

**TOWN OF FARMINGTON
ZONING BOARD OF ADJUSTMENT MEETING
Thursday, September 4, 2014
356 Main Street, Farmington, NH**

- Members Present:** Elmer W. "Butch" Barron III, Joe Pitre, Joanne Shomphe
- Members Absent:** John David Aylard
- Town Staff Present:** Director of Planning and Community Development Kathy Menici,
Department Secretary Bette Anne Gallagher
- Public Present:** KJ Cardinal, Kim Cardinal, Darlene Cardinal

At 7:03 pm Chairman Barron called the meeting to order.

BUSINESS BEFORE THE BOARD:

- **Review and approve Meeting Minutes of April 3, 2014.**

Joe Pitre made four suggestions as to language and asked for a referenced definition to be added.

Joe Pitre motioned to approve the minutes of April 3, 2014 as amended; 2nd Butch Barron. Motion carried with 2 in favor and 1 abstaining.

- **Any other business to come before the Board.**

NEW CASES:

Application for Variance from Article 4.02 Section G of the Zoning Ordinance By: Kim Cardinal, Sr., Applicant and Property Owner (Tax Map R32 Lot 019): To allow structures within the fifty (50) foot buffer zone of a Class 2 Wetlands. Parcel is located at 78 Main Street in the Industrial Business District.

Chairman Barron read the variance request and asked the applicant if his reason was that he wanted to use part of his lot that was within the 50-foot buffer required in the Town's regulations.

Kim Cardinal from 78 Main Street said that the family always had a pool when the kids were little and since then they have had two others. The last one taken down was replaced with a new one with the same footprint and the same with the deck. Mr. Cardinal said the recently added addition was permitted correctly.

Planner Menici explained that when CEO Roseberry did the inspections on the addition, the pool, patio and pergola were not there. This situation came about because when driving past the house the CEO saw materials and construction activity and stopped to see what was being done. That is when he saw the pool, patio and pergola. He checked the tax records and at the time of the last revaluation in 2009 none of the structures and features was there.

Mr. Cardinal said he did not know he needed a permit to replace the pool and thought it was there when the assessor was at the property in 2009. Planner Menici said she can only go with the information provided by the Code Enforcement Officer.

The Planner asked the Board's permission to summarize the variance request for the applicant and the Board agreed. She referred the members to the last paragraph of her report that the applicant is applying for a variance because without one the combined setback and buffer make portions of the parcel unbuildable and significantly limits the development capability of the balance of the parcel. She said the variance is to allow the structures – deck, expanded patio and pergola – as a package.

Planner Menici explained that this parcel is a very constrained piece of property consisting of six acres in total of which approximately five acres are impacted by wetlands. Then there is the 50-foot setback for the industrial business overlay and the 50-foot setback from the wetlands. The Planner further explained that at its deepest the parcel is only 140 feet deep and in some places it is only 120 feet deep so if you take the widest section and deduct the 50-foot setback from the road and the wetlands that leaves only 40 feet to use and that is really the issue before the Board – to allow a variance to encroach into the 50-foot setback from the wetlands.

Planner Menici said the existing home is already within the 50-foot setback from the street and the variance will allow some encroachment into the 50-foot setback from the wetlands. She added that the house was built in 1946.

Chairman Barron said there is certainly no doubt that because of size and uniqueness this property is not the same as the neighbors' properties and there definitely is ample room for hardship for buildable area. He then read the criteria directly from the application:

A variance is requested from Article 4.02 Section G of the Zoning Ordinance to permit replacing structures existing within the buffer of fifty (50) feet outward from the boundaries of a Class Two wetland.

Facts supporting this request:

- 1. The Variance will not be contrary to the public interest:** *There is no potential damage from erosion, turbidity, siltation, no loss of fish and wildlife and their habitat, no loss of habitat having demonstrable natural, scientific or educational value, no loss or diminution of beneficial aquatic organisms and Wetland plants, no potential destruction of the economic, aesthetic, recreational and other public and private uses of Wetlands to the community as a result of replacing these structures.*

Planner Menici said that the property has been in residential use for a number of years and the backyard has been used for all of this time and the owners are not expanding the area of the backyard into the setback. Chairman Barron said that a couple of businesses that were there were within the front 50-foot setback.

All members agreed that a variance would not be contrary to the public interest.

- 2. The spirit of the ordinance is observed:** *Use is incidental to the enjoyment or maintenance of residential property. Such incidental use shall include maintenance of existing structures and existing landscape, but shall not include removal, deposition of material from or into a Wetland or draining a Wetland.*

All members agreed that the spirit of the ordinance is observed.

- 3. Substantial justice is done:** *Special Use Permit application is submitted to the Planning Board in conjunction with this application for variance.*

Chairman Barron said he was not sure that is what the response should be. Planner Menici said that what the applicant is proposing is pretty much the basic amenities for the enjoyment of a residential use.

All members agreed that substantial justice would be done by the granting of a variance.

- 4. The values of surrounding properties are not diminished:** *The real estate market value of surrounding properties stands to increase with these upgrades.*

Chairman Barron said it is not really increased but not diminished.

All members agreed that the value of the surrounding properties is not diminished.

- 5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:** *By replacing the pool & deck that has existed on the property for decades, the size & enjoyment of the land will not be impacted in any manner, but our pursuit of happiness would be. The size of the lot itself is a hardship as we use it for both our residence & our business. We would not be able to afford to separate the two entities from one another & that would also (be) a hardship if we had to choose to move our family residence that has been here for the past 60+ years or our business that has been here for the past 30+ years.*

All members agreed that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Joe Pitre motioned to grant the Variance from Article 4.02 Section G of the Zoning Ordinance for Tax Map R32 Lot 019 (78 Main Street) to allow structures within the fifty (50) foot buffer zone of a Class 2 Wetlands; 2nd Joanne Shomphe. Motion carried with all in favor.

At 7:23 pm Elmer W. "Butch" Barron III motioned to adjourn; 2nd Joanne Shomphe. Motion carried with all in favor.

Respectfully submitted,
Bette Anne Gallagher, Department Secretary

Elmer W. "Butch" Barron III, Chairman
Zoning Board of Adjustment

Date