

ZONING BOARD OF ADJUSTMENT

Wednesday, January 26, 2005
Belmont Corner Meeting House
Belmont, N.H.03220

Members Present: Chairman J. Olmstead; N. Patten, P. Harris, B. Paquette and B. Arey.
Alternates Present: P. Oberhausen and E. Hawkins.
Staff: C. Daigle and E. Murphy.

The chairman opened the meeting at 7p.m.

Abutters' Hearing – Leo & Nancy Toomey: Request for a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a house closer (41') to the front property line than allowed (50'). Also a Variance of Article 4 of the Wetland Ordinance to construct a house closer (17.6') to the wetlands than allowed (35'). Property is located on Nancy Drive in an "RS" Zone, Tax Lot 107-052, ZBA # 0105 & 0205.

Mr. & Mrs. Leo Toomey presented the application.

Mr. Leo Toomey explained that originally they thought there was a small wetland on the property but have since discovered there are two wetlands. He is a mechanic and has numerous recreational vehicles and needs a place to store them. He was aware of the wetlands when he hired Mr. Bill Otto to clear the lot. Ms. Vicky Chase, DES, issued a Cease & Desist order after a neighbor said that it was not a buildable lot. They contacted the Wetland Scientist who originally did the wetland delineation on the property. The lot has hydric soils in the original wetland area. Mr. Seekamp delineated the new wetlands. Mr. Toomey stated that they purchased the property knowing there was a wetland on the property and were willing to work with the town on how to place the structures on the lot. He plans to retire here and needs the garage for his boat and recreational vehicles.

P. Harris wanted to know when they purchased the property. Mrs. Toomey stated that it was in July of 2004. P. Oberhausen stated that if the garage is moved forward they would only need one variance. Mr. Toomey stated that he bought the property intending on putting a garage on it. Mrs. Toomey stated there is an overhead utility line that goes diagonally across the property and used a plan to show that the corner of the house would be under them. Mr. Toomey stated that the power line has a transformer on it and he is concerned about it being hit by lighting. He stated that R. Ball's suggestion would put the power line on the corner of the house. They originally wanted a 28' x 40' house but have reduced it to a 28' x 36'. Mrs. Toomey wanted to know if there is a safety code preventing utility wires from being on the corner of a house. B. Arey stated there is no problem with the power line as long as it is not over the house. Mrs. Toomey stated she would not feel safe with the wires on the corner of the house. Mr. Toomey stated the location of the wires have to be taken into consideration when putting the modular home on the lot because of the crane work. They would like to keep the

house were it is located on the plan. P. Harris stated that they need to meet all the criteria for a variance and they have reasonable use of the property without the garage. Everyone has to meet today's criteria. The town has reduced the setbacks on preexisting lots. The Toomeys were aware of the restrictions since they just purchased the property. Mrs. Toomey wanted know if there is any way they could move the house away from the utility line.

Mr. Toomey stated that DES told them they could clear the trees from the wetlands as long as they leave the stumps. P. Oberhausen wanted to know where the well would be located. Mr. Toomey stated that it is a community well. They have already invested in the sewer by bringing it across the street before the road was paved. C. Daigle wanted to know what the power line feeds and if the power company has an easement. Mrs. Toomey stated that she does not know if there is an easement or what the lines feed. C. Daigle suggested that they contact PSNH to see if there is an easement and if the lines could be relocated. Mr. Toomey wanted to know if they could move the house forward. He stated that he has talked to DES and they stated that you can build up to the wetlands as long as you don't touch them. He explained that they looked at what would be best in keeping in line with the flow of the neighborhood and neighboring houses.

J. Olmstead wanted to know if they could make changes to the application. C. Daigle stated that they would have to renotice any changes. The Board discussed some options that could reduce infringing on the wetlands and the road. The applicants are stuck between infringing on the wetlands or the front setbacks. The closer they are to the wetlands the greater the chance for contamination from backyard maintenance such as lawn mowing and fertilization. The closer to the road they build creates problems with the driveway access and road maintenance. J. Olmstead stated that because of the building envelope they would not be able to have complete compliance. He suggested moving the house 10' closer to the road increasing the distance from the wetlands to 27.6' P. Oberhausen stated that it is the only way to get it. P. Harris stated that he feels that the garage is too big for the house. Mr. Toomey stated that he could redesign and downsize the garage. He stated that he went around the neighborhood and there is a house at 76 Elaine Drive that has a bigger garage. It is new and is in the wetlands. Mr. Toomey stated that he could downsize the garage but needs the same footprint as he has at his home. P. Harris stated that they have to meet the hardship criteria and his rule of thumb is 50% is okay more than that is too much. He has no problems with the house only the garage. He stated that R. Ball's concerns are justified. Mr. Toomey stated they could leave the house where it is now and move the garage up to get it away from the wetlands. Mrs. Toomey stated that it could be moved up to meet the house and downsized. P. Harris suggested that the garage have a 12 pitch roof with a loft for more room. Mr. Toomey explained that during the summer there was no standing water on the property even though it is on a high water table. He talked about moving the house to the right and bringing the garage up a little and reducing the garage to 24' x 30'. Mrs. Toomey stated that she would check with PSNH to see if they have an easement and if the utility lines can be relocated. Mr. Toomey stated that the house was designed to keep in line with other houses in the area and the new design would put it so the neighbor would be in the back. E. Hawkins stated they should try for the minimum variances necessary and relocating the house so that it still needs the same number of variances does not meet the spirit of the ordinance. Mr. Toomey stated that they are willing to compromise but reiterated the fact that they bought the property with what they thought was only one wetland and now they have two. Is there any way they do not have to meet the new regulations but be subject to what others in the neighborhood had to? He stated that he wouldn't be here if it wasn't for the input of an abutter. C. Daigle explained that their argument is the same as everyone else. Zoning came in 1986 and everyone has to meet the same regulations.

This is not unique and it could be the reason why this is the last undeveloped lot in that area.

Mr. Toomey wanted to know if they could decide on the house only and table the garage to a later date. C. Daigle explained that the proposed amendments for 2005 have been posted and they would be subject to them. If the aquifer petition passes then they would be restricted to the 10% lot coverage. The Toomeys submitted a completed Zoning application prior to the posting so they do not have to meet those requirements but if they start with a new application they will be subject to the new requirements. She suggested that the application be tabled and changes made to the existing application.

B. Arey suggested moving the house to 31' from the front property line making it 27.6' from the wetlands. This would keep the proposal within 50% of the setbacks. If they move the house to the right 3' or 5' they can move the garage up so that it is even with the front of the house. Mr. Toomey stated that he would like to move the garage only half way up the side of the house because of the door. He reviewed the Board's suggestions: reduce the garage to 24' x 30', move the house 5' to the right and forward 10' and the garage halfway up the side of the house. J. Olmstead stated that by moving the garage forward that would eliminate one setback variance and increase the distance to the wetlands. E. Hawkins stated that R. Ball's suggestions would eliminate the variance and they would only need one variance with the same setback. Mr. Toomey stated that he doesn't want the house that close to the road. E. Hawkins stated that the Board strives for minimum relief necessary. By connecting the garage and the house they would only need three variances. N. Patten wanted to know if the garage would be the same size if it is attached. Mr. Toomey stated that it would be a 24' x 30' garage.

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

BOARD ACTION – LEO & NANCY TOOMEY:

MOTION: B. Arey moved to Table the Variance of Article 5 Table 2 of the Zoning Ordinance to construct a house closer (41') to the front property line than allowed (50'). Also a Variance of Article 4 of the Wetland Ordinance to construct a house closer (17.6') to the wetlands than allowed (35') to February 23, 2005 at 7 P.M. as it is incomplete.

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

MOTION: B. Arey moved to Table the two Variances of Article 4 of the Wetland Ordinance to construct a garage closer (2.4' & 6.3') to the wetlands than allowed (35') to February 23, 2005 at 7 P.M. as it is incomplete.

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

OTHER BUSINESS:

A. BOARD'S ACTION - MINUTES:

N. Patten made a motion to approve the minutes of December 15, 2004. B. Paquette seconded. Carried (3-0-2) P. Harris and B. Arey abstained.

STAFF REPORT:

1. SHORELAND DEVELOPMENT & CONSERVATION LAND:

The Board discussed having a joint meeting with the Planning Board on February 14th at 6 P.M. to have Mr. Gary Spring from DES talk to them about shoreland protection. Also that evening Ms. Kate Hartnett from the Jordon Institute and Ms. Carol Foss from the Audubon Society would like to meet with the Boards to discuss their grant work with Belmont to voluntarily or by ordinance protect Belmont's rural quality. It was the consensus of the Board to attend the Planning Board's worksession on February 14th.

ADJOURNMENT:

MOTION: On a motion by N. Patten, seconded by B. Arey, it was voted unanimously to adjourn at 8:07p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy