

ZONING BOARD OF ADJUSTMENT MEETING
MAY 3, 2018

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

The meeting was called to order at the Town Office at 7 p.m.

7:00 p.m. Mr. Bruce Simpson, USA Properties, Inc. – Submission of a variance & special exception application: Mr. Simpson owns lot 10/7, Stowell Road, submitted a variance application to Article VI.C.1 of the Zoning Ordinance to allow more than one multi-family dwelling unit on one lot consisting of 97 acres. Mr. Simpson stated he is proposing to build 8-9 units with 9 townhouses in each unit for a total of 72 new dwellings. Wendy questioned if there would be impact to any wetlands and Mr. Simpson's engineer Peter Holden stated there would not be as they would use directional boring to go underneath the wetlands.

David stated there is nothing in the Zoning Ordinance that allows having multiple buildings on one lot. Mr. Simpson stated that is what the variance would be for. There was discussion on which Article the variance would be for. Wendy stated it should be Article VI.C.1.

The applicant presented the special exception. The special exception would be for the same article as the variance. Wendy stated when the Board has a variance before them, they typically do not apply for a special exception for the same thing; the applicant either meets requirements for a special exception or seeks a variance. She added Mr. Simpson is proposing something not allowed by special exception and the applicant would seek a variance and not a special exception. Mr. Simpson stated for any multi-family dwelling a special exception is needed. Wendy agreed but noted it would be covered in the variance. David stated there are two issues: one is putting multiple buildings on one lot and the second is having the ability to put multi-family housing on the property. Wendy responded that the reference is the same. Mr. Simpson suggested applying for a special exception (for the multi-family unit) first and then applying for the variance to have multiple units on one lot. David suggested the applicant submit two applications: the variance application to have multiple-family dwellings on one lot, and a special exception application for the multi-family units.

Wendy stated both the special exception application and variance application before the Board are referenced to Article VI.C.1 of the Zoning Ordinance and the applicant does not need a special exception if he is applying for a variance for the same thing. Wendy noted whatever plan put before the Board is the same plan for both applications. The applicant stated this is the preferred plan but there are other options. There was discussion on whether or not the applicant would need to submit a special exception application. Wendy noted there is no way one could be approved and not the other. David mentioned Article VII B. the density control for a multi-family dwelling. The minimum lot size is 2 acres, minimum 30,000 sq. ft. per dwelling unit for rural district.

Wendy referred to Article IV.C.6; where it states a multi-family dwelling (single home) requires a special exception. Under IV.C.1 in the rural district are those uses allowed by special exception; however, that is not what is being proposed. She added what is being proposed is not allowed in the Rural District and

therefore the applicant needs a variance. David noted if the applicant is granted the variance to allow multiple buildings on one lot, he would then need a special exception to allow multi-family housing. Wendy stated if the Board grants a variance for multiple buildings on one lot, multi-family dwellings on one lot, then there is no special exception. David disagreed. Discussion continued. Wendy stated what the applicant is presenting is not allowed according to the Zoning Ordinance, is not allowed by special exception, and would not meet the criteria for a special exception that is the reason the applicant would need a variance. David asked what the detriment would be to have the applicant apply for a special exception and Wendy responded the special exception would be for a different plan; it does not qualify for a special exception.

Mr. Simpson suggested within the hearing for the variance, when criteria is discussed we will explain "The use is not contrary to the spirit of the ordinance", and when discussing this section we can explain the ordinance allows multi-family housing if you meet the special exception criteria. Wendy and Stan noted they liked Mr. Simpson's proposal. David disagreed.

The abutter list was briefly discussed and noted to check the owner of the common land abutting property. Wendy noted everyone in the homeowners association or abutting lot 10/6 would be considered an abutter. Wendy suggested conditionally approving the application upon verification of abutter list and payment of fees.

Stan made a motion to accept the application for a variance conditional upon verification of abutter list and payment of fees. Edwin seconded the motion and it passed with four in favor and one opposed.

The public hearing was scheduled for June 7, 2018 at 7:00 p.m.

8:00 p.m. Mr. Kenneth Lehtonen II – Continuation of Public Hearing: The public hearing was continued from April 5, 2018. Mr. Lehtonen submitted a variance to Article XII.A of the Zoning Ordinance to permit a replacement septic system for the property at 586 Turnpike Road. Mr. Ed Rogers spoke on behalf of Mr. Lehtonen. He stated he surveyed the property and compared his to the septic design done by Mr. Chris Guida, Fieldstone Land consultants. Mr. Rogers stated there are two existing pins in the front of the property and the neighbor Mr. Carron was very helpful in finding the remaining pins. Mr. Rogers added Mr. Guida was a little conservative on his line, which was a little more to the east than Mr. Rogers, and the right-of-way was also pulled back from Mr. Guida's measurements giving a little more of a buffer. Mr. Guida's design shows the closest pipe to Mr. Carron's property line will be 12 feet and the closest pipe to the right-of-way will be three feet. Mr. Rogers confirmed the system will be on Mr. Lehtonen's property and not in the right-of-way. It will be about 4 feet from the front setback. Mr. Rogers is going to forward his revision to Mr. Guida to display on the revised septic design and the Town will then be given a copy of the new design. Mr. Rogers stated he understood the Board's need to be precise and he is confident the system will not be closer than 3 feet to the front setback and not closer than 12 feet to the property line.

Wendy noted a barrier that would need to be installed to protect the system from a vehicle driving over it. Mr. Lehtonen agreed.

The five criteria for granting a variance was discussed.

- 1) The proposed use would not be contrary to the public interest because it will allow the home to be occupied and have an operating septic system.
- 2) The use is not contrary to the spirit of the ordinance because it is the best and the only location for the system on the property.
- 3) Granting the variance would do substantial justice because the building will be renovated and maintained and not left vacant.
- 4) The proposed use would not diminish property values because it will have a new septic system which will allow the building to be occupied which will add more value to surrounding properties.
- 5) Literal enforcement of the ordinance would result in unnecessary hardship to the owner because... if the variance was not granted there would be no way of replacing the septic system.
 - a.) No fair and substantial relationship exists between the general public purposes of the ordinance provision...the lot is smaller and existing conditions of the property.
 - b.) The proposed use is a reasonable one because it also allows the building to be used as a home not left vacant.

Abutters were asked to speak. Mr. Carron questioned how far away the septic will be from his house. Mr. Rogers responded the edge of the leach field to the corner of his house will be about 24.5 feet. He also asked if the limb of the tree on his property will need to be cut down in order to install the system and Mr. Lehtonen responded he did not believe so and would try not to.

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. Wendy stated she a failed system is contrary to the public interest. David noted having the building habitable is a good thing. Members agreed having a septic system that functions properly is needed. The proposed use would not be contrary to the public use but would be beneficial. Wendy stated having a system that functions wins over the encroachment.

David made a motion to grant the variance with the following conditions:

- 1) A copy of the final plan with the septic system layout locating the system no closer than 3 feet to the front setback and no closer than 12 feet to the west side setback.
- 2) Installation of the barrier to protect the septic system.

Stan seconded the motion and it passed unanimously.

The minutes of the April 5, 2018 were reviewed. Stan made a motion to approve the minutes. Walker seconded the motion and it passed unanimously.

The meeting adjourned at 8:35 p.m.

Respectfully submitted,

Lori Rautiola

