

ZONING BOARD OF ADJUSTMENT

Wednesday, December 28, 2005
Belmont Corner Meeting House
Belmont, N.H.03220

Members Present: Chairman J. Olmstead (7:20); N. Patten, P. Harris and P. Oberhausen.
Members Absent: B. Paquette (E).
Alternates Present: E. Hawkins and L. Couture.
Staff: C. Daigle and E. Murphy.

The acting-chairman P. Harris opened the meeting at 7:05 p.m. and appointed E. Hawkins and L. Couture as voting members for tonight's meeting.

Abutters' Hearing – Brian & Michelle Ribeiro: Request for a Special Exception of Article 10.A.3.d of the Zoning Ordinance to construct a deck closer (36') to the front property line than allowed (50') but not closer than the existing structure. Property is located at 134 Hoadley Road, in a "R" Zone, Tax Lot 215-030, ZBA # 6005.

At least three members have viewed the site.

Mr. and Mrs. Brian Ribeiro presented the application.

Mr. Ribeiro stated that when they purchased the house last May there was a wooden board across the sliders that prevented anyone from using them. There is only one way to enter and exit the house and that is through the front door. To get to the basement they have to go outside. They cannot use the sliders because of the board across them. There were stairs from the sliders but they collapsed because of the ice. They would like to have a deck to be able to use both sliders as a means of egress.

Mr. Ribeiro stated that being a new home owner he was unaware of the setback requirements and hired a contractor to build the deck. When they started pouring the footings he received a letter from C. Daigle stating that he was in violation and stopped work immediately. He then applied for the Special Exception.

P. Harris wanted to know what facilities are provided. Mr. Ribeiro stated that they have a septic and well. P. Oberhausen stated that the assessment card shows that they are on city water so the applicant may want to check with the assessing office to correct the assessment card.

L. Couture wanted to know if they are prepared to handle the ice situation so the deck doesn't collapse again. Mr. Ribeiro stated that he will be installing gutters to prevent any mishaps. They will also monitor any ice build up that may be caused from the heat escaping the house.

E. Hawkins wanted to know if there would be rails on all sides of the deck. Mr. Ribeiro stated that there would be.

C. Daigle stated that staff received a call from Mrs. Janice Pelletier, an abutter, and she has no problems with this proposal.

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

BOARD ACTION – BRIAN & MICHELLE RIBEIRO:

MOTION: P. Oberhausen moved to grant the Special Exception of Article 10.A.3.d of the Zoning Ordinance to construct a deck closer (36') 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. The specific site is appropriate for the use.
4. No factual evidence is found that property values in the district will be reduced.
5. There is no valid objection from abutters based on fact.
6. No nuisance or hazard is involved.
7. Adequate and appropriate facilities are already provided.
8. There is adequate sewage disposal.
9. Structures must otherwise meet all dimensional requirements of the Ordinance.
10. 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. (5-0)

Abutters' Hearing – Andrew P. Sanborn Farm, LLC: Request for an Appeal of Administrative Decision of the Planning Board's interpretation of Zoning Articles 10.c and 14 (frontage). Property is located on Durrell Mountain Road in an "R" Zone, Tax Lot 214-009, ZBA # 6105.

Atty. William Philpot Jr., Ms. Karen Feltham and Mr. Howard Warren were present for the application.

P. Harris stepped down from the Board for this application and P. Oberhausen became the acting-chairman. C. Daigle explained that this will create a short Board. They were not aware the chairman would be absent at this meeting. L. Couture was not a voting member at the original hearing but was present at the meeting. Atty. Philpot stated that he would prefer to have a full Board and is willing to wait until the next meeting to get one. Mr. Howard Warren was visibly upset and abruptly left the meeting.

Atty. Philpot stated that even though he will wait for a full Board he would like the Board to vote to

release Town Counsel's opinion. E. Hawkins stated that it would be inappropriate to put L. Couture in that position since she is a new alternate to the Board. He also stated that given the Chairman's unexpected absence and P. Harris stepping down from this case he doesn't feel that it is appropriate to vote on releasing counsel's opinion. P. Harris informed the Board and Atty. Philpot that he did not receive a copy of Town Counsel's opinion. C. Daigle confirmed the opinion has been copied only to the voting members. Atty. Philpot stated that he understood the Board's decision.

BOARD ACTION – ANDREW P. SANBORN FARM, LLC :

MOTION: N. Patten moved to table the application until January 25, 2006 at 7:00 PM

The motion was seconded by P. Oberhausen and carried. (4-0)

The applicants left the meeting.

The Board discussed the benefits of meeting with counsel prior to the next meeting to clarify any questions that they have about the legal aspects of this case. They understood that counsel would not argue the case only clarify any question of law pertaining to this case.

J. Olmstead entered the meeting and apologized for being late due to a family emergency. L. Couture stepped down and J. Olmstead joined the Board.

MOTION: J. Olmstead moved to meet with Town Counsel prior to the January meeting to clarify the legal aspects of this case.

The motion was seconded by N. Patten and carried. (3-1) E. Hawkins opposed.

P. Harris rejoined the Board.

OTHER BUSINESS:

A. BOARD'S ACTION - MINUTES:

P. Harris made a motion to approve the minutes of November 30, 2005. N. Patten seconded. Carried (5-0)

STAFF REPORT:

1. PROPOSED ZONING AMENDMENTS:

C. Daigle explained that the first Public Hearing on proposed zoning amendments will be Monday, January 9th at 7:00PM at the Corner Meeting House.

The first amendment will be to clarify the definition of frontage to include "the frontage of a lot is

intended to provide vehicular access to the portion of the lot developed, or to be developed with the primary use.”

The seconded proposal is to replace “in-law” apartments with “accessory” apartments. This would eliminate the complexity of having to record the restrictions in the registry and trying to enforce who lives in the apartment. The “accessory” apartment would be regulated based on the size of the house and only a percentage of that home would be allowed to be used for an apartment. This would provide affordable housing and help to eliminate the illegal apartments that are being constructed around town. Safety issues could be addressed during inspections. People are now creating apartments and they are not being inspected because they don’t want to go through the complexity of having an in-law apartment.

E. Hawkins wanted to know if they would be allowed in all zones. C. Daigle stated that they would be allowed in all residential zones but not in the commercial or industrial zones. The Planning Board is also considering requiring a special exception for “accessory” apartments in the “RS” zone the same as required for in-law apartments now. N. Patten stated that she thinks it is a good idea to allow “accessory” apartments.

The Board also discussed the number of residents that can occupy one apartment. They are aware of the diverse cultures that have multiple family members living in one house/apartment. C. Daigle explained that the size of the apartment would be based a percentage of the primary structure.

E. Hawkins wanted to know if any other proposal would be on the ballot. C. Daigle stated that the Board is working with Mr. Bruce Mayberry on Impact Fees and Schedules but there is not enough time to draft, review and educate the public on Impact Fees. The Board may consider having a Special Town meeting if after the studies are complete they decide to move forward with Impact Fees or a Growth Ordinance based on those studies.

ADJOURNMENT:

MOTION: On a motion by P. Oberhausen, seconded by N. Patten, it was voted unanimously to adjourn at 7:38 p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy