

ZONING BOARD OF ADJUSTMENT
September 6, 2018

PRESENT: David Lage, Vice Chairman, Walker Farrey, Stan Long, Edwin Somero, Lori Rautiola

ABSENT: Wendy Juchnevics-Freeman

The meeting was called to order at the Town Office on September 6, 2018 at 7 p.m. Lori was appointed to fill the vacancy of Wendy.

The minutes of the August 2, 2018 meeting were reviewed and the following corrections made: Third paragraph down change the wording to read "decrease the number of buildings from nine to five", second page, fifth paragraph down change the first sentence to read "David questioned Mr. Sisson's cited sources...". Walker made a motion to approve the minutes as amended. Stan seconded the motion and it passed unanimously.

7:15 p.m. Marla Somero (Be Fit)-Public Hearing for a variance application: Marla Somero (Be Fit), Lot 7/37A, 5 Dark Lane, Rural District submitted a variance application to Article XIII.F.4.C in order to forego a free standing entrance sign and allow one large wall sign. Mrs. Somero stated she would like to amend the application to allow one round sign on the front of the building for Be Fit and one smaller rectangular sign for White Mountain Chiropractic. She added Be Fit has a round logo and White Mountain has a rectangle logo which looks better than one large rectangular sign. This would change the display area of the signs from 32 to 33 square feet.

The five criteria for granting a variance were discussed:

- 1) The proposed use would not be contrary to the public interest because the Town allows a 64 square foot entry sign which the applicant would forego for additional square footage on the wall sign.
- 2) The use is not contrary to the spirit of the ordinance because the sign would improve appearance as well as aesthetics.
- 3) Granting the variance would do substantial justice because the sign would be readable, clear and non-distracting to vehicular and pedestrian traffic.
- 4) The proposed use would not diminish property values because the sign will improve the appearance and aesthetics.
- 5) Literal enforcement of the ordinance would result in unnecessary hardships to the owner because due to such a large area on the face of the building a 24 square foot sign may not be readable and clear to vehicular and pedestrian traffic.
 - a.) No fair and substantial relationship exists between the general public purposes of the ordinance provision.... The applicant is proposing less square footage than what is allowed, the sign would just be in a better area.
 - b.) The proposed use is a reasonable one because the sign purpose and intent is to identify a business and fulfill the public need for direction.

David made a motion to close the public hearing for deliberations. Walker seconded the motion and it passed unanimously.

The Board discussed the criteria for a variance application. The proposed use would not be contrary to the public interest because the applicant is allowed 64 and 24 square feet and is willing to forego the monument sign for a larger wall sign that is more appealing to the public.

The use is not contrary to the spirit of the ordinance as the new sign would improve the appearance as well as aesthetics. Granting the variance would do substantial justice because the sign will be readable and clear to vehicular and pedestrian traffic. The proposed use would not diminish property values because the sign would improve the appearance as well as aesthetics. Literal enforcement of the ordinance would result in unnecessary hardship to the owner because... due to the large area on the face of the building a 24 square foot wall sign may not be readable and clear to vehicular and pedestrian traffic. The proposed use is a reasonable one because the sign purpose and intent is to identify a business and fulfill the public need for direction.

David stated as discussed by the Board, there is an ordinance for the public good, and a variance request that seems to meet the intent of the ordinance. David made a motion to approve the application as amended to two wall signs as shown on the plans with the condition that no other free standing/monument sign be installed. Walker seconded the motion and it passed unanimously.

7:45 p.m. Rebecca Lehtonen – public hearing for a variance application: Mr. Ed Rogers was present for Rebecca Lehtonen who owns Lot 12/68, 9 Manley Road, Rural District. Mr. Rogers stated the applicant is requesting a variance to Article XII.A. of the Zoning Ordinance to allow construction of a septic tank not closer than five feet to the right-of-way and construction of a leach field not closer than ten feet from the right-of-way and side setback. Mr. Rogers continued stating the property was subdivided about 100 years ago and the house was built in 1950. The existing septic system is showing signs of failure and needs to be replaced. The septic tank is inside the front setback and is proposed to be replaced with a new tank that meets current size requirements. The current undersized leach field is also showing signs of failure and needs to be replaced. Mr. Rogers noted the applicant would like to preserve the value of the house.

A survey of the property was distributed. David questioned moving the tank further away from the right-of-way. Mr. Rogers responded if the tank was moved it would create more plumbing inside the house, which would be an added expense to the homeowner, adding he prefers to limit the number of bends in the system, and moving the tank would create more bends. He also stated NHDES requires a minimum of 5 feet from the edge of house to the septic tank. David questioned the distance from the edge of pavement to the edge of the right-of-way. Mr. Rogers noted it is approximately 15-16 feet from the edge of pavement.

The five criteria for granting a variance were discussed:

- 1) The proposed use would not be contrary to the public interest because it will eliminate a potential public health concern posed by an aging septic system and the property will not look substantially different with the proposed septic system installed.
- 2) The use is not contrary to the spirit of the ordinance because it is consistent with the ordinance, specifically to promote and conserve the health, safety, convenience and general welfare, also to protect public and private water supply and preserve the value of land and buildings.
- 3) Granting the variance would do substantial justice because it will allow the property to continue to be used as a home and eliminate the potential for surface water contamination, since the existing system is undersized and beginning to exhibit signs of failure. Without the variance, the

house will soon cease to have a functioning septic system rendering it uninhabitable, diminishing the property value which would impact the value of surrounding properties.

- 4) The proposed use would not diminish property values because the existing vegetation on the easterly boundary line can be maintained with the proposed configuration of the septic system, and the proposed septic tank will not be visible upon completion. The neighborhood should look substantially the same upon completion of the proposed system.
- 5) Literal enforcement of the ordinance would result in unnecessary hardship to the owner because... The property is over 100 years old and the house was constructed around 1950 prior to zoning. The property is only .3 acres, which makes all of the setback criteria from boundary lines, the well, the foundation and the nearby culvert extremely restrictive in a way that would likely not affect a larger property.

If the criteria in 5a. and 5b. are not met, the property cannot be reasonably used in strict conformance with the ordinance because using the existing dimensional setbacks in the rural district does not provide enough room for the construction of a replacement septic tank and leach field on the property. Without a functioning septic system, no reasonable use can be made of the property.

At the conclusion of the discussion the Board entered into deliberations on the application. The Board reviewed the five criteria for granting a variance. David stated the applicant is trying to eliminate a public health concern which is in the public's best interest; the Board agreed. The use would not be contrary to the spirit of the Ordinance because it is consistent with the purpose of the ordinance, to promote and conserve the health and general welfare and to protect public and private water supply, also to preserve the value of land and buildings. Granting the variance would do substantial justice because it will allow the property to continue to be used as a home and eliminate the potential for surface water contamination since the existing system is undersized and is beginning to show signs of failure. Without the variance, the house will soon cease to have a functioning septic system rendering it uninhabitable, diminishing the property value, which would impact the value of surrounding properties. Without a functioning septic system, no reasonable use can be made of the property. David noted his only concern would be to keep some distance between the edge of pavement but 16 feet seems reasonable.

Walker made a motion to approve the variance application. Edwin seconded the motion and it passed unanimously.

The meeting adjourned at 8:10 p.m.

Respectfully submitted,

Lori Rautiola

