

**MINUTES**  
**ZONING BOARD OF ADJUSTMENT**  
**TOWN OF PETERBOROUGH**  
Wednesday, July 7, 2010 – 7:00pm  
1 Grove Street, Peterborough, New Hampshire

**Present:** Matt Waitkins, Alice Briggs, Loretta Laurenitis, Jim Stewart, Sharon Monahan

**Also Present:** Dario Carrara, Assistant Code Enforcement Officer; Nicole MacStay, Assistant to the Town Administrator

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Chair Waitkins called the meeting to order at 7:00pm and read the notice:

**Case No, 1159 Scott L. MacKenzie** Request for Variances to Article III, §245-15E(1) and Article II, §245-8D(2) of the Peterborough Zoning Ordinance. Applicant requests the Board's approval to permit the alteration of natural surface configuration by the addition of fill and the construction of a carport, driveway extension and the construction of a building that does not comply with the minimum 30 foot side setback 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, representing the applicant, began presenting the request by providing the Board with the entirety of the plan submitted with the application, and an enlarged detail with highlights to show the wetlands buffer and the property line. He reviewed the history of the lot, explaining that this lot was originally 110 feet by 110 feet. After purchasing the property it was discovered that there could not be a septic system given the proximity to the well, nor was the existing garage on the property. A lot line adjustment was done with the consent of the Town of Peterborough and the Conservation Commission. Mr. MacKenzie was under the assumption that the structure now in question was temporary, and as such was not required to comply with the setbacks. Mr. MacKenzie is willing to agree to take down the structure should he sell the land. By putting the car port where he did, he tried, by his judgment, to locate it in a place where it would create the least amount of intrusion.

Mr. Little then addressed the variance criteria saying that given the small size of the lot, the intrusion into the setback does not conflict with those intrusions into the side setback. The abutting land is not developed and is not likely to be developed [the abutting property is owned by the Town of Peterborough and is protected by a conservation easement] and as such he did not think that it constitutes any diminution of value. In terms of utilization of the lot, the minimum size lot in the Rural District is three acres, and therefore this lot presents an unusual circumstance due to its size. With respect to the fill area in the wetlands, both the plan done by Smooth Sailing and another done by Mr. Hagstrom, the area filled is not a wet area, rather a backup area. The wetlands were created by the construction of Route 202 which serves as a dyke. There is a minor amount of fill which has changed the topography of the area a little, but this time of year the area is completely dry. In terms of the buffer, Mr. MacKenzie feels that he has made the best compromise given all these restrictions and special conditions associated with and surrounding the lot.

Chair Waitkins asked Mr. MacKenzie if he had anything he wanted to add. Mr. MacKenzie responded that in addition to the testimony given on his behalf, he and his wife have spent a lot of money to keep the place looking nice. He said that they own nine registered vehicles, and he put the carport there to protect the vehicles from the elements and to store them in a neat and orderly way. He then presented the Board with an additional photograph of the carport.

Chair Waitkins asked if any members of the Board had any questions. Ms. Briggs said that the letter from the Code Enforcement Officer dated May 5, 2010 mentions a variance would be required to operate a vehicle repair shop on the property. Mr. Little said that Mr. MacKenzie travels to the vehicle that needs repairing; he does not operate his business on the lot. Ms. Briggs asked when the fill was put in. Mr. MacKenzie said that they did not fill a hole, they leveled the ground last summer in preparation for the building. Ms. Briggs asked how many square feet is the car port. Mr. MacKenzie said that it is 40' x 46'. Ms. Briggs then asked what the size of the house is; Mr. MacKenzie said that one section is 40' x 44', and the other is 20' x 25'. She then asked for the size of the lot; Mr. Little replied that it is 1.24 acres, give or take.

Ms. Laurenitis, addressing Mr. Little, said that the carport was presented as a temporary building, however there are issues raised by the Code Enforcement Officer. Mr. Little replied that the applicant first needs to know if the building can be kept there before they address those issues. Ms. Laurenitis noted that the Code Enforcement Officer said that approval is required from DES for the driveway. Mr. Little said that there will be a Minor Dredge and Fill Application after the fact filed if there is a favorable decision tonight. Ms. Laurenitis then asked about the proposed septic and wells indicated on the submitted map. Mr. MacKenzie explained that neither of the existing wells meet the setback from the leach field; the new location would require an easement from the Town of Peterborough.

Mr. Waitkins asked how much of the structure is in the wetlands buffer. Mr. Little replied that the entire structure is in the buffer. Ms. Briggs asked if the Board were to deny the variance for the structure, could the structure still be used. Mr. Little answered, saying that the building and driveway would have to be relocated, and the restoration would have to be done. The building would have to be moved behind the existing well, near the existing shed, however it would still be within the buffer. Mr. MacKenzie said that he would have to add more fill into the buffer area to raise the ground and make it more accessible. In addition, he would have to excavate his lawn and put in a road base fill, cut down more trees and dig up the flower garden. Mr. Stewart asked if it was fair to say that any location on the property would require relief of the Zoning Ordinance. Ms. Monahan said that she did not see an envelope on the property big enough for this structure, however she can see that the wetlands could have been avoided, but that there may still be an issue for the State. She then asked if a complaint or action has been filed with the State. Mr. Little said that there has not, and added that having spoken with Mr. Hagstrom, this was a man-made wetland, and not natural; it is a matter of the engineering design of the highway and the location of the culvert. Ms. Laurenitis asked if there was any consultation with the Conservation Commission. Mr. MacKenzie said that he had not spoken with them.

Ms. Monahan asked regarding the dimensional request, why couldn't the applicant meet the 30' side setback. Mr. Little responded saying that as he understood it, because he was putting up a temporary structure, he did not have to meet the side setbacks; the entire structure can be unbolted, taken apart and moved. Ms. Briggs asked Mr. Carrara if he thought that the building is temporary. Mr. Carrara responded that if a building is up for six months or more, the Town deems it to be permanent, regardless of how easy it is to move. Ms. Monahan asked if, in his experience, when the State approves a plan for a proposed well, does the property owner have to put it in. Mr. Carrara said that no, it is not required. Mr. Little explained that this was an existing residential structure that needed a septic system; the State was not too concerned with the well. The problem was that it was a failing septic, which they wanted to get into compliance.

Ms. Monahan said that she couldn't understand the hardship of meeting the 30' setback, and asked if it was the applicant's position that he didn't need to meet the setback. Mr. Little said that it was a mistake on the applicant's part, he felt that putting it on the back corner made best use of the property and the best appearance to the public. Ms. Laurenitis asked to go back to the issue of moving the building, and is there sufficient room to move the building. Mr. MacKenzie said that the well nearest the house on the submitted plan is not being used.

As there were no further questions from the Board and no members of the public in attendance to comment, Chair Waitkins closed the Public Hearing and opened deliberations. He then said that one thing the Board must think about is the hardship, and if it is reasonable to have a house and a garage on the property, both of which the applicant already has, and so in his opinion that reasonable expectation has already been met. He added that he did not know what is unique about this property that would make it reasonable to have another garage. Ms. Briggs said that one could argue that the property has hardships, but they already have a use, so why does the applicant have a right to more use. She then addressed the special conditions of the property, which she said is the existence of the wetlands. Mr. Stewart said that in that respect, the ordinance is to protect the wetlands. He said that he didn't think that whether there is a garage already there is the issue, whatever they do, they will need to have relief from this ordinance. He then suggested that the Board pretend that the garage does not exist, and then ask if the building would meet the criteria. Chair Waitkins agreed that whether or not the garage already exists is not relevant. Ms. Monahan said that the Town gave them land to make the lot larger already, and they could have placed this structure elsewhere. Mr. Stewart asked if Ms. Monahan is suggesting that they should have been thinking ahead. Ms. Monahan said that they already knew where the wetlands are, they already knew where the setbacks are, and they did not have to put the structure there; it's created hardship, and that's why it is after the fact now.

**Motion:**

A motion was made/seconded (Briggs/Waitkins) in **Case No, 1159 Scott L. MacKenzie** request for Variances to Article III §245-15E(1) and Article II, §245-8D(2) of the Peterborough Zoning Ordinance wherein the Applicant requests the Board's approval to permit the alteration of natural surface configuration by the addition of fill and the construction of a carport, driveway extension and the construction of a building that does not comply with the minimum 30 foot side setback on property located at 470 Hancock Road, Parcel No. R011-030-000 in the Rural District is hereby **DENIED**.

The Board finds with reference to the Request for a Variance to Article III §245-15E(1):

1. The variance would be contrary to the public interest because the use requested would encroach on existing wetlands, which the applicant knew were present, based on a previous survey done in 2006 and submitted with the application.
2. The spirit of the ordinance would not be observed because the use requested would fill existing wetlands that the ordinance was designed to protect.
3. Substantial justice would not be done by the requested variance because the applicant knew the location of the wetland before he filled it.
4. The values of surrounding properties will not be diminished because the surrounding properties are undeveloped conservation land.
5. Special conditions of the property do not distinguish it from surrounding properties because the problems associated with the lot size and the wetlands on the lot were resolved through a

lot line adjustment.

6. Because no special conditions distinguish this property from surrounding properties, a fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property because the purpose of the ordinance is to protect wetlands.
7. The proposed use is not a reasonable one because intrusion into the wetland could be avoided, and the property already supports a residential building and a garage.

In addition,

8. The property can be reasonably used in strict conformance with the ordinance because the property already supports a residential building and a garage, and
9. A variance is not necessary to enable reasonable use of the property because the property is being successfully used as residential property.

The Board finds with reference to the Request for a Variance to Article II, §245-8D(2):

1. The variance would be contrary to the public interest because the use requested would encroach on the side setback.
2. The spirit of the ordinance would not be observed because the use requested would place a building closer than 30 feet to the conservation land, thereby detracting from the preservation of the conservation land.
3. Substantial justice would not be done by the requested variance because the applicant could place the proposed building to meet the 30 foot setback, and the applicant had a plan which identified the setbacks before he located the building.
4. The values of surrounding properties will not be diminished because the surrounding properties are undeveloped conservation land.
5. Special conditions of the property do not distinguish it from surrounding properties because the problems associated with the lot size and the wetlands on the lot were resolved through a lot line adjustment.
6. Because no special conditions distinguish this property from surrounding properties, a fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property because the purpose of the ordinance is to provide space between lots.
7. The proposed use is not a reasonable one because intrusion into the setback could be avoided, and the property already supports a residential building and a garage.

In addition,

8. The property can be reasonably used in strict conformance with the ordinance because the property already supports a residential building and a garage, and

A variance is not necessary to enable reasonable use of the property because the property is being successfully used as residential property.

**Vote:**

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

The Board then discussed the meeting scheduled July 8<sup>th</sup> with the Planning Board to discuss the proposed amendments to the Wetlands Ordinance.

As there was no further business, the meeting adjourned at 8:50pm.

Respectfully Submitted,

Nicole MacStay, Assistant to the Town Administrator