

## ZONING BOARD OF ADJUSTMENT

Wednesday, October 22, 2008  
Belmont Corner Meeting House  
Belmont, N.H.03220

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

The chairman opened the meeting at 7p.m.

### **Abutters' Hearing – Brenda Falter for Mallards Landing:** Request for:

- A. A Variance of Article 4 of the Wetland Ordinance to construct a shed closer (11.9') to the highwater mark (Tucker Brook) than allowed (50'). ZBA #3408
- B. A Variance of Article 5 Table 2 of the Zoning Ordinance to remove and replace an existing structure closer (3.9') to the side property line than allowed (12.5'). ZBA # 3508
- C. A Special Exception of Article 11 A.3.d of Zoning Ordinance to remove and replace an existing structure closer (22.8') to the highwater mark (Tucker Brook) than allowed (50'). ZBA # 3608
- D. A Special Exception of Article 11 A.3.c.of the Zoning Ordinance to add useable space (2<sup>nd</sup> floor) in the pre-existing structure. ZBA # 3708

Property is located at 8 Third Street in an "RS" Zone, Tax Lot 110-002-000-409.

At least three members have viewed the site.

Atty. Miguel Nieves and Mr. Thomas Falter presented the application.

Atty. Nieves explained that the Falters have owned the existing seasonal camp for thirty years and it is deteriorating. Their insurance company is denying them coverage. They can't remodel. The proposed plan has a new 50' x 24' footprint with a second floor. The footprint encroaches into the setbacks. A portion of the existing shed is on the abutting property and they will relocate the shed onto their property.

The variance will not diminish the value of surrounding property because everyone else around them has new units and this proposal will enhance values. It is seasonal camp and will raise property values and bring in additional revenues.

Substantial justice will be done because they use it as a seasonal camp and have looked at alternatives and this is their only option. If they don't fix it they won't have insurance on it. The Spirit of the Ordinance is observed because they are not changing the use. Many of the abutting neighbors have built closer to the property line than they are proposing.

Atty. Nieves stated that another hardship is that Mallards has a height restriction so they have to build out instead of up. They will need a special exception because they are adding useable space with the second floor being used for a loft and storage. They do not need a variance because the expansion is not more than 40% it is only 36%.

P. Oberhausen wanted to know if they have a Shoreland Protection permit. Mr. Falter explained that the closest corner of the building is 260' from the water so they do not need one.

L. Couture wanted to clarify the height restriction because the proposal shows a second story and Atty. Nieves stated that they are not allowed to go up; that is why they are expanding out. Mr. Falter stated that Mallards has a height restriction of 18.5' and they are building to that maximum height.

P. Harris wanted to know if the shed is on someone else's property. Mr. Falter stated that the original survey was incorrect and when the land was resurveyed they found out their shed is not on their property. There is also another camp that the boundary line goes through. The new survey is the correct one. There are no buildings on the Paroma property in that area. P. Harris wanted to know what is stored in the shed. Mr. Falter stated that it is for fishing and lawn equipment and tools.

L. Couture wanted to know if this application is approved would they be able to get the construction equipment and supplies across the bridge because there is a sign on the bridge stating that you are passing at your own risk. Mr. Falter stated that there is a weight limit but his neighbor just built a new house and they crossed over it. Also when they put the sewer in equipment had to cross the bridge.

There was discussion on how the 18.5' height requirement is measured. Mr. Falter stated that it is measured from the 100 year flood map and flood highwater mark. P. Oberhausen stated that the high water elevation for Lake Winnisquam is 486'. C. Daigle stated that the ground level is 484' so are they measuring from the ground level or the high water elevation because that would make a difference in the height. Mr. Falter stated that they will be building the camp on piers because they do not want to bring in fill or change the drainage. The height will have to be certified. C. Daigle stated that the 18.5' requirement is Mallards not the town.

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

**BOARD ACTION – BRENDA FALTER FOR MALLARDS LANDING:**

**MOTION:** P. Oberhausen moved to grant a Variance of Article 4 of the Wetland Ordinance to construct a shed closer (11.9') to the highwater mark (Tucker Brook) than allowed (50').

1. A Variance will not decrease surrounding property values, because it is in a better location.
2. A Variance is not contrary to the public interest.
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 water.  
and
  - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method, because this is the best location.
4. A Variance will result in substantial justice being done.
5. A Variance will observe the spirit and intent of the ordinance.

The following conditions apply:

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 L. Couture and carried. (4-0-1)P. Harris abstained.

**MOTION:** P. Oberhausen moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to remove and replace an existing structure closer (3.9') to the side property line than allowed (12.5').

1. A Variance will not decrease surrounding property values.
2. A Variance is not contrary to the public interest.
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 existing unit is deteriorating.  
and
  - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method.
4. A Variance will result in substantial justice being done.
5. A Variance will observe the spirit and intent of the ordinance.

The following conditions apply:

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. For reduced setbacks between structures, no fuel source or accessory structure shall

be placed between the structures.

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

**MOTION:** N. Patten moved to grant a Special Exception of Article 11 A.3.d of Zoning Ordinance to remove and replace an existing structure closer (22.8') to the highwater mark (Tucker Brook) than allowed (50').

1. The Ordinance specifically allows the use when a Special Exception is granted.
2. The specific site is appropriate for the use. This will be a better structure.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal. It is on town sewer.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

The following conditions apply:

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. Oberhausen and carried. (4-0-1)P. Harris abstained.

**MOTION:** L. Couture moved to grant a Special Exception of Article 11 A.3.c.of the Zoning Ordinance to add useable space (2<sup>nd</sup> floor) in the pre-existing structure.

1. The use is allowed in the district
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

The following conditions apply:

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 fuel source or accessory structure shall be placed between camp & Unit 411.

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

**Abutters' Hearing – Catherine A & Frank D Sweeney:** Request for a Variance of Article 8G of the Zoning Ordinance to allow an RV to remain on a vacant lot without being connected to a NH State approved on-site water and septic facility for 140 days. Property is located at 110 Cotton Hill Road in an “R” Zone, Tax Lot 204-046, ZBA # 3808.

Mr. & Mrs. Frank Sweeney presented the application.

Mr. Frank Sweeney stated that the RV is self contained and he moves it every 14 to 16 days.

Mrs. Catherine Sweeney stated that they are here because they found out that starting in September they couldn't stay more than 30 days in the RV so when they come back in the spring they would have no place to go with the motor home. She stated that she wants to withdraw the application because they have decided to put a septic system in. She apologizes for having people come out tonight. They were going for a short term variance but have decided to put the septic in instead. They wanted to postpone the expensed of the septic until spring.

C. Daigle stated that RV's are allowed on vacant lots for 30 day in a 12 month period without being hooked up to a NH State approved on-site water and septic or sewer facilities. Mrs. Sweeney stated that she thought the 30 days started when she got her permit. C. Daigle stated that no permit has been issued because the outhouse has to be certified by a licensed septic designer and they need a permit for the dry well. Mrs. Sweeney stated that DES said they do not need a permit for the drywell. C. Daigle stated that the privy needs to a certified by a licensed septic designer.

Mrs. Sweeney stated that they decided to go for a septic and well. Mr. Sweeney stated that they have to be up there for sixty days until the work is completed. C. Daigle stated that they can only get a permit for 30 days. Mrs. Sweeney stated that they had a septic design done six years ago but it has expired.

P. Harris explained that the purpose of the ordinance and why they only allow RVs to remain on site for 30 days is to prevent campground; from popping up all over town. Mr. Sweeney stated that they are not trying to be a campground. He did note that there are other RV's parked around town with people living in them and they do not have permits. C. Daigle stated that there is a time limit on how long they can be used and some of them may be hooked to a septic system. The Code Enforcement Office does follow up on any complaints they receive. Mr. Sweeney can file a complaint and it will be looked at. Mr. Sweeney stated that he does not want to file any complaints.

P. Oberhausen stated that he thought Mrs. Sweeney withdrew her application. Mrs. Sweeney stated that she did and apologizes for taking up everyone's time.

Ms. Lisa Shaw wanted to know what the difference is between rural and residential. C. Daigle

stated that we do not have just a residential zone. Ms. Shaw wanted to know if she could put a trailer on her property. C. Daigle stated not a manufactured home unit unless it is a replacement unit.

Mr. William Goetz, an abutter, wanted to clarify that you can occupy an RV for 30 days. C. Daigle stated that with a permit you can occupy the unit for 30 days in a 12 month period. Mr. Goetz wanted to know if hot tubs are allowed on vacant lots. C. Daigle stated that they are and the Sweenys have permits for the hot tub, deck and shed. Mr. Goetz wanted to know what kind of precedent it would set if they grant this variance. C. Daigle stated that variances should not set precedents because each application is looked at for the special conditions of the individual property. Each hardship is unique to the property.

Ms. Linda Frawley, an abutter, stated that the drainage is a problem and she is concerned about water runoff. Cotton Hill Road is a scenic road. They are concerned about conservation and the view shed. She is also concerned about vehicles barreling down the street. An RV is not a feature of the neighborhood as there are single family homes in the area. They are conscientious of wildlife corridors and habitats. The recent housing study strongly recommends a need for quality housing. Transient housing is not appropriate for the neighborhood.

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

No action was taken on this application as the applicant withdrew the application.

#### **OTHER BUSINESS:**

#### **BOARD'S ACTION - MINUTES:**

P. Oberhausen made a motion to approve the minutes of September 24, 2008. L. Couture seconded. Carried (3-0-2) N. Patten and P Harris abstained.

#### **STAFF REPORT:**

#### **CONSERVATION COMMISSION MEETING:**

C. Daigle reminded the Board of the Conservation Commission invitation to their November 5, 2008 meeting.

#### **FALL PLANNING AND ZONING CONFERENCE:**

C. Daigle reminded members of the Fall Planning and Zoning Conference on Saturday, October 25, 2008. Zoning Board members P. Palombo and M. Ford will be attending the conference.

#### **BUDGET:**

C. Daigle informed the Board that the Budget Committee approved their 2009 budget.

**ADJOURNMENT:**

**MOTION:** On a motion by P. Oberhausen, seconded by N. Patten, it was voted unanimously to adjourn at 7:55 p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy