

Zoning Board of Adjustment Meeting
April 21, 2010 - 7:00 PM
Meeting Room, Town Administration Building
Public Hearings with Applicants

Members present: Chair Karyn Forbes
Ray Desmarais
George Bailey
Gerry Gajewski (Alt)

Chair Forbes called the meeting to order at 7:00 PM. The Clerk called the roll of members present. The meeting was taped for use by the Clerk. She announced that there was an air quality problem at the Town Administration Building and any one that wanted to have his/her hearing continued to a later date could do so. No one spoke so the first hearing was opened.

Case # ZB 10/678 - Tonia Mays

Castle Rock Road - Map 224, Lot 67
Variance Request: Article 4, Section 4.2 - Table 2
An addition was built to a barn that is less than 30 feet from
the side lot line

Tonia Mays represented her Case. She said that she had applied for a building permit in September of 2007. She found out that the barn was on the abutting property. She and her abutters reached an agreement but the structure was still in violation. This was the reason that she was asking for the variance.

Mays said that the barn existed before she purchased the property. She built an addition to the barn in good faith and found out 6 months later that it was 16 feet, 7 inches from the lot line. Mays said there was no way to correct the addition violation as it was put on a concrete foundation. She said the opposite side of the lot was sloping and wet.

Mays said in 2007 she applied for a building permit that her contractor picked up. She said the construction was never inspected. Forbes asked when the ramp was built. Mays said it was on the barn when she bought the site. She said the barn had existed since 1991.

The members had no further questions at this time. Forbes asked if anyone wanted to speak in favor of the Case. No one spoke. She asked if anyone wanted to speak against the Case. Abutter JoEllen Gallant stood to speak. She presented a time line that was given to the members. She said they had tried to settle this problem in 2008. She said they had a survey done in May of 2007. The lot line did not match the deed. Gallant said she talked with her surveyor concerning the lot line and the violation of the addition. Gallant presented a full packet of information that she gave to the Board. Forbes said there was a great deal of information for review that could not be done at this hearing.

Forbes said the Board had a standard that they had to go by. An area variance would need to show that the property values would not be diminished in the neighborhood, was not

contrary to the Ordinance, to deny would cause hardship, and to grant the variance would do substantial justice. She said there were several items that needed to be proven. She said that the use could not be contrary to the neighborhood. She said either it was a barn or a garage. Gallant said it was used for repairs and auto body work

Gallant said Attorney James Schulte represented her. Mays said Attorney Sanford Roberts represented her. Gallant said that Eastern Survey did a boundary survey for Mays and she hired Randy Orvis, Geometres Blue Hills to do one for her. The two surveys matched. The survey was recorded and registered with the State.

Gallant said they had done a settlement agreement with Mays which stated that she had to go before the Zoning Board for a variance and if she did not get it she would have to buy enough land from Gallant to meet the required setback of 30 feet. Gallant said Mays had paid \$12,000.00 for the additional land received and if an amount was needed to meet 30 feet she would have to pay \$4000.00 more.

Gallant presented photos of the barn and addition. She said it was not used as storage as Mays represented. They listen to vehicles being worked on. She said May's boyfriend Adam Akullian used the area as a repair garage. She presented a picture that showed a car on a lift. She said the car belonged to Adam, May's boy friend. Gallant said they did not like the noise at all hours.

Bailey asked if the plan presented had been agreed to. Gallant said yes. She said that they had been out of town and wanted to sell their place so the line needed to be cleared up. Mays said that she had purchased a lift for her boy friend's birthday as he was a mechanic by trade but did not do any business at her place. She said he worked on his own cars and hers and sometimes he did some work for a friend. Mays said he worked for Eliot Auto and Browns in Northwood.

Mays said the addition had been built in the winter. Gallant said they were gone for 6 months and when they returned the addition had been built. Mays said the barn had been built 19 years ago before she owned the property. She said when she bought the property she walked the site with the former owner and assumed that the structures met all requirements including setbacks.

Gallant said a gravel driveway went to the barn and addition. Mays said that she had a paved driveway and in 2007 they put gravel in toward the barn as it was muddy. She said there were erosion issues on the side of the site.

Gallant said Akullian and his friend Frank had cards made saying F & A Auto. They had Frank's phone number in Lebanon and Adams in Barrington. Mays said Adam and his friend used to work together but now that Frank was working they no longer did jobs together. As there were no additional questions or comments the informational portion of the hearing was closed.

Decision

Desmarais said that there was a great deal of information to review. He said he would like to hear from Ted Buczek, the Zoning Administrator/Code Enforcement. Mays should establish what the use of the barn was. Forbes said the use could not diminish the value of the Gallant property. Any evidence that the building was being used as a garage business needed to be presented.

Gajewski said that the noise could be a problem. Clerk Hatch said that the noise levels were 75 decibels at the property lines. Bailey said Gallant represented that they could not sell their property because of the business.

Forbes said Gallant wanted Mays to buy additional land at an additional cost of \$4000.00 to meet the 30 foot side line setback. Bailey said that the barn addition could be torn down and rebuilt in the center of the site. All agreed that they wanted to hear what Buczek had based his letter on. Bailey made a motion to continue the hearing to May 19, seconded by Desmarais, all in favor.

Case ZB 10/679 - Maurice and Jennifer Yergeau

7 Pepper Lane - Map 115, Lot 40

Appeal from an Administrative Decision from the Code Enforcement Officer for using their lot on Pepper Lane as a campground.

Jennifer and Maurice Yergeau represented their Case. Jennifer Yereau said they had received a cease and desist from Code Enforcement Officer that stated that there were 2 campers on their property on Pepper Lane. She gave a background on the site. She said in 2003 they had received a cease and desist and hired a lawyer. She said at the time Wayne Lehman was the Code Enforcement Officer. Yergeau said he came to the property and talked with both her and her husband.

The utility shed that Buczek referenced had been build to replace part of a bus that was used for storage. It was replaced in kind - in place. The fire pit included in the cease and desist was also addressed through the Department of Environmental Services and was not a problem.

Yergeau said after she had talked with Buczek and Hatch they had removed one of the campers. Bailey asked how long they had owned the site. Yergeau said they bought the lot in 1996 and at that time had a pop up camper. She said no one lived in it. She said her sister in law lived on Tibbett's Road, 3 miles from the site and on Memorial Day, Fourth of July, and Labor Day she came and stayed overnight. Yergeau said that the abutter wanted to sell his lot and felt that the campers on her site had lost the sale. She said there was only 1 camper on the site at this time.

Forbes asked if anyone wanted to speak for or against the Case. Attorney Steve Clark represented the abutters, Alan and Ann Zobay as they lived in Cincinnati Ohio. He said the Zobays wanted the appeal from Buczek to stand and the appeal to the Zoning Board denied. He said there had been over 30 days since the Yergeaus had been served with the Cease and Desist so it should not be heard. He read from 15.5, Violations and Appeals. Forbes said the Board should review the guidelines for the Zoning Board to see what is represented concerning an appeal.

Clark said that the right-of-way went over the land of Zobay to the Yergeau lot. He said the camper sat close to the ROW and the beach. Clark said that he had talked with Ted Buczek who told him that the camper could not be used as a year round dwelling. Bailey said Yergeau might have to remove the camper. Clark said the Zobays would like to see this done.

Clerk Hatch asked to read from the Zoning Ordinance. Forbes told her she could. She read Article which stated by this Ordinance a camper was not construed as a dwelling. As long as it was not used more than 120 days in a calendar year it was permissible.

Forbes asked if Buczek knew that Yergeau had removed one camper. She said the Board would like some input from Buczek for what he based his decision on. She asked Hatch to talk with Buczek and have him either attend the May 19 meeting or send the Board clarification of what he used for his decision. Bailey made a motion to continue the Yergeau hearing to May 19, seconded by Gajewski, all in favor.

Case ZB 10/680 - Harry and Jacqueline Kessler

4 Kessler Way - Map 243, Lot 33 & Map 112, Lot 12.01

Appeal to remove a condition on approved subdivision
concerning a backlot

Kessler explained that they had done a subdivision in 1989 and were granted 2 backlots. On one of the lots there was a conservation easement that they now wanted to move to their land that abutted this one. Kessler said that if they sold their existing house and built on the abutting lot they wanted the easement to remain on their land.

Forbes said the Planning Board needed to remove the condition of approval not the Zoning Board as this was not part of the Ordinance. She told Kessler to meet with the Planning Board and represent what she wanted to do. Kessler thanked the Board for their input. Kessler said she had paperwork that stated that the Zoning Board had granted a variance with conditions. She said she would like to continue the hearing to May 19 so the members can review its contents. She asked if she did not need relief from the Zoning Board could she get her money refunded. Hatch said she would look into it for Kessler if she did not need to meet with the Zoning Board. The hearing was continued, motion by Bailey, seconded by Desmarais, all in favor.

Case ZB 10/681 - Bulls Gap Development

Long Shores Drive - Map 102, Lot 90

Request for a variance - Article 4, Section 4.2 - Table 2

Build a house that would not meet the side setbacks

Lisa Doust' represented the request. She said that they had received a variance to put a mobile home on the lot but wanted to change the request to a stick built house. She said that the front and back setbacks would be met but not the sides. Kevin Cole, the developer said a house sells better than a mobile home and added value to a neighborhood. The variance for a mobile home, 14 feet by 60 feet was granted in 2007.

The members said that they had no questions as they had viewed the plan before. The house would be shorter on the lot but the side setbacks would be decreased. Forbes asked if anyone wanted to speak for or against the Case. Jeffrey Conger abutter across the road was concerned about the swamp and wetlands. He said he enjoyed the bubbly brook but it can enlarge and produce a greater flow.

Conger presented pictures of the area and the wetlands. He said he had owned his property since 1985. Forbes asked how the house across the road would affect his property. Conger said anything that added to the flood zone increased the flooding. He said the swamp was spring fed. He said he was also concerned about his neighbors down the road. Conger said he would like to have the members view the site. As there were no additional questions or comments the informational portion of the hearing was closed.

Decision

Bailey said he had looked at the site when the request for the mobile home was made in 2007. Forbes said all the Board was looking at was an amended plan. Cole had already received a variance for a mobile home on the site. Desmarais said the building footprint was reduced and in his opinion reasonable.

Forbes said the use had not changed from the original variance, the use was the same as all others in the area. A new house would add value and meet the Codes with a state approved septic system. The use was in the spirit of the Ordinance and would not be contrary to it. All lots in the area were non-conforming and to deny would create a hardship to the applicant. All of the lots on the road were non-conforming and residential. Forbes said the Board had limited jurisdiction and any water problems were beyond the Board's jurisdiction. The members agreed. The variance was granted, motion by Desmarais, seconded by Gajewski, all in favor. The hearing was closed

Hatch said she had added Bailey's name to the list of members present. Bailey made a motion to approve the minutes with his name added, seconded by Desmarais, all in favor. The next meeting of the Board will be held on May 19. The meeting adjourned at 9:10 PM, Motion by Desmarais, seconded by Bailey, all in favor.