

Zoning Board of Appeals
April 23rd, 2018
Casco Community Center

Members Present: Geof Hancock, Steve Linne, Terri Linnell,
Trevor Tidd and Pat Troy
Members Absent: None
Staff Present: Alex Sirois, CEO & Sandy Fredricks, ZBA
Administrative Assistant
Public Present: James Macklin, Josh Morton, Tom Morton & Mark
Kingston.

Trevor calls the meeting of the Zoning Board of Appeals to order
at 7:00 P.M.

Trevor reads the required information into the record and for
those present as follows:

1. Please recognize all statements through the Chair.
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 record it within 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.

Trevor states we have Minutes of September 18th, 2017 to be
approved.

Pat moves to approve the Minutes of September 18th, 2017 as
written.

Geof seconds.

Any discussion? None.

All in favor? 5 yes - 0 no - 0 abstain.

Trevor states the Board has before it application by James
Macklin for a General/Dimensional Variance to permit
construction of a 20'x 25' garden/storage shed. Applicant has
requested a 27' reduction from the required 50' setback to allow
a 23' setback and an 8.7' reduction from the required 25' side
setback to allow a 16.3' side setback. The property is known as

Map 11, Lot 27 and is commonly known as 199 Highland Shores Road and is located in a Shoreland District.

Trevor opens the Evidentiary portion of the meeting of the Macklin application.

EVIDENTIARY

Jim Macklin introduces himself to the Board and states he lives at 1024 Meadow Road. He continues to give background that he has a building permit to build the shed and that in looking more closely at the location from his neighbors' perspectives, he is concerned about blocking the neighbors' views. He states he is looking to relocate the shed to minimize the impact upon his neighbors. He also states he had proposed a 30' x 30' shed, however, he brought it down to 16' x 20' with an overhang and a carport with grass underneath to a 20' x 25' total structure size.

He further states he is trying to utilize the topography of the land and shows the Board photos of the property. He states that his wife is about 30' from the road. He continues that if you look down the apple tree line, about 15' from the line to give you some sense of measure, also the Association Boat Dock is in that area.

Geof states that he understands the applicant wants to move the structure closer to the road, correct. Jim states that if he puts it in that little "nook", it will be out of the neighbors' view.

Trevor asks Jim to show where the building has been approved to be located. Jim shows the Board the approved location on the photo.

Pat asks what he wants to store in the shed. Jim states he has a cedar strip boat, a tractor and room to work on the boat.

Terri asks if it is a three car garage on the property. Jim states it is a two car garage.

Pat asks if there isn't enough storage in the garage. Jim states not for the cars, the boat, the tractor and other items. Pat continues by stating if you move it away from the house and closer to the road it could cause some problems for the Highland Shores Road Association. Jim states that it should not because if the Road Association is that far in, they are into his property. He states everything inside the fence is on his property. Pat inquires if they keep road the road open and plowed out during the winter. Jim states no, they don't.

Terri asks if he has a walkout basement. Jim states he does; it is finished. Terri states then there is some storage there.

Jim states there is not and certainly he wouldn't want to store gasoline or certain other items in the basement.

Pat asks Jim what his reasons are for requesting the variance to relocate the shed. Jim states it is partly to be friendlier to the neighbors to have better sightline to the water and people driving down the road to have a better sightline.

Pat inquires what the height of the finished shed will be. Jim states it is 16' high. Pat asks what the square footage is, not just the outside. Jim states it is 25' x 20', so rough calculation is 420 s.f.

Steve inquires if Jim can point out which neighbor's view is of concern. Jim does so on the photos stating he is concerned about the view of all the neighbors however. Steve states that the structure Jim pointed to is a garage and the neighbor isn't going to be viewing anything from the garage and by moving the shed you would be more in his sightline; if you draw a straight line from the house to the proposed location of the shed it is more intrusive.

Jim states the Board may have to come out and look at the property themselves. Jim continues that his wife is about 5'1" to give you some gauge.

Mark Kingston states he lives in the next association up from Jim and one of the abutters to Jim's property (Ray and Marie Delisle) are the people that he's (Jim) concerned with the sightline. He continues that if the shed is moved, Kristofferson should be able to see over it, then Ray and Marie support this.

The Board inquires if we are in receipt of any correspondence from abutters either supporting or objecting to the application. They are informed there has been no contact from abutters.

Trevor closes the Evidentiary Portion of the meeting for this matter and opens Deliberations on the application.

DELIBERATIONS

Pat states she has some problems with this; the variance size is excessive. She continues that he has an area he can put it now. She further states that to satisfy the ordinance it states that no structure shall be permitted from this 10' setback requirement. She inquires, are we going above and beyond the 10' setback. Geof and Trevor state, yes. Pat states she doesn't feel the Board can grant the variance due to the wording of "shall" in the ordinance. She continues that in Accessory Structure it states the height shall not exceed 12'; he is worried about the view of the neighbors and 16' would be worse

than 12'. Pat further states that there is something in the ordinance about square footage, but she cannot locate it right now.

Trevor states he doesn't feel it meets the criteria of #1, it can get a reasonable return. Pat states she agrees.

Geof states that it is great to be aware of the neighbors but it seems like this could fit in just as well within the setbacks; there is more than enough space there whether the shed is 25' one way or the other is where you need to decide if the shed is more important than the view of the neighbors.

Steve states that criteria #2, unique circumstances of the property is if something prohibits building within the setbacks.

Pat states there are too many things that don't fit, but overall there just won't be less property value and there are other places it will fit.

