

MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, March 11, 2013 – 7:00 pm
1 Grove Street, Peterborough, New Hampshire

DELIBERATIVE SESSION

Board Present: Jim Stewart, Bob Lambert, Loretta Laurenitis, and David Sobe

Staff Present: Laura Norton, Office of Community Development and Dario Carrara, Code Enforcement Officer.

Chair Stewart called the meeting to order at 5:30 p.m. The members met at the Town House after their site visit to 77 Cheney Avenue, the home of Mona A. Brooks and Michael Teitsch.

Ms. Brooks raised her hand and asked “since this is our last chance, is it possible to request a meeting with the parties involved? Is that within your realm?” She also asked if the three vertical posts in the front could be cut down to a three or four foot height to maintain the wood “like a corral if you will” if the decision went against them. She told the members it would help support the wood so it was not falling all over the place.

Chair Stewart explained the process noting “the applicant is here to receive a Variance and zoning affects everyone the same.” He went on to review the criteria for a Variance including undue burden, hardship and relief. “All criteria must be met” he said adding “if one criteria fails they all fail.” He concluded by noting “we have to consider the effects on the neighborhood and the abutters have submitted letters that we have to weigh as well.”

Mr. Fernald asked for confirmation that the Board had also seen a letter from Realtor Marc Tieger. Chair Stewart confirmed they had. Mr. Fernald referred to the criteria for a Variance noting “I think we should go through the 5 items because I think the Board was confused before.” He stood and said “there are four streets and 79 homes involved here, not one of them has a woodshed sitting in the front corner of the lot in violation of the setback.” He went on to note that it would not be in the public’s best interest to allow the woodshed. “That is why we have setbacks” he said adding “to keep the beauty of the area and allow people to enjoy their homes without things that don’t look nice sitting on a neighbor’s lawn.” He went on to note that substantial justice would not be done “as they both testified they have another heating system, in fact they have two.” He noted the oil furnace and the gas heater the applicants described. “They may *prefer* to burn wood but their problem is they don’t want to move the wood from the front to the back of their house. It may be an inconvenience but that is *not* a hardship. They can still occupy their house and have the right to do what they want as long as it complies with zoning. And bear in mind if they had a garage they could store the wood there but they chose to convert it to a studio where she does her artistic work.”

Mr. Fernald noted letters from three direct abutters that objected to the woodshed and said “and like I have said before Mr. Chairman, if you allow this how are you going to prevent someone else in the neighborhood from doing it too?” He gave an example of the potential of another house installing a heating system using sawdust. He said so they build a shed 15 by 8 feet and fill it with sawdust that can be piped to the heating system. “They would need a Variance for that” he said and looking at the Board asked “would you consider that a reasonable request? I don’t think so.”

Mr. Fernald went on to ask “why should they be allowed to be the only people in a neighborhood of 78 other homes to do this?” He noted “with a Variance, it becomes a permanent structure. Is that protecting the property owners up there? I don’t understand why this would be allowed. I think it is a self-incurred hardship they put on themselves and they are trying to get you people to allow it. They have not satisfied the conditions of a Variance, hardship especially.”

Mr. Fernald concluded with a review of zoning, what was allowed and what was not. He reiterated the hardship criteria and his position that “there is no hardship here, it is their wish they be allowed to store the wood there. It is an inconvenience to move it where it is allowed” adding “it is your job to uphold the ordinance. If you allow this what will prevent the next person?” Mr. Fernald noted the letter from Mark Tieger, “an experienced realtor, appraiser and Town Moderator in Jaffrey, N.H.”

Mr. Teitsch stood and introduced himself. “I am not a lawyer and do not profess to be one,” he said adding “but I do take exception to what has been said.” He went on to note the hardship of the woodshed being in any other location on his lot. “I am not rich, and we burn wood to make it through the winter financially.” Mr. Teitsch said “the Tieger letter has all the ingredients to make it look correct but I have plans at home to make it a desirable looking structure and if I am allowed to I will make it look nice and match the decor of the neighborhood.” Mr. Teitsch concluded with “we have tried hard to be good neighbors and will continue to do so. I hope this situation is resolved in a peaceful way.” As Chair Stewart replied “thank you” he looked up and down the table and asked “are we ready for deliberation?”

Ms. Brooks interjected “one last thing,” adding, “forgive me; I am on the edge of breaking down. No one should be scrutinized like this. I stood in my driveway and kept my mouth shut (referring to the site visit) but this is not right, I feel like we are at the Nuremberg Trials. No one has the right to tell us to rely on oil or that I do not need a studio.” She reviewed the sloping of the land to the back of the lot, and reiterated “if we are given the opportunity to finish it the intent is that you would not even see it.”

Ms. Brooks continued by noting “I don’t care as much about the shed as its effect on human relations, it is wrong, it is *not* right.” She went on to say, “I feel like moving out of Peterborough.” As Ms. Brooks wiped tears from her face she said, “forgive me for my tears, this is not right. On behalf of myself right now, this kind of thing is wrong, wrong for all of us. Do what you have to do.” She looked to Mr. Teitsch and said, “Mike, I don’t want to abandon you but I cannot stay, it is wrong, I can’t stay.” With that Ms. Brooks left the room.

Chair Stewart noted he would entertain a motion to go into deliberation. A motion was made/seconded (Laurenitis/Lambert) with all in favor.

Chair Stewart read a statement regarding the deliberative session that defined the hearing as closed with no additional testimony from the applicant or the public being heard. "But the Board may request additional information at its discretion," he said.

Deliberation

Mr. Lambert began by asking "if the Variance is not approved and the structure has to come down can they still keep their wood in the same place?" Chair Stewart noted the applicants could still stack their wood where it is currently located. Code Officer Carrara agreed noting "it would be a woodpile with a tarp on it." Mr. Lambert noted if the wood could still be stacked in the same place (just without a structure around it) "I don't think that is a hardship."

Chair Stewart replied, "there is something about this property, it is sloping and is very restricted." He went on to note the existing playhouse and chicken coop in the back. "It may be different if they did not have these things, I cannot ignore that."

Ms. Laurenitis interjected, "the issue for me is that they do have other structures on the lot giving them a choice on how to use the lot." She asked "can the wood be stored in the studio or in the playhouse?" She went on to say "I just think there are other options to explore." Ms. Laurenitis then noted several court cases including Bacon V. Town of Enfield noting "all requests must be reviewed very carefully." Chair Stewart interjected "all you would have to do in that case is replace the word *heater* with the word *woodshed*."

The members discussed the criteria, particularly whether or not the applicants met the hardship criteria. When a straw poll was taken Ms. Laurenitis noted "they are not meeting the criteria, there are other small lots on the street so there is nothing to distinguish them from other homes in the area. She also noted there were other potential areas to store the wood on the lot. Mr. Sobe noted "I thought this through at great length "and I cannot accept the hardship issue. I think they have alternatives." Mr. Lambert agreed and suggested the wood could be stacked on the side of the studio. He also noted the alternative options and locations to stack the wood.

The definition of a building was reviewed with one member noting "so technically a mailbox or a dog house can be considered a structure." Mr. Carrara cautioned the members about referring to a doghouse as a structure "or we will be having a lot more meetings" he said.

Chair Stewart sat back and said "for the record, the real hardship for *me* is the fact that two neighbors cannot work something out and now we have to make a decision." He looked to Ms. Laurenitis with an anticipation of a motion and said "Loretta?"

Ms. Laurenitis made a motion that the request for Variance be denied. "I understand the desire and the convenience, but that in itself is not a hardship."

Noting clarification, Mr. Carrara asked “you are not providing any relief at all? You are saying no and denying the case?” He went on to briefly explain the board’s ability to grant partial relief.” It is in your scope” he said. Ms. Laurenitis replied “in this particular case I am not for partial relief.”

The motion was seconded by Mr. Lambert and the members compiled their decision to deny the request with all in favor.

The Deliberative Session ended at 6:35 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant

Approved April 1, 2013

ZONING BOARD OF ADJUSTMENT

NOTICE OF DECISION

Case Number 1189

March 11, 2013

You are hereby notified that the request of Mona A. Brooks and Michael Teitsch, for a **Variance** to Article II, Section 245-6 B (2) of the Zoning Ordinance, for a shed having a front building setback of twelve (12) feet and a side building setback of five (5) feet, on property located at 77 Cheney Avenue, parcel number U002-043-000, in the Family District, is hereby **DENIED**.

In reaching this decision, the Board finds that:

1. The variance will be contrary to the public interest because:
The front and side setbacks are established to maintain the character of the neighborhood.
2. The spirit of the ordinance is not observed because:
The purpose of setbacks is to maintain a buffer between properties and limit congestion and over development of properties. The applicants already have a shed/playhouse and chicken coop on their property in addition to the main house.
3. Substantial justice is done because:
Placement of the structure within the setback would impact the view of the other neighbors and detract from the open feel of the neighborhood. In addition, the applicants have other possibilities for the placement and protection of wood on their property.
4. The Board finds that the proposed structure's placement would affect the aesthetic appeal of the neighborhood but could not determine if the property values would be diminished.
5. Unnecessary hardship has not been established.
 - a. Special conditions listed, including slopes, a non-conforming lot, the large pine tree, and the existing driveway and access, do not distinguish this property from a number of other properties in the neighborhood, thus not meeting the criteria for hardship.
 - b. The Board finds that this property can be reasonably used in strict conformance, thus making a variance unnecessary to enable reasonable use of the property.

Signed,

James Stewart, Chair

Note: An application for rehearing on any question of the above determination may be taken within 30 days of said determination by any party to the action or person directly affected thereby according to the provisions of New Hampshire Revised Statutes Annotated, Chapter 677. Decisions for Variances and Special Exceptions shall become null and void in two years if substantial compliance with said decision or substantial completion of the improvements allowed by said decision has not been undertaken after the date of approval. If this decision becomes null and void, the owner must reapply to the Board of Adjustment for a Variance or Special Exception as provided for in §245-42 of the Peterborough Zoning Ordinance.