

ZONING BOARD OF ADJUSTMENT

Wednesday, June 25, 2008
Belmont Corner Meeting House
Belmont, N.H.03220

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

The vice-chairman opened the meeting at 7p.m. and appointed P. Palombo as a voting member for tonight's meetings.

Abutters' Hearing – Jameson Grant for Mallard's Landing: Request for a Variance of Article 5 Table 2 of the Zoning Ordinance to replace a manufactured home closer (17.2') to the rear property line than allowed (25') but not closer than the existing unit. Property is located at 56 First Street in an "RS" Zone, Tax Lot 110-002-000-237, ZBA # 1208.

Mr. Jameson Grant and Mr. Bryan Bailey presented the application.

Mr. Grant explained that there was a 35' x 16.5' trailer with a four-season porch on the site and they want to replace it with a double wide manufactured unit. They are on town water and sewer. The new unit meets the front and side setbacks but encroaches on the railroad ROW. The proposal is 1" further away from the railroad but more of the unit encroaches on the ROW. They need a variance because the expansion is 43% which is more than the 40% expansion allowed by special exception.

Mr. John Varoski, an abutter, stated that he has no objections to the proposal. It will be an asset to the Association and the town.

P. Oberhausen stated that in the future he would like to see no further encroachments in the railroad ROW. No sheds or other accessory building would be allowed.

M. Ford wanted to know about the shed that is on the site. Is it going to be replaced and is it going to be bigger. Mr. Grant explained that the building permit that M. Ford saw on the shed is actually the demolition permit for the house. He had no place to put it when he took the unit down.

M. Ford wanted to know about the sewer easement. Mr. Grant stated that the easement runs

parallel to the tracks. M. Ford wanted to know how far the sewer easement is from the proposal. Mr. Bailey stated that it is 7.2' from the easement and there is more than enough room to maintain and repair the sewer lines.

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

BOARD ACTION – JAMESON GRANT FOR MALLARDS LANDING:

MOTION: N. Patten moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to replace a manufactured home closer (17.2') to the rear property line than allowed (25') but not closer than the existing unit as it meet all the criteria.

1. A Variance will not decrease surrounding property values because they are replacing an older unit with a newer one.
2. A Variance is not contrary to the public interest because it will increase property values in the neighborhood.
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 structure is situated between the road and the railroad ROW.
and
 - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because of the cost factor.
4. A Variance will result in substantial justice being done because the restrictions would interfere with reasonable use of the land.
5. A Variance will observe the spirit and intent of the ordinance because it is the proper use of the property.

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. Palombo and carried. (5-0)

Abutters' Hearing – Cameron & Diana Cormier: Request for a Variance of Article 4 of the Wetlands Ordinance to permit an existing deck closer (11.6') to the highwater mark than allowed (50'). Property is located at 6 Elaine Drive in an "RS" Zone, Tax Lot 107-124, ZBA # 1308.

Atty. Patrick McNicholas presented the application.

Atty. Patrick McNicholas explained that the applicant purchased the property in 2005. This is an

after-the-fact application so it will be hard to meet the five criteria. This is a small variance. The situation is that there was a 10' x 16' deck on the cottage in the 1980's. In 1992 the town records show it as a 10' x 20' deck and now it is 11' x 20'. This was done prior to Cormier buying the property. The entire lot is within 50' of the water so anything that is built on the lot would not meet setbacks. In 2002 someone voiced a complaint to the Town and the owners were notified of the violation. In 2005 the lot was sold and the old owners did not tell the Cormiers that there were any outstanding issues or violations. The deck is within the 50' setback requirement but the town doesn't know when it changed from a 10' x 16' deck to a 10' x 20' deck. The proposal is to leave the deck where it is. When they were notified of the violation they applied for an after-the-fact building permit which was denied. They want to leave the deck where it is because the purpose of the wetland ordinance is to keep from disturbing the wetland and by removing the deck they will cause more damage to wetland than leaving it alone.

Mr. McNicholas stated that the variance is not contrary to the public interest because more damage will be done to the wetlands by not leaving the deck alone. It has been there for 16 years. The Wetlands Ordinance serves to protect the disturbance of the area around water bodies and removing the deck would disturb the wetlands. The special conditions of the property are that the 11' x 20' deck already exists and has been there since 1992. They were not aware of the violation when they brought the property. The benefit sought by the applicant cannot be achieved by some other method because this is not a case where they want to increase a setback violation but to allow the existing encroachment to remain because they were not aware of the violation. The deck has been there for 16 years and the area is better off undisturbed. The spirit of the ordinance will be observed because they won't be punished for an unknown violation. Substantial justice will be done because they would be able to keep what they purchased. The deck has no negative impact to property values because it add value to the land and would cost more to rebuild it than it did in 1992.

