

Zoning Board of Appeals
November 17, 2009
Central Fire Station

Members Present: John Devereux; Robert Doucette; Sue Durkee and Lawrence Sawyer, Chair

Members Absent: Terri Linnell and Ed Wade

Staff Present: Elwin Thorpe, CEO and Sandy Fredricks, Secretary

Applicants Present: William Johnson

Public Present: Pat Troy

7:05 PM

Larry Sawyer calls the Meeting of the Zoning Board of Appeals to order.

Agenda:

Larry states there are three items on the agenda this evening, approval of Minutes and two variance requests.

Sue moves to approve the July 21, 2009 and September 15, 2009 Minutes as written.

John seconds.

Any discussion? None.

All in favor? 4 yes – 0 no

Larry states that the first item on the agenda is the application of Peter E. and Fay B. Campbell who have filed an application for a General Variance to permit 14' reduction in the front road setback requirement, to permit an 8' lake setback reduction and to permit a 21' sideline setback reduction to meet the existing side setback of the house in order to construct a 10' x 18' open deck across the front of the house known as 118 Acadia Road. The property is also known as Map 20, Lot 82 and is located in a Limited Residential Recreational District.

Larry continues, this application was tabled at the Board's September 15, 2009 meeting and the Board did not have a quorum to hold the meeting originally scheduled in October. The applicants are in Florida and have submitted a written request to the Board to table this matter until the June 2010 meeting.

Sue moves to grant the request to table this matter until June 2010.

Bob seconds.

Any discussion? None.

All in favor? 4 yes – 0 no

Chairman Sawyer reads the following statement for the record:

General Information for Applicant and the Audience

1. Please recognize the chair for all questions or information.
2. Please introduce yourself before speaking.
3. All applicants will receive a written Notice of Decision within 7 days of this meeting. Applicant has 45 days to appeal to Superior Court.
4. Applicant may stay for the Decision but cannot in any way participate in this part of the meeting.
5. If the Decision is approved, the applicant will receive in the mail along with the Notice of Decision, a Certificate of Zoning Variance Approval. You have 90 days to have this Certificate recorded at the Registry of Deeds. If you do not meet the 90-day limit, the Decision is automatically void and you cannot appeal for one (1) year.
6. A permit secured by vote of the Zoning Board of Appeals under the provisions of this Ordinance shall expire if the work or change involved is not commenced within one (1) year of the date on which the appeal is granted, and if the work or change is not substantially completed within eighteen (18) months of the date on which such appeal is granted.

Larry states the Board will now begin the Evidentiary Portion of the meeting.

EVIDENTIARY

William P. Johnson has filed an application for a General Variance to permit finishing a storage area above a garage to heated living space, specifically a dining room. The room is approximately 24' x 24' 3". The property is known as 102 Lakewood Road, Map 2, Lot 1-A14 and is located in a Residential District.

Larry states, for background purposes he would like to put it on the record that in 2005 Mr. Johnson filed a Dimensional Variance appeal to construct the two-car garage that we are now addressing as far as putting living space above. At the time the original variance, we did grant approval of a 15' side setback with the understanding and condition that the storage over the garage could never be utilized as living space.

Larry continues that the current application was submitted as a General Variance and he believes it, too, should be a Dimensional Variance

request as it is actually an amendment to a previously granted Dimensional Variance. The Board discusses this issue and with Mr. Johnson's permission, the Board amends the application to be a Dimensional Variance request.

Larry moves to reflect the change of the current variance request from a General Variance to an amendment to a Dimensional Variance in the record.

John seconds.

Any discussion? None.

All in favor? 3 yes – 0 no – 1 abstain (Bob)

Bob states he is confused as to what we are amending. Larry explains on the application it should be a dimensional variance and was submitted as a general variance request so we are amending the type of variance requested.

After the above explanation, the Board again votes on the above motion and it is unanimous to amend the application to a Dimensional Variance to amend a previously granted Dimensional Variance.

Larry states we have a new application with a sketch of the new existing garage, a footprint of the lot and a floor plan for the second floor area. We also have the subdivision plan and the property tax map.

Larry asks Mr. Johnson what makes him feel that the storage above the garage can be utilized as living space given that the Board decided in 2005 that there is not to be living space at any time.

Bill states that in 2005 his wife had wanted a dining room with the garage and at that time the Town was going through a Comprehensive Plan. Larry states that we were going through Zoning Ordinance changes at the time, not the Comp Plan. Bill continues that he wasn't going to build the dining room in 2005 but needed to build the garage. In the meantime the zoning changes didn't pass that would have allowed construction of the dining room over the garage and that is why we are here tonight as they now wish to move forward with construction of the dining room.

Larry asks if their situation has changed since 2005. Bill states they have as far as family size and he feels it is detrimental to the resale value of the house to not have a dining room.

Larry asks if the Board members have any questions.

Bob stated he wants to be certain what the Board is bound by and if they have the authority to grant the requested variance.

Larry reads from Page 88 of the Zoning Ordinance:

“As used in this Ordinance, "dimensional standard" means and is limited to Ordinance provisions relating to lot area, lot coverage, frontage and setback requirements and "practical difficulty" means that strict application of the Ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner. A variance may be granted only by majority vote of those members present and voting, and may include such conditions and safeguards as are appropriate under this Ordinance.”

Larry states as he understands it, rather than find on the hardship we would be amending the previous variance. We already granted the dimensions in the earlier variance, we would be permitting a further use without changing the dimensions.

Bob states but what about the next paragraph which states:

“Except where specifically limited or prohibited, variances may be authorized only for maximum heights, minimum setbacks, maximum building coverage or impervious surface, minimum frontage, 15% expansion of nonconforming uses, and reconstruction of destroyed nonconforming buildings. Only the minimum variance which will alleviate the hardship shall be granted.”

Larry states it would expansion of a nonconforming use and asks Elwin if that is his understanding of it. Elwin states it is a conforming use. Larry states but it is non-conforming in that would not have conformed but for the Board having granted the 2005 variance. Elwin states he is not convinced we should be granting this new variance request.

Sue states we are setting precedence in going against the agreement and condition of no living space as has always been done. Larry states he

can't remember having ever gone back and changed the conditions of an approval.

Bob states he is still concerned as to whether or not the Board has the authority to grant this variance request. Larry stated he feels they had the authority originally in 2005; it may have changed the decision, but now they have to figure out if they have the authority to grant an amendment to an approved variance.

Pat states she wants to make it clear in the record it was not the Comp Plan but work on the Zoning Ordinance which was voted down in June. Further, Pat asks why the original restriction was placed on the variance; you set the condition of not to be used as living space. Bill states he believes it was because a lot of apartments were going over garages without proper paperwork.

Elwin states, that was a part of it, but the accessory apartments had to meet setback in all the discussions related to the Zoning Ordinance. He continues that we have set this same condition on many other garages which were granted variances. Further, now he is uncertain where the accessory apartments will fall. This is different as it isn't an apartment, it is only one room.

Pat asks if the Board has the authority to reverse itself. Larry states he is not sure and the Board may need input from the Town's legal counsel.

John asks how this meets the conditions of a hardship.

Pat brings up a point of order that the Board shouldn't discuss the application further until you get the legal input you discussed. Larry informs John this wouldn't fall into the hardship category as it is a dimensional request.

Bill asks that since they are going to the Dimensional variance with the wider open door, he is asking if it is truly a dimensional request as he has already gotten the dimensional variance and this is interior. Larry states that if they can amend the variance, he will have an easier case than a straight variance. He continues that the Board is just seeking legal opinion if we have the authority to do it. We will still be making the decision on the application.

Bill asks where it says they can't address it. Larry states there is nothing that says they can change it.

Larry moves to table the application to January 19, 1010 and requests the Town Manager request input from legal counsel if the Board has the authority to amend a previously granted variance.

Bob seconds.

Any discussion? None.

All in favor? 4 yes – 0 no

Pat states they need to be sure they are on solid legal ground as this can open a can of worms.

Larry moves to adjourn.

Bob seconds.

Any discussion? None.

All in favor? 4 yes – 0 no