

Zoning Board of Adjustment
May 12, 2020
Minutes

Members Present via Zoom: Scott Lees, John Krebs, Craig Niiler, Jake Stephan, Karl Ogren, Denny Anderson (A), John Quigley (A)

Members Absent: Tim Cupka (A)

Others Present: Janice Zecher, Recording Secretary, Don Harris, Zoning Officer

This meeting was originally scheduled for April 28 but had to be rescheduled due to a technical issue.

Meeting called to order at 7:00pm by Scott Lees. Scott read the following statement:

Due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to the meeting. However, in accordance with the emergency order, this is to confirm that we are: a) providing public access to the meeting by telephone and by access with Zoom, b) All members of the board have the ability to communicate in this meeting through the Zoom platform. The public has access to listen and, if necessary, participate in this meeting by dialing the number in the invitation. c) Providing the public with a mechanism to alert the public body during the meeting if there are problems with access. If the public is unable to access the meeting, we will adjourn the meeting and will have to reschedule it.

Roll call completed.

Minutes from March 31, 2020 were reviewed by the board. The following amendments were made: After the roll call on page one, add the following statement: This meeting was originally scheduled for March 24, and it was continued to March 31 due to the Covid crisis. Third to last paragraph on page one, change sentence to "The Architect provided an updated calculation of the square footage of the proposed and existing nonconformity. Third to the last page, where it says John would like to see the setbacks delineated on the plan by White Mountain Survey. Change White Mountain Survey to Licensed Surveyor to verify the setbacks.

Case #24-9-17 Ronna Werner Revocable Trust *continued from March*

Applicant seeks an appeal for Variances under Article 7, Section 706.2, side setbacks, 706.3 exceeding height of a non-conforming structure, Article 3, Section 304.6.7.3 % of impervious surface. Special Exceptions under Article 3, Section 304.6.4.1 Erosion Control, and Section 304.6.6.2 tree cutting. Applicant wishes to demolish the existing home, replace with a new structure, no closer than the old structure to the front and side setbacks. Concrete walkway/boat ramp is being replaced in kind and in place setbacks. At Map 24, Lot 9-17, 151 Haverhill Street.

Mark and Jacob McConkey were present as agents on this application. Mark reviewed the changes made to the plan and application as discussed during the March meeting. The request to replace the boat ramp that was on the original application has been removed from the ZBA application. The application will run through the state application process. It is still showing on the plan though. The plan now shows the lot coverage of the proposed structures which shows 14.10%. Mark said he no longer needs the Variance under article 3, section 304.6.7.3. The other request from the board was to move the building back 11 feet. Mark reported the owner does not want to move the building partly because of ledge. The shoreland is under review with the state.

John Krebs asked if they will be able to get a 4 foot frost wall because of the ledge. Mark said they will pin where they have to. Scott was asked for more information on why he was opposed to the application. He explained that he feels the house is able to be moved further back from the shorefront even though it encroaches a bit more on the side setbacks to protect the quality of the water. There were no abutters and no members of the public to speak to this application. Karl asked if the cement walkway counted as a structure, and how many square feet that is. Jake said it is 264.71 sq ft and added it to the proposed coverage number. The new proposed coverage percentage is 15.45%. The dock is separate. Jake said they had previously asked to waive the lot coverage. Karl asked Mark what the changes are on the new plan vs the March plan, the request was to make it smaller. Jake said they added where the ledge outcroppings are located, located the septic tank on the plan, added the structural lot coverage which he will add the walkway to, added the proposed peak roof elevation showing 29 feet, a new date on the plan. Karl asked them to show the reason the house could not be moved. Mark responded that it was because they discovered ledge when they went back to the site. He said the builder's position is that it would be easier to deal with the known ledge at the current site than to try to move the building and find unknown ledge. Scott asked if they knew if there was ledge underneath the existing house. Mark said they probed around the existing footprint and feel comfortable that they can do enough excavation to get the footing and slab in place. Concern that there could be existing ledge underneath the current building remained. The board is in agreement that they want the building to move back 10 feet, and they are ok with the current percentage. Mark will speak with his client. John asked how the power is going to be brought to the house. Currently it is coming from the neighboring property. Mark said it hasn't been discussed. John asked if he could find out what their plan is. He is concerned that the house is having power brought in from a neighboring property without an easement. Mark will find out. The tree cutting plan was acceptable to the board. Karl made a motion to continue the application to May 26, seconded by John Krebs.

Case # 09-05-20 Michael Bergen

Applicant seeks an appeal for a Special Exception under Article 15, Section 1503 Major Home Occupation. Applicant would like to build a 30' X 40' garage on the property as a light automobile repair shop at 145 Old Portland Road

Mark and Jacob McConkey presented the application on behalf of Michael Bergen. Mark said Mr. Bergen only has one employee, plenty of parking, setbacks are met, has an offsite well, they are in the process of getting his new septic system approved, lot coverage is fine. The business won't be seen driving by unless you stop in the road and look at the house. The plan has space for 6 vehicles. Scott said there is no mention of a dumpster and Mark said the applicant did not ask for a dumpster and that he will keep everything he is working with inside the building. Scott asked what the state says about hazardous waste. Mark said they have to be in containers and in a spill proof enclosure. There is no floor drain out of the garage. He confirmed the septic system is new for the house and the building. The garage will only use the septic for 1 sink and 1 toilet. Mark confirmed with Scott that the applicant will keep all scrap and car parts in the building. John Krebs was concerned about article 15,

section 1504.01 with potential future accumulations of stored items. If the property is sold, the future owner may not keep the property in accordance with the zoning ordinance. It doesn't seem to fit with a home occupation. Mark confirmed that the applicant will limit himself to 5 cars and won't have a dumpster, and he is not to put supplies outside the building. Karl asked if this application needs to go to the Planning Board. Scott asked Don if this would need to go to the Planning Board. Don said that according to the ordinance, he does not have to go before the Planning Board but according to section 1506, is open to unannounced inspections, then it would be an enforcement issue.

Karl asked the definition of a light repair shop. Mark said it would be for light repairs, no fabricating, or working on big trucks. Karl said if the house and sheds only as the dwelling, the garage size is over the allowed size. Also, if this application doesn't have to go before the Planning Board, then the ZBA should be asking for everything the Planning Board would normally ask for on the plot plan. Mark felt the tree house should be considered a structure and it's square footage added to the calculations. The board felt that the tree house would not be considered.

Specific discussion about hazardous waste, ADA compliant driveway and parking lot being properly designed with spaces properly delineated as outlined in the zoning ordinance, snow storage, no outside storage of any kind, lighting, landscaping, ability for emergency vehicles to get in. Scott would like to have a detailed plan of how applicant is going to store materials and waste if he is not going to keep it outside. John asked if it has to be a quanset hut or could it be something more aesthetically pleasing. Mark will ask the applicant. Karl asked about noise.

Abutter comments: Carleton Peare's concerns are his personal property value. The garage would be outside his bedroom window. Abutters Duncan & Carla McLaughen said that this is not at all in keeping with the neighborhood and the existing home occupations on that road. It is a completely different type of business. They feel it would change the look and feel of the neighborhood. Property values be affected, it is just up the hill from the town well. There are a lot of pledges from the applicant to do the right thing, but not much in place to control it.

Public Comment: Paul Elie wanted to reiterate the mention of hazardous material, and the proximity to the town wells. The property is just uphill from the well and Loon Lake and could pose a potential hazmat problem. There is a potential impact of increased traffic through the village. The lot is fairly open so the business would be very visible. Screening would most likely come into play.

Don Harris read section 1504.01 and Scott suggested that Mark study the requirements to show compliance.

John made a motion to continue the application to the May 26 meeting, seconded by Karl. Because the April meeting was delayed until May 12, and the deadline for the May meeting was May 11, continued applications at this meeting will have until May 21 at noon to submit materials for the May 26 meeting. Mark stated he was prepared to meet this deadline.

Case # 31-8-20 George Conroy

Applicant seeks an appeal for Equitable Waiver of Dimensional Requirements under Article 3, Section 308. Applicant is building a barn on the corner of Ossipee Lake Road and East Danforth Road.

Don Harris presented this application as agent for Mr. Conroy. Don is bringing this application to the board as he feels the error was made by him in measuring the setbacks for this application.

Karl asked if a lot line adjustment happened on this lot in the past 25 years. The last contact the ZBA had with this applicant showed the lot to be .64 acres and now shows .83 acres. The lot next door got smaller and Mr. Conroy's lot got bigger by 20%. Don is not aware of an adjustment but felt this is not relevant to the application. Karl explained that it makes it unclear how the measurements come into play if the lot size is unclear, he would like to have the final lot size recorded and an understanding of how the size changed. There is a garage and a lean to showing on the property that no permits were issued for. The board would like a plot plan of the whole property and an explanation of what the building is going to be used for. Don verified that there will be no living space in the garage.

There were no abutters or members of the public who spoke to this application.

Scott asked if the garage and lean to is counted on the plan submitted by the applicant. Don said only the house was listed in the application. John Krebs showed a google earth photo that shows two structures that could be identified as portable, but there is also a steel structure showing with a concrete pad that is closer to the water than the house. Lot coverage percentage was discussed. John Krebs said he felt that if the carports were removed, and the structure removed along with the cement pad and something placed on the ground to reclaim the natural area, he would be glad to grant the equitable waiver. Denny would like to see a property survey done, Karl would like to see either a property survey or a very detailed plan showing everything on it, including all structures and calculations. If the garage is found to be permanent and no permit was issued, he would address then he would feel strongly that the building would need to be removed. The garage is too close to the water to be permissible.

Don and the board agreed that the extra structures need to be researched. He would like a decision to be made about the equitable waiver now. The board felt the two are tied together. John Krebs would like Don to find out if the garage had a permit before they act on the equitable waiver. If it is found that there no permit and that Don will act on it separately, then he would sign the waiver next month. Karl does not want to vote on the waiver until there is a full plan presented. Jake would like to see the reason for the lot size change, and investigate the structure near the water, but he has no problem granting the Equitable Waiver now. John Krebs said if a permit was issued to build the garage, he now feels that it would be unfair to question lot coverage at this point. He wants to be sure that enforcement take place for the garage. He would like a full plan submitted. John also said that the applicant built a road into a gravel bank behind the house with no erosion control plan submitted. John Quigley feels the waiver should be approved at this meeting. He is confident that Don will enforce the remainder of the concerns. Denny agrees with John Quigley but would like a survey done so it is shown where the buildings are on the lot. Craig would like to see that the rest of the lot be brought up to speed on the issues discussed by other board members. He also said that there is much less pervious ground now and there needs to be a plan for where the water is going. This would have been required if he had applied for a variance for this building there would need to have been a plan submitted for infiltration or storm water management. In summary, the board is separating the two issues. The garage below will be investigated by Don for zoning code enforcement if there is no permit.

Regarding the Equitable Waiver, Jake voted to approve the waiver, the remaining members of the board voted against approval tonight.

Application is continued to May 26.

Other Business

John Krebs asked about a deck being built on the water side at 295 West Bay Road. Don said that the deck was being installed legally.

John also asked if there is a commercial business being run at 199 Haverhill Street. There are always 2 excavators and a bulldozer at that location. The board knows about the equipment and said the homeowner brings them here to play with.

Communication and Miscellaneous

There being no further business before the board, Scott made a motion to adjourn, seconded by Karl. All in favor. Meeting was adjourned at 10:00 pm.

Respectfully Submitted,

Janice Zecher