

ZONING BOARD OF ADJUSTMENT MEETING
NOVEMBER 6, 2014

PRESENT: Wendy Freeman, Chairman, David Lage, Edwin Somero, Marianne Graham, Joanne Meshna

The meeting was called to order at 7:00 p.m. at the Town Office. Members agreed to change the time of the meetings to 6:30 p.m.

The Board prepared the budget for 2015. The budget will remain the same as the 2014 budget.

The minutes of the October 2, 2014 were amended as follows: page one under San-Ken Homes, second sentence should read "If there is no appeal within 30 days..."; 2nd paragraph under San-Ken Homes, first sentence should read "...continue the hearing until November 6..." and page 2 under Nantel, fourth paragraph should read "The Board reviewed the five criteria for granting the variance presented by the applicant:" David made a motion to approve the minutes as amended. Marianne seconded the motion and it passed unanimously.

San-Ken Homes, Inc.: An e-mail was received from Attorney Michael requesting a continuation of the San-Ken appeal. David made a motion to continue the hearing until December 4. Edwin seconded the motion and it passed unanimously.

7:30 p.m. Ginger Hill - Public hearing for an equitable waiver of dimensional requirement application:

Steve Pro from Septicpro presented the application to the Board. Ms. Hill owns lot 3/86, 70 Middle Pratt Pond Road, rural district. There is a two bedroom structure on the property. The septic system was found to be in failure. Mr. Pro designed and installed a new system. As part of the design process, he reviewed the Town regulations and a DES website that lists communities that require local approval. The website did not include New Ipswich. He did not realize in New Ipswich a septic system was considered a structure. He came to the Town for any additional requirements for review and was told there was none. State approval was granted and the septic system installed. Mr. Pro referred to RSA 674:33-a, Equitable Waiver of Dimensional Requirement, and read "When a lot or other division of land or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings." The RSA then lists four conditions that have to be met that Mr. Pro addressed in the application.

Mr. Pro distributed a copy of the construction plans for the system. The lot is 80 feet wide along the Pratt Pond and 105 feet at the other end. He explained that they hit ledge in most of the lot and the shoreland protection prevents the system from being installed by the pond. The only suitable soils were

found within the setback areas. Mr. Pro noted they tried to design as responsibly as they could within the constraints of the lot.

A singular green pre-treatment system was installed and will be maintained yearly by someone who is familiar with small scale waste water system. There is also an alarm system on the system.

The tanks that are below ground are located approximately 11 feet to the boundary line. The leachfield meets the setbacks. A well release form was filed with the State. The abutter's water comes from the pond. No abutters were present.

Wendy asked how to keep Mr. Pro from building another septic system in New Ipswich within the setbacks. Mr. Pro stated he would not do it again. He added his concern for other installers not familiar with the Town regulations. There are no additional requirements listed with the State for New Ipswich.

David noted that the system could have been shifted closer to the building and Mr. Pro responded there was ledge and it would have been more of a burden.

Rick Donovan, Building Inspector, notified Mr. Pro of the violation before the system was back filled. Mr. Pro stated he had told the Building Inspector they were going to cover it to get vegetation on it. There was "no hurry up and finish." Everything was in and had to be covered. The system requires sand to be put on the system that rain will move. If the application is denied this evening, he will have to remove it and place it another location where waivers will be required.

Wendy stated she was not comfortable there is enough information to grant an equitable waiver given this is something done so recently. If the applicant had submitted a variance application, the Board could look and see if there is another place where the tank could go. From looking at the plan, she thought the tank could move 15 feet. Mr. Pro stated that was the only area that could be found.

David commented the leachfield is not the issue; the issue is where the tanks are located. The system was substantially installed and the Board should be looking at it as an equitable waiver. The applicant was not aware of the setback for a structure.

Mr. Pro referred to RSA 674:33-a and the findings that the Board must make:

- 1) The violation was not noticed or discovered by the owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed. They did not know of the violation until it had been built and were notified by the Building Inspector.
- 2) The violation was not an outcome of ignorance of the law or ordinance, failure to inquire, misrepresentation or bad faith. They did inquire. It was not bad faith or done maliciously. It was a good faith error.

- 3) The physical or dimensional violation does not constitute a public or private nuisance. Nobody is present to dispute it.
- 4) Due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained. They are taking a failed system and making it better.

David made a motion to continue the hearing. Marianne seconded the motion. Wendy stated she would like to know the cost to move the tank and where he plans to move it. Mr. Pro responded he would see what he could do. The motion passed. The hearing was continued to December 4 at 6:45 p.m.

8:10 p.m. John Heywood - Public hearing for a variance application:

Mr. Henry Kunhardt submitted a letter to the Board from Mr. and Mrs. Heywood authorizing him to act on their behalf. The variance requested is from Article X.D.4.b.1 and Article XII.A of the Zoning Ordinance to permit construction of a stream crossing for a driveway and placement of culvert and headwalls within the 20 foot side setback line. The property is located on Old Country Road, lot 12/103, rural district.

Mr. Kunhardt explained that previously the 75 acre lot had been accessed by crossing several properties along Waterloom Pond. A lot line adjustment with Mr. Steve Packard granted the Heywoods a 50 foot strip for access from Old Country Road. The strip is wider than 50 feet in some places. They propose a 10 foot driveway with 20 foot shoulders.

Mr. Kunhardt stated the proposal is for a 3 foot high by 8 foot wide box culvert. The driveway will go over the culvert. Silt fences will be used for erosion control during construction. The box culvert is set on the alignment of the stream and is 18 feet long with stone headwalls. It is located 12 feet from the abutter's boundary line. There is a 9% grade tapering off to 5.5% grade and then 3%. A field survey does not reveal any slopes over 15%.

Once the variance and State approval have been approved logging will be done on the lot. Additional variances may be required as plans proceed for a home.

Mr. Kunhardt addressed the five criteria for the granting the variance:

- 1) The proposed use would not be contrary to the public interest - it is a ten foot driveway in a residential area to serve a 75 acre lot for a single family house. The variance request is to be able to cross a stream and to get relief from the dimensional requirement for the side setback. Giving up the old access to the lot is not contrary to the public interest.
- 2) The use is not contrary to the spirit of the ordinance - the design is trying to minimize the impact to the wetlands. The structure they are proposing is a stone retaining wall.

- 3) Granting the variance would do substantial justice - This is the only access into the lot. The lot is a pre-existing lot of record. This is a better access than the original one.
- 4) The proposed use would not diminish property values - Signed letters from Douglas and Gail Ford and Stephen Packard state they do not object to the proposal. Mr. Robert Taft was present and had no problems with the proposal.
- 5) Literal enforcement of the ordinance would result in unnecessary hardship to the owner - The proposed driveway is the only way to provide access to the lot.
 - a. No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property - There is no fair and substantial relationship.
 - b. The proposed use is a reasonable one - It is a ten foot driveway to a 75 acre property for a single family road. This is the only access to the property off Old Country Road.

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

The Board reviewed the five criteria for granting the variance:

- 1) The proposed use will not be contrary to the public interest - The property is segregated from everyone. Due diligence has been done on the application.
- 2) The use is not contrary to the spirit of the ordinance - The culvert will not impact others. There is no sewage involved.
- 3) Granting the variance would do substantial justice - Allows access to the property with minimal impact. Much better option than the original access option.
- 4) Proposed use would not diminish property values - Property values are being maintained.
- 5) Literal enforcement of the ordinance would result in unnecessary hardship - The owner would not have access to their property.

David made a motion to approve the variance application. Marianne seconded the motion and it passed unanimously.

8:55 p.m. Richard and Annmarie Nantel - Continuation of a public hearing for a variance application:

The hearing was continued from October 2, 2014. A site visit was held on October 24. Mr. Nantel and Robert Olson, his contractor, were present to discuss the application. Mr. Nantel presented a new map of the site to the Board. Mr. Nantel confirmed by a surveyor that the stone wall is the property line. Flags were found at the corners of the property. The original drawing showed the boundary line was a straight line but the deed describes a jog as shown on the new map. A variance is needed for the side setback to the property line for the 24'x30' garage attached to the house by a breezeway.

Wendy stated that she was unable to make the site visit but was able to go by today. She noted at that time that construction has begun. Mr. Nantel responded they had cleared the area. Wendy added there are a couple of five foot piles of soil along the stone wall so clearing has begun for the garage. She questioned if there were forms and Mr. Nantel responded Mr. Olson had started doing the forms. There is no building permit. Wendy stated the action was disrespectful to the Board and to the Town and its rules and regulations. The variance was a prerequisite to getting the building permit. Wendy asked if the applicant was aware construction cannot begin without a building permit. Mr. Olson stated that in most towns a foundation can be put in. David noted that Mr. Olson has to abide with the State building code. Marianne added that if any construction is being done at all that was unacceptable and why would the Board waste their time if they did not think it was important. Wendy commented that Mr. Nantel knew he could not get a building permit without the Zoning Board approval and Mr. Nantel responded they were trying to get the garage constructed in a timely fashion.

Mr. Olson stated it was not done in the spirit of disrespect. They were trying to gain a few days on the project. They were confident the variance would be approved and he added it was his fault. Marianne questioned if he chose to disrespect the Board and disregard their role. Mr. Olson stated he did not do it out of disrespect.

Wendy stated that when she looked at the lot and the size of the garage there was no reason it could not fit on the property and meet setbacks. She suggested in front of the proposed location and Mr. Nantel responded there were trees and a culvert runs through the middle of the driveway that you drive over to access the parking area. Turning it a little still does not meet the setback.

David noted there is an intermittent stream on the outside of where they are currently parking. At the site visit they talked about turning the garage. David suggested downsizing the garage to 24x24 which would not require a variance. Mr. Nantel stated he would still need a variance.

Wendy suggested the applicant try and make it work without a variance. Also, he cannot meet the five criteria required by State statute. There are other alternatives such as location and size. Mr. Olson noted putting the garage out front devalues the property. Wendy stated the applicant can withdraw the application without prejudice and try to figure out how it can work without a variance, or the hearing can be continued.

Mr. Nantel reviewed the five criteria for granting the variance:

- 1) The proposed use would not contrary to the public interest - It is not going to impede on the public land and no abutters are present to object.
- 2) The use is not contrary to the spirit of the ordinance - There will be no impact to any other properties, public roads or access area.

- 3) Granting the variance would do substantial justice - It would allow the applicant to build the garage adjacent to their home. Property value would be improved. Ms. Nantel is an EMT and having her car parked in the garage would be beneficial. It is the most convenient location.
- 4) The proposed use would not diminish property location - They are not impeding on any residential property lines as it is town owned land. The garage will increase their property value.
- 5) Literal enforcement of the ordinance would result in unnecessary hardship to the owner - It is the only ideal location for the garage with attachment to the house by a breezeway. It will not enhance the property value if it is located at the front of the lot. It will be pleasing to the eye if attached to the house.

David noted all five criteria need to be met for approval to be granted. His recommendation was to look at alternatives that might work.

Mr. Nantal asked if work had not begun on the site if the conversation would have been easier tonight. Wendy responded she felt there were alternatives and a variance cannot be granted if there are alternatives. Having another place on the lot to locate the garage is an alternative. Wendy added she was upset that they had broken ground but the reason for the conversation is because the Board suspected from the time of submission of the application to tonight that there were alternatives. As it stands right now, the five criteria cannot be met.

David made a motion to continue the hearing to December 4 at 7:15 p.m. Edwin seconded the motion and it passed unanimously.

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

Joanne Meshna
Land Use Manager