

ZONING BOARD OF ADJUSTMENT

Wednesday, September 23, 2009
Belmont Corner Meeting House
Belmont, N.H.03220

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

The chairman opened the meeting at 7p.m.

Abutters' Hearing – Evelyn Henry: Request for an Equitable Waiver of Article 5 Table 2 of the Zoning Ordinance to allow a structure closer (37.44') to the front property line than allowed (50'). Property is located at 34 Forest Drive in an "RS" Zone, Tax Lot 229-066, ZBA #3509Z.

Mr. Mark Condodemetraky presented the application.

Mr. Condodemetraky explained that the structure had a building permit and a certificate of occupancy in August of 1991. There was also a permit for a tool shed in 1999 and in 2000 there was a building permit for a roof over the deck. There is no certificate of occupancy for the deck because of lack of inspections. The Code Enforcement Officer has been out to view the property three times. The property has been in existence for twenty years and has had three owners and the encroachment was not found. Based on law this meets all the criteria for an equitable waiver.

P. Oberhausen wanted to know if the applicant considered a variance instead of an equitable waiver. Mr. Condodemetraky stated that the house has been in existence for over ten years without any complaints and the violation has not been picked up by the Code Enforcement Officer.

E. Hawkins wanted to know what years the property was sold. Mr. Condodemetraky stated in 1998 and 2006. E. Hawkins stated that the legal process for real-estate transfer did not catch the encroachment.

M. Ford wanted to know if the house was built before the cul des sac. Mr. Condodemetraky stated that he does not know because that was over twenty years ago. M. Ford stated that there was plenty of room on the property to build the house within the setbacks. Mr. Condodemetraky agreed and stated that the error was not a bad faith error but probably a mistake.

E. Hawkins stated that they have met the time frame for an equitable waiver and there was no legal action taken within that time frame.

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

E. Hawkins wanted to know if there is a written record when a final inspection is done and if there is one for this property. C. Daigle stated there is a written record and staff has reviewed it.

P. Harris stated the application meets the criteria for an equitable waiver considering the time frame and lack of complaints. The hardship to correct the encroachment should not be placed on the third owner after twenty years. E. Hawkins stated that the violation is for dimensional requirement and the burden of proof is on the property owner. The violation has existed for more than ten years and no enforcement action occurred. The violation does not diminish property values. The literal enforcement of the ordinance would require moving the house further back on the lot and the cost would outweigh the public benefit.

BOARD ACTION – EVELYN HENRY:

MOTION: P. Oberhausen moved to grant an Equitable Waiver of Article 5 Table 2 of the Zoning Ordinance to allow a structure closer (37.44') to the front property line than allowed (50') based on the following:

1. It was proven that the owner/agent or town official did not discover the violation until the structure was substantially complete. The property changed hands many times without the violation being noticed.
2. It was proven that the violation was not caused by 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 the ordinance interpretation by town official. It was proven that the violation existed for ten years or more and no enforcement action occurred during that time.
3. It was proven that the violation does not constitute nuisance, diminish value or other property, nor interfere/affect any present or permissible future uses of any such property.
4. It was proven that due to the 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 N. Patten and carried. (4-0-1) P. Harris abstained.

Abutters' Hearing – Frank Capone for Sunset Beach Association: Request for a Special Exception of Article 11.A.3.c. of the Zoning Ordinance to add useable space (2nd floor) within a preexisting nonconforming footprint. Property is located at 80 Sunset Drive in an "RS" Zone, Tax Lot 107-150-000-008, ZBA # 3609Z.

At least three members have viewed the site.

Mr. David Dolan and Mr. Frank Capone presented the application.

Mr. Dolan explained that the property is located at 80 Sunset Drive. The existing dwelling is located within the 50' setback requirement. This is an after the fact application to add a second floor. It is a 9' high 840 square foot expansion that is 2' higher than the abutting building. There are several other two-story units in the area. They will be keeping with the spirit of the ordinance. It is an appropriate area and is consistent with the neighborhood. It will increase property values in the area. The building exterior is wood and there is an on site well.

The chairman asked if anyone in the audience had any questions or comments.

Mr. Tom Knox, an abutter, stated that he has no problems with this proposal. Mr. Bill Peterson, an abutter, stated it will be an improvement to the neighborhood and increase property values. It is a lot better than what is there.

E. Hawkins wanted to know if Mr. Capone owned the property in 2001. Mr. Capone stated that he did not.

L. Couture wanted to know if Mr. Dolan said that the structure was 50' from the road. Mr. Dolan clarified his earlier statement by explaining that the building is entirely within the 50' setback requirement. M. Ford wanted to know if the building was built prior to zoning. Mr. Dolan stated that originally it was and in the 1990's there was some expansion to the original unit.

E. Hawkins stated that the building permit was denied in June. Mr. Capone stated that he was repairing damage to the roof caused by the snow loads. He was not aware the permit was denied because he never received the denial letter because there is no mail receptacle at that site. He went to Town Hall to pick up his permit and was told his permit was denied. S. Dalton, Code Enforcement Officer, told him not to worry about it; he could finish weather proofing it and then stop work on the shell.

P. Harris stated that the abutters are in favor of the request. There has been a fair amount of expansion around lake.

P. Oberhausen stated that a majority of people start construction without a permit and think it is okay. If the owner didn't have a permit in hand he should not have started the work. Mr. Capone stated that in the month of June it rained all month. He went to S. Dalton and he agreed to let him go ahead and demo it and make it weather tight and he could take care of the rest later. He also clarified that the 850 square feet is not additional living area. They are moving the bedroom upstairs and expanding the kitchen. He explained that because of the rain they built the addition within two or three days. When he submitted his building permit he was under the impression that he just had to bring in the plans and he would get the permit. When he went to pick up the permit that is when he found out he was denied. He talked to S. Dalton who okayed him making the house weather tight because the tarps were not working

and were creating more damage. They did pull a plumbing permit for the work they did downstairs but have done nothing upstairs since they were denied.

There being no more public input, the chairman closed the public hearing.

BOARD ACTION – FRANK CAPONE FOR SUNSET BEACH ASSOCIATION:

MOTION: N. Patten moved to grant a Special Exception of Article 11.A.3.c. of the Zoning Ordinance to add useable space (2nd floor) within a preexisting nonconforming footprint 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. This will be an improvement to the property.
4. There is no valid objection from abutters based on fact. Abutters are in favor of proposal.
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.

Conditions:

1. No structures or additions (including decks, porches, landings, etc.) that do not meet setback, except as approved are allowed.

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

Abutters' Hearing – Frederick & Claudette Brezinski: Request for:

- A. A Special Exception of Article 10.A.3.c of the Zoning Ordinance to allow a deck and stairs (northside) closer (33.04') to the front property line than allowed (50') but not closer than the existing structure. ZBA # 3409Z.
- B. A Special Exception of Article 10.A.3.c of the Zoning Ordinance to allow a deck and stairs (northside) closer (23.24') to the northside property line than allowed (25') but not closer than the existing structure. ZBA # 3709Z.
- C. A Variance of Article 5 Table 2 of the Zoning Ordinance to allow a deck with ramp (southside) closer (12.43') to the south side property line than allowed (25') but not closer than the existing structure. ZBA # 3309Z.
- D. A Variance of Article 5 Table 2 of the Zoning Ordinance to allow a deck with ramp (southside) closer (33.10') to the front property line than allowed (50') but not closer than the existing structure. ZBA # 3809Z.

Property is located at 28 Morgan Road in an "R" Zone, Tax Lot 239-068.

At least three members have viewed the site.

Mr. & Mrs. Frederick Brezinski presented the application.

Mr. Brezinski stated that the stairs were rotted so he replaced them. The stairs were 5' off the ground so he decided to make a deck to use for a second exit. The stairs were unsafe and the 5' drop off is why he needed the deck.

M. Ford stated that when he visited the site he observed that there was no furniture on the deck. He stated that a 4' x 4' deck is not big enough to open a storm door. The Board should look into changing the size requirement. C. Daigle stated that the deck is 8' x 10'.

N. Patten wanted to know when Mr. Brezinski moved in. Mr. Brezinski stated in 1992.

C. Daigle stated that the existing deck was smaller. M. Ford stated there are thirteen stairs which is high and needs an emergency exit. Mr. Brezinski stated that the old deck was too small because of the size of the door jam. They need a 34" deep landing to accommodate the door. He eliminated one stair at the bottom and expanded the platform. P. Oberhausen stated the deck makes it easier getting out to the lake. The town allows for a 4' x 4' deck and decks larger than that need to meet the setbacks. If decks are bigger than the 4' x 4' then many of them would be right on the road. Mr. Brezinski is looking at the deck size more as a convenience. Mr. Brezinski stated that it is a second entrance from the bedroom without the deck they would have to jump down. M. Ford stated that it is a safety issue. Mr. Brezinski agreed stating he couldn't get out of a 12" window.

P. Harris stated that it is important to bring the property into compliance. Does the deck need to be torn down or can the Board grant relief? The deck is away from the road and far away from the water. This is an after the fact deck that is safer for egress. It is not an elaborate structure. No nuisance is involved. He wanted to know if the sewer disposal issue is cleared up. Mr. Brezinski stated that he has the receipts from Al's Septic showing when they had the holding tank pumped out.

E. Hawkins stated that the current application has to be taken on its merit. The DES issue concerning the water well, dry well and holding tank has not been resolved so the Board has to decide to accept the application as applied or to include the non-compliance issues. M. Ford stated that if we include the dry well then the water well is 73' from the holding tank. That water is not being used for drinking. He stated that when he visited the site there was a bin on the south end of the mobile home that had water jugs in it that were used for drinking water. He stated that they could put a condition on the approval that the well not be used for drinking water and can only be used for showers and doing dishes. That condition could be registered at the Court House. The well is not creating any health issues. E. Hawkins stated that the issue is still open and whether that factors into the application for the deck is up to the Board. P. Harris wanted to know what staff's input is on this issue. C. Daigle stated that the septic is in violation of the State permit because the State septic approval prohibited having a well on property and there is no permit for the dry well. M. Ford stated that the situation is pre-existing before zoning. C. Daigle stated that the Brezinski have addressed the issue of the holding tank. It is intact but they have no permit for the drywell. The permit for the holding tank prohibits having a well on the property. It is a

violation of the septic permit. M. Ford stated that they can pump from the lake. C. Daigle explained that this is a State law and they have to go to DES to straighten out the permit. Mr. Brezinski stated that it is ok for the holding tank but not for the dug well. He explained that the previous owner lived on Rte 106 and was pulling water from the lake. Mr. Brezinski stated that he dug the shallow well. He stated that he has called and talked to DES and no one has gotten back to him.

N. Patten suggested giving the applicant thirty days to get permits for the wells. C. Daigle stated that thirty days is a short time for them to hire a septic designer and get what they need from the State. N. Patten suggested tabling the application for six months and they not use the well during that time. The Brezinski's are also leaving now for the winter.

MOTION: M. Ford moved to table the application to March 24, 2010 to allow the applicant time to resolve the environmental issues.

The motion was not seconded.

C. Daigle stated that turning off the water can be a health issue. P. Oberhausen stated that the well, septic and holding tank was a concern the neighbor had when Mr. Brezinski came before the Board the last time. The neighbor was concerned that there would not be enough room for her well and septic if the Brezinski were allowed to have their addition. C. Daigle stated that the issue was resolved and the addition would not prohibit the neighbor from having their septic. P. Oberhausen stated that it is a health issue that has been going on for years. Because of the issues with the deck they can resolve the outstanding issues at one time. E. Hawkins stated that as a condition of action for the deck could they require the applicant to close the drywell. He suggested that the applicant send a certified letter to the State requesting the information on what needs to be done to close the well and get septic approval. Mr. Brezinski stated he can go to Concord to get that information. E. Hawkins stated that the Board would need proof on what the requirements are to get approval for the well and septic and proof that the well is permanently closed. The compliance issues have to be resolved. Mr. Brezinski has to ask the State for what the procedure is to close a dry well. The dry well is only 10' from the holding tank. M. Ford stated that the water well is down slope from the dry well. P. Harris stated that it has been three years and the owners have not resolved the outstanding issues. C. Daigle stated that the town needs something from the State or a licensed designer that what is on the site is legal. Mr. Brezinski stated that he will talk to someone in Concord to find a resolution. P. Harris stated that he needs to inform the town on what is being done.

P. Oberhausen stated that this is a summer home and they are going back to their home. This has been going on for years and in 2006 they tabled the application and nothing got done. The problem is not getting solved. Mrs. Brezinski wanted to know if something has to be done right now. P. Oberhausen wanted to know if not then when will it be done. E. Hawkins stated they can clear up the deck issue and follow up with the septic issues by certified mail. They can work on it all winter. The options the Board has tonight are to table the application to time certain or to put a condition on the action the Board takes. Mr. Brezinski stated that they cannot work on the water issue if they have no water. E. Hawkins stated that they need to send a certified letter to the State asking them to outline the procedure needed to bring the water and septic issues into compliance. They need to copy the correspondence and documents to the

Town. M. Ford stated that they need to get a permit for the water well and holding tank. C. Daigle stated that the holding tank is no longer valid because the approval has been violated by having the well on the site. The drywell, water well and holding tank issues all need to be resolved. P. Oberhausen stated that if they sold the property they would be responsible for the outstanding issues. He reiterated the fact that the last time the applicant was before the Board he was going to correct the septic and well issues.

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

The Board discussed the applicant not using the property for the next six months until they correct the environmental issues. E. Hawkins stated that this is an after the fact deck and the Board can act on that issue today. M. Ford withdrew his motion. P. Oberhausen stated that the applicant does not have to wait until March to work on this issue he can work on it from home by certified letters or phone calls. Mrs. Brezinski stated that they would work on the issues and will be back before the Board in March.

BOARD ACTION – FREDERICK & CLAUDETTE BREZINSKI:

- MOTION:** M. Ford moved to table the following applications to March 24, 2010 at 7 PM to allow the applicant time to get the necessary DES permits for the dry-well, holding tank and water well or their removal.
1. A Special Exception of Article 10.A.3.c of the Zoning Ordinance to allow a deck and stairs (northside) closer (33.04') to the front property line than allowed (50') but not closer than the existing structure.
 2. A Special Exception of Article 10.A.3.c of the Zoning Ordinance to allow a deck and stairs (northside) closer (23.24') to the northside property line than allowed (25') but not closer to than the existing structure.
 3. A Variance of Article 5 Table 2 of the Zoning Ordinance to allow a deck with ramp (southside) closer (12.43') to the south side property line than allowed (25') but not closer than the existing structure.
 4. A Variance of Article 5 Table 2 of the Zoning Ordinance to allow a deck with ramp (southside) closer (33.10') to the front property line than allowed (50') but not closer than the existing structure.

The motion was seconded by N. Patten and carried. (3-1-1) M. Ford abstained and P. Harris denied.

OTHER BUSINESS:

BOARD'S ACTION - MINUTES:

P. Oberhausen made a motion to approve the minutes of July 22, 2009. N. Patten seconded. Carried (5-0)

RULES OF ADMINISTRATIVE PROCEDURE:

C. Daigle stated that the Board has received a draft of the proposed Rules of Administrative Procedures.

Some of the changes include recording the decision in the Registry of Deed. The rules have been updated to be more in compliance with law and their operating procedure. The model is based on OEP regulations. E. Hawkins stated that staff has done a good job.

C. Daigle highlighted some of the other changes. The applicant is required to supply more copies of the application. This will allow each Board member to have a copy. The clear notice calculation date has been defined. There are many more changes to make the process easier for the applicants and Board members.

MOTION: P. Oberhausen moved to accept the Rules of Administrative Procedure as written.

The motion was seconded by N. Patten and carried. (4-0-1) M. Ford abstained.

FEES:

C. Daigle explained that currently the Zoning Board application fee is \$100 per structure not per approval. Some structures have as many as six different needs for approval. The more approvals needed per structure the more staff time is involved reviewing the application and communicating with the surveyor to make sure all the necessary approvals are applied for. There is an increase in supply and noticing cost. C. Daigle suggested increasing the fees to \$100 for the first approval and \$50 for each additional approval per structure. M. Ford wanted to know if staff has looked at what other towns are charging. C. Daigle stated that they have not checked with other towns. She explained that it is costing more for multiple approvals and staff is suggesting a smaller fee on additional approvals because of the complexity of the application and having to go back and forth with surveyors to make sure that all the required dimensions are on the survey so the applicant doesn't have to come back to the Board for additional approvals.

M. Ford stated that if the fees are too expensive people will not get the required approvals and there will be more after the fact applications. L. Couture stated that a good amount of the applications are already after the fact ones. E. Hawkins suggested having additional fees for after the fact applications. The Board discussed imposing a penalty for after the fact applications and the fact that some applicants don't know the rules and are unaware of the regulations. The discussion centered on this being a democracy and people having to be aware of the rules. If the rules are not followed then violators must be cited. Staff noted after-the fact fees are already applied during the building permit process.

MOTION: L. Couture moved to increase the approval fees to \$100 for the first approval and \$50 for each additional approval per structure.

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

CUSTOMER SERVICE SURVEY:

The Board received a copy of a flow chart that show the process an applicant must go through when applying to the Planning Board, Zoning Board or for a building permit. The flow chart is a result of a suggestion a customer had to outline the process to make it more user friendly.

LANDINGS:

M. Ford stated that a 4' x 4' landing is not big enough to open a storm door or if someone has a handicap. C. Daigle explained that the handicapped get what they need to access a building. She explained that the Board in the past didn't allow anything in the setback and now they allow a 4' x 4' deck. M. Ford stated if they allowed a 4' x 6' landing it would allow space to open a storm door and a place to stand on the deck. The Board discussed that allowing bigger decks might encroach on abutters and they have to balance the property owners rights with the abutters rights. M. Ford agreed and stated that is why the Zoning Board is here is to grant relief.

LAW LECTURES:

The Board received copies of the Law Lecture handouts addressing the new variance requirements that go into effect January 1, 2010.

ADJOURNMENT:

MOTION: On a motion by P. Oberhausen, seconded by M. Ford, it was voted unanimously to adjourn at 8:46p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy