

ZONING BOARD OF ADJUSTMENT

Wednesday, February 24, 2010
Belmont Corner Meeting House
Belmont, N.H.03220

Members Present: Chairman Peter Harris; Pleasant Oberhausen, Linda Couture and Marshall Ford.
Members Absent: Norma Patten (E).
Alternates Present: Ed Hawkins.
Staff: Candace Daigle and Elaine Murphy.

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

Abutters' Hearing – Theresa Corriveau: Request for:

- A. A Variance of Article 5 Table 2 of the Zoning Ordinance to reconstruct a single-family dwelling, 2-story with full basement, closer (25.3') to the front property line than allowed (50'). ZBA # 1010Z
- B. A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single story addition to an existing accessory structure (garage) closer (34.1') to the front property line than allowed (50') but not closer than the existing structure. ZBA # 1110Z

Property is located at 135 Jefferson Road in an "RS" Zone, Tax Lot 111-017.

The Board and the applicants received copies of a letter from Gwendolyn & Raymond LaPlante stating their objections to this application.

Mr. Jim Bolduc presented the application and stated that owners, Sharon and Ben Mercuri, are also present to answer any question.

Mr. Bolduc explained that the property at 135 Jefferson Road is .402 of an acre (17,515 square feet) with 195' frontage on Jefferson Road. He presented the Board with an existing condition plan that was part of the Shoreland Protection permit they obtained. The site has an existing house, garage, a couple of sheds, a retaining wall and walkway. There are no proposed improvements to the retaining wall or walkway. They plan to demolish the existing rectangular house and replace it with a larger new house with a garage. This property has a 50' front and rear setback and a 12.5' side setback. This is a narrow lot with 50' front and rear setback which restrict the development of the lot. There is an existing driveway on Jefferson Road. There is a well on site and the lot is serviced by sewer.

Mr. Bolduc explained that the proposal includes a small addition to the garage. They have

positioned the new house out of the 50' highwater setback making it conflict with the front setback from Jefferson Road. The house will be a little over 25' from the road and the garage will be 34.1' from the road. They did receive a Shoreland Permit from DES. The property has been surveyed for the Shoreland Permit and all the trees and brush have been located on the plan. Due to the impervious surface, infiltration units have to be installed for stormwater management.

Mr. Bolduc stated that the proposal will be a benefit to both the neighborhood and town because it will be a nicer looking house that will increase surrounding values and town taxes.

P. Oberhausen wanted to know if the Town has a copy of the Shoreland Permit. C. Daigle stated that they do have a copy of the approval. Mr. Bolduc stated that it is part of the Zoning process to have the permit prior to applying to the Zoning Board. The Shoreland permitting process has improved with State's staff and applicants having a better understanding of the process.

P. Oberhausen wanted to know if the retaining wall is going to be removed. Mr. Bolduc stated that they are only proposing the new house and the addition to the garage. Nothing will be done to the retaining wall.

M. Ford stated that the elevation of the garage is higher than the house and wanted to know how they are going to get from the deck to the garage without stairs. Is there going to be a passage way? Ms. Sharon Mercuri stated she is not sure. M. Ford wanted to know if this is a year round home. Ms. Mercuri stated that it is not year round, but they use it in the summer and winter. Mr. Bolduc explained that the garage was built after the house. Mr. Ben Mercuri stated the garage and the house are at two different elevations. Mr. Bolduc stated that when they came in for a building permit for the garage they had to move it. M. Ford wanted to know how high the new house is going to be. Is it strictly going to be a basement? Mrs. Mercuri stated that it is strictly a basement. Mr. Bolduc stated that it is a traditional single story house with a pitched roof. E. Hawkins wanted to know what the height at the south western corner of the structure will be. Mr. Mercuri stated that he didn't know the height of the house. E. Hawkins wanted to know if it is a two story building. Mr. Bolduc stated that the difference is the second floor. P. Harris referred to the letter from the abutters that the proposal would be blocking their view of the lake and diminishes their property value. M. Ford stated that Mr. & Mrs. LaPlante, the abutters, live on Wakemen Road diagonally, not directly, across from the applicants. Mr. Mercuri stated that it is not their fault if the LaPlante's real estate agent marketed their property having water views. P. Harris stated that between the new garage and house it takes up some of the view. Mr. Mercuri stated that in the spring, summer and fall you can't see the water because of the foliage. P. Oberhausen stated that the new house is closer to the road, two stories and is not built on an incline like the existing one is. Mrs. Mercuri stated that the existing house is a two story with a basement but it looks like half a basement because the basement and floor are below the incline. E. Hawkins stated that it is built into the hill and now they are flipping the house and doubling the dimensions. He explained that the highest part of the house may not be the only issue the Board has to be concerned with the impact on light and air quality. They could move the house back out of the highwater setback but not closer than the existing setback. Mr. Bolduc stated that the first point is that there is nothing relating to height in the ordinance. If there is concern about height then it should be in the ordinance. C. Daigle explained that there is a height restriction in

the ordinance. It is 45'. E Hawkins stated that it is not just the height but the impact it will have.

Mr. Bolduc stated that he had a similar situation in Tilton where he was restricted not only to the square footage of the house but he had to leave the new house in the same footprint. DES made him measure the footprint and he could not go outside that footprint. Every inch was restricted. The State is more receptive if you have the structure out of the 50' highwater setback than if it infringes on that setback.

L. Couture wanted to know what the length of the house is. With the house being 56', a 30' driveway and the 48' garage all on the roadside it does block the view. Mr. Bolduc explained that the addition to the garage is only 18'; the 30' already exists.. M. Ford stated that in the summer you have to peek through the foliage so there is not much of a view of the lake. If the applicants move the shed it will open up more of a view.

