

MEETING MINUTES
ZONING BOARD OF ADJUSTMENT PUBLIC MEETING
**MEETING LOCATION—EARLY CHILDHOOD LEARNING
CENTER
77 RAMSDELL LANE**
Barrington, NH

(Approved July 18, 2018)
7:00PM
June 20, 2018

Members Present

Karyn Forbes, Chair
Meri Schmalz
Cheryl Huckins
Raymond Desmarais
Dawn Hatch

Alternate Member Present

George Schmalz

Alternate Member Absent

George Bailey

ACTION ITEMS

1. **106-31-GR-18-ZBA Variance (Owners: Daniel Cassidy & Barbara D. Feldman)** Request by applicant for a variance from Article 3.5.1 (7) from the requirement that the lot meet the 80,000 s.f. minimum to allow for an ADU in a new accessory structure where the lot is approximately 40,000 s.f. located at 47 Pine Road (Map 106, Lot 31) on a .93 acre lot in the General Residential (GR) Zoning District.

Daniel Cassidy explained they had purchased a seasonal camp on Ayers Lake. They had received a permit for a two car garage with full dormered second floor with intent to create an ADU on the second floor. The original permit was for only a garage, but the understanding was when they got a septic system designed they would come in for an ADU permit for the second floor. When they had gone for the ADU permit in February or March John Huckins, Code Enforcement Officer had explained that the lot did not meet the required minimum lot size under the ordinance for an ADU in a detached structure. They did not have any issues with setbacks from lot lines.

K. Forbes asked the size of the ADU.

Daniel Cassidy explained it was 742 sq. ft. just under the 750 sq. ft. maximum.

K. Forbes expressed that it was on top of the garage and did not include the garage.

Daniel Cassidy agreed.

K. Forbes expressed he would now need to address the justification criteria for a variance. In this case he was asking to have something on a lot that was on half the size it was required to be.

Mr. Cassidy read from the criteria for the granting of a variance.

1. Special conditions exist such that literal enforcement of the Ordinance will result in unnecessary hardship to the applicant as defined under applicable law.

We have designed the garage to accommodate an ADU on the second floor. Framing and window package as well as roof design was an additional expense in anticipation of finishing this space as an ADU. Original permit application included discussion with Code Enforcement regarding future use of second floor once State approved septic plan was granted. Camp on property is not currently suitable for year round use.

2. Granting the variance would be consistent with the Ordinance.

Granting the variance will allow us to use this property on a year round basis. The garage located ADU will be energy efficient and a much more comfortable and convenient living space for year round use.

3. Granting the variance will not result in diminution of surrounding property values.

Area is lightly developed and the garage is an appropriate use of the space available on the property. We believe the finished structure will add to our property value while enhancing the general residential feel of the abutting properties.

4. Granting the variance would do substantial justice.

We believe there was some initial confusion during the planning and permitting process and that we may have proceeded differently if we were aware of the zoning restrictions in this case regarding future construction of an ADU on this property.

5. Granting of the variance would not be contrary to the public interest.

We see no potential negative outcomes due to the granting of this variance. Having a year round residence in this area would enhance security and response time to any natural disaster in the immediate neighborhood as there are currently no other year round residents on Pine Road.

K. Forbes expressed that there is a concern in putting to many structure near the water. A condition the Board may consider would be limiting the front building to seasonal use only.

Daniel Cassidy expressed the garage was already built.

K. Forbes expressed that the issue was the lot was half the size it needed to be. It was a small lot and to have two year round residences on it was a concern.

C. Huckins asked if they planned to live there.

Daniel Cassidy said yes.

K. Forbes asked for anyone to speak in favor.

K. Forbes asked for anyone to speak against.

No one spoke.

K. Forbes closed the public testimony portion.

R. Desmarais expressed if the structure had already existed they would have been able to do it.

The Board went over Article 3.5 of the Zoning Ordinance.

K. Forbes asked what the restrictive covenant was.

M. Gasses explained it was a requirement that the owner occupy one of the units.

K. Forbes expressed that was an enforcement disaster.

M. Gasses explained that the Planning Board had chosen to require the owner as well as any subsequent owner sign and record the document, so that the owner understood the requirements under the ADU regulations. Communities such as Dover require the owner file every year for a permit to prove residence in one of the units and charge a \$50 fee.

D. Hatch expressed the front unit was not winterized.

K. Forbes expressed that the issue was that it was new construction.

K. Forbes suggested the front building not be winterized.

D. Hatch asked what the front building would be used for. She was interested what the applicant's plans were for the camp.

Daniel Cassidy expressed for family or rental in the summer.

John Huckins, Code Enforcement Officer explained that seasonal only applies to NHDES. If you are not able to prove 9 months out of 12 prior to 1992 that the structure was used as a year round residence and you were going to insulate the structure you would have to get an approved septic system from NHDES. Once a septic system is designed the structure meets the residential requirement. In the Town's regulations once the septic is designed it's a dwelling unit. It does not need to be insulated. Just like when renovating an old home you do not need to bring everything up to code. Once the Town receives the septic design the camp will be a dwelling unit, which you have to have in order to have an ADU in the garage. You cannot have an accessory dwelling without a primary dwelling. There is no difference between seasonal and nonseasonal use in our Zoning Ordinance or the Building Code.

K. Forbes asked that even if there was a stipulation that the camp not be insulated they could live in it year round.

John Huckins expressed that once they have a septic design they can live in the camp full time, it did not need to be insulated.

K. Forbes asked if he had a suggestion on how they should handle this. The lot was half the size required and they wanted to place two dwelling units on it.

John Huckins expressed he only wanted to way in, in respect to ten years from now the person who had his job would have to go back to figure out when the accessory structure was built in order to see if they

could have an ADU in the accessory structure. At what point is it that you determine what is, “existing”. It was existing at the time the application came in for the dwelling unit, but it did not exist at the time the ordinance was adopted. He had determined after discussion with the Town’s attorney that the structure needed to have existed at the time of the passing of the ordinance. If the Zoning Board agreed with his determination then the Zoning Board could grant a variance. If they did not agree with his determination then a variance would not be needed.

R. Desmarais asked if the garage was a new structure after the ordinance was accepted.

John Huckins stated the structure was built after the ordinance was adopted, but before he asked for an ADU.

R. Desmarais asked the reason for his decision.

John Huckins explained that after talking with the Town’s attorney his decision needed to be the structure had to be built prior to adoption of the ordinance.

R. Desmarais asked if the building permit was applied for before the ordinance was adopted.

Daniel Cassidy explained the ordinance passed in the spring of 2016 and he applied for a building permit in the fall of 2017, but he was not sure of the dates.

John Huckins expressed he had screwed up and was only looking at the setbacks, until Marcia had pointed it out to him. He had misinterpreted the time frame in his original conversations, but the regulation was still the regulation.

Daniel Cassidy expressed that the septic plan he submitted was only for the ADU and not for the camp.

John Huckins explained the under the NHDES regulations the septic must be designed to handle both the load of the primary structure and the accessory structure. The designs needed to be based upon units plus bedrooms, not just bedrooms.

Daniel Cassidy explained his current system is still functioning.

John Huckins explained that he was still required to have a design to handle both, although he could use the existing septic until it went into failure.

R. Desmarais expressed that ADU’s were designed to provide independent living facilities for elderly, disabled, adult children who wish to give care and support to parents, and to a lesser extent, expand the diversity and supply of housing. He expressed the intent was someone to take care of someone and that did not appear to be the intent here.

M. Gasses expressed she had attended numerous workshops on the law and a big part of it was to supply affordable housing for different age groups.

R. Desmarais expressed they were going to live in the ADU and rent out the cottage, which would get a lot of use.

K. Forbes her suggestion was winterization, which may or may not affect things.

D. Hatch expressed that this sticks, it circumvents the regulations by allowing two dwellings on one lot.

M. Gasses expressed it was State law.

K. Forbes expressed that their question was that “New construction of a detached Accessory Structure that incorporates an ADU shall meet the minimum dimensional standards set forth in Article 4 of the Zoning Ordinance for a single family dwelling”.

K. Forbes expressed there was a hole in the ordinance in regards to the date of adoption that adds some ambiguity. Someone could interpret that if he built the garage first he could have the ADU. If the garage existed prior to the adoption of the Ordinance he is not required to meet the minimum lot standards.

John Huckins expressed that if the ADU was attached he would not need to meet the minimum lot size either.

M. Gasses read RSA 674:72-674:73.

K. Forbes expressed that took care of the intent.

M. Schmalz expressed it came down to just the size of the lot.

K. Forbes expressed that the statute said that you could have attached ADU’s.

M. Schmalz asked if it would affect the water.

K. Forbes expressed that she had less concern if it was not winterized.

D. Hatch expressed it doesn’t matter if he had an approved plan for a septic system and it is winterized.

John Huckins expressed that if he attached it he would create more impervious surface because he was allowed up to 1000 sq. ft.

K. Forbes expressed that was correct and he could attach it to the house and then they wouldn’t have anything to say.

K. Forbes expressed there were a lot of inconsistencies in statute. It was the 80,000 verse the 40,000 and he could have it if he attached it to the house and no one could stop him and it would be closer to the water.

R. Desmarais expressed being further from the water was a positive.

D. Hatch expressed that there were design provisions.

Barbara Feldman expressed they would not of proceeded this way if they had known the 80,000 sq. ft. requirement. They would have attached it perhaps if they had known. She understood they were concerned with living up to the letter of the law and not changing something for them and setting a precedent. She believed their situation was special because of the circumstances and that why people come to the Board for a variance.

K. Forbes expressed she did not want her to think that the Board thought they were trying to get away with something. The Board’s concern was more with the ordinance itself and how they apply it and the

fact it was 40,000 sq. ft. and not 80,000 sq. ft. The other thing they were looking at was the inconsistencies in the statute because if they had attached it would not have been an issue.

K. Forbes asked how far from the water the accessory structure was.

Daniel Cassidy explained 175' from the water. Part of their decision to go with a detached was to not cause excavation so close to the water. The camp was only 50' from the water.

K. Forbes expressed their concern is the water. The Board often saw expansions proposed close to the water.

R. Desmarais asked if they can explain there was confusion in the ordinance as part of the reason for the decision, that there was confusion in the whole permitting process.

K. Forbes expressed that at this point there would be financial hardship. It did not have to be a hardship exclusively to the land, to some extent it can be a financial hardship.

F. Forbes expressed she liked the fact that the ADU would be farther away from the water.

A motion was made by M. Schmalz and seconded by R. Desmarais to approve the variance request on the basis of financial hardship, the ADU would be located more than 75' from the water and the confusion over the ordinance. The motion carried unanimously

2. [250-10-GR-18-ZBA Variance \(Owners: Erichh Lutz & Kathryn Callahan\)](#) Request by applicant for a variance from Article 4.1.1 (Table 2) minimum front setback to allow a 28.2' setback where 40' is required on a 1.94 acre lot in the General Residential (GR) Zoning District. (Map 250, Lot).

Erich Lutz introduced his father Paul Lutz who would speak on his and his girlfriend's behalf.

Paul Lutz described the application for 121 Beauty Hill Road. The issue was that they were less than 40' from the property line on Lilac Circle.

R. Desmarais asked why the setback wasn't 30'

M. Gasses explained that when there is frontage on two streets the ordinance requires both frontages have a 40' setback.

M. Gasses asked if it was a private road.

Erich Lutz expressed the Town maintains the road and there are three or four houses on it. The other homes were further down the road toward the cul-de-sac.

K. Forbes asked the applicant to explain why they could not locate the garage elsewhere on the lot.

Paul Lutz explained that nothing would have made them happier than to be able to locate the garage elsewhere given they had spent \$3000 to date on plot plans because of the layout of the land. If they had been able to locate the garage anywhere else that would have been avoidable.

K. Forbes explained there needed to be a physical reason they could not locate the garage elsewhere.

Paul Lutz explained there was a significant drop off behind where the proposed garage is shown.

Paul Lutz referenced photos.

K. Forbes expressed applicants normally show topography on the plan. It was his burden to show it cannot go elsewhere and it appeared there was plenty of space to locate it.

Paul Lutz explained that it was also heavily wooded and seasonal wetlands are located there and could not be built there at all unless it was significantly filled. To do either one of those would be two to three times as much as four and one half times the estimated cost of the project.

K. Forbes expressed that they need more than what they have. If there are wetlands they needed to be shown on the plan. If it is going to cost thousands more they needed to have some type of estimate telling them why it is going to cost that much more. The plan shown appeared to have plenty of room.

Paul Lutz explained that on the lower left there was a private grave yard and there is a setback from the graveyard.

K. Forbes expressed that needed to be on the plan.

Paul Lutz asked if they needed to come back.

K. Forbes expressed they should ask for a continuance. They needed to have someone for the record that showed they could not locate it in all of the vacant space shown.

D. Hatch expressed they needed to show the cemetery.

R. Desmarais expressed you need to show the cemetery, grades and wetlands.

K. Forbes expressed you have to show a hardship in the land and an estimate from the contractor if you believe it is going to cost three to four times more.

Paul Lutz expressed that they were going to be into it for \$5000 before they even are able to apply for a building permit.

K. Forbes expressed that people do this all the time.

Paul Lutz expressed that these were young first time homeowners and police officers.

R. Desmarais expressed he should go back to the surveyor and say they should have put this in to begin with. You were applying to pay for a variance and they needed to show why.

C. Huckins expressed that photos A1, and A3 showed a significant drop off.

Erich Lutz expressed that was the intention.

Paul Lutz expressed that the grade stake show on A1 was at the intersection of where the intersection of the pavement and the grass where the front of the building would be, taken from down grade. A3 showed almost the same thing.

Erich Lutz expressed that A16 showed the wetlands, which if you walked in the area in the spring you would sink down to half way between your knee and your ankle.

Paul Lutz expressed A16 was directly behind A1 and A2 and was an indication of the type of soil behind there.

K. Forbes expressed the huge boulders should be shown on the plan.

Erich Lutz expressed he understood providing the information they asked for, but he wanted to add in the aesthetically pleasing location of the proposed garage. If it was located on the graveyard side of the house they would need to add a separate entrance in and now they are talking two driveways on Beauty Hill for the same dwelling.

K. Forbes expressed they can talk about that when they come in. They needed to show what impediments exist that do not allow them to meet the setbacks. They needed to understand that applicants appear before them all the time and explain to them why they want to locate a structure where they do. The Board applies ordinances adopted by the legislative body and sit as a quasi-judicial board and it is their obligation to apply those ordinances. They take their job seriously and part of the standard is a hardship in the land and it might be a financial hardship also. She could not recall granting a variance for a setback based upon a plan that looked like the one provided. They needed to add the items asked for.

A motion was made by R. Desmarais and seconded by D. Hatch to continue to July 18, 2018. The motion carried unanimously

3. [234-25,31&31.4-GR&V-18-ZBA Variance \(Owners: Haley/McMahon\)](#) Request by applicant for a variance from Article 6, Section 2.6 perimeter buffers for the 100' buffer not to apply to Meetinghouse Road and Oakhill Road as depicted on the development plan, (Map 234, Lots 25,31 & 31.4) in the General Residential (GR) and Village (V) Districts. BY: Chris Berry, Berry Surveying & Engineering; 335 Second Crown Point Road; Barrington, NH 03825.

Request to continue to July 18, 2018

A motion was made by R. Desmarais and seconded by M. Schmalz to continue the application to July 18, 2018. The motion carried unanimously

MINUTES REVIEW AND APPROVAL

4. [Approval of May 16, 2018.](#)

A motion was made by R. Desmarais and seconded by C. Huckins to approve the May 16, 2018 meeting minutes. The motion carried unanimously

ADJOURNMENT

A motion was made by R. Desmarais and seconded by M. Schmalz to adjourn at 8:10 p.m. The motion carried unanimously