

Zoning Board of Appeals
September 17th, 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: See Attached.

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. The meeting is conducted in two parts, Evidentiary which is
where the applicant presents his case and answers questions
from the Board. The second part is the Deliberations where
the Board discusses the Evidence presented among themselves
to come to a decision.
5. Applicant may stay for the Decision but cannot in any way
participate in this part of the meeting.
6. 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.
7. 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 August 20th, 2018 to be
approved.

Pat moves to approve the Minutes as written.
Geof seconds.
Any discussion? None.
All in favor? 5 yes - 0 no - 0 abstain.

Trevor states before they address the matters on the Agenda he
would like to ask the Board if they could do the Evidentiary
then Deliberations on each item as they are fresh in everyone's
mind rather than all Evidentiary and then go into Deliberations

on all matters at the same time. He finds it easier to do them individually. The Board discusses this and is uncertain if it can be done that way legally. It has always been done all Evidentiary then close Evidentiary and open Deliberations. The Board would like this to be checked with the Town attorney.

Pat moves the Board do all the Evidentiary first then go to Deliberations as in the past.

Geof seconds.

Any discussion? None

All in favor? 4 yes (Geof, Steve, Terri & Pat) – 1 no (Trevor)

Trevor states the first item on the Agenda is an Administrative Appeal filed by Colleen Demirs, Trustee of Lake Shore Realty Trust regarding the issuance of a Permit to Mark Tomasino to allow cutting/removal of trees in the shoreland zone. The Tomasino property is known as Map 23, Lot 17, commonly known as 9 Kane Holmes Lane. The permit issued by the CEO for cutting/removal of trees is on neighboring property known as Map 23, Lot 16 commonly known as 12 Kane Holmes Lane. Both parcels are located in an LRR Zone.

Trevor states it seems one party is saying we shouldn't even hear the variance appeal and asks how would we handle this if we don't hear it and if we do hear it, there is the one year provision before it can be brought back to the Board.

Geof states he would like to know if Alex has corrected the Permit after it was issued. Alex states the Permit has not been amended.

Pat asks who doesn't feel the Board can hear the application. Alex states that it is the Permit holder. Pat asks what the situation is with the Easement. Terri ask if it can just be fixed by Alex issuing a Permit on the other lot. Alex explains that per Natalie (town attorney) he should just put both lot numbers on the permit. The Board is concerned about setting precedence. Trevor states that they could table the appeal for a month then we could get an opinion from the Town's attorney.

Trevor moves to hear the appeal.

No second.

Motion fails.

Trevor asks Alex if he is correct that if someone requests a permit and Alex denies it, that person has 30 days to appeal the denial, but this is different as it isn't the permit holder or person requesting the permit who is appealing. Steve states it is stamped and in his office once something is stamped by someone in the department that is the date. Pat states she is concerned about hearing it if it wasn't received in the correct time frame.

Steve asks Alex if he issued the permit incorrectly why can't he just rescind the permit and reissue. Alex states that Natalie stated that the permit should be amended not rescinded.

Pat states she feels the process should be started all over. Alex states that that doesn't apply to this appeal. Terri states that if Natalie states to revise the permit, why can't he just do that. Alex explains that he can, but the Board has to hear the application to decide that.

Steve moves that the Board move forward to hear Colleen DeMirs's application.

Geof seconds.

Any discussion? None.

All in favor? 1 yes (Trevor) - 4 no (Geof, Terri, Steve & Pat)

The Board requests that Alex contact Natalie for further guidance for them.

Tim DeMirs states he is representing Lake Shore Realty Trust. He states there was some confusion on the date of the appeal. He continues they filled out the appeal, got a stamped copy by the Town Clerk, it was in the time frame allowed. Tim goes on to state they asked for advice from the Building Inspector and never heard back. Alex states he had called them as well and didn't get a return call. Alex further states they have spoken several times.

Steve asks if the revision to the permit could be done and the trees cut.

Nick Adams states he doesn't believe the Board isn't going to hear this; you didn't make a Motion to table it, then you have essentially denied the application. Steve states that it wasn't a valid permit. Alex states the Board needs to determine if you can hear an appeal. He further explains how the permit was issued and that with the Easement each owns 6' on the other person's lot.

Trevor states the next item on the Agenda is Mark W. Kingston has filed an application for General / Dimensional Variance to permit construction of a 20' x 20' x 16' garage. Applicant has requested a 39' reduction from the required 50' front setback to allow an 11' front setback and an 8' reduction from the required 25' side setback to allow a 17' side setback for siting of the new structure.

Trevor opens the Evidentiary portion of the meeting.

EVIDENTIARY

Mark Kingston states he would like to amend his answer to #1 as it is required if the reduction is by the water. He continues that the property has been in the family for 33 years and they

plan to stay there for many more years. He states winters can be harsh and he would like this garage. Additionally, he states with the falling acorns they have caused thousands of dollars in damage to the cars. He continues that the reduction from the side setback is almost what the Village residents enjoy.

Mark continues that the Board has received a statement from DEP clearing lot to build the garage as long as it is 75' from the water. Additionally, he states the State has enacted an Act to Allow Flexibility under Municipal Shoreland Ordinances which states in part "This subsection is not intended to prohibit a municipal board of appeals from granting a variance, subject to the requirements of this article and title 30-A, section 4353, nor is it intended to prohibit a less than substantial expansion of a legally existing nonconforming structure, as long as the expansion does not create further nonconformity with the water setback requirement.

Mark states they will take appropriate steps to control runoff during construction. The new law passed by the State is to allow Municipalities more flexibility. He goes on stating that the expansion will be under 30% per the Ordinance and they meet the 100' water setback. The proposed location is as optimal as possible. Continuing, he states per Pat's comment last year that 50' is needed for Fire Department he has met that. He goes on stating that Alex suggested 15' from the septic and that has already been met.

Mark states that all of the abutters have signed letters to approve the application. He continues that a garage here is not just something to want, it is important to have in the winters.

Geof states that he understands Mark also owns a lot across the street from his home and inquires if he couldn't put the garage on that lot. Mark states it is 150' from the house and in order to make it saleable he would have to put in a septic field etc.

Steve states that not to get into the State regulations, but it doesn't mean the municipality has adopted it. Steve further states he questions the 30% information. Terri states that he is 100' from the water, so the 30% doesn't apply. Trevor asks about the 30%. Alex confirms what Terri has stated is correct.

Alex further states that Mark can't build the garage as a primary structure; a garage is an accessory structure.

Geof asks why they can't move it back closer to the house. Mark comes to the table to explain. He states yes, he could move it some but has to move the propane tanks and other infrastructure which he is willing to do. Geof and Mark discuss the options of relocating it. Geof states that 39' is a large variance. Steve states that Mark indicated he doesn't fully own the other lot. Mark states it is jointly owned.

Pat states that she also feels 39' reduction is a big variance. She continues that she is hearing the words "The State" a lot, but the Town doesn't have to adopt those regulations. Therefore, the State should not be brought into this as we have our own ordinance. Further, she states, Mark states he wants to see equality, but there are reasons for the different lot sizes and setbacks in the various districts. Pat states the Shoreland Zone is the most restrictive to protect the lakes. Mark states he had the DEP look at this and they don't have a problem with this. Pat continues that there is a reason the Ordinance is the way it is and does get amended from time to time if they feel a certain area should be adjusted. She doesn't like the comparisons of the State regulations and the Shoreland can't have the same requirements as the Village, Residential or other districts; we have to protect the environment.

Trevor states looking at the front it looks like 11'. Mark states the property pins are 15' back from the road and the front setback is from the front property line. Steve asks how we can procedurally amend the application to allow relocation from that submitted. Terri asks if it can be smaller. Mark states it can't be smaller than 20' x 19' if not 20' x 20'.

Ed St. Pierre addresses the Board and wants to know what the 50' number is and what the reduction number is. He is informed the 50' is the required rear setback and he is looking to reduce it by 39'. Ed asks if that is from the road. He is advised it is from the road, the side setback is 25' and he asking it be reduced to 17'.

Trevor closes the Evidentiary portion of the meeting and opens the Deliberations.

DELIBERATIONS

Pat states first of all, the setbacks requested are way over if you look at the regulations for variances, it doesn't meet the hardship clause and we have indication from someone else that it doesn't meet the hardship. We have denied other requests because they didn't meet the hardship requirements.

Geof states it is a reasonable return, he is looking for most reasonable return.

Steve states the issue is that the lot is so small, there really is restriction that the land itself is causing the hardship; he can't go across the street and he is thinking possibly he could move it back to the dashed line. He continues so we would be looking at 20' setback reduction rather than 39'. He continues that for reasonable return you are talking about real estate, will it get a reasonable return. He is willing to relocate the structure. Pat states it would be changing his application. Geof agrees.

Pat states he bought the lot knowing it had no garage and the size of the lot has not changed. She feels the hardship part of the regulations has to be considered and he will still get a reasonable return.

Terri states it certainly can obtain a reasonable return without a garage.

Trevor states Mark seems to have a lot of support from abutters, he changed the size and location. We have a situation where the applicant is trying to work with us.

Geof states again 39' is a large variance.

Steve moves to accept the application for variance by Mark Kingston with modification of road front setback of 20'.

Trevor seconds.

Any discussion? None.

All in favor? 2 yes (Steve/Trevor) - 3 no (Geof/Terri/Pat)

Geof moves to accept the application of Mark Kingston for variance for garage as submitted.

Trevor seconds.

Any discussion? None.

All in favor? 2 yes (Steve/Trevor) - 3 no (Geof/Terri/Pat)

Trevor states he would like to take things one at a time which we did essentially if it's okay with the town attorney. Would everyone be okay with it? The Board discusses how the Planning Board does one item at a time and agrees that if it is legally okay, they will do that. Alex will check with Natalie.

Alex states he is going to speak with Natalie about coming to talk with the Board before the next meeting.

Steve moves to adjourn.

Geof seconds.

Any discussion? None.

All in favor? 5 yes - 0 no