

ZONING BOARD OF ADJUSTMENT

Wednesday, November 29, 2006
Belmont Corner Meeting House
Belmont, N.H.03220

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

The chairman opened the meeting at 7p.m. All stood for the Pledge of Allegiance

ABUTTERS' HEARING – NEW CINGULAR WIRELESS PCS, LLC: Continuation of a request for a special exception of Article 5 Table 1 of the Zoning Ordinance to construct a personal wireless service facility including a 180' monopole tower in a commercial zone. Property is located on 15 Dutile Road, Tax Lot 217-116, ZBA # 4006.

C. Daigle explained that they received a letter from Mr. Brian Grossman representing New Cingular Wireless requesting that the application be withdrawn without prejudice.

BOARD ACTION – NEW CINGULAR WIRELESS PCS, LLC:

MOTION: P. Oberhausen moved to accept the withdrawal and deny without prejudice the case for a special exception of Article 5 Table 1 of the Zoning Ordinance to construct a personal wireless service facility including a 180' monopole tower in a commercial zone.

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

ABUTTERS' HEARING – GLORIA HAMEL: Requests for:

- A Special Exception of Article 10.A.3.d. of the Zoning Ordinance to construct a deck closer to Seavey Road (38.56') than allowed (50') but not closer than the existing house.
- A Special Exception of Article 10.A.3.d. of the Zoning Ordinance to construct a sunroom with attached deck closer to Hurricane Road (27.97') than allowed (50') but not closer than the existing house.

Property is located at 272 Seavey Road in an "RS" Zone, Tax Lot 237-008, ZBA # 4206 & 4306.

MOTION: P. Oberhausen made a motion to hear both special exception applications at the same time and to have two separate motions for approval or denial.

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

At least three members have viewed the site.

Ms. Hamel and Mr. John Santiago presented the application.

Ms. Hamel explained that her house is a corner lot with two front setbacks. The proposed structure is behind her house and there is plenty of room behind the house. In this situation it is an appropriate location for the deck and there is no other place to put it.

P. Oberhausen wanted to know what the size of the proposed sunroom is. Mr. Santiago stated that is 12' x 12' and comes off the corner of the existing house. P. Oberhausen stated the deck will be between the garage and existing house. L. Couture stated that it is not closer than the house and is further from the road than the house. P. Harris wanted to know if it will be enclosed with a roof. Mr. Santiago stated the roof will line up with the existing roof line. He stated that he was surprised that they were not complying because it is a big lot. There is no other place to put it. L. Couture stated that it is the best place for it. There is no room in front of the house for it. She wanted to know if the chimney would be in the way. Ms. Hamel stated it is not; that is where the deck will be.

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

P. Harris stated that setbacks are in the ordinance to address safety, to prevent over buildout and road safety. This application doesn't infringe on those and is further from the road than the existing house.

BOARD ACTION – GLORIA HAMEL:

MOTION: P. Harris moved to grant a Special Exception of Article 10.A.3.d.of the Zoning Ordinance to construct a deck closer to Hurricane Road (27.97') than allowed (50') but not closer than the existing house as it meets all the criteria.

1. The use is allowed in the district.
2. The specific site is appropriate for the use and similar to others in the area.
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. It is on Town water and sewer
8. Structures must otherwise meet all dimensional requirements of the Ordinance.
9. All property bounds/existing footprint certified during construction as required.
10. 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. (5-0)

MOTION: P. Harris moved to grant a Special Exception of Article 10.A.3.d. of the Zoning Ordinance to construct a sunroom with attached deck closer to Seavey Road (38.56') than allowed (50') but not closer than the existing house as it meets all the criteria.

1. The use is allowed in the district.
2. The specific site is appropriate for the use and similar to others in the area.
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. It is on Town water and sewer
8. Structures must otherwise meet all dimensional requirements of the Ordinance.
9. All property bounds/existing footprint certified during construction as required.
10. 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. (5-0)

ABUTTERS' HEARING – DUNN FAMILY TRUST: Request for a Variance of Article 5 table 2 of the Zoning Ordinance to allow an existing deck closer (44.9') to the travel way than allowed (50'). Property is located at 43 Breck Shore Road in an "RS" Zone, Tax Lot 114-020, ZBA # 4506.

Atty. Phil Brouillard and Mrs. Rose Dunn presented the application.

The Board received a letter in support from Mr. Enos, an abutter. Atty. Brouillard addressed the picture in the letter. He explained that the old garage was demolished and the shed replaced. The congestion on the road has been eliminated by the removal of the garage. He stated that Mr. Enos supports the proposal. He explained that after the construction was complete they found out that the deck was within 44.9' of the road. Mr. Dunn was careful with the measurement and met with town officials to find out where to measure from. The first building permit was signed April 10, 2006 and it showed 50' and 53' from the travel way. In the course of digging the cellar hole Mr. Dunn decided he wanted a deck so he pushed the structure back 15'. When Mr. G. Boisvert went out for an inspection he informed the Dunns they needed a building permit for the deck. That was July 6, 2006 and the setback for the house was 40' and 51'. They didn't take the curve into consideration. They measured from the wrong point. There is between 10' and 12' of the deck within the 50' setback. It was a good faith error. Atty. Brouillard stated that the Land Use Technician stated that the Dunns should have known that but he wasn't aware that Mr. Dunn had moved the house back. Mr. Dunn did consult with G. Boisvert on the measurements.

Atty. Brouillard stated that the structures on Breck Shore Road are close to the road. The Board granted Ms. Mitiguy a 35' setback and seven out of eight homes on Breck Shore Road don't meet the setbacks. They are asking for the deck to remain. The deck's supports are underneath and it is not feasible to chop off any of the deck. The deck is suspended in air and doesn't interfere with traffic. The setback is 45' from the road and that is more than most houses on Breck Shore Road. An area variance is needed because when the sewer line went in the apex of the travel way changed. He reiterated that a Town official was present when the measurement was taken. He stated they are in the "RS" zone and it is common for many of the lots in this area to be nonconforming. There is only about 10' of the deck that is in violation and the Board in the spring of 2006 granted a variance for a neighbor to construct a screened porch that didn't meet the setbacks. Atty. Brouillard reviewed the pictures that were submitted with the application explaining that there is still sight distance along the road. The hardship is the apex of the road. The applicant made a good faith effort to meet the setbacks. The previous garage was removed and this is a great improvement. It wasn't until the final inspection that the error was noticed.

Mrs. Rose Dunn explained that there is just a small section of the deck that is nonconforming.

P. Oberhausen wanted to know if a certificate of occupancy was issued since a variance is needed for the deck. C. Daigle stated that they are separate permits. The house is in conformance. P. Oberhausen stated that each application has to stand on its own merit and just because other houses are granted variances doesn't automatically mean all variance applications will be granted. Atty. Brouillard stated that the Board has run into this before where people forget to put the deck on the permit. L. Couture agreed. N. Patten stated that they moved the house back in anticipation of the deck. Atty. Brouillard stated that they made a legitimate attempt to construct the deck within the setbacks.

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

P. Harris stated that it is feasible to tear the deck down but it would not be just.

BOARD ACTION – DUNN FAMILY TRUST:

MOTION: N. Patten moved to grant a Variance of Article 5 table 2 of the Zoning Ordinance to allow an existing deck closer (44.9') to the travel way than allowed (50') as it meets all 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:
 - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.
 - B. The benefit sought by the applicant cannot be achieved by some other method reasonable feasible for the applicant to pursue, other than an area variance.

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/existing footprint certified during construction as required.
7. No structures or additions that do not meet setback, except for the approved herein are allowed.

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

ABUTTERS' HEARING – STEPHEN SENICK: Requests for:

- A Special Exception of Article 10 A.3.c of the Zoning Ordinance to add useable space (a foundation) closer (26.4') to the highwater mark than allowed (50') and closer (12.09') to the south sideline than allowed (12.5').
- A Special Exception of Article 10 A.3.d of the Zoning Ordinance to construct a 7' x 7' an enclosed front porch closer (37.7') to the highwater mark than allowed (50') but not closer than existing structure.
- A Variance of Article 5 Table 2 to construct rear stairs and landing closer (25.7') to the highwater mark than allowed (50').

Property is located at 102 Elaine Drive, in an "RS" Zone, Tax Lot 107-102, ZBA # 4406, 4606 & 4706.

C. Daigle explained that Mr. Senick has withdrawn his two special exception and one variance application.

BOARD ACTION – STEPHEN SENICK:

MOTION: P. Oberhausen moved to accept at the applicant's request the withdrawal of his two special exceptions and one variance application and to close the case. The applicant can reapply at a later date.

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

OTHER BUSINESS:

BOARD'S ACTION - MINUTES:

P. Oberhausen made a motion to approve the minutes of October 23, 2006. N. Patten seconded. Carried (5-0)

P. Oberhausen made a motion to approve the minutes of October 25, 2006. N. Patten seconded. Carried (5-0)

STAFF REPORT:

ZONING AMENDMENTS:

C. Daigle explained that the Planning Board is looking at zoning amendment and will be scheduling the public hearing for their January meeting. If the members or the Board have any amendment proposal they need to contact staff.

NEW BUSINESS:

J. Olmstead stated that it is with regret that he has to tender his resignation effective tonight as he is moving and will no longer be a residence of Belmont. He has learned a lot from the Board and will miss them.

ADJOURNMENT:

MOTION: On a motion by P. Harris, seconded by P. Oberhausen, it was voted unanimously to adjourn at 7:47 p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy