



Zoning Board of Adjustment Meeting
Monday, August 6, 2012 at 7:00 p.m.
City Hall, Council Chambers

MINUTES
Approved 9.4.12

I. Roll Call

Present: Mike Hurd, Carolyn Towle, Tom Rock, Jim Hanson, Pierre Caouette (alt), Dan Worcester (alt)

Absent: Todd Russel

City Staff: Tracey Hutton; City Planner; Jane Taylor, City Attorney, Kelly LeBlanc, Administrative Assistant

Dan Worcester will sit in for Todd Russel.

II. Review Public Meeting Minutes from Jul 2, 2012

Motion: approve minutes from July 2, 2012

Made By: Mr. Rock

Second: Ms. Towle

Vote: Unanimous

III. New Business

- **(ZO2012-0018) Lisa Portelli and Sheila Butler, Bradenton, NY-** The applicant is seeking a variance from the building line dimensional requirement, Section 22-148. Property Location: **Hanover Street**, Tax Map 84, Lot 7, Zoning District AR.

The applicant is seeking a variance from the building line dimensional requirement, Section 22-148. The lot was modified with a lot line adjustment at the July 16, 2012, Planning Board meeting to create a building envelope with suitable access to the right of way and utilities. The NHDOT has approved a driveway location as shown on the plan.

The frontage of this lot is in the R-1 zoning district, the back land is in the AR district. Section 22-148 of the City Code requires 250 feet in lot width at the building line in the AR district. After the lot line adjustment, this parcel only has 163 feet of width at the building line. One variance of 87 feet is being requested.

The majority of this lot is not buildable. The front of the lot is an R-1 district but where the structure is proposed is in the AR district.

Lisa Portelli and Sheila Butler were present for their application.

Wayne McCutcheon, surveyor, was present to discuss the application. Beverly Beede owns the house/lot to the North. Ms. Beede currently lives in NY. Lisa Portelli and Sheila Butler plan to purchase the .97AC after the ZBA meeting. They have already gone to the Planning Board and received approval for the lot line adjustment. The 9.2 AC that they bought is not feasibly buildable. There are two frontage points, both of 60 feet, the one in the middle has a brook going through it. Mr. McCutcheon stated that Ms. Beede has agreed to sell the .91AC portion of the lot. A state of NH DOT permit has been issued and water and sewer municipal services are present on the other side of the road.

Mr. Hanson inquired about the 15ft width of the driveway, stipulated by the state of NH.

Open Public Hearing

Abutters present: Elmer & Patricia Walter & Shawn Belanger
The abutters present at the meeting had no comment.

Close Public Hearing

Mr. Rock stated that there is not a house in that section of homes that meets requirements.

IV. Review Criteria

When considering this application, the following Variance criteria should be considered. The burden of proof is upon the applicant to demonstrate that all necessary criteria are met.

Variance To review a Variance in accordance with New Hampshire statutory criteria the ZBA must adopt the following **Findings of Fact** for each criterion:

1. Would granting the Variance be in accord with the public interest?

Yes, the three lots to the south are in the same situation. The size of the lot being 10 acres gives it plenty of room for a house.

2. Would granting the Variance be consistent to the spirit of the ordinance?

Yes, the state has addressed the driveway and the house would be built on a 10 acre lot.

3. Would granting the variance, as requested, do substantial justice? (Is the loss to the applicant outweighed by the benefit to the public if the variance were denied; would granting the variance threaten the public health, safety or welfare?)

Yes, the state has addressed any issues.

4. Does the proposed use maintain the value of surrounding properties?

Yes, the new construction will enhance the area and increase the value of houses in the area.

5. Would denial of the variance by literal enforcement of the ordinance result in unnecessary hardship to the owner under either condition below?

Yes, this is non buildable land and the proposed variance is the only option.

A. For purposes of this subparagraph, “unnecessary hardship” means owing to special conditions of the property that distinguish it from other properties in the area:

(i) The Applicant has demonstrated that no fair or substantial relationship exists between the general public purposes of the Section(s) of the Ordinance from which relief is sought and the specific application of the Section(s) to the property.

(ii) The Applicant has demonstrated that the proposed use is a reasonable one.

Alternatively, if and only if the criteria in the above subparagraph cannot be established

- B. Has the Applicant demonstrated the special conditions of the property that distinguish it from other properties in the area prevent reasonable use in strict conformance with the ordinance and a variance is necessary to enable a reasonable use of the property?

Motion: to approve a variance from the building line dimensional requirement, Section 22-148 with the following conditions (1) The applicant shall obtain and receive all necessary permits and approvals as determined by the Local, State and Federal governments and (2) This Variance shall be recorded in the chain of title.

Made By: Mr. Rock **Second:** Ms. Towle **Vote:** Unanimous

- **(ZO2012-0019) Leslie Glenn Fotter, Claremont, NH-** The applicant is seeking a variance to allow for an emergency shelter, Section 22-186. Property Location: **Pappas Road**, Tax Map 179, Lot 3-2, Zoning District RR-2.

The applicant is seeking a variance to allow for an emergency shelter, Section 22-186. Emergency Shelters are not a use contemplated in the City Code, and therefore a variance is required.

This emergency shelter is 8' x 16' with another future underground building site contemplated on the parcel. Because there is a private well, constituting pressurized water, in the shelter, a full septic system is required by NH DES. This shelter is not a single family dwelling, as it does not meet the definition.

In 2009, Warren Stevens, of M&W Soils Engineering Inc., performed an analysis of the structural integrity of this shelter, at that time it was sound. There have been some modifications since that time and the Planning and Development Department has been in contact with Mr. Stevens and is awaiting an updated report.

Chair Hurd asked if there is a future write-in that the emergency structure is not to be used as a residential unit. Ms. Hutton stated this could be an additional condition from the board.

Mr. Rock asked if this is an accessory building. Ms. Hutton stated that it cannot be an accessory building when there is no primary building. The primary use will be as an emergency structure.

Ms. Towle would like to see more information. The engineering report is needed. Ms. Hanson stated building code will take care of the specifications.

Open Public Hearing

Ms. Monique Limoges, abutter, stated that she was told the structure was a root cellar at the time. She was concerned at the time if there was a septic system because it could affect the water in the area. Chair Hurd confirmed that there will be a septic system so there will be no negative effects to the water.

Mr. Fotter stated the gravel on top of the structure was per the engineering requirements. The engineer looked at the shelter before and after the concrete was poured. He did not finish the shelter in 2009. Mr. Hanson asked how deep the structure is. Mr. Fotter stated it was a 10 foot structure but only goes in the ground a few feet.

Mr. Rock stated that if there would eventually be a house, the septic would go to the house as well as the shelter. Mr. Fotter stated that he did not plan to have a septic to the shelter, only a septic to the house.

Ms. Towle confirmed that she is waiting on the report. Ms. Hutton stated Warren Stevens was aware of the issue (M&W Soils) since last Monday. The idea is that it is en route.

Ms. Hutton stated that DES assured that any pressurized water needs a septic. The septic rule is a state requirement.

Emergency Shelter is determined by the City Manager, Governor or the President.

Ms. Taylor stated that if the board is concerned with the definition of emergency, the board might consider defining emergency for this situation.

Close Public Hearing

IV. Review Criteria

When considering this application, the following Variance criteria should be considered. The burden of proof is upon the applicant to demonstrate that all necessary criteria are met.

Variance To review a Variance in accordance with New Hampshire statutory criteria the ZBA must adopt the following **Findings of Fact** for each criterion:

1. Would granting the Variance be in accord with the public interest?

Yes, aside from the fill on the top, the shelter is barely visible.

2. Would granting the Variance be consistent to the spirit of the ordinance?

Yes, there is no parallel or standard to go off of.

3. Would granting the variance, as requested, do substantial justice? (Is the loss to the applicant outweighed by the benefit to the public if the variance were denied; would granting the variance threaten the public health, safety or welfare?)

Yes, there is no glare, noise, etc. The shelter would need a septic and comply with DES requirements.

4. Does the proposed use maintain the value of surrounding properties?

Yes, the shelter is not noticeable from the road.

5. Would denial of the variance by literal enforcement of the ordinance result in unnecessary hardship to the owner under either condition below?

There is no guideline to go by per the City Ordinance. The hardship is that there is no regulations state wide. There is no specific area for this project. It is a unique use of the property.

- A. For purposes of this subparagraph, “unnecessary hardship” means owing to special conditions of the property that distinguish it from other properties in the area:

- (i) The Applicant has demonstrated that no fair or substantial relationship exists between the general public purposes of the Section(s) of the Ordinance from which relief is sought and the specific application of the Section(s) to the property.
- (ii) The Applicant has demonstrated that the proposed use is a reasonable one.

Alternatively, if and only if the criteria in the above subparagraph cannot established

- B. Has the Applicant demonstrated the special conditions of the property that distinguish it from other properties in the area prevent reasonable use in strict conformance with the ordinance and a variance is necessary to enable a reasonable use of the property?

Motion: to approve a variance to allow for an emergency shelter, Section 22-186 with the following conditions: (1) The applicant shall obtain and receive all necessary permits and approvals as determined by the Local, State and Federal governments, (2) This Variance shall be recorded in the chain of title, (3) NH DES approved septic must be designed, installed, and inspected, prior to use of shelter, (4) not at any point in time can this structure be used as a residence, (5) pending approval of Warren Stevens engineering assessment, (6) to be used only in a declared emergency.

Made By: Mr. Hanson **Second:** Mr. Caouette **Vote:** Unanimous

IV. Correspondence

V. Other

VI. Adjournment

Motion: to adjourn

Made By: Ms. Towle **Second:** Mr. Rock **Vote:** Unanimous

Meeting adjourned at 7:46 PM

Respectfully Submitted by, Kelly LeBlanc