

ZBA Minutes 11/28/11

Contributed by Lisa Fellows-Weaver
Tuesday, 07 February 2012

Zoning Board of Adjustment

Minutes

November 28, 2011

Official as of January 23, 2012

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

PRESENT: Chairman Bruce Farr, Tom Lavigne, Nona Holmes, Robert Bailey, Alternates Jean Lane and Curtis Naleid, Board Administrator Linda Smith, and Board Secretary Lisa Fellows-Weaver.

Mr. Farr thanks all parties and the public for their patience and he explains that the board took time to read correspondence from the board's counsel. Mr. Lavigne makes a motion, second by Mr. Bailey, that the correspondence received from counsel shall remain confidential. Motion passes unanimously; 5/0.

VOTING MEMBERS: Bruce Farr, Tom Lavigne, Nona Holmes, Bob Bailey, and Alternate Curtis Naleid.

ABSENT: Vice-Chairman Roy Pender, Alternate Doug Pollock

MINUTES

Mr. Lavigne makes a motion, second by Ms. Holmes, to approve the minutes of October 3, 2011, as written. Motion passes unanimously; 5/0.

APPLICATIONS

Consideration of Motion for Re-Hearing of Bob and Janet Clark for: Case #11-04: Larry Cleasby, Old Pittsfield Rd. Map 205; Lot 1.

Mr. Bailey recuses himself from this case.

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

Mr. Farr states that the board members were provided the document relative to the rehearing request and have reviewed the Clark's petition. Mr. and Mrs. Clark are present and have no additional comments. Mr. Cleasby is present as well and has no additional comments.

Mr. Lavigne states that much information was provided to the board at the beginning of the process regarding Case 11-04, both documented and undocumented. He states that if there are people who feel that the board made a decision based on not having all of the necessary information, then he would agree to rehear the case. However, he adds that if the board feels that all of the information has been heard and reviewed, then the board should not grant the request to a rehearing. He states that if there is a doubt, he would like to err in favor of re-hearing.

Ms. Holmes feels that it would be a good idea to rehear the case and have any new information provided.

Mr. Naleid agrees and Mr. Farr adds that he feels that it would behoove the board to review the case again based on the standards, and the information that has been provided.

Mr. Lavigne makes a motion, second by Mr. Naleid, to grant the request for a rehearing of Bob and Janet Clark for Case #11-04: Larry Cleasby, Old Pittsfield Rd. Map 205; Lot 1. Motion passes unanimously; 4/0.

A discussion is held regarding scheduling the rehearing. All parties agree to meet December 20 at 7 p.m. The board agrees to change the December regular monthly meeting from December 19 to December 20.

Case #11-05: Richard & Louise Jean, Association Drive. Map 108; Lot 63. Applicant is seeking variances to permit construction of a garage. Variance to Article IV, Section (B)(1)(c), no road frontage as required per Northwood Development Ordinances; (B)(2)(b) lot is .11 acre and 2 acres is required; (B)(4)(b) garage proposed to be 4' from private road where 20' is required.

Atty. Dennis Vachon is present along with Mr. and Mrs. Jean. Mr. Farr notes that there is a letter in the file authorizing Atty. Vachon to represent Mr. and Mrs. Jean.

Mr. Bailey returns to the board as a voting member.

VOTING MEMBERS: Bruce Farr, Tom Lavigne, Nona Holmes, Bob Bailey, and Alternate Curtis Naleid.

Atty. Vachon states that four variances are requested. He explains that the road variance is really two parts; Article IV, Section (B)(1) and (C), the actual frontage on the road and the type of road it is. The next variance is for Section (B)(2)(b) lot size as the lot is .11 acre where 2 acres is required. The last variance is for the garage, which is proposed to be 4' from the private road where 20' is required, Section (B)(4)(b).

Atty. Vachon notes that there is an abutter in the audience with the same last name as a board member; Bailey. Donald Bailey, abutter, states that there is no relation to Bob Bailey.

Atty. Vachon explains the proposal. He states that the property is located on Association Dr. He provides plans for board members and states that there is one plan of land for Harold Eastman, dated 1949-1953. This plan shows this lot as lot 77 and shows Association Dr. as a 20' wide right-of-way. He states that the owner's deed identifies this plan as 202 A as recorded at the registry of deeds. However, he states that he has been unable to locate the plan which was never recorded at the registry. He adds that he did find another plan at the state archives called 202 B, which is the same plan as the one that was to have been recorded.

Atty. Vachon states that there are currently no buildings on the lot. The road is a private road, over which the owners have a deeded right of way in common with other landowners in this subdivision. He explains that this road existed prior to 1981 and should therefore, be shown on the Northwood roads map as outlined in Section (B)(1)(b)(2).

A discussion is held regarding the town's road map. Ms. Smith explains that she viewed the map with Atty. Vachon. To the best of her ability to read the faded map, she does not feel that this section of the road is shown on the map. Atty. Vachon states that he does not recall if the correct (original) map was located. Ms. Smith adds that the 1981 map as referred to in the zoning ordinance was done on a mimeograph machine. There are markings on the map and it is now faded. She states that there was a map in better condition; however, this map is not available now since a move of offices within the town hall. She explains that in an attempt to correct this situation, the planner, road agent, board administrator, and citizens of Northwood have looked at the existing map and agree to what should be delineated on the 1981 map. Ms. Smith states that the map is being remade by Strafford Regional Planning Commission, which will show both current roads and the approved roads from 1981. She states that the faded original is in town hall. She adds that she and Atty. Vachon did review the tax maps and it appears that the town is assessing the road as a separate lot of record. She explains that the land under the road is property owned by an entity, not just in the case of a right of way. She notes that the surveyor is showing where the lot line is on the plan.

Atty. Vachon states that the road was in existence prior to the creation of the town's 1981 road map. He explains that he is relying on the plan he located in the state's archive done by True Chesley in 1953. Ms. Smith states that this plan is not a recorded plan at the registry of deeds. Atty. Vachon replies correct and adds that it is referenced in the deeds that it has been recorded. Mr. Bailey states that if you compare the 1953 map to the town map, the lots do not match up. Atty. Vachon replies that they do match up, more or less, and adds that this subdivision occurred prior to there being requirements to record plans.

Atty. Vachon states that because the road is a private road the road is a separate lot of record owned by the association; the land the road sets on. He adds that the owners cannot merge the lots as the lots are not contiguous lots because of the road. He states that if this were a town road the lots could be merged and many of these issues would not occur. He states that if the lots could be merged the structure would be classified as an accessory building per the town's definition. Atty. Vachon states that the structure is an accessory use, a garage used for storage space that would be used for the benefit of the lot across the street. He explains that the structure is proposed to be 20' x 20'. There will be no water or septic to the garage. If the building could be classified as an accessory structure, then the applicant would only need to seek a variance for setbacks.

Atty. Vachon states that there are no buildings on this lot, only a septic system that services the owner's lot across the street. The septic system is state approved. Mr. Farr asks how the septic system is legally attached to the main lot. Atty. Vachon explains that there is an agreement with the association regarding the septic. Further discussion is held regarding selling the lots and Mr. Jean states that the deed indicates that the lots cannot be divided.

Mr. Holden asks about the retaining wall and the elevations. Atty. Vachon explains that the retaining wall is along the property line, an extension of the existing stone wall. Mr. Lavigne notes that the height of the proposed building is 21' to the top of the peak.

Mr. Holden states that he is present representing the Northwood Cove Association and is the immediate past president.

He provides a letter authorizing him to speak. He adds that the director of the Northwood Cove Association, Don Bailey, is also present.

Pictures of the proposed area are provided and reviewed. General discussions are held. Mr. Naleid asks if the proposal is to match the retaining wall in elevation and size. Atty. Vachon states that is his understanding.

Discussion is held regarding page 2 of the deed allowing structures of specific values. Atty. Vachon notes that page 2 of the deed references plan 202 A of Mr. Eastman, surveyed by Mr. Chesley. He states that he cannot locate plan 202A; however, plan 202B, this plan does follow the dimensions of the lots.

Mr. Holden asks about parking in front of the stone wall. Atty. Vachon replies that property is not owned by the applicant but is part of the road right-of-way.

Abutter Scott Hignett expresses concern with the height of the stone wall as noted in the pictures. Mr. Bailey states that it is approximately 4 ft.

Atty. Vachon further explains the elevations. Atty. Vachon refers to the portion of the state approved septic plan provided. He states that the plan shows the location of the septic system. He states that the septic tank is 2,500 gallons and there is a leach field. Atty. Vachon refers to the plan provided and directs members to follow the contour lines, which show that the retaining wall will be located below the contour lines as shown on the septic plans. He states that this is the only location available due to the state requirement prohibiting retaining walls or foundations within the side slope of a septic system. He states that this is the location that is farthest away for the foundation. He states that the garage must be 4 ft. from the property line in order to build the proposed 20' x 20' building. He states that the established roadway is 10' back from the property line. He provides additional pictures showing the edge of the traveled way. Atty. Vachon states that the deed provides a right of way over the established roadway, not over the entire tract. He explains that the best evidence is where the road is now located; it is located to the property line at the lot across the street, so there is a 4 ft. setback but in reality it is 14 ft.

Mr. Naleid states that the association owns the lot (land) and could expand the road at any time. Atty. Vachon states that the association would be hard pressed to do that. He states that the association owns the lot. Mr. Bailey states that the pins between the lots are 20 ft. Atty. Vachon states that the road is only 10 ft. wide. He adds that the established roadway coming down from Rte 4 and a telephone pole are located in the right of way, which corresponds with the plan that it is 10' back from the property.

Atty. Vachon provides additional picture showing other sections of Association Dr. and how narrow it gets. He explains that the photographs show that the road would not be widened only in front of the applicant's lot. Other areas have structures that make the roadway less than 20' wide. He refers to the tax map and states that there is not 20';.

Mr. Farr asks why the garage size could not be amended. Atty. Vachon states that this is the most minimal or modest size of a garage. He states that there is always the depth needed for the size of the vehicle as well as enough space to accommodate other items. Mr. Naleid states that the depth of 20' would be sufficient for a vehicle. Ms. Smith states that the planning board uses 9' x 18' for a parking space. Mr. Naleid states that the depth is needed for the car to get into; however, there is not much room to turn around or get into the garage; the proposed driveway is 4 ft. from the setback. Atty. Vachon states that the driveway is not proposed as a turn-around.

Mr. Lavigne expresses concern with the elevation of the garages. He states that the garage is approximately 21' from the ground to the peak. Mr. Jean explains that the height will not impede the view of the abutter behind the garage because the house is in the way. He states that he intends to have a storage area in the top part of the garage. Discussion ensues regarding the elevations. Mr. Lavigne states that roughly this roof will be 13' higher than the flat elevation where the septic system is located. Mr. Jean states that the garage will be on the opposite lot behind the house.

Atty. Vachon provides pictures showing that they do not believe that the views will be obstructed. Mr. Bailey states that he visited the site today and expresses concern with the fact that the view will be obstructed. Mr. Bailey notes that the tax base considers views. Atty. Vachon states that he disagrees that there will be an obstruction and explains that the view is already obstructed with the existing house and the view is to the right.

Mr. Hignett states that he is the owner of lot 71 and feels that there will be an impact to his views.

Mr. Naleid states that the wall of the garage will be 10' off the foundation, a 12' pitch, which is 10' to the peak, and the rafters make this garage 21' tall. In addition, this is on top of a frost wall, which is out of the ground; another 1½'. This will make the garage 22½' tall. Mr. Lavigne states that he figured 21';.

Atty. Vachon suggests rotating the pitch of the roof, which would reduce any negative impact on any views from above.

Mr. Farr notes that a 6' x 12' pitch would also reduce the roof and not impact the views as much.

Mr. Holden states that on behalf of the association the association understands the Jean's problems with a small lot. He explains that the association is charged with maintaining safe right-of-ways. He states that the association does try to make improvements on an annual basis. He states that this area is probably the most dangerous area in the association as there are hills and turns. He states that there have been several severe weather events in this area and it is always a challenge for emergency vehicles, repair truck, police, fire, etc. He states that this will create a problem for life safety if there is not the 20' so that these vehicles will be able to turn around. He states that the 4' is unmanageable and feels that 10'-12' would be necessary to ensure room for these vehicles. He adds we also need to consider snow plows.

Mr. Farr states that the 20' does not seem to be in question; it is the additional setback over the 20'. Mr. Holden states that a lawn allows a fire truck to be maneuvered whereas a stone wall will not. He adds that safety is paramount for the Northwood Cove Assoc. and is their obligation.

Mr. Hignett states that a previous owner attempted adding an accessory building years ago. He states that the ZBA did not grant the application. He asks why the board is revisiting this same proposal. Mr. Farr explains that a new owner begins the process and this board does not set a precedent. Ms. Smith notes that there is a prior ZBA application in the property file for a 20' x 28' two-story garage, from 1999.

Mr. Bailey states that there will be more of an issue when there is snow storage. Atty. Vachon states that he does not believe that the builder would have proposed this configuration if it were not possible and feels that the snow storage could be maneuvered to be over the septic system. Discussion ensues. Atty. Vachon states that the property is typically used as a seasonal residence. He notes that the reason for the garage is for storage of motorcycles. Mr. Lavigne states that the use is the owners concern and the board needs to deal with the issues of setbacks, frontage, etc. Mr. Farr states that he would disagree and feels that he needs to know why the building needs to be so large and encroach so much into the setback. He would like to be convinced that this proposal is the minimal building that can be built on this lot and be useable with such a large encroachment.

Mr. Farr explains the process and protocol as the board proceeds with the application criteria. The board and Atty. Vachon agree to address all 4 variances together as a package as they relate to the area in question.

Atty. Vachon states that the Jean's are requesting variances from the Northwood Development Ordinances from Article IV, Section (B)(1) requiring frontage on a state or town road and this property is located on a private road; (C) which requires a minimum of 150' frontage and this parcel has 50' of frontage; (B)(2)(b) requires a minimal lot size of 2 acres and the parcel is .11 acres; (B)(4)(b) requires a 20' setback from a private road right-of-way and the proposed building will be built 4' back from the front property line.

Variance Criteria

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

Atty. Vachon states that the lot has been taxed as a building lot. The construction of an accessory lot will add to the town tax base. He states that this private road has been used since the 1940's. He notes that there is a similar accessory structure in the area down the street, which is used for storage, and is located closer than 20' to the front lot line. He states that another accessory structure in this area will not alter the character of the neighborhood or threaten the health, safety, or general welfare of the public. He states that as a result, there will be no affect to the public interest.

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

Atty. Vachon states that road frontage, lot size, and setback requirements are intended to prevent over crowding, to secure safe access to the property, to secure neighbors against fire and other hazards, and to provide adequate light and air. He states that the owners are already utilizing the private road to access their residence across the street. He states that the construction of an accessory building for storage will not increase the use of the private roadway. Atty. Vachon continues and explains that reducing the front setback from the roadway does not increase the safety risk to the public using the private road because the road is nearly 10 ft. from the property line. He states that the construction of a storage building approximately 14' from the established roadway will not increase the safety or fire hazards of people using the road or their homes. He adds that the lots in the area are small and the road is already a narrow road. He notes that there are not many existing buildings on this street and a storage building in the proposed location will not result in overcrowding or diminution of available light and air.

3. Granting the variance would do substantial justice.

Atty. Vachon states that the only access to this lot is via a private road. He states that many lots in town are accessed by private roads. He states that the only improvement on this lot is a septic system, which services the owner's lot across the street. He states that the construction of the septic system on this lot enhances the water quality of the lake by being further away from the water than it would be otherwise if placed on the lot across the street. Atty. Vachon states that if the location of the septic system prevents the placement of the building further back and if the owners are not

allowed to construct an accessory building for storage, they would be denied a reasonable use of their property. He states that the public would not benefit from denying the owners this reasonable use of the property.

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

Atty. Vachon states that the proposed accessory building is in character with the surrounding neighborhood. He states that the proposed building's size is a modest size building, which affords the minimal amount of space required for the storage of one vehicle and various seasonal household items. He states that this structure would eliminate the use of the outside storage and increase the property values. He states that the modest size structure is in kind with the many other small cottages in the neighborhood.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to the owner. Special conditions of the property that distinguish it from other properties in the area are as follows:

Atty. Vachon states that there are no buildings on this lot. The only improvements are a state approved septic system that services the lot across the street. He adds that state environmental regulations prohibit retaining walls or foundations used as retaining wall from being constructed within the side slopes of a septic system. He adds that the slope of this lot requires that the foundation of the proposed building serve as a retaining wall. He states that the only location for this proposed modest-size structure is at the front of the lot and within the required 20 ft. setback from front lot lines. Atty. Vachon states that because the private road is located on a separate lot of record and owned by a third party, the two lots are not contiguous and cannot be voluntarily merged; therefore, requiring additional variances for lot size and road frontage. This is not a typical requirement for accessory structures under the ordinance.

Owing to the special conditions of the property:

1. No fair and substantial relationship exists between the general purpose of the ordinance and the specific application of that provision or those provisions to the property because:

Atty. Vachon states that the purposes of the ordinances are to prevent over crowding, to ensure safe access and to protect neighboring properties from fire and other hazards. He states that the private road is already being used by the property owners and neighbors for access. He explains that the lots in this neighborhood are small and most of the buildings are older and were built prior to the enactment of the ordinances. He adds that the construction of an accessory building for storage in the proposed location will not increase the number utilizing the lot or the road, nor result in the placement of a building near abutters, contrary to the ordinance.

In addition, Atty. Vachon states that he would like to take exception to the request of the association that the variance not be granted so that fire trucks can have an opportunity to use the 20 ft. right-of-way and also be able to back up onto this lot due to an emergency. He states that there is no justification under the law for forcing the property owner to make his land available in perpetuity for emergency vehicles to back up on during an emergency.

2. The proposed use is a reasonable use because:

Atty. Vachon states that the proposed use of the property for the construction of a storage building or garage is consistent with the residential use of the surrounding properties. He adds that the proposed building does not represent a change or increase in use. The building is proposed to be located behind a retaining wall that would be located at the property line and will be in line with the retaining wall of the abutting property. He states that the construction of an accessory building for storage would allow for a vehicle and other personal items of household use to be kept indoors and out of public view.

Abutter's Comments:

Scott Hignett expresses concern with the location of the garage as there will need to be some cutting a portion of the hill out to make it level. He states that he is concerned with losing more of his view of the lake. Atty. Vachon states that the proposed location of this building meets the requirements of the environmental statute that the retaining wall will not be constructed within the side slope. He notes that the side slope ends at E105 on the plan and the proposal is to build the retaining and foundation wall at F105. He states that this will not impact the side slopes of the septic plan. Atty. Vachon refers to the plan and adds that the certification is made by the surveyor.

Mr. Hignett adds that he has concerns with the proposed pitch and height. He states that the proposed building will encroach his property and the building will be higher.

Don Bailey states that he is in favor of a building in this location; however, he is concerned with the setback encroachment to the existing road. He states that 4 ft. from the road is too close. He refers to the last proposal on this lot years ago that was 5 ft. and this is just too close. He states that once the building is built it will always be there. He suggests a new proposal of a smaller building and further back.

Mr. Farr reads a letter from the Northwood Cove Association, which grants Bob Holden authorization to speak and states that the association board of directors is in opposition to the 4 ft. setback. Mr. Holden states that there is a reason why the town has established a 20' setback. He explains that sometimes there may not be a significant impact; however, based upon the lay of the land in this area, this is a case where there is a need for at least 15 ft. He adds that

the property owners have indicated that the primary use is for the storage of motorcycles, motorcycles are not 20 ft. long.

Mr. Farr, speaking as an individual, states that he is not concerned with the private road and frontage aspects because of the uniqueness of the land. However, he expresses concern with the 4 ft. encroachment and the height. He asks if the proposal is the final design requested. Atty. Vachon states that the height issue is not a matter of concern for the variances. Mr. Farr states that the height and encroachment is affecting the abutters. Atty. Vachon states that the abutters do not have a right to insist that their view not be obstructed. Mr. Farr states that abutters have the right to their own opinions as to whether or not they are affected by surrounding values.

A discussion is held between the applicant and his counsel regarding options. Atty. Vachon suggests changing the pitch of the roof to the other direction.

Mr. Naleid states that based on discussion, perhaps the applicant should consider making some changes.

Ms. Smith states that the septic design indicates that the lots must remain under single ownership, not the deed as formerly noted.

Atty. Vachon states that in the event the variance be granted, the application for the building permit will be modified to switch the pitch from being parallel to the road to perpendicular to the road to minimize the potential impact to the view for the abutter in the rear.

Mr. Lavigne makes a motion, second by Mr. Bailey, to deny the requests for all variances based on the fact that criteria 2, 4, and 5 have not been met.

Mr. Farr asks if there are any comments from abutters based on the proposed roof change. No additional comments are received.

Mr. Lavigne states that as far as the spirit of the ordinance, the setback being 20' and is now reduced to an encroachment of 16', he feels is very excessive. He understands that they are working within the parameters; however, he does not feel the building is far enough back from the road. He continues and addresses the property values. He states that the property values will diminish especially to the house in the rear as the view will be obstructed in some way. He adds that if the view is obstructed, then the property values will be decreased. He states that 13 ft. above the grade of where the existing leach field is, is high. Mr. Lavigne states that there is a hardship as there is a steep slope; however, the land is being used productively now and is being used for the septic system. He adds that this is the only location for the septic.

Mr. Bailey agrees with the noted criteria not being met. He adds that at some point the septic system will need to be repaired and will need permission to access from the neighbors.

Mr. Naleid states that he also agrees and adds that he feels that criteria one is also questionable of being met relative to safety and accessibility on the road is being encroached when the front setbacks are lost.

Ms. Holmes states that she would like to see a smaller building proposed and set further back.

Mr. Farr agrees with the motion and states that a good case has been made relative to the accessory building as it makes sense for a building to be placed on the lot. He adds that he is not supportive of the 4 ft encroachment. He states that the association may consider 15 ft. He states that the setbacks are important. He adds that the height is also an issue to the abutters and too large of an impact. He states that there are other options that could make this a useable structure.

Roll call vote on motion to deny:

Roll Call Vote:

Mr. Naleid – in favor

Ms. Holmes – in favor

Mr. Bailey – in favor

Mr. Lavigne – in favor

Mr. Farr – in favor

Motion passes unanimously; 5/0.

Correspondence

Other

Ms. Smith provides information relative to the zoning board receiving funds from an applicant to cover legal opinions on specific matters. Mr. Farr requests that the information regarding alternate members and voting be mailed out to members again for further review. Both of these items will be placed on the December agenda.

Adjournment

Mr. Lavigne makes a motion, second by Mr. Bailey, to adjourn. Motion passes unanimously at 8:46 p.m.

Respectfully submitted
Lisa Fellows-Weaver
Board Secretary