

Unofficial
As of 7/11/07

**HOOKSETT
ZONING BOARD OF ADJUSTMENT
MINUTES
JULY 10, 2007**

HOOKSETT MUNICIPAL BUILDING

CALL MEETING TO ORDER

The meeting was called to order at 7:00 pm by acting Chair R. Savoie.

MEMBERS OF THE BOARD

R. Savoie, D. Johnston, R. Bairam, J. Levesque, G. Hyde
R. Duhaime arrived late.

ELECTION OF CHAIR AND VICE-CHAIR FOR 2007-2008 YEAR

Continued to July 17, 2007

CONTINUED PUBLIC HEARING

PIERRE BOIS & LINDA MEDAGLIO

365 Hackett Hill Road, Map 28, Lot 19-2

Special Exception

specified in Article 26, Section C.4 to allow the construction of a two story sunroom which is an extension or enlargement of less than 50 percent of the gross floor area on a legally non-conforming lot.

Open Public
No comment
Close Public

D. Johnston motioned to grant the special exception to allow a special exception to build a two-story sunroom on a non-conforming lot.

Seconded by J. Levesque.

Vote unanimously in favor.

CONTINUED AND NEW PUBLIC HEARING

LESLIE NEPVEU

6 Orchard Drive, Map 16, Lot 38

Special Exception

specified in Article 26 Section C.4 to allow the construction of a three car garage and mudroom which is an extension or enlargement of less than 50 percent of the gross floor area on a legally non-conforming lot.

Variance from Article 4, Section E.3.a. to allow for an addition which does not meet one of the front setback requirements of 35'. The setback for this addition is 14.10'.

Open Public hearing

No comment

Close Public hearing

R. Duhaime arrived at 7:15 pm

J. Levesque and R. Bairam voting alternates

The Building and Highway Departments have no problem with this application.

R. Duhaime motioned to approve the special exception specified in Article 26 Section C.4 to allow the construction of a three-car garage and mudroom, which is an extension or enlargement of less than 50 percent of the gross floor area on a legally non-conforming lot. Seconded by D. Johnston.

Vote unanimously in favor

Variance - front set back.

J. Duffy: This is a corner lot with frontage on two sides.

The Planning Board and the Highway Department have indicated they have no problem.

D. Johnston motioned to grant the

variance from Article 4, Section E.3.a. to allow for an addition which does not meet one of the front setback requirements of 35'.

Seconded by R. Bairam.

Vote unanimously in the affirmative.

NEW PUBLIC HEARINGS

CHRIS MASTRIANO

1135 Hooksett Road Map 41, Lots 10

Appeal from Administrative Decision. Denial of Building Permit for a two-family structure in the Performance Zone.

Philip Hasting, with Cleveland, Water and Bass:

The land at 1135 Hooksett Road dates back to 2003 when the property was located partially in the commercial and residential district. He proposed a car repair facility on the Commercial Site and a two family dwelling in the residential district. That was granted in August of 2003. The Variance runs with the land without expiration. The zoning was amended in 2006 and it is now in the Performance Zone where residential uses are no longer allowed.

Since a variance was received in the past and then the building permit denied, we believe the building inspector's denial was in error and we ask the ZBA to overturn the building inspectors decision and allow this use.

R. Savoie: This case is only a hearing on the appeal to overturn the decision. They had 30 days to submit that appeal. That was not met. We will not look at the zoning but only the appeal itself.

P. Hastings: We are only asking for the denial to be overturned.

R. Savoie: The rules of the Planning Board state "to file an appeal it must be done in a timely fashion" which is within 30 days of denial. This does not meet that deadline.

C. Mastriano:

I filled out the permit in March and I was told it would be denied, so I left to do research and look into why I was denied after I spent 30 to 40 thousand dollars on engineering fee and architectural plans. I was surprised I couldn't get my building permit because the zone had changed. I went to the building inspector 45 days later with the same application and he denied it with a March date.

J. Duffy:

Mr. Mastriano started cutting down trees in the end of March. An abutter had concerns and looked into it and at that time Michelle Bonsteel advised the owner that he didn't have permission to build because of the change in zone that doesn't allow the residential use. He applied for a variance for last month and then asked it to be continued to June.

Then, close to the meeting date, he decided to withdraw the application. Chris Mastriano came in with his application for Charley Mewkill to deny.

Charley didn't start here until the beginning of May. I would argue with Attorney Hastings that the variance wasn't for the use of a home; he didn't need a variance for use but for the area. The variance that runs with the land has nothing to do with the use. The first thing to address is if they meet the 30-day deadline.

P. Hastings: Mr. Mastriano applied in March but didn't get a written denial. He had been advised informally to apply for a variance. I then was contacted for clarification.

Mr. Mayer advised me that the ZBA didn't have the authority to provide a variance under the Performance Zone provisions. We feel we are not under the Performance Zone because of the variance. We wanted a building permit so we could get a ruling to see if the denial was valid. It was part of an overall development plan, which included residential and commercial.

R. Savoie: We voted on an area variance, which is different from a use variance.

P. Hasting: We want to carry out the original plan.

J. Duffy: The original plan had the duplex on the back part of the parcel and the automotive in the front.

I don't know what Mr. Hastings referred to with the denial in writing. We have Charley's signature stating, "denied" but it is not dated. He started here on May 7th and Michelle denied the application in March.

P. Hastings: Mr. Mastriano has tried to bring this forward in a reasonable manner. To have this denied, on a procedural matter, is inconsistent with due process.

The zoning changed in May of 2006.

Open Public

Charles Winhauser, Mammoth Road:

I wrote a letter to this effect, and I want to state that I'm not trying to tell anyone what to do with their property, but I would make sure that all the abutters were aware of the situation. Mr. Mastriano was in touch with the left and right abutters and worked out deals. I was not notified and then saw trees gone and I am the closest abutter. When I bought my property there was a sense of seclusion. That will change with a building 15 feet from my property with no trees.

J. Duffy: There is an aerial of this area in the packet.

C. Windhauser: There is now no buffer between my property and his.

I'm looking at a market loss. My second issue is the plans for the driveway, which would come up on the left hand side. There are now two driveways and now there would be 3 driveways in a row.

R. Savoie: That is a Planning Board issue.

C. Windhauser:

When I bought my home in the 80's, they said there was no driveway approval. Now my value is decreasing because of this design.

I am not in favor of this at all.

If you do vote and approve the permit denial, are you approving the building in the Performance Zone?

R. Savoie: If we overturned this decision, we would be allowing the house.

C. Mastriano: This is confusing because this change is once in 25-year change. I didn't know how to handle this. I spoke to Jo Ann, Michelle, and my lawyer, I was very confused.

The 30 days with the permit; I didn't know how to handle this. I was told to go to Superior Court. I didn't want to do that. If the Performance Zone never came, I could get my permit. This Performance Zone changed everything. I'm trying to do everything by the book.

J. Duffy:

Now that it is Performance Zoned, there are no more waivers. The Planning Board cannot grant a waiver for something that is not allowed. The only thing to do is to go to court. He chose not to do that but rather to take this route.

If this board were to grant this request and allow this decision to go forward, there is a 30-day window to appeal the ZBA's decision.

W. Bruce Kenney: I was aware there was single-family house. I didn't know this was a two family house. There wasn't enough land between the properties for a driveway. I disapprove of a two family house. A single-family house was ok.

Are they going to demolish the building in the front?

If they put the house in that area, it would be ok; otherwise, it would be in my back yard and decrease my property value.

Bob Silkman on behalf of my mother at 1130 Hooksett Road; we are in opposition because of the water system that goes to her house.

J. Duffy: There was a condition that a water line be run to the Silkman's property as part of this approval which has not yet been done.

R. Duhaime: The Performance Zone was to take care of these issues.

That is why the Planning Board should review this since residential use is not allowed in Performance Zone. We should support what the voters did.

J. Duffy: I think you should deal with the 30-day issue. The appeal came in to our office on June 20th.

Close public hearing

J. Duffy: He applied for a permit with Michelle Bonsteel and denied it verbally.

He applied for a variance to build a duplex because it was denied. Why did he apply for a variance if it wasn't denied?

G. Hyde: We need a new building permit with a denial in writing. We can't decide whether he met the time line.

R. Savoie: He didn't make the timeline because we can't prove either way.

C. Mastriano: I was told to go to the Planning Board and then told not to go to the Planning Board.

I was very confusing.

J. Duffy: I spoke with the town attorney and he said the only recourse is Superior Court and he chose to go this route instead.

R. Duhaime motion to uphold the administrative decision to deny the permit for 1135 Hooksett Road. Seconded by R. Bairam.

Vote unanimously in favor.

KEVIN AND TAMMY GREGOIRE

20 Evelyn Street Map 20, Lot 7-19

Variance

from Article 18, Section G.2.b to allow an existing shed within 3' to 5' from a wetlands, which requires a forty-foot setback from the wetland boundary to any building.

K. Gregoire: Map 20, 7-19 and 7-18 went for an even property swap and I gave my frontage and got his back. I hired a surveyor and wanted to make it all legal. During the survey procedure, after living here 10 years, the shed and house were built by a developer. We realized the shed was close to the wetlands and we brought it to the Planning Board and they approved it with the condition that the ZBA grant the variance for the setbacks.

It is on a foundation. I am 35 feet into the buffer.

Open public:

Close public:

R. Duhaime motioned to approve the variance from Article 18, Section G.2.b to allow an existing shed within 3' to 5' from a wetlands, which requires a forty-foot setback from the wetland boundary to any building. Seconded by D. Johnston.

Vote unanimously in favor.

OMNIPOINT COMMUNICATION/T-MOBILE

305 Bicentennial Road, Map 44, Lot 3

Variance

from Article 5.A. to allow for a wireless communications facility in the medium density residential district, and a Variance from Article 28, Section O.5.a for side and rear setbacks.

D. Johnston motioned to continue to July 17 at Hooksett Public Library. Seconded by R. Bairam.

Vote unanimously in favor.

RONALD CLARKE

5 Oakhill Road Map 25, Lot 17

Variance from Article 5, Section C. 1.a. and b. for the construction of a single family home which lacks frontage.

Ronald Clarke: There are two houses on Lindsay Drive and I would like a variance to put a driveway in. Where Virginia Court ends on Lindsay, there has always been a right of way. I would like to bring a driveway up and then later get a subdivision to build a house.

J. Duffy: They need the variance first before they can go to the Planning Board.

When the subdivision was approved, there was a 50-foot strip on that land reserving it for a future roadway and Mr. Clarke's land is at the end of

it. Rather than build a road for one house lot, he would like a driveway. There is no frontage.

R. Clarke: The 4-acre parcel that is off the back of Lindsay Drive is two triangular lots. It is before the water tank. I have owned this for ten years and it is heavily wooded.

J. Duffy: The only record is the plan that was recorded. It is mentioned in the two abutting parcels that they own up to that right of way.

R. Duhaime: Who owns that right of way?

J. Duffy: That is a legal determination.

There hasn't been any proof of who owns the paper street. Typically it goes to the owners who previously owned that area. This was layed out as a subdivision and this was reserved for the future. There is some case law on who would own a paper street.

R. Savoie: Technically, if that is layed out and on a stamped plan, it goes to that subdivision.

J. Duffy: I don't know if the town took ownership. It is not in anyone's name and no one is paying taxes on it.

J. Levesque: How can you give someone permission to use town land as a driveway?

J. Duffy: We could get a legal opinion and continue to next week.

Abutters:

M. Sorel: Ali Jaber, the buyer of the future property.

There was a lot of conversation and we were not privy to. A right of way is a type of easement. An easement is someone's right on someone else's property.

Mr. Clarke would have to hold rights, title or interest to make a successful argument and he would need to show documentation to that effect.

R Savoie: If it is a paper street, it is there for access to back land.

M. Sorel: But it is subject to research. And if you read the deeds to the two abutters, they have rights to that strip.

R. Savoie: The deeds say the easement is layed out on both deeds.

M. Sorel: Mr. Clarke does not have rights to that right of way.

If he would be willing to build a town-approved street, he would then have access. I wanted to point out that unless he has rights, title or interest, he needs to provide proof of that.

A. Jaber: I went to the water department and the sewer department and they gave me permission to build one house.

R. Savoie: That is irrelevant.

J. Barmby: I abut the easement and I want to go on the record opposing this. This is not a town approved road. This would make my front yard his back yard

Abutter, Lindsay Road: We were never notified of this meeting. That shows a questionable application. We only know because our neighbor was notified. If you put a driveway as opposed to a street, it will reduce our property. I am skeptical of the intent. I've lived here 3 years. There are animals back there. Last year, that land was used for farm animals, specifically pigs. The smell was horrible and it brought in preying animals. We now have no small animals in our neighborhood.

Within 3 to 4 weeks ago, I called the Police Department because we had a red fox in our yard and the Police Department put it down. There is a deed that says a road, not a driveway.

R. Clarke: The purpose is to put a house like this, not a pigpen.

Dennis Depelteau, 14 Lindsay Road: When I moved there, this was a development that had been there for a few years. There was a right of way with the intent of future development similar to what is now there.

George Haddon: I am down from the property, but does it abut Oak Hill Ave? Why can't you go down Oak Hill Road?

R. Clarke: I wouldn't be able to get direct access.

G. Haddon: Most of the abutters were not made aware of this application

It appears that the abutters were not properly notified.

D. Johnston motioned to table until the abutters can be properly notified. Seconded by G. Hyde. Vote unanimously in favor.

A. Jabar: The right of way goes between lot 18-8 and lot 18-9.

R. Savoie left the meeting at 8:45 and R. Duhaime assumed the Chair.

FRANK MAGDZIARZ

25 Jacob Avenue, Map 48, Lot 47

Variance from Article 5, Section C.1.c. to allow for a two-lot subdivision, one lot will have 115.70' of frontage where 200' of frontage is required.

Eric Mitchell, representing the Magdziarz

This is a 12.97-acre existing lot. If this variance is granted, we would like to go to the Planning Board to get a two-lot subdivision and it will only have 115 feet of frontage. The process would leave 10.6 acres and 2.25 acres. There is $\frac{3}{4}$ of an acre reserved for a right of way. There is an area to give extra right of way to the town. The public works asked us to do that.

The variance is for the lack of 200 feet of frontage where we have 115.7. The future site is more than 200 feet off the road.

E. Mitchell read from the application (see file)

R. Duhaime: An acre and half is being proposed?

E. Mitchell:

There is a provision that if a road is put in, it can be in a reasonable location and there would be enough frontage and it would then be a conforming lot.

The chicken coop would also be taken down to conform to current setbacks.

Open Public:

M. Pinard: I live across the street and have no objection to the house lot but I do object to the road. It dumps in front of my driveway. It is very rural and it dumps snow there. In my deed, I have the land that Jacob Ave sits on as part of my property. There is a question of true ownership of Jacob Ave. I think I own it, and if I do I have the right to say where it would go. And I wouldn't want it to go in my front yard. If it was just a driveway, that would be ok, but a road is another issue.

R. Duhaime: That would be a Planning Board issue. They are only here for a variance.

M. Pinard: This is a safety hazard for my home and my family.

Jacob Ave is included in my deed. I would like to see that clarified. I spoke to the surveyor and I have a copy of that. It is a town maintained road. I've contacted the highway, accessing, and the tax departments and I haven't seen anything that says the town owns it. My point is I don't like the location of the road dumping in my front yard near my driveway.

R. Duhaime: I direct you to the Planning Board if this is approved.

M. Pinard: Where would the 50-foot section meet Jacob Ave?

E. Mitchell: The road would come out 90 degrees, but the location of the road could change if there were a future subdivision. We are leaving a reservation so that this lot can't stop a road from going through.

That could be worked out at the Planning Board when the road is designed in the future.

K. Magdziarz: If that will be a road, will that effect my setback for frontage?

I object to my property being set back for a project. That is very unclear. I assume the 15 feet is abutting which will set it back another 15 feet. The road is undefined.

Those plans are unclear and it will make me a corner lot.

E. Mitchell: The variance is for the lack of frontage with the provision for a road in the future if it happens. At any point this can be moved. We want the right to use this road in the future. No road is approved at this time.

Close public hearing

G. Hyde: I think it is nice for the surveyor and the land owner to present that right of way in case of a proposed road.

R. Duhaime: There is no sewer or water in this area.

J. Duffy: The Planning Board is very against the creation of non-conforming lots.

R. Duhaime: There isn't frontage and the abutters are objecting, so I'm not in favor.

R. Bairam: We shouldn't consider the road, it's irrelevant.

D. Johnston motioned to grant the variance from Article 5, Section C.1.c. to allow for a two-lot subdivision, where one lot will have 115.70' of frontage where 200' of frontage is required.

JIM FECTEAU/DEBRA O'DONNELL

314 Whitehall Road, Map 15, Lot 80-4

Special Exception

from Article 26 Section C.4 to allow the construction of a 14' x 20' sunroom and deck which is an extension or enlargement of less than 50 percent of the gross floor area on a legally non-conforming lot.

Douglas Rose:

We would like to build a sunroom on a non-conforming lot. The homeowners had the property resurveyed. It is a 14 x 20 sunroom with less than required frontage.

Site walk scheduled Saturday, July 14 at 8:00 am

STEPHEN LUCAS

3 Farmer Road Map 31, Lot 28

Variance

from Article 5, Section E. to allow the construction of an 18' x 20' master bedroom addition, which would be located within 15' of the rear lot line where 25' is required.

Special Exception from Article 26, Section C.4. to allow an 18' x

20' addition, which is an extension or enlargement of less than 50 percent of the gross floor area on a legally non-conforming lot.

Robert Bowen:

We want to build a master bedroom on a non-conforming lot. This does not meet setbacks as well and have applied for a variance.

Site walk schedule July 10th 8:30 am

WILLIAM TAYLOR

52 Lantern Lane Map 26, Lot 60

Variance

from Article 5, Section E.2 to allow the construction of a 24' x 24' two-car garage with a loft and 12' x 20' attached mudroom, which will be located within 12.4 feet of the side lot line where 20 feet is required.

Special Exception

from Article 26, Section C.4 to allow an extension or enlargement of less than 50 percent of the gross floor area on a legally non-conforming lot.

Robert Bowen: This requires a special exception due to area. According to the card, it is .97 acres but the tax bills say 1.12 acres. We do not believe we need a special exception.

J. Duffy: I suggest we reference the deed.

Site walk schedule for special exception 8:45 pm in case still needed.

Variance

Robert Bowen read from file

Open Public Hearing

Andrew Bilideau, 50 Lantern Lane: I have no objection.

The buildings will be 100 feet away based on where our buildings currently sit.

Close Public hearing

D. Johnston motion to grant the variance from Article 5, Section E.2 to allow the construction of a 24' x 24' two-car garage with a loft and 12' x 20' attached mudroom, which will be located within 12.4 feet of the side lot line where 20 feet is required. Seconded by R. Bairam.

Vote unanimously in favor

ROBERT DOYLE

18 Helen Drive Map 43, Lot 22-17

Special Exception

from Article 26, Section C.4. to allow the addition of a 16' x 24' family room and attached 19' x 22' deck which is an extension or enlargement of less than 50 percent of the gross floor area on a legally non-conforming lot.

Stewart Pappas: This is for a Special Exception to build a 16' x 24' family room on a non-conforming lot due to frontage.

Open to Public

No comment

Site walk schedule for 9:00 am.

CAROL COOPER

160 Whitehall Road Map 20, Lot 35

Special Exception

from Article 26, Section C.4. to allow the construction of a 15' x 10' sunroom on an existing deck which is an extension or enlargement of less than 50 percent of the gross floor area on a legally non-conforming lot.

Alan Gamas: I want to build a 15 x 10 sunroom on a non-conforming lot.

Site walk scheduled for 8:15 am

MANCHESTER SAND & GRAVEL

22-27 Lehoux Drive Map 22, Lot 36-4

Special Exception from Article 18, Section E.1.a to replace and reconstruct 184' of an existing failed 24" drainage culvert. The project impacts 1336 sf of wetlands.

Peter Holden: This is for a piece not far from the river and is a wetland.

MS& G has a haul road and there is a culvert there. It use to run down the banking. After the spring, it washed out the road and the culvert.

Pictures were distributed. It has all been eroded. They have a wetland permit application into the State. The pipe use to go under the road now the water will go in and drop down and go pretty low and come out at the bottom so it won't run down the banking. We will put a 32-inch pipe rather than 24' and it will be all covered and in the future it won't go over the road.

Site walk scheduled for July 21st at 8:00 am at the end of Legends Drive

APPROVAL OF MINUTES OF June 12, 2007

R. Bairam motioned to accept the minutes. Seconded by J. Levesque

Vote unanimously in favor.

ADJOURN

The meeting was adjourned by the Chair

Respectfully submitted,

Lee Ann Moynihan