

ZONING BOARD OF ADJUSTMENT

Wednesday, October 28, 2009
Belmont Corner Meeting House
Belmont, N.H.03220

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

The chairman opened the meeting at 7p.m.

Abutters' Hearing – Jeff & Joyce Baker for Winnisquam Beach Campground Association: Request for:

- A. A Variance of Article 5 Table 2 and 8.B of the Zoning Ordinance to construct a roof over an existing unit closer (11.4') to Unit 114 than allowed (15'). ZBA # 3909Z
- B. A Variance of Article 5 Table 2 and 8.B of the Zoning Ordinance to construct a roof over an existing unit closer (8') to the rear property line than allowed (12.5'). ZBA # 4009Z

Property is located at 17 Dolphin Drive in an "RS" Zone, Tax Lot 117-015-000-115.

Mr. Bryan Bailey and Mr. Jeff Baker presented the application.

Mr. Bailey explained in the property is located in Winnisquam Beach Campground and has been before the Board in the past for other approvals. The site is located on the shoreline behind the docking facility. They are requesting two variances to secure a permit for a roof over the travel trailer. There is very little difference between what exists and what is proposed. They have contacted the Department of Environmental Services (DES) regarding the addition of the roof and they do not need a Shoreland Protection Permit because there is no increase in impervious surface.

P. Oberhausen wanted to know if Mr. Bailey had permission to represent Mr. Baker as he does not see any written permission in the file. Mr. Baker stated that he doesn't present well and would like Mr. Bailey to represent him tonight.

Mr. Bailey explained that the Bakers were before the Board in the past to construct a wood sunroom attached to the travel trailer. The proposal tonight is to create an A frame structure with a metal roof so that the snow slides off in the winter. This is a preexisting nonconforming site and has a prior special exception relative to the sunroom. The roof will be over the trailer not over the sunroom.

Mr. Bailey addressed the criteria for a variance. The proposal is not contrary to the public interest because it is not going to impair anyone's use. It will not be unsightly from the water. The special condition of the property is the travel trailer is already there and backs up to the railroad bed. The top of the trailer is level with the tracks. The literal enforcement of the ordinance would result in unnecessary hardship because it is a preexisting use with the travel trailer already there and is set back from the lake the best way it can. The campground was laid out in the 1960's when it was rental property. In the 1990's the property was converted to condos. There is no way to move the trailer to be in a better position. The roof will not change the utilization of the property but only protect the value of the trailer. It will not affect the lake or surrounding common area. Substantial justice will be done by granting the variance because they are protecting their investment from the weather because travel trailers are not designed to carry heavy snow loads. It will not diminish the value because it will not have any detrimental affect to the surrounding property values. It will increase them.

P. Oberhausen wanted to know what the height of the roof will be. Mr. Baker stated that it will be 42" taller than the travel trailer. P. Oberhausen stated that they are building a roof with a wooden frame and metal roof with 4' x 4' posts. On April 29, 2008 Mr. Baker received a certificate of occupancy for a seasonal room. Then he poured a slab and now they are building a roof with poles to support it. He is concerned that the slab won't support the poles and roof. Mr. Bailey explained that it is a floating slab and the post will rise and fall the same as the travel trailer does. P. Oberhausen wanted to know if they are using sona tubes. Mr. Bailey stated that they are using clips connected to the slab so that they expand and move with the concrete. P. Oberhausen wanted to know if they know how thick the slab is. Mr. Baker stated that it is 8" with rebar through it. It supports the travel trailer there. The roof will move up and down with the trailer. Mr. Bailey stated that the engineering calculations are being supplied to the Building Official stating that it meets the 90lb snow load requirement. The Board is approving the location not the building code. He assured the Board that it will meet all the current building codes. Mr. Baker stated that he designed the floating slab with rebar so that it is above and beyond the required building code. P. Oberhausen wanted to know if the slab is under the tip out. Mr. Baker stated that it is. The concrete comes out 2' and the tip out comes out 3'. There will be a cantilevered roof over the tip out. Mr. Bailey stated that the pad is bigger than the travel trailer and the tip out will have a 1' cantilevered roof. C. Daigle wanted to know if the eaves will extend beyond the concrete. Mr. Bailey stated that they will not extend beyond the concrete and pavers. The existing concrete goes back to the wooden retaining wall. C. Daigle stated that the front and side of the trailer have no concrete. Mr. Bailey stated that the front has brick pavers. The eaves will not extend beyond the concrete and pavers because that would require a permit from DES.

M. Ford wanted to know if the bump out can retract in. Mr. Baker stated that it could. L. Couture stated that the pitch of the roof will allow the snow to slide off the roof and she wanted to know why they are not protecting the sunroom. Mr. Bailey stated that the sunroom was built to meet the building codes and the roof can handle the snow loads.

M. Ford wanted to know what the life expectancy of a travel trailer is. Mr. Baker stated that it is ten years and his travel trailer is a 1999 model.

C. Daigle wanted to know if there are any plans to close in the sides. Mr. Bailey stated that there

are no plans to close in the sides except the gable roof ends. They want something that is light and durable for a seasonal campground. They want to be able to remove the travel trailer in the future.

C. Daigle wanted to know if they have a copy of the lease or any documentation from the railroad regarding the crossing encroachment. The variance goes to Mr. Baker and the Town has an agreement with the railroad to document or eliminate any encroachment on the railroad property. Mr. Bailey stated he has no information on that. Mr. Baker stated that he did not read all the staff report and was not aware he needed anything. Mr. Bailey stated that he will assist Mr. Baker in getting the necessary documentation. He acknowledges that the encroachment of the stairs is new and was not there when the campground was condominiumized.

P. Oberhausen stated that the trailer is 28' long and they are going to support the roof with 2" x 8" what are they using for supports between the trailer and sunroom. Mr. Bailey stated there will be an intersection between the sunroom and trailer because they can't span the 28'. P. Oberhausen stated that some people overbuild, some with and some without permits, and he wants to know how they are going to support the roof. Mr. Baker stated that when he had the sunroom designed they designed it with the idea of putting a roof over the travel trailer. The sunroom has a 10' span with 4" x 4" post in the sunroom, one on each side and one in the middle. C. Daigle stated that they are required to meet all applicable building codes. Mr. Baker stated that they can't expand in the front or rear because of the property line. Mr. Bailey showed the Board a copy of the building sketch and building plan. Mr. Baker stated that Steve Dalton, the Building Official, had him go to Home Depot and have them certify that the roof load will meet the 90lb snow load. He has to purchase trusses to meet the snow load requirements. He has engineered plans.

P. Harris stated that the footprint for the existing slab will not become the zoning footprint. Mr. Bailey stated that the travel trailer is not a structure; the slab is not a structure. The roof and sunroom are structures. Why would they put the roof anywhere else but over the travel trailer? P. Oberhausen wanted to know if they are going to extend the floating slab and extend the roof. Mr. Bailey stated they are measuring from the corner of the roof. C. Daigle stated that they are measuring from the edge of roof because the State won't allow them to have eaves. They cannot extend beyond the edge of the concrete and pavers. Mr. Bailey also stated there is a retaining wall in the rear.

Mr. Bailey stated that there is only one step encroaching in the railroad right of way. L. Couture stated that 1' is a lot because of the way the structures are situated in there. Mr. Baker stated that the structures on both sides of him don't have roofs over them. L. Couture stated that the 10' x 28' roof makes a lot of shade in summer and doesn't affect the viewing from the water or either side of the building. Mr. Bailey stated the structure is an asset not an eyesore.

P. Harris wanted to clarify that the extremity of roof does not create a footprint. Mr. Bailey stated that they are not enclosing the sides or creating any additional footprint. Mr. Baker stated that they are preserving what he already has. Mr. Bailey stated that the waterfront site is one of the most valuable in the park and they are working on preserving the beauty of the area. L. Couture agreed that it is a very well maintained area.

P. Harris stated that needing the roof is not the hardship in itself. Mr. Bailey stated that it is reasonable to preserve the property. The unnecessary hardship would be to not allow them to have a roof over the travel trailer. They want to keep it in good repair to preserve the campground. The new interpretation of the zoning criteria needs to take into consideration the preserving of assets.

L. Couture wanted to know if they considered redoing the roof on the trailer. Mr. Baker stated that he doesn't want to have to keep redoing it and shoveling off the roof. L. Couture stated that it was designed as a travel trailer not with a carport over it. P. Oberhausen stated that with a ten year life expectancy the unit has already reached its life expectancy. They will probably want to take it out and replace it with another unit. Mr. Baker stated that the issue is the roof and they want to fix that and not replace the unit. However they will leave room for the unit to be removed.

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

BOARD ACTION – JEFF & JOYCE BAKER FOR WINNISQUAM BEACH CAMPGROUND ASSOCIATION:

MOTION: P. Harris moved to grant a Variance of Article 5 Table 2 and 8.B of the Zoning Ordinance to construct a roof over an existing unit closer (11.4') to Unit 114 than allowed (15') as it meets all the criteria.

1. A Variance will not decrease surrounding property values because it is a benefit to the area and structure. It will increase value to the surrounding area.
2. A Variance is not contrary to the public interest because it is not unsightly from the neighbors or water.
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 are forced to stay in that location with the travel trailer. It is a preexisting condition and there is no other easy solution to construct the needed roof.
 - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because literal enforcement of the law would be a hardship because this is a preexisting structure that is set back as far as possible into the hillside. This is the best location for the unit.
4. A Variance will result in substantial justice being done because it is a safety factor due to the roof snow load in the winter. They are protecting their investment from the weather
5. A Variance will observe the spirit and intent of the ordinance because the roof won't change the utilization of the unit. They are staying within the confines of the property. There is no threat to the lake or surrounding area.

Conditions:

1. No structure or additions (inc. decks, porches, landing etc.) that do not meet setback, except as approved are allowed.
2. No fuel source or accessory structure shall be placed between the structures and Unit 114.
3. The roof height not to exceed 42" from the trailer roof.
4. Only the gable ends of the roof to be enclosed.
5. Provide a copy of the lease or other document between the Association and NH Bureau of Rails that permits the steel platform behind this unit to encroach onto Railroad property.

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

MOTION: P. Harris moved to grant a Variance of Article 5 Table 2 and 8.B of the Zoning Ordinance to construct a roof over an existing unit closer (8') to the rear property line than allowed (12.5') as it meets all the criteria.

1. A Variance will not decrease surrounding property values. It will increase surrounding property values.
2. A Variance is not contrary to the public interest because there were no abutters present.
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 of the location of the travel trailer.
 - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because of the location of the travel trailer. They are protecting their investment and use.
4. A Variance will result in substantial justice being done because it allows safe use of the property.
5. A Variance will observe the spirit and intent of the ordinance because it is a safety issue.

Conditions:

1. No structure or additions (inc. decks, porches, landing etc.) that do not meet setback, except as approved are allowed.
2. No fuel source or accessory structure shall be placed between the structures and Unit 114.
3. The roof height not to exceed 42" from the trailer roof.
4. Only the gable ends of the roof to be enclosed.
5. Provide a copy of the lease or other document between the Association and NH Bureau of Rails that permits the steel platform behind this unit to encroach onto

Railroad property.

Seconded by P. Oberhausen (4-1) L. Couture opposed.

Abutters' Hearing - Jason Fee: Request for:

- A. A Special Exception of Article 11.A.3.d of the Zoning Ordinance to construct an addition closer (30.6') to the property line than allowed (50') but not closer than the existing structure. ZBA # 4109Z
- B. A Special Exception of Article 11.A.3.c. of the Zoning Ordinance to add useable space (2nd floor) within a preexisting nonconforming footprint. ZBA # 4209Z

Property is located at 733 Province Road in an "R" Zone, Tax Lot 222-028.

At least three members have viewed the site.

Mr. Jason Fee presented the application.

Mr. Fee explained that he wants to extend the footprint and raise the roof to increase the useable area for a second story.

P. Oberhausen stated that a new septic design has been submitted.

M. Ford stated that he noticed that some of the area for the foundation has been dug and more footings are needed under the forms. Mr. Fee agreed and stated that he is using 3' running footings.

Abutter Mr. George Hurst, representing KP Trust, stated that he has no objections and the addition will increase property values.

Abutter Mr. Raymond Greenwood stated that he has no problem with the addition and supports the proposal.

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

BOARD ACTION – JASON FEE:

MOTION: N. Patten moved to grant a Special Exception of Article 11.A.3.d of the Zoning Ordinance to construct an addition closer (30.6') to the property line than allowed (50') but not closer than the existing structure 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.
No factual evidence is found that property values in the district will be reduced.

- They are doing a wonderful job improving the property.
3. There is no valid objection from abutters based on fact.
 4. No nuisance or hazard is involved.
 5. Adequate and appropriate facilities will be provided.
 6. There is adequate sewage disposal.
 7. Structures must otherwise meet all dimensional requirements of the Ordinance.

Conditions:

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

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

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.
They are doing a wonderful job improving the property.
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.

Conditions:

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

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

OTHER BUSINESS:

BOARD'S ACTION - MINUTES:

MOTION: P. Oberhausen made a motion to approve the minutes of September 23, 2009. N. Patten seconded. Carried (5-0)

STAFF REPORT:

HANDOUTS:

The Board received the following handouts:

1. “New Law Defines Unnecessary Hardship”
2. “The Legislature has left the Building”
3. “What Do You Do When They Stop Building”
4. “Constitutional Issues in Land Use Regulation:
5. Citizen Guide to ZBA process.
6. ZBA 2009 Handbook

RULES OF ADMINISTRATIVE PROCEDURE:

The Board signed the certified copy of the Rules of Administrative Procedures.

ADJOURNMENT:

MOTION: On a motion by P. Oberhausen, seconded by L. Couture, it was voted unanimously to adjourn at 8:17p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy