

BOARD OF ADJUSTMENT
DEERFIELD, NEW HAMPSHIRE

MAY 28, 2013
MINUTES OF MEETING

PRESENT: Board members Joshua Freed, George Thompson, Katherine Alexander, Darlene Cumming. Alternate member Anthony DiMauro. Secretary Jane Boucher.

Chair Joshua Freed called the meeting to order at 7:15PM and appointed Anthony DiMauro a voting member.

Anthony DiMauro moved to adopt the revised application for a Special Exception. George Thompson seconded. Voted in favor.

George Thompson moved and Darlene Cumming seconded to table the election of officers until the next meeting.

Joshua Freed will sit as acting clerk and Vice Chair George Thompson will sit as acting chair.

Joshua Freed moved to recommend to the Board of Selectmen the appointment of Anthony DiMauro as a member of the Board of Adjustment to fill the unexpired term of Sandra Logan. (April, 2015). Darlene Cumming seconded. Voted in favor with Anthony DiMauro abstaining.

Acting Chair George Thompson explained procedure , noting that the Board will hear two cases this evening. He added that an appeal for a decision to grant a special exception for JCR Construction has been received and the board has thirty days to take a vote as to re-consider. The Board will discuss this at a public meeting, with no public input, and make a decision as to whether to re-hear the case at that time. Acting Chair Thompson noted that, depending on the time needed to hear the two scheduled cases, the Board may discuss the motion to re-hear at this meeting.

7:30 PM CASE # 13-04 CHARLES SARGENT/PIT BULL REALTY GROUP
Charles Sargent was present.

Acting Clerk Joshua Freed read the Notice of Public Hearing by which Charles Sargent has applied for a variance from Article II, Section 204.1, 207.1 to construct a dwelling on a lot without adequate frontage. The property, identified as Tax Map 416 Lot 72, is owned by Sheila Slade Szelog.

Joshua Freed moved to accept Case #13-04. Anthony DiMauro seconded. Voted in favor.

Charles Sargent commented that the lot consists of 3.6 acres with 115 feet of frontage on Nottingham Road and 50 or 60 feet of frontage on Adams Hill Road. There is an existing foundation on the property and it is his intent to construct a 1200 sq. ft. home. He noted that there was adequate room for septic and well.

Mr. Sargent showed the distance of setbacks on the map submitted.

Mr. Sargent proved copies of notarization from Sheila Slade Szelog, owner of the property. The Board commented that the notary stamp was not clear on the letters. Mr. Sargent was requested to provide another copy.

Joshua Freed moved and Darlene Cumming seconded to continue Case # 13-04 to June 25, 2013 at 7:30PM. Voted in favor.

7:45PM CASE # 13-05 ANDREW HOWELL
Andrew Howell, his father, and Attorney Kevin Baum were present.

Acting Clerk Joshua Freed read the notice of public hearing by which Andrew Howell has applied for a variance to Article II, Section 204.1 to subdivide a lot creating two lots without adequate frontage. Map 406 Lot 24, Old Coffeetown and Blakes Hill Road.

Joshua Freed moved and Anthony DiMauro seconded to accept Case # 13-05. Voted in favor.

Attorney Kevin Baum commented that the property is located on the corner of Old Coffeetown Road and Blakes Hill Road. The lot which has two dwellings, is allowed by variance granted in 2011. He noted that two homes have been located on the property for about 50 years. Attorney Baum said that his client would like to split the lot into two lots which will have less than 3 acres in each. If a variance is granted the owner will apply to the Planning Board for Subdivision approval.

Attorney Baum said by having two homes on the same lot leaves the applicant unable to create re-financing.

Attorney Baum noted that many lots on adjacent properties are less than three acres in size.

Joshua Freed questioned the well on the property. Mr. Howell replied that the well has been serving two dwellings since 2010.

Attorney Baum said that there will be not visible change to the

property.

No one spoke in favor or in opposition.

8:10PM Joshua Freed moved and Anthony DiMauro seconded to go into deliberative session at this time.

Joshua Freed voiced concern regarding the well.

George Thompson said that an easement could address the concern over the well.

Darlene Cumming asked if this would create a precedent and that if granted, would be a financial benefit only.

George Thompson said that the decisions made by the ZBA do not set a precedent. Each case is voted on by it's own merit.

Joshua Freed voiced concern regarding hardship.

8:20PM Joshua Freed moved and Darlene Cumming seconded to go out of deliberative session at this time.

Attorney Baum said he wished to clarify some issues. He referred to his submission for criteria, noting the case of Walker v. City of Manchester. A copy of page three of the submission is attached to these minutes.

Attorney Balm reiterated that there will be no visible change to the property and clarified that his client will agree to put in a separate well if necessary.

8:25 The Board went back into deliberative session and completed work sheets.

