

ZONING BOARD OF ADJUSTMENT

Wednesday, June 24, 2009
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 Absent: Ed Hawkins (E).
Staff: Candace Daigle and Elaine Murphy.

The chairman opened the meeting at 7p.m. 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 – Ernest & Carol Tourtellotte: Request for a Variance of Article 15 (frontage) of the Zoning Ordinance to permit the creation of a new lot without access to lot being over its own frontage. Property is located at 277 Durrell Mountain Road in an “R” Zone, Tax Lot 212-052, ZBA # 2209Z.

Attorney William Philpot representing Mr.& Mrs. Tourtellotte stated that they wish to Table their application for a full five member Board.

MOTION: P. Oberhausen moved to Table the Abutters' Hearing for Ernest & Carol Tourtellotte to the July 22, 2009, 7PM meeting.

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

Abutters' Hearing – Jean Haley Rev. Trust: Request for:

- A. A Special Exception of Article 5 Table 2 of the Zoning Ordinance to construct entry steps closer (44') to the front property line than allowed (50') but not closer than the existing structure. ZBA # 1509Z
- B. A Special Exception of Article 11.A.3.c.of the Zoning Ordinance to construct a second floor closer (28.71') to the front property line than allowed (50'). ZBA # 1609Z

Property is located at 107 Gardners Grove Road in an “RS” Zone, Tax Lot 120-011.

At least three members have viewed the site.

Mr. Kurt Lauer presented the application and stated that they will accept a four member Board. Mr. & Mrs. Haley were also present.

Mr. Lauer stated that they are tearing down the existing house and sidewalk. The sidewalk will be reconstructed 10' further away. The new house will be a two-story two-bedroom house. They will be using the same footprint but the second floor will be encroaching in the setback. The storm water runoff management will be mitigated by having two dry wells, two rain gutters, and drip line trenches and a rain garden so not to impact the lake. The setback issue is the steps within 50' of lake.

P. Oberhausen wanted to know if they plan to relocate the propane tanks. Mr. Lauer stated that it will be 10' off the property line. P. Oberhausen wanted to know if there is going to be any living space in the garage. Mr. Haley stated that it has a potential for storing the boat trailer and an entry space with a closet. There will be no bathroom, den, bedrooms or other living space.

Mr. Lauer addressed Rick Ball, Land Use Technician, concern that the stormwater facilities are built adequately stating that if DES doesn't do the inspection he will do the inspections to make sure they are done correctly. L. Couture wanted to know if they need a Shoreland Protection permit as they are working close to the lake. Mr. Lauer stated that they already have it and have submitted it to Land Use staff.

L. Couture wanted to know if the garage is going to meet the setbacks. Mr. Lauer stated that it is within the setbacks by about 2'-3'.

P. Harris wanted to know if the site is on public sewer. Mr. Lauer stated that it is.

L. Couture wanted to know what the garage is built on. Mr. Lauer stated that will be a concrete slab on grade. There is a crawl space under the existing house and they will have a crawl space under the living section of the new house. L. Couture wanted to know when they plan to start construction. Mr. Lauer stated that it will be in the fall.

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

BOARD ACTION – JEAN HALEY REV. TRUST:

MOTION: P. Oberhausen moved to grant a Special Exception of Article 5 Table 2 of the Zoning Ordinance to construct entry steps closer (44') to the front property line than allowed (50') but not closer than the existing structure as it meets all the criteria.

1. The use is allowed in the district.
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced. Proposal will increase property values.
4. There is no valid objection from abutters based on fact. No abutters present.

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.

Additional conditions:

1. All property bounds/existing footprint certified during construction as required.
2. All conditions of the DES Shoreland Permit to be complied with.
3. No structures or additions that do not meet setback, except for those approved herein are allowed.
4. No living space in the garage.

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

MOTION: P. Oberhausen moved to grant a Special Exception of Article 11.A.3.c.of the Zoning Ordinance to construct a second floor closer (28.71') to the front property line than allowed (50') as it meets all the criteria.

1. The use is allowed in the district.
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced. Proposal will increase property values.
4. There is no valid objection from abutters based on fact. No abutters present.
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.

