

Zoning Board of Appeals
JULY 21, 2014
Casco Community Center

Members Present: Sue Durkee, Trevor Tidd and Pat Troy

Members Absent: Terri Linnell

Staff Present: Donald Murphy, CEO and Sandy Fredricks, Secretary

Public Present: Timothy Richardson, Antje Richardson, Brenda Smith, Ted Beckner and Bill Horton

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

Trevor states that there is information he must read into the record and for those present. He reads the following information for the record:

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 in 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 February 24th, 2014 to be approved.

Pat moves to approve the Minutes as written.

Sue seconds.

Any discussion? None.

All in favor? 3 yes – 0 no

Trevor states the Board has before it application of Timothy Richardson, property known as Map 25, Lot 16; 413 Roosevelt Trail and located in a Commercial District. He asks who will be presenting the matter to the Board. Tim Richardson introduces himself and his wife, Antje, to the Board and states that he will be speaking on their behalf.

Trevor begins the Evidentiary portion of the meeting.

EVIDENTIARY

Tim explains that he would like to build a garage and needs reduction to the front setback to do so. He continues by stating they are on a shallow lot with unique features. He further states he has provided a survey, prepared an overlay and submitted pictures showing the uniqueness of the lot.

Bill Horton states he owns the Casco Inn and is just here to see the plans and hadn't formed an opinion yet on the request. He continues that a building of 35' x 50' would fit site plan review requirements and asks Don if that is correct. Don states it was not presented as a business at any time.

Trevor asks if change of use would be an immediate change if they were to do so. Don states a home occupation would be allowed and talks about advertising and signs. If they sold the entire property, as it's zoned Commercial, with the size it would have to go to Planning Board. The variance of the setback would come back for Planning Board review. Pat states home occupations are allowed to have a sign, not multiple signs.

Pat states this is a planned garage for a residential use. She asks the applicant how many vehicles there will be. Tim states three (3) and he also wants to use it as a shop. Pat asks what kind of shop. Tim states woodworking. Tim confirms it is only for his personal use.

Pat asks when the applicants purchased the property. Tim states in 2001 or 2002. Pat asks how much acreage there is. Tim states it is one (1) acre. Don states it is 1.04 acres. Pat states it is a substandard lot for general zoning. She asks if the properties on either side of the applications are residential or commercial. Tim states just down from him is an auto garage. Pat asks Don if the auto garage is permitted. Don states he doesn't know. Pat asks the applicant if the lots on either side of him are of the same size as his or are they larger. Tim states he believes one lot is larger than his and is not sure about the other. Pat asks if there are any wetlands on the property, as she drove by and noticed a ditch and asks why it is there. Tim states it gets a little damp in the Spring but it is dry now. Don states it is a man-made ditch, not a wetland but a swale.

Pat asks the applicant if he has any future plans to do auto work or woodwork as a business. Trevor asks what the posts were on the property that he saw. Tim stated he was going to erect a pole barn, but it didn't work out and he has no immediate plans to use the garage for business purposes.

Pat states she noticed other structures on the property. Tim states there is a small 6' x 14' shed.

Trevor asks the applicant if he would consider removing the existing garage and reducing the size. Tim states he is open to that. Trevor asks if perhaps they would consider reducing the footprint and proposes reducing the size of the structure to 20' x 40'. He continues that if the old garage was taken down the new structure could be moved back it would make a difference in his thinking on the project. The applicant and the Board further discuss possible size reductions of 40' x 28' with removal of the existing garage. Trevor asks how tall the building would be. Tim states it would be about 17' at the peak.

Pat asks if the property abuts any other zoning district. Don states it does not.

Pat states she is very confused about some of the lines and asks where New Road comes into this. Don states New Road comes off a Right-of-Way to 302. Don and Pat discuss the Right-of-Way and DOT regulations.

Trevor asks if there are any other questions or comments.

Bill Horton asks how the discussion about taking down the existing building was decided because he didn't hear a resolution. Trevor states the applicant is willing to remove the existing building if he gets the 30' x 50' structure approved.

Trevor asks if the Board has any further questions; being none, Trevor closes the Evidentiary portion of the meeting and opens the Deliberations.

DELIBERATIONS

Trevor asks Sue and Pat how they feel about the 50' setback reduction requested. Sue states she would like to see the existing structures taken down. Pat states she knows she cannot vote for this Variance as 50' reduction is out of the question. Pat states that on page 89 of the Zoning Ordinance it 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." ***emphasis added**. She continues that this certainly is not minimum.

Trevor states that if the applicant agrees to take the existing structure down, it is a little more compliant than what has been proposed. Don states if he can't build as proposed, they would get a building permit to rebuild as it sits which is about 5' from the road. Pat states she would like to see it removed and pushed back. Don states it wasn't set back further because the drainage ditch is there. Tim states it would take a lot of fill and cutting more trees to do that.

Pat states we have to work with this application. Don states an 80' setback on a 110' deep lot does not work. He continues that the Board could approve and make it a COA to move back some distance, then they could bring revised final plan to next meeting. Don is informed that you cannot put a COA on a Variance.

Trevor states that by removing the existing garage it moves back 21' so it reduces the variance from a 50' reduction to a 29' reduction. The front would be reduction to 30' or 35' by doing that.

Trevor asks Pat to read through the guidelines. Pat states on Page 88 of the Zoning Ordinance the criteria are: a) the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood. The Board agrees it meets this requirement; b) that the granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties. The Board agrees it meets this requirement; c) the practical difficulty is not the result of action taken by the petitioner or a prior owner. Pat states the difficulty is he wants a shed there and needs a very large setback reduction. Don states it you look at the Overlay, the difficulty is the result of the Town Zoning Commercial on a small Residential lot. Trevor states it just means you can't do some things on some lots. Pat continues, d) no other feasible alternative is available to the petitioner. The Board agrees it meets this requirement; e) the granting of an easement will not unreasonably adversely affect the natural environment. The Board agrees it meets this requirement; f) the property is not located in whole or in part within the Shoreland Zone. The Board agrees it meets this requirement.

The Board discusses the "difficulty" issue. The lot is shallow and the applicant didn't change anything it is as he bought it. The problem is what he wants to do with it.

Pat states she wants to address the hardship criteria; we also need to consider hardship. The Board reviews: a) that the land in question cannot yield a reasonable return unless a variance is granted. Trevor and Sue believe it is true. b) that the need for a variance is due to the unique circumstances of the property and not the general conditions in the neighborhood. The Board concurs. c) that the granting of a variance will not alter the essential character of the locality. The Board concurs. d) that the hardship is not the result of action taken by the applicant or a prior owner. Pat states if we look at this as requested; they have created it. If they are willing to cut back size and remove existing structure, it's better. The Board determines they meet the criteria.

The Board and the applicant discuss possible options to permit a lesser setback reduction and smaller structure.

Trevor moves that the application requesting a 50' front setback reduction be granted.

Sue seconds.

Any further discussion? None

All in favor? 0 yes – 3 no

The motion fails.

Trevor moves to allow a 30' x 50' structure provided the applicant removes the existing garage/storage structure and requiring the doors to be facing the existing house, thereby pushing the structure back 20' for a 30' variance from 80' to 50'. Further the Board grants a 35' setback for the southerly corner of the new garage to permit angling to avoid driving across the existing septic system. The Board further requires the applicant to plant trees for buffering to the road.

Sue seconds.

Any further discussion? None

All in favor? 3 yes – 0 no

The motion passes.

Trevor moves to adjourn.

Pat seconds.

Any further discussion? None

All in favor? 3 yes – 0 no