

ZONING BOARD OF ADJUSTMENT

Wednesday, November 30, 2005
Belmont Corner Meeting House
Belmont, N.H.03220

Members Present: Chairman J. Olmstead; N. Patten, P. Harris and P. Oberhausen.
Members Absent: B. Paquette (E).
Alternates Present: E. Hawkins.
Alternates Absent: L. Couture (E).
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 – Robert & Jacqueline Kiver: Request for a Dimensional Variance of Article 5 Table 2 of the Zoning Ordinance to construct a covered deck to a preexisting nonconforming structure closer (27.6') to the front property line than allowed (50'). Property is located at 41 Westview Drive in an "R" Zone, Tax Lot 201-023, ZBA # 5605.

Mr. Robert Kiver presented the application.

Mr. Kiver explained that the deck will not have a roof over it because they had siding put on and didn't want to wait for this approval to finish the job so they eliminated the roof. He explained that originally there was a deck there that rotted out. He started replacing it and a neighbor told him that he needed a permit. That is when he went to the Building Official and was informed that the deck is too close to the road and he would need a variance. Mr. Kiver stated that the house is only 35' from the road and does not meet setbacks.

P. Oberhausen stated that they are replacing the deck with an 8'x 8' deck and if they replaced it with an 4'x 4' landing they wouldn't need a variance. Mr. Kiver stated that they had already started the deck and the pillars are in place that is why they are staying with the 8' x 8'.

P. Harris stated that the application states that safety is an issue because of ice falling from the roof and if they eliminated the roof, safety would still be a concern. C. Daigle informed Mr. Kiver that an approval is good for two years and if he wanted to put a roof on he could do it within that time frame. Mr. Kiver stated that the door doesn't get used often in the winter because that area is not plowed. He stated that the surveyor told him that the survey only includes what is being done now. C. Daigle explained that he probably meant that if something is different than this proposal he may have to redraw the plan.

J. Olmstead stated that the application is for a deck with the roof and if approved it would include the

roof. C. Daigle stated that is correct if the applicant wants to leave the roof as part of the application. If he doesn't do the work in six months then he will have to come in for another building permit but the Zoning approval will remain for two years. Mr. Kiver stated that he will consider keeping the roof as part of the application for safety reasons.

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 in the name of safety, approval for a variance is necessary.

BOARD ACTION – ROBERT & JACQUELINE KIVER:

MOTION: P. Harris moved to grant a Dimensional Variance of Article 5 Table 2 of the Zoning Ordinance to construct a covered deck to a preexisting nonconforming structure closer (27.6') to the front property line than allowed (50') as it meet all the criteria.

1. The variance will not be contrary to the public interest. There is no reference in the Master Plan to the road or the area being built out.
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. The house has been there for twenty years and cannot be moved.
 - B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than area variance.
3. The spirit of the ordinance is observed by allowing safe access in and out of the house during the winter.
4. Substantial justice will be done. The covered deck allows safe access in and out of the house.
5. The variance would not diminish the value of surrounding properties. Other houses in the area are similar.
6. 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. (4-1) E. Hawkins opposed.

Abutters' Hearing – Michael Allen: Request for:

- A Special Exception of Article 10.A.3.d of the Zoning Ordinance to construct a deck closer (9.39') to the north side property line than allowed (12.5') but not closer than the existing building.
- A Variance of Article 5 Table 2 of the Zoning Ordinance to construct an addition with basement closer (23.89') to the front property line than allowed (50').

Property is located at 6 Island Drive in an "RS" Zone, Tax Lot 111-013, ZBA # 5705 & 5805.

At least three members have viewed the site.

Mr. Rod Pearl presented the application.

Mr. Pearl explained that he met with G. Boisvert to review the plans and was told the proposal is nonconforming. Mr. Allen has a brother that needs extra help when he stays here. The lots in the area are close and were built before zoning.

P. Oberhausen noted G. Boisvert's comment about the ceiling height in the basement. Mr. Pearl stated that the new basement ceiling height will meet code. He stated that there is an existing bathroom in the basement making it an existing condition. E. Hawkins stated that there is town sewer in the area. C. Daigle stated that G. Boisvert will have to work the ceiling height out with the owner.

E. Hawkins stated that the application mentions a wooden deck extending out towards the lake. Mr. Pearl stated the plans changed and it will not be done.

E. Hawkins wanted to know about the well. Mr. Pearl stated that it is an artesian well that was installed in the last three or four weeks. E. Hawkins wanted to make sure that there was adequate water supply for the new bathroom.

