

Town of Northwood
Zoning Board of Adjustment
May 20, 2013

Chairman Roy Pender calls the meeting to order at 7:00 p.m.

PRESENT: Chairman Roy Pender, Vice-Chairman Tom Lavigne, Bruce Farr, Curtis Naleid, Doug Pollock, Board Administrator Linda Smith, and Board Administrator Lisa Fellows-Weaver.

ABSENT: Alternate Jean Lane, and Alternate Robert Bailey

VOTING MEMBERS: Roy Pender, Tom Lavigne, Bruce Farr, Curtis Naleid, and Doug Pollock.

ELECTION OF OFFICERS:

Mr. Farr makes a motion, second by Mr. Pollock, to maintain the current status of officers. Motion passes unanimously; 5/0.

MINUTES:

Motion is made by Mr. Naleid, second by Mr. Farr, to approve the December 18, 2012, minutes, as written. Motion passes unanimously; 5/0.

CASE:

Case #13:01: Jeffrey Irrevocable Trust, 35 Jeffrey Drive. Map 217, Lot 52. Applicants seek a variance to Article IV, Section (B)(6) to allow a second residence on a lot that currently has a residence, when only one principal residential structure is allowed on a single lot.

Julia Jeffrey and her son John Jeffrey are present.

Ms. Jeffrey explains that she has 65 acres on Jeffrey Drive in an irrevocable trust for her family. She states that her daughter had lived on this property. She states that the proposal is to add a mobile home; however, there is already one single-family structure on the lot, which is her Jeffrey's home.

Mr. Jeffrey explains that in 1976 the lot was approved by the planning board for a building with three apartments, which is now the barn. This apartment building was damaged by fire in the late 80', early 90's. He states that the building was not used after the fire and the intent is to use this building as a barn only now. He adds that a person will be living in the mobile home who intends to begin the agricultural use of the property. He states that the barn will then be used for agricultural purpose only, not residential.

Ms. Jeffrey states that over the past years, there were no funds available to repair the barn, and it is now an eyesore. She adds that she was not aware that

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there were any time restraints for repair or rebuilding of the barn back to apartments.

A discussion is held regarding the town's ordinance relative to abandonment. Ms. Smith explains that it is clear that a period of time has passed that this would not be considered a grandfathered use; it has been abandoned for many years. She states that the issue at hand is that if the mobile home and the house were one structure then the applicants could do a duplex, without the need for a variance; in order to have two separate buildings, there is a zoning ordinance that states that only one principal, residential structure is permitted on a lot. She states that the proposal is for two units and for them to be separate structures. She notes that there is adequate frontage and square footage; however, the proposal is for the two structures to be at different locations on the same piece of land. The issues are specific to the two units being separate from each other and are not being proposed to be connected.

Mr. Lavigne asks if at the time when the apartment building was approved, was there an ordinance in place that prohibited that structure. Mr. Jeffrey replies no; it was an approved use at that time.

Mr. Naleid asks if there is a septic system for the house and the apartment building. Mr. Jeffrey states that there are two systems, one for the house and a separate system for the apartment building. He adds that the system for the apartment building has not been used since the fire. He adds that he could use that system or put in another one, if necessary.

Mr. Lavigne asks if Jeffrey Drive is a private road. Ms. Smith replies that the road is a town maintained road. Additional discussion is held regarding the length of the Jeffrey Drive.

Mr. Naleid states that there is nothing in the town ordinances specific to farm labor housing. He states that it appears that the original apartment was set up in those lines and it would be being used again in those lines. He feels that it is reasonable for there to be housing for farm labor. He asks if it would be possible to apply some type of wording indicating that should the trust ever be transferred or sold, the farm labor housing would not be transferrable. Ms. Smith states that this option was discussed with the applicants, whether the concept would fit into the zoning ordinance by calling it an accessory use to the existing house. She states that the applicant has indicated that do not want to tie their hands to that condition and the main house is not being used for the farm; it is a residence. She notes that if the variance was approved the applicants would be allowed to have the second residence. She states that the issue to address is that there is a regulation that states that only one principal residential structure is allowed per lot; a duplex would be okay if a roof was

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added to join the two structures. She states that the applicants want the two structures to be separate, which is a more typical presentation.

Ms. Jeffrey states that they do not intend to be renting apartments. Ms. Smith states that the variance request is relative to the two structures not to a number of units. A duplex would be allowed; however, the proposal is for two separate structures.

Mr. Pender asks if the applicants are not able to subdivide due to the stipulations of the trust. Ms. Jeffrey explains that with an irrevocable trust, nothing can be changed without going through an attorney with all parties involved, dissolve the trust, or create another one.

Mr. Farr states that the request is a logical request. He states that he doesn't understand why there is such an ordinance with this wording. He states that this may be an item to discuss with the planning board. Mr. Farr states that the hardship is created by the applicant as they meet the requirement for a duplex; however, they are choosing not to build a duplex.

Ms. Smith states that the reason that one principal residential structure was created was so that you could not have numerous structures without subdividing. In addition, she refers to private roads, sharing driveways and roads, which are other issues that have resulted in regulations requiring town roads in new developments.

Mr. Naleid asks about making decisions today which could potentially affect variances in the future. Ms. Smith states that the board needs to base their decision on the case, on the merits of the case, and individual responses for the criteria.

Mr. Pender states that there were apartments in the barn. He explains that grandfathering does not necessarily disappear over a certain period of time. He states that the fact that the property has been in the owner's name all along does not mean that time has wiped out.

Ms. Smith adds that the town does have an abandonment ordinance. She explains that when zoning changed it became non-conforming and a non-conforming structure or use is considered abandoned after 12 months. She states that there has been no intent to rebuild. Because of the number of years that has passed with no intent to rebuild, the building department felt that this proposal was the best avenue as they did not feel that they could issue a permit based on "grandfathering" due to the abandonment in the zoning ordinance.

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5 Variance Criteria

1. Granting the variance would not be contrary to the public interest.

Mr. Jeffrey states that the lot is 65 acres, and is at the end of a dead end road. He states that the use is agriculture. He adds that there is plenty of frontage. He states that this is a very large area and the spacing between the units would give plenty of setback for a subdivision at a later time. He states that there is 140' between the structures. Mr. Jeffrey notes that the barn is in between the proposed two structures; however, it is not a residential structure any more due to the abandonment.

2. The use is not contrary to the spirit of the ordinance.

Mr. Jeffrey states that the same items would apply as noted in number one.

3. By granting the variance, substantial justice will be done.

Mr. Jeffrey states that there was a previously approved second residential unit on the lot. He states that the area was used once as a farm and that is the intent once again. Ms. Jeffrey adds that they are not changing the use of the lot.

4. The proposed use would not diminish surrounding property values.

Mr. Jeffrey states that the burned apartment building will be turned back into a barn and will improve the appearance of the property. Ms. Jeffrey states that for years they were unsure of what they wanted to do with the burned barn and they did not have the finances to do anything with it.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

The "Special Conditions: of this property that distinguish it from other properties in the area as follows:

Mr. Jeffrey states that it is the size of the lot; it meets the requirements of the subdivision. There were two approved dwelling units there before. He explains that the land is in an irrevocable trust; which however is a hardship that they created.

(A) Owing to the special condition of the property, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision

Ms. Jeffrey states that there is no one nearby to bother. Mr. Jeffrey states that there are 100's of feet to the lot lines other than the family, which all reside around the lot.

(ii) The proposed use is a reasonable one because:

Mr. Jeffrey states that the use is agricultural. Ms. Jeffrey adds that the goods will be sold at the local farmer's market.

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Mr. Naleid asks if the mobile home will be on a foundation or a slab. Mr. Jeffrey states that the building department will determine the requirements when they apply for the permit.

Mr. Pollock asks about the acreage and the surrounding properties. Mr. Jeffery explains that this lot is 65 acres with an additional 25 acres on the other side of the power lines. He states that it is all agricultural, wood lots, and all in current use.

Mr. Naleid asks if there is separate power to the barn. Mr. Jeffrey replies yes. Mr. Naleid asks if there will be a new, separate meter for the mobile home. Mr. Jeffrey replies that he is unsure. Mr. Naleid states that there are some unique characteristics of the property as to how the property was developed and built years past. He explains that there is some convenience with placing the new mobile home on the same location because of the proximity to the existing septic system as to the option of placing the mobile home right next to the existing house and building a connecting roof. He states that tying into the main house may force tying into existing main utilities and may cause an over load. He adds that there are some unique things with the property of how it was previously developed with the three apartments. He states that it may be advantageous to place the new home at this specific spot.

Mr. Lavigne makes a motion, second by Mr. Pollock, to deny the variance based on the fact that criteria 1, 2, 3, and 5 have not been met.

Mr. Farr states that it is not the job of the board to advocate for the applicant; however, he requests more discussion relative to Mr. Naleid's comments regarding the uniqueness of the property.

Mr. Naleid states that it seems that there are some unique characteristics of how the property was developed for the three unit apartment building. He explains that there is an existing septic system, well, and electric already to the site. He states that if an additional dwelling is to be located on the property these unique items balance out the load on the utilities by placing the new home on the location where the previous apartments had been; opposed to what the town would allow by placing the mobile home right next to the existing house and building a roof and deck to connect the two structures. He states that by attaching to the existing structure you are tapping into the house for the septic, well, and into the existing power.

Mr. Farr asks why they do not want to attach the mobile to the existing home. Ms. Jeffrey replies she would prefer to not have the house that close to her home. Mr. Lavigne notes that by adding the mobile home to the existing home

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and then tapping into the septic system may exceed today's standards for septic systems.

Mr. Lavigne states that had the applicant rebuilt after the fire, there would be three apartments there now with three families. Today's proposal is for one single family structure. He states that he still stands by his motion and feels that the noted conditions have not been met. He adds that the one condition that he feels has been met is the fact that by placing a mobile home on this lot would not diminish the surrounding property values.

Mr. Farr states that as far as the conditions, the proposal is in the public interest because the public interest has declared that they want to subdivide large properties with clear deeds, and town roads. He adds that there has been discussion tonight regarding the difficulties with shared driveways and access. He states that if the board grants the variance there is little evidence that setting aside the subdivision regulations would be okay. There is a hardship of the trust; however, there is no evidence that this should not be subdivided.

Mr. Farr states that as far as being contrary to the spirit of the ordinance, he mentions two dwellings being attached together and living close. He states that there is no requirement that the second home must be owner occupied to be farmed.

As far as substantial justice, Mr. Farr explains that there has been 20 years abandonment relative to the apartments. Mr. Pender adds that the town's ordinance of "grandfathered" has yet to be tested in court.

Mr. Farr states that the proposal would not diminish surrounding property values as this area is a rural area. He states that he does not believe that there would be any negative impacts. Therefore, he feels that this condition has been met.

As far as special conditions of the lot, Mr. Farr explains that with the trust and not being able to separate the land; it is a manmade hardship. He states that this type of hardship is not acceptable as the hardship must be relative to the land. He adds that he understands with the proposed placement of the home with being near the crops; however, there are other areas to live.

Mr. Farr states that he is in favor of the motion and does not believe that the board has any option to grant the variance as condition 4 is the only one met. Mr. Farr states that these kinds of issues may need to be looked into and perhaps the board should meet with the planning board.

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Mr. Naleid comments to the purpose of the ordinance and states that a big part of the ordinances is to support open space. He states that here is a big difference with this property. He feels that the applicant's proposal is still meeting the purpose of the ordinance. The applicants are not over congesting the streets, there is ample space between the structures, and there are adequate provisions for necessary utilities. He states that we do not want people turning their property into apartments which is overcrowding so there is some uniqueness with this property, the size and space that there is, and at the end of the road. He adds that he feels that the applicants are trying to keep the proposal fitting with the ordinance, and keeping the open space, and open land that makes the property unique.

Mr. Farr asks Mr. Naleid regarding where others would have to subdivide the property and these applicants do not have to. Ms. Jeffrey states that she didn't realize that there was a time sensitive matter with rebuilding.

A discussion is held regarding conditional variances. Ms. Smith states that the board could grant a conditional variance based on the uniqueness of the size of the lot to only have two dwellings or, if the lot was ever reduced or subdivided that the mobile home would need to be removed or, if the property is ever conveyed based on the size of the lot other than the ownership.

Mr. Naleid suggests an amendment to approve the variance with the condition that the if the lot is reduced in size or subdivided, the mobile home would need to be removed or subdivided onto its own lot meeting the current zoning regulations.

Mr. Lavigne offers to withdraw his motion. Discussion ensues as to the motion and if the process should be to withdraw or make an amendment. Mr. Naleid suggests an amendment to the motion to grant the variance based on the fact that all criteria has been met, with the condition that should the lot be reduced in size or subdivided, the mobile home would need to be removed or subdivided onto its own lot meeting the current zoning regulations, at that time.

Mr. Lavigne accepts the amendment to his motion. Mr. Pollock seconds the amendment. To grant the variance based on the fact that all 5 criteria have been met, with the following condition:

Should the lot be reduced in size or subdivided, the mobile home must either be removed or the lot must be subdivided so that the mobile home is located on its own lot as a single residential unit, meeting the current zoning regulations, at that time.

Amendment Vote:

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Mr. Farr – in favor
Mr. Lavigne – in favor
Mr. Pollock - opposed
Mr. Naleid - in favor
Mr. Pender - in favor
Motion prevails, 4/1.

Motion Vote:

Mr. Farr – in favor
Mr. Lavigne – in favor
Mr. Pollock - opposed
Mr. Naleid - in favor
Mr. Pender - in favor
Motion prevails, 4/1.

INTERNAL BUSINESS

Non-Public Session

Mr. Lavigne makes a motion to enter into a non-public session per RSA 91-A:3,II(e), litigation. Second by Mr. Farr.

Roll Call Vote:

Mr. Farr – in favor
Mr. Lavigne – in favor
Mr. Pollock – in favor
Mr. Naleid - in favor
Mr. Pender - in favor
Motion passes unanimously; 5/0, 8:03 p.m.

8:10 p.m. Mr. Farr makes a motion, seconded by Mr. Naleid, to come out of non-public session; and to seal the minutes of the non-public session. He adds that no action was taken by the board.

Roll Call Vote:

Mr. Farr – in favor
Mr. Lavigne – in favor
Mr. Pollock – in favor
Mr. Naleid - in favor
Mr. Pender - in favor
Motion passes unanimously; 5/0.

Recording of Notice of Decisions

Ms. Smith requests the board consider recording the notice of decisions (NOD's) for all cases, not just approved cases. She explains that a recent matter with a rehearing from December has brought out a few issues. She states that staff records the board's NOD's when the board approves a case.

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She states that the recording fee is charged to the applicant as a part of the application fee. She notes that when a case is denied the NOD is not recorded. Ms. Smith continues to explain that she feels it would make sense to record the NOD's for denied application as well so if there were something relative to a piece of property potential buyers could also see recent activity and requests that have been made to the town.

Mr. Farr suggests checking with counsel for any negativity to the proposal. Ms. Smith states that this is a public document that is placed in the town's property files; however, she will ask counsel. Mr. Pender states that with the documentation in the record it does not allow any excuses for ignorance. He does not feel that this is out of the board's jurisdiction; it is showing the history of the property. Ms. Smith notes that a notice of decision is required by state statute.

Mr. Lavigne makes a motion, second by Mr. Pollock, to record all notice of decisions of the zoning board. Motion passes unanimously; 5/0.

Members List

Staff to provide an updated members list for the next meeting.

Applications

Mr. Pollock notes that the authorization form allowing the board to enter the applicant's party is not included with this application. Ms. Smith states that she will check with the building department to make sure that they have the updated ZBA applications.

Adjournment

Mr. Farr makes a motion to adjourn. Mr. Naleid seconds. Motion passes unanimously; 5/0, 8:22 p.m.

Respectfully submitted,

Lisa Fellows-Weaver
Board Secretary