

ZONING BOARD OF ADJUSTMENT

Wednesday, November 28, 2007
Belmont Corner Meeting House
Belmont, N.H.03220

Members Present: Chairman P. Harris; N. Patten and P. Oberhausen.
Members Absent: L. Couture (E).
Alternates Present: E. Hawkins, Paulette Palombo and Alfred Beliveau.
Staff: C. Daigle and E. Murphy.

The chairman opened the meeting at 7p.m. and appointed E. Hawkins, P. Palombo and A. Beliveau as voting members for tonight's meeting.

ABUTTERS' HEARING – JOHN DONNANGELO: Request for a Variance of Article 5 Table 2 of the Zoning Ordinance to permit an existing shed closer (41.8') to the property line than allowed (50'). Property is located at 8 Swallow Road in an "R" Zone, Tax Lot 212-030, ZBA # 6207.

Mr. Pleasant Oberhausen recused himself for this application.

Mr. Pleasant Oberhausen presented the application.

P. Harris gave the following history of the lot: Conforming lot subdivided in 1996 and was developed with single family residence in 1997 by the current owner. Original shed constructed in 2001. Original 12x18 shed (216sf) was constructed and issued a Certificate of Occupancy in 2001. It was approved to be located 39' to the sideline even though the usual zoning setback was 50' because Accessory Structures less than 300sf in size get a 50% reduction in the side setback. In 2006 the owner applied for an after-the-fact permit to add a 9'x18' addition to the shed. The permit was denied because by adding that 162sf addition, the overall shed now exceeded the 300sf size permitted under the Ordinance to be closer to the sideline than 50'. The whole shed is now nonconforming to the required 50' setback to the side property line and requires a variance.

Mr. Oberhausen explained that the 12' x 20' shed was constructed in 2001. In 2005 Mr. Donnangelo bought an antique tractor to restore and had no place to store it. He then added a 4' x 18' addition onto the original shed to store his tractor. They had discussions with the contractor who said that a permit was not needed. In 2006 they read in the paper that a permit was required so they applied for an after the fact permit and were denied because it didn't meet setbacks. They are now asking for a variance to keep the shed.

Mr. Oberhausen addressed the criteria for granting a variance. The variance won't decrease property values. He is an abutter and has no problem with the shed. It is not contrary to the public's the interest. Denial of the variance would create a hardship by having to tear the shed down and building another one a few feet.

E. Hawkins stated that there is plenty of conforming space on the property to locate the shed. P. Oberhausen stated that there is a stream that runs along the entire back of the property. The original shed has a concrete foundation making it hard to relocate. E. Hawkins stated that given the history of the shed having the setbacks reduced because it was less than 300 square feet, adding an addition onto it without knowing they needed a permit and having the addition increase the size of the shed to make it too large for the setback relief is a series of errors but there is ample space to relocate the shed. P. Oberhausen stated that the septic is located on the opposite side of the property. E. Hawkins stated there is a large area behind the house. P. Oberhausen explained that the surveyor didn't put the seasonal stream on the plan. It cannot be put in the septic area and if they move it forward they would need relief from the setbacks on Durrell Mountain Road. E. Hawkins reiterated the fact that there is a relatively large area of land. They could move it closer to the house or back towards the stream. P. Harris wanted to know what the setbacks are from a seasonal stream C. Daigle stated that they are 35'. P. Harris wanted to know if everything behind the stream is wetland. P. Oberhausen stated it is not but you need a wetland permit for crossing the stream. P. Harris stated that the shed cannot be relocated over the septic tank and moving it forward would require a variance for the setback from Durrell Mountain Road. It would be more of an environmental hazard to cross the wetland with equipment. Half of it was already there and met the setbacks. E. Hawkins stated that they have to look at the application which is for the entire shed including the addition.

N. Patten wanted to know if the tractor is kept in the addition because there is no concrete floor in that area and fuel leakage could be a problem. P. Oberhausen stated that it is an antique tractor and they do not store fuel in it only oil.

