

**MINUTES**  
**ZONING BOARD OF ADJUSTMENT**  
**TOWN OF PETERBOROUGH**

Monday, November 17, 2010 – 7:00pm  
1 Grove Street, Peterborough, New Hampshire

**Present:** Matt Waitkins, Loretta Laurenitis, Alice Briggs, Jim Stewart, Sharon Monahon, Maude Salinger, Tricia Cravedi

**Also Present:** Tom Weeks, 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-A Scott L. MacKenzie:** Request for Variances 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.

Mr. Little said that he submitted a plan of the septic system as it was actually constructed earlier in the day. He then said that the applicant is returning to the Board with two proposals, the first to move the building fifteen feet forward so that it would sit on the existing well; the building would be further from the property line, but would still intrude into the wetlands setback. The second proposal is to turn the building 90 degrees, put it against the edge of the septic system; a smaller portion of the building would be in the wetlands setback. He said that either proposal is acceptable to Mr. MacKenzie, however he feels that the first option would create less of a disturbance than the second option which would require the removal of a clump of trees.

Ms. Briggs asked if this meant that the applicant is asking the Board to disregard the prior proposal. Mr. Little said that he is. He went on to say that each proposal has about the same impact. The existing well that would be covered is being abandoned. He and the applicant have reviewed the comments of the Conservation Commission, and they acknowledge that restoration must be done in the area that was previously disturbed.

There was discussion about removing the shed. Mr. MacKenzie said that he did not want to remove the shed because that is where the heating fuel for his home is stored. There was then further discussion about other locations for the structure on the property, and the various constraints of the property due to other present structures. The Board asked if Mr. MacKenzie would consider removing the ten-foot wide lean-to section of the structure, thereby allowing the structure to stand substantially outside of the wetlands protection district. Ms. Laurenitis asked the applicant how many vehicles he and his wife owned, and how many did they feel it was essential to cover. Ms. MacKenzie said that they have a thirty-foot long ramp truck, a business trailer, a plow truck, a box truck, as well as wood pellets and lawn equipment. Mr. MacKenzie added that recycled auto parts are also stored in drums within the structure, as well as junk parts which are associated with his business. Mr. Weeks said to clarify his testimony that some of the auto parts stored on the property are used for the business, which is not a permitted use. Mr. Weeks told Mr. MacKenzie that he cannot store parts in the structure, and that he can only drive to and from this property without a variance. Mr. MacKenzie said that he has rights under the ADA to operate his business from his home. Mr. Weeks

said that in order to work out of his home he must get approval from the Board. Mr. MacKenzie said that he is not working out of his home, he is working from home. Mr. Weeks said that Mr. MacKenzie cannot store parts at his home. Mr. Little said that he is certain that Mr. MacKenzie will be very careful to make sure that the spirit and intent is met. There was then an extended discussion about the dimensions and composition of the proposed driveway, and the dimensions of all structures on the lot, during which both the applicant and the Board made numerous references to the two plans submitted by the applicant.

Ms. Laurenitis asked if the structure's size could be modified; Mr. MacKenzie said that the fourth bay could be removed. Ms. Briggs noted that part of the request includes installing a geo textile fabric under the gravel driveway. Ms. Monahan said that gravel surfaces and pavement have the same level of impermeability, and that there is no infiltration. Ms. Briggs asked if the applicant accepted that testimony. Mr. Little said that he is not an engineer, but his understanding is that gravel does allow water to move through. Ms. Briggs asked how many square feet was subject to gravel; Mr. MacKenzie said approximately 3,600 square feet. There was an extended discussion regarding the dimensions of the buildings and driveway and distance from setbacks under both options.

Chair Waitkins asked anyone present would like to speak either in favor of or opposition to the application. Francie Von Mertens of the Conservation Commission said that she wished to speak neutrally. She then said that in 2006 the Conservation Commission recommended that this parcel be expanded to allow a septic system to replace one which had failed; the Select Board agreed, and ultimately the Town gave the property owner conservation land which tripled the lot's size. In hindsight the Conservation Commission and Select Board did not think to say that the Wetlands Protection District should remain intact in regards to the buffer function through deed restrictions. There was further discussion about the permeability of gravel. Ms. Laurenitis asked if Ms. Von Mertens could speak to the importance of maintaining the Wetlands Protection District with regards to these wetlands. Ms. Von Mertens explained that the entire wetlands complex is highly rated, however there is considerable forested wetland which does not rate as highly between this parcel and the highly rated wetland. Ms. Briggs asked if this could be considered a second order of wetlands; Ms. Von Mertens said that distinction was tricky to make.

Mr. Weeks noted that the proposed driveway is approximately two feet from the delineated wetlands, and asked if there was anything that could be done to prevent the driveway from impacting that wetland. Ms. Von Mertens said that she did not know of anything. The Board reviewed the options before them with Ms. Von Mertens and asked if any of the options were more acceptable than any of the others. Ms. Von Mertens said that any option which would reduce the amount of intrusion to its bare minimum would be the most acceptable.

The Board then reviewed the parking facilities as they are currently, and as they are intended for continued use. The MacKenzies described parking places next to the shed and behind the garage in addition to the parking available in both the garage and structure in question which they need to accommodate the nine to eleven vehicles they own. Mr. Stewart expressed his concerns about the constraints of the property and the use it is being put to. Mr. MacKenzie said that he is trying to improve the appearance of the property, and said that he did not know that he was not allowed to control the drainage of water on his property, nor was he allowed to park vehicles on his property. He said that he never received a letter notifying him of the constraints. Ms. Briggs explained that every property owner in town is subject to these regulations.

At this time Ms. Salinger asked if the Board would officially incorporate all the previous testimony from the previous cases.

**Motion:**

Ms. Briggs made a motion to incorporate all testimony from Case 1159 and Case 1159-A; Ms. Laurenitis seconded.

**Vote:**

Matt Waitkins, Loretta Laurenitis, Alice Briggs, Jim Stewart and Sharon Monahon voted in favor of the motion; the motion carried.

After some discussion regarding the options before the Board, the two possible sizes of garage and the uncertain location of the parking facilities being requested, Chair Waitkins asked the applicant to draw a final plan while the Board adjourned to confer with counsel.

**Motion:**

Ms. Briggs made a motion to adjourn; Ms. Laurenitis seconded.

**Vote:**

Matt Waitkins, Loretta Laurenitis, Alice Briggs, Jim Stewart and Sharon Monahon voted in favor of the motion; the meeting adjourned at 8:45.

**Motion:**

Ms. Briggs made a motion to reopen the hearing; Ms. Laurenitis seconded.

**Vote:**

Matt Waitkins, Loretta Laurenitis, Alice Briggs, Jim Stewart and Sharon Monahon voted in favor of the motion; the hearing was reconvened at 8:59pm.

Attorney Little presented the configuration preferred by the applicant; the driveway would be forty-six feet deep and either thirty or forty feet wide depending on the width of the structure the Board approves. The driveway would extend to the corner of the existing garage. The building would be either 30'x46' or 40'x46'. The Board decided that the best course would be to adjourn the meeting and ask the applicant to provide clearer plans with both options. The Board asked that counsel also be present at the at the continued hearing.

**Motion:**

Ms. Briggs made a motion to adjourn the hearing to allow the applicant to produce the plan he has described, and to continue it until November 22, 2010 at 6:30pm; Ms. Laurenitis seconded.

**Vote:**

Matt Waitkins, Loretta Laurenitis, Alice Briggs, Jim Stewart and Sharon Monahon voted in favor of the motion; the motion carried.

As there was no further business, the meeting adjourned at 9:07pm.

Respectfully Submitted,

Nicole MacStay, Assistant to the Town Administrator