

MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, December 3, 2018 – 7:00 pm
1 Grove Street, Peterborough, New Hampshire

Board Present: Dario Carrara, Seth Chatfield, Loretta Laurenitis, Peter LaRoche and Peggy Leedberg

Staff Present: Laura Norton, Office of Community Development and Tim Herlihy, Code Enforcement Officer.

For the Record:

Code Officer Herlihy has reported per the Zoning Board Handbook: “RSA 673:7 stipulates that appointed or elected planning board members in towns may also serve on other municipal board or commission, provided that such multiple membership does not result in two planning board members serving on the conservation commission, local governing body or a land use board as defined by RSA 672:7.” He noted he had looked on our Boards and Committees list and Matt Waitkins is no longer a member of the Planning Board.

Chair Carrara called the meeting to order at 7:00 p.m. “This the regularly scheduled meeting of the Zoning Board of Adjustment” he said as he welcomed the audience and introduced the Members and Staff.

Chair Carrara read the only case for the night:

Case No. 1250 Andrew Bell requests a Variance to build a new garage in place of an existing driveway located within the front and side setbacks as regulated by the zoning ordinance in Article II, Section 245-6 B. 2. The property is located at 3 MacDowell Road, Parcel No. U024-048-000, in the Family District.

Andrew Bell introduced himself and noted most of his presentation had been provided with his application (which is delivered in the form of case packets to the members prior to the meeting). He told the Members he currently has a single car garage that is in disrepair, abuts his house in a strange way and with rain and snow, results in water problems. “I would like to replace it with a two-car garage” he

said. Mr. Bell pointed out the area he planned to build the structure. “This area is already paved, we are already parking on it so the easiest thing to do is to put it right here. Essentially, we are just covering where we park now, that is it” he said.

When asked Mr. Bell noted he would demolish the current single-car garage and added “and the hardship is that there is no other reasonable location on the property to put a two-car garage that wouldn’t be in the setback.”

Ms. Laurenitis asked if a two-car garage that was not connected the house was an option with Mr. Bell noting any other location encroached the setbacks and inhibited his snow storage. “I would still have to be here for a Variance” he said as he reiterated “the area of least disturbance is where we are parking now.” Ms. Laurenitis asked about the front setback in the Family District. It was noted the setback was 30 feet for the front setback and 25 feet for the rear and side setbacks. A discussion about the setbacks in the neighborhood followed with Mr. Bell noting “this is not in any way atypical. Many, many houses in the Family District have two-car garages closer to the front and side setbacks.” He went on to say “you approved a two-car garage for my neighbor across the street less than a year ago (a Variance for a side setback encroachment).

Mr. Chatfield noted he knew the neighborhood well (he lives there). “I am very familiar” he said adding “my home is five feet from the edge of the road. It was built in 1940, before zoning.” When asked when his house was built Mr. Bell replied “1945” (also before zoning).

Chair Carrara noted while the two graphics shown to the Members were not exact footprints of the lot “they are reasonably close” adding “my concern would be making sure the garage is on Mr. Bell’s property and not in the Town’s Right-of-Way.” Ms. Leedberg agreed as Mr. Bell reiterated the least disruptive location for the garage was where they were currently parking but he was willing to push it back a bit from the road if the Board granted him relief.

With no other questions from the Board Chair Carrara opened the hearing to the public.

Ron McIntyre introduced himself as an abutter “I am in favor and have no strong objection” he said adding “but for the sake of clarity I would like to know if you are planning any excavation.” Mr. Bell noted the work would involve a demolition of the current garage and some excavation would be necessary “but there would be no significant disturbance.”

Chair Carrara asked about slab or a 4-foot frost wall with Mr. Bell noting he had not secured a contractor yet and those plans had not been determined.

Sandra Bibane introduced herself as an abutter and asked about the current setbacks in the District. Those dimension requirements were reviewed once again (30 feet in the front and 25 feet to the side and rear) with Chair Carrara noting the request was for a reduction of the front setback to 10 feet and the side setback to 5 feet. "This is a pretty substantial request for relief" he said.

Paula Sennett introduced herself and asked about the Traditional Neighborhood Overlay Zone II (TNOZ II). "Do the Overlay setbacks (less than the Family District) get thrown out the window?" she asked. A brief discussion about the history of the overlay zone followed. Chair Carrara noted the intent of the TNOZ II was for new development. Mr. Herlihy noted the overlay was intended "to allow higher density infilling of lots and additional residential housing in close proximity to the currently developed areas of Town." "Additional housing" he said. Acknowledging the inconsistency Chair Carrara noted "it needs to be fixed, be it a new house on an empty lot or an add-on, if it is in the TNOZ II the reduced setbacks should apply. It is something that needs to be changed."

Ms. Bibane told the Board she was not against the project but noted her concern about the trees along the property line. "They are a wonderful screening and I hope they will be protected during construction" she said. Mr. Bell noted the trees would remain intact. "There are some branches that extend over my property that may need to be trimmed but no cutting" he said. Mr. Herlihy confirmed it was "the property line to the sky" on the ownership of trees and their extending branches.

Chair Carrara confirmed "so there is no plan to cut any trees." Mr. Bell replied "correct" adding while he may have to trim some branches, "I see no reason to fell any trees."

Mr. McIntyre noted a maple tree on his land that is compromised and said, "I don't want it falling on a new garage." He then requested he have the tree removed. Mr. Bell replied, "that would be fine." Chair Carrara interjected he appreciated the good will on both sides. Mr. McIntyre closed by saying "I support this, I am in agreement, enough said."

Ms. Laurenitis asked if a 5-foot setback was enough with Mr. Bell reiterating "moving it back a bit further would be fine." Ms. Laurenitis also confirmed Mr. McIntyre was the closest and most affected abutter (he is).

Chair Carrara reviewed the deliberation statement where the hearing is closed to any additional public or applicant input but the Board retains the right to ask for additional information if deemed necessary.

Deliberation:

“We’ll start with a straw poll” said Chair Carrara:

Mr. LaRoche began by stating “I see no issues other than it is close to the street and town property, another 5 feet back may be easier for him” he said.

Ms. Leedberg agreed, noting her concern for the proximity to the street and the town Right-of-Way.

Mr. Chatfield reiterated the character of the neighborhood with many houses in close proximity to the street. “I would like to see it pushed back a bit” he said adding “the only thing that would steer me toward a “no” is if the immediate abutters had a problem, but they are OK with it.”

Ms. Laurenitis also noted her concern for the proximity to the street and agreed with the other members that the garage be moved back.

Chair Carrara concluded that he was also in favor. He noted the lot was a pre-existing non-conforming lot adding “it has been a non-conforming lot for over 50 years and there is not a lot of room on it.”

A brief discussion on the current setbacks, the sidewalk and the town Right-of-Way followed. Ms. Leedberg again noted her concern to stay out of the town Right-of-Way during or after construction. Mr. Chatfield asked her what, specifically was her concern with the Right-of-Way to which Ms. Leedberg replied, “if they want to widen the road or road improvements in general.” Mr. Chatfield relied “any changes to the road in that area would be a massive undertaking.” Chair Carrara added “the focus is that you cannot build in the Right-of-Way anyway.” He then suggested the applicant work with the Code Officer to determine the location of the Right-of-Way “and make sure you are back from that.” Chair Carrara went on to note “this is a property where the house was already there when zoning came along in the 1970s. It is in a district (Family) where the minimum lot size is about an acre (and this property is about a third of an acre) and that was never fixed by the town. There are no “scaled back” setbacks for these houses.”

Chair Carrara then led the Members through the five Variance Criteria:

The Variance is not contrary to the public interest: The Members agreed the proposed structure is in keeping with the existing neighborhood's construction and lot placement and would not threaten public health and safety.

The spirit of the ordinance is observed: The Members agreed the lot has been a non-conforming lot for the last 50 years and there was not a lot of room to do anything without a Variance.

Substantial justice will be done: Again, the lot is pre-existing and non-conforming, and the requested structure is in keeping with the existing property standards of the neighborhood so there is no detriment in building it.

Surrounding properties would not be diminished: The structure would likely increase the property value and would not be visually obstructive.

Denial of the Variance would result in unnecessary hardship: Because the lot is very small and provides little to no alternative locations for a structure that needs to be replaced. Garages are generally considered reasonable and the current setbacks of the District take up half the lot.

Special Conditions: The property is smaller than most of the other lots in the neighborhood and provides little to no alternative location for a structure that is in disrepair and need to be replaced. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because garages are considered reasonable and the proposed structure is in keeping with that of other properties in the neighborhood.

In an effort to move toward an approval the Members had a brief discussion about the front setback from the sidewalk. Mr. Chatfield suggested 10 feet from the sidewalk with Chair Carrara suggesting a 15-foot setback. Mr. Herlihy interjected "how about 5 feet from the *property line*, not from the sidewalk." Ms. Laurenitis asked how that would be determined with Mr. Herlihy replying "surveyor." Ms. Laurenitis asked, "is that a cost to the applicant?" Mr. Herlihy replied "yes."

Chair Carrara suggested locating the boundary line pipes or pins would be sufficient. "It is not overly complicated, you just have to stay out of the town Right-of-way" he said. Mr. Bell interjected "I just learned my property line does not extend to the sidewalk."

A motion was made/seconded (LaRoche/Leedberg) to approve a Variance to build a new garage in place of an existing driveway located within the front and side setbacks of the Family Zoning District. A 5-foot side setback is granted with the front setback of the structure to be a minimum of 15-feet from the sidewalk and not in the town Right-of-Way with all in favor.

Minutes:

September 5, 2018: A motion was made/seconded (LaRoche/Leedberg) to approve the Minutes of September 5, 2018 as written with all in favor. Ms. Laurenitis noted she did not feel the Board had considered the Variance criteria individually when making their decision. A brief discussion about procedure followed.

The ZBA meeting scheduled for October 1, 2018 was cancelled.

November 5, 2018: Ms. Laurenitis also noted her concern with the following paragraph:

“He (Attorney Ratigan) went on to note there have been very few appeals to the Board. “That is a compliment” he said adding “following your own procedure and having it *work* is fine.” Ms. Leedberg interjected “so we can discuss and deliberate each criterion individually and then vote in toto. Mr. Herlihy added “and the Board can disagree with one particular criterion and still vote yes in the end.”

A discussion about the *majority* vote (if the majority of the member consensus is yes, the individual criteria is met. All five criteria must be met for a Variance approval) followed. It was noted the consideration of the criteria by each member would be duly reflected in the Minutes.

Chair Carrara suggested the Members focus on the Minutes at hand and place a review of their *Rules and Procedures* document on an upcoming agenda.

A motion was made/seconded (LaRoche/Chatfield) to approve the Minutes of the training session prepared by Town Attorney John Ratigan on November 5, 2018 as written with all in favor. There was brief discussion as to whether or not the training session constituted a meeting and whether or not they were available to the public. (This meeting/training was publicly noticed). Zoning Administrator Tim Herlihy noted he would follow up with Town Counsel.

In conclusion it was noted there was also some confusion with the Special Exceptions criteria. Chair Carrara noted “we just cannot avoid the criteria by saying it does not apply. We have to weigh in on every single criterion and not “not applicable” we must address each one individually or we will not be following procedure.”

In closing Ms. Leedberg announced she had attended the New Hampshire Municipal Association Annual Conference in Manchester and told the Members “I got a lot of great information and I would love to share it with you.” She went on to say “the most important thing at the conference was a session on the workforce housing challenge. “What this means in New Hampshire is the most important thing” she said. She also noted she had participated in a session on investigating Junkyard complaints.

The meeting adjourned at 8:15 p.m.

Respectfully submitted,

Laura Norton

Administrative Assistant

NOTICE OF DECISION

Case Number 1250

December 3, 2018

You are hereby notified that the request of Andrew Bell, for a **Variance** to Chapter 245, Article II, Section 6 B. 2. of the Zoning Ordinance, reduce front side and rear setbacks to build a new garage in place of an existing driveway, on property located at 3 MacDowell Road, Parcel No. U024-048-000, in the Family District, is hereby **GRANTED**.

In granting this variance, the Board imposes the following conditions:

- Side setback is approved with a minimum of 5' from property line.
- Front setback is approved with a minimum of 15' from sidewalk being sure to not be in the town Right-of-way.

Signed,

Dario Carrara, Chair