P. Oberhausen wanted to know if the applicant was aware of the letter from the Code Enforcement Officer concerning the stability of the deck because it is not on sona tubes. Atty. McNicholas stated that nothing in that area would meet today's building requirements. The deck is more sound than most decks. If they built it today they would have to meet the standards. It is a solid deck.

L. Couture wanted to know what kind of wood the deck is made out of. Atty. McNicholas stated that it is all pressure treated wood. M. Ford stated that it is a nicely kept deck and can't be seen by anyone except from the lakeside. Atty. McNicholas stated the deck is on 4" X 4" concrete blocks with a 2" x 8" subfloor. L. Couture stated that nothing stays on a pressured treated deck. Mrs. Cormier stated that nothing has moved in the last few years and with the amount of rain the water has gone right through the underneath of the deck.

P Oberhausen stated that by granting the variance they would be giving relief to the owner.

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

BOARD ACTION – CAMERON & DIANA CORMIER:

MOTION: N. Patten moved to grant a Variance of Article 4 of the Wetlands Ordinance to permit an existing deck closer (11.6') to the highwater mark than allowed (50') as it meets all the criteria.

1. A Variance will not decrease surrounding property values because it has been part of the neighborhood for 16 years.
2. A Variance is not contrary to the public interest because there were no objections from abutters.
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 they can enjoy the deck and it can remain in its current location.
and
 - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because it is already there and makes no sense to tear it down.
4. A Variance will result in substantial justice being done because they were not aware of the 1992 violation.
5. A Variance will observe the spirit and intent 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.
3. No further expansion of deck and must comply with construction standards applied by Building Official.

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

Atty. McNicholas stated that if they have to add sona tubes for the certificate of occupancy they will disturb the wetlands more than by leaving it alone. M. Ford stated that if the blocks are stacked below frost level then it is not an issue. They don't have to be anchored. Atty. McNicholas stated that he can see 2 blocks above the ground but he doesn't know what is below. M. Ford stated that the deck was put there sometime between 1992 and 2005 and the life expectancy of a deck 15 years so when they have to replace it they would have to meet the building codes at that time. C. Daigle stated that they have to acknowledge the Code Enforcement Officers comments. N. Patten stated that he is referring to today's building the codes. Could they stipulate that they would have to rebuild to today's standard if they rebuild it. L. Couture stated that they would have to take the deck down to put in sona tubes. She wanted to know how many support post there are. Atty. McNicholas stated that the deck is very stable because there are so many post under it but he doesn't know how many there are. M .Ford used the pictures to estimate around 15 posts are being used for support. Atty. McNicholas stated that if the deck has to be rebuilt then it would be reasonable at that time to meet the building codes but to do so now would disturb the wetlands more than leaving it alone. C. Daigle stated that it is not the fault of the current

owner but there would be no relief if they couldn't get a certificate of occupancy to use the deck because it doesn't meet code. The Board does not have the authority to negate the certificate of use requirements. The applicant should meet with the Code Enforcement Officer to determine what his requirements are.

Abutters' Hearing – Richard Morway for County Construction: Request for a Special Exception of Article 11.A.3.c of the Zoning Ordinance to reconstruct a pre-existing nonconforming (water setback) residential garage adding useable space (a second floor) in a preexisting nonconforming footprint converting the structure to a single family dwelling use and removing the manufactured home from the property. Property is located at 29 Morway Lane in an "RS" Zone, Tax Lot 115-002, ZBA #1408.

At least three members have viewed the site.

Mr. Richard Morway and Mr. John Suldenski presented the application.

Mr. Suldenski stated there is a three-bedroom mobile home, a large shed, a small shed and garage on the site. The large shed was used as living space and they want to use the existing footprint of the garage and convert it to a two-story single family house.

P. Oberhausen wanted to know if the sheds are going to be removed. Mr. Suldenski stated that the sheds are staying but the manufactured home is being removed. P. Oberhausen stated that in 1989 the Railroad Department stated that the shed was on non-leased property. Mr. Minor stated that they are meeting with the Railroad Department in the morning and will do whatever they need to do. P. Oberhausen stated that the history of the lot shows that they applied for a building permit on November 28, 2007 and that application was closed. Mr. Morway stated that they didn't have the plans at that time that is why the application was closed.

P. Palombo stated that if the shed is being rebuilt it would have to meet building codes. M. Ford wanted to know if the existing garage has a foundation. Mr. Suldenski stated it has a foundation under it and met code at the time it was built.

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

BOARD ACTION – RICHARD MORWAY FOR COUNTY CONSTRUCTION:

MOTION: P. Oberhausen moved to grant a Special Exception of Article 11.A.3.c of the Zoning Ordinance to reconstruct a pre-existing nonconforming (water setback) residential garage adding useable space (a second floor) in a preexisting nonconforming footprint converting the structure to a single family dwelling use and removing the manufactured home from the property 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.

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. NH DES Shoreland Protection Waiver to be submitted.
3. Copy of lease from NH DOT/Railroad to be submitted for area where sheds are located or sheds to be removed.
4. No structures or additions that do not meet setback, except for those approved herein are allowed.
5. Manufactured home/decks/additions to be removed within 30 days of CO. Estimate for removal to be submitted, approved by staff and funds escrowed for removal prior to building permit being issued.

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

Abutters' Hearing – Michael & Donna Iacopucci: Request for a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a shed closer (8.5') to the front property line than allowed (50'). Property is located at 69 Tucker Shore Road in a "RS" Zone, Tax Lot 107-005, ZBA # 1508.

Mr. & Mrs. Michael Iacopucci presented the application.

Mr. Iacopucci stated that they are asking for permission to put a shed on his property because they are lacking in storage space because there is no basement in the house. There is not enough room to meet the setbacks from the lake, road or neighbors. Mrs. Donna Iacopucci presented the Board with a letter from the immediate abutter stating they have no objections. Mr. Iacopucci stated that there are a lot of existing sheds on the street that are similar to this proposal.

P. Oberhausen wanted to know why they can't move the shed back another 20'. Mr. Iacopucci stated that it could be moved to meet the 50' setback but they would have to cut down trees and fill in the area. The proposed area is flat and being on the lake makes cutting down tree an issue. The proposal is 8.5' to the front property line but 24' from the pavement. Mrs. Iacopucci stated that when they put the road in it was moved over to the lot across the street. They tried to meet all the setbacks to the lake. They want the shed to look nice and be located so that the abutters can look out their kitchen window without seeing the back of the shed. P. Oberhausen wanted to know what size trees they would have to cut. Mr. Iacopucci stated that they are 6"-8". P. Oberhausen stated that the shed is 24' from the road and only 8' from the property line. What would happen if someday they widen Tucker Shore Road? When plowing the road snow could be pushed up against the shed and cause damage to it. Mr. Iacopucci stated that there are a lot of other sheds a lot closer to the road. Mrs. Iacopucci stated that there is a huge stump on the property that would make it hard to relocate the shed. They would have to cut down more trees if

they relocated the shed. M. Ford stated that if they move it back they could get a bigger shed. Mrs. Iacopucci stated that under the Shoreland Protection Act that goes into effect July 1st they can't make it any bigger or cut any vegetation. C. Daigle stated that if they add fill then a permit from the State would be needed. Mrs. Iacopucci stated that she talked to DES and this is why the shed is where it is. She referred to the pictures they submitted to reiterate how many other sheds are closer to the road. L. Couture stated that she is concerned that the shed is only 8.5' from the road when the setback is 50'. Mrs. Iacopucci stated that if they move it back they would not meet the setback as outlined by DES. C. Daigle stated that the Public Works Director reviewed the application and did not have concerns with it. He has in past voiced his concerns if he had any objections to a proposal. N. Patten stated that Land Use Technician, R. Ball comments suggest that a condition of approval be that the Town has no liability for damages from snow plowing and maintenance due to the close proximity to the road.

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

BOARD ACTION – MICHAEL & DONNA IACOPUCCI:

MOTION: P. Palombo moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a shed closer (8.5') 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 is an improvement to the neighborhood by storing equipment inside.
2. A Variance is not contrary to the public interest because it will improve property values in the neighborhood.
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.
 - and
 - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because of the trees, vegetation and setback requirements.
4. A Variance will result in substantial justice being done because it will enhance the neighborhood by tidying up the site.
5. A Variance will observe the spirit and intent of the ordinance because it is a benefit to all parties involved.

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.
3. No excavation or filling shall occur in conjunction with the construction or placement of the structure. (DES condition)

4. Structure shall not be heated, have electricity or plumbing, or be used as living space. (DES condition)

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

Abutters' Hearing – Michael & Donna Iacopucci: Request for:

- A. A Variance of Article 5 Table 2 of the Zoning Ordinance to permit an existing membrane structure closer (10.1') to the constructed public way than allowed (50'). ZBA # 1608
 - B. A Variance of Article 4 of the Wetlands Ordinance to permit an existing membrane structure closer (3.2') to the wetlands than allowed (35'). ZBA # 1708
- Property is located at 70 Tucker Shore Road in an "RS" Zone, Tax Lot 107-037.

