

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

Present: Chair Matt Waitkins, Alice Briggs, Vice Chair Loretta Laurenitis, Sharon Monahan, Tricia Cravedi
Also Present: Tom Weeks, Code Enforcement Officer; Nicole MacStay, Assistant to the Town Administrator

Chair Waitkins called the meeting to order at 7:00pm, appointed Ms. Cravedi to sit with the Board, and explained that there are no new cases on the agenda, but the Board will be talking about a motion to rehear Case 1159-A Scott L. MacKenzie. He explained that this is a public meeting, but not a public hearing, and as such no testimony will be taken. Chair Waitkins reviewed the history of Case 1159-A. He then said that after the decision had been made and having thought more about the decision, he wanted to talk about the notion that as a Board the ZBA did not fully explore reasonable conditions, and that the variance criteria may not have been met. He said that he looked at the decision made in July in Case 1159 and compared it with the October decision made in case 1159-A.

Motion:

A motion was made/seconded (Waitkins/Monahan) to rehear Case 1159-A Scott MacKenzie because the Zoning Board of Adjustment may have made an error to the extent of not fully considering the variance criteria and proper conditions may not have been imposed.

1. The Board needs further input regarding what reasonable conditions could be applied to this variance should it be granted.
2. The Board needs to reexamine whether all criteria have been met and to decide if they have fully articulated the balance between the Wetlands Protection District and the needs of the applicant to meet the interests of justice.
3. All previous testimony will be incorporated; new testimony will be taken.

Chair Waitkins said that his first concern is regarding conditions; the structure, 40' by 46' will mostly be in the Wetlands Protection District. While he was not certain that if any mitigation can be done, there will be a building permit and some kind of foundation structure, which will cover approximately 2,000 square feet. He said that he does not feel qualified to know what other conditions should have been applied. He noted that it was said in the hearings that the variance would go with the property, and so long as any structure built in the future is in reasonable compliance with the variance it could be put there. He then added that he has spoken with Town Counsel, who said that his opinion is that the Board could impose a condition that this would be the only building that could be erected there, and no other building could replace it. Ms. Laurenitis said that she was unaware that the Board could impose such a condition.

Chair Waitkins then reviewed the history of the property, noting in particular that there had recently been a lot line adjustment to make the property more useful, which the owners were aware of, and so in addition to the possibility of additional conditions, he was also concerned about whether the variance criteria had been met. Ms. Briggs asked which criteria he was referring to. Chair Waitkins said that criteria 7 and 9 and read from both the July and October decisions. He said that while the application in October was different, he wasn't sure what about it had changed from July when it

was not a reasonable use to October when it was reasonable. Ms. Monahan said that is one of the things that was not discussed in the October deliberations and she would like to discuss. She said that the property already has a nonconforming garage, and wondered if the Board should have extended the nonconformity by allowing an additional carport. She added that in the first decision the Board concentrated on the wetlands, and in the second application the Board determined that the application was substantially different because the structure had been moved and no impact to the wetland was proposed, however according to Peterborough's Zoning Ordinance the wetlands include the 50' setback, and the applicant is still proposing a structure in the Wetlands Protection District.

Ms. Briggs said that the problem rises from criterion 7 of both decisions; Ms. Briggs read both aloud, and said that there is a Wetlands Protection District and actual wetlands, and asked what the difference is. Chair Waitkins said that there is no difference so far as the Ordinance is concerned. Ms. Laurenitis said that the wetlands are defined by the soils, and Ms. Monahan added that wetlands are under State jurisdiction, and the Town's Ordinance is the buffer and all that takes place in the uplands to protect the wetlands. She added that Towns have the power to enact stricter wetlands ordinances within the State's jurisdiction. Mr. Weeks added clarification, explaining that the Wetlands Protection District is the wetland and the 50' setback, and both are the same as far as the Town is concerned; the first and second application both have the driveway in the Wetlands Protection District. Chair Waitkins said that if this were a different property that might be a consideration, however this property has already had a lot line adjustment because of the location of the Wetlands Protection District; its presence has been clear. Ms. Briggs said nonetheless, the board did approve the request. Ms. Laurenitis said that there was a great deal of discussion. Ms. Monahan said that she felt pressured because it was so late. She added that she automatically assumed that when a variance has been requested having to do with the Wetlands Protection District the Conservation Commission usually automatically consults with and guides the Board, however they did not have any input. Mr. Weeks explained that obtaining input from the Conservation Commission only happens automatically with special exception requests, not variances.

Chair Waitkins asked if everyone is clear that the Board does have the authority to vote to rehear the case; he said that he has spoken with Town Counsel, who said that the Supreme Court has ruled in 74 Cox Street vs. City of Nashua that Zoning Boards do have the power to reconsider their own decisions, so long as they vote to do so within the 30 day appeal period. Ms. Briggs said that she is reluctant to vote on a decision made by a Board that she was not sitting on at the time. Mr. Waitkins asked Ms. Cravedi would be comfortable voting; she said that she would. Ms. Briggs said that in that case, she would abstain.

Vote:

Chair Waitkins, Ms. Laurenitis, Ms. Monahan and Ms. Cravedi voted in favor of the motion; Ms. Briggs abstained. The motion carried.

The rehearing was scheduled for November 17th 2010 at 7:00pm. The Board then directed the Office of Community Development to request that the Conservation Commission provide a written report evaluating the proposal, its impacts, and provide a list of recommended conditions that could mitigate the impact on the Wetlands Protection District, with explanations. The Board also requests a draft of the most recent Conservation Commission meeting which include the discussion of this case. The Board also requests the presence of Town Counsel at the November 17th, 2010 rehearing.

Minutes

In a motion made/seconded (Waitkins/Laurenitis) the Board approves the minutes of December 7, 2009 through October 4, 2010.

Vote:

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

As there was no further business, Chair Waitkins made a motion to adjourn; Ms. Monahan seconded. All in favor, the meeting adjourned at 8:07pm.

Respectfully Submitted,

Nicole MacStay, Assistant to the Town Administrator