Additional conditions:

1. All property bounds/existing footprint certified during construction as required.
2. All conditions of the DES Shoreland Permit to be complied with.
3. No structures or additions that do not meet setback, except for those approved herein are allowed.
4. No living space in the garage.

The motion was seconded by M. Ford and carried. (4-0)

Abutters' Hearing – Frank Faticanti: Request for:

- A. A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a 2- story addition closer (19.7') to the front property line than allowed (50'). ZBA # 1709Z
- B. A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a 2-story addition closer (9.4') to the side property line than allowed (12.5'). ZBA # 1809Z

C. A Variance of Article 4 of the Wetlands Ordinance to construct a 2-story addition closer (34.2') to the highwater mark than allowed (50'). ZBA # 1909Z
Property is located at 159 Gardners Grove Road in an "RS" Zone, Tax Lot 119-007.

Mr. Faticanti presented the application and agreed to a four member Board.

Mr. Faticanti stated that the structure is a summer cottage that they have owned for 25 years. The original structure is two-story with three bedrooms. The addition will be closer to the property line than the porch in the front. The back will not be closer than the existing structure. They will be demolishing the garage. They have a Shoreland Protection permit. They will contain the runoff with gutters that slope toward the earthen berm to reduce erosion and runoff into the lake. They will also do selective planting.

P. Oberhausen stated that tree removal has already started and when they were taken down there was no protection for the shoreline. There was sawdust around the trees. Mr. Faticanti stated that he has State approval. P. Oberhausen stated that he has to protect the shore. He wanted to clarify that Mr. Faticanti was demolishing the garage and making the house into a six-bedroom home. Mr. Faticanti stated that was corrected. P. Oberhausen wanted to know how many grownups are in the house. Mr. Faticanti stated the additional bedrooms are for the grandchildren. There will be six grownups with their children. P. Oberhausen wanted to know where they will be parking. Mr. Faticanti stated they will park on the side. There is room for three large cars and one small one plus room on the other side of the house for additional parking.

P. Oberhausen wanted to know what the plans are for the additional camp. Mr. Faticanti stated he would be agreeable to reducing that use. He will turn it into a storage building but will tear it down if the Board wished him to. Mr. Faticanti stated that it will open up views and reduce runoff.

L. Couture wanted to know if the Shoreland Waiver has been recorded. Mr. Faticanti stated that it has been and the Land Use Office has a copy of it.

P. Harris stated that nothing is encroaching into road. The addition will be along the same lines as the old porch.

James Foye, an abutter, stated that the proposal will be an advantage. The old garage is a disgrace.

P. Harris stated that the additional space is in the same footprint and wanted to know if there are other structures of similar size in the area. Mr. Faticanti stated that there are additions that are larger than this proposal.

L. Couture wanted to know what the square footage is. Mr. Faticanti stated that it is 884 square feet plus the 140 square feet for the porch. C. Daigle stated that the existing square footage is 972 square feet. The total square footage of both floors is 1628 square feet. L. Couture wanted to clarify that both the garage and the camp are being removed. Mr. Faticanti stated that if that is the wish of the Board. It will reduce the footage by 200 square feet. L. Couture wanted to know if the porch is screened in. Mr.

Faticanti stated it is screened in but is not living space.

P. Harris stated that it is on public sewer. P. Oberhausen stated that if the camp is not demolished and is converted he would like to see the toilet taken out so that it is only used for storage. M. Ford stated with all the children they can use the building as a changing room and bathroom. The use is grandfathered. L. Couture stated that there is sewer to the cabin. Mrs. Faticanti stated that she would like it torn down because it blocks the neighbor's view. It would also open up the view from her porch.

Mr. Sanborn stated that he received an abutters notice and would appreciate it if he received notification sooner. He feels it was too close to the meeting date. C. Daigle stated that the notices are sent out as required by State law.

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

BOARD ACTION – FRANK FATICANTI:

MOTION: P. Oberhausen moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a 2-story addition closer (19.7') to the front property line than allowed (50') as it meets all the criteria.

1. A Variance will not decrease surrounding property values because it will improve the site.
2. A Variance is not contrary to the public interest because removing the unsightly garage is an improvement.
3. Denial would result in unnecessary hardship to the owner because there are not many options:
 - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property because there is no other way to add the large amount of bedrooms on the small lot. They cannot expand widthwise.
and
 - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because the cost of razing the building and re-erecting it would be a financial burden to the applicant.
4. A Variance will result in substantial justice being done because it will increase property values.
5. A Variance will observe the spirit and intent of the ordinance.

Additional conditions:

1. All required NH DES Shoreland Permit conditions to be complied with.
2. No structures or additions (decks, steps, porches, landings, etc.) that do not meet setback, except for those approved herein are allowed.

3. Garage to be removed prior to occupancy.
4. Camp to be removed prior to occupancy.

The motion was seconded by L. Couture and carried. (3-1-0) P. Harris opposed.

MOTION: P. Oberhausen moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a 2-story addition closer (9.4') to the side property line than allowed (12.5') as it meets all the criteria.

1. A Variance will not decrease surrounding property values because it will improve the site.
2. A Variance is not contrary to the public interest because removing the unsightly garage is an improvement.
3. Denial would result in unnecessary hardship to the owner because there are not many options:
 - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property because there is no other way to add the large amount of bedrooms on the small lot. They cannot expand width wise.
 - and
 - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because the cost of razing the building and re-erecting it would be a financial burden to the applicant.
4. A Variance will result in substantial justice being done because it will increase property values.
5. A Variance will observe the spirit and intent of the ordinance.

Additional conditions:

1. All required NH DES Shoreland Permit conditions to be complied with.
2. No structures or additions (decks, steps, porches, landings, etc.) that do not meet setback, except for those approved herein are allowed.
3. Garage to be removed prior to occupancy.
4. Camp to be removed prior to occupancy.

The motion was seconded by M. Ford and carried. (4-0)

MOTION: P. Oberhausen moved to grant a Variance of Article 4 of the Wetlands Ordinance to construct a 2-story addition closer (34.2') to the highwater mark than allowed (50') as it meets all criteria.

1. A Variance will not decrease surrounding property values because it will improve the site.
2. A Variance is not contrary to the public interest because removing the unsightly

- garage is an improvement.
3. Denial would result in unnecessary hardship to the owner because there are not many options:
 - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property because there is no other way to add the large amount of bedrooms on the small lot. They cannot expand width wise.
and
 - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because the cost of razing the building and re-erecting it would be a financial burden to the applicant.
 4. A Variance will result in substantial justice being done because it will increase property values.
 5. A Variance will observe the spirit and intent of the ordinance.

Additional conditions:

1. All required NHDES Shoreland Permit conditions to be complied with to protect the water in Silver Lake.
2. No structures or additions (decks, steps, porches, landings, etc.) that do not meet setback, except for those approved herein are allowed.
3. Garage to be removed prior to occupancy.
4. Camp to be removed prior to occupancy.

The motion was seconded by M. Ford and carried. (4-0)

Abutters' Hearing – Blue Sky Enterprises, Inc. for Rachael, Calvin & David Brown: Request for a Variance of Article 5 Table 1 and 13.F.2 of the Zoning Ordinance to permit a dwelling unit in the commercial zone without the required primary business. Property is located on Ladd Hill Road/Diane Drive, Tax Lot 201-032, ZBA # 2009Z.

Ms. Karen Feltham presented the application and agreed to a four member Board.

Ms. Feltham explained that the lot is a corner lot on Ladd Hill Road and Dianne Drive. It is a 1.3 acre lot located in the commercial zone. The lot has residential abutters on two sides. It is in the commercial zone which requires 2 acres. They can meet the setback requirements. She explained that to have a residence in the commercial zone it has to be subordinate to a commercial use and the applicants just want to have a single family dwelling on site without a commercial business. Ms. Feltham pointed out the commercial lots and the residential lots surrounding this lot. She explained that the lots surrounding this one are residential lots with residential uses on them. This lot is in the commercial zone but because of the way it is situated and the setback requirements it is difficult to see. There is a ROW on the corner of the lot that requires them to setback further from the road. She used pictures to demonstrate the lots location and how difficult it is to see the lot from the road. Being a commercial lot signage would also be an issue where it has to be 10' off the property line it would not be visible from

the road.

Ms. Feltham stated that the property values would not be diminished but if the variance is denied a commercial use in the middle of a primarily residential area would diminish the surrounding property values. The variance will not be contrary to the public interest because the purpose of restricting a residential use in the commercial zone is to preserve those areas zoned as commercial for commercial development so that the town has adequate area for commercial development and the land is not used for residential development. In this case the lot is not situated for commercial use as it fronts on residential streets and does not have the visibility that commercial uses require. It is an undersized commercial lot and does not have access to public water or sewer. It is unlikely that a commercial developer would want to locate to this lot. Utilizing it for residential purposes would not result in the loss of commercial development. When Diane Drive was developed the lots were restricted to residential purposes only. A commercial use would be disruptive to the neighborhood.

The zoning restriction interferes with the reasonable use of the property because the ROW for both Ladd Hill Road and Diane Drive are wider than normal along the frontage of this lot. Because of the wider than normal ROW along the lot frontage it has no visibility for commercial purposes. Allowing a commercial use on the property would bring with it traffic, noise and lighting issues that would affect the surrounding residential use.

P. Harris stated that the Town Administrator commented on the fact the owners have applied for several abatements and that this would be a viable option. He also stated that allowing a residential use on the lot would straighten out the residential area without having a commercial use in the middle of it.

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

BOARD ACTION – BLUE SKY ENTERPRISES, INC. FOR RACHAEL, CALVIN & DAVID BROWN:

- MOTION:** M. Ford moved to grant a Variance of Article 5 Table 1 and 13.F.2 of the Zoning Ordinance to permit a dwelling unit in the commercial zone without the required primary business as it meets all the criteria.
1. A Variance will not decrease surrounding property values because residential homes are consistent with the area.
 2. A Variance is not contrary to the public interest because it is a commercial site with no frontage or access to Route 3.
 3. Denial would result in unnecessary hardship to the owner because it is not marketable as a commercial lot:
 - 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 because the sloping topo makes

- it hard to position a commercial building with parking on an undersized lot; and
- B. a fair and substantial relationship does not exist between the general purposes of the zoning ordinance and the specific restriction on the property, because a single family dwelling will have adequate setback and add value to the neighborhood; and
 - C. the variance would not injure the public or private rights of others, because the owners have had abatements for several years because the lot is in the commercial zone. Allowing a single family residence would increase the value of the property.
- 4. A Variance will result in substantial justice being done.
 - 5. A Variance will observe the spirit and intent of the ordinance.

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

Abutters' Hearing – Lakes Region Mobile Home Park for Claire Haynes: Request for a Special Exception of Article 11A.3.d of the Zoning Ordinance to replace a manufactured unit closer (28.65') to the front (Edwards Road) property line than allowed (50') but not closer than the existing unit. Property is located at 37 Turkey Drive, in an "R" Zone, Tax Lot 217-095-000-171, ZBA # 2109Z.

At least three members have viewed the site.

Mr. Michael Emond presented the application and agreed to a four member Board.

Mr. Emond stated that they abut Edwards Road which really isn't a road just an ATV trail that goes to a beaver pond. There was another unit previously on the site. The new unit's footprint is different than the previous one so they need a variance. The unit will be 28.65' to the front setback of Edwards Road. The lot has two front setbacks and they meet the other front setback.

M. Ford wanted to know if the distance between the stonewall and travel section of road is all trees. Mr. Emond stated that it is foliage. One neighbor is 24' away from the road and another is 25' and there are others in the park that are closer than he will be. He is 28.65' from Edwards Road.

P. Oberhausen stated that when he viewed the site they looked like they were planning on pouring the concrete. Mr. Emonds stated that they did the grading and they are nailing things together but have not poured the concrete. The trailer is already at the park on a different site waiting for approval. P. Oberhausen wanted to know how far they plan on going before they get their approval. Mr. Emond stated it would have been nice to know before they purchased the unit that it needed a variance. It has become a financial burden waiting for approval. They have had to get a survey and notify everyone outside the park plus three abutters inside the park. If they do not get approval then Concord Homes will have to take the unit back.

M. Ford wanted to know how much frontage the site has. Mr. Emond stated that it is a good size lot with 90' of frontage. M. Ford wanted to know if the unit could be turned around. Mr. Emond stated

that it couldn't be because of the leach field. He stated that Concord Homes removed the previous unit and they had to buy the replacement unit from them. Concord Homes dropped the ball because they said it would fit. He missed the deadline for the May Zoning Board meeting and had to wait until this month before anything could be done. The concrete has not been poured. P. Harris stated that he understood that they have been waiting a long time but there are standards and regulations that have to be followed. Mrs. Haynes stated that they have been waiting since April 27th.

P. Harris stated that they are on septic not on public sewer. Mr. Emond used the plan to locate the septic system. M. Ford wanted to know if it is on municipal water. Mr. Emond stated that it is on park water. M. Ford stated that there is enough room on each side of the unit.

Mr. Emond wanted to know why he had to notify abutters all around the park it was very expensive. C. Daigle explained that it is State law. A manufactured park is not a subdivision with individual lots and for notification purposes it is considered one lot. Abutter notification has to follow State law.

P. Harris stated that the proposal is within 3% of the existing structure which is important when you go to sell it. There will be no violation issues. Mr. Emond stated that he is going on the grandfathered footprint from the unit that has already been removed. C. Daigle stated the new unit is wider than the previous one. They have met the interior road setback but not the Edwards Road setback. Mr. Emond stated that there are five new trailers in the park that said they were 50' from the setback to Edwards Road but they are not. This is very frustrating going through this when other people haven't had to do it.

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

BOARD ACTION – LAKES REGION MOBILE HOME PARK FOR CLAIRE HAYNES:

MOTION: L. Couture moved to grant Special Exception of Article 11A.3.d of the Zoning Ordinance to replace a manufactured unit closer (28.65') to the front (Edwards Road) property line than allowed (50') but not closer than the existing unit as it meets the criteria.

1. The use is allowed in the district
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.

Additional conditions:

1. All property bounds/existing footprint certified during construction as required.
2. 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)

OTHER BUSINESS:

BOARD'S ACTION - MINUTES:

MOTION: P. Oberhausen made a motion to approve the minutes of May 27, 2009 as written. M. Ford seconded. Carried (4-0)

STAFF REPORT:

NOTICE OF DECISION:

C. Daigle explained that Planning Board has been recording their Notice of Decisions which helps future prospective owners know exactly what actions have been taken on the property. This informs people and helps enforce the notion that permits are necessary. The Zoning Board in the past has discussed filing Notice of Decisions for their actions and she wanted to know if they want to start implementing that procedure. A Notice of Decision would be drafted after each meeting. It will be brought to the next meeting for the Chairman's signature after the minutes are approved. The cost to the applicant will usually be \$16.43.

MOTION: P. Oberhausen moved to adopt a process whereby a Notice of Decision on each action is filed at the Registry of Deeds with the cost of such filing to be borne by the applicant.

The motion was seconded by L. Couture and carried. (3-0-1) M. Ford opposed.

RULES OF ADMINISTRATIVE PROCEDURE:

C. Daigle stated that there have been some changes including the adoption of recording the Notice of Decision that need to be included in the Rules of Administrative Procedure. It was the consensus of the Board to draft updated Rules of Administrative Procedure.

CORRESPONDENSE:

C. Daigle informed the Board that she sent a letter to Mr. Ernie Roy asking him if he was interested in being an alternate on the Zoning Board. She has not heard back from him.

C. Daigle stated that she sent a letter to Paulette Palombo thanking her for serving on the Board.

ADJOURNMENT:

MOTION: On a motion by P. Oberhausen, seconded by P. Harris, it was voted unanimously to adjourn at 8:38p.m. (4-0).

Respectfully submitted,

Elaine M. Murphy