

MEETING MINUTES
ZONING BOARD OF ADJUSTMENT PUBLIC MEETING
NEW LOCATION--BARRINGTON MIDDLE SCHOOL

GYM

51 HALEY DRIVE (Off Franklin Pierce Hwy)

Barrington, NH
October 21, 2015
7:00PM

Members Present

Karyn Forbes, Chair
George Bailey
Meri Schmalz
Raymond Desmarais
Gerry Gajewski

MINUTES REVIEW AND APPROVAL

1. Approval of September 23, 2015 Regular Meeting Minutes.
A motion was made by G. Bailey and seconded by M. Schmalz to approve the September 23, 2015 meeting minutes. The motion carried unanimously.

ACTION ITEMS

1. [118-54-GR-15-ZBA \(Owner: Suzanne L. Shneider\)](#) Request by applicant to request a variance from Article 4 Dimensional Requirements Table 2 to expand an existing 3 bedroom footprint to be as close as 23.3' on west side and 26.9' on southerly front yard as close as 11.4' on northerly front yard and 8.8' with proposed ramp; as close as 14.4' on west front yard and as close as 9.2' south side yard with a proposed ramp. This lot is located at 75 Bulley Road on a .157 acre site (Map 118, Lot 54) in the General Residential (GR) Zoning District. BY: David W. Vincent, LLS, Land Surveying Services; PO Box 7418; Rochester, NH 03839-7418.

This hearing was continued from September 23, 2015. David Vincent of David W. Vincent, LLS, Land Surveying Services represented the applicant along with the architect. The revised plan presented showed only four dimensional changes that took off a lot of the expansion. David Vincent explained the changes. The proposed addition was reduced from 990+/- s. f. of net additional lot coverage to 364+/- s. f. of net additional lot coverage.

K. Forbes asked if the enclosed porch was part of the existing building.

K. Forbes asked if there was anyone present to speak for or against the application
No one spoke

K. Forbes closed public testimony at 7:07 p.m.

R. Desmarais noted that Mr. Vincent had done what was asked and moved to grant the variance,

K. Forbes noted the following:

1. There is hardship as this is a substandard size lot.
2. The request is consistent with the spirit of the ordinance as this is an existing building and they are minimizing the impact of the property.
3. The variance won't diminish surrounding property values.
4. The variance would do substantial justice.
5. The variance won't be contrary to the public interest.

seconded by G. Bailey. The motion carried unanimously.

2. [220-57-RC-15-ZBA \(Owners: Rina Myhre, Paul C. Helfgott & Carol H. Ledous/Developer: Joseph Falzone\)](#) Request by applicant to request a variance from Table 1-Table of Uses which restricts conversation cluster subdivisions in Regional Commercial District and also requests a variance from requirement of 6.2.5 (5) of the Zoning Ordinance which requires all cluster groups obtain a driveway access from interior street on Tolend Road on a 103.2 acre parcel (Map 220, Lot 57) in the Regional Commercial (RC) Zoning District. By: Scott Cole, Beals Associates PLLC; 70 Portsmouth Avenue; Stratham, NH 03885.

Mark Johnson represented the applicant, Joseph Falzone. They are requesting two variances – to allow a conservation cluster subdivision and allow driveway access from Tolend Road as opposed to access from interior subdivision streets. The preliminary design of the proposed subdivision showed two roads that ended with cul-de-sacs. A memo from Road Agent, Peter Cook, suggested shared driveways over the cul-de-sacs as it would benefit the Town because it would not be creating a road for the Town to maintain in the future. The cluster subdivision would allow for more open space than a conventional subdivision. The lots are smaller than a conventional subdivision. A memo from Chief Walker also supported all of the driveways exiting directly on to Tolend Road. Mr. Johnson noted that a conservation cluster subdivision is in keeping with cluster by-laws. He presented a written comparison of a conventional subdivision vs. a conservation cluster subdivision. Christian Smith, engineer with Beals Associates, showed the second proposal with all lots having frontage on Tolend Road and some with common driveways. They also showed an aerial photograph of the property.

K. Forbes asked if there were any questions from the Board – there were no questions.

Attorney Johnson reviewed the criteria for a variance as follows:

1. Unnecessary hardship due to the topography of the site – would better preserve open space and conserve wetlands.
2. With the spirit of the ordinance the natural resources will be preserved and is a judicious use of the land.
3. There will be no diminution of surrounding property values as it is in keeping with the neighboring development.
4. It will do substantial justice by being consistent with the area's present use, does not harm abutters and protects the properties natural resources.
5. It is not contrary to the public interest as it preserves a large tract of land and protects natural resources.

There were no questions from the Board

K. Forbes asked if there were any public comments

Dan Ayer stated that he has attended a lot of Conservation Commission meetings and they are in favor of this request.

Randall Heller, property owner on Tolend Road, stated that he is a strong advocate of this proposal.

K. Forbes closed public testimony at 7:18 p.m.

K. Forbes noted the following:

1. It is clear that it is residential in that area except on Route 125.
2. Granting the variance would be consistent with the spirit of the ordinance as it preserves open space and the wetlands.
3. It will not result in diminution of property – it may improve it.
4. Granting the variance would do substantial justice.
5. Granting the variance would not be contrary to the public interest.

K. Forbes noted that there are two variances that are being considered.

R. Desmarais moved to grant both variances Table 1-Table of Uses and 6.2.5 (5) of the Zoning Ordinance, seconded by M. Schmalz. The motion carried unanimously.

3. [238-5-TC/SDAO-15-Appeal \(Owners: George & Arvilla-Calef-George Calef Fine Food's\)](#) Request by applicant to appeal the Planning Board interpretation of the definition of structure (Article 18 Definitions). Located at 495 Calef Highway on a .398 acre parcel (Map 238, Lot 5) in the Town Center (TC) & Stratified Drift Aquifer Overlay (SDAO) Zoning Districts. By: Steve Oles, Norway Plains Associates, Inc., PO Box 249, Rochester, NH 03866-0249.

Attorney Gregory Wirth represented the applicant. Attorney Worth stated that the Calef's seek to install a well on their property instead of using an offsite well that has serviced the property for several decades. The well is necessary as the abutter (Three Socios) is proposing installing buried tanks for a convenience store and gas station and is proposing placing a well on a conservation easement that is part of the Village Place subdivision that will service several commercial establishments. Based on the abandonment of the offsite water source, Mr. Calef approached the town to see if a permit was necessary to install a well on his property and was told he did not need a permit that was back in late 2014. He worked with a well driller to put a plan together to address both the location of the septic system and boundary lines. He applied to DES for the well and was approved on August 8, 2015. The well was installed and then he was advised that he needed site review approval and a variance as a well is a structure. Attorney Wirth stated that under the Zoning Ordinance a well is not a structure and does not have to meet setbacks. The DES website shows that Barrington's local contact is Dawn Hatch and that Barrington wells don't need permits and is not subject to the required setbacks. This is information Mr. Calef considered when putting the plan together. As of September, 2015 the requirement for an offsite easement with respect to the well radii is no longer applicable so Mr. Calef does not need to obtain the offsite radii easement from Citizens Bank. Attorney Wirth stated that their position is this well is not subject to setbacks, never has been nor should be.

K. Forbes asked if there were any questions from the Board.
There were not.

K. Forbes asked if there were any members of the public who would like to speak for the case regarding the interpretation of the Zoning Ordinance as the next case deals with the variance.

Steven Jeffery noted that in the Zoning Ordinance there are different definitions of structures including wires and underground pipes that are going through the setbacks. He feels the ZBA would probably not want to deal with those sorts of variances. He showed a plan of Village Place where there are two wells that are placed with no variance required.

Chris Vachon said we are talking about a water system and the town's attorney had stated several years ago that water systems are a utility so no setbacks are needed for a water system. We keep attacking this a every angle. When you go to your town code enforcement officer with a DES certification and your code enforcement officer says you don't need a permit and then you receive a cease and desist after you drill your well that seems like harsh treatment. He is in the real estate business and wells are on property lines everywhere so why is Mr. Calef being singled out? He has his right to have a well. He continued that Mr. Calef has lived in this town for 40 years he has received dozens of awards for volunteering in this town. He has commendations from the Governor and President Clinton. It is time to do what is best for our residents – enough is enough

George Calef stated that he has tried to do what his right. He was told at the town hall he didn't need a permit for a well. He said he received a cease and desist at night and that stinks. He said wells are going in all over town. He showed a plan of the Ramsdell Woods Subdivision with wells on lot lines. He feels he is the first one to be held to this standard when the standard changed half way through the process.

K. Forbes asked if there was anyone in opposition to the application.

Attorney Whitelaw who represents the Planning Board was present in support of their decision. She spoke regarding the interpretation of the Zoning Ordinance and whether a well is a structure noting that is the question before the Zoning Board tonight. Article 18 defines a structure as "anything constructed, installed, placed or erected, whether above or below grade. Unless otherwise stated in this Ordinance, the following structures are exempt from the building permit requirements set forth in Section 15.4.1 and shall not be construed as structures for purposes of setback requirements, but shall be so construed for all other purposes. Examples listed are signs, stone walls, home propane and heating oil tanks, and fences. The rules of construction are clear where there are exceptions to a main regulation as they are listed out individually but they cannot be added. The Supreme Court recently made that rule. At one time there may have been an attempt by the Planning Board to accept wells in the buffer and not require setbacks but it was not put in and we can't add language to the Ordinance that wasn't included in that list. We disagree with the characterization of the conversation that was had with Code Enforcement Officer Huckins but that doesn't make any difference with what this Board is charged with under the statute. Its job is interpreting of the Zoning Ordinance. Their estoppel claim should be made to the Superior Court and not this Board.

K. Forbes asked if anyone had any questions for the Planning Board's attorney.
There were none.

K. Forbes asked if there was anyone else to speak in opposition.

Attorney John Arnold, representing Three Socios, submitted a letter stating their objections to this appeal. He agrees with Attorney Whitelaw. Attorney Arnold stated regarding the discussion of Mr. Calef not knowing that permits were required for site plan approve when he, as a Planning Board member, actively participated in the site plan hearing for the gas station when there was discussion that site plan approval was required for wells and a separate application was necessary when applying for a well on the Village Place property.

George Calef said he didn't actively participate in the commercial site plan process for the gas station – he recused himself. He further stated as a Planning Board member that has not heard of anyone else having to go through this process.

Close public testimony and the Board discussed.

K. Forbes explained the decision before the ZBA as the interpretation of the Ordinance and is a well a structure. There is a remedy to this situation and that is to change the ordinance.

R. Desmarais stated that he never has given a variance for a well in his 25 years on the ZBA and clearly the Planning Board has been approving subdivisions with wells in setbacks. R. Desmarais feels the interpretation of the ordinance would include wells as it does include septic systems.

K. Forbes stated that we are currently stuck with the ordinance and maybe the Planning Board should review it at some time.

G. Bailey agrees with R. Desmarais as he has sat as a guest at some Planning Board meetings and they have never dealt with this before.

M. Schmalz feels that the property had an original well that was abandoned so why doesn't a well go with this property - it only makes sense.

J. Gajewski feels the well is a structure.

K. Forbes agrees with J. Gajewski. She states that the Ordinance is poorly crafted.

R. Desmarais moved to overturn the decision of the Planning Board, seconded by G. Bailey. The motion passes three to two.

4. [238-5-TC/SDAO-15-Variance \(Owners: George & Arvilla Calef-George Calef Fine Food's\)](#)

Request by applicant to request a and a variance from Table 2-Table of Dimensional Standards which the rear setback is 15' and the well is located 8.8 from the rear lot line at 495 Calef Highway on a .398 acre parcel (Map 238, Lot 5) in the Town Center (TC) & Stratified Drift Aquifer Overlay (SDAO) Zoning Districts. By: Steve Oles, Norway Plains Associates, Inc., PO Box 249, Rochester, NH 03866-0249.

This case was withdrawn.

ADJOURNMENT

A motion was made by G. Bailey and seconded by R. Desmarais to adjourn at 7:55 p.m. The motion carried unanimously.

Respectfully submitted,

Suzanne McNeil
Selectmen's Clerk