P. Harris wanted to know if the garage is the same distance from the road as the existing structure. Mr. Bolduc stated that it is parallel with the building. P. Harris stated that they are staying within the building setback. E. Hawkins clarified it by stating that the addition to the garage is not closer than the existing structure. P. Harris stated that it is aesthetically pleasing. They are not just constructing a new building but are adding onto an existing building. Mr. Bolduc stated that the corner of the existing building to the corner of the new house is not much closer to the road. They are pulling the structure out of the 50' lake setback. P. Harris stated that they are eliminating some of the slope access issues that are safety issues.

Mr. David Kaye, an abutter, stated that Mr. & Mrs. LaPlante wanted to make sure that their letter was submitted to the Board. C. Daigle explained that the Board did receive the letter. Mr. Kaye stated that he lives at 136 Jefferson Road and was before the Board in past when he wanted to raise his house to put a foundation under it and his application was denied. If they approve the Corriveau's application the Board would be doing the Town a great injustice. No variances have ever been granted on Jefferson or Wakeman Road. A precedent has been set and the Board has to decline the application, otherwise legal action could be taken. P. Harris wanted to know how long ago his application was declined. Mr. Kaye stated that he is not sure but it has been a few years. That meeting was very hostile with Mr. Corriveau voicing his objections stating that Mr Kaye's proposal would block their view. If the Board approves this application they will be making a great mistake. Ms. Mercuri stated that her parents attended that meeting and she doesn't think her father was hostile because her dad is a very relaxed man. The point they objected to was that Mr. Kaye wanted to move the house so he could build another structure on the property. Mr. Kaye said he is there year round but they do not see him. Ms. Mercuri reiterated that Mr. Kaye wanted to move his house from one side of the lot to the other so he could build another one and sell it. Mr. Kaye said he did not want to build another house he just wanted to lift the house up and put it back down and nothing else. He requested moving the house because the variance was denied. P. Harris stated that there is a difference of opinion. Each case is looked at individually, judged on its own merits.

Mr. Kaye stated that he did not have enough time to prepare for this meeting. Abutters are not

given reasonable time to prepare. C. Daigle stated that the Town follows the noticing requirements set by the State. The abutters noticing went out February 16th two days ahead of the required noticing deadline. Mr. Bolduc stated that all the abutters were also notified during the State's Shoreland permitting process. Mr. Kaye stated that he was out of town and just received his notice two days ago. E. Hawkins wanted to know if there is a time frame for abutters to make comments. C. Daigle stated that there is no time frame abutters can either come to the meeting or submit their comments in the form of a letter.

Mr. Kaye stated that the statement that the proposal would benefit the neighbors and the town is not a fair statement because the proposal blocks abutter's views.

L. Couture stated that the proposal is definitely not within the existing footprint and wanted to know why they didn't stay within the existing footprint. Ms. Mercuri stated that her parents bought the house in 1984 and she and her two brothers grew up there. They all have families now and need the extra room. They want to make it big enough to accommodate them but keep it small enough that it is still a camp. L. Couture stated that it is bigger than what is there. Ms. Mercuri stated that doubling it makes sense. Others on the lake have made their houses bigger. They have been paying taxes all this time for a large double lot.

P. Oberhausen wanted to know where they store their snowmobiles. Ms. Mercuri stated they are stored at her brother's house in Bedford.

P. Harris wanted to know if Jefferson Road is a private road. Mr. Kaye stated that yes it is. M. Ford wanted to know who owns the land under the road. C. Daigle stated that it probably is the original developer or by joint ownership. The town does not assess the roads so there is no reason to keep track of the ownership. Everything from the railroad tracks back is private.

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 the definition of hardship has changed since January 1, 2010. Is the proposed use a reasonable one? There is no change in use. The special conditions of the property need to be looked at. The property is between Jefferson Road and the water which narrows the design footprint. There is concern that substantial fairness be considered for the abutters concerning the height of the building. E. Hawkins stated that every decision is evaluated on its own criteria. He recommends that the applicant provide a side and road view of the proposed house. The abutters could also provide history of other Board decisions in that area. P. Harris stated to make a fair decision they look at every variance on its own merit and criteria. He would like to see more information on other decisions that the Board made in that area. He would like more information on the height issue as this is a substantial increase.

BOARD ACTION – THERESA CORRIVEAU:

MOTION: E. Hawkins moved to table the Variance of Article 5 Table 2 of the Zoning Ordinance to reconstruct a single-family dwelling, 2-story with full basement, closer (25.3') to the front

property line than allowed (50') and the Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single story addition to an existing accessory structure (garage) closer (34.1') to the front property line than allowed (50') but not closer than the existing structure to the March 24, 2010 meeting at 7 PM. This action will allow the applicant time to provide a profile of the proposed construction including the height with a side and road view of the property along with any additional applicable evidence. Also to give the abutters time to provide evidence of Zoning Board actions on abutting properties along with any additional applicable evidence.

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

OTHER BUSINESS:

BOARD'S ACTION - MINUTES:

M. Ford made a motion to approve the minutes of January 27, 2010. P. Harris seconded. Carried (3-0-2)
L. Couture and P. Oberhausen abstained.

HANDOUTS:

The Board received a copy of the customer survey.

They also received an article from Town and City "Zoning Regulation cannot result in an unconstitutional taking of property until the landowner exhausts all opportunities to receive a variance from the regulation".

ADJOURNMENT:

MOTION: On a motion by E. Hawkins, seconded by P. Oberhausen, it was voted unanimously to adjourn at 7:53p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy