

ZONING BOARD OF ADJUSTMENT

Wednesday, July 28, 2010
Belmont Corner Meeting House
Belmont, N.H.03220

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

The chairman opened the meeting at 7p.m.

Abutters' Hearing – Susan Leichtman: Request for a Variance of Article 4 of the Wetland Ordinance to allow an existing deck closer (21.9') to the highwater mark than allowed (50'). Property is located at 196 Gardners Grove Road in an "RS" Zone, Tax Lot 119-022, ZBA #3610Z.

Mr. Jim Bolduc presented the application. Ms. Leichtman was also present.

Mr. Bolduc explained that the site is located on Gardners Grove Road on a peninsula area surrounded by water. The lot has an existing residence and garage and has to meet the 50' front and highwater mark setbacks. He explained that the home has a couple of existing decks that were damaged in the winter. When the current owner came in for a building permit to repair the existing decks the Land Use staff discovered that the previous owner had constructed a deck without a permit. The deck is a normal transition from the house to the outside. The interior of the house is carpeted and the deck is used as a transition from the water to the house so that all the dirt and sand from the water does not get tracked inside. He explained that there is another entry in front of the house but the platform is a natural addition to the rear of the house. The entire house is inside the 50' setback and they are asking relief for the small platform that was built by the previous owner. The closest point of the deck to the highwater mark is 21.9'.

L. Couture wanted to clarify that the deck was there when Ms. Leichtman bought the house and she didn't construct it. Ms. Leichtman stated that she didn't know there was any problem when she bought the house.

M. Mastenbrook wanted to know if the deck was built in sections would it be still be considered

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a deck and would they have to come to the Zoning Board. C. Daigle explained that they could have patio blocks or a patio built in sections that are not connected and easily moveable by one person unassisted.

P. Harris wanted to know if there has there been any correspondence with DES about needing a Shoreland Permit. C. Daigle explained that DES allows a deck to extend out 12' from a residence without needing a permit. Mr. Bolduc stated that the house was built prior to 1990 so it does not need a permit. M. Mastenbrook wanted to know if DES has been in contact with Ms. Leichtman since she owned the property. Ms. Leichtman stated that they have not contacted her.

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

BOARD ACTION – SUSAN LEICHTMAN:

MOTION: P. Oberhausen moved to grant a Variance of Article 4 of the Wetland Ordinance to allow an existing deck closer (21.9') to the highwater mark than allowed (50') as it meets all the criteria.

1. The variance will not be contrary to the public interest because allowing the deck to remain will have no impact to the public.
2. The spirit of the ordinance is observed because the deck has existed for a number of years and does not impact the public.
3. Substantial justice will be done because it allows for safe access from the rear of the house.
4. The variance would not diminish the value of surrounding properties because the deck has been there and there is no impact on abutters.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following:
 - a. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision and the specific application of that provision to the property because it is an existing deck that has no impact on the public or abutters.
and
 - b. The proposed use is a reasonable one because it allows safe access from the rear of the house.

Conditions:

1. No other structures or additions (incl. decks, porches, landing, etc.) that do not meet the setback are allowed by this approval.

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

Abutters' Hearing – Robert & Donna Mattie: To allow an existing structure and deck at 54 Sunset Drive, in an “RS” Zone, Tax Lot 104-048.

- A. An Equitable Waiver of Article 5 Table 2 of the Zoning Ordinance to allow an existing structure closer (7.45’) to the south property line than previously permitted by special exception (9’) but not closer than the preexisting structure. #3710Z
- B. A Variance of Article 4 of the Wetland Ordinance to permit an existing deck closer (35.61’) to the highwater mark than allowed (50’). #3410Z
- C. A Special Exception of Article 5 Table 2 and 11.A.3.d of the Zoning Ordinance to permit an existing deck closer (7.5’) to the south property line than allowed (12.5’) but not closer than the existing structure. # 3810

At least three members have viewed the site.

P. Harris read the history of the lot. The lot is preexisting nonconforming (size & frontage). The use is conforming (single family). The original dwelling was preexisting nonconforming (water & south side property line setbacks). In 1987 a Variance was denied to construct a second two-family dwelling on the lot. In 1998 a Special Exception was granted to replace the existing single family home in the same footprint, to square off the existing footprint closer (36’) to the highwater mark than allowed (50’), but not closer than the existing building and to add a second story within a preexisting nonconforming structure. In 1999 a mortgage plot plan (not by a licensed land surveyor) was submitted showing the south side property line was not where everyone had thought it to be. Although the house had been replaced within the same footprint, the “squared off” sections were only 9’ from the south side line instead of the required 12.5’. The Zoning Board granted an after-the-fact special exception to expand a preexisting nonconforming structure within the side setback. In 2008 the owner was cited for expanding a deck without permits. His building permit application showed only that the deck further encroached on the water. That would need a Variance. In 2010 the owner submitted a plan (by a licensed land surveyor) as part of his Variance application for the deck. This plan shows the deck also requires a special exception to the south side property line. The 1999 special exception granted for a 9’ side setback were not sufficient as the actual distance to the sideline is 7.5’. This proposal may now be eligible for an Equitable Waiver or will require a Special Exception.

Mr. Matthew Moore presented the application.

Mr. Moore stated that C. Daigle did an excellent job putting together the history of the lot. He explained that Mr. Mattie bought the property in 2005 and has owned the property for five years. They

are here tonight to clean up the record. He explained that Mr. Bryan Bailey did the survey plan. The house was originally constructed in 1940 at this location. The previous owner re-built it in the original footprint. When they had a survey done they found out that the markers from the mortgage plot plan were incorrect and the lot line shifted.

Mr. Moore explained that the Equitable Waiver is for the 1990 approval. The building has been there as constructed for over ten years and they did not know it didn't meet the setbacks. Mr. Moore used the pictures to explain where the trees and the property lines are.

M. Ford wanted to know if the garage is entirely within the property. Mr. Moore stated that it is except for the eaves. The roof line is shown as required for the Shoreland permit. M. Ford stated that a 2' overhang is allowed.

P. Harris stated that the applicant has demonstrated that the structure has been there for more than ten years. The violation was not discovered by the owner/agent or town official until the structure was substantially complete. The violation was not the outcome of ignorance or the law, failure to inquire, obfuscation, misrepresentation or bad faith by the owner/agent, but was caused by good faith error by owner/agent or error in the ordinance interpretation by town official. The violation does not constitute a nuisance, diminish property values of other properties nor interferes or affects any present or permissible future uses of the property. Due to the degree of construction and investment made in ignorance of the violation, the cost of correction outweighs the public benefit to be gained so as to be inequitable to require correction. P. Harris stated that they meet the requirements for an Equitable Waiver.

Mr. Moore stated that the Zoning Board acknowledged that in 1998 the footprint was already there.

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

BOARD ACTION – ROBERT & DONNA MATTIE:

MOTION: P. Harris moved to grant an Equitable Waiver of Article 5 Table 2 of the Zoning Ordinance to allow an existing structure closer (7.45') to the south property line than previously permitted by special exception (9') but not closer than the preexisting structure as it meets all the criteria.

1. Violation was not discovered by owner/agent or town official until structure was substantially complete.
2. Violation was not outcome of ignorance of law, failure to inquire, obfuscation,

misrepresentation or bad faith by owner/agent, but was caused by good faith error by owner/agent or error in ordinance interpretation by town official.

3. Violation does not constitute nuisance, diminish value of other property, nor interfere/affect any present or permissible future uses of any such property.
4. Due to degree of construction/investment made in ignorance of violation, cost of correction outweighs public benefit to be gained so as to be inequitable to require correction. There have been no complaints or problems in 12 years.

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

Mr. Moore addressed the variance for the deck. He explained that he does not know for sure how and when the deck was built to the current size. They were unaware that there was a permit only for a 4' x 9' deck. When the current owner purchased the property his intent was to repair and square off the deck. He did not know the deck was larger than what was permitted. The larger 6' x 18' deck is already there and they are asking for approval to allow the 6' x 18' to remain. The deck is 35.61' from the high water mark. The previous owner has a special exception for the deck to be 36' from the high water mark.

Mr. Moore used the pictures submitted with the application to show the Board that the neighbor's deck to the west is closer to the highwater mark than Mr. Mattie's deck by around three or four feet. Mr. Mattie's deck is relative to other decks in the neighborhood and further from the highwater mark than others.

Mr. Moore explained that when he started this project there were new rules for Shoreland Permitting. He met with the State and they stated that they would not deal with the applications. He stated that Mr. Mattie has pavers that go out to the lake and they will be removing 72 square feet of them to offset the impervious surface. They will be putting grass back in that area. The State is requiring them to do an As-Built Plan but not requiring a Shoreland Permit.

P. Harris stated that they are on public sewer. It is an allowed use and is similar to others in the area. They meet the criteria for a variance.

MOTION: N. Patten moved to grant a Variance of Article 4 of the Wetland Ordinance to permit an existing deck closer (35.61') to the highwater mark than allowed (50') as it meets all the criteria.

1. The variance will not be contrary to the public interest because the deck will not impact the public use of or access to the lake. The deck will not negatively impact the quality of the lakes.
2. The spirit of the ordinance is observed because the impact of the impervious deck

expansion has proposed mitigation. The deck will not increase the density of homes on the waterfront, is serviced by public sewer and there will be no pollution to the surface or ground water.

3. Substantial justice will be done because it will provide needed space at the house for summer activities.
4. The variance would not diminish the value of surrounding properties because the deck does not block the view of the neighbors and both neighbors and many of the properties on the street already have decks on the lakeside of their homes.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following:
 - a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because there will be no negative impacts to the general public.
 - and
 - b. the proposed use is a reasonable one because the deck has no negative impacts to the neighbors, Town or State.

Additional Conditions:

1. No other structures or additions (incl. decks, porches, landings, etc.) that do not meet setback are allowed by this approval.

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

Mr. Moore addressed the Special Exception. He stated that when Mr. Mattie bought the house he was improving the deck and lined it up with the house.

M. Ford wanted to know if the garage is it going to be a guest house. Mr. Mattie stated that the previous owner had water pipers run to the garage but they are not connected and there but no facilities. He uses the garage for storage. C. Daigle stated that they cannot use the garage as a guest house. It is not a permitted use.

MOTION: P. Oberhausen moved to grant a Special Exception of Article 5 Table 2 and 11.A.3.d of the Zoning Ordinance to permit an existing deck closer (7.5') to the south property line than allowed (12.5') 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.

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. No other structures or additions (incl. decks, porches, landings, etc.) that do not meet setback are allowed by this approval.

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

Abutters' Hearing – David & Carolyn Monasky: A request of Article 5 Table 2 of the Zoning Ordinance to allow an existing structure and add a deck at 1 Maynard Drive, in a "RS" Zone, Tax Lot 222-06.

- A. An Equitable Waiver to allow an existing house closer (44.5') to the front property than allowed (50'). #3910Z
- B. A Variance to construct a deck closer (44.5') to the front property line than allowed (50') but not closer than the existing structure. #4010Z

Mr. Ron Johnson presented the application. Mrs. Monasky was also present.

Mr. Johnson explained that the property is located on the northerly side of Union Road and the westerly side of Maynard Road. He explained that he thought that they would have to go for a Special Exception but after researching the property he found out the house was built in May of 1986 just a couple of months after zoning was adopted in March of 1986. They are 5.5' closer to the property line than allowed. The closest point to the easement is 44.5'.

Mr. Johnson explained that they are asking for an Equitable Waiver because the house has been there for 24 years and there are no records of enforcement.

M. Ford stated that there is a 30' ROW and he wanted to know who owns the land under the road. Mr. Johnson stated that they have permission to cross over the land. The Monaskys own to the center of the road. They have an easement to pass over the road. C. Daigle clarified that it is a private road that services three properties. It was laid out to serve the three properties at the time of the subdivision.

P. Harris stated the violation happened just two months after zoning was adopted. The house is similar to other houses in the area. C. Daigle stated that it more compliant than others in the area. Mr. Johnson stated that the Board received letters from the abutters who are in favor of this proposal.

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

BOARD ACTION – DAVID & CAROLYN MONASKY:

MOTION: N. Patten moved to grant an Equitable Waiver to allow an existing house closer (44.5') to the front property line than allowed (50') as it meets all the criteria.

1. Violation was not discovered by owner/agent or town official until structure was substantially complete.
2. Violation was not outcome of ignorance of law, failure to inquire, obfuscation, misrepresentation or bad faith by owner/agent, but was caused by good faith error by owner/agent or error in ordinance interpretation by town official.
3. Violation does not constitute nuisance, diminish value of other property, nor interfere/affect any present or permissible future uses of any such property.
4. Due to degree of construction/investment made in ignorance of violation, cost of correction outweighs public benefit to be gained so as to be inequitable to require correction.

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

Mr. Johnson addressed the variance. He explained that the pool is existing and they decreased the size of the proposed deck so that it is not closer than the existing house. It is in a convenient location because the deck goes around the pool. The variance is not contrary to the public interest because it is no different than other lots on Maynard Drive. This is not a town road but an easement. The spirit of the ordinance is observed because of the location of the improvement and the distance from the abutters. Substantial Justice will be done because it is a customary use. It will allow safe access directly from the residence to the pool. It will not diminish property value because it is similar to surrounding properties and immediate abutters have swimming pools

MOTION: M. Ford moved to grant a Variance to construct a deck closer (44.5') to the front property line than allowed (50') but not closer than the existing structure as it meets all the criteria.

1. The variance will not be contrary to the public interest.
2. The spirit of the ordinance is observed because it will not decrease property values. There were no objections from abutters.
3. Substantial justice will be done because not granting the variance would be an injustice.
4. The variance would not diminish the value of surrounding properties because no

- factual evidence was found that it would diminish property values.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following:
 - a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.
 - and
 - b. the proposed use is a reasonable one because it gives enjoyment to the owner.

Additional conditions:

1. No other structures or additions (incl. decks, porches, landings, etc.) that do not meet setback are allowed by this approval.

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

Abutters' Hearing – Charles & Dianne Stewart: Request for a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a manufactured home closer (24') to the front property line than allowed (50'). Property is located at 17 Sleepy Hollow Lane, in an "RM" Zone, Tax Lot 121-065, # 4110.

P. Oberhausen stepped down for this application and the chairman appointed M. Mastenbrook as a voting member for this application.

Mrs. Georgie Johnson presented the application.

Mrs. Johnson explained that she represented the previous owner when they came before the Board for a Variance. The previous owner received approval. They removed the old unit but never replaced it so that approval has expired. Mr. Stewart is the current owner. He has a unit in Mallards Landing that he wants to put on this property. The previous approved variance to the side was for 9'. He will move the shed to meet all the setbacks.

Mrs. Johnson addressed the criteria for a variance. The proposal is not contrary to the public interest because it will improve the property and neighborhood and is an allowed residential use. The spirit of the ordinance is observed because it is a residential use that is in harmony with the zone. Substantial justice will be done because it will allow the owner to make improvements to the property. The changes will be more conforming to the ordinance. The variance will not diminish surrounding property values because it will improve the lot and make it aesthetically pleasing by replacing the old home with a newer one. It will improve the neighborhood. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision because it is an existing nonconforming lot and it would be deemed unusable if they had to

meet all the setbacks. The property would have no value. The proposed use is reasonable because it is keeping with the surrounding properties and no other use would be permitted or feasible.

M. Ford stated that a variance was granted in 2005 for 20.9' to the front property line and 9.6' to the side. The new footprint is not encroaching into the side setback and is now 24' from the road which is more compliant than the previous approval.

L. Couture wanted to clarify that they are bringing in another manufactured unit from somewhere else. Mrs. Johnson explained that the unit is a 1988 unit that is currently in Mallards Landing. The Board reviewed the pictures of the old and new unit.

P. Oberhausen wanted to know if Mr. Stewart is putting a new roof on the unit. Mr. Stewart stated that he is going to reshingle it.

P. Harris wanted to make sure that Mr. Stewart was aware of the Code Enforcement Officer's comment that the unit has to meet the HUD requirement. Mr. Stewart stated that the unit has a HUD sticker on it. L. Couture wanted to know if the unit is in good condition. Mr. Stewart that it is a two bedroom, two bath that is in good shape.

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

BOARD ACTION – CHARLES & DIANNE STEWART:

MOTION: M. Ford moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a manufactured home closer (24') to the front property line than allowed (50') as it meet all the criteria.

1. The variance will not be contrary to the public interest because it is a residential neighborhood.
2. The spirit of the ordinance is observed because it is more conforming than the previous approval. There are no objections from abutters. It will provide a home for the applicant.
3. Substantial justice will be done because not granting the variance would be an injustice.
4. The variance would not diminish the value of surrounding properties because no factual evidence was provided that it would diminish property values. Adequate sanitary facilities are provided.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the

following:

- a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because it is pre-existing nonconforming lot that needs a variance to build to anything.
and
- b. the proposed use is a reasonable one because there will be adequate facilities and a Certificate of Occupancy is required.

Additional conditions:

1. All setbacks certified during construction as required.
2. No other structures or additions (incl. decks, porches, landings, etc.) that do not meet setback are allowed by this approval.
3. Obtain building permit and relocate shed to footprint shown on plan.

The motion was seconded by M. Mastenbrook and carried. (5-0)

M. Mastenbrook stepped down and P. Oberhausen rejoined the Board as a voting member for the remainder of the meeting.

OTHER BUSINESS:

BOARD'S ACTION - MINUTES:

P. Oberhausen made a motion to approve the minutes of June 23, 2010. N. Patten seconded. Carried (5-0)

STAFF REPORT:

NOTICE OF DECISION (NOD):

The chairman signed the NOD for the June applications. The NOD are recorded in the registry and follow the title.

BELMONT FIREARM AND RANGE TAX LOT 210-005:

C. Daigle explained that they have found two consultant companies that can administer the noise test for the proposed outdoor shooting range. They will finalize the requirements and choose the company to do the testing. Once the decision is made and Mr. Gilleppe escrows the fund they will set up the test date and notice it. They will evaluate the results and open the public hearing.

MOTIONS AND DECISIONS:

The Board discussed the criteria for approving applications and what needs to be in the motions. They discussed that each application is looked at individually. If it is an after-the fact application it needs to be looked at as if it has not been constructed. Just because it has been constructed should not affect their decision (with the obvious exception of equitable waivers). They also discussed having to take into consideration the actions the previous Boards have taken on a specific application.

ADJOURNMENT:

MOTION: On a motion by P. Oberhausen, seconded by N. Patten, it was voted unanimously to adjourn at 8:40 p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy
Administrative Assistant