P. Harris stated that he supports the zoning ordinance and the ability to grant relief from it. Setback requirements are in place for fire safety and to protect the environment. He stated that this is a three acre lot which the back lot has to access over a stream which is a drawback. He is not in favor of after the fact permits but this is a small infringement. A. Beliveau stated that the shed has been solidly constructed and he doesn't have any problems with it.

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

BOARD ACTION – JOHN DONNANGELO:

MOTION: P. Harris moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to permit an existing shed closer (41.8') to the property line than allowed (50') as it meets all the criteria.

1. A Variance will not decrease surrounding property values, because the quality of the building is similar to others in the neighborhood and will add to the tax base.
2. A Variance is not contrary to the public interest because it is a small infringement on the setback. There is still adequate room for fire safety. Provides relief from the seasonal wetland.
3. Denial would result in unnecessary hardship to the owner having to relocate it. A large percentage of the shed was preexisting and conforming.
 - A. The variance is needed to enable the applicant to construct the development as designed due to special conditions of the property because only the addition is nonconforming and there is no area benefit having to relocate that section.
 - B. The benefit sought by the applicant cannot be achieved by some other reasonably feasible method because it was constructed in a manner that it can not be moved because of the concrete foundation. There would be more harm to the environment by moving construction equipment over the stream.
4. A Variance will result in substantial justice being done because the applicant made an honest attempt to work within the regulations given the reduced setbacks for the original shed based on size.
5. A Variance will observe the spirit and intent of the ordinance.
6. 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. (4-1) E. Hawkins opposed

P. Oberhausen rejoined the Board and N. Patten stepped down as she is an abutter for the next application.

ABUTTERS' HEARING – JUDITH PILLIOD: Request for a Special Exception of Article 10.3.d.of the Zoning Ordinance to construct an addition to a garage closer (31.2') to the front property line than allowed (50') but not closer than the existing building. Property is located at 504 Province Road in an "R" Zone, Tax Lot 215-001, ZBA # 6607.

At least three members have viewed the site.

Dr. and Mrs. Pilliod presented the application.

Mrs. Pilliod explained that they have three cars and only a two car garage. The addition is so they will be able to park three cars in the garage. There is no septic involve. The addition sets back from the other garage. They also have a barn on the property. E. Hawkins wanted to know what type of cars the Pilliod's own. Mrs. Pilliod stated that they have a Pria, Rav 4 and Subaru. She explained that Mr. Tom Dalton will be doing the work.

A. Beliveau stated that if they move the garage back they will have to bring fill in. Dr. Pilliod

agreed and stated that they are trying to stay within the setbacks but there is a large maple tree in the way.

N. Patten, an abutter stated that she has no problem with this proposal.

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

P. Harris stated the use is appropriate for the area. Property values will not be reduced. There are no valid objections from abutters. There is no nuisance involved. He wanted to know how close the addition will be to the barn. Dr. Pilliod stated that it is 10' from the barn and there is ample room for fire equipment to get around the buildings.

BOARD ACTION – JUDITH PILLIOD:

MOTION: P. Oberhausen moved to grant a Special Exception of Article 10.3.d.of the Zoning Ordinance to construct an addition to a garage closer (31.2') to the front property line than allowed (50') but not closer than the existing building as it meets all the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted.
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 A. Beliveau and carried. (5-0)

ABUTTERS' HEARING – DONALD WILSON: Request for a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a garage closer (15') to the front property line than allowed (50') but not closer than the existing building to be demolished. Property is located at 25 Wakeman Road in a "RS" Zone, Tax Lot 111-020, ZBA # 6707.

No one was present for this application.

BOARD ACTION – DONALD WILSON:

MOTION: P. Oberhausen moved to Table the application to December 19, 2007 at 7 PM as there was no one present to represent the applicant.

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

ABUTTERS' HEARING – FOLEY OIL COMPANY: Request for:

- A Special Exception of Article 5 Table 1 of the Zoning Ordinance to allow three underground bulk storage tanks and building addition in a “C” Zone. ZBA # 6807.
- A Variance of Article 4 of the Wetlands Ordinance to install three 30,000 gallon underground storage tanks closer (79’) to the stream than allowed (250’). ZBA #6907.

Property is located at 39 Old State Road in a “C” Zone, Tax Lot 201-002,

At least three members have viewed the site.

Mr. Jeff Pierson, Mr. Dennis Phelps and Mr. Roy Creley presented the application.

Mr. Pierson explained that he has been president of Foley Oil Company for 13 years and has been on several energy Boards and Commissions. Mr. Phelps has been with the company for 20 years as a truck driver, service manager and has his hazmat certification. Foley Oil Company has been in the family since 1936 and they are committed to the industry. The proposal is for three underground storage tanks. The property is a bulk storage facility and has six above ground tanks. They are in compliance with all the regulations and have worked with the fire department that uses their facility for training. They have met with the Conservation Commission to review the proposal and have received their endorsement. The Conservation Commission stated that they are more concerned with the run off problem than with the underground tanks. Mr. Pierson stated that the tanks will be 79’ from the stream closer than the allowed 250’. The stream is more of a runoff/ditch than a stream.

Mr. Pierson explained that they need a special exception to store petroleum in the commercial zone. C. Daigle stated that it is a legal preexisting use that predates zoning. Mr. Creley stated that the underground tanks are like the ones that are at gasoline stations. He explained that Foley Oil Company came to him early on in the project and wanted to know the best means to facilitate the project. He explained that it is a small site and above ground tanks could be a fire hazard. The underground tanks cannot be seen and can be driven on. Underground tanks are the best bet for this project as they utilize the site better. Foley Oil needs to store more products as there are more kinds of fuel and you can’t mix different types of fuel anymore. The underground tanks have double walls so if they leak it goes to the outside tank which sets off an alarm. The pipes are also double walled. He explained that New Hampshire has the strictest regulation for underground storage. The tanks will be inspected by the Fire Department before they are backfilled. The State’s engineer will also be doing inspections. There are safeguards in place to protect the stream which is more of a seasonal runoff. Mr. Phelps explained that some of the water that is in the ditch will be diverted after the Rte 3 construction project is complete. C. Daigle stated that a lot of the water is diverted onto Rte 3 then into the drainage system and into a detention pond before it goes into Lake Winnisquam.

P. Oberhausen wanted to know if they are fiberglass tanks. Mr. Creley stated they are steel tanks surrounded by a mesh and a sensor on the bottom. P. Oberhausen stated that if the sensor is on one end

then it may not be activated when there is a leak on the opposite end. Mr. Creley stated that they can pitch the tank at a 1% pitch. The monitor sensor will draw fluid toward it. The tanks are steel with fiberglass double walls with aluminum between them. The steel tanks have a 30 year warrantee. There have been some that have been in the ground for 50 years. Technology has come and gone but the double walled fiberglass tank is here to stay. P. Oberhausen wanted to know how they mount the double wall piping to the wall cradle. Mr. Creley explained that the pipes are flexible. The tanks are the same one the State DOT installs and they are promoting the new flexible pipe. The fittings are welded together. The plan went before the State and they have met all the State's requirements. The State's setback requirement is 75' and they meet it.

Mr. Creley addressed the Sewer's Department concern about an easement going through the property by explaining that it runs between the existing tanks and existing building. C. Daigle stated that the applicant also needs to get site plan approval. E. Hawkins wanted to know if the monitoring wells are up front. Mr. Creley stated that they do not need monitoring wells. E. Hawkins wanted to know how deep it is to ground water. Mr. Phelps stated that it is 14' to ground water. E. Hawkins stated that the tanks are 1' from ground water. Mr. Creley stated that the tanks are designed to sit under ground water. E. Hawkins question whether the State requires monitoring wells. Mr. Phelps stated that they did test pits and the plans are stamped by an engineer. The Board had concerns that tanks sitting in water tend to corrode. Mr. Creley stated that is why they went to fiberglass tanks. E. Hawkins wanted to make sure that the State knows how close to the ground water the bottom of the tank is. Mr. Pierson stated that they approved the plans and they are also an abutter. C. Daigle stated that this property is not located on the aquifer. Mr. Creley stated that this proposal will make the property more aesthetically pleasing and safer because the tanks will be underground. P. Harris wanted to know how much fuel is stored on site now. Mr. Pierson stated 65,000 gallons and on an average day they use 35,000 gallons. They are looking to store more than a few days of supplies. They have 13 products and they cannot be mixed.

C. Daigle wanted to take this opportunity to thank Foley Oil Company for being proactive in taken care of the storm water runoff from their property.

P. Oberhausen stated that the above ground tanks should be double walled. Mr. Creley stated it is not required for above ground tank. They would rather see the pipes. P. Oberhausen wanted to know if there would be anything to prevent trucks from hitting the tanks. Mr. Creley stated that the trucks would have to hit the island first before reaching the pipes. Delivery trucks drive through and don't have to back up. E. Hawkins wanted to know how long they have been going through the process. Mr. Pierson stated they have been working with the Town for almost 2 years and 1 year with the State.

E. Hawkins wanted to know the age of the above ground tanks and if they have a maintenance and replace plan for them. Mr. Phelps stated that tanks are certified through 2009 and they are required to make necessary upgrades.

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 it is an existing use in the commercial zone so it is an appropriate location and is not over the aquifer. C. Daigle stated that the business has been there for a number of years and they never had any complaints on the site. P. Harris stated that there is no nuisance or hazard involved. They are on public sewer.

BOARD ACTION – FOLEY OIL COMPANY:

MOTION: P. Harris moved to grant a Special Exception of Article 5 Table 1 of the Zoning Ordinance to allow three underground bulk storage tanks and building addition in a “C” Zone as it meets all the criteria.

1. The use is grandfathered
2. The specific site is appropriate for the use. There are already storage tanks on the property.
3. No factual evidence is found that property values in the district will be reduced. The proposal will improve the site.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved. The proposal utilizes state of the art technology and equipment and has received approval from the Conservation Commission.
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.

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

MOTION: P. Harris moved to grant a Variance of Article 4 of the Wetlands Ordinance to install three 30,000 gallon underground storage tanks closer (79’) to the stream than allowed (250’) as it meets all the criteria.

1. A Variance will not decrease surrounding property values because the use is allowed in the commercial zone. The state of art equipment will not be visible.
2. A Variance is not contrary to the public interest because the applicant has been working with the State to address safety issues. It will be aesthetically pleasing.
3. Denial would result in unnecessary hardship to the owner because of the demands of the business and safety of the site.
 - A. The variance is needed to enable the applicant to construct the development as designed due to special conditions of the property.
 - B. The benefit sought by the applicant cannot be achieved by some other reasonably feasible method because of the small size of the lot.
4. A Variance will result in substantial justice being done because it provides safer storage of fuel.
5. A Variance will observe the spirit and intent of the ordinance because it is an existing

- use. State of the art equipment will be used to protect the environment.
6. All property bounds/setbacks to be certified during construction as required.
 7. No structures or additions that do not meet setback, except for those approved herein are allowed.

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

BOARD'S ACTION - MINUTES:

P. Oberhausen made a motion to approve the minutes of October 24, 2007 with the following changes:

Page 5 paragraph 2 last line should read "There will be no storage of gasoline or contaminants."

Page 5 paragraph 7 the first sentence should read "E. Hawkins noted the two obvious principles involved in the front porch request are the relatively small size of the 2500 square foot home and buildable area given the size of the lot (.89ac);"

P. Harris seconded. Carried (5-0)

STAFF REPORT:

TOWN MAPS:

Board members received copies of the new town maps.

PROPOSED ORDINANCE:

C. Daigle explained that the Planning Board has completed the 1st draft of a proposed aquifer ordinance to be placed on the ballot this year. They are using the State's model ordinance with the expanded list of prohibited uses. It allows people to use their property and maintain water quality. It will not impact private home owners. It is the only proposed new amendment on ballot. The Planning Board is trying to work with Tilton and Northfield on tri-town ordinances.

AFTER THE FACT APPLICATIONS:

The Board discussed the importance of looking at after the fact applications as if it had not been built. E. Hawkins stated that they have to make their decision based on the merits of the application and not on the fact that it is in violation. The applicants have to meet the State's requirement and Court rulings.

ADJOURNMENT:

MOTION: On a motion by P. Oberhausen, seconded by P. Palombo, it was voted unanimously to adjourn at 8:38p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy