

Zoning Board of Adjustment Meeting
September 15, 2010 - 7:00 PM
Library, Elementary School, 347 Rte. 125
Barrington, NH 03825

Members present: Chair Karyn Forbes
Ray Desmarais
Douglas Hatch Jr.
Ellen Conklin
Gerald Gajewski (Alt)

Chair Forbes opened the meeting at 7:05 PM. The Clerk called the roll of members present. The first hearing was opened.

Rehearing for Case ZB 10/678 - Tonia Mays

**22 Castle Rock Road, Barrington, NH
General District - Map 224, Lot 67**

Request by Applicant for a Rehearing on the Decision for Case # 10/678, denied May 19, 2010 for a side setback for an addition to an existing barn located on Castle Rock Road, Article 4, Section 4.2 – Table 2. Parcel contains 41,364 square feet.

Applicant, Tonia Mays and Attorney Sanford Roberts represented the request for a rehearing of her case that had been denied in May, 2010. Attorney Roberts said he would not belabor over the facts that had been presented with the original hearings.

Roberts said the Gallants had agreed to the lot line that had been set. He said they had not opposed the variance. He said their concern had been that they felt there had been a business operated in the addition of the barn. Roberts said at the last hearing Mays' boyfriend had stated that he did his own work. He said the Code Enforcement Officer had sited Mays with operation of a business but had revisited the site and could not prove any business was being operated.

Roberts said the principal problem with Gallant was noise. Chair Forbes said the request that the Board had voted on was a boundary line agreement for a side line. She said the noise problem was not what the Board had considered.

Roberts said there had been 2 surveys done and both parties had agreed to the boundary. He said they had entered in to an agreement. It had cost Mays \$12,000.00 to resolve this problem and come before the Board for a variance. Roberts said Gallant agreed to additional land as long as their lot did not become nonconforming. This transaction would cost Mays an additional \$4000.00.

Roberts said Mays had received a quote of \$80,000.00 on adding fill, moving the driveway, and changing the door to the addition to the other side. He said she also got an estimate to sound proof the addition inside and some on the outside. Mays would agree that the door would be closed when work was going on inside and even when it was hot the door would not be opened more that 48 inches.

Attorney Roberts said he had contacted Attorney James Schulte, who had represented the Gallants but did not get a call back. Clerk Hatch said she had received a call from Attorney Schulze to verify the hearing time and place. Forbes said then he was aware of it taking place.

Forbes said she had talked with Schulte concerning what had been agreed to and has insisted that it was done. The emails between Attorneys Schulte and Roberts were viewed as part of the package. It was represented that Gallant was anxious to get the problem solved.

Again Forbes said the Board was not considering the use issue and had stated that several times in the hearing process. Mays was before the Board for a side setback violation. Roberts said the barn addition was approximately 150 to 200 feet from the Gallant home.

Desmarais said that when he spoke on moving the additions door it was because the driveway was in the side setback. Conklin said it appeared that to enter the garage a vehicle went over the agreed boundary line. Mays said she thought that she had bought more land at the time of purchase. She thought that the gravel driveway was on her lot. She presented pictures showing a fence along the agreed boundary for a distance.

Mays said everything that had been over the agreed boundary such as a pile of wood had been moved and was now beside the barn. She said there was nothing beyond the boundary line. Mays said before the boundary line agreement there had been no problem with the line. Forbes said the 30 foot setback can be used for a driveway, it cannot contain a structure. She said the fence could be extended.

Hatch Jr. said the fence should be extended along the building. He said the fence would make it difficult to turn a vehicle but it could be done. Both Desmarais and Conklin said the fence should not encroach on the abutting property. Desmarais said the sound proofing should help with the noise issue. Conklin said the problem was encroachment.

Forbes asked if there was anyone present that wanted to speak for or against the proposal. No one spoke and there were no abutters present. The informational portion of the proposal was closed.

Decision

Forbes went over the points that needed to be proven. The surrounding properties would not be diminished in value as the lot line had been changed and agreed to put the structure on the Mays property. The plan was being done in the public interest as Mays was making improvements to reduce the noise. Denial would cause hardship as the lot was narrow and would create a jagged line.

There would be a financial burden as the applicant had reached an agreement with the abutter which had cost Mays substantial money. Conklin said that changing a deed and the legal work would add costs. The fence and insulation should help solve the problem of encroachment and noise from the addition. Hatch Jr. said Mays had an agreement with the abutter concerning the boundary line.

The change would not injure the rights of others as Mays and the abutters had made a boundary line agreement for the new line. There was nothing in the agreement that addressed their concern of noise. Substantial justice would be done for all the reasons stated above. The barn addition was over 100 feet away from the Gallant house and with conditions the noise level would be kept down.

Desmarais made a motion to grant the variance with the conditions that a fence would be installed along the length of the building along the property line, approximately 50 feet and the addition would be sound proofed with sound board and work based on the quote from Silversmith of \$6350.00. The motion was seconded by Hatch Jr., all in favor. Chair Forbes announced that the variance was granted with the conditions stated above.

Case ZB 10/685 – Dana Walsh

9 Coolidge Ave., Peabody, MA 01960

Location of lot - Berry River Road, Barrington, NH

Map 101, Lot 23 – General Residential District

Request by Applicant for a variance from Article 4, Section 4.2 – General Provisions, Section 4.2 – Table 2 – Front setback – Lot contains 26,138 square feet as shown on the site plan. The map of the site may be found on Maps Online.

Dana and Sheri Walsh represented their Case. Hatch Jr. stepped down from the hearing as he had drilled Walsh's well. D. Walsh said they had put a 40 foot travel trailer on their lot. The front setback of 40 feet could not be met as the back of the lot have a steep slope.

Forbes asked how long the trailer had been on the site. Walsh said about a year and a half. Hatch Jr. said he could verify that the back of the lot dropped off significantly. Walsh said there was 3 to 4 feet at the back of the trailer to allow room for anyone to get around it. He said this makes 3 to 4 feet from the trailer to the slope. S. Walsh said they had set the trailer using the street line as a guide.

Forbes asked what the blocks would be used for. Walsh said due to the weight of the trailer he needed to set it on concrete blocks for support. Forbes asked if the trailer would be set up to remain on the lot. Walsh said this was his intentions.

Forbes asked if anyone wanted to speak for or against the Case. No one spoke and no abutters were present. The informational portion of the hearing was closed.

Decision

The members discussed the points that needed to be proven. Forbes said the lot was nonconforming. Walsh had placed the trailer as far back as possible and still allow going around it. The slope on the back of the site had been verified by Hatch Jr. She said to add enough fill to level the back slope would be costly. The value of the surrounding homes would not be diminished as there were other trailers in the area. Substantial justice would be done as it would allow Walsh to use his lot. There was 47 feet to the traveled way of the road. All of the members agreed that the points had been proven by Walsh. Desmarais made a motion to grant the variance for a front setback violation, seconded by Conklin, all in favor. Hatch Jr. returned to the Board.

Case ZB 10/686 – Joseph and Shelia Marquette Jr.

86 Beauty Hill Road

Map 250, Lot 38 – Neighborhood Residential District

Request by Applicant for a variance from Article 4, Section 4.2, Minimum Lot Size, Table 2 – Side setback for an existing house from the driveway that services 2 backlots –

Lot contains 436,780 square feet as shown on site plan. The map of the site may be found on Maps Online.

Joseph Marquette represented his plan. He read a letter from Berry Surveying and Engineering into the record. It explained that the actual setback of his house from the road to the backlots was 2.8 instead of the 7.7 represented at the original Zoning Board hearing.

Marquette explained that the back stake had been removed. He said they had not changed anything except the distance from the house to the road which would be actually a driveway to the backlots. Marquette said the subdivision would have 3 lots, 1 front one and 2 backlots. He said the sheds would be removed from the 50 foot right-of-way.

Marquette said he had talked with the Road Agent and he wanted to have one curb cut for the 3 lots. He showed the fir tree on the site as a reference and pointed out the location of the proposed driveway. He said the barn/shed would be moved.

Abutter Linda Mariotti said she wanted to be sure that Marquette was paying taxes on his out buildings. She said hers showed on her tax card but there were none on Marquette's. She said a variance should be considered only if the person was in good standings. Forbes asked Mariotti to wait until the Board was done with their questions and the hearing was opened up to the abutters and public. Mariotti said she wanted to see the plan and was against the variance request as it was the second one for the same site.

Forbes asked if anyone wanted to speak for or against the proposal. It was noted that abutter Linda Mariotti was present and had spoken against the variance request. No one else spoke. The informational portion of the hearing was closed.

Decision

Forbes said the proposed lots would be served by one curb cut. There was no diminishment in values as the use would be residential as allowed. The lot was narrow. The rights of the abutters would not be affected as the violation would be within the lot. She said when the subdivision was done the driveway would be in the middle of the 50 feet, each lot would own 25 feet. Clerk Hatch said there would be a common driveway to service both backlots. Forbes said the existing septic system was on the opposite side so it would cost money to replace. A wetland was on the opposite side of the parcel. The members agreed that Marquette had proven the points for a variance. Forbes announced that the variance had been granted.

Case ZB 10/687 – Lake Shore Barrington, LLC

5 Dick Tracy Drive, Pelham, NH 03076

Location of lot – 22 Lake Shore Drive, Barrington, NH

Map 119, Lot 25 – General Residential District

Request by Applicant from Article 5, Section 5.1.2. 3) and Section 5.2.1.1 for a new multi-family dwelling to replace an existing one which would be a reduction of over 600 square feet in building impervious surfaces. The lot contains 50,470 square feet as shown on the site plan. The map of the site may be found on Maps Online.

Eric Weinrieb, PE, Bob Gagnon, Patrick Bonner, and Jillian Soucy represented the plan for owners William and Renee Soucy. He explained the plans. At present the lot contained a 4 unit apartment building with access from Speedwell Pines Association

land. This access would be eliminated and the access from Lakeshore Drive would be used.

Weinrieb said the well existed and would be used. There needed to be substantial work done as the electrical, plumbing, and insulation were all substandard. There were 7 existing bedrooms on the 50,470 square foot lot.

Weinrieb said the existing structure would be razed and a duplex with 6 bedrooms constructed. There would be 2 users with a new state approved septic system installed. Weinrieb said the structure was within the protected shoreland so they would also go through the State for necessary permits. He said the existing structure was 3270 square feet and the new one would be 2650.

Weinrieb presented pictures of the old structure and drawings of the new one. There were questions concerning the new structure. Weinrieb said the third floor would be unfinished. Conklin asked what the height would be. Weinrieb said 30 feet from ground level.

Weinrieb went through the 5 points for a variance. The new structure would meet the zoning and a new state approved septic system would be installed. He said coverage of the lot would be 7.2% which was a reduction from what existed.

Weinrieb said the use was in the spirit of the Ordinance as the lot predated zoning and was capable of having a well, septic system, and house. He said they plan to demolish the old structure and replace it with a new one that would meet all codes. Weinrieb said the configuration of the lot did not meet zoning. The house was in disrepair, did not meet current codes and would be expensive to remodel.

The new structure would add value to the property and neighborhood. It would be similar to other homes in the area and enhance their value. The access on the side of the lot would be eliminated which would be more aesthetically pleasing. Weinrieb said the structure could be rented but would become in greater need of repair. He said at present all leases had expired so now was the time to build a new structure.

Forbes asked if anyone wanted to speak for or against the plan. Abutter Michael Dill asked about the driveway. Weinrieb said it would remain where it was shown on the plan and enter off Lakeshore Drive. The side access would be eliminated. He said they would fix the drainage. Dill said he was satisfied with what was represented. Clerk Hatch read a memo from the Conservation Commission which stated that the Commissions recommends locating all buildings as far away from the shore line as possible. It is the Commissions opinion that this new structure was an improvement over what existed. As there were no additional questions or comments the informational portion of the hearing was closed.

Decision

The members discussed the Case. Desmarais said the new structure would be a significant improvement. Hatch Jr. said he had been in one of the apartments and it needed major repairs. The new structure would add value to the lot and neighborhood. It would meet all requirements and codes. The hardship would be the existing structure was in need of many repairs and it still would not meet all codes.

The structure would be in the spirit of the Ordinance and add value. The use would be reduced as the units would go from 4 to 2 with 6 bedrooms. The use was not contrary to the Ordinance as the structure would be in a residential subdivision.

The members agreed that the 5 points had been proven. Desmarais made a motion to grant the variance, seconded by Hatch Jr., all in favor. Forbes announced that the variance had been granted.

Case ZB 10/688 – Renee L. Soucy

11 Knoll Road, Dracut, MA 01826

Location of lot – 20 Lakeshore Drive, Barrington, NH –

Map 119, Lot 26 - General Residential District

Request by Applicant from Article 4 – Dimensional Requirements, Section 4.2 – Table 2 for a new residence to replace an existing one that will be razed. The existing foundation will remain. The house footprint will be expanded away from the water and extend into the side setback approximately 2 feet. The lot contains 48,440 square feet. The map of the site may be found on Maps Online.

Jillian Soucy and Patrick Bonner, daughter and son-in-law of Renee Soucy represented the plan with Eric Weinrieb PE and Bob Gagnon. Weinrieb said it was an existing lot with an existing residence. He said the lot abuts the one discussed at the former hearing. There was a loop access to the dwelling which would be reduced. The existing garage would remain. Weinrieb said they would re-vegetate the areas within the protected area of the shoreland where the driveway would be removed.

Weinrieb said they intended to demolish the existing structure and the new structure would expand away from the water. The structure would have 4 bedrooms. Weinrieb said they were asking for approximately 2 feet to include any eaves, sheathing, overhangs etc. He presented pictures of the existing house and drawings of the new one.

Weinrieb said the existing septic system will remain on site to collect the water from the water softener as it damages septic systems. Conklin asked if a washer etc would also use it. Weinrieb said everything else would be piped to the new state approved system.

Weinrieb read the 5 points that had to be proven for a variance. He said the home was in poor condition and in need of updates. The existing foundation would be used with the rooms enlarged to meet today's standards.

There would be an adequate buffer between the structures on other lots. The configuration of the lot and site location of the house would limit visibility to abutting properties. The hardship would be if the owner had to demolish the foundation and move the structure. This would cost considerable just to move the structure 2 feet. There would be no extension toward the water. Conklin asked what the height of the building would be.

Weinrieb said 35 feet from ground level. He said they would be going to DES to extend the dock. He said the variance would be only for 1 side, an extension of 2 feet. Gagnon said the dock existed. Conklin asked about the patio. Gagnon said the patio was made up of pavers. Conklin said this would be a structure as the pavers were concrete. Forbes said as these all exist it would be up to the Building Inspector to review and make the final determination. Weinrieb said he was aware that the pavers might need a variance.

Clerk Hatch read a memo from the Conservation Commission suggesting that Soucy check with the Shoreland Protection for any requirements as the existing

foundation if extended would encroach in the shoreland setback. As there were no additional comments or questions the informational portion of the hearing was closed.

Decision

Forbes went over the items for the variance. The new structure would add value to the neighborhood. The hardship would be to destroy the existing foundation and start over. This would add substantial costs. The new structure would meet all codes and have a state approved septic system. The new structure would not be visible from other lots due to its configuration. It is in the spirit of the Ordinance as it is an allowed use. The proposal would not be contrary to the public interest as the new dwelling would improve the value of the lot.

All members agreed that the points had been met. Desmarais made a motion to grant the variance, seconded by Hatch Jr., all in favor. Forbes announced the variance had been granted. The hearings were closed.

The Board moved to a business meeting with Town Planner Constance Brawders. Brawders said she had 3 items to discuss. 1 – The Law Lecture Series – Brawders said there were 3 lectures; Cell Towers – October 27, 2 – Conflict of Interest – October 13, and 3 – Administrative Decisions in Planning and Zoning – October 20. She said anyone that wanted to sign up for any or all of the lectures was welcome and the Town paid for them. The dates represent the dates of the lectures at the McConnell Center, Dover from 7PM to 9PM. Each lecture was scheduled for Wednesday evening.

Brawders said she had talked with the Attorney at the Local Government Center and was told as long as the zoning decisions were posted they did not need to be published in the local paper. All agreed if it was not necessary to publish the decision we should stop. The decisions would be posted at the Library, Post Office, and Town Hall. Desmarais made a motion to post the zoning decisions instead of publishing them, seconded by Douglas Hatch Jr., all in favor.

Brawders said she was working on creating new checklists for zoning hearings. She said each application / checklist would be uniform. A draft was given to each member to review and make any changes. Desmarais said if people can fill out the application and checklist more easily it would be better.

Forbes said she would like to see the forms give a better description of what was being applied for. An example would be a structure to be replaced, it would be easier to look at if there was an existing plan and a proposed one. This would give the members the opportunity to view and compare the plans.

Conklin said the Board did not get involved in creating zoning nor do the members give input. Forbes said as the Zoning Board was a Quazi Board we should keep a distance from creating zoning. Brawders said she would like to complete this project as she had others to start. She asked the members to read, make any suggestions or changes and email them to her.

The meeting adjourned at 9:00 PM, motion by Desmarais, seconded by Conklin, all in favor.

Dawn Hatch, Clerk