

Official

HOOKSETT ZONING BOARD OF ADJUSTMENT

Tuesday, July 23, 2013

HOOKSETT MUNICIPAL BUILDING

SPECIAL MEETING AGENDA

CALL TO ORDER

Chair Chris Pearson called the meeting to order at 6:32 pm.

PLEDGE OF ALLEGIANCE

ATTENDANCE: Michael Simoneau, Don Pare, Richard Bairam, Roger Duhaime (arrived at 7:15 pm), Chris Pearson, Jackie Roy, James Levesque, Council Rep.

EXCUSED: Phil Denbow, Gerald Hyde

STAFF: Lynn Perkins, Code Enforcement Officer

APPROVAL OF MINUTES

July 9, 2013 Regular Meeting – *J. Roy moved to request a continuance of the approval of minutes to the August 13, 2013 meeting, M. Simoneau seconded. Motion carried.*

CONTINUED PUBLIC HEARINGS

JAMES WELCH Case #13-10 16 Rae Brook Road Map 47, Lot 32-8 MDR A variance is requested from Article 8, Section E.3. (Open Space – A minimum of 50% of the tract area shall be set aside as common land covenanted to be maintained as permanent open space in private, cooperative or public ownership and shall be designated by the Conservation Subdivision applicant.) Applicant is requesting permission to install a 20' X 40' in-ground swimming pool within the buffer.

C. Pearson: Mr. Perkins, were proper notifications done?

L. Perkins: Yes.

C. Pearson: You sent out a note to us about an ordinance that specifies that the Planning Board may in fact give a variation on the buffer area if the spirit or objectives of the ordinance are being provided. Could you please clarify this.

L. Perkins: If you look back at the zoning ordinances it gives the Planning Board the latitude with the spirit of the ordinance that is being met. It essentially says that if somebody wanted to encroach into those buffer areas but they were going to eliminate some of the green areas that were in that buffer area, could people continue to use that as open space which is what the spirit of that ordinance was under the Planning Board. If that spirit is still there than you have the ability to make the decision that you would like. You have to look at this and decide whether or not the encroachment of the swimming pool is keeping spirit of the ordinance of that buffer zone in tact.

C. Pearson: Mr. and Mrs. Welch, do you have anything to add?

J. Welch: What it shows on the drawing does not cut into the buffer zone at all it is just cutting into the setbacks. We are staying on our property and not asking to go into the buffer zone.

M. Simoneau: How much are we encroaching in the setback?

C. Pearson: They need a 100 foot perimeter buffer.

D. Pare: One corner they are at 4 ft. The other corner does not specify, it could be 15-20 ft.

J. Levesque: With the new regulations that 100 ft. would have to be on the property line? You can't come over a property line with the buffer area in the way.

L. Perkins: The buffer zone is part of the property.

J. Levesque: It can't be part of the property.

L. Perkins: I believe it is part of the property.

J. Levesque: Under new regulations, it can go up to the property line and then you have your buffer area.

C. Pearson: We received a note dated July 22, 2013 (attached). Subdivision approval has already occurred. What is not clear is what they need a variance for.

J. Levesque: With the new regulations, it is still encroaching on the property line.

C. Pearson: It is not encroaching as bad as what the drawings show. S&H showed the perimeter buffer based off of the old regulations.

J. Levesque: They are encroaching to the property line without having a set-back, but this is all open space, so they are not encroaching against a neighbors' property.

C. Pearson: It is the open space and the open space behind them is owned by the Homeowners Association.

D. Pare: There is still 175 ft. of buffer.

C. Pearson: Any other questions?

Application was read into record by Rachel Welch.

C. Pearson: I don't think it is proper to look at a variance for Article 8, Section E.3. That would have been correct under our old laws where the buffer zone would encroach into a private property. This is not that case. What they are encroaching on is Article 8, Section G.3 which is the setbacks.

M. Simoneau: So side and rear yard is 21 ft.?

C. Pearson: Yes. They need the side set-backs to the rear where it is 20 ft. They are asking for a 4 foot encroachment in one corner. When looking at what the applicant is applying for and both the variance for Article 8, Section E.3 as well as the new regulations, maybe it would make sense to grant them or deny them their request under the new regulations as well as the old regulations.

L. Perkins: I understand what you are trying to do. We did see the transition of the ordinances change from it's original time through, I believe, 2006-2008.

C. Pearson: We are trying to decide what regulations they are applying to which could be the old or the new. We can cover our bases and look to approve or deny Article 8, Section E.3 as well as Article 8, Section G.3.

Opened Public Hearing

No Comments

Closed Public Hearing

Discussion ensued.

C. Pearson: We can make a motion, but I would like to approve or deny on both E.3 and G.3 because I don't know what is governing their property right now.

L. Perkins: Jo Ann had a question on that as well and was trying to get that resolved due to the transition in the regulations.

D. Pare: What does the land do at the end of the pool? What happens beyond your land?

J. Welch: I am running a retaining wall down my property line with the boulders that we pulled up.

D. Pare: Are you putting those boulders along the back or the side of your property?

R. Welch: Along the west wall.

D. Pare: If you stepped off of your property into the buffer zone, what does the land do at that point?

J. Welch: We will tie it in somehow with boulders that separate the property.

C. Pearson: Is the land flat or sloping up or down?

J. Welch: I am creating it so it is as level as possible. The high side, which would be the west side, we cut back down about 4 ft. trying to carry it level from west to east and then we will taper it down with boulders to create that barrier.

D. Pare: If you were to step out of your backyard and go straight back is it flat or go up?

J. Welch: That is flat land.

R. Bairam moved to grant a variance under Article 8, Section E-3 to allow a 20' X 40' in-ground swimming pool to be installed within the buffer zone. D. Pare seconded. Motion carried

unanimously.

R. Bairam moved to grant a variance under Article 8, Section G-3 where 20 ft. is needed and the applicant is asking for 4 ft. for a rear set-back. D. Pare seconded. J. Roy opposed. Motion carries 4-1.

R. Duhaime joined the meeting.

OTHER BUSINESS

CERTIFIED PLOT PLAN REQUIREMENTS

C. Pearson: Currently, when our applicants go to staff we ask them for a certified plot plan which can cost them \$400-\$1200. Jo Ann and Lynn asked me if this is something we want to continue to do because the cost keeps going up. Most other towns ask for certified plot plans but some ask for land surveying plans instead. Those prices can vary. I talked to Brown Engineering and they said that in a new sub-division it typically runs \$400 for one well-marked lot. An older lot can get up to \$1200 - \$1500.

L. Perkins: I have done some investigation on this and have asked two abutting towns what they are doing. Bow does not implement this strategy and Auburn is leaving it up to the discretion of the Board which is what I tend to be most familiar with. If you see a conflict with a variance or the land use case, you certainly have a discretion to table it or extend it to another meeting and ask the applicant to bring forth more information. Auburn is using variations. They know that if they are going to have a brand new property that has well documented certified site plans or updated surveys, the cost is going to be similar to what you just expressed. If you get into a matter with conflicts, the applicant could be looking at a \$3000 cost because the investigation may have to shoot out so far. For example, if an applicant wants to put a shed on their property and it was a tight property, they could be looking at \$1500 for a shed to use on the property. Auburn uses a swing tie which is an extension of a string with a circular motion to it to get range, but they will call on the applicants, if it is within the Board's discretion, to implement that. There are a couple other towns that are not requiring certified site plans for land use. It is at your discretion. If you are going to adapt this procedure you either have to have it in the town regulations or you have to adapt it officially to the policies and procedures for the Zoning Board.

C. Pearson: Our policy and procedure is what we do now.

M. Simoneau: I am not sure it is fair to compare Manchester to Hooksett, but I lived in

Manchester and owned a ¼ acre lot. I had to get a certified plot plan to put a pool in. Manchester requires a certified plot plan. They want to see exactly how much you are encroaching on that set-back.

C. Pearson: Jo Ann checked with two towns and they both require it. I think she might have also checked with Bow and they did not. We should look at what our options are. Years ago things were backing up because applicants would come to the ZBA and we would get kind of a tax map where someone would draw in pencil what they wanted to do and if there were any disputes then we would ask them to go out and get a certified plot plan which would create weeks of backing up. We would get a lot of incomplete applications and it was hard to know what you were really voting on. That is why we adopted this.

L. Perkins: We are trying to alter our process, barring the ZBA, in our office, so we are glad the matter of certified plot plans is on the agenda. We could go back to an idea of suggesting the ZBA may require a certified plot plan and look at it as what the case would demand. If it is a shed, we have to go out and we are pulling permits, not for the shed construction, but to verify it's setback off the line. The contention is that sheds are moveable objects and there could be a conflict. We could structure this so that it goes back to the ZBA and may require a certified plot plan and we could also put it into the discretion of Building Dept. that they will take a look at the application and make sure there is no a conflict due to guidelines that you might establish.

C. Pearson: A lot of reasons we went this way was, back when the economy was good, all the additions that were coming in. The additions were hitting on side setbacks so we wanted to make sure that if you said that you were going to infringe on 10 ft., and you neighbor agreed, we wanted to make sure the infringement did not end up being 5 ft.

L. Perkins: In Manchester, if you are going to do an addition you have to have that second trip from a surveyor measuring the foundation of the addition, saying that it has not gone beyond where it should, because the Building Dept. in Manchester won't sign off on that foundation unless you produce that.

C. Pearson: On occasion, we have done that here when there have been contentions.

D. Pare: Is it safe to say that every town has 90% of a plot plan on file?

L. Perkins: I would say perhaps after 1980 and on and before that it is hit or miss.

D. Pare: If someone had a house for the last 15 years would the town have a plot plan on file?

L. Perkins: Possibly, but I have not been able to get that information from the archives in the short time I have been here to clarify that information.

D. Pare: The reason I say that is because if someone is asked to spend \$400-500 and it has already been done by the last person, the town has it on file, and they are being asked to spend the money again when it is right there. I am not saying that every lot in this town is on file, but I can guarantee a majority of them are. Isn't this public information?

L. Perkins: It is public information but it is not necessarily a certified plan. We are dealing with a case right now on White Hall Road where there is too much innuendo in the plan because some of the boundaries are being disputed. It is primarily because the house that centers on this was built in the mid 1970's. We don't have record of that lot.

D. Pare: I have had my house for 15 years and I have one in my file. You have to have it when you go to the bank to take out a loan. Everybody should have one. A lot of people have this in their homes and they may not realize it or know where it is so they are having to pay for it 2 or 3 times.

L. Perkins: The low end that Chair Pearson is referencing is for reverifying something that is already in the file. The discussion is what do you do for people who don't have it on record. If they want full use of their land what are they going to be subjected to.

C. Pearson: We have seen the request for a certified plan stop the project for some people who have come in front of us.

D. Pare: What if a person wants to put up a \$1500 shed and it costs \$1500 to get a plot plan?

M. Simoneau: We are also taking a shed vs. an in-ground pool which could cost \$30,000.

C. Pearson: That is why we might want to come up with a clear set of procedures. A shed vs. an addition vs. a pool.

M. Simoneau: An in-ground pool is a fixed object like a foundation.

D. Pare: Lynn, would a shed be something that when they come in front of you for a permit, you can check to see what the property line looks like?

C. Pearson: Maybe we can continue to table this so we can get more feedback so we can have concrete procedures. We definitely set those procedures in place a while ago so they should be on record.

L. Perkins: That did become a dispute in the office because I have your regulations here and did not find it. I may have missed it or may have an outdated copy.

D. Pare: There are so many different situations and so many variances.

R. Bairam: The other thing that is happening is that people come back here two or three times.

D. Pare: It can create a burden on us especially if it gets busy again. Next thing you know there's 15 applications coming in and 10 from the week before all because of a plot plan.

C. Pearson: If Lynn has a good adopted procedure from us, when applicants come to him he will be able to let them know what they need.

L. Perkins: If you are looking at something like an addition, subdividing a lot, or putting in a \$30,000 pool, the \$1,500 certified plot plan isn't that big of cost.

D. Pare: \$1500 is probably the high end.

J. Roy: That is low end.

C. Pearson: That can be the low end. When I talked to Brown Engineering he told me he just finished one where they wanted a 50X50 land swap, and he is now into about \$5000 of surveying.

J. Roy: There is a huge difference between just getting a survey if you are plot planning and doing a certified plot plan. We had to pay \$2200 to put our up fence because there was nothing on file and they still didn't certify it because they wanted to do the whole road before they would certify it. We stopped it there because we had enough information to put a fence in. A certified plot plan is very different from regular surveyed plan. It can get costly especially if it is not a permanent structure. Maybe that is how we could consider some of the wording, permanent vs. removable.

D. Pare: You can put wording in there that anything that was built from 1990 on there is different criteria because you know there is going to be something on file.

M. Simoneau: I was thinking something to the effect that, if construction costs to the subject property are above \$2000, it would require a certified plot plan.

C. Pearson: I think the best thing would be to cut and paste from something that is working somewhere. Take a look at them, maybe make a few minor changes and take it from there. If we can get feedback from other towns on procedures or whatever they use. We got some good feedback from Belmont, but not exactly their procedure.

L. Perkins: I saw that email as well. I found that Bow and Auburn were accommodating to various cost cases. If you are putting in a foundation, not including excavation cost, you are looking at a \$3,000 cost. Maybe a permanent structure in the ground or going beyond the \$3000 mark is a good threshold to start looking at.

C. Pearson: The difference with our town is that we added a lot of conservation sub-divisions a few years ago which put us in a position where people had to come to ask for a pool.

J. Roy: The only other comment I would make as far as putting a dollar limit on things, is that once inflation hits it will hurt people again. We can say \$3,000 today but 5 years from now it could be completely different.

M. Simoneau: That could be changed to a percent which can fluctuate with construction costs.

C. Pearson: I think we should get some feedback and continue to work towards this and get something in place in a few months.

J. Levesque: When I put my garage in, back in 2000, I had a 2 lot sub-division that was done in 1976. I brought that to Mr. Andrews, plus the drawing I had of my lot and laid it out with the garage, but I only have 165 ft. of frontage with 13.68 acres. Today I would have to come for a variance. He allowed my plot plan from the subdivision plan which was registered with the Registry of Deeds. That is a registered plot plan on a registered site division so I guess you could utilize those drawings if they are available. Remember on Hackett Hill Road when they had those two houses and they couldn't figure out where the property line was. The description was not even on that piece of property, it was 5 lots down the road. Those are the ones we can't let go by. They couldn't even come up with a certified plot plan because they did not know where the lots were. However, asking somebody to come up with \$1500 for a certified plot plan to put a garage up when you know there is plenty of room to put it up doesn't make sense and is expensive to the applicant.

C. Pearson: I think we can work towards something.

J. Levesque: I think it is up to the discretion of the building inspector. If he has good documentation and feels comfortable with it It puts a higher burden on our residents when they want to do something. We have people come to us and want to put a deck on their back property and the front of their house doesn't meet the set-back because they were built 35 years ago. Now they have to pay money for a variance and a plot plan when it is 50 ft. behind the house with plenty of set back and they are trying to ask for a variance. These are the things that we are going to change that makes it a little more up to the discretion of the inspector.

L. Perkins: What would you like me to follow up on?

C. Pearson: Getting procedures from other towns. We can look at adopting and discussing them via email and also via discussion at the end of meetings.

ADJOURNMENT

The meeting adjourned at 7:20 pm.

Respectfully submitted by,

AnnMarie White

Recording Clerk