

Zoning Board of Appeals  
March 21, 2011  
Casco Community Center

Members Present: Robert Doucette, Sue Durkee, Terri Linnell and Lawrence Sawyer, Chair

Members Absent: John Devereaux

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

Public Present: Jim Daigle, Kim Hartford, Debora Keef, Dianne Brazier and Ed Brazier

7:05 PM

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

Agenda:

Larry states we had three items on the agenda, two variance requests and an Administrative Appeal, however, the Administrative Appeal had not gotten all their documentation in to the Board to review and that matter has been postponed to the April meeting. The two variances remain on the agenda.

Chairman Sawyer states the following information the record:

1. Please recognize all statements through him.
2. Please introduce yourself before speaking.
3. Applicant will receive a written Decision within 7 days of this meeting and 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 approved, the applicant will receive a Certificate of Zoning Variance Approval with the Notice of Decision and has 90 days to record it 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.

Bob moves to approve the October 18, 2010 Minutes as written.

Larry seconds.

Any discussion? None.

All in favor? 4 yes – 0 no

## **EVIDENTIARY**

Larry states the first item on the agenda is an application by Daniel and Debora Keef for a Dimensional Variance to permit a 7' aside setback reduction on the east side of the property from its current 22' setback to a 15' setback. The purpose of the request is to permit an addition to the property to provide sufficient living space for the owners' primary residence in the back while they continue to operate their business in the front portion of the structure. The property is known as 324 Roosevelt Trail, Map 24, Lot 7 and is located in a Commercial District.

Larry states this is what he just referred to about expiration if not undertaken within the year time frame. The Board had granted a variance for this same property and same purpose last March and understands the applicants are, essentially, just asking for an extension of time for the project.

Larry states that the Board has seen this situation before and after checking with the Town's attorneys found they do have the authority to re-grant the variance to permit the extension for a year.

Debora Keef states they are only asking that the same variance be granted to allow them another year for the project. The banks would not give them a loan for sufficient funds to complete the entire project and their house on Cold Springs Road has not sold. She continues they have had some people look at the house recently and are certain it will sell this spring or summer, at which time they can do the addition.

Larry asks if anyone has anything further to add. They do not and Larry moves to the next application.

Larry reads the following into the record: Kim Hartford and James Daigle have filed an application for a General Variance to permit construction of an addition to the garage below and upper level kitchen. The property is known as 128 Acadia Road, Map 20, Lot 82 and is located in a Limited Residential Recreational District.

Larry states the Board has received the following items in connection with this application: Initial application, plan prepared by Survey, Inc., a supplemental plan received March 14, 2011 with further information, copy of letter to abutters outlining plans, letter from Mike Morse of DEP commenting because the property is in shoreland.

Larry asks Kim and James if they have anything further to share with the Board.

James states they have pictures that show the incline of the driveway and space to allow such addition. He continues by showing the Board the building that will be removed if this application is granted.

Bob asks if the Board has the authority to grant a variance of this nature. He continues that the Board is limited to 15% on a non-conforming structure. Clearly this structure is non-conforming and this request is for more than 15%.

Larry states he hasn't seen a variance like this in his years on the Board and he is not sure where the Board stands on this. He asks the applicants if they have spoken with an attorney regarding this application. Further, he states he understands they have an Easement for the driveway, but not certain they can permit the project.

James states the existing garage is in terrible shape; the roof and ceiling are gone and the building needs to come down. He continues that he spoke with the neighbor and he had no problem with it to allow driving straight in. He further states it is a 16' garage.

Larry states that on the survey it indicates at present 27% of the lot is covered by buildings or impervious driveway.

James states the existing building out back is coming down so that opens up some of it.

Larry asks how it impacts the property next door for impervious percentages. Elwin states he is not sure it will impact the neighbor as the driveway is already impervious surface and 433 s.f. will be removed when they remove the old garage.

Terri asks where the house next door is on this drawing. She is informed it is not shown on the drawing. Terri asks how many feet will the new addition be from the neighbor's house as it will change their sideline setbacks.

James states there is a stone wall that was there when we bought and there is a tree line and pins that appeared this would be the property line and the neighbor assumed that was the property line as well.

Elwin states he doesn't know if the Board has the authority to grant this either and he talked with David Morton about it, but David didn't want to bring the attorney in unless the Board requested it. At the same time, if this is granted, then you need to include information about further reducing the non-conformance of the neighbor's lot.

Larry states we can't tell what the percentage of square footage of lot coverage would be. He continues, the variances being requested are road setback, side setback, non-conforming lot of the neighbors.

Bob states doing just quick calculations it appears that even removing the old garage they are still over by 700 s.f. The allowable square footage is 1260. Larry states the total square footage is 6302; so  $1934 \div 6302 = 31\%$  and although the survey says 27% this is even more.

Larry asks if they are within 100' of the water with this project. Board members state that if you look at the drawing, it is.

Larry states there are 5 or 6 different variances and we have to find out if we can even do it.

Larry asks the applicants if they thought about putting the garage behind the house. James states they did, but the septic is there. Elwin and the applicant discuss the septic location.

Bob states he feels we need to find out whether the Board can even do this.

Larry states that the Board just doesn't have enough information to act.

James states it would help the erosion problem.

Larry states we can ask the Town's attorney to see if we have authority to do it. The major problem is if the Board can even grant these variances. He continues that while the neighbor was happy to give an Easement, they may not be able to do so. Under the Zoning Ordinance, a property owner cannot make a non-conforming lot more non-conforming.

Larry continues, stating that the Board will leave the decision to the applicants. The Board can come back and look at this matter as presented or they can revise their application for the Board to review.

Larry states the applicants may wish to retain an attorney to review their request as the Board can only do what they are given the authority to do under the Zoning Ordinance.

James states that the Board is more concerned with the neighbor's property while their property is in more violation of the Zoning Ordinance as it is than if they do the project presented. Larry and Elwin explain to the applicants that the existing structure and setbacks are grandfathered because they were put in place before a Zoning Ordinance existed.

Elwin states he is concerned about the permanent structure on the Easement as it makes the other lot even more non-conforming.

Elwin explains that the costs for the Town's attorney to review the matter and provide input will be borne by the applicants. The applicants may, of course, review this matter with their own attorney which would also be at their expense.

Larry again states that there are provisions in the Zoning Ordinance that he is unsure can allow them to grant the requests of the applicant and while it may be the same amount of impervious surfaces, the issue of it being a permanent structure presents other problems.

Larry states he does believe the Board needs some legal advice on this; the Board can only grant variances on the four criteria that the State and the Town Require. You have to show a hardship.

Larry states he would be more receptive if they put something behind the house, but he cannot tell them how to utilize their lot, nor do we want to say we are going to grant a variance if you do amend the application to put it behind the house.

James asks if they can remove gravel with a variance as the driveway is impassible and he can not maintain it in the winter. It is too steep, the cars slid out of the driveway two times this winter.

Larry states removal of gravel would be a CEO question. Elwin states he doesn't see why they couldn't make the driveway flat.

James states it would still be impervious. Larry states, yes, it would, but it would be located on your own property.

Applicants ask the Board for a list of questions that need answering:

1. Building on someone else's property
2. Building across the property line
3. Percentage of lot coverage
4. Building within the 100' line
5. Need to calculate approximately how much of the building is below the 100' mark; it can not be more than 30% - only calculation is the living area above the unfinished garage
6. Variances for side and road setbacks

Larry and Elwin state that in all their years on the Board, neither has ever seen a request of this type.

Larry states that he sees easements granted in his real estate practice when someone has erroneously placed a shed and a portion is on the neighboring property, but he has never seen allowing new structures placed on an easement.

James and Kim state they will think it over as to how they want to proceed.

Larry states the Board will continue this matter until the applicants get back to us.

Larry closes the Evidentiary portion of the meeting and opens the Decision portion.

### **DECISION**

Larry asks the Board how they wish to proceed on the Keef application.

Bob moves to grant the application as previously granted and resubmitted.  
Sue seconds.

Any discussion? None.

All in favor? 4 yes – 0 no

Larry moves to adjourn.

Sue seconds.

Any discussion? None.

All in favor? 4 yes – 0 no