

ZBA Minutes 05/23/11

Contributed by Lisa Fellows-Weaver
Wednesday, 21 September 2011

Zoning Board of Adjustment

Minutes

May 23, 2011

Official as of August 22, 2011

Chairman Bruce Farr calls the meeting to order at 7:00 p.m.

PRESENT: Chairman Bruce Farr, Tom Lavigne, Nona Holmes, Alternates Jean Lane, Doug Pollock, and Curtis Naleid, and Board Administrator Linda Smith.

VOTING MEMBERS: Bruce Farr, Tom Lavigne, Nona Holmes, Jean Lane, and Doug Pollock.

ABSENT: Vice-Chairman Roy Pender, and Robert Bailey

MINUTES

The minutes of April 25, 2011, are postponed to the next meeting.

Continued Case #11-01: Michael McMahon, North River Lake Rd. Map 233; Lot 6. Applicant is seeking a Variance to Article IV, Section (B)(1)(b)(2) to construct a single family residence, with no road frontage, as it is a private road.

Mr. Farr reads an email received from Atty. Vachon requesting to withdraw the application request for a variance. Mr. Farr notes that within the email there is a comment regarding recovery of costs of the town's attorney from the applicant. Atty. Vachon wrote that it was his understanding the applicant would not be responsible for incurred legal fees.

Further discussion is held regarding procedures for attorney fees. Ms. Smith states that there was some discussion held at a prior meeting where she explained that the law had changed to be similar to how the planning board operates to pass on certain costs to applicants. She adds that the board agreed that the town would incur the legal costs relative to this case. She requests that this statement be included in the minutes.

Mr. Lavigne states that in the future he would prefer to address the issue on a case by case basis.

Ms. Smith will provide more information on the statute for the next meeting.

Mr. Lavigne makes a motion, second by Ms. Lane, to accept the applicant's request to withdraw the application, without prejudice. Motion passes unanimously; 5/0.

Case #11-02: TukCor Real Estate & Development (Jeff White), Elm St. Map 123; Lot 46. Applicant is seeking variances to permit construction of single family residence. Variance to Article IV, Section (B)(1)(b)(2), 150' of frontage is required, (lot has 50' frontage on a private road); and Article IV, Section (B)(2)(b), lot of 0.11 acres, where 2 Ac. is required. (Property currently owned by Jack Downing).

VOTING MEMBERS: Bruce Farr, Tom Lavigne, Nona Holmes, Curtis Naleid, and Doug Pollock.

Mr. Farr indicates that the request is for two variances. Mr. Farr notes that there is an approval for Jeff White to speak for the owner.

Mr. Farr states that there are no abutters present for this case and no correspondence has been received relative to this case.

Mr. Farr gives an overview of the variance process.

Jeff White, builder, states that they are applying for variances for a property on Elm Street, within the Harvey Lake Estates, to allow for a two bedroom split level home, 24'x32', or 900 sq. ft. total living space. He states that there is a trailer there now, which will be removed.

Mr. Naleid asks how long Mr. Downing has owned the lot. Mr. White replies at least 10 years. Mr. Naleid asks if Mr. White will be purchasing the land and will develop it. Mr. White replies yes.

Mr. Naleid asks about the well and septic. Mr. White states that there is no well or septic on the site; however, they have a state approved well location and septic design. Mr. Farr asks if all setbacks have been met. Mr. White states that the setbacks are 10' because it is an undersized lot. Ms. Smith states that the 10' requirement is correct. Mr. Lavigne states that the absolute minimum setback is 10'. Discussion ensues regarding the certified plot plan and the well radius. Ms. Smith states that this is not a surveyed plan; it is a portion of the septic design. Mr. White states that it is his understanding from the septic designer, Fred Walker, that the lot was surveyed. Ms. Smith states that Mr. Walker is not a surveyor. Mr. White states that Mr. Downing had the lot surveyed. Ms. Smith states that the building department may request this, and the board can add a condition to an approval, requesting the two points on the side lines be set by a surveyor. She adds that there is a requirement for a certified plot plan for reduced setbacks. Mr. White states that they will be doing a certified plan when the foundation has been completed. Mr. Lavigne states that there is a 2 ft. margin noted.

Mr. Naleid mentions non-conforming lots and that the 75' well radius goes beyond the setback of an adjoining lot. Ms. Smith explains that there is an option for a special exception to develop the lot, which could have been applied for but the applicant did not meet the criteria, thus he has applied for the variances, which has a higher standard to meet. Ms. Smith states that the well is not required to be addressed by the board but will be addressed by the subsurface bureau.

Mr. Lavigne asks if the bottom floor is a walk out basement. Mr. White replies that there will be a cellar, which will contain the furnace, well, pump, etc. He states it is not his intention for the basement to be finished. Mr. Lavigne asks if all the living space will be above grade, on the main floor. Mr. White replies yes.

Mr. Naleid asks about the location of the parking. Mr. White replies that the parking is between the street and the house. He states that there is enough room for a turn around so that there will be no need to back out onto the street.

Mr. Farr asks if the deck is in the setback. Mr. White replies yes. Mr. Farr asks if the applicant will be officially deleting the deck from the application. Mr. White replies yes.

Mr. Lavigne asks about the surrounding properties. Mr. White explains the neighboring properties. Mr. Lavigne asks if the applicant has any options to purchase additional land. Mr. White states that there is a structure on the neighboring lot.

Mr. Pollock asks how far the lot is from the lake and asks about the shoreland protection. Mr. White replies that the lot is not affected as it is too far, approximately 600 ft. from the lake.

Variance Criteria

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

Mr. White states that he does not believe that this will be contrary to the public interest because the lot will support a two bedroom home. He states that there are other similar homes in the area. He adds that there is a need in NH for affordable homes.

2. The use must not be contrary to the spirit of the ordinance.

Mr. White states that the variance will allow a small, affordable home to be built in an area where similar homes exist.

3. Granting the variance would do substantial justice.

Mr. White states that this home will help a young family afford a starter home.

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

Mr. White states the proposed building will be similar to those in the area. He states that in 2008 another 2 bedroom was built on this road. In 1998, a two bedroom ranch was built.

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

Mr. White states that he believes that the proposed use is a reasonable use. He explains that Elm St. is a residential area with many residential homes. He states that the request is to build an affordable home similar to the ones in the area.

Mr. Farr asks what the market value is for this style of home. Mr. White replies that it will be listed for \$129,000. Mr. Lavigne asks why he is only proposing a two bedroom home. Mr. White replies that the state will not allow a three bedroom septic design on a lot this size. The maximum is a two bedroom design on a lot of 5,000 sq. ft.

Mr. Pollock asks if this is a town road. Mr. White replies that this is a private road with a group of people that maintain the

road on their own. He states that this lot is around 600 - 800 feet from the end of the town maintained road. Mr. Lavigne asks if there is an association in this area. Mr. White replies no. Mr. Farr states that there is no road agreement.

Mr. Lavigne makes a motion, second by Mr. Pollock, to approve both variances noting that all five criteria has been met. Mr. Lavigne states that there have been many similar cases in this area. Many of these lots were created many years ago. He states that this is a two bedroom home, affordable because of the size. He feels that this is a reasonable use. He notes that there does not appear to be any potential lots to purchase to increase the lot size.

Mr. Farr suggests adding conditions to the motion for a survey to locate pins for measurements prior to building foundation; and basement to remain unfinished.

Mr. Lavigne amends the motion, second by Mr. Pollock, to grant the variances based on the fact that all five criteria have been met, with the following conditions:

- • Applicant to provide certification from NH licensed surveyor that building footings meet all setback requirements as shown on plan; and
- • The basement to remain unfinished; not living space.

Mr. Naleid expresses concern over the size of the lot and private roads. He states that zoning has changed since the homes compared to were built. Ms. Smith states that road frontage requirements were in the old zoning regulations with frontage requirements on a town maintained road. She states that there have been amendments made over the past 30 years. Mr. Naleid states that there are areas that have high concentration of homes and the zoning is trying to change that. He states that he feels uncomfortable accepting applications like this without a clear description of the community and when it is clear that there is no other opportunity for some other option. He notes that this lot is currently being used as a camping lot.

Mr. Lavigne states that the intent of the area was for camps and for people to visit in the summer and enjoy the lake; however, that was many years ago. Ms. Smith states that the area was developed as camp lots back in the 1950's.

Mr. Farr states that this area is the classic seasonal camp area in town and the town encouraged development either by intent or oversight and allowed these camps to become year-round homes for revenue. He states that it does not seem reasonable now for these lots to have year-round homes although it exists. He adds that he agrees that the square footage of the home needs to be the minimum to satisfy reasonable use. He is in favor of the variances based on the uniqueness of the property and past history.

Mr. Naleid comments that this proposed use is a better use for the site than how the site is currently being used.

Mr. Pollock states that the lot is 50' x 100' and he would like to see a registered surveyed plan. Ms. Smith states that originally all of the lots were created at 50' x 100'. Septic design plan is further reviewed. Mr. Naleid states that the building department will require an inspection once the foundation is poured. Discussion ensues as to the depth of the frontage.

Mr. Farr calls for a recess. When session resumes Ms. Smith provides a copy of the Harvey Lake Estates plan for review.

Roll Call Vote:

Cutis Naleid – Yes
Nona Holmes – Yes
Tom Lavigne – Yes
Bruce Farr – Yes
Doug Pollock – Yes
Motion passes unanimously; 5/0.

ADJOURNMENT

Mr. Lavigne makes a motion, second by Mr. Pollock, to adjourn at 8:12 p.m. Motion passes unanimously; 5/0.

Respectfully submitted
Lisa Fellows-Weaver
Board Secretary