



# BELMONT LAND USE OFFICE

## ZONING BOARD OF ADJUSTMENT

Wednesday, March 25, 2009  
Belmont Corner Meeting House  
Belmont, NH 03220

Present: Vice Chairman P. Oberhausen; Members N. Patten, L. Couture and M. Ford;  
Alternate P. Palombo.  
Absent: Chairman P. Harris (E), Alternate E. Hawkins (E).  
Staff: C. Daigle.

The Vice Chairman opened the meeting at 7pm and appointed P. Palombo as a voting member for the evening.

### **ABUTTERS HEARING – James Chapman:** Request for:

- A. A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a garage closer (23.1') to the front property line than allowed (50'). ZBA # 3908
- B. A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a garage closer (9.8') to the side property line than allowed (12.5'). ZBA # 4008

Property is located at 26 Sunset Drive in an "RS" Zone, Tax Lot 104-058.

Mr. Ryan Benson presented the application. He explained that the Chapmans also have a property on Dutile Shore Road. They want to retire there, but there is no storage room. The main reason for this garage is storage. They have seven grandchildren and they have quite an array of water craft and boats. The property on Dutile Shore Road does not have room to store anything, having only a one-car garage. The purpose is storage. Mr. Chapman would also like to have a recreation room above the storage area as well. The building will be 20' x 30' and will encroach into the front and side setbacks. They feel this is the best location because of a very large maple tree between the house and garage site. They want to keep the tree so they need to be outside of that root system. In that location the garage is flush with the front of the house optimizing parking space. Moving it away from the side line would make access to the garage difficult. They are open to options.

The building would have a finished recreation room with a pool table. They would also like to have a half bath, shower, sink, etc for cleanup. M. Ford noted it could then be used as a temporary dwelling just by adding some bunk beds which would be a violation. There would be other issues involved such as needing to be built to different codes even to be used overnight.

The Vice Chairman opened the hearing to public comment. There were no abutters present. There being no further questions or comments the Vice Chairman closed the public hearing.

**BOARD ACTION – JAMES CHAPMAN:**

**MOTION:** M. Ford moved to grant two Variances of Article 5 Table 2 of the Zoning Ordinance to construct a garage closer (23.1') to the front property line than allowed (50'), and closer (9.8') to the side property line than allowed (12.5') on the following basis:

1. A Variance will not decrease surrounding property values, because the garage will not obstruct any views of the lake.
2. A Variance is not contrary to the public interest; because it results in no safety or health issues and there has been no opposition.
3. Denial would result in unnecessary hardship to the owner because
  - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property because the lot size prevents other alternatives;
  - B. and the benefit sought by the applicant cannot be achieved by some other reasonably feasible method, because the lot size prevents other alternatives.
4. A Variance will result in substantial justice being done because the applicant's property will be protected from the weather and theft. Any loss to the general public is outweighed by the benefit to the applicant.
5. A Variance will observe the spirit and intent of the ordinance, because it observes zoning goals to protect safety and health.

And with the following conditions:

- A. All property bounds/existing footprint certified during construction as required.
- B. A copy of the signed NH DES permit to be submitted and all conditions to be adhered to during construction and occupancy of the site.
- C. No structures or additions that do not meet setback, except for those approved herein are allowed.
- D. No dwelling or living area of the garage or second floor is permitted

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

Mr. Benson asked for a clarification as to whether the building could be connected to municipal sewer and a bathroom installed as proposed under this approval. The Board noted that it could not be.

**ABUTTERS HEARING – Roy & Mary Lerner For Winnisquam Beach Campground:** Request for:

- A. A Variance of Article 4 of the Wetlands Ordinance to erect an RV in excess of 320 sf closer

- (19.3') to the highwater mark than allowed (50'). ZBA #0309Z.
- B. A Variance of Article 8.B.9.f of the Zoning Ordinance to erect an RV in excess of 320sf closer (.7') to an unrelated shed than allowed (20'). ZBA # 0609Z.
  - C. A Variance of Article 8.B.9.f of the Zoning Ordinance to place a shed closer (10.8') to an internal road than allowed (15'). ZBA # 0709Z.
  - D. A Variance of Article 8.B.9.f. of the Zoning Ordinance to place a shed closer (7.1') to the internal road than allowed (15'). ZBA # 0809Z

Property is located at 7 Morway Drive in an "RS" Zone, Tax Lot 117-015-000-136.

Mr. & Mrs. Lerner were present for this application. Mr. Lerner explained that this is a preexisting nonconforming lot. They have an 18 yr old 38' travel trailer with a box size of 35' with two bedrooms, a 5-foot slide and porcelain toilet. The manufacturer is no longer in existence. In order to find a 35' unit it would come with multiple tipouts and be as large as the one they are proposing anyway. They would like to place a slightly larger travel trailer but he has to move an existing shed. The smaller shed is really on his neighbor's property so he will move it back onto his site so it does not interfere with his neighbor's usage. They were not aware that the shed was not on his site until they had the lot surveyed. They want to place a 3'x8' shed in front of the other existing shed just to store chemicals, gasoline and other items of a combustible nature. He also brought photos that show some other sheds along the road have doors that practically open into the road. His proposal is in keeping with the park look.

The Vice Chairman opened the hearing to public comment and asked if anyone in the audience had any questions or comments. No abutters were present.

L. Couture asked about the existing buildings. What type of shed is the small one? Mr. Lerner answered that it will be poly vinyl. It will be placed more than 50' from the water if there were to be a spill. L. Couture asked about the length of the proposed unit. The floor length is 37.8' but it has a bay window so that makes a total length of 40'. It does not include the tongue. So it's 3'6" larger than the existing unit. It will be no closer to the water, just closer to the road. They will still have enough space for parking two vehicles. P. Palombo asked about what will be stored in the sheds. The larger shed is used for water sport equipment, an extra table, etc. P. Palombo noted her concern about the storage of contaminants in the shed and its proximity to the lake. L. Couture asked about the small tree. Mr. Lerner said it will not be taken down. P. Oberhausen asked about the form of heat/cooking fuel. Mr. Lerner noted they use propane and that it will be placed slightly closer to the lake than its current location. It will be between the two slideouts near where it is now. It is a 100lb cylinder. P. Oberhausen noted the safety issue with propane in such close quarters and suggested that they consider using electric.

There being no further comment the Vice Chairman closed the public hearing.

**BOARD ACTION – Roy & Mary Lerner For Winnisquam Beach Campground:**

- MOTION: L. Couture moved to grant the following applications for:
- A. A Variance of Article 4 of the Wetlands Ordinance to erect an RV in excess

- of 320 sf closer (19.3') to the highwater mark than allowed (50'), and
- B. A Variance of Article 8.B.9.f of the Zoning Ordinance to erect an RV in excess of 320sf closer (.7') to an unrelated shed than allowed (20');

on the following basis:

1. A Variance will not decrease surrounding property values, because the proposal is to replace a trailer that is hazardous.
2. A Variance is not contrary to the public interest because it is not an exorbitant increase in size given the 20 year span in years.
3. Denial would result in unnecessary hardship to the owner because of the preexisting condition of the current unit, and
  - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property, and
  - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because the whole unit needs to be replaced.
4. A Variance will result in substantial justice being done because the owner will be able to enjoy their property.
5. A Variance will observe the spirit and intent of the ordinance because it allows the owner to use the whole lot and there were no objections from abutters.

And with the following conditions:

- A. All property bounds/existing footprint certified during construction as required.
- B. No structures or additions that do not meet setback, except for those approved herein are allowed.
- C. No fuel source or accessory structure shall be placed between the structures.
- D. No concrete pads are allowed by this action.

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

**MOTION:** N. Patten moved to grant the request a variance of Article 8.B.9.f of the Zoning Ordinance to place a shed closer (10.8') to an internal road than allowed (15') on the following basis:

1. A Variance will not decrease surrounding property values, because the sheds are there and there are no objections.
2. A Variance is not contrary to the public interest because they will be able to enjoy their property.
3. Denial would result in unnecessary hardship to the owner because the owner needs these sheds to store anything that can't be kept under or around the trailer.

- 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 room and he is using his property as it is, and
  - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because the property is already being used to its fullest.
- 4. A Variance will result in substantial justice being done.
  - 5. A Variance will observe the spirit and intent of the ordinance.

And with the following conditions:

- A. All property bounds/existing footprint certified during construction as required.
- B. No structures or additions that do not meet setback, except for those approved herein are allowed.
- C. No fuel source or accessory structure shall be placed between the structures.
- D. No concrete pads are allowed by this action.

The motion was seconded by L. Couture and carried. (4-0-1 P. Oberhausen abstained)

The members discussed the storage of flammables in the smaller shed. Mr. Lerner stated they would have two 5-gallon gas cans, but they are usually not both full at the same time. The cans remain there, empty, over the winter.

**MOTION:** P. Palombo moved to grant the request for a Variance of Article 8.B.9.f. of the Zoning ordinance to place a shed closer (7.1') to the internal road than allowed (15') on the following basis:

- 1. A Variance will not decrease surrounding property values; it will enhance values because the shed will be on their own property and not disturb anyone's view.
- 2. A Variance is not contrary to the public interest because all of the homes are similar in nature.
- 3. Denial would result in unnecessary hardship to the owner because such things have to be stored somewhere and they are better stored inside than under the trailer.
  - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property; and
  - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because they are very small nonconforming lots and they just don't have the space to build somewhere else and they do need to store the gasoline.
- 4. A Variance will result in substantial justice being done because it will allow them to get the most out of their property.

5. A Variance will observe the spirit and intent of the ordinance as it really enhances their recreational use of the property.

And with the following conditions:

- A. All property bounds/existing footprint certified during construction as required.
- B. No structures or additions that do not meet setback, except for those approved herein are allowed.
- C. No fuel source or accessory structure shall be placed between the structures.
- D. No concrete pads are allowed by this action.

The motion was seconded by N. Patten and carried. (3-1-1 P. Oberhausen in opposition because of the contamination potential and M. Ford abstained because he had not been able to access the site to view the proposal)

**ABUTTERS HEARING – Susan Youssef:** Request for:

- A. A Variance of Article 4 of the Wetland Ordinance to allow a commercial workshop/shed addition closer (32') to the wetlands than allowed (35'). ZBA # 0409Z.
- B. A Variance of Article 4 of the Wetland Ordinance to allow a commercial workshop/shed addition closer (32.1') to the stream than allowed (50'). ZBA # 0509Z.
- C. A Variance of Article 5 Table 2 of the Zoning Ordinance to allow a commercial workshop/shed addition closer (40.8') to the Sun Lake Drive ROW than allowed (50') ZBA # 0909Z.

Property is located at 252 Daniel Webster Highway in a "C" Zone, Tax Lot 102-11.

Mr. Bryan Bailey presented the application. Mr. & Mrs. Youssef were also present. Mr. Bailey explained the use predates zoning. The site plan originally submitted brought to light that two sheds at the rear of the building were constructed without permits and do not meet setbacks. The existing property uses include retail sales, seasonal dock construction and sales, a 2-bedroom second floor apartment and an exterior contractor's yard. He explained the location on Rte 3. The property has been owned by the Youssefs since the 1970s and this proposal can best be characterized as an after-the-fact request for an accessory building workshop and storage building to be allowed to remain.

The proposal is also necessary to complete the process of application to the Planning Board for site plan approval. The Town and the Youssefs have been corresponding for a number of years regarding non-compliance of the site and they would like to get the property into compliance with all the current regulations and establish a written record on which they and the Town can rely as a base line to evaluate this property in the future. The goal is to complete this process in 2009.

Mr. Bailey explained that there has been quite a bit of activity over the years as it pertains to the perennial stream running through the property. It has been determined that a permit was obtained from NH DES in the 1990s to allow for a 36" culvert to be placed basically encasing the stream. The stream shows adjacent to the Clark property. The culvert is shown as a dotted line running through the property and it daylight on the Bladecki property to the southwest. They had to have a local wetlands scientist determine the exact location of the wetlands and the stream because they

have been so disturbed over the years.

Mr. Bailey read the basis for the Variances from the written application form (see application). He noted that the addition is in line with the existing building and can only be seen from Daniel Webster Highway when travelling south. He stressed that the westernmost shed has one wall missing. It's a roof and two walls attached to the existing building. These additions are not on permanent foundations, only cement blocks. There is no floor in the sheds. They are for covered storage. The primary business is constructing seasonal docks. This is where they are fabricated and sold. Granting the variance will ensure that the continued operation will be measured against a well-documented plan.

Mr. Youssef and Mr. Bailey have discussed the time frame as to when these sheds were actually constructed. The shed closest to the highway was built in the early 1990s well over the ten years required if they were filing for an equitable waiver. The second shed doesn't meet that ten-year time frame. This request for variance is not going to bring anything new to the neighborhood. It is going to be a positive movement and will keep everything in good order.

One thing that has already taken place on site is that the yard has been cleaned up and the equipment has been placed under covers. Mr. Craig Bailey, a Professional Engineer, has been involved heavily in the site plan process. The dimensions being varied are minimal, 32' instead of 35', and 32.1' instead of 50' and again the stream has been much altered over the years. The ROW setback is 40.8' instead of 50'.

Mr. Bailey discussed the Sun Lake Drive ROW. It is a private ROW not a public way. So this is not a setback issue to DW Highway which is a very busy highway, where Sun Lake is a very low use private road.

P. Oberhausen stated that he disagreed that the construction was done without knowledge of the need for permits. The owner was put on notice by the Planning Board but it was ignored. As to the inlet of the stream, there is no information on where the culvert goes. The flow comes from the Mall area. He asked if snow storage was on top of the culvert since there's no real knowledge of where/how it crosses the property.

Mr. Bailey noted that he did not believe that the snow storage was over the culvert. Mr. Youssef stated that the culvert was installed in a straight line. Mr. Bailey noted it is a 36" reinforced concrete culvert and they are usually installed in a straight line. He reiterated that these buildings are not on foundations and that there was a permit for the culvert installation. But the property has been so heavily modified and there are no surveys that show where the stream originally was. That's why they had to bring in an expert to determine the status of the stream. It's impossible to follow it further north than the Clark property. The watershed goes up to the crest of Daniel Webster Highway so there's quite an area of collection. But nowhere does it look like a nice brook.

With regard to the time frame Mr. Bailey noted that Mr. Youssef did make an application in the early 1990s for an addition to the main structure. That was not followed up on at that time. They

didn't build that building, but they did add on sheds. They are admitting to that. The buildings have caused no problems. They now need the permits due to the value of the property. Mr. Bailey stated the variance was not to expand but to simply substantiate what exists there. The property has been used in a commercial sense since the 1970s. This process is to move forward and keep the value of the property secure. The value benefits both the owners and the Town. If anyone buys the property the sheds will probably be the first thing to go, but it serves the current owner.

The Vice Chairman opened the hearing to public comment. There were no abutters present. C. Daigle disclosed that she had received a call today from Mr. Brouillard, an abutter and the owner of Sun Lake Drive. Mr. Brouillard stated that he is not in opposition to these variances. However, he plans to approach the Planning Board during the Site Plan process to ask that a fence and landscaping (shrubs in front of the fence) be installed along Sun Lake Drive as there is a significant visual impact along that side of the property.

M. Ford asked to confirm that it is a private road and is owned by Mr. Brouillard. This was acknowledged by Mr. Bailey.

N. Patten asked what is stored in the workshop addition. Mr. Bailey explained that the most rear shed is used to store saw horses and is the assembly area where they assemble the docks. Nothing hazardous is stored there. L. Couture asked about the dimensions. Mr. Bailey explained that the rear addition is 15.5' x 24.4' long and the middle shed is 21' x 24.4'/27' as there is a bump out. He showed that on the plan. L. Couture clarified that the Board is approving the footprint. Staff agreed it was the footprint and number of stories that the variance would cover. Upon inquiry staff also stated that there is no State permit necessary for a building constructed in proximity to the wetlands. Mr. Bailey suggested that the Board could further condition the Variances to just what type of structure/use is currently there.

C. Daigle explained that the Town's goal is compliance. There has been a lot of discussion about the history of the violation, but the Town's goal is simply to have the site brought into compliance. If the Variances are granted that will eliminate the dimensional violations and the owner can move on to the Site Plan process.

Mr. Bailey reiterated that the owner is not looking for a variance that would permit some sort of enhanced structure in the future. They would accept conditions.

There being no further comment or question the Vice Chairman closed the public hearing.

### **BOARD ACTION – Susan Youssef:**

**MOTION:** P. Oberhausen moved to grant a Variance of Article 4 of the Wetland Ordinance to allow a commercial workshop/shed addition closer (32') to the wetlands than allowed (35') on the following basis:

1. A Variance will not decrease surrounding property values because the

- building has been there for numerous years.
2. A Variance is not contrary to the public interest since there are no abutters objecting. In fact an abutter agreed to the proposal with some improvements for visual buffering.
  3. Denial would result in unnecessary hardship to the owner because it would result in a request that it be taken down which would be a financial hardship.
    - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property as this will make the structure legitimate and
    - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because the structure is already there.
  4. A Variance will result in substantial justice being done.
  5. A Variance will observe the spirit and intent of the ordinance.

And with the following conditions:

- A. No structures or additions that do not meet setback, except those approved herein are allowed.
- B. All other necessary permits including Site Plan are required.
- C. Owner shall participate in annual aquifer inspection program.
- D. The structure will remain single story with the same measurements.
- E. The use is to remain a minor accessory use (storage and assembly) to the primary commercial use.

The motion was seconded by N. Patten and carried. (4-1 with P. Palombo in opposition)

**MOTION:** P. Palombo moved to grant a Variance of Article 4 of the Wetland Ordinance to allow a commercial workshop/shed addition closer (32.1') to the stream than allowed (50') as it meets all the criteria.

1. A Variance will not decrease surrounding property values because the building is already there.
2. A Variance is not contrary to the public interest because the stream and buildings are already there.
3. Denial would not result in unnecessary hardship to the owner because
  - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property; and
  - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because the building is already there.
4. A Variance will not result in substantial justice being done because the building is already there.
5. A Variance will observe the spirit and intent of the ordinance because the

building exists.

And with the following conditions:

- A. No structures or additions that do not meet setback, except those approved herein are allowed.
- B. All other necessary permits including Site Plan are required.
- C. Owner shall participate in annual aquifer inspection program.
- D. The structure will remain single story with the same measurements.

The motion was seconded by M. Ford and carried. (4-1 L. Couture in opposition)

**MOTION:** N. Patten moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to allow a commercial workshop/shed addition closer (40.8') to the Sun Lake Drive ROW than allowed (50') on the following basis:

- 1. A Variance will not decrease surrounding property values because the property is existing and there are no abutters in opposition.
- 2. A Variance is not contrary to the public interest because it will bring the site into compliance with no expansion of the nonconforming structure.
- 3. Denial would result in unnecessary hardship to the owner because he is trying to come into compliance and has no other choice.
  - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property because the buildings are existing; and
  - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because the building is already there.
- 4. A Variance will result in substantial justice being done because it will help bring compliance.
- 5. A Variance will observe the spirit and intent of the ordinance.

And with the following conditions:

- A. No structures or additions that do not meet setback, except those approved herein are allowed.
- B. All other necessary permits including Site Plan are required.
- C. Owner shall participate in annual aquifer inspection program.
- D. The structure will remain single story with the same measurements.

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

**OTHER BUSINESS:**

- 1. **Minutes:**

MOTION: On a motion by P. Palombo, seconded by M. Ford it was voted to accept the minutes of February 18, 2009 as written. (3-0-2 L. Couture and N. Patten abstained)

2. **Elections:**

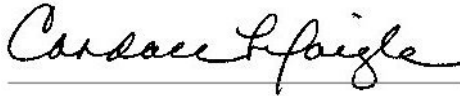
MOTION: On a motion by P. Oberhausen, seconded by L. Couture it was voted unanimously to reelect Peter Harris as Chairman for the upcoming year. (5-0)

MOTION: On a motion by P. Oberhausen, seconded by L. Couture, it was voted unanimously to elect Norma Patten as Vice Chairman for the upcoming year. (4-0-1 N. Patten abstained)

3. **Adjournment:**

MOTION: On a motion by L. Couture seconded by M. Ford it was voted unanimously to adjourn at 8:37pm. (5-0)

Respectfully submitted,



Candace L. Daigle, Town Planner