance by obtaining the required permit for the 3-season structure.

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

**MOTION:** E. Hawkins moved to deny the application for a Variance of Article 4 of the Wetlands Ordinance to construct a deck closer (28') to the wetlands than allowed (35'), ZBA #6007, on property located at 85 Durrell Mountain Road in an "R" Zone, Tax Lot 212/022, on the following basis:

The overwhelming fact is that there is ample room to reconfigure that deck to being it into a conforming location to the setback.

1. The variance would therefore be contrary to the public interest because it's to protect our precious water resources. Although it might seem trivial in respect to this particular situation the value of our water resources is vital.
2. Denial of the Variance would not result in unnecessary hardship to the owner seeking it because:
  - A. an area variance is not needed to enable the applicant's proposed use of the property given the special conditions of the property; because
  - B. the benefit sought by the applicant can be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance, and that is to reconfigure the deck to bring it into a conforming location to the setback.
3. The spirit of the ordinance is observed by denying the variance.
4. Substantial justice will be done by this denial.
5. The variance would not diminish the value of surrounding properties.

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

### **OTHER BUSINESS:**

#### **1. Membership Applications:**

Mr. Alfred Beliveau and Ms. Paulette Palombo were present to be considered for appointment to positions on the Board.

The chairman thanked them for their interest. He explained the duties of the positions. He pointed out that the staff does provide a great deal of information and the Board tries to deal with applications in a single meeting. The Board does need more members, though, because people do have conflicts from time to time. There are currently 4 alternate and 1 member positions open.

Mr. Beliveau explained that he is retired and has been in Belmont for 17 years. He currently lives on Dutile Shore Road. He would like to get involved in Town procedures. That should keep him busy. He'd like to see what it entails. He is willing to put the time in. He would like to be a full member, but that's up to the Board. P. Harris asked if he has a vision or direction that he sees. Mr. Beliveau stated he likes it here and that's why he stays here. He doesn't know too many of the people involved, but he'd like to get

involved and see how he could help. He's been involved in organizations before so he knows a little about parliamentary procedures.

P. Oberhausen stated that he felt there is quite a learning curve on the Board and he is surprised that Mr. Beliveau wants to be a full member right away. Mr. Beliveau stated he is willing to put the time in. As far as being full time, he thought that's what he'd like to do. He doesn't think it's that hard. He's willing to read the books. If the Board decides they want him as an alternate, he might try that.

P. Oberhausen noted the full-time seat is only for 5 months, until the elections. He sees an alternate as very often a voting member. Mr. Beliveau noted that he felt if the Board needed a full-time member, then they should appoint one. E. Hawkins noted that since the full-time opening is only for 5 months, it might make as much sense to have 3 alternates and 4 members to give more people an opportunity to serve since the two applicants do not appear to have any prior zoning board experience. P. Oberhausen stated that certainly the members don't serve for the pay or gratitude. He noted it's something one does to serve the community. P. Harris noted it is good to be an alternate to get some experience. You always get an opportunity to sit at the table and ask questions. Mr. Beliveau also noted that the Board gets to act as a team in any case. Mr. Beliveau wanted the full seat in case he chooses to run.

Mrs. Paulette Palombo noted she was in attendance for a fact-finding evening. She has never served on a Board before but is just becoming more politically involved. This was much more intense than she expected. She went out and drove by the lots to see them before the meeting. She doesn't have the background or experience and she realizes now that there's a lot more to the job. She does have a full-time job. P. Harris explained they had seen two different applications tonight. One was more difficult than the other. It's important to have a diversified board. It's a team to best represent the Town. It's a fairer decision. Not everyone thinks alike, but all seem to serve in the best interest of the Town.

Mr. Beliveau thinks the Board did an excellent job tonight and made the right decisions. Mrs. Palombo stated she is in education and has been a therapist for many years.

L. Couture stated that alternates participate during the public hearing, but do not vote unless they're appointed to vote in place of a member. Staff provides assistance and members can speak to staff regarding applications or general zoning law.

E. Hawkins noted he felt it was a nice transition to serve as an alternate. P. Oberhausen also noted he has served as both an alternate and member. They get quite a bit of information from staff and from applicable seminars. P. Harris noted the State does offer lecture series that can be attended and the Town will reimburse the cost.

**MOTION:** E. Hawkins moved to appoint Alfred Beliveau (2009) and Paulette Palombo (2008) as alternate members of the zoning board of adjustment. The motion was seconded by N. Patten and carried. (5-0)

The members signed the appointment sheets and Mr. Beliveau and Ms. Palombo received copies of pertinent Ordinances, maps and other documents. They were directed to be sworn in by the Town Clerk prior to the next meeting.

2. **Minutes:**

MOTION: On a motion by P. Oberhausen, seconded by N. Patten, it was voted unanimously to accept the minutes of September 26, 2007. (5-0)

3. **Membrane Floors:**

The members discussed their requirement for membrane-protected floors for sheds close to wetlands/shorefront. The interim building inspector, Bill Tobin, is not aware of any easy way for that to be accommodated because the membrane can't rise up as part of the walls where the door is located.

4. **Adjournment:**

MOTION: On a motion by P. Oberhausen seconded by L. Couture it was voted unanimously to adjourn at 8:28pm. (5-0)

Respectfully submitted,



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Candace L. Daigle, Town Planner