8:35PM Joshua Freed moved to DENY the request for a variance for Andrew Howell. Darlene Cumming seconded. Voted in favor to DENY with Joshua Freed, Katherine Alexander and Darlene Cumming in favor and George Thompson and Anthony DiMauro opposed.

APPROVAL OF MINUTES

Anthony DiMauro moved to approve the minutes of April 23, 2013 . Katherine Alexander seconded. The following revisions were made to the minutes:

Page 3 Paragraph 11: correct to read "...being worked on, this is where the helicopter....."

Page 5 Paragraph 13 Correct to read:"...knowing the decibel level..."

Page 6: Paragraph 7: Correct to read "...could be done to quiet the noise.."

Acting Chair Thompson called for a vote on the motion. Motion carries with Joshua Freed and Darlene Cumming abstaining.

9PM APPEAL FOR RE-CONSIDERATION; SPECIAL EXCEPTION JCR
CONSTRUCTION

It was noted that two requests for appeals have been received. The first, dated May 19, 2013 was received on May 23 and mailed to Board members on that date. The second appeal, dated May 20, 2013, was received on May 28 and given to members at this meeting. It was determined that both appeals were valid. Copies of both appeals are attached to these minutes.

Joshua Freed moved that the Board consider "Appeal # 1" dated May 19, 2013 for discussion, as the Board has not had the opportunity to review the appeal dated May 20. Darlene Cumming seconded. Voted in favor.

It was determined that, after reviewing RSA 677:2, the Board has thirty days to hold a public hearing if the decision is made to re-hear the Case.

Joshua Freed addressed Appeal #1:
1. Notification of abutters and others.

Board members felt there was no procedural error.

2. Testing of noise.

Anthony DiMauro commented that the Planning Board will require this during Site Plan Review process.

3. Increased flight activity

This will be part of the Commercial/Overlay Site Plan Review.

4. Criteria for Special Exception

Board members referred to #14 "Allowed by Special Exception". Aircraft Take Offs and Landing Strips as an accessory to a dwelling unit.

Darlene Cumming felt that this did not apply as there is no dwelling unit on the property. She noted that this does not need a special exception and should have gone directly to the Planning Board, as a commercial use. Joshua Freed agreed.

George Thompson noted that the Board, seated on April 23, had taken a great deal of time to review and address the criteria for a Special Exception. Mr. Thompson said that the application did include the constructing of a dwelling.

5. Open Space Plan

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Open Space plan noted, but does not affect criteria of a special exception.

Joshua Freed moved that the Board accept Appeal # 1 for re-hearing. Darlene Cumming seconded. Voted in favor. 3 in favor and 2 opposed. Joshua Freed, Darlene Cumming and Katherine Alexander in favor and George Thompson and Anthony DiMauro opposed.

A Public Hearing to re-hear the application for a Special Exception for JCR Construction will be held on June 25, 2013 at 7:45PM.

Those applying for the re-hearing will be responsible for payment of noticing and abutter notification.

The meeting was adjourned at 10:30PM.

Recorded and transcribed by Jane Boucher
Pending Approval by the Board of Adjustment

3. Granting the variance will do substantial justice

The New Hampshire Supreme Court has stated that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Unless the Property is subdivided, the Applicant will not be able to re-mortgage or eventually sell the Property using conventional financing. Thus, granting the variance will allow greater productive use of the Property. Moreover, the general public will gain nothing by the denial of this variance, and in fact, will lose the benefit of the increased taxable value created by subdividing the Property into two lots. Therefore, substantial justice will be done by granting the variance.

4. Granting the variance will not diminish the values of the surrounding properties

As discussed above, the Applicant is not proposing to make any physical changes to the Property. Rather, the two existing dwellings will remain, as has been the case for approximately fifty years. The only change to the Property will be to create a new property boundary between the two existing dwellings. There will be no visible change to the Property as a result of the variance and the Applicant's proposed subdivision, if approved by the Planning Board. Further, permitting two new lots at less than the required three acres will have no effect on any surrounding properties given the number of similarly non-conforming lots located in the immediate vicinity of the Property. Consequently, granting the variance will not diminish the value of surrounding properties.

5. Denial of the variance will result in unnecessary hardship

✓ The New Hampshire Supreme Court has stated that hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect on the neighborhood. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966). This is precisely the case in the this instance. The variance requested by the Applicant will result in two new lots of approximately 1.163 acres and 1.168 acres, respectively. These newly created lots will be consistent in size with the surrounding area, which includes several lots of far smaller size. Moreover, there will be no physical change to the Property as a result of the requested variance. It, therefore, will have no adverse effect on the neighborhood.

a. ✓ No fair and substantial relationship exists between the general public purposes of the Zoning Ordinance and the specific application of Section 2.01 to the Property

The stated purposes of the Zoning Ordinance are, in part, for the "lessening congestion in the streets;...promoting health and general welfare;...preventing overcrowding of the land; [and] avoiding undue concentration of population". See Zoning Ordinance Section 101, Preamble. No fair and substantial relationship exists between these stated goals and the three-acre lot-size requirement for the two dwellings located on the Property. The use of the Property for a single family dwelling and a manufactured home is permitted as a matter of right. Moreover, this use has been ongoing since the 1960s. The Applicant has proposed no change to the current use, only that he be granted relief from the three acre minimum lot size to allow for the subdivision of the Property to create two individual lots of record. Each existing dwelling has its own septic system and access to an existing roadway. None of these physical features will change as a result of the Applicant's proposal. Thus, there will be no impact to the health and general welfare of the Town, overcrowding of the land or undue concentration of population as a result of the variance. Accordingly, the requested variance fully supports the purposes of the Zoning Ordinance.

May 19, 2013

Joshua Freed
Chair, Zoning Board
Town of Deerfield
PO Box 159
Deerfield, NH 03037

RE: Case #13-03, JCR Construction Co, Inc
27 North Road
Deerfield, NH 03037
Map No. 210, Lot No. 54

Dear Mr. Freed:

We are writing to appeal the decision of the Deerfield Town Zoning Board to grant a special exception utilizing the front of Lot number 54 on Map number 210 in Deerfield as a helicopter landing pad, helicopter storage, fuel storage, and housing for pilot and mechanic. We are requesting a re-hearing on this issue for the following reasons:

1. The Board of Adjustment/Zoning Board failed to use reasonable judgment in notifying other property owners aside from the immediate abutters. We understand that the Zoning Board is not legally required to notify non-abutters, however, other property owners in Deerfield have standing in this issue and will be significantly impacted by the nuisance of noise, vibration, odor, light pollution, and diminished property values (Title LXIV Planning and Zoning, Chapter 674, Section 33, I (b) 4). They were not notified of the hearing and thus were not able to be educated on the issue and their voices were not heard. In addition, as there are no flight paths outlined, notification to Deerfield residences of a re-hearing should be town wide in order to ensure everyone who could possibly be affected shall have a voice.
2. There was a failure to do measurable testing in order to determine the actual decibel levels involved in take-off, landing, and flying overhead. Testing is necessary to ascertain the actual noise and vibration nuisance to abutters and those in the surrounding area, in order to make an educated decision regarding this issue. Testing should be done using a sound level meter meeting the standards of the American National Standards Institute "American Standard Specification for General Purpose Sound Level Meters".
3. There is no assurance that increased flight activity will not happen as no flight plans are being required. There is no binding assurance that additional helicopters will not be purchased and housed on the location, except for the word of the landowner. In addition, there is no assurance that if the company changes hands, the helipad will not be expanded. (George Thompson cited special exception #14 aircrafts take offs and landing

strips as an accessory to a building - D criteria for special exception. I can't find this anywhere to read it.)

- 4. The Board of Adjustments/Zoning Board did not follow proper protocol when passing the application submitted by JCR. The zoning ordinances state that the application shall meet all stipulations on the list and this application minimally did not with item #6 of Special Exceptions: *Shall not create a "nuisance" in the vicinity due to noise, vibration, odor, glare or unsightly outside storage of material or equipment and shall be in conformity with other uses and/or structures in the vicinity.* We feel that the Zoning Board voted to pass this special exception without regard to Special Exception item #6.
- 5. Last, but not least, the charm and character of our town center may be adversely affected by the installation of a helicopter pad and does not fit in with the Open Space plan. The town website states, *"We are a growing community with a warm small town feel, proudly committed to serving and protecting our citizens' way of life."*

At this time, we are appealing the decision of the Zoning Board Case 13-03 and requesting a re-hearing to include the abutters as well as all property owners who have standing in this case.

Sincerely,

Pat Winski - Patricia Winski - 31 Mountain Rd.
 Thomas A Foulkes & Thomas Foulkes 26 Nottingham Rd
 Madelyne Foulkes Madelyne Foulkes 26 Nottingham Rd
 Dennis Winski Dennis Winski 31 Mountain Rd
 Craig S. Moser Craig Moser 12 Raymond Rd
 CONNIE STONE Connie Stone 17 Nottingham Rd.
 Hillary Minerud Hillary Minerud 15 Nottingham Rd
 Benjamin Minerud ~~Benjamin Minerud~~ 15 Nottingham Rd
 Nancy Gross 18 Nottingham Rd.
 Eric Ross 24 Nottingham Rd Katherine Weygant
 Katherine Weygant 24 Nottingham Rd Smith T. Weygant
 SMITH WEYGANT
 Linda Lee Ruda Lee 27 Mountain Rd
 Cathy LaForge 48 Mountain Rd. Cathy LaForge
 Joanne Devlin 1 Mountain Rd Joanne Devlin

Jacqueline P Linker J Linker 23 Mountain Rd
Karry Linker K. Linker 23 Mountain Rd.

Wm L. Young 20 Mt. Rd.
Brian A. C. 20 Mtn Road

~~James C~~ 20 Mtn Road

Josephine
Barbara Bullino 9 James City Rd.

SYLVIA BEGIN 7 MT. ROAD

Bruce Adams Bruce Adams 32 Mountain Rd

Robert Cote ~~Robert Cote~~ 32 Mountain Road

Debra Delota 18 North Road Deerfield, NH

Mr. & Mrs. Peter Prentice
2 Raymond Rd
Deerfield, NH 03037

May 20, 2013

Mr. Joshua Freed
Chair, Zoning Board of Adjustment
Town of Deerfield
PO Box 159
Deerfield, NH 03037

Dear Mr. Freed:

This letter is written in appeal of the April 23, 2013 decision of the Town of Deerfield Zoning Board of Adjustment of Case #13-3, Map No. 210, Lot No. 54.

As property abutters, we are requesting a re-hearing of this case. As presented this application does not qualify for the Special Exception "Aircraft Take Offs and Landing Strips as an accessory to a dwelling" as no dwelling currently exists. We believe the Zoning Board of Adjustment failed to recognize the intent of the ordinance and the reason for the association with a dwelling. It is our opinion that the intent is to allow homeowners the ability to land personal aircraft on their private property (so long as the six criteria of a special exception are met). This application is for a commercial aircraft take off and landing site, which is a completely different level of activity, noise and local disturbance.

In addition the application presented by JCR Construction failed to meet requirements of a Special Exception, specifically, 206.1 D-4

Shall not create a safety hazard due to:

c. Danger of fire, explosion, release of toxic fumes or material.

As well, 206.1 D-6,

Shall not create a "nuisance" in the vicinity due to noise, vibration, odor, glare or unsightly outside storage of material or equipment and shall be in conformity with other uses and/or structures in the vicinity.

The Board acknowledged and discussed at length the fact that the application did not meet all of the requirements and then proceeded to approve the application stating that the Planning Board would figure out how to minimize the impact.

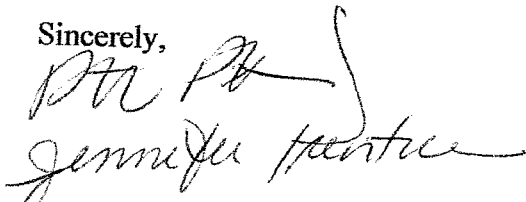
According to The Board of Adjustment in New Hampshire - a handbook for local officials, October 2012, (page 34 of 171) the Zoning Board of Adjustment cannot legally approve a special exception if the stipulated conditions do not exist or cannot be met. Shell Oil V.

Manchester, 101 N.H. 76, (1957). In Case #13-3, the Board approved the special exception after acknowledging that the criteria had not been met and possibly could not be met.

Also according to The Board of Adjustment in New Hampshire - a handbook for local officials, October 2012, (page 34 of 171) "there must be...sufficient evidence before the Board to support a favorable finding on each of the statutory requirements for a special exception." Barrington East Cluster Unit 1 Owner's Association V. BARRINGTON, 121 N.H. 627, (1981). This case demonstrates that the Board must base their finding on facts and not the opinion of the Board. During the original hearing of Case #13-3, no evidence was requested or given in this hearing even though the Board identified non-compliance with the required criteria. The applicant offered to do sound testing (fly overs). At a minimum the Board should have required testing in accordance with the local noise ordinance (measurements at all major lot lines at 4' off the ground) prior to considering that specific criteria met.

We respectfully request a re-hearing of Case #13-3, Map No. 210, Lot No. 54.

Sincerely,



Peter and Jennifer Prentice

cc: Mr. George Thompson Jr., Vice Chair, Zoning Board of Adjustment
Ms. Katherine Alexander, Member, Zoning Board of Adjustment
Ms. Darlene Cumming, Member, Zoning Board of Adjustment
Ms. Jane Boucher, Clerk, Zoning Board of Adjustment
Mr. Anthony DiMauro, Alternate Member, Zoning Board of Adjustment
Mr. Stephen R. Barry, Chairman, Select Board
Mr. Alan E. O'Neal, Vice Chairman, Select Board
Mr. R. Andrew Robertson, Select Board
Mr. Richard W. Pitman, Select Board
Ms. Rebecca Crosby Hutchinson, Select Board
Mr. Frederick J. McGarry, Chairman, Planning Board
Ms. Katherine Hartnett, Vice Chairman, Planning Board
Ms. Lisa Wolford, Planning Board
Mr. Peter Schibbelhute, Planning Board