

ZONING BOARD OF ADJUSTMENT

Wednesday, February 27, 2008
Belmont Corner Meeting House
Belmont, N.H.03220

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

The chairman opened the meeting at 7p.m. and 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 – Ronald Snow: Request for a Variance of Article 4 of the Wetlands Ordinance to construct a deck closer (32.4') to the highwater mark than allowed (50'). Property is located at 423 Jamestown Road in an "RS" Zone, Tax Lot 118-010, ZBA # 0108.

Mr. Snow presented the application and agreed to a short Board.

Mr. Snow explained that they want to put a deck on the front of the house on the water side. When they found out that they would be infringing on the highwater they cut the deck back. Originally it was going to be 12' but he cut it back to 8'. He stated that he has only one means of egress from the house and by constructing the deck he can use the existing sliders as another means of egress.

P. Harris stated that what he is proposing meets the side setbacks. Mr. Snow stated that the stairs come out to the side so as not to go further into the setback. Anyway he puts it would be in the setbacks. Mr. Snow stated that when he first measured they had over 70' to the water and it wasn't until he had a survey that he found out he was much closer. E. Hawkins stated that there is a huge fluctuation in water in that lake and in the late summer you have to go out further to reach the water. E. Hawkins stated that it is an allowable expandable footprint and Mr. Snow doesn't have many options. Mr. Snow stated that he has been told by the State that he does not need any permits from them only from the Town.

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

L. Couture stated that the house is not within the setback and the deck is beyond that.

P. Harris referenced the plan stating the lot size is 100' x 141'. The building size is 1500 square feet and the addition is 250 square feet. The dimensions are reasonable for a deck. E. Hawkins stated that the applicant scaled back his proposal when he knew about the highwater mark setback. It is a tight fit for a small buildable footprint which provides for the hardship. The special conditions of the land warrant the proposal. L. Couture stated that the applicant has scaled back his proposal and there are no objections from abutters. Other decks in the area are closer than this proposal.

BOARD ACTION – RONALD SNOW:

MOTION: E. Hawkins moved to grant a Variance of Article 4 of the Wetlands Ordinance to construct a deck closer (32.4') to the highwater mark than allowed (50') as it meets all the criteria.

1. A Variance will not decrease surrounding property values because there has been no factual evidence brought before the Board to suggest that a diminution of value will take place as a result of the proposal.
2. A Variance is not contrary to the public interest as it will not alter the essential character of the locality or threaten public health, safety or welfare.
3. Denial would result in unnecessary hardship to the owner because:
 - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property. Literal enforcement of the ordinance does result in unnecessary hardship to the applicant in that the size of the nonconforming lot has a very small allowable footprint for construction to take place. It is a very reasonable proposal in terms of the size of the deck compared to the house such that the special condition is that a variance is needed to enable the applicant to construct a deck.
 - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method, due to the special conditions of the lot.
4. A Variance will result in substantial justice being done because the loss to the applicant if the variance is denied would not be offset by the greater gain to the general public.
5. A Variance will observe the spirit and intent of the ordinance, both in light of the zoning codes and the master plan providing health, safety and general welfare. It would lessen congestion in the street and provide security and safety for fire and ambulance with adequate lighting care.

The following conditions apply:

- a. All required floodplain/Shoreland Protection documents to be submitted.
- b. Deck must remain open (unroofed, unenclosed) unless all required permits, included NH DES and Town are obtained.
- c. 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 – Erich Bockley and Lisa Coroa-Bockley: Request for:

- A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a deck closer (11.7') to the Dutile Shore Road private road easement than allowed (50'). ZBA #0208
- A Variance of Article 4 of the Wetlands Ordinance to construct a deck closer (16.7') to the highwater mark than allowed (50'). ZBA # 0308

Property is located at 53 Dutile Shore Road in an "RS" Zone, Tax Lot 103-013.

Mr. Erich Bockley presented the application and agreed to a short Board.

