

Present: John Deleire, Chairman; Frank Perry, Vice-Chairman; Steve Bryant, David French, Larry Job, Members; Mark Call, Patricia Young, Alternates; Susan Ayer, Secretary; Mark Sikorski, Building Inspector

The Chairman called the meeting to order at 7:00, and said that as two members are also abutters to the property in one case, and one member is an abutter to the property in another case, alternate members may be used as necessary in the course of the evening.

REHEARING: Case #16-03: Application from Stephen and Maryann Zagieboylo, for variance to the terms of Article III, Section 7.7.1 (Yard Requirements), to permit a wheelchair accessible garage within 50' of the property lot line in Zone A, for property at 23 King Street, Map 4, Lot 27.

Aaron Brown of Atrio Properties introduced himself and gave the Chairman a letter of authorization to speak for the Zagieboylos in their absence. Mr. Brown said that the property has been for sale since last summer. He said that the Zagieboylos have lived there for 12 years, and have made many changes to the house to make it handicapped accessible for M. Zagieboylo, who is in a wheelchair, but do not have a garage as it is very difficult to fit one within the property setbacks.

Explaining that when the property owners first began the process of seeking a variance, they were delayed due to missing the application deadline, A. Brown said that in the time between then and when they came before the Board in October, S. Zagieboylo was offered a job in Texas. The owners chose to continue the effort to get a variance, as the home is handicapped accessible but does not have a garage.

J. Deleire said that when the initial hearing took place, the owners represented themselves as living there, and did not say the house was for sale. He said the Board granted the variance based on M. Zagieboylo's accessibility needs, and chose the design based on her preferences.

F. Perry asked when the job offer was received, and when did the Zagieboylos know they would be moving. A. Brown said that this was known about 3 weeks before the October hearing, but that there was no deception involved, as the home was on the open real estate market. He added that Board members would have known this if they had driven past the property.

S. Bryant said that when M. Zagieboylo came before the Board saying the variance was needed because of her handicap, that was deceptive. F. Perry agreed, and asked for an explanation of what the Board was led to believe. A. Brown said that the job offer came after the initial missed deadline, and that he had advised the owners to proceed with the process, as the home would be enhanced by having a garage. F. Perry said he did not disagree with this concept, but that it would have been better if the Zagieboylos did not misrepresent their situation.

J. Deleire asked that A. Brown address the criteria for acceptance, which he did as follows:

1. The variance will not be contrary to the public interest: Looking down King Street, you will see many garages, so it is hard to see how this could be contrary to the public interest.
2. The spirit of the ordinance is observed: The garage could be put farther back, but the slope of the land makes that very difficult. The only way to do it would be to enter into the bedroom area, as all living space is on the left.
3. Substantial justice is done: In some towns, the owner would not need the variance for a 2 acre lot. Also, the best use of the home is handicapped use, and the ground level project is the best way to go.
4. Granting the variance would not diminish the values of surrounding properties: on the contrary, a garage increases the value and usability of the home and fits in with surrounding homes.
5. Special conditions that exist such that literal enforcement of the provision of the ordinance would result in unnecessary hardship: Literal enforcement would cause the garage to be put at the back of the home.

F. Perry noted that A. Brown has referred several times to handicapped access. He asked if there is anything about handicapped accessibility that makes the home unattractive to a non-handicapped buyer. A. Brown said no, that he feels this is a unique feature, as there are not many handicapped accessible homes in Hampton Falls, but that the home would be fine for able-bodied residents.

F. Perry asked what the hardship would be if the owner no longer will be living here, saying the answer is none as this is no longer a consideration. A. Brown said that the reason is to enhance the value and marketability to handicapped persons, and that the property listing specified that it is handicapped accessible.

J. Deleire said that A. Brown needs to understand that increased marketability is not a reason to grant a variance, and that as there is no longer a handicapped individual living in the home, all the reasoning is moot.

A. Brown said that he had understood he could apply to get the variance on the merits. It was noted that the new owner could come and apply for the variance themselves. A. Brown said that in his experience as a real estate broker, people buy a home based on what they can do with it, not what they might do.

The hearing was opened to public comment.
None was heard; public comment period closed.

MOTION: To deny the request from Stephen and Maryann Zagieboylo, for variance to the terms of Article III, Section 7.7.1 (Yard Requirements), to permit a wheelchair accessible garage within 50' of the property lot line in Zone A, for property at 23 King Street, Map 4, Lot 27, based on new information and reconsideration of the Board's decision of October 27, 2016.

MOTION: S. Bryant

SECOND: L. Job

UNANIMOUS

Case #16-06: Application from Patricia Bowen for variance to the terms of Article III, Section 7.7.1 to permit construction of a State approved leach field in Zone RA, for property located at 18 Old Stage Road, Map 5 Lot 21.

The Chairman named Alternate Members P. Young and M. Call to replace F. Perry and S. Bryant for this case only, as they are abutters to the applicant's property. F. Perry and S. Bryant will not discuss or vote on this application, but can comment as members of the public as they so choose.

Engineer Don Graves presented the case on behalf of the property owner. He informed the Board that there is an update to the plan they have received, and that now the system will be turned 90 degrees; this will allow for 85 feet of clearance to the back corner of the property and 18 feet to the front.

D. Graves went on to describe the current septic system as pre-existing non-conforming. He said the system has failed; the tank is undersized and it is now spilling effluent. D. Graves said that the current location of the leach field is the only one available; none of the open space on the property is suitable. The well is located on the right side, so the leach field is limited to the front corner. The lot is one acre.

J. Deleire asked for the input of the Building Inspector. M. Sikorski said that basically there is no place else for the leach field to go.

M. Call asked why it was decided to turn the system 90 degrees, and D. Graves answered that it is on a slope close to the existing grade, so fits nicely into the side slope.

D. Graves addressed the five criteria:

1. The variance will not be contrary to the public interest as it will allow for installation of a state-approved leach field so that proper effluent treatment can take place.
2. The spirit of the ordinance will be observed, as it will allow for protection of ground water.
3. Substantial justice will be done by allowing the owner to continue to live in the home knowing that proper leaching treatment is taking place, keeping the environment healthy
4. Granting the variance will not diminish the values of surrounding properties, as the nearest house is 100 feet away, and installation of a state approved leach field can only solidify surrounding property values.
5. Due to the pre-existing conditions, this is the best that can be done to apply 2016 provisions.

J. Deleire asked D. Graves if there was any other type of design that could bring the system farther from the setbacks and mitigate potential harm to the abutter. D. Graves answered that this was the best place, as indicated by test pits, and that putting it in front of the home is not an option because of the contours of the property that run toward the house. He added that he is asking for what the state allows, and the system will not encroach beyond that.

M. Call said he noticed that the property is for sale and asked how soon the work is to be done. D. Graves said that he expects the system to be installed within 30 to 40 days.

The Chairman opened the hearing to public comment.

S. Bryant identified himself as the closest abutter, and said he has no problem with the project, as long as it is at least 75 feet from his well, which it was agreed is the case. J. Deleire asked M. Sikorski if the distance to the neighboring well would be addressed at the time the permit is issued. M. Sikorski said that the house was built in 2000, and there will be a design on file to show it had proper distances at the time.

Hearing no additional comments, J. Deleire closed the public comment portion of the hearing. There was a brief review of the five criteria by the voting members, in which all were in agreement.

MOTION: To approve the request from Patricia Bowen for variance to the terms of Article III, Section 7.7.1 to permit construction of a State approved leach field in Zone RA that will be no closer than 10 feet to the side line and no closer than 18 feet to the front line, for property located at 18 Old Stage Road, Map 5 Lot 21, based on the findings that the variance will not be contrary to the public interest, that the spirit of the ordinance is observed, that substantial justice is done, that the values of surrounding properties are not diminished, and that literal enforcement of the provision of the ordinance would result in unnecessary hardship, as the property would continue to have a failed system.

MOTION: J. Deleire

SECOND: D. French

UNANIMOUS

Case #16-07: Application from Laurelynn D. Carter for variance to the terms of Article III, Section 7.7.1, to permit construction of an addition in Zone A, for property located at 188 Kensington Road, Map 1, Lot 46.

J. Deleire said he will be stepping aside as a voting member on this application, as he is an abutter. He said F. Perry will sit in as Chairman. F. Perry then appointed M. Call as the voting member on this case to replace J. Deleire.

Laurelynn Carter introduced herself, and said she will be representing herself in this case.

L. Carter said she wants to put a 480 square foot addition on her home to improve the value and the living space. Due to the triangular shape of the lot, there is no place to add on and stay within the 50 foot setback ordinance. L. Carter added that her plan shows the setbacks to be 25 feet, but she found when she applied for a building permit that this is actually supposed to be 50 feet. She showed on her plans where the addition would go, noting that it will still leave 30 feet from the property line. She said that there are no neighboring houses nearby.

F. Perry questioned M. Sikorski about the lot size and setback requirements. The lot is 1.375 acres, and the setbacks are to be 50' according to the ordinance that was put in place in 1975. The plans presented to the Board of Adjustment in 1999 when variance for a septic replacement was requested were in error, showing the setbacks as 25 feet, but this was not identified as a mistake at that time. He said the septic variance was granted due to the replacement septic being placed no farther into the setback than the existing septic, and the setback distance was not discussed in the minutes. However, he said he had researched carefully to know that the 50 foot setback does indeed apply to this property.

D. French asked if the addition will be used for extra living space or if it would include a bedroom or toilet. L. Carter answered that the use is not certain at this time, but the need is for extra living space as the home is small for her family. D. French asked if there were plans to put on an upper story, and the answer was no. F. Perry said that if there was a decision to add on in future, a new building permit would be required. M. Sikorski added that if another bedroom is created, a viable plan with a sufficient septic system would be required. L. Carter said that the septic system cannot be expanded, and she could never list the home for sale as including anything more than 3 bedrooms.

L. Carter referred to the drawings of the proposed addition, saying that she attempted to improve both the looks and usability of the house, and that the addition conforms to the single story roof line of the garage at the opposite side of the house.

F. Perry opened the hearing to public comment. There were no abutters present.

L. Carter then referred to her written comments to address the five criteria:

1. The variance will not be contrary to public interest, as it will add to the property value and thereby surrounding property values. The home will be more attractive.
2. The spirit of the ordinance is observed in that a 30 foot setback will still remain, and the direct neighbor on that side is at least 200 feet away.
3. Substantial justice is done because the northwest side of the house has the most space on the lot, and again, the nearest house is 200 feet away.
4. Granting a variance would not diminish the values of surrounding properties, on the contrary, it should increase them.
5. The special conditions that exist are the size and shape of the lot, which is non-conforming already. Literal enforcement of the provision of the ordinance would make it impossible to build an addition anywhere besides off the front doorway. This causes a hardship in that the home's size can't be increased to meet the needs of the family.

F. Perry closed the public comment portion of the Public Hearing.

There was a brief discussion of the 5 criteria among the voting members. No dissent was heard.

MOTION: To approve the request from Laurelynn D. Carter for variance to the terms of Article III, Section 7.7.1, to permit construction of an addition in Zone A, for property located at 188 Kensington Road, Map 1, Lot 46, as submitted.

MOTION: D. French

SECOND: M. Call

UNANIMOUS

The meeting continued with all regular members in voting capacity, Alternates as observers only.

Case #16-08: Application from James and Jean Cotton for variances to the terms of Article III, Section 7.5.8, to permit a proposed private roadway with 300' sight distance at the entrance; and to the terms of Article III, Section 7.7.1 to permit a leach field to be within 50' of lot line setback, for property located at 23 Prescott Lane, Map 4, Lot 46-7.

Charles Zilch, Project Manager of S.E.C.& Associates, and Stephen Pernaw, P.E., Professional Traffic Operations Engineer, introduced themselves as representing James and Jean Cotton (also present).

D. French said that before the case is presented he would like to say that he has received an email regarding covenants on the neighborhood where the Cotton's property is located. J. Deleire said that he looked at the protective covenants for the original 12 lots created at Prescott Lane, but said that in his opinion, it is not the job of the Board of Adjustment to protect those covenants, that there are steps that can be taken if they are applicable. D. French said he asked the question because if the covenants prevent this subdivision, there is no reason to listen to the case. F. Perry said that he had also looked into the matter and found that covenants between neighbors are not the purview of the Board, and the Board has no control over them.

J. Deleire said the presentation of the case should go forward.

C. Zilch described the house and the land at 23 Prescott Lane. He said the subdivision was created in 1983, creating 12 building lots and Prescott Lane. The road is a loop with several straight sections of roadway.

The proposal is to subdivide the Cotton's 10.5 acre lot into three different lots in compliance with Private Road Subdivision Regulations. The lots would include one with the existing home, and two new, all meeting Subdivision rules, and all owned and maintained by the owners. The proposal includes a private roadway for access to the two new lots.

C. Zilch explained the reason the variances are needed are that two Zoning requirements can't be satisfied, the first being 300' sight distance in either direction entering Prescott Lane from the proposed private road. He then deferred to S. Pernaw for detail on this part of the application. S. Pernaw said that this is a unique case, saying that the required 300 feet of sight distance is good for a design speed of 40 MPH, but in this case, 40 MPH is not possible on the approaching road. Horizontal curves on either side control the speed limit. He said that the sight distances of 243 feet looking to the left and 280 feet looking to the right are good for 30-35 MPH. S. Pernaw said that for that reason, he is confident that the variance for sight distance is more than ample. He referred the Board to his letter of November 28 which gives more detail.

J. Deleire said that this is not an easy case, in that there are alternatives. He said that, for instance, the leach bed encroachment would not be an issue if the lot were divided into two instead of three new lots. C. Zilch said that he is prepared to speak to the issue of the leach field, but that he would like to finish with the sight distance issue first.

S. Bryant asked what the distance of the private roadway would be to the property line. C. Zilch said that the roadway and the ROW would be on the property line. When asked if setbacks were not required, the Building Inspector said that none are required, as is the case with a driveway.

C. Zilch read from S. Pernaw's letter, noting that he reports that "the 50-foot radius curves in advance of the Prescott Lane/Proposed Private Driveway intersection reflect a design speed of 15 mph." F. Perry said that he might be able to rationalize the sight distance issue, but that he

would like the applicant to address the Substantial Justice criterion, and explain why it is necessary to consider this variance, and what the injustice would be if not approved.

J. Deleire read from the letter in which C. Zilch addressed the criteria for granting a variance: "There will be substantial justice in granting the variance because the variance will be based upon actual existing onsite conditions supported by accepted sight distance criteria as provided by a professional traffic engineer." J. Deleire said that the Board does not have its own traffic engineer to counter the information provided by S. Pernaw. S. Pernaw said that the last time he was in the Town Hall it was to work for the Town to counter information from another traffic engineer and provide a second opinion. He also said that the Town's Road Agent came out to observe his work on Prescott Lane, and saw no problem with the sight distance. S. Pernaw said he would never ask the Board to grant something he is not comfortable with, but feels this is within the safety factor and well backed up.

J. Deleire then began to read from the five criteria answers that were submitted for the Site Distance variance, but F. Perry asked for the applicant to elaborate on his answer to Criterion #1, that the proposed variance will not be contrary to the public interest. F. Perry said that he did not see how it could be said that this will not negatively affect the safety of the general public, when the application has received several negative responses from abutters. C. Zilch said that the point is that the variance will not make the public any less safe. Asked if neighbors were consulted, he said no.

Asked if these two variances are granted the project would be allowed, C. Zilch said that the plan still would need to go through local and state review, and be looked at as a whole.

J. Deleire said that the Board has to consider if any of the criteria are not met, and that even if the neighborhood covenant should not impact the decision, he can see the idea was that there should be one lot for one home and the contemplation of additional lots is something to be considered. C. Zilch asked for a moment to consult with his client, and was granted a short recess.

Upon return, C. Zilch said that he can see that the issue of the covenants is making the decision difficult. He said he does not believe the covenants still exist.

J. Deleire said that the covenants don't have a bearing on the ruling of the Board, but he brought them up to think about the Substantial Justice and Hardship portions of deliberation. He said that most people come before the Board to preserve or make better their living situation, but this is a little different. He asked M. Sikorski for his input on the matter of the covenants.

M. Sikorski said that the Town does not really work with protective covenants in normal process, so he did some research on the existence of the association. He found that if there is a true, active Homeowners' Association (HOA), it would have been the responsibility of the applicants to contact them first. He said that is all he can say, aside from that he does not see that there is a current, active HOA for Prescott Lane.

F. Perry said he concurred that the covenants are not a problem in and of themselves. However, he added that when there is a contentious issue and he can see people are upset, arguments need to be heard from both sides and abutter comments taken very seriously. He said he felt the issue

of the diminishing values alone can't be easily dismissed. F. Perry went on to say he has read the letters from those against the project, and would like to hear from those that are in favor.

J. Deleire said that he would like to delay public comment until the criteria for both variances have been addressed.

C. Zilch said that he is inclined to ask for a continuance in order to have time to respond to comments, but it would help to hear from the abutting property owners so that the applicant knows everything that concerns them.

P. Young asked if the applicant has seen the letters the Town received from the abutters. J. Cotton said this is the first he has heard of them.

PUBLIC COMMENT

J. Deleire opened the hearing to public comment, saying that if the applicant wants a continuance, they can ask for it after the public has been heard.

Gary Fincke, 18 Prescott Lane, said that when he bought his property 32 years ago the real estate broker represented the property as a locked in subdivision with no ability to further subdivide. He said he wanted a quiet, private space at the end of the cul de sac, and that all of the residents were under the same impression and understanding, that the covenants were in place to protect the value and integrity of the properties. G. Fincke said he took offense that the covenants are not seen to be important. He also said there is no hardship involved.

G. Fincke said that due to the Town not enforcing properly developed drainage, water and ice collect in spots during bad weather.

Another resident added that delivery vehicles and school buses often come too fast up the road and end up driving on the wrong side. Also, there is little visibility coming down Prescott to turn into her property.

G. Fincke said that the larger lots near the road were initially priced lower as it was thought nothing else could be done with them. He also said that he could understand asking for a variance where a lot is confined and a septic can't be placed without a variance, but to grant one only for financial benefit does not make sense.

It was shared that the lot in the center of the circle is wetland and part of a deer run.

A resident said that new homes would bring teenagers and more cars and this could impact property values.

Nancy Sinclair of 22 Prescott said she and her husband, Thomas Wharton, had written two letters to the Board. She said there are many things wrong with the project, starting with the road.

She said there is a Town easement that she understands can't be taken away, as it is there to take the water that runs downhill straight in front of the properties on the northern side. She said she believes a new road will put an even larger burden on water that collects.

F. Perry asked if any enhancement might be offered that could enhance drainage.

N. Sinclair said that is only one problem, and went on to say she was concerned about trees being taken down that would remove the natural setting of her home and decrease her value. She said it would disrupt animals.

N. Sinclair also said that getting less than a month's notice she felt she had no time to prepare.

She also said the matter was of concern to the entire neighborhood, but only direct abutters were notified. She said she felt the project was being pulled off behind their backs.

G. Fincke said that to be fair, if he was asked to put the road on his property line, he would have the same concern. He said he has nothing against the Cottons, it is just a matter of principal.

N. Sinclair addressed the traffic report and asked if the site was looked at. She said that due to vertical changes in the road, kids on bikes ahead can't be seen. She said an email chain had been sent around saying to be careful of the kids.

She said she would like consideration, not lawsuits.

J. Deleire said that if anyone wanted to do the same thing, it would be the same process. There is notification to abutters and in the newspaper for this reason, to give the public the opportunity to be present and respond. He said that if the applicant wants to continue, that is their right.

P. Young asked to be shown on the map where the road will be going, and whose trees will be cut.

G. Fincke asked again about easements, and if the ZBA had the ability to wipe them out. F.

Perry said that is not the purview of the ZBA, and J. Deleire said that is not the matter before the Board, that the applicant is here to request relief from two sections of the Zoning ordinance, which is a first step in the process.

F. Perry encouraged those present to watch for agendas that are posted for all town boards, to know what is coming up.

Jean Cotton said that she and her husband have lived at 23 Prescott since 1995 and raised their children there. She said they are not trying to be sneaky or underhanded. She said that if the extra lots were approved, she does not feel that this would diminish the property values of any of the neighboring homes, including her own. She said the lots are proposed to be directly behind her house, so no one else will see new houses. She said she had hoped her daughter could move in behind them. She said she was unaware of restrictive covenants. J. Cotton added that when she and her husband talked to an engineer about putting in a straight driveway they became aware that a shared driveway is allowed, so that is what they are trying to do. She said she has never been disrespectful to the neighbors, and they would never intend to harm value.

At this time the Chairman closed the hearing to public comment.

C. Zilch said that he has consulted with the applicants and they wish to continue both requests.
MOTION: To continue both variance requests until February 23, 2016, at the applicants' request.

MOTION: J. Deleire

SECOND: D. French

UNANIMOUS

The Chairman called a five minute recess, after which the Board reconvened.

REVIEW AND APPROVAL OF MINUTES OF PREVIOUS MEETING: November 17, 2016

MOTION: To approve the minutes of November 17, 2016 as written.

MOTION: S. Bryant

SECOND: J. Deleire

UNANIMOUS

MOTION: To adjourn at 9:25 PM.

ZONING BOARD OF ADJUSTMENT
December 22, 2016

draft

7:00 PM
TOWN HALL

MOTION: J. Deleire

MOTION: S. Bryant

UNANIMOUS