

Zoning Board of Adjustment Meeting
May 19, 2010 - 7:00 PM
Library, Elementary School, Rte. 125
Public hearings with applicants

Members present: Chair: Karyn Forbes
Ray Desmarais
Ellen Conklin
Douglas Hatch Jr.
George Bailey

Chair Forbes opened the meeting at 7:00 PM. The Clerk called the roll of members present. **The Clerk announced that the June 16 meeting will be held in the Library at the Elementary School.** The first hearing was opened. As some of the abutters to the first hearing were not present the Board moved to the Jackie Kessler Case.

Continued Cases

Case # ZB 10/680 – Harry & Jacqueline Kessler

**4 Kessler Way - Map 243, Lot 33 & Map 112, Lot 12.01
Barrington, NH 03825**

**Appeal from a variance granted on December 18, 2002
that stated that the a backlot was created on a parcel
that had been subdivided after 1991. The granting of
the variance stated that the lot must remain as
represented on the plan presented on December 18,
2002**

Jackie Kessler represented her Case. She said that she had come before the Board in 2002 for a variance to allow a backlot that was created after 2002. She said now the Zoning Ordinance had no set date for backlots and up to two were allowed.

Kessler said that they planned to sell their home in the future and wanted to subdivide the land to create a smaller lot of 4 to 5 acres for the house and include the backland in their abutting lot. She said that part of the lot contained an easement which they wanted to continue to own. This was the reason for the subdivision.

Chair Forbes asked if anyone wanted to speak for or against the plan. There were no comments. There were no abutters present. The informational; portion of the hearing was closed.

Decision:

All agreed that the condition no longer applied to backlots. Desmarais made a motion to rescind the condition on Case # 02/518, seconded by Bailey, all in favor.

Case # ZB 10/678 – Tonia Mays

22 Castle Rock Road – Map 224, Lot 67

Barrington, NH 03825

Variance Request – Article 4, Section 4. 2 – Table 2

**An addition that was built before a lot line revision was
done making the side setback less than 30 feet**

Tonia Mays represented her case. The Board had reviewed packets of information from the abutter JoEllen Gallant and Mays. She said that she had brought in the office a rebuttal to the information presented at the April meeting by abutter JoEllen Gallant. The Board reviewed the packets of material from both Gallant and Mays.

Mays said she and her abutters had settled the boundary dispute. She said after having her lot surveyed it was found that the setback still was not met. She said that the abutter's Gallant stated in their information that the addition was built after she was notified that the setbacks would not be met. Mays said that the statement was not true and she presented information stating when it was built.

Mays said that if she did not get the variance she could not purchase additional land from Gallant because it would make their lot nonconforming. She said it would have to be an equal swap.

Mays said the barn was in place when she purchased the property. She had the addition built and had a lift installed within it. Adam Akullian who lived with Mays said he had talked with the Gallants who said that they had no problem with the addition. Mays said that the boundary line had been agreed on.

Mays said that her contractor who built the addition was present to answer any questions from the members. Joseph Silva, Parker Mountain Road said the addition was started in December of 2007 and completed in February of 2008.

Mays said there was no business at the site. She said that Adam and Frank Pouven were friends and had thought about starting a business. She said that they both were mechanics. She said that they had business cards made for each. Mays said that Frank lived in Lebanon, Maine and Adam lived in Barrington.

Forbes asked Frank Pouven where he worked. He said he had worked for Gagnon Brothers of South Berwick for 3 years. She asked Adam Akullian where he worked. He said for Alfred E. Brown in Northwood and for Eliot Maine Auto for 10 years. He said he and Pouven were friends and helped each other out. He said there was no exchange of money.

Richard Sheppard of Portsmouth and Broderick Morse of Madbury were also friends who swapped work. Shepard said he gave Akullian guitar lessons in exchange for work on his car. He said he did not have the ability to fix a car. He said Akullian charged nothing for his help. Mays said she had asked both to come to tell the Board what was done with regards to them.

Mays said she needed the area variance to get the foundation certified. She said that she could not get a building permit approval without it. Forbes said

Zoning Board of Adjustment minutes

5/23/2010

it was the work of the Board to make a decision on what was presented. She asked the members if they had additional questions. Forbes asked if anyone wanted to speak.

Abutter JoEllen Gallant said she had not read the packet of material from Mays. Forbes asked if she would like a few minutes to do so. She said no. Gallant said the foundation was built in 2007 and this dispute had been in progress over a year. She said that it should have been taken care of before.

Gallant said that the addition was not used as storage. She said there was mechanic work done in it whether it was a business or not. She said it was very noisy and work was done at night and on weekends. She said that it was not as bad now as it had been in the past. Hatch Jr. asked if this would be a civil matter. Forbes said if the operation caused a noise problem or was a nuisance it should be addressed. Desmarais said if there was no business on the site he was satisfied with what May had represented.

Forbes said according to what was presented Mays and Gallant had a written agreement that Mays would buy additional land if she did not get a variance for a price of \$4000.00. Steve Gallant said it was not about the money. He said it was the wood and trash on his property. He said if you gave them an inch they would take a mile.

Words were exchanged between Adam Akullian and Steve Gallant. Forbes said there would be no cross debate or she would close the hearing. Forbes asked what the abutter based their knowledge of a business on. JoEllen Gallant said the business cards, noise, and the pictures that the Town asked them to take for documentation.

Forbes said that even if the business was denied May would still have to buy the land as noise would still be an issue. Again Steve Gallant said money was not the issue. He said according to his neighbor there was a tow truck on the site. Forbes asked him if he knew this as a fact. He said no. There was no evidence that there was a tow truck on the Mays property.

Conklin asked if the wood shown in the pictures was on the Gallant site. Gallant said yes. JoEllen Gallant said she picked the business card up at Cozy's.

Forbes asked Ted Buczek, Code Enforcement Officer when he got involved. He said when the addition to the barn was done. It needed a foundation certification and to meet the setbacks.

Hatch Jr. asked if the door could be moved away from the abutter's side. Akullian said no because of the steep slope on the opposite side of the site. Bailey asked if Buczek had done any inspections. Akullian said that Buczek and Fire Chief Walker had come to the site. He said Buczek had not signed off on the building. Mays said she asked Buczek what was not OK for an inspection. She said he checked out whether there was a business on the site.

Akullian said that Gallant did not have a permit for his shed. Mays showed the Board the plans of where she had wanted the addition which was on front of the barn. She said she did not know what a foundation certification was. Mays believed it was a materials test for concrete. Mays said that it was 6

months before she knew that the addition did not meet the setbacks. She said that even with the lot line revision the addition did not meet the setback.

Bailey asked who poured the foundation. Mays replied Norm Vetter and presented his bill. She said that Joseph Silva built the structure. Bailey said he needed to see a building permit to see what was needed. Hatch Jr. said if the door was moved to the opposite side it would satisfy the abutters. Hatch Jr. said they might be able to come up with some type of agreement.

Mays said the driveway could not be changed to service the opposite side due to steepness of slope. Desmarais said that he could vote for the variance if the door was changed and a sign off from the building inspector was received. Bailey said that the lift would need to be reversed.

Forbes asked Gallant how large their lot was. Gallant said just under 2 acres. Forbes said to change the lot line again would have to be an equal swap as the lot could not be made non-conforming. She asked Mays if she wanted to continue the hearing to give her time to think about moving the door. Mays said her contractor told her it would be very expensive to move the door, fill the area, extend the driveway, and move the lift. As there were no additional comments the informational portion of the hearing was closed.

Decision

Forbes said one of the criteria that the Board had to rule on was that what was presented would not injure the public or private rights of others. Hatch Jr. and Desmarais said they could support the variance if the door was moved. Forbes said this did not seem to be an option. Desmarais made a motion to deny the request for a variance for Case # ZB 10/678, seconded by Bailey, all in favor. Forbes said Mays had 30 days to appeal the decision.

Case # ZB 10/679 - Maurice & Jennifer Yergeau

27 Jacobs Well Road

Epping, NH

7 Pepper Lane, Barrington - Map115, Lot 40

Appeal from an Administrative Decision from Code

Enforcement Officer – Article 15.5 – Violations & Appeal

Article 3, Permitted Uses, Section

3.3.1 2) Recreational Vehicles for using their lot on

Pepper Lane as a campground

Jennifer Yergeau represented her Case. She went over the material that she had presented for the first meeting. She said the fire pit had been addressed by the Department of Environmental Services and found to be grandfathered. The shed had been addressed. Yergeau said that the lot was grandfathered as it existed prior to 1972.

Yergeau said that a letter had been sent in January of 2010 after receiving a letter from Ted Buczek on December 29, 2009 stating that she could appeal his decision. She said that one camper had been removed. She presented pictures that showed only 1 camper on the site. Attorney Steve Clark had also taken pictures of the site. All material had become part of the record.

Zoning Board of Adjustment minutes

5/23/2010

Desmarais asked if the camper was on wheels and could move. Yergeau said that they used to go camping but because her sister-in-law's health was not good they did not go anymore. She said they all used to go to various campgrounds. Yergeau said that her sister-in-law comes on some holidays and stays over night. She said maybe 2 or 3 times a year.

Desmarais asked if the vehicle was registered. Yergeau said not at this time. She said the use had been discontinued for the season and winterized. She said at no time was it ever used as a residence.

Forbes asked if anyone wanted to speak for or against the proposal. Attorney Steve Clark said that he represented the Zobays as they live out of town. He presented a plan of the Zobay property. He said that they own a right-of-way to the lake that was beside the camper. Clark said the Zobay's wanted to sell their lot and they thought that the camper spoiled the sale. Clark said that electricity went to the camper.

Clark said he questioned the timeliness of the appeal. He said that he had talked with Ted Buczek who said that a person had 30 days to appeal. He said this had gone over 30 days. He said Yergeau had received a cease and desist for 2 campers on the site. He said that Buczek said that both campers had to be removed from the lot.

Forbes said the ZBA Guidelines stated 30 days. She said we needed to check if what she had was still current. She said that RSA.33 stated a reasonable time. Clark said in his opinion 60 days were unreasonable. Desmarais said storing a camper on site was different than using it.

Conklin asked if a person could not camp on their own property. Hatch Jr. asked the same question, an owner could not use his camper on his own land? Buczek said a camper could not be used on the same site as a house as that would be 2 dwellings on a lot. Bailey said Yergeau had received notice in December and had not responded before the May meeting.

Yergeau said that when Zobay purchased their lot the campers were there. The pictures presented were taken in 2010. Clark said the campers existed in January and February. He said in his opinion May was not a reasonable time. Forbes said that timeliness was not the issue.

Forbes said that Buczek's letter was the only place that referenced the 30 days which were state requirements not local. Yergeau said that the use was only 2 to 3 days a year. Clark said that an appeal had to be filed within the 30 day period. Forbes said that Yergeau said she had met with Buczek before the scheduled meeting. Clark said Buczek had not sent any other letter or communication.

Forbes said that there were several items that needed to be addressed. Desmarais made a motion to continue the hearing to June 16, seconded by Bailey, all in favor.

The hearings were closed. Bailey made a motion to accept the minutes of April 21, seconded by Desmarais, all in favor. Desmarais made a motion to adjourn, seconded by Hatch Jr., all in favor. The next meeting will be held on June 16.