P. Harris asked Mr. Bockley about the NH DES application he submitted to the State. He also wanted to know if the additional information the State requested has been submitted. Mr. Bockley stated that the application to the State has been withdrawn. He misinterpreted the State's requirement and he doesn't need a State permit for a deck less than 12' wide. P. Harris stated the sketch to the State is different from the one he submitted with this application. E. Hawkins wanted to know if the application with the State has been formally withdrawn. Mr. Bockley stated that it hasn't been done in writing. C. Daigle stated that the September 2006 application to the State has been withdrawn and wanted to know about the one Mr. Bockley submitted in December 2007. Mr. Bockley stated that the December, 2007 application has also been withdrawn and the deck has been reconfigured. E. Hawkins stated that a concern is that he builds the deck and then tears down the house and uses the deck as part of the house footprint. Mr. Bockley stated that he will not tear the deck down to use as additional footprint for the house. He appreciates the lake and is working on getting the milfoil out of the it. It is not his intention to build a new deck just to tear it down. The deck is for his family to enjoy. The property slopes down and he has to meet two 50' setbacks. One from the road and one from the highwater mark and the property is only 90' deep. There is no place to do anything on the property and meet both 50' setbacks. He bought the property in 2003. A previous owner, Mr. Morrill, had put in a lot of cement on the property.

Mr. Bockley addressed the criteria for a variance. He explained that the proposal is not contrary to the public interest because it is not closer than the existing structure and will not impede emergency vehicles. The deck will not impact the public use of the lake or water quality. The area variance is needed because there is no place to construct anything given the limited depth of the property. Providing any level and safe area will need variance given the small lot and close proximity to the lake. The deck is not closer than the existing structure and will there will be no pollution to the surface or ground water. He will not be removing any trees or vegetation. They have located the stairs so as not to impact any trees or natural habitats. The deck is to have a level place to walk without hazards. There are several other decks and screened porches in the area.

E. Hawkins stated that the existing structure is 30' x 16' which is 480 square feet. The proposal is for a 600 square foot deck and when you add that to the existing deck that is around 680 square feet of deck with a 400 square house. He is concern about altering the character of the area by having the house

so encaptured with decks. Mr. Bockley stated that it doesn't impact the character of the area because he is the last house on street. Given the limited area of the land, the deck fits in. Most of the docks or decks in the area are very large. E. Hawkins stated that there are decks and concrete along the shore. Mr. Bockley agreed that there is. E. Hawkins stated that the decks are around 1 ½ times the square footage of the house. The decks are a little overbearing. L. Couture stated that the deck is 16.7' from the water. Mr. Bockley stated that if the deck sets back 50' from the water he wouldn't be on his property. E. Hawkins stated that the constraints here are different from the last one. P. Harris stated that the special condition of the property is the lot size because he cannot build anywhere on that lot. The lot is a little over a 10th of an acre. He is concerned about the reasonable use criteria because there already is a house on the property. E. Hawkins stated that the reasonable use criteria doesn't come into play since the Simplex ruling.

N. Patten stated that there is a full basement and first floor and wanted to know if the basement is finished off. Mr. Bockley stated that there is a bedroom downstairs and 1/3 of the basement is taken up by the furnace.

E. Hawkins stated that he considers the size of the deck out of character with the area Mr. Bockley stated that he is willing to work with them by scaling back the deck if they choose to go that route. The Board discussed the size of the proposed deck and how it compares to the size of the existing house. Would the variance be contrary to the public interest by altering the character of the area and could the proposal be achieved by some other method to bring it in line with the structures in the area. If they denied the current proposal then the applicant would have to resubmit a new application. Could they approve a scaled back proposal without having to renote. C. Daigle state that it is up to the Board but they would be reducing footprint making it smaller than what was noticed. Mr. Bockley stated that he gets double jeopardy because if he had a bigger house then he would be allowed a bigger deck. P. Harris stated that the problem is that he owns a small lot and needs more land to build just like others in Town. He is concerned that in the future Mr. Bockley could enclose the deck for more useable living area. The proposal doesn't affect services. He usually uses the 50% footprint increase as a criteria and this proposal is for a 400 square foot house with a 680 square foot deck. L. Couture had concerns about the impact to the lake. E. Hawkins stated that the setback is to the deck not the stairway and was noticed to the easement not the roadway. E. Hawkins stated that the size of the deck is large. He is not sure legally and with respect to the zoning ordinance they can deny the proposal given the merits of the case. The lot is similar to many shoreland lots. It is a nonconforming lot due to its size and the proposal is what is allowed under the Shoreland Protection Act. What has come out of this case is the clarification of the proposal to the State and what was proposed to the Town. The proposal to the State has been withdrawn.

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

BOARD ACTION – ERICH BOCKLEY AND LISA COROA-BOCKLEY:

MOTION: E. Hawkins moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to

construct a deck closer (11.7') to the Dutile Shore Road private road easement than allowed (50') as it meets all the criteria.

1. A Variance will not decrease surrounding property values because there has been no factual evidence brought before the Board to suggest such a diminution of value will take place as a result of the proposal.
2. A Variance is not contrary to the public interest as it will not alter the essential character of the locality or threaten public health, safety or welfare. There is adequate space for emergency vehicles and guest parking.
3. Denial would result in unnecessary hardship to the owner because
 - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property. Literal enforcement of the ordinance does result in unnecessary hardship to the applicant. The lot is small and has a tight allowable footprint such that a variance is needed to enable the applicant to build according to the design.
 - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method. The encroachment of the edge of the deck is no greater than the edge of the existing primary structure. It will not contribute additional jeopardy to the general welfare or safety of the Town of Belmont.
4. A Variance will result in substantial justice being done because if denied the loss to the applicant is not be outweighed by a gain to the general public.
5. A Variance will observe the spirit and intent of the ordinance, based on the zoning goals and the master plan. There is no impediment to the health, safety and general welfare of the residents of the Town of Belmont. It does not increase the congestion of the street. It is the last house on a private road and does not impinge on the security of the fire protection and other agencies or the adequate lighting and air supplies on neighbors.
6. Additional conditions:
 - a. No structures or additions that do not meet setback, except for those approved herein are allowed.
 - b. All decks to remain unroofed and open unless then required Shoreland Protection documents are submitted.

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

MOTION: E. Hawkins moved to grant a Variance of Article 4 of the Wetlands Ordinance to construct a deck closer (16.7') to the highwater mark than allowed (50') as it meets all the criteria.

1. A Variance will not decrease surrounding property values because there has been no factual evidence brought before the Board to suggest such a diminution of value will take place as a result of the proposal.
2. A Variance is not contrary to the public interest It will not alter the essential character

- or quality or threaten the public health, safety or welfare.
3. Denial would result in unnecessary hardship to the owner because:
 - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property. Literal enforcement of the ordinance would result in unnecessary hardship to the occupant. That being the uncontrollable nature of the property with minimal allowable footprint. The variance is needed as the project is designed to meet the special conditions of the property,
and
 - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method. The use is for a deck, size though overly large, meets the zoning criteria.
 4. A Variance will result in substantial justice being done. If the variance is denied the loss to the applicant is far outweighed by the gain to the public.
 5. A Variance will observe the spirit and intent of the ordinance, based on the zoning goals and the master plan. There is no impediment to the health safety and general welfare of the Town of Belmont. It does not increase the congestion on the street and does not impinge on the security of the fire protection and other agencies or the adequate lighting and air supplies on neighbors.
 6. Additional conditions:
 - a. All required floodplain/Shoreland Protection documents to be submitted.
 - b. No structures or additions that do not meet setback, except for those approved herein are allowed.
 - c. All decks to remain unroofed and open unless then required Shoreland Protection documents are submitted.

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

Abutters' Hearing – Charles and Marilynn Fowler: Request for a Variance of Article 5 Table 2 of the Zoning Ordinance to reconstruct an existing nonconforming structure closer (5.61') to the constructed road than allowed (50'). Property is located at 81 Tucker Shore Road in an "RS" Zone, Tax Lot 107-009, ZBA # 0408.

Atty. Regina Nadeau and Mr. Fowler presented the application and agreed to a short Board.

Atty. Nadeau explained that the Fowlers have owned this property and other properties on Tucker Shore Road for many years. Their children have now taken over their other properties on Tucker Shore Road. This property doesn't have a building envelope because the setback requirements are 50' from Lake Winnisquam and 50' from Tucker Shore Road. The proposal is to remove the existing 2 bedroom home that is situated in the 50' water setback from the shoreland but come within 8' of roadway. Using photos she explained to the Board that the back of the existing house is crowding the lake and the proposal is to move it back to the level part of the lot and away from the lake. She showed pictures of the adjacent houses that are close to the road. The first building permit showed the convoluted shoreline and

they have reangled the house so that the proposed house would not be within the 50' highwater mark. She explained that Mr. Fowler initially had submitted a DES Shoreland Permit but he has withdrawn that application. The first plan showed the deck and the new plan submitted on February 20th shows what the proposal is. She explained that the Fowlers have consent from all their abutters and she submitted letters from them to the Board.

Atty. Nadeau addressed concerns from the Staff Report. She stated that there will be a crawlspace not a full basement. The deck has been removed from the plan. She explained that the 8.05' is the measurement to the property line and the 5.61' is to the edge of pavement. She addressed R. Ball's comments about how Tucker Shore Road became a public highway, possibly by prescription. She stated that it would be by adverse possession and that would be a taking. She also addressed R. Ball's statement about the granite bound being held as a corner lot stating that the granite bound is not always marking the bounds. Mr. Fowler has agreed that there will be no parking in front of garage and will park on the side of building. He can use the permeable surfaces for parking. She stated that the Fowlers will keep the driveway opened so snow removal should not be a concern. The concern was that the Town would fill the driveway with snow but the Fowlers won't be parking in front of the garage so it won't be a problem.

Atty. Nadeau explained that the Legislature is implementing new Shoreland Protection laws. On June 29, 2007 they restricted lot coverage that would go into effect in April 2008, now it is proposed to be retroactive to July 1, 2007. If a foundation is in the ground by April 1, 2008 it may be exempt. As of today the law is proposed to be exempt if excavation has started or the forms are in place. If the State law is not resolved work in progress can continue until the State law prohibits it or the Town issues a cease and desist. E. Hawkins wanted to know if the applicant should take a wait and see approach to determine what happens. Atty. Nadeau stated that would be unfair. Mr. Fowler is going under the law that is in effect. E. Hawkins stated that in this case the action is imminent for a resolution from Concord. Atty. Nadeau stated that the Zoning Board only meets once a month it would be too late regardless of how the law is written. He would have two days to put a foundation in if he waited until the next meeting. The State employees have advised them to move forward. If the law says they will need a permit then they have jurisdiction to go under the current law. E. Hawkins wanted to know how much they could get done before April 1st. Atty. Nadeau stated they have to the end of March. If they don't get it done then it is their loss. C. Daigle stated that they are going to apply the law that is in effect on April 1st.

Atty. Nadeau addressed the criteria for the variance. The proposal is not contrary to public interest, the only setback in violation is the roadway. The sideline and shoreland setbacks are maintained. If they rebuild in the same footprint it would be an environmental issue on the shore. It will not create overcrowding on the road because houses on both sides of the Fowlers are close to the road and both abutters have no concerns. The only negative impact is where the parking would be and Mr. Fowler has agreed to a condition that he or his company will not park in ROW. She stated that the snow removal issue concerning the driveway and garage is something that the Fowlers already deal with. The proposal is to stay out of the shoreland setback and the special condition of the property is there is no building envelope alternative except straddling both setback lines. The benefit to the public interest is to

abide to the shoreland setbacks more than the road setback. The proposal is in the spirit of the ordinance because it protects water quality and prevents overcrowding. There is existing loam on the site and they will seed and vegetate the existing foundation. The lot coverage is under 20% and they are not required to do mitigation or planting. The grass will act as a filter. Substantial justice will be done because the alternative would be to keep the existing house where it is now. The new State law may allow them to add a second floor. There is no gain to the public by keeping it in the same place. The proposal will not diminish surrounding property values.

N. Patten stated that if they moved the existing house over there would be more room to snowplow. P. Harris stated there is not enough room to get off the road in an emergency. They would have to get out of the vehicle open the garage and park inside in order get an emergency vehicle in the driveway. Atty. Nadeau stated that they would not be using the garage all the time. N. Patten wanted to know what the point of having a garage is if they are not going to use it and park along side it. Atty. Nadeau stated that the garage can be used for other things such as storage during the summer. The Fowlers may not want the hassle of going in and out of the garage.

P. Harris asked Atty. Nadeau to address the Land Use Technician, Town Administrator and Public Works Directors comments about the close proximity to the road. Atty. Nadeau stated that the granite bound was set by surveyor Brian Crocket when he did a survey for Mr. Alan Dolan 14 years ago. Mr. Dolan stated that the pavement was already there when he had his land surveyed and the granite bound was set 5' from the property line. He has owned the property for twenty nine years and this is a dead end road with little traffic other than the residents. There are several other structures closer than 8' from the road. The Iacopucci's garage and the Cummings' shed are extremely close to the road. This is not a loop around with vehicles cutting through to get to other roads. It is also not an emergency access to other roads. E. Hawkins stated that some of these units are preexisting and others had to come to the Zoning Board for relief. Atty. Nadeau stated that she has been before the Board last winter for other variances in this area. One of the differences between applications is that in the other proposals the structures were closer together. With the two 50' requirements there is no other option for building. E. Hawkins stated that the concern is about emergency assess and road maintenance. He understands that they want to stay out of the 50' water setback but there is ample area to balance the proposal and relocate it so it is not so far into the road setback. Mr. Fowler stated that they could tip the garage and move it 8'-10' to the right and that would make it 14' from the road. L. Couture stated that the issue is they have no where to go because there is limited space and Mr. Fowler is willing to move it so that it is almost 14' from the road. Atty. Nadeau wanted to know if they could proceed tonight with the changes to the setbacks. C. Daigle stated that they would be asking for 14' to the road instead of 5.61' but there is also a new encroachment. P. Harris stated that if they drew on the maps they would no longer have a certified plan to act on. They have to act on what was submitted. C. Daigle stated the change would be different from what was noticed. It would be a new encroaching footprint that wasn't noticed. E. Hawkins stated that they are trying to work out a workable agreement with the applicant but it is up to the chairman to decide what the proper procedure is. Atty. Nadeau stated that they are turning the building and the Board could grant conditional approval until they have a certified plan that shows no part of the structure encroaching into the setback less than 14'. P. Harris stated that it is unfair to ask the Board to approve a change that is not certified and that they have not had time to review. The Department Heads need to

review the changes also. E. Hawkins stated that it is up to the Chairman to determine the proper procedure. He acknowledged that the applicant has agreed to pull the encroachment back 14' which is better than 5' but proper procedures need to be followed. The Board already approved a variance for 12' to the road way and the applicant had made good faith effort to make the proposal more conforming. P. Harris stated that if they are going to redesign the application at a meeting the Department Heads will not have time to review them. Atty. Nadeau stated that of all the Town Planner C. Daigle is the most rigorous in reviewing plans. If the Board gave conditional approval that the encroachment is limited to 14' than that is what it is. L. Couture stated that would make it conditional without seeing a plan. P. Harris stated that a quick decision is not always the best. E. Hawkins stated that the applicant is redesigning the proposal to relieve the concerns of the Public Officials. The proposal more than doubles the distance originally proposed. It is a workable solution. P. Harris stated that he commends them for staying out of the wetlands but they also have to take into considerations the other setbacks. E. Hawkins wanted to know if he wanted them to balance the building somewhere in the middle. P. Harris stated he would like it balanced between the State and Town regulations. E. Hawkins stated that the proposal before them is the distance to the roadway and people in that area want to redevelop their lots. The lots on Tucker Shore Road are nonconforming and they have to take into consideration what a logical distance to the road is. P. Harris wanted to know what the hardship is. E. Hawkins stated the hardship is there is no reasonable feasible alternative. The special condition of the land is that there is limited buildable area on this small lot. Atty. Nadeau stated she has represented dozens of applications at the State level and the State says if you can meet the shoreline setback you have to. P. Harris stated that the Department Heads still need to review the new plans.

C. Daigle stated that this is a unique situation due to the April 1st deadline and she wanted to know if the Board would consider a special meeting to hear the new proposal before the next scheduled meeting. It was the consensus of the Board to have a special meeting on March 12th. This will allow the applicant time to proceed, if approved, before the new DES regulations go into affect. The applicant would have to renote and they would have to have all the information submitted by noon on March 4th.

Atty. Nadeau stated that the applicant would like to withdraw this application. It was the consensus of the Board to accept Atty. Nadeau's withdrawal of the application.

The chairman closed the public hearing and thanked the public for coming out and explained that they would be renoticed for the new public hearing.

BOARD'S ACTION - MINUTES:

L. Couture made a motion to approve the minutes of December 19, 2008. P. Harris seconded. Carried (2-0-2) E. Hawkins and N. Patten abstained.

STAFF REPORT:

ALFRED BELIVEAU:

The Board accepted A. Beliveau's resignation and signed a letter thanking him for the time he served on the Board.

ADJOURNMENT:

MOTION: On a motion by P. Harris, seconded by N. Patten, it was voted unanimously to adjourn at 9:08 p.m. (4-0).

Respectfully submitted,

Elaine M. Murphy