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

E. Hawkins stated that this is an approvable variance because if you look at other properties in the area this buildout is less than abutting properties and is not overburdening the area. P. Harris stated that looking at the whole picture in the past someone built 1/10 acre lots for small seasonal camps on this road. The Master Plan looks at the future and this is an explosive buildout area with an accident waiting to happen. The applicant purchased the home with a family knowing the setbacks and then asks the Zoning Board to ignore those setbacks that are in place. The road infrastructure is undersized for emergency access. Full time residents will impact the school system and it becomes an issue of seasonal homes turning into year round residences. E. Hawkins wanted to know if P. Harris thinks the proposal is out of line with others in the area. This proposal is less intrusive and less nonconforming than others in the neighborhood. P. Harris stated that it is a large addition to the existing house. E. Hawkins stated the addition to 8 Island Drive is a much bigger addition. P. Harris stated that the road in that area is tight and there are at least ten other houses in that area that are not built to this size. When do you stop increasing the nonconformity? He stated that looking at a variance application they have to base their decision on hardship of the land not on the health of a person. E. Hawkins stated that a dimensional variance is in character with the particular area. C. Daigle clarified that the footprint alone is 720 square feet the addition is 480 square feet plus 30' with the overhang and stairs for a total of just over 500 square feet. P. Harris stated these are small lots built as seasonal homes.

BOARD ACTION – MICHAEL ALLEN:

MOTION: E. Hawkins moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct an addition with basement closer (23.89') 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. It will still conform with the character of the neighborhood and is in line with or less nonconforming than others in the 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.
 - 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. Any expansion to the existing structure would require a variance.
3. The spirit of the ordinance is observed.
4. Substantial justice will be done. Denying the variance would result in a loss to the individual applicant out weighing the gain to the general public.
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 N. Patten and carried. (4-1) P. Harris opposed.

P. Harris wanted to know if E. Hawkins could identify the special condition for approval. E. Hawkins stated that it is a very small nonconforming lot and any alterations would make a variance necessary.

MOTION: E. Hawkins moved to grant A Special Exception of Article 10.A.3.d of the Zoning Ordinance to construct a deck closer (9.39') to the north side property line than allowed (12.5') but not closer than the existing building as it meets the criteria.

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. The establishment of the new nonconformity is less than others in the area.
6. Adequate and appropriate facilities will be provided. A new well has been installed.
7. There is adequate sewage disposal. It is on municipal sewer.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.
9. No structures or additions that do not meet setback, except for those approved herein are allowed.

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

OTHER BUSINESS:

- A. **Andrew P. Sanborn Farm, LLC:** Request for a rehearing on Board's October 31, 2005 action to an Appeal of Administrative Decision of the Planning Board's interpretation of Zoning Articles 10.c and 14 (frontage)

for Tax Lot 214-009, ZBA # 5905.

P. Harris stepped down for this application as he is the chairman of the Planning Board.

P. Oberhausen stated that the applicants want to be on a Class 5 road C. Daigle stated that there may be some confusion about a Class 5 vs Class 6 road. The lot is grandfathered and a building permit requires 20' of frontage on a Class 5 road. The applicant came in for a boundary line adjustment to get 20' frontage on a Class 5 road but was not going to access the lot from that frontage. J. Olmstead wanted to know when the boundary line adjustment was done did that void the grandfathering. C. Daigle stated that it did not. The applicant made the lot less nonconforming. She stated that these questions are valid reasons for granting a rehearing to allow more information. J. Olmstead stated that they are allowing people to change a lot and it is still nonconforming. C. Daigle explained that if an applicant has a grandfathered lot and not enough frontage then they need to have 20' of frontage on a Class 5 road. This is an unusual situation. P. Oberhausen stated he doesn't know why they don't go down Rogers Road to access the lot. C. Daigle explained that that section of the lot is under water. P. Oberhausen stated they still have to cross water on Durrell Mountain Road. C. Daigle stated that the issue is if the Planning Board made a reasonable interpretation of the law. P. Oberhausen stated that Atty. Philpot stated that the Zoning is unreasonable because of frontage. The Town requires 180' of frontage and now they want 20' to access lot. C. Daigle reiterated that the issue is the Planning Board's interpretation of the Ordinance.

E. Hawkins stated that Atty. Bates provided the Board with two letters and the first one was based on circular reasoning not on fact. Then in response to Atty. Philpots letter Atty. Bates came back with a response stating it is confusing. The issue comes down to the note on the plan and the rehearing should be based on ambiguous terms and they are constrained to make a literal interpretation of the definition based on State OEP guidelines. C. Daigle stated that if they grant a rehearing they could also ask Atty. Bates for a legal opinion on the literal interpretation on the definition.

MOTION: P. Oberhausen moved to grant a rehearing on the Board's October 31, 2005 action to an Appeal of Administrative Decision of the Planning Board's interpretation of Zoning Articles 10.c and 14 (frontage) for Tax Lot 214-009 to allow new information to be presented, for clarification on the definition of frontage and to consult Counsel and clarify the facts of the case.

The motion was seconded by N. Patten and carried. (4-0)

B. BOARD'S ACTION - MINUTES:

P. Oberhausen made a motion to approve the minutes of October 31, 2005. J. Olmstead seconded. Carried (5-0)

STAFF REPORT:

1. ZONING AMENDMENT:

The Board would like to see an amendment clarifying the definition of frontage.

ADJOURNMENT:

MOTION: On a motion by N. Patten, seconded by P. Harris, it was voted unanimously to adjourn at 8:15p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy