

## ZONING BOARD OF ADJUSTMENT

Wednesday, May 23, 2007  
Belmont Corner Meeting House  
Belmont, N.H.03220

Members Present: Vice-Chairman P. Oberhausen, N. Patten, L. Couture and J. Bennett.  
Members Absent: P. Harris (E).  
Alternates Present: E. Hawkins.  
Staff: C. Daigle and E. Murphy.

The vice-chairman opened the meeting at 7p.m. and appointed E. Hawkins as a voting member. All stood for the Pledge of Allegiance.

### **Abutters' Hearing – Jon Rich:** Request for:

- A Variance of Article 5 Table 2 of the Zoning Ordinance to allow a shed closer (14.8') to the property line than allowed (25').
- A Variance of Article 4 of the Wetlands Ordinance to allow a shed closer (5.9) to the wetlands than allowed (35').

Property is located at 333 Province Road in an "R" Zone, Tax Lot 212-067-003, ZBA #1607 & 1907.

Mr. Jon Rich presented the application.

Mr. Rich explained that he is here to apply for an existing shed that is too close to the wetlands. He explained that four years ago he and his fiancé were looking for a piece of property to build a home and somewhere to board her horses. They found the property on Rte 107 and the house was already under construction by the builder. The property had 12 acres which was good for the horses. They both owned houses and thought it would take a long time to sell both properties but they both sold fast and they had to have someplace to live. They talked to the builder and he pushed up the moving date. When they moved in they received a certificate of occupancy. They had a plywood counter with a sink. They did what they needed to get into the house and the builder came back through the summer and finished things up. In the fall he talked to the contractor because his garage was small and the builder suggested putting up a shed. They looked at different areas to put the shed and they put it near the logging road where it was out of the way. They talked about needing a permit but the contractor said the house was still under construction and it would be included in the original permit. In 2005 they received a letter notifying them that the shed did not meet setbacks and he needed to apply for a permit which required moving the shed out back where the horses were. It was then that they were told that there was a culvert under the dirt road that accessed the rear of the lot that was never permitted. The culvert was not something he put in, he inherited it when he purchased the home. He contacted his lawyer on what it

takes to get a wetland crossing. They started the process and contacted Katie Surowiec, a certified soil scientist, because she delineated the wetlands on the original plan. They then gave the information to Mr. Bryan Bailey to put on survey plan. It then went back to the lawyer who is still working with DES to obtain that permit. Within the last month they discovered that there was a wetland fill permit on an abutter's property to fill 400' of wetlands that happened before the 110 acre parcel was subdivided. There were conditions put on that property that now affect them. They did not know about the conditions because they were never transferred onto the deed.

Mr. Rich stated that after their one year warrantee was up with the builder they found things that were not done or were done very poorly. He submitted pictures and a report from Fisher Engineering to show the poor workmanship. The roof structure is not supported properly. The engineer reported that the beams are less than half the thickness required for a span of that distance. The 2 x 6 beam in the basement was the only thing holding up the other beams. There was no insulation in the basement. There were circuit breakers that someone cut to force them into the circuit panel. There were wires hanging out of circuit boxes. The reason he brings this up is because all his time was spent dealing with the law suit. They settled the law suit in December. He received another notice last fall to move the shed. They considered moving the shed. He submitted pictures of the house showing the rear of the house and the deck that is cut at an angle. Originally it was square but had to be cut off to meet the setbacks. This shows why they can't put the shed back there. There is no place to put the shed on the north face of the house. The septic system is in the front of the house and it can't be put there. The other side is the driveway and you can't put a shed halfway out in the driveway. There is a 3' mound with trees which he would have to remove the trees and level the area. In front beyond the turnaround for the driveway there is mound of dirt that rises up 5'-10' and goes down the side to more water. When they put in the permit for the barn they were told they couldn't put anything out there because of the illegal culvert. The shed is used to store paint storage, rakes and shovels. The 22' x 23' garage has room for one car and the grain for the horses. There is not much room in there. He apologized for dragging the process out but he is a small business owner and has been involved with the law suit with the building. If the shed is required to be moved he is not sure that it can be moved, it may have to be torn down. He is not capable of moving it. He has to weigh the possibility of having someone come in and move it for him vs having to tear it down and building it somewhere else.

P. Oberhausen stated that there is a shed in the back of the property and he wanted to know how they get to it. Mr. Rich stated that it is a three sided run in shelter and they walk up to it. The horses walk up there and go under it when the weather gets bad. P. Oberhausen stated that there are a number of violations and permits that have been filed. They have filed a permit with DES to cross the wetlands. Mr. Rich stated that it is correct. P. Oberhausen wanted to know what stage the permit with DES is in now. Mr. Rich stated that they just found out within the last month that they have deed restrictions that were never recorded on the deed. The lawyer is working on a waiver. P. Oberhausen stated that eventually there will be a roadway or large walkway to go to the back. Mr. Rich stated that they are hoping to but there is no guarantee that they will get it. P. Oberhausen stated that they are infringing on the property of the Pikes. They will be 14.8' off the property line. There is a lot of land and they are asking the Board to disregard the DES permit they might get. Then they would be able to move the shed to the back dry part of the land. Mr. Rich stated that he would have to move the shed or tear it down.

L. Couture wanted to know if he did a title search when he bought the property. Mr. Rich stated that the lawyers did but the restrictions never made it to any of the deeds. The restrictions were put on by DES and Mr. Van Hertel who owned the entire parcel was supposed to put the restrictions on each of the deeds and that never happened. L. Couture wanted to know if it was the fault of the title company. Mr. Rich stated that it was never on a title. The fault was Mr. Hertel's when he subdivided his land and didn't have the deed restriction put on the deeds. E. Hawkins stated that the shed that was there is a nonconforming structure when he purchased the land. Ignorance is no excuse for putting a structure in violation of the zoning ordinance. He stated that given the long history he wanted to know what made him put up the second shed when he was already noticed for the violation on the first shed. Mr. Rich stated that the shelter for the horses occurred after he was denied a permit for the barn. He talked to the Code Enforcement Officer, the horses were already there, and he told the Rich's off the record to do what they had to do. E. Hawkins wanted to know if the Code Enforcement Officer allowed him verbally to put up a building without a permit. Mr. Rich stated that he did so verbally. E. Hawkins explained that the compelling information before the Board in terms of evaluating the current structure is that he has a very large tract of land where you can put a shed in a conforming area. Mr. Rich did not agree it could not be done easily because they don't have legal access to back of the property. The front part has quite a bit of terrain. P. Oberhausen stated that he is going for a permit to have access to the back of the property. Mr. Rich stated that there is no guarantee that they will get it. If they do not get the permit the shelter will get removed and the horses will go away. They will have to sell the property to someone who doesn't have horses. They cannot leave the shelter there if they do not have all the State and local permits. P. Oberhausen stated that since they have applied to DES and they want more information he can't see why they could grant the variance.

E. Hawkins wanted to know about substantial justice and what Mr. Rich feels that is. Mr. Rich stated that it would allow him substantial storage for garden tools and equipment. E. Hawkins explained that the criteria requires that the loss to the individual is not outweighed by the gain to the general public. He wanted to know if Mr. Rich had any comment on that and could he demonstrate that the loss would not be outweighed by the public. Mr. Rich stated that the loss would be the loss of the structure. The gain would be the 15' to the property line. The abutting house is 300' away and the land in between is not useable because of substantial wetlands. So there would be no substantial loss from the shed being there. The abutting house just sold so it hasn't hindered the sale. He stated that justice to the general public means justice for him by not having to suffer the cost of moving the shed.

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

E. Hawkins stated that the application is similar to the Shuten's application that they had last month. They had a large substantial piece of conforming property and had options to locate the garage in a conforming area. The difference is that this structure is already in place but they have to review it as if it is a new structure. The decision has to be based on if they would allow it to be built as a new structure and they should not take into consideration that it already exists. L. Couture agreed that they have to treat it as a new structure.

**BOARD ACTION – JON RICH:**

**MOTION:** E. Hawkins moved to deny the variance of Article 5 Table 2 of the Zoning Ordinance to allow a shed closer (14.8') to the property line than allowed (25') for the following reasons.

1. The variance will not be contrary to the public interest.
2. Denial of the Variance would not result in unnecessary hardship to the owner seeking it:
  - A. An area variance is not needed to enable the applicant's proposed use of the property given the special conditions of the property. There is ample space available for the applicant to place the shed in a conforming area.
  - 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. The shed can be relocated to a conforming area.
3. The spirit of the ordinance is observed.
4. Substantial justice will be done. Denial of the requested variance would not cause a loss to the individual that would not be outweighed by the general public.
5. The variance would not diminish the value of surrounding properties.

The motion was seconded by N. Patten and carried. (5-0)

**MOTION:** E. Hawkins moved to deny a Variance of Article 4 of the Wetlands Ordinance to allow a shed closer (5.9') to the wetlands than allowed (35') for the following reasons:

1. The variance will not be contrary to the public interest.
2. Denial of the Variance would not result in unnecessary hardship to the owner seeking it:
  - A. An area variance is not needed to enable the applicant's proposed use of the property given the special conditions of the property; There is ample space available for the applicant to place the shed in a conforming area.
  - 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. The shed can be relocated to a conforming area.
3. The spirit of the ordinance is observed.
4. Substantial justice will be done. Denial of the requested variance would not cause a loss to the individual that would not be outweighed by the general public. The property rights of abutting properties owners with respect to the wetland variance having the use of wetlands as cleansing attributes of hydrological cycle outweighs the applicants.
5. The variance would not diminish the value of surrounding properties.

The motion was seconded by L. Couture and carried. (5-0)

E. Hawkins reiterated the fact that they can gain the necessary relief from the State and move the shed into the center of the property.

**Abutters' Hearing – Frank & Jemma Bartolotta:** Request for:

- A Special Exception of Article 10.A. 3.d of the Zoning Ordinance to construct a deck closer (42.32') to the highwater mark than allowed (50') but not closer than the existing structure.
- A Special Exception of Article 10.A.3.d of the Zoning Ordinance to construct a deck closer (39.29') to the front property line than allowed (50') but not closer than the existing structure.

Property is located at 10 Island Drive in an "RS" Zone, Tax Lot 111-011, ZBA # 1707 & 1807.

At least three members have viewed the site.

Mr. & Mrs. Frank Bartolotta presented the application.

Mr. Bartolotta stated that a year ago they got a variance to build a 2 story home but when they came in for it they weren't concentrating on the entrance. They are 90% done and have purchased a door with side panels and a 4' x 4' landing is not high or wide enough to open the door. The original concrete has been removed and now they would like to make it 3' wider. When they dug the foundation they had to raise the foundation and the additional height has made it dangerous to open a 36" door.

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

**BOARD ACTION – FRANK & JEMMA BARTOLOTTA :**

**MOTION:** P. Oberhausen moved to grant a Special Exception of Article 10.A. 3.d of the Zoning Ordinance to construct a deck closer (42.32') 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. 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 a Special Exception of Article 10.A.3.d of the Zoning Ordinance to construct a deck closer (39.29') to the front property line 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. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by J. Bennett and carried. (5-0)

**Abutters' Hearing – Louis and Robin Nordle:** Request for

- A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single family 2-story with full basement residence closer (38.4') to the front property line than allowed (50').
- A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a garage closer (9.5') to the front property line than allowed (50').
- A Variance of Article 5 Table 2 of the Zoning Ordinance to relocate a shed closer (2') to the side property line than allowed (12.5').
- A Variance of Article 5 Table 2 of the Zoning Ordinance to relocate a shed closer (42') to the front property line than allowed (50').

Property is located at 8 Walnut Street in an "RS" Zone, Tax Lot 114-014, ZBA #2007, 2107, 2207 & 2307.

The chairman explained that Mr. & Mrs. Nordle have decided not to move forward with this application. They have submitted a building permit that meets the setback requirements.

**MOTION:** N. Patten moved to deny without prejudice a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single family 2-story with full basement residence closer (38.4') to the front property line than allowed (50'). A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a garage closer (9.5') to the front property line than allowed (50'). A Variance of Article 5 Table 2 of the Zoning Ordinance to relocate a shed closer (2') to the side property line than allowed (12.5'). A Variance of Article 5 Table 2 of the Zoning Ordinance to relocate a shed closer (42') to the front property line than

allowed (50').

The motion was seconded by P. Oberhausen and carried. (5-0)

**OTHER BUSINESS:**

**BOARD'S ACTION - MINUTES:**

N. Patten made a motion to approve the minutes of April 25, 2007. L. Couture seconded. Carried (5-0)

**ADJOURNMENT:**

**MOTION:** On a motion by P. Oberhausen, seconded by L. Couture, it was voted unanimously to adjourn at 7:50p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy