

ZONING BOARD OF ADJUSTMENT

Wednesday, September 27, 2006
Belmont Corner Meeting House
Belmont, N.H.03220

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

The chairman opened the meeting at 7p.m. All stood for the Pledge of Allegiance. The chairman appointed J. Bennett as a voting member for tonight's meeting.

Abutters' Hearing – Frederick & Claudette Brezinski: Continuation of a request for:

- A Special Exception of Article 10 A.3.d of the Zoning Ordinance to construct an addition closer (33.04') to the front property line than allowed (50') but not closer than the existing structure.
- A Variance of Article 5 Table 2 of the Zoning Ordinance to construct an addition closer (18.73') to the north side property line than allowed (25').

Property is located at 28 Morgan Road in a "R" Zone, Tax Lot 239-068, ZBA # 1106 &1206.

J. Olmstead explained that the applicants have asked to Table the application to allow them to get the information the Board requested at the August meeting.

MOTION: J. Olmstead moved to Table a Special Exception of Article 10 A.3.d of the Zoning Ordinance to construct an addition closer (33.04') to the front property line than allowed (50') but not closer than the existing structure. Also to Table the Variance of Article 5 Table 2 of the Zoning Ordinance to construct an addition closer (18.73') to the north side property line than allowed (25') to the October 25th meeting to allow the applicant to get NH DES approval for the well and drywell or both be closed.

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

Abutters' Hearing – Lester Ludlum: Request for a Variance of Article 4 of the Wetlands Ordinance to replace a manufactured unit closer (9.4') to the wetlands than allowed (35') but not closer than the existing unit. Property is located at 14 Donway Drive in a "RS" Zone, Tax Lot 117-015-000-021, ZBA # 3206.

Mr. Bryan Bailey presented the application.

Mr. Bailey explained that the project was before the Board in May to replace a manufactured unit in Winnisquam Beach Campground. The campground was established in the 1960s and converted to condominiums in the 1990s. In May the applicants received a variance to allow a manufactured unit closer 28.8' to the northeast corner. They were denied a variance for the unit to be closer on the south side (1.8') to the wetlands than allowed (35'). That proposal was for a 14' x 68' manufactured unit and the new plan is for a 14' x 60' unit. They tried to accommodate the prior variance. The existing manufactured unit is in dyer need of replacement and cannot be repaired. The applicants are shortening the unit to 60' x 14' and moving it forward a little but not closer than the existing unit. The closest point 9.4' to the back wetland is not more encroaching than the existing unit. The screen porch dimensions will be the same.

Mr. Bailey stated that the proposal will not adversely affect the public interest, the environment or public safety. An area variance is needed because the unit has deteriorated to the point it has to be replaced and constraints of the wetland make a variance necessary. The placement of the home maintains or improves the setbacks to the wetlands. The spirit of the ordinance is observed because the proposal provides optimum setback distance to the property lines, road and other structures. Substantial justice will be done because it allows the owners a safe and adequate home and without the variance no other improvements can be achieved. The new manufactured home will not diminish property values but will enhance the condition of the neighborhood and lot.

P. Oberhausen wanted to know if the tongue is going to be removed because the existing one sticks out 4'-5'. Mr. Bailey stated that the measurements are to the unit not the tongue. The tongue has to be removed and that is no problem.

J. Olmstead wanted to know about the unit being 9.4' to the southern wetland. Mr. Bailey stated that is to the property line not the wetland. The new unit is moved to the north and the only relief they are seeking tonight is to the western side.

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

BOARD ACTION –LESTER LUDLUM:

MOTION: P. Oberhausen moved to grant a Variance of Article 4 of the Wetlands Ordinance to replace a manufactured unit closer (9.4') to the wetlands than allowed (35') but not closer than the existing unit 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 reasonably 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 those approved herein are allowed.
8. The manufactured home tongue to be removed.

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

Abutters' Hearing – F. Robert Sleeper Trust: Request for a Variance of Article 5 Table 1 of the Zoning Ordinance to have an ornamental iron work, artist/blacksmith business as an accessory to a residence. Property is located on Farrarville Road in the "R & C" Zones, Tax Lot 225-002, ZBA #3506.

Mr. Tom Sleeper presented the application.

Mr. Sleeper explained that there is a 60' access going into a 1 acre envelope that is out of current use. The residence will be between the neighbors and the shop. The gallery will have a medieval front and will be positioned on the lot so that the noise goes toward the back of the lot. The lot is thickly wooded with hemlock and pine. The driveway will be like a country lane and will have more of an impact than the shop. Most of his projects take between 50 and 200 hours so they are long term and do not produce a lot of traffic. The business may have to fall outside the current use envelope to fit.

P. Oberhausen stated that the land in the commercial area is mostly wetland. Mr. Sleeper stated there is a section in the commercial zone that is not, but the proposed iron works shop is in the rural zone. He stated that there are a couple of other businesses in the area, a saw sharpening shop and Mr. Heimlich's landscape maintenance business. P. Oberhausen stated that he has concerns about future development by allowing other businesses in the rural zone. He is concerned that the rural zone could lose its character. C. Daigle stated that the variance granted would be limited to a one man business based on what is being applied for. They would be authorizing a particular use and have the control to keep it from becoming a non residential use. P. Oberhausen wanted to know how big the building is going to be. Mr. Sleeper stated that it could be a 40' x 60' building but it could be smaller. The house will be between the shop and the neighbors. C. Daigle stated the back area is about 300' back from the abutter's property.

Mr. Sleeper stated that he received staff's comments and there was concern about fumes. He stated that the most fumes would come from a welding rod and those are not dangerous. L. Couture wanted to know about the noise level. Mr. Sleeper stated that he would be hammering steel inside the building not outside. The building will open to the back lot and there is a thick tree buffer to the neighbors. N. Patten wanted to know what he does with the scraps. Mr. Sleeper stated that he would build a hopper. He has to keep the site neat because he has high-end customers.

Ms. Lynne Michaud, 162 Farrarville Road, stated that noise is a concern. The noise from Arcon was disruptive to them. The surrounding property values will suffer because buyers will not want to buy next to a business. The noise is going to be substantial. Mr. Sleeper explained that Arcon used vibrators and that what

contributed to the noise. Ms. Michaud stated that traffic is also a concern because they are already suffering from the other businesses in the area. Hutchinson Motors uses the road for test drives, Heimlich landscaping has construction vehicles and deliveries going up and down the road and the saw sharpening business has customers going up and down the road. Mr. Sleeper stated that there will be no tractor trailers, his deliveries come by UPS and probably only come about ten times a year. Ms. Michaud stated that his business will grow. Mr. Sleeper stated he is a one man operation and has been for twenty-three years. Ms. Michaud stated that it is contrary to the spirit of the ordinance. She suggested that Mr. Sleeper do a boundary line adjustment with the two lots he owns and put his residence in the rural zone and the business in the commercial zone. She is adamantly opposed to the proposal because it is not in the public's best interest. They will lose their privacy and it will create more traffic.

Ms. Lachapelle, 172 Farrarville Road, stated that she is concerned about her son with strangers going back and forth. Her son cannot play out front now because of strangers staring at him and now he won't be able to play out back in the yard they have been working on for ten years because of strangers. It is a small business but there will be noise and they will hear it. They didn't buy on Rte 106 because they didn't want to deal with it. They have to deal with Hutchinson's Motors using Farrarville Road for test drives and turning in her driveway as well as customers and delivery people for the saw sharpening business staring at her son. Property values will change and go down with a steel business behind them. P. Oberhausen stated that it is a home occupation and cannot grow. C. Daigle clarified that it is not a home occupation but is limited to the representation that it is a one man operation. P. Oberhausen stated that Belmont is growing and Farrarville Road is used as a main travel way. Ms. Michaud stated that it is a rural community and that is how she wants to keep it.

Mr. James Boisselle, 36 Bryant Road, stated that he is directly behind the property and has no concerns with the proposal.

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

L. Couture stated that Mr. Sleeper wants to put a shop on his property but nothing is specific. Can he put it anywhere? C. Daigle stated that they could condition the approval to a minimum setback. If approved he will still have to get site plan approval and the Planning Board will look at the physical construction of the site.

BOARD ACTION – F. ROBERT SLEEPER TRUST :

MOTION: P. Oberhausen moved to grant for a Variance of Article 5 Table 1 of the Zoning Ordinance to have an ornamental iron work, artist/blacksmith business as an accessory to a residence 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 because:

- A. The zoning restriction as applied to the applicant's property does interfere with the applicant's reasonable use of the property, considering the unique setting of the property in its environment;
 - B. A fair and substantial relationship does exist between the general purposes of the zoning ordinance and the specific restriction on the property; and
 - C. The variance would not injure the public or private rights of others.
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. Site Plan approval by the Planning Board is also required.

The motion was seconded by J. Bennett and did not carry. (1-4) J. Olmstead, N. Patten, L. Couture and J. Bennett opposed.

J. Bennett wanted to know if it would injure the public rights of others. J. Olmstead stated that it is a decision she has to make.

Abutters' Hearing – Armand & Beverly Fortier: Request for:

- A Special Exception of Article 10A.3.c of the Zoning Ordinance to construct a mezzanine creating useable floor space in a nonconforming structure.
- A Variance of Article 5 Table 2 of the Zoning Ordinance to construct an addition closer (37.8') to the Old State Road property line than allowed (50').
- A Variance of Article 5 Table 2 of the Zoning Ordinance to construct an addition closer (31.8') to Daniel Webster Highway than allowed (50').

Property is located at 174 Daniel Webster Highway in an "C" Zone, Tax Lot 101-011, ZBA # 3606, 3706 & 3806.

At least three members have viewed the site.

Atty. J. Kristen Gardiner presented the application. Mr. Jeff Fortier from Northeast Tire was also present.

Atty. Gardiner explained that Northeast Tire is a retail automotive repair business. Originally the State's widening project on Rte 3 did not include the area in front of Northeast Tire but at the request of the Town and further State review the area was included in the widening project. The widening project will cause Northeast Tire to lose parking. They are asking for a special exception to create mezzanine space in the existing footprint for an additional 1,620' of storage space for inventory. The structure is over thirty years old and the Fortiers have owned it since 1972. Motor vehicle repair is a permitted use in the commercial zone. The site is appropriate for the use as it has been there for thirty years and the use will not change. It will not affect surrounding property values as no one will know there is a second floor for storage. There will be no additional noise or hazard involved. The services already exist. They need more storage space where the office is currently located. When the State widens Rte 3 and puts curbing in, Northeast Tire will lose parking spaces so they want to relocate the parking area to the end of the building where the new office will

be located.

Atty. Gardiner stated that they need two variances for the new office space. One is for an addition that will be closer (37.8') to the Old State Road property line than allowed (50'). The other is for the addition being closer (31.8') to Daniel Webster Highway than allowed (50'). The proposal is a safety issue so that customers would not have to cross in front of the work bays to get to the office from the parking lot. The parking will be near, only 10'-20' away from the office instead of 100'. The existing office space will be used for storage space. It is in the public interest to enhance public safety by moving the office. The improvements the State is making will be an improvement to the site by lessening the number of entrances to the site.

J. Bennett wanted to know how far the curbing will be from the building. Atty. Gardiner stated about 25'. There will be no parking in front of the building and they will have to go for site plan approval. If the variances are denied an unnecessary hardship will be created because it will limit safe access to the office for customers. The existing roof line makes the walkway near the office icy and by relocating the office there will be less ice build up because the sun will melt the snow faster on that side of the building. There is no other alternative to get from the parking area to the office without walking in front of the bays unless the office is relocated. The proposal is the most appropriate use of the land. Substantial justice will be done by creating a safer situation for the public. Property values will not be diminished.

J. Olmstead wanted to know if the office is in the bay area. Mr. Fortier stated that the addition sits back from the bay area. There will be no doors in the back of the office so no one can exit into the bays. The access to the office will be from the end of the building

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

BOARD ACTION – ARMAND & BEVERLY FORTIER:

MOTION: N. Patten moved to grant a Special Exception of Article 10A.3.c of the Zoning Ordinance to construct a mezzanine creating useable floor space in a nonconforming structure 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. All property bounds/existing footprint certified during construction as required.
10. All required floodplain/Shoreland Protection documents to be submitted.
11. No structures or additions that do not meet setback, except for those approved herein

are allowed.

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

MOTION: L. Couture moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct an addition closer (37.8') to the Old State Road property line 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 reasonably 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. No structures or additions that do not meet setback, except for those approved herein are allowed.
7. The applicant shall adhere to the location of the islands as proposed by NH DOT.
8. The proposal also requires Site Plan approval by the Planning Board.

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

MOTION: L. Couture moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct an addition closer (31.8') to Daniel Webster Highway 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 reasonably 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. No structures or additions that do not meet setback, except for those approved herein are allowed.
7. The applicant shall adhere to the location of the islands as proposed by NH DOT.
8. The proposal also requires Site Plan approval by the Planning Board.

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

OTHER BUSINESS:

BOARD'S ACTION - MINUTES:

P. Oberhausen made a motion to approve the minutes of August 30, 2006. L. Couture seconded. Carried (5-0)

STAFF REPORT:

NEW CINGULAR WIRELESS PCS, LLC TAX LOT 217-116:

C. Daigle informed the Board that a date has been set for a joint meeting with the Planning Board on October 23rd at 7pm for the Cingular Wireless cell tower application. A Balloon test will be October 14th with an inclement weather date of October 21st from 8am to 4pm.

ADJOURNMENT:

MOTION: On a motion by L. Couture, seconded by N. Patten, it was voted unanimously to adjourn at 8:22 p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy