

## ZONING BOARD OF ADJUSTMENT

Wednesday, July 27, 2005  
Belmont Corner Meeting House  
Belmont, N.H.03220

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

The chairman opened the meeting at 7p.m. and appointed E. Hawkins as a voting member for tonight's meeting.

### **Abutters' Hearing – Donald Harpell:** Continuation of Requests for:

- A Variance of Article 5 Table 2 of the Zoning Ordinance to allow a deck closer (6.6') to the front property line than allowed (50').
- A Special Exception of 10. A.3.d. of the Zoning Ordinance to allow a deck closer (17.4') to the front property line than allowed (50'), but not closer than the existing structure.

Property is located at 94 Cotton Hill Road in an "R" Zone, Tax Lot 204-047, ZBA # 3205 & 3305.

At least three members have viewed the site.

Mr. Donald Harpell presented the application.

Mr. Harpell submitted photos of the property. He explained that he purchased the property with the structures already there. The previous owner didn't get the needed permits. When he received notification that the decks did not have permits and did not meet the setbacks he started the Zoning Board process.

P. Oberhausen wanted to know what the west side setback for the deck is. C. Daigle stated that it is approximately 64' to the sideline.

B. Paquette wanted to know what was there prior to the decks. Mr. Harpell stated he doesn't know because they were there when he bought house. He believes that there was some kind of retaining wall which has been replaced with what is there now.

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

### **BOARD ACTION –DONALD HARPELL:**

- MOTION:** P. Oberhausen moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to allow a deck closer (6.6') to the front property line than allowed (50') as it meets all the criteria.
1. The variance will not be contrary to the public interest.
  2. Denial of the Variance would result in unnecessary hardship to the owner seeking it:
    - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property;
    - B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
  3. The spirit of the ordinance is observed.
  4. Substantial justice will be done.
  5. The variance would not diminish the value of surrounding properties.
  6. No structures or additions that do not meet setback, except for those approved herein are allowed.

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

P. Oberhausen stated that by not granting the variance the hardship would be that the applicant could not get out his front door.

- MOTION:** P. Oberhausen moved to grant a Special Exception of 10. A.3.d. of the Zoning Ordinance to allow a deck closer (17.4') to the front property line than allowed (50'), but not closer than the existing structure as it meets all the criteria.
1. The use is allowed in the district.
  2. The Ordinance specifically allows the use when a Special Exception is granted.
  3.
    - a. The specific site is appropriate for the use.
    - b. No factual evidence is found that property values in the district will be reduced.
    - c. There is no valid objection from abutters based on fact.
    - d. No nuisance or hazard is involved.
    - e. Adequate and appropriate facilities will be provided.
    - f. There is adequate sewage disposal.
    - g. Structures must otherwise meet all dimensional requirements of the Ordinance.
  4. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by E. Hawkins and carried. (5-0)

**Abutters' Hearing – Donna Guimont and Linda Couture:** Request for 2 Dimensional Variances of Article 5 Table 2 of the Zoning Ordinance to construct a garage closer (10') to the east side property line than allowed (12.5') and closer (15.5') to the traveled way of Tucker Shore Road than allowed (50'). Property is located at 114 Tucker Shore Road in an "RS" Zone, Tax Lot 107-025, ZBA # 4005 & 4305.

Ms. Donna Guimont and Ms. Linda Couture presented the application.

Ms. Guimont addressed staff's comments. She is not sure where they would be constructing 4' from the lot line. C. Daigle explained that it is not the lot line but the access drive on the west side of the lot. Ms. Guimont stated that they would be increasing the width of driveway and they are aware of trucks coming in the area. The trucks have to stop at the beginning of the road because it is a dead end street and ROW. She stated that the houses on the opposite side of the road are close to the road. There is one within 14' of the ROW. One wall along side of the driveway will be removed and the other one will be partially removed. They will not disturb the natural environment. She stated that Fire Chief Siegel and R. Ball stated that they could move the garage over to the west but if that is done the driveway would be narrow and they would have trouble getting their truck out. They would keep the snow plow in the garage. They plow the gentleman's yard next to them and that is where they pile the snow. They have a letter that the abutters signed that they have no objections to this proposal.

E. Hawkins stated that he agrees with staff's comment that the garage being within 4' of private driveway is a concern. C. Daigle explained that they would be building within 4' to the access to the neighbor's lot. E. Hawkins wanted to know if they considered building within the conforming footprint because of the road. Ms. Guimont stated it is not attached because they are not comfortable removing the sliding door because they could not see who is in the yard. Ms. Couture stated that if they push it back closer to the house they couldn't get through to the side yard. Ms. Guimont stated that they considered everything about the town and neighbors and made some adjustment to try to make it fit. If they put it in the middle they won't have ample space to park cars.

P. Oberhausen stated that it could be moved 3' to the northwest and if they remove the existing side stairs they could move it back 6' to 8'. Ms. Couture stated that it would make it harder to get to the side yard. P. Oberhausen stated that they should have known when they bought the property what would conform on the site. Ms. Guimont stated that it is hard to compare when across the street a structure is only 14' from the ROW. They could move the garage back 2' and cut garage size by 2'. P. Harris explained that they have to show a hardship. Ms. Guimont stated that they have to get on their knees to put stuff away under the house. P. Harris stated that they are full time residents and have reasonable use of property. With reasonable use they can't meet the hardship requirement. Ms. Guimont wanted to know what the alternative is. She stated that in 2001 the owners gave a portion of another lot to this lot and then put a house on it and sold it to them. Ms. Couture stated they applied for a variance so they could put up something that doesn't meet the requirements. Ms. Guimont stated it is not a hazard and would not obstruct any views. P. Harris stated that it is near a 70% reduction of the front setback requirements and that is large percentage. Ms. Guimont wanted to know how it could be done on one lot and not on another. Ms. Couture gave examples of variances that were approved. P Harris stated that those examples showed that there was 30' on one side which was approved but the 14' from the road was denied because abutters objected. E. Hawkins stated that there is an allowable footprint that would conform to the regulations. There is plenty of room to fit in the footprint. They could rearrange the garage and reduce of the size of the deck. Ms. Couture stated that putting the garage length wise would block the ROW of the abutter. E. Hawkins stated that there may other alternatives that they could look at. Ms. Couture stated that they are making good use of the land. Putting the garage in more of the driveway would cause a parking problem. E.

Hawkins stated that putting it in the conforming footprint would give them more parking spaces. P. Oberhausen stated that the deck between the house and garage could be moved back.

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

P. Harris stated that the first variance allowing the garage to be 10' closer to the property line than allowed 12.5' is no problem. He agrees moving it to the west would infringe on the gravel ROW. E. Hawkins stated that there is no need for either setback as it can fit in a conforming footprint. If you look at the whole picture then you have a different perspective. The side setback is okay but you have to look at the total picture.

**BOARD ACTION – DONNA GUIMONT AND LINDA COUTURE:**

**MOTION:** P. Harris moved to approve a Dimensional Variance of Article 5 Table 2 of the Zoning Ordinance to construct a garage closer (10') to the east side property line than allowed (12.5') as it meets all the criteria.

1. The variance will not be contrary to the public as there are many similar situations in that area.
2. Denial of the variance would result in unnecessary hardship to the owner seeking it.
  - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.
  - B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
3. The spirit of the ordinance is observed by not reducing the setback more than 2.5'.
4. Substantial justice will be done.
5. The variance would not diminish the value of surrounding properties as there are many in that area.
6. All property bounds/existing footprint certified during construction as required.
7. No structures or additions that do not meet setback, except those approved herein are allowed.

The motion was seconded by P. Oberhausen and carried. (3-2) P. Oberhausen and E. Hawkins opposed.

**MOTION:** P. Harris moved to deny a Dimensional Variance of Article 5 Table 2 of the Zoning Ordinance to construct a garage closer (15.5') to the traveled way of Tucker Shore Road than allowed (50') for the following reason:

1. No hardship as there is reasonable use of the property and ample room to locate the garage.

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

**Abutters' Hearing – Philip & Mary Clairmont:** Request for a Dimensional Variance of Article 5 Table 2 of the Zoning Ordinance to subdivide one lot into two, creating a building lot with no frontage. Property is located at 23 Perkins Road in an "RM" Zone, Tax Lot 237-035, ZBA # 4105.

Mr. Jon Pike and Mr. Philip Clairmont presented the application.

Mr. Pike explained that Mr. Clairmont has been located on Perkins Road for many years and wants to give some of his property to his daughter and son in-law. There are two accesses to the property but the new lot would have no frontage. They would reconstruct a different ROW into the property and then go to the Planning Board for approval. They are looking to subdivide one lot which would be just for family. They are aware of the Fire Chief's and R. Ball comments about needing 100' frontage and precedents being set but those issues can be addressed at the Planning Board level. The lot has been serviced by the town for many years. The ROW would come out to Perkins Road.

E. Hawkins wanted to know if any plans have been submitted. Mr. Pike explained that there are none because they didn't want to pay a surveyor if the plan did not get approved. They will submit a surveyed plan when they go before the Planning Board. P. Oberhausen stated that it would be helpful to see what they are planning on doing. Mr. Pike stated that the lot would have a driveway not a road. If they go for a traditional subdivision they could get more lots. They are not creating a road just a single driveway no roads are planned for the for future and no other lots would be created. P. Oberhausen stated there are many other people in the same situation and if they do it once then they are setting a precedent. Mr. Pike stated that they could put it in the deed that they can't further subdivide. P. Harris can't see that as a safeguard. Mr. Pike stated that if Mr. Clairmont wanted he could sell to a developer who could put a road in and subdivide the lot. P. Harris stated it is tough when it is for a family but they have to be concerned about setting precedents.

Mr. Pike stated that there are lots with two homes on one driveway. C. Daigle explained that it is for access only. Mr. Pike stated that they are creating situation where if they can't give the land to their daughter then they may sell it to a developer. There is an existing road that was used for a gravel business that was run out of there. Mr. Clairmont wants to give one lot to his daughter instead of creating multi lots. There could be a deed restriction stating that the lot can not be re-subdivided. You are looking at the impact of one house vs thirty houses. P. Harris stated that they may want to seek counsel's opinion on a deed restriction. Mr. Pike stated that restrictions placed on plans in the past have been upheld by the Planning Board. C. Daigle asked Mr. Clairmont if he is willing to restrict any future subdivisions or developments. Mr. Clairmont did not answer C. Daigle's question. The Board discussed the fact that creating a back lot without frontage would landlock the property even if it is for a family member now. If the property sells problems may develop. Mr. Pike stated that the best thing to do may be to subdivide the lot into multi lots. P. Harris stated that if approved he doesn't see the safe guard to prevent everyone from subdividing without the proper acreage or frontage. Developers will take advantage of these situations. They have to look at the five criteria for granting a variance.

Mr. John Dumais, Badger Glenn stated that he has no problem with this proposal. Mrs. Sue Roberts stated that she has no problem with the proposal. Mr. Larry Clairmont had no problems with this proposal.

E. Hawkins explained that they have to meet the criteria to uphold the ordinance and this isn't the forum to change these ordinances. J. Olmstead agreed that this is not the place to create the relief they are looking for.

P. Oberhausen stated he needs more information on where the road would go. Mr. Pike stated that it was a money issue for surveyor and they needed approval before expending those funds. C. Daigle stated that is why they were allowed to come in with that just the general plan. Mr. Clairmont stated the road would be perpendicular to Perkins Road.

Mr. Elson Moody stated that Mr. Clairmont has lived here all his life and he should be able to give his daughter property to build a house on as long as it stays in the family.

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

### **BOARD ACTION – PHILIP & MARY CLAIRMONT:**

**MOTION:** E. Hawkins moved to deny for a Dimensional Variance of Article 5 Table 2 of the Zoning Ordinance to subdivide one lot into two, creating a building lot with no frontage for the following reasons:

1. Creating a lot without frontage is contrary to the public interest in having residential lots with frontage for access, uniformity and safety issues.
2. The spirit of the ordinance is not observed by creating a landlocked parcel which is not uniform with the residential zoning.
3. Denial of the variance would not result in unnecessary hardship because the benefit sought can be achieved by another reasonably feasible method as (more) conforming area is available.
4. Substantial justice will not be done given the current Zoning regulations.

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

### **OTHER BUSINESS:**

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

P. Oberhausen made a motion to approve the minutes of June 22, 2005. E. Hawkins seconded. Carried (3-2) B. Paquette and P. Harris abstained.

### **STAFF REPORT:**

#### **1. FEE SCHEDULE:**

The Board received copies of the proposed amendment to the Land Use fee schedule. C. Daigle explained that the Planning Board has approved the proposed fee changes and will schedule a public hearing.

**MOTION:** P. Oberhausen moved to approve the proposed amendment to the ZBA portion of Land Use fee schedule.

The motion was seconded by B. Paquette and carried. (5-0)

**ADJOURNMENT:**

**MOTION:** On a motion by P. Harris, seconded by E. Hawkins, it was voted unanimously to adjourn at 8:31 p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy