

ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, December 12, 2016 – 4:00 p.m.
1 Grove Street, Peterborough, New Hampshire

Board Present: Jim Stewart, Sharon Monahan, Loretta Laurenitis, Peggy Leedberg and Seth Chatfield

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

Chair Stewart called the meeting to order at 4:00 p.m. “Good afternoon” he said “this is the continuation of Case No. 1229 for Louise and George Gardos for a Variance to allow more than 50% of the wetland, excluding the wetland buffer, to be used to satisfy the minimum lot size requirement when creating a new lot, as regulated by Chapter 245, Article III, Section 15, Paragraph I, 1 of the zoning ordinance. The property is located at 121 Old Town Farm Road, Parcel No. R004-006-200, in the Rural District.

Chair Stewart looked up and said “we left it last waiting for information from the Conservation Commission (ConCom)” adding “this hearing is still open and public.” He asked staff if they had received any additional information regarding the case (they had not) as well as if the members had had a chance to review the ConCom recommendation (they had).

Chair Stewart asked Mr. Ingram if he’d had a chance to review the recommendation and if so did he agree or disagree with it. Mr. Ingram replied “the only thing we noted was the recommendation of restricting new construction on Lot R004-006-201 to the upland area where a house is currently located” adding “we are not proposing any construction but in the future if the owner were to put up a barn or a shed it would not be in the wetland buffer.” He then qualified the upland area as the northern part of the lot.

Mr. Chatfield interjected “it may not be so much about construction” as he noted the ConCom’s conclusion that the wetland appeared to fall into the wet meadow classification. “I am not a wetland specialist” he said adding “but this is their job” and noted his concern that the wetland may be more productive than they’d thought.

Code Officer Dario Carrara noted if the restriction was not in place the applicant would have to follow the underlying zoning in the district. Mr. Ingram pointed out several location where small structures could be constructed within the setbacks of the district.

Ms. Laurenitis asked “isn’t the upland area where the house is now?” Mr. Ingram replied no, it is the northern area where the wetlands are.” Mr. Chatfield interjected “that is not what this application is for” with Mr. Ingram adding “right, that is why we are speaking to the recommendation.”

Ms. Laurenitis asked for clarification that the intention was to keep the hayfield as it is without any plans to build anything. Mr. Ingram replied “right, but that is not to say my client would not want to put a shed there in five years.” Mr. Chatfield noted he read the ConCom recommendation with caution. “It doesn’t sound like the ConCom is greatly in favor of this as an acceptable lot” adding “and the wetlands are important to the ecosystem.” Chair Stewart reiterated “this is a unique lot, it has two houses on one lot” adding “and the five criteria had been met.” Ms. Leedberg asked about a formal recommendation from the ConCom (scheduled to meet December 15th.) Chair Stewart replied “they do but you can vote however you want. Just because they say something does not mean you have to agree with it.”

Deliberation:

Once again Chair Stewart read the request and looking at Mr. Ingram asked “anything to add?” Mr. Ingram replied “no” and Chair Stewart appointed Ms. Leedberg to sit.

Chair Stewart began with a straw poll. “This is a very unique piece of property” he said adding “and if there was a better way, *any* other way to subdivide it I would be willing to listen. It seems reasonable to divide it so it is a useable lot for an average family. I am not thrilled about restricting the upland, they would still have to follow all the wetland regulations but if that is what it takes to approve the Variance I am for it.”

Ms. Laurenitis told the members “I am in favor with the current condition regarding the wetlands.” She went on to say “the purpose was the hayfield remain a hayfield and the ConCom has stressed preserving the wetlands.”

Mr. Chatfield was also in favor with the caveat of any future construction being restricted to the upland area.

Ms. Leedberg noted “personally I think it could have been drawn (subdivided) differently” adding “but I am in favor.”

Chair Stewart concluded “so we are all in agreement.” He looked to Mr. Ingram and said “good job on writing up the Variance” and suggested they use the language Mr. Ingram presented in their notice of decision. After a brief discussion (concern for future of the wetlands and proper procedure for any other uses) the Board found the condition of any future construction on the lot be restricted to the upland area and within 150 feet of Old Town Farm Road. “That is reasonable” said Chair Stewart as he suggested they add substantial compliance to the plan presented and dated November 7, 2016, as a second condition.

A motion was made/seconded (Stewart/Hatfield) to approve the request for a Variance to allow more than 50% of the wetland, excluding the wetland buffer, to be used to satisfy the minimum lot size requirement when creating a new lot with all in favor.

The meeting adjourned at 4:25 p.m.

Respectfully submitted,

Laura Norton

Administrative Assistant

NOTICE OF DECISION

Case Number 1229

December 5, 2016

You are hereby notified that the request of Louise and George Gardos, for a **Variance** to allow more than 50% of the wetland, excluding the wetland buffer, to be used to satisfy the minimum lot size requirement when creating a new lot, as regulated by Chapter 245, Article III, Section 15, Paragraph I, 1 of the zoning ordinance, on property located at 121 Old Town Farm Road, parcel identification number R004-006-200, in the Rural District is hereby **GRANTED**.

In **granting** the variance, the Board finds that:

1. The variance **WILL NOT** be contrary to the public interest because:
The dimensional variances requested do not unduly, nor to a marked degree, violate the basic zoning objectives of the ordinance, nor will they alter the essential character of the neighborhood or threaten the health, safety or

general welfare of the public. In this case, the structures already exist and there is no aggrieved abutter who will be adversely affected by the slight upland area deficiencies which occur within the properties. Each resulting lot will have more than enough area to continue to be used independently relative to the current dwellings and their related infrastructure. Provisions for proper water supply and effluent disposal have been included in the lot design.

2. The spirit of the ordinance **IS** observed because:
Granting the variance would not violate the basic zoning objectives to protect an owner or abutter from the effects of the slightly reduced upland areas. It is extremely unlikely that the drafters of the zoning ordinance envisioned this particular subdivision scenario, but rather crafted the ordinance with 'vacant land' subdivisions in mind. Since these two dwellings and their related infrastructure have existed without issue to date, and the proposed plan accounts for future considerations, the spirit of the ordinance is observed.
3. Substantial justice **IS** done because:
Denial of the Applicant's variance would not be outweighed by any gain to the general public. The public would not have any general concern with the slightly reduced upland areas requested by the variance, and would not gain anything by the denial of the variance. The existing structures are consistent with the neighborhood's present use and purpose of the area. The granting of this variance will allow the properties to be subdivided in a way that continues to be consistent with their current uses and purposes. Denial of the variance would hamper the Applicant's ability to sell the properties due to its unique circumstances.
4. The values of surrounding properties **ARE NOT** diminished because:
The land uses and structures associated with the area variance request already exist and are consistent with the neighboring uses associated within the Rural Zone. The minor area variance is not going to result in any changes in use or appearance of the Applicant's property or the proposed lots; the surrounding abutting properties will experience no changes in the intensity of use, or in other factors that might threaten to affect or diminish property values.
5. Unnecessary hardship:
Literal enforcement of the provisions of the ordinance would result in an un-necessary hardship. The size, type and location of the existing structures, and the property's general use, relative to the proposed subdivision, reveal the property's special conditions which distinguish it from other properties in the area.
 - a. There is no fair and substantial relationship between the

general public purposes of the ordinance's area provisions, and the specific application of those provisions to the Applicant's property. Due to the unique circumstances of this application, variance relief can be granted without frustrating the purpose of the ordinance, and the full application of the ordinance to this particular property is not necessary to promote a valid public purpose. Further, because of the special conditions of the property, strict application of the ordinance provisions would not advance the purposes of the ordinance provisions in any fair and substantial way. The proposed uses of the property resulting from the granting of the variance will not change and are reasonable in light of the property's primary use for residential use on single family lots.

- b. The proposed use is a reasonable one given the special conditions of the property and its primary function for single family residential lots. The structures already exist, and the variance in upland area values will have no adverse effect on the owners of either: Lot R004-006-200 or Lot R004-006-201, the neighboring properties, or Peterborough's zoning goals generally. Granting the variance would result in a reasonable and efficient use of the property, as it will allow for the separation of the existing dwellings as contemplated in the overall zoning objectives of the town.

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

1. Any future construction on lot R004-006-201 shall be restricted to the upland area within 150' of Old Town Road.
2. Substantial compliance to plans submitted, dated November 7, 2016.

Signed,

Jim 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.