

MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, October 4, 2010 – 7:00pm
1 Grove Street, Peterborough, New Hampshire

Present: Chair Matthew Waitkins, Maude Salinger, Peter Leishman, Vice Chair Loretta Laurenitis, Jim Stewart, Sharon Monahan

Also Present: Tom Weeks, Code Enforcement Officer; Nicole MacStay, Assistant to the Town Administrator

Chair Waitkins called the meeting to order at 7:02pm, reviewed the rules and procedures, and read the notice:

Case No 1159-A Scott L. MacKenzie Request for Variance to Article III, §245-15E(1) of the Peterborough Zoning Ordinance. Applicant requests the Board's approval to permit the alteration of natural surface configuration for proposed driveway extension and the construction of a building within the Wetlands Protection District on property located at 470 Hancock Road, Parcel No. R011-030-000 in the Rural District. There was no objection to the notice.

Silas Little presented the case on behalf of the applicant. He explained that this application is for an intrusion into the Wetlands Protection District. Mr. Little produced a schematic prepared by Mr. Hagstrom, a licensed septic designer and wetlands scientist showing that more than 60% of the lot is either wetlands or in the Wetlands Protection District. This lot could not be created today because it is substandard. Mr. MacKenzie would like to retain the building but move it so that it and the driveway do not encroach into the wetlands or the property line setback. Mr. Little then reviewed two court cases, Malackey Glen v. Chichester and the Town of Greenfield's attempt to prevent the construction of a cell tower and how he believes that they relate to the case. He said that a variance is injurious to the public rights of others if it unduly violates to a great degree or goes against the spirit of the ordinance. He said that in his opinion that intrusion into a wetlands buffer does not constitute a violation of the basic zoning ordinance. Mr. MacKenzie has stipulated that the structure will be removed when he no longer lives on the property.

Mr. Little added that the Social Security Administration has determined that he is disabled. This application will allow him to continue to operate his business. He said that under the Americans with Disabilities Act a person can be granted a variance in an instance when their disability prevents the use of the property otherwise; Mr. Little admitted that this application does not fall exactly within that statute. Mr. Little concluded by saying that this is a better proposal; there is no need for a variance to the property line setback, but they will still need a variance for the intrusion into the Wetlands Protection District. He also added that no abutter opposes this application.

Ms. Salinger asked how has the applicant addressed the issue that this application is materially different from the one previously denied. Mr. Little said that it is in a different location on the property, and Waugh v. Manchester makes clear that this is an important distinction. Ms. Salinger asked why the applicant did not request a rehearing. Mr. Little said that there were too many variances needed in that corner. Ms. Monahan asked if the size of the building had changed; Mr. Little said that it has not. Ms. Monahan noted that in the decision in the original case there were a few references regarding not filling the wetlands. Mr. Little said that there will be no disturbance of

the wetlands. Ms. Laurenitis asked if there is a reduction in the intrusion into the Wetlands Protection District. Mr. Little said no, and explained that the only area on the property outside the wetlands is the portion of the property where the house and septic system are located. Vice Chair Laurenitis asked if the driveway is being shifted. Mr. Little said that it is being relocated outside the wetlands, and extended to the proposed building site. Ms. Salinger asked what would be the purpose of the building. Mr. Little said that it is for the storage of vehicles; Mr. MacKenzie has a camper, a ramp truck for work, motorcycles and vintage vehicles. Mr. Little added that Mr. MacKenzie operates an offsite repair service which he operates out of the existing garage where he keeps his parts and machinery.

Ms. Salinger said then he has an existing garage that he could use for his personal vehicles. Mr. Little said that he cannot use the garage because of his disability. Ms. Monahan said that she looked up section 3604 of the ADA; she read the section in question which talked about variances required for a primary dwelling, and asked how the proposed building is necessary for him to use and enjoy his dwelling. Mr. Little said that the Peterborough Zoning Ordinance allows the use of property for use other than a dwelling, and the denial of this application would deny him his use. Mr. MacKenzie added that under the ADA he is asking the town to make a reasonable accommodation, and said that this building is the only way to make the property more appealing.

Chair Waitkins asked if anyone present would like to speak in favor of the application. George Sterling said that he was Chair of the Planning Board when Mr. MacKenzie came before them for the lot line adjustment, which was granted, and he was permitted to operate his business out of his home but not on site. Mr. Sterling said that Mr. MacKenzie is a good person and a good business man, and he provides a great service. He believes that the request is a reasonable one, it is not the same request as before, and he thinks that it is in the public interest to allow Mr. MacKenzie to store his vehicles away from the road. Andy Peterson said that he is in favor of the application and added that he helped Mr. MacKenzie to purchase the property. Since purchasing the property Mr. MacKenzie has made a great many improvements. Sandy Enegess said that he is also in favor of the application, and added that Mr. MacKenzie is a stand up guy who wants to continue to do business in town. John Kaufhold also supported the application. No one spoke in opposition to the application. Chair Waitkins closed the public hearing.

Chair Waitkins read the notice for the next case:

Case No. 1079-B David Sutton Request for a Variance to Article II, §245-7A of the Peterborough Zoning Ordinance. Applicant requests the Board's approval to convert space in the building as the 9th dwelling unit that was permitted in 2006 by Case No. 1079 on property located at 80 Pine Street, Parcel No. U019-023-000 in the General Residence District. There was no objection to the notice.

Mr. Sutton said that there is no objection to the recent decision by the Board to deny the renting of single rooms. He explained that he is before the Board to ask for a reinstatement of the variance granted in 2006 but was allowed to lapse, and for a confirmation from the Board that the method of approach is acceptable. Mr. Sutton then reviewed the history of the building since he took ownership. He explained that sprinklers have been installed in half of the building, and he intends to convert Unit 9 to a dwelling unit by adding a bathroom, kitchen, living room and other things necessary to bring it up to code. The Board asked Mr. Sutton to describe the new configuration; Mr. Sutton displayed two diagrams and pointed to the proposed alterations.

Chair Waitkins asked if anyone present wished to speak either in favor of or against the application; hearing none, he closed the public hearing.

Chair Waitkins appointed Mr. Leishman to sit on case 1159-A. He then said that the first order of business is to decide if this is a case that the Board should be hearing because there is some question as to whether this is a different case. Mr. Stewart said that he believes that this is a different case for several reasons: there is substantially more evidence and the proposed building and driveway will be in a different location. Vice Chair Laurenitis agreed, and noted that the applicant has attempted to respond to the concerns the Board had. Ms. Monahan and Chair Waitkins both agreed that the application is substantially different.

Motion:

In a motion made/seconded (Laurenitis/Leishman) the Board finds that the application is materially different from the previous, and attempts to address the Board's concerns with the previous application, and therefore is properly before the Board as a new application. The proposed building is in a new location and the driveway will no longer be located within the jurisdictional wetlands.

Vote:

Vice Chair Laurenitis, Mr. Leishman, Chair Waitkins, Ms. Monahan and Mr. Stewart voted in favor of the motion; the motion carried.

Motion:

In a motion made/seconded (Waitkins/Leishman) in **Case No 1159-A Scott L. MacKenzie** Request for Variance to Article III, §245-15E(1) of the Peterborough Zoning Ordinance. Applicant requests the Board's approval to permit the alteration of natural surface configuration for proposed driveway extension and the construction of a building within the Wetlands Protection District on property located at 470 Hancock Road, Parcel No. R011-030-000 in the Rural District is hereby **GRANTED**.

The Board finds:

1. The variance will not be contrary to the public interest because the proposed building would be a more suitable means of vehicle storage on a property that is surrounded by wetlands.
2. The spirit of the ordinance is observed because the proposed building will be located in the area with the least amount of impact and encroachment in the Wetlands Protection District. No jurisdictional wetlands will be filled for either the building or the proposed driveway.
3. Substantial justice is done because there is only a small envelope on the property that is outside of the Wetlands Protection District that is already being utilized by the septic system and the primary residence.
4. The values of surrounding properties are not diminished because it is undeveloped conservation land.
5. Special conditions of the property distinguish it from surrounding properties because it is a preexisting nonconforming lot with approximately only 20% of the lot that is not within the Wetlands Protection District.
6. Owing to those special conditions the property cannot be reasonably used in strict conformance with the ordinance because the location of the Wetlands Protection District prohibits any conforming use.
7. A variance is necessary to enable continued reasonable use of this specific property because only a small percentage of the property is outside the Wetlands Protection District.

The Board imposes the following conditions:

1. The building and driveway will be in substantial conformance with the plan submitted with the application.
2. No fuel shall be stored in the proposed building or driveway other than what is normally contained in the vehicles for their normal operation.
3. The driveway shall not be paved.

Vote:

Chair Waitkins, Mr. Leishman, Vice Chair Laurenitis, Ms. Monahan and Mr. Stewart voted in favor of the motion; the motion carried.

Chair Waitkins appointed Ms. Salinger to sit on Case 1079-B

Motion:

In a motion made/seconded (Salinger/Waitkins) in **Case No. 1079-B David Sutton** Request for a Variance to Article II, §245-7A of the Peterborough Zoning Ordinance. Applicant requests the Board's approval to convert space in the building as the 9th dwelling unit that was permitted in 2006 by Case No. 1079 on property located at 80 Pine Street, Parcel No. U019-023-000 in the General Residence District is hereby GRANTED.

The Board finds:

The variance applied for had been previously approved, but dwelling unit 9 was not substantially completed. There have been no changes in the zoning ordinance, the surrounding neighborhood, or in any circumstance that would make a denial of the variance necessary. The Board therefore incorporates the previous decision in Case 1079, April 3, 2006 which is hereby attached.

Vote:

Ms. Salinger, Chair Waitkins, Vice Chair Laurenitis, Ms. Monahan and Mr. Stewart voted in favor of the motion; the motion carried.

As there was no further business, the meeting adjourned at 10:30pm.

Respectfully Submitted,

Nicole MacStay, Assistant to the Town Administrator