

## ZONING BOARD OF ADJUSTMENT

Wednesday, August 24, 2005  
Belmont Corner Meeting House  
Belmont, N.H.03220

Members Present: Chairman J. Olmstead; N. Patten and P. Oberhausen.  
Members Absent: P. Harris (E) and B. Paquette (E).  
Alternates Present: E. Hawkins.  
Staff: C. Daigle and E. Murphy.

The chairman opened the meeting at 7p.m. He appointed E. Hawkins as a voting member for tonight's meeting. 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.

**Abutters' Hearing – NEM, Inc. for MetroCast Cablevision:** Request for a Use Variance of Article 5 Table 1 of the Zoning Ordinance to allow an off site sign. Property is located at 29 Laconia Road in an "C" Zone, Tax Lot 205-057, ZBA # 4205.

Mr. Jerry Grossman, Mr. Josh Barstow and Ms. Christine Guyer presented the application and agreed to a short Board.

Mr. Grossman explained that currently traffic cuts through McGreevey's parking lot trying to find MetroCast. They are not proposing a new sign, the sign post exists and they would be changing the wording on it. The variance is greatly in the public interest because it would increase safety and make MetroCast easier to find without having to have the car dealership answering questions on how to get there. This is a use variance and is unique because MetroCast is located off the main road and this would direct traffic coming off Rte.106. The specific condition is that the sign is necessary because an on site sign wouldn't help customer with directions to locate them. Mc Greevey's Dealership is in support of the sign. The Spirit of the ordinance is observed because the ordinance allows for directional signs but they need to be on someone else's property because of their location. This sign would help customers find where MetroCast is located. The proposal won't diminish property values because it is an existing sign in a commercial zone. The directional sign do not allow logos and MetroCast wants to put their logo on the sign to help the public locate the business. The sign is identical to the one they have in Rochester.

J. Olmstead wanted to know if they have considered an allowed directional sign. Mr. Gross stated that they haven't because the public wouldn't recognize one without MetroCast's logo and you can't put it on someone else's property. C. Daigle explained that the sign could 16" x 5' similar to the ones on a State highway.

She also stated that they can be located on off site. Mr. Barstow stated that the logo is the trademark for MetroCast and he thought that directional signs had restrictions to color and language. C. Daigle explained that they do and are the signs are consistent to catch people's eyes and logos maybe not allowed but not advertiaing. J. Olmstead explained that they can have a directional sign without having to come before the Zoning Board. He also wanted to know what the size of the existing sign on the McGreevey's property is. Mr. Barstow stated it is either a 3' x 3' or 4' x 4' sign.

P. Oberhausen stated that they have received the letter from McGreevey's about MetroCast customers cutting through the parking lot and asking for directions but he doesn't think the sign at the end of the parking lot will help. People coming from Laconia will not see the sign and still cut through the parking lot. McGreevey's could lock the rear gates to stop people from cutting through the parking lot. Mr. Barstow explained that when they give out directions they explain that they are located past the Mobile on the Run behind McGreevy's. He stated that this is a regional payment center not just for Belmont customers and that is why they need the sign to help customers locate them.

E. Hawkins wanted to know how many signs McGreevey's has and if they are permitted. Ms. Guyer stated that there are three. C. Daigle explained that they are either permitted or are preexisting grandfathered signs. The sign that they are proposing to use is a preexisting sign.

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 Zoning Ordinance allows directional signs and business directional signs are allowed off site. C. Daigle explained that the year the Town no longer allowed off site advertising they permitted directional signs to help people locate businesses that are not on the main roads. They understood the need to locate businesses off the main road and decided to institute similar regulations as the State. The standards are to provide an opportunity for businesses to be located but not allow off site advertising. N. Patten stated that if they can use the business directional sign they should go with something that can be allowed without a variance. Fair and substantial justice does not require a variance.

### **BOARD ACTION – NEM, INC. FOR METROCAST CABLEVISION:**

**MOTION:** N. Patten moved to deny a Use Variance of Article 5 Table 1 of the Zoning Ordinance to allow an off site sign for the following reasons:

1. Special conditions of the land do not render the proposed use of the land reasonable.
2. A fair and substantial relationship does exist between the general purposes of the zoning ordinance and the specific restriction on the property in that the general purpose of the ordinance is to limit offsite advertising signs within the community and there is no reason to relax that ordinance in this case because a sign meeting the standards of a directional sign is available by permit and this reason also speaks to both the issues of substantial justice and the spirit of the ordinance.
3. The variance would injure the public or private rights of others.
4. The spirit of the ordinance is not observed.

5. Substantial justice will not be done.
6. The variance would not diminish the value of surrounding properties.

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

Mr. Gross wanted to know if they could apply for a business directional sign with the business name and location. C. Daigle explained that they could and the regulations for a directional signs are available at Town Hall or on line.

**Abutters' Hearing – Margaret Guyer:** Request for 2 Dimensional Variances of Article 5 Table 2 of the Zoning

Ordinance to replace a manufactured unit closer (20.9') to the front property line than allowed (50') and closer to the side property line (9.6') than allowed (12.5'). Property is located at 17 Sleepy Hollow Lane in an "RM" Zone, Tax Lot 121-065, ZBA # 4405.

Mrs. Georgie Johnson and Mrs. Margaret Guyer presented the application and agreed to a short Board.

Mrs. Johnson explained that Mrs. Guyer's property has an existing manufactured home on it and it is not feasible to fix it up. They took the maximum of the units that they looked at and that is what they are applying for but they may go smaller. They placed the biggest unit on the plan and showed its location and its relationship to the setback requirements. They plan to keep the existing garage and shed in the back. The lot is preexisting and would not meet today's requirements. The variance would not be contrary to the public interest as it will be an improvement to the neighborhood. The area variance is needed because the lot cannot meet today's regulations. Today's typical setback would restrict the owner from using the lot. The spirit of the ordinance is observed because the proposal is in harmony with the area. The proposal would not diminish property values because this would be a new home and add value to the tax roll. They propose a screen porch off the back and a 4' x 4' landing in front. They want to attach the garage to the manufactured home and have an entrance into it from the unit.

J. Olmstead stated that the existing garage would have to be fire proofed and meet fire code. He suggested that the applicant work with G. Boisvert on what the code is. C. Daigle stated that the applicant's utilities are already there somewhat dictates the new location. P. Oberhausen wanted to know why they can't square off the building to the lot line. C. Daigle stated that it would not meet the angle of the garage. P. Oberhausen stated that the assessing card shows two outbuildings. C. Daigle stated that those are the garage and the shed and the applicant plans on keeping them.

E. Hawkins stated the new proposal decreases the infringement on the front setback and increases the side setback. He wanted to know if the steps are new. Mrs. Johnson explained that the steps are existing. C. Daigle stated that they were 13.9' from the front property line and now are 20.9' from the front line. E. Hawkins stated the proposal is more in compliance than the existing unit. J. Olmstead stated that they are only increasing the side setback by 1'.

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

**BOARD ACTION – MARGARET GUYER:**

- MOTION:** E. Hawkins moved to grant a Dimensional Variance of Article 5 Table 2 of the Zoning Ordinance to replace a manufactured unit closer (20.9') to the front property line than allowed (50') as it meets all the criteria.
1. The variance will not be contrary to the public interest as the new structure will be an improvement and better sited within the available building area.
  2. Denial of the Variance would result in unnecessary hardship to the owner seeking it because:
    - a. Special conditions of the property do make an area variance necessary in order to allow the applicant to construct the development as designed as this is a very small lot with a restricted building envelope and the proposal is not egregious or overbearing;
    - b. The applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose an undue financial burden.
  3. The spirit of the ordinance is observed as the proposal further reduces the nonconformity and provides a safe distance between the road and the building.
  4. Substantial justice will be done.
  5. The variance would not diminish the value of surrounding properties.
  6. All property bounds/existing footprint shall 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 N. Patten and carried. (4-0)

- MOTION:** E. Hawkins moved to grant a Dimensional Variance of Article 5 Table 2 of the Zoning Ordinance to replace a manufactured unit closer to the side property line (9.6') than allowed (12.5') as it meets all the criteria.
1. The variance will not be contrary to the public interest as the new structure will be an improvement and better sited within the available building area.
  2. Denial of the Variance would result in unnecessary hardship to the owner seeking it because:
    - a. Special conditions of the property do make an area variance necessary in order to allow the applicant to construct the development as designed as this is a very small lot with a restricted building envelope and the proposal is not egregious or overbearing; and although the replacement is relatively large it is placed against the existing garage to maximize setback;
    - b. The applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose an undue financial burden.
  3. The spirit of the ordinance is observed as the proposal further reduces the nonconformity and provides a safe distance between the road and the building.
  4. Substantial justice will be done.

5. The variance would not diminish the value of surrounding properties.
6. All property bounds/existing footprint shall 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. Oberhausen and carried. (4-0)

**Abutters' Hearing – Donna Guimont and Linda Couture:** Request for a Dimensional Variance of Article 5 Table 2 of the Zoning Ordinance to construct a garage closer (26.1') to the traveled way of Tucker Shore Road than allowed (50'). Property is located at 114 Tucker Shore Road in an "RS" Zone, Tax Lot 107-025, ZBA # 4505

The chairman asked if Ms. Donna Guimont and Ms. Linda Couture wanted to proceed with a short Board. Ms. Guimont wanted to know what their choices are. C. Daigle stated that if they Table the application they will not have to renote. Ms. Guimont wanted to know what the cost of an appeal is. C. Daigle explained that they would have to come back to the Zoning Board to request a rehearing and prove that the Board made an error in law or new information will be presented that no one was aware of at the time of the application. Ms. Guimont wanted to know if they are denied tonight could they come back to the Board if they make changes. C. Daigle stated that there would have to be substantial changes to the proposal.

Ms. Donna Guimont and Ms. Linda Couture agreed to a short Board and presented the application.

Ms. Linda Couture explained that the request is not unreasonable. She used the Simplex technologies vs. Town of Newington as examples of hardship. She stated that in that decision "the Court replaced the long established zoning variance hardship test with a totally new standard. Municipal land use officials and land use attorneys agree that the new test completely changed the process of considering and issuing zoning variances." "The first prong of the new test acknowledges that the neighborhood is relevant. Before it rules on a variance request a Zoning Board of Adjustment must now consider neighboring land uses and the condition of neighboring properties."

Ms. Couture explained that the hardship is the location of the oil tank. It is parallel and abuts the existing deck. There is not sufficient space between the garage and deck for passage, snow removal or oil deliveries. If the garage is too close to the house it will block natural sunlight. It would also restrict space for off road parking. Another hardship is they have no basement and they do not have sufficient storage for their tools and maintenance equipment causing the equipment and tools to be exposed to the elements and deteriorate. Substantial justice would not be done if they removed the deck because it would remove the main entrance to the house, leave the oil tank in the middle of the yard and block their vision to the traveled way.

They have reconfigured the size of the garage, moved it back and altered the deck to try to make it conform. The fuel tank is to the right of the sliders and abuts the deck. This is an existing condition and would be a hardship if moved.

Ms. Couture stated that in the past two months an abutter has received a building permit for a shed that does not meet the setbacks. When they applied for a similar permit they were denied. If they are denied the

variance they feel that they are being discriminated against by the Board. The Board at the last meeting told them that they knew what the property was like when they purchased it but didn't their neighbors know what their properties were like when they purchased them? The neighbors were granted variances for similar constructions. When they purchased the property they thought they would be able to get a permit for a garage and a shed. The neighbors know about the proposal for the garage and are not opposed to it.

Ms. Couture stated that since the last meeting they have reconfigured and moved the garage to fit into a more conforming location. They have altered the size of the existing deck and have made the garage smaller. They are now 26.1' from the travelled way instead of 15.5'.

Ms. Guimont used pictures to show the neighbor's shed. She stated that the do not enter sign on 117 Tucker Shore Road is a private sign. She explained that she is concerned that an attached garage would take away from the main entrance to the house and that they would not be able to get to the oil tank in the side yard for deliveries. They also need room to plow. Storage space is critical for them to be able to stay in the house. Currently they have their belongings stored somewhere else and they cannot keep them there any longer. They are not infringing on anyone. All six abutters have signed off that they approve the proposal. She explained that the sewage is on the opposite side of the garage

C. Daigle stated that the applicants provided excellent information tonight. She stated that she has already provided information on why previous permits were granted on the other properties and asked to have that information incorporated in the records. There are reasons for those approvals. She cannot address the new permit information presented tonight because she would have to review those individual applications.

P. Oberhausen stated that the applicants have tried hard to make the garage conform. They have moved the garage back and reduced the size of the deck and the garage.

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

### **BOARD ACTION – DONNA GUIMONT AND LINDA COUTURE:**

**MOTION:** P. Oberhausen moved to grant a Dimensional Variance of Article 5 Table 2 of the Zoning Ordinance to construct a garage closer (26.1') to the traveled way of Tucker Shore Road 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 because:
  - a. Special conditions of the property do make an area variance necessary in order to allow the applicant to construct the development as designed;
  - b. The applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose an undue financial burden;
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 shall be certified during construction as required.
7. All require floodplain documents shall 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)

**OTHER BUSINESS:**

**A. BOARD'S ACTION - MINUTES:**

P. Oberhausen made a motion to approve the minutes of July 27, 2005. J. Olmstead seconded. Carried (3-0-1) N. Patten abstained

**ADJOURNMENT:**

**MOTION:** On a motion by P. Oberhausen, seconded by N. Patten, it was voted unanimously to adjourn at 8:20 p.m. (4-0).

Respectfully submitted,

Elaine M. Murphy