Steve states a 20' x 25' shed is 500 s.f., he just did the calculations so it is up to the CEO to determine that. Alex states that the 100 s.f. he can do, but because this is over 100 s.f., he can't do it and is why we are here. He states he feels the reduction to 10' should be a CEO decision not ZBA but we have to follow the ordinance.

Pat moves that the Zoning Board of Appeals accept the request from James Macklin for a variance for setback reduction for a storage building.

Geof seconds.

Any discussion? None.

All in favor? 0 yes - 5 no - 0 abstain

The variance is denied.

Trevor states the next item on the agenda is Joshua Morton has filed an application for a Dimensional Variance to permit division of Map 2, Lot 22 into two lots. Applicant has requested the minimum lot size be reduced to permit each of the lots to be 1.18 acre parcels due to misinformation provided at the time of purchase. The property is located on New Road and is in a Residential District.

Trevor opens the Evidentiary portion of the meeting for this application.

EVIDENTIARY

Josh Morton states he purchased the lot on New Road under assumptions based on the Town's records that it was 3.8 acres. The purchase was owner financed. He continues that he met with Alex and found the 3.8 acres indicated on the Town's website. He goes on to explain he intended to split the lot and sell one

lot; after closing he then found out the lot is less than 3.8 acres and is only 2.6 acres.

Terri asks if the applicant utilized a realtor's services. Josh states he did not. Terri asks if he used an attorney for the closing. Josh states he did.

Pat states that she understands the applicant purchased the property believing it was one lot, correct. Josh states he bought it knowing 3.8 acres could be divided into two lots. Pat asks how he would know that; she knows it couldn't be two lots.

Josh states that the seller had been paying taxes on 3.8 acres for years.

Trevor asks if he looked at the property with Google Maps. Josh states no.

Steve states this parcel had to be split off at some time; was it surveyed when that lot was split. Alex states he doesn't believe so. Alex continues that the Deed description is one of the worst he's seen and can understand how the Assessor could get the acreage incorrect. He goes on to state that this parcel was not part of any approved Town subdivision, it must have been done by the owners over time. Alex further states that we don't come across it often, but Town records can sometimes be wrong; if a realtor had been involved, it would have been looked at in more depth. He continues that the applicant bought the property with full intent of splitting it.

Trevor asks Alex if he gave any indication the applicant could split the lot without a survey. Alex states he did recommend a survey prior to purchase. Josh states he must not have heard that part.

Pat states in a situation like this, he thought, he assumed, that it was large enough to split, but it was so close it called for a survey. She continues, you can't just assume you can split the lot before it's bought.

Thomas Morton states he is Josh's dad. He states the seller indicated it was 3.8 acres and based on what Phil Gendreau told him and the Town records, it was assumed the lot could be split. He continues that Josh did go to the Town, he did do his due diligence. Thomas further states that he is within the 500' notification area from the property Josh bought and he has no issue with it; it doesn't do anything to the area and some consideration should be made.

Thomas asks where the 3.8 acre figure came from. He is advised that no one here can answer that.

Pat states as far as she knows, we went through the ordinance in '86 or '87 and made changes and updated the ordinance but it has

been 2 acre lot requirements in Residential zone for a long time. She continues that sometime in the 1920s the Portland paper, whatever it was called then, bought up land on the Crooked River and had some kind of contest where the little tiny lots on the Crooked River in Casco were the prizes. Alex states it is Sebago Lake Shores subdivision. Pat states back then no one thought about the problems these tiny lots would pose over time. She continues that she was appalled at the number of small lots in that area and she would just have backed out of the purchase.

Terri asks if the applicant went back to Mr. Gendreau about this issue. Josh states he did talk with Phil but didn't get anywhere.

Terri states that she went back 3 deeds and found very little information. She continues that when Ivan Chute owned it, he divided up several parcels with vague Deed descriptions.

Thomas states that Josh saved up to be able to purchase the lot.

Trevor closes the Evidentiary portion of the meeting for this matter and opens Deliberations.

DELIBERATIONS

Steve states he knows someone 2-3 lots from this property and that person's lot is 3.8 acres so there are larger lots on that road.

Pat states this property is about ½ mile up from Brown Avenue, correct. Josh states he didn't know the name of the road, but yes it is about ½ mile in.

Pat further states that there are a lot of lessons to be learned here when you are buying or selling a property; you shouldn't take things for granted.

Pat continues that as far as hardship, it states in the ordinance "The nature of the hardship to the property under appeal and the physical circumstances that allegedly would occasion such unusual difficulty or special hardship. A financial hardship does not necessarily constitute grounds for granting a variance."

Trevor states it may not be a financial hardship.

Steve states he has a problem with the fact that the Assessor was incorrect and the Town shouldn't just wash their hands from it. He continues we've collected taxes for 20 years on this parcel; he states he could understand if it was assessed at 3.8 acres and was 3.6 acres, ok, but from 3.8 acres to 2.4 is a big difference.

Steve further states that the Assessor says he has a full basement under his building, which he does not. Pat states that her handicapped ramp in the back of her house was being assessed as a deck.

Trevor states that it does state that the tax records should not be utilized in lieu of a survey. Trevor further states that it is still a valuable lot.

Pat states it is a valuable lot and we all understand the situation, she just can't vote in favor of the variance because you can't right a wrong with another wrong.

Steve moves to accept the variance application by Joshua Morton to allow for division of the lot in question.

Geof seconds.

Any discussion? None.

All in favor? 1 yes (Steve) - 4 no (Geof/Trevor/Terri/Pat) - 0 abstain.

The variance is denied.

Geof moves to adjourn.

Trevor seconds.

Any discussion? None.

All in favor? 5 yes - 0 no - 0 abstain