

ZONING BOARD OF ADJUSTMENT MEETING
APRIL 5, 2018

PRESENT: Wendy Juchnevics-Freeman, Chairman, David Lage, Walker Farrey, Stan Long, Lori Rautiola

ABSENT: Edwin Somero

The meeting was called to order at the Town Office at 7 p.m. Lori was appointed to fill the vacancy of Edwin Somero.

The minutes of the March 1, 2018 meeting were reviewed and the following corrections were made: First paragraph change the word "dealer" to "Dealership License". Third paragraph down change the word "relieve" to "relief". The fourth paragraph down change the word "submission" to "deliberations". Walker made a motion to approve the minutes as amended. David seconded the motion and it passed unanimously.

7:10 p.m. Mr. Kenneth Lehtonen II – Continuation of Public Hearing: The public hearing was continued from March 1, 2018. Wendy stated the Board's main concern was having a survey done of the right-of-way to make sure the septic was inside the property line and further relief from the minimum setback was not required. Mr. Lehtonen responded that Mr. Guida had measured all the boundaries and each distance confirmed to match the deed's measurements. Wendy asked if a survey was completed and Mr. Lehtonen said one was not done, stating it is not within the Board's jurisdiction for one completed and that he would like to see a case in the past where one was requested from an applicant. David Lage responded that the Board does not need show where in the past it has been done; and the regulations state whatever information the Board needs the applicant will need to provide. Mr. Lehtonen stated that would be biased to force one person to have a survey done but not another.

There was discussion on the septic system that was designed by the previous owner. Wendy stated the previous applicant could not fit a five bedroom septic in that space because it would be in the right-of-way of the road. Mr. Lehtonen stated the last applicant had wrong information, adding Mr. Guida from Fieldstone Land Consultants did a field survey and told Mr. Lehtonen, after measuring all the boundaries, that if a formal survey was done his measurement would be within 1/4-1/2 inch of what he measured on site. Wendy asked Mr. Lehtonen if he was suggesting to not have a survey done on the right-of-way and Mr. Lehtonen responded it would be an unfair request of the Board. Wendy noted Mr. Lehtonen could withdraw the application, refuse to do the survey and go into deliberations without it, or postpone this hearing until the survey is done. Mr. Lehtonen stated it was unrealistic to request a survey and Wendy responded the Board feels it is their due diligence to request it. Mr. Lehtonen stated there are no variables here; it was field measured on site. David questioned why Mr. Guida did not submit something with these measurements on it. Wendy recommended Mr. Lehtonen postpone the hearing to allow time for a survey to be done.

There was a five minute recess. The Board reviewed the old septic design from the previous applicant. Wendy asked Mr. Lehtonen the distance from the new system to the existing pavement and Mr. Lehtonen said the distance from the center line to the system was 32 feet. The Board discussed whether or not the property line was in inside the right-of-way of the road. David stated, according to this map the property line is outside of the right-of-way, adding that was his only concern. As long as the property line is outside

of the right-of-way he would be satisfied. Wendy disagreed. Mr. Tom Carron (an abutter) stated there was a boundary pin a couple inches from the maple tree on the plan. Mr. Lehtonen explained the reason the former applicant's measurements were wrong was because they took the measurement from the center line of the road, not from the boundary pin/stonewall on the other side of road. He added the highway is off center due to the sidewalk on the other side of road. Wendy asked the applicant if there was any drawing showing Mr. Guida's measurements or any documentation stating that the stonewall represents the edge of the easement and Mr. Lehtonen did not have any drawing but stated Mr. Guida had emailed an older plan which he could forward to Lori.

David questioned where the State's easement line was located and Mr. Lehtonen responded the property line meets the State's easement; there is no dead space in between.

Wendy asked the applicant if he could survey the right-of-way to make sure it is not in the State right-of-way. Mr. Lehtonen stated that was a substantial expense and an unfair request. Walker stated the Board needs confirmation the system is not within the State right-of-way. Wendy also mentioned the Board needs to do their due diligence and make sure the line was surveyed and the leach field is on the Lehtonen's property. Mr. Lehtonen asked the Board for confirmation and stated if he does the survey, would the Board give him approval to put the system in. Wendy responded she would like the system fixed and for the abutters well to be clean again; however, they cannot afford a bad design or for the system to be in the wrong place. Mr. Lehtonen requested a vote from the Board that if the survey matches this property line would they approve the variance. David stated you can ask for a vote; however, the Board does not have to have one. Wendy added we want to give you the variance but need a survey that shows the system is on your property. Stan, Wendy and Walker agreed they did not see a problem with the approval if the system was on his property. Mr. Lehtonen agreed to have the survey done.

Stan made a motion to postpone the hearing until May 3 at 7:15 p.m. Walker seconded the motion and it passed unanimously.

7:50 p.m. Mr. Walter Saari - Public Hearing for a variance: Mr. Saari owns lot 8/57, 40 Finn Hill Drive. Two variance applications have been submitted. One variance request is for an 11.1 acre lot that is just under two feet short for the minimum feet of road frontage for a subdivision. The other variance application is to allow dredging and filling within the wetlands to construct a driveway for the proposed building lot if subdivided.

Mr. Saari presented a map of the proposed two lot subdivision and easement for the proposed driveway. The driveway would have a minimal impact of about 1,620 square feet with a 36 inch culvert. The size of the culvert being so large was discussed and Mr. Ed Rogers stated DES strongly suggests this size and filling the culvert with roughly six inches of rock after installed.

The five criteria for granting the variance (backlot) were reviewed:

- 1) The proposed use would not be contrary to the public interest because creating a standard residence of one home and the land is in the vicinity of surrounding residential homes and needs only two feet of frontage for an 11 acre lot.

- 2) The use is not contrary to the spirit of the ordinance because the subdivided lot is short by only two feet of frontage. The backlot would still have the 50 feet of the right-of-way.
- 3) Granting the variance would do substantial justice because it will be a nice house and will not diminish property values. It may add value.
- 4) The proposed use would not diminish property values because it will be a well-built house in a good neighborhood which may increase property values.
- 5) Literal enforcement of the ordinance would result in unnecessary hardship to the owner because it would not allow use of the 11 acre parcel in a way the owner would like to do so
 - 5a) No fair and substantial relationship exists between the general public purposes of.... It is an area with existing homes and will create minimal impact and may raise property values.
 - 5b) The proposed use is a reasonable one because it would create another residence and would generate more tax dollars.

The five criteria for granting the variance (wetland crossing) were reviewed:

- 1) The proposed use would not be contrary to the public interest because it is a private piece of land with minimal impact to the wetlands.
- 2) The use is not contrary to the spirit of the ordinance because a properly designed crossing with minimal impact will be no threat to public health or safety. The proper design will not change/block or create flooding.
- 3) Granting the variance would do substantial justice because it would allow for another parcel of taxable property as a single family dwelling.
- 4) The proposed use would not diminish property values because proper construction of the driveway/culvert according to plans and concurrent permitting by NHDES ensure there will be no adverse effects on the environment.
- 5) Literal enforcement of the ordinance would result in unnecessary hardship to the owner because the owner would not be able to access the property.
 - 5a) No fair and substantial relationship exists between the general public purposes of...The proposed use when properly permitted and constructed will not adversely impact the wetlands.
 - 5b) The proposed use is a reasonable one because it provides access to the building lot on the property in the same fashion as other driveways in town.

Walker made a motion to close the public hearing and enter into deliberations. Stan seconded the motion and it passed unanimously.

The Board discussed the criteria for the backlot. Members agreed two feet is minimal and the purpose of the ordinance was not to allow two feet getting in the way of an 11 acre parcel; the proposed use is a reasonable one.

The Board discussed the criteria for the wetland crossing. Wendy stated the impact to the wetland is very minimal and did not see anything that would be contrary to the public interest. Members all agreed.

David made a motion to approve the variance application to Article XIII D.1 for the reduction in frontage of property in order to create a backlot from the 11 acre parcel and to approve the variance application

to Article X.D. allowing the wetland crossing in order access the property. Walker seconded the motion and it passed unanimously.

8:25 p.m. Zeke Ketola – Submission of variance application: Zeke Ketola owns Map 13/7, 40 Settlement Hill Road. Mr. Ed Rogers stated he was representing Mr. Ketola. Mr. Rogers stated Mr. Ketola owns two lots. One parcel is 11.2 acres, the other is 10.1. One parcel has two houses on it, the other parcel has one house. Mr. Rogers added the houses were most likely pre-zoning. Neither parcel is on a class V road. Mr. Ketola is requesting the variance from Article XII.A to be able to subdivide. Wendy stated it is the State law that you cannot subdivide on a class VI Road. The road would need to be upgraded to a class V road. The Board agreed and the application was not accepted.

The meeting adjourned at 8:35 p.m.

Respectfully submitted,

Lori Rautiola