

MEETING MINUTES

FOR

ZONING BOARD OF ADJUSTMENT

As Chair of the Zoning Board of Adjustment, 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, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, this is to confirm that we are:

We are utilizing the Microsoft Team for this electronic meeting. All members of the Board have the ability to communicate contemporaneously during this meeting through the Microsoft Team, and the public has access to contemporaneously listen and, if necessary, participate in the meeting through dialing the following phone #1-603-664-0240 and Conference ID: 542261940

OR Call 603-664-0330 or email: jhuckins@barrington.nh.gov

OR

bit.ly/BarrZB200715

(Approved August 19, 2020)

Wednesday, July 15, 2020

7:00 p.m.

Please note that all votes that are taken during this meeting shall be done by Roll Call vote.

Roll Call

Karyn Forbes, Chair

Meri Schmalz

Cheryl Huckins

Raymond Desmarais, Vice Chair

George Bailey

ACTION ITEMS CONTINUED FROM JUNE 17, 2020

1. **250-101-NR-20-ZBA (Owner: James Saccoccia)** Request by applicant for a variance from Article 6.2.4 (Table 3) Dimensional Minimum Standards to allow a right-side setback of 8' and 12' where 20' is required in a Conservation Subdivision (Map 250, Lot 101) at 21 James Henry Drive in the Neighborhood Residential (NR) Zoning District.

K. Forbes asked J. Saccoccia to explain where he stood with the request.

J. Saccoccia explained he was seeking the board's guidance, as he had gone back and done more research and thought he had found a reasonable compromise. He had reached out to his builder to see if the accessory dwelling would be more feasible on the left-hand side of the house. It would add about another 20%-25% (\$30,000) to the build.

- Site work and septic- \$20,000 Farrell Construction
- Trench for electrical – Obrien Landscape
- Tree removal – Do to damaging root system for electrical trench - \$6,700 – Arbor Care Tree Service
- New Electrical Service – Newsky Contractors

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- New Driveway – Since the electrical runs down the driveway underground – \$25,000 KC Paving
- Grand total of extra cost to the project if it were to go to the left side of the house - \$90,000 that is not included in the design changes.
- Cost to go to the right side of the house = \$150,000
- Total cost to go to the left side of the house - \$240,700

J. Saccoccia explained he would have to go back and pay for a redesign on the prints and surveying. The original dimensions were 28 X 32, the 28 feet would have left 8ft from the property line. That did not fly last meeting, so he was proposing building a 26 X 34 accessory dwelling. The closest part of the ADU would be 10ft from the boundary. He expressed he was seeking the Boards recommendation on whether these dimensions would work.

In addition, J. Saccoccia had spoken with neighbor Terry Hill (to the right) who said he was willing to write a letter if it would help. Also, Kelley Bowen, (neighbor to the left) is willing to write letter as well.

If the Board went along with the proposal he would come back with revised drawings for next month.

K. Forbes expressed to the Board that it was a conservation subdivision and the setback was 20’.

R. Desmarais expressed the new proposal was at 10 feet which was halfway.

G. Baily expressed that what J. Saccoccia had done so far earned reconsideration. It was now half the distance that was required.

C. Huckins and M. Schmalz did not have questions.

K. Forbes asked if there was anyone to speak in favor or against. No one spoke.

K. Forbes closed the public portion of the meeting.

G. Baily expressed some of the site costs would be astronomical. Where the applicant was downsizing the size of the building, careful consideration should be given by the board.

R. Desmarais agreed G. Baily and if he could find a little bit more that would be favorable as well.

M. Schmaltz agreed.

C. Huckins expressed that he had reduced the size of the addition.

K. Forbes expressed that they could not vote unless they had a plan in front of them showing all setbacks.

A motion was made by G. Baily and seconded by C. Huckins to continue to August 19, 2020.

Roll Call

R. Desmarais

C. Huckins

G. Baily

M. Schmaltz

K. Forbes

The motion carried unanimously. 5-0

K. Forbes expressed the discussion was that 10’ would be acceptable.

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REQUEST FOR REHEARING FROM THE May 20, 2020 MEETING

2. Request on behalf of Richard Kelsey for a rehearing of the May 20, 2020 decision by the Zoning Board of Adjustment on the following case:

261-39-GR-20-ZBAppeal (Owner: Richard Kelsey) Request by applicant under RSA 674:41 relief under section II to appeal of administrative decision not to issue a permit to renovate existing structure on an island at Mendums Pond 1.64-acre (Map 261, Lot 39) in the General Residential (GR) Zoning District.

K. Forbes explained that the procedure was that if the request is granted the hearing would be heard at the next meeting.

Attorney Eric Mayer represented the applicant Richard Kelsey. Attorney Mayer expressed the request was pretty self-explanatory. He offered a brief explanation if the board desired.

K. Forbes expressed they don't typically take testimony on a request for a rehearing.

R. Desmarais expressed their motion basically made their case for us. They had denied the solar panels because they didn't want him pumping water to wash dishes and take showers, "where would the waste-water be going". R. Desmarais expressed his feeling was no.

C. Huckins expressed she thought the reason was to keep it a rustic cabin.

R. Desmarais expressed they would not be able to build today if the cabin did not already exist.

K. Forbes explained that it was not a motion to leave it as a rustic cabin. The reason was to review the restrictions that the Board had placed in the approval.

What the request for appeal argues is that any restrictions placed on the property must be reasonable under the circumstances. K. Forbes expressed that she believes the Board should grant the request for rehearing. If the Board comes to the same conclusion then the Board could clarify the reasons for the restrictions the Board placed on it. That way if the case goes to appeal the judge will have a very clear idea of what was contemplated.

There were two reasons to ask for a rehearing; to make sure the Zoning Boards record is clear and to make restriction placed are clear.

The Board members agreed to the reasoning.

A motion was made by R. Desmarais and seconded by G. Baily to approve the motion for rehearing.

M. Schmaltz
C. Huckins
R. Desmarais
G. Baily
K. Forbes

The motion carried unanimously. 5-0

ACTION ITEMS

3. **262-53-GR/SLWD-20-ZBAVar (Owners: Kingfisher Bait Company, LLC)** Request by applicant for a variance under Article 3.5.1 (8) for a detached ADU dwelling to be 1,212.25 s.f. where 750 s.f. is allowed at 362

Hall Road (Map 262, Lot 53) in the General Residential (GR) and Swains Lake Water District (SLWD) Zoning District. BY: Donald Whittum Law Offices; 89 Charles Street; Rochester, NH 03867.

The applicant was represented by Attorney Don Whittum. Attorney Whittum explained that the hardship was the difficult component to prove. They believed they could qualify and meet the requirements.

The proposed use of the property is to construct a 36' x 40' apartment over the garage. The client is a fisherman who spends approximately 6 months at sea. They would occupy the home during the off season. The main house is occupied by his son with his family. Attorney Whittum expressed that 700 sq. ft. over an 1800 sq. ft. garage did not make sense and did not meet the needs of the family. The wife is disabled and needs certain accommodations. The 1200 sq. ft. ADU would be a safe place for his wife.

The granting of the variance would not be injurious to the rights of other people. The want of the Town appeared to not want the overuse of ADU's in the Town and add to the burden to the Town. Approval would not increase the burden on any services.

The proposed 1200 sq. ft. structure would best meet the needs of the Town by the structure they were proposing. The proposed ADU cannot be located elsewhere on the lot due to the location of the existing home. A variance would be needed to locate anywhere else. They believed the use was reasonable and made a lot of sense.

M. Schmalz asked how they would get to the second floor.

J. Huckins explained they had a building permit for a deck and stairs to go up to the second floor.

Attorney Whittum expressed that a stairwell and deck had been constructed to allow for a chairlift.

G. Baily asked what would happen to the existing house on the property.

Attorney Whittum explained that the son currently occupied the house and would continue to do so.

J. Huckins explained the regulation for ADU's in the Ordinance.

K. Forbes expressed that that the Planning Board had recommended the 750 sq. ft. and confirmed with J. Huckins that the Board could have recommended a larger size.

J. Huckins explained the State made the requirement that 750 sq. ft. had to be permitted, but the ordinance could also require that the ADU be attached. The Planning Board decided to go up to 1000 sq. ft. if attached and 750 sq. ft. and that was what passed.

G. Baily asked if there was a permit issued for the construction of the garage.

J. Huckins explained both a permit and CO were issued.

C. Huckins asked how long the owners had owned the home.

Attorney Whittum believed the property was purchased in 2017 and argued due to its size the ADU should be allowed.

K. Forbes asked if there was anyone to speak in favor or against the application. No one spoke.

K. Forbes closed the public portion of the meeting.

C. Huckins expressed that the original intent of the law was to allow children to allow their ageing parents to live with them, a space for teenagers or college kids. It was designed to help families out, which is happening here, except 1200 sq. ft. is close to a second house. It was not an accessory dwelling, but a condo. It goes against the intent of what an accessory dwelling unit was designed for.

K. Forbes expressed that her concern was hardship, which Attorney Whittum acknowledged would be difficult to address. She did not believe there was hardship. The applicant had reasonable use of the land, it was not a unique piece of property, 1200sq.ft. was like increasing it by 2/3.

R. Desmarais expressed he agreed with both K. Forbes and C. Huckins.

G. Baily asked if the building had been built in conformance with the Zoning Ordinance.

J. Huckins expressed the CO that was issued was just for the garage. Then they came back for a permit to create the accessory dwelling above the garage.

G. Baily expressed that was really pushing the envelope.

A motion was made by C. Huckins and seconded by R. Desmarais to deny the application.

Roll Call

R. Desmarais yay

C. Huckins yay

G. Baily yay

M. Schmaltz yay

K. Forbes yay

The motion carried unanimously. 5-0

MINUTES REVIEW AND APPROVAL

4. Approval of June 17, 2020 meeting minutes.

Roll Call

A motion was made by G. Baily and seconded by C. Huckins to approve the minutes of June 17, 2020.

Roll Call

C. Huckins yay

S. Schmaltz yay

G. Baily yay

R. Desmarais yay

K. Forbes yay

The motion carried unanimously 5/0

ADJOURNMENT

A motion was made by R. Desmarais and second by C. Huckins to adjourn at 7:36 p.m.

Roll Call

C. Huckins

S. Schmaltz

G. Baily

R. Desmarais

K. Forbes

The motion carried unanimously 5-0

Marcia J. Gasses