Mr. & Mrs. Michael Iacopucci presented the application.

Mr. Michael Iacopucci stated that they didn't know they needed a permit for a membrane structure. They put it in the same area they store their boat and parallel to an existing garage. This was an economical solution to store their boat. They are locked in this area because of the wetlands behind it and the road in front. They cannot move further back without filling in the wetlands. Mrs. Donna Iacopucci stated that there has been a garage in that area for the last 50 years and this membrane structure is close to it. The garage hasn't been a liability to the town. Even with the snow last year there were no issues.

N. Patten wanted to know how long a membrane structure is good for. M. Ford stated that most are good for 10-12 years and a good one will last 15 years. L. Couture stated that it is close to the road. Mrs. Iacopucci stated that the lot is not wide and they thought this is the best place because of the wetlands. M. Ford stated that the area is heavily wooded and the membrane structure is dark gray making it hard to see. The neighbors can't see it. M. Ford stated that this is a temporary building. C. Daigle stated that there are no temporary structures they all have to meet the same setback requirements. A membrane structure can be more offensive to neighbors when it becomes torn and tattered. If they grant the variance they are granting the footprint. In the future the applicant could replace the membrane with a single story wooden structure. P. Oberhausen stated the Town started regulating membrane structures years ago because membrane structures were popping up all over town instead of garages. C. Daigle stated that they are regulated the same as other structures because they pose the same dangers such as fire or interfering with the neighbor's views. Mr. Iacopucci stated that there are a number of membrane structures in the neighborhood. Mrs. Iacopucci stated that the trees cover most of the structure. N. Patten stated that they won't in the winter. Mrs. Iacopucci stated that it has been there all winter and neighbors knew it was there. P. Oberhausen stated this is a heavily wooded area and they could take down trees and turn the shed around in the opposite direction to get a greater road setback. M. Ford stated they have to be able to access the structure and by turning it they would not be able to back the boat into it without cutting down a lot of trees. Mrs. Iacopucci stated if they turn it around they would have to come back to the Board. C. Daigle stated that they are permitting the footprint for any accessory use. They are permitting a one story 12' x 24' footprint. Mrs. Iacopucci stated that the entire lot is in the wetlands setback.

P. Palombo wanted to know if they are setting a precedent. C. Daigle stated that legally every application is looked at on its own merit's but as this applicant has brought in pictures of other permitted structures it raises the expectation for others to do the same thing based on the specifics of the case.

P. Oberhausen wanted to know the size of garage. Mr. Iacopucci stated that it is 23' x 14'. P. Oberhausen stated that they could put the boat in the garage. Mr. Iacopucci stated the boat is too big. P. Oberhausen stated that he could knock out a wall to make room for the boat or it could be wrapped.

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

BOARD ACTION – MICHAEL & DONNA IACOPUCCI:

MOTION: P. Oberhausen moved to deny a Variance of Article 5 Table 2 of the Zoning Ordinance to permit an existing membrane structure closer (10.1') to the constructed public way than allowed (50') for the following reasons.

1. The structure can be repositioned to be further away from the road.
2. A wall could be removed from the existing garage allowing room for boat storage.
3. Difficulty parking is not a reason to grant a variance.

The motion was seconded by P. Palombo and carried. (4-1) M. Ford opposed.

MOTION: P. Oberhausen moved to grant a Variance of Article 4 of the Wetlands Ordinance to permit an existing membrane structure closer (3.2') to the wetlands than allowed (35') as it meets all the criteria.

1. A Variance will not decrease surrounding property values.
2. A Variance is not contrary to the public interest because a variance is needed in any direction.
3. Denial would result in unnecessary hardship to the owner.
 - 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 setback is 20' from the road and the Board cannot find another method to cover the boat.
4. A Variance will result in substantial justice being done.
5. A Variance will observe the spirit and intent 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 N. Patten and failed (2-3) L. Couture, M. Ford and P. Oberhausen opposed.

OTHER BUSINESS:

BOARD'S ACTION - MINUTES:

L. Couture made a motion to approve the minutes of May 28, 2008. P. Oberhausen seconded. Carried (4-1) N Patten abstained.

STAFF REPORT:

PROPOSED EARTH EXCAVATION REGULATIONS:

C. Daigle informed the Board of the Public Hearing for the proposed Earth Excavation Regulations scheduled for July 14th at 7 pm. Each member received a copy of the proposed regulations and were invited to attend the public hearing.

ADJOURNMENT:

MOTION: On a motion by N Patten, seconded by L Couture, it was voted unanimously to adjourn at 8:54p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy