

ZONING BOARD OF APPEALS

MINUTES

Monday, August 26, 2002

7:00 P.M. at the Town Office

MEMBERS PRESENT: Michael Higgins, Chairman; Aurel Gagne; Peter Leavitt; and Lawrence Murch

STAFF PRESENT: Jack Cooper, Code Enforcement Officer; Amanda L. Simpson, Recording Clerk

M. Higgins called the meeting to order at 7:05 pm.

M. Higgins called for a motion to approve the minutes of July 29, 2002. P. Leavitt moved to approve the minutes of July 29, 2002 as written with a second by A. Gagne. Motion carried unanimously.

Hearings:

**1) Map 24, Lot 9 - 18 Swans Road – LRR1  
Dexter Dudley  
Request for Setback Reduction for side and rear yards.**

M. Higgins opened the hearing and requested the appellant identify himself and give a brief explanation of his request.

D. Dudley explained that he is constructing an 8' x 8' shed and would like to maintain a 10' side and 15' rear setback.

There was no public input.

J. Cooper, CO, indicated that it was new construction of a home and garage on a small lot. D. Dudley indicated that the proposed spot was the only flat area on the lot.

M. Higgins closed the public hearing and stated that the board had the authority to approve down to a 10' side setback and 15' rear setback. J. Cooper indicated that the standard setbacks in the district are 30' rear and 20' side.

J. Lamagna questioned the board about the benefits of zoning if the setbacks were reduced.

P. Leavitt responded that the past several years that board has had the authority to grant setback reductions with no hardship. A variance would be required if it was less than the prescribed amounts.

M. Higgins indicated that the setbacks can be reduced to 10' without proving hardship, strictly proving that there was no harm to abutters.

Bob Fogg of the Raymond Pond Association introduced himself and stated that he was representing the Association as their Road Agent/Manager and requested that the board assure that the Association be notified regarding any development on Swans, Legacy, or Two Acre Island Roads. They are concerned about the overall development and possible effects. The Board entered into a lengthy discussion with B. Fogg regarding the noticing requirements. It was concluded that the secretary would add the address given as the address for the Association in the assessment records and also attempt to notify the Association through B. Fogg of any ZBA applications.

M. Higgins called for a motion on the petition.

**MOTION:** M. Higgins then moved to grant the setback reduction for the rear yard to 15' and the side yard to 10'. P. Leavitt seconded the motion and it carried unanimously.

**2) Map 54 Lot 74 – 9 Ridge Road – LRR2**  
**Donna T. Tosh**  
**Administrative Appeal of Building Permit Denial**

M. Higgins asked if Donna Tosh was present. Natalie Boons introduced herself as attorney for D. Tosh. She explained that the Toshes own lots 54- 73&74 and that J. Cooper had determined that the lots have been merged under the land use regulations 3.3 Land Use and 12.c.3 Shoreland Zoning Provisions. N. Boons indicated that as she reads the ordinance she does not believe the lots were merged. They are lots 29, 35 and 36 of the original subdivision. The Toshes acquired lot 74 on October 14, 1994 and lot 73 on June 26, 1997. Lot 74 is not improved. N. Boons continued that under the provisions there was an exemption provision that allowed lots to be split prior to 6-17-94. Bayview Subdivision was approved in 1965. Both lots would have qualified to be split prior to 1992. Nothing in the ordinance indicates that lots have to stay split if they qualify. She indicated she had a second argument and would hold on that discussion if the board wished.

M. Higgins indicated that the board would address each argument separately and asked J. Cooper to comment on the first argument. J. Cooper explained that when the lots were purchased one was vacant and the other had a house on it. There was a five-year window where lots could be split. When the building permit application came in the Toshes had transferred the lot from husband and wife to the wife. He researched the previous deed and concluded that it had merged the lots.

M. Higgins called for any input in favor. Carol McCloud indicated that she had no opposition to the lots being considered as separate.

M. Higgins then called for any input in opposition and any general input. There being none, he asked the board for questions and discussion.

P. Leavitt asked J. Cooper about the statement the owners made that he had assured them that a house could be constructed on the lot. J. Cooper responded that his initial cursory review led him to believe that it was a separate lot. When the application was submitted he researched the property and concluded that the transfer had occurred after the time limit expired to split the lots.

P. Leavitt stated that he believed that the intent of the ordinance was to merge small non-conforming lots that were adjacent and held by the same owner. A. Gagne indicated that the applicant is requesting the board to approve what was originally approved by the town. He believes that is was a legitimate mistake.

L. Murch remarked that if the lots were to be combined it would create an odd-shaped lot. The lots were conforming in 1966.

J. Cooper registered his frustrations with title companies and attorneys that do not explain the merger clause to property owners. N. Boons expressed that she believes that ¶ 2 protects grandfathered lots.

A. Gagne asked what the proper language for a motion was, should it be worded to "revert back to tax map"?

J. Cooper indicated that if the Administrative Decision was reversed, a permit could be issued.

**MOTION:** A. Gagne moved to reverse the Administrative Decision with a second by L. Murch. Motion passed unanimously.

**3) Map 50, Lot 25 - 23 Main Street – VR1**  
**Sandra P. Falsey**  
**Variance request for density requirement for duplex conversion**

M. Higgins asked the applicant to introduce herself and give an overview of the proposal.

Sandra Falsey, prospective buyer, introduced herself and proceeded to describe the request for a variance. The property is at 23 Main Street and is the old grange hall. Her request is for a 2-unit residential condominium. Her attorney is present for any technical questions. The history of the property after the Knights sold it includes storage for a furniture store in 1987-88. There was an approval for a duplex but it was never developed. Soil testing has been completed by Bud Harris and there is adequate room for a new septic system. Water supply would be from the new water line. Structural engineer Jim Thibodeau has evaluated the building and determined that the proposed load can be handled.

She continued to discuss the changes. The outside would include the existing garage and a second one car garage would be proposed in the back for the second unit. The driveway to the east would be eliminated to accommodate the septic system. She has discussed this project with most of the neighbors and in general they would be happy to see something happen.

M. Higgins clarified that S. Falsey was the prospective buyer and asked if there were any questions from the Board. J. Cooper stated that the lot is non-conforming for single-family and duplex development.

Jim Levis, attorney for the applicant, stated that the historical and current uses of the building and lot are non-conforming. He believes that Section VI.B.1.e. allows the Board to grant exceptions to the zoning requirements for non-conforming lots outside of the variance criteria. A duplex would be a conforming use.

The Board discussed the option of a single-family unit with S. Falsey. J. Cooper indicated that the minimum lot size for a single-family is 60,000 sq. feet and 75,000 sq. feet for a duplex.

P. Leavitt asked J. Cooper about the proposed garage. He continued, stating that this type of conversion seemed to be in accordance with the Comprehensive Plan. Making the property more conforming would be an improvement.

S. Falsey indicated that she had done a similar project in Portland and passed out photos of that project.

M. Higgins called for public input. No input was given either in favor or in opposition. General comment was taken. Richard Pierpont, abutter, indicated he thought it was a good proposal. He asked what buffer might be placed along his property boundary. Lawrence Winde of 28 Main Street asked about absentee ownership.

L. Murch inquired about how the grounds would be maintained. S. Falsey explained that there would be a two-member condominium association and the deeds would spell out how the property was to be managed. Her goal is to keep things as separate as possible and she will be placing covenants on the property. The units will be townhouse style with 3 bedrooms and 2 ½ baths. The wooden windows will be maintained and the units will sell between \$160,000 and \$180,000.

The Board continued discussion about condominium ownership, use of the yard.

**MOTION:** P. Leavitt moved to grant the variance for a sub-standard lot. A. Gagne seconded. Discussion ensued regarding how this approval should be worded. If the Board agreed this was under B.1.e. a variance would not be required. The motion by P. Leavitt was re-stated to grant to vary the provisions of the non-conforming lot for lot size and frontage under Section VI. B. 1. e. for the development of a single-family unit or a two-unit residential condominium with the condition that all other provisions of the Land Use Regulations are met. A. Gagne seconded. Motion passed 3-1.

#### **4) Map 11, Lot 58 – RR**

**266 Webbs Mills Road**

**Jane Gagnier – Variance request for second single-family home on lot**

M. Higgins asked the applicant to introduce themselves and give a brief overview of the request.

Jane Gagnier, owner, introduced herself and explained that she is requesting a variance for a second single-family home on her property. She explained that she has a developmentally disabled daughter that she has been caring for in her home for six years. As her daughter ages, she hopes to have her live more independently. J. Gagnier described her lot and indicated that she would like to construct a 2-3 bedroom home on the back portion of her property. She is prepared to increase the size of the current leach field and has had a design done to build a new one. The Board discussed the specific aspects of the use of the property. J. Cooper questioned whether or not she would qualify for an in-law apartment rather than pursue a variance.

M. Higgins stated that he did not see how the hardship standards could be met for a variance. He asked J. Gagnier if she had considered other options.

J. Cooper explained that she could modify her request to one for a detached in-law apartment. The Board and applicant discussed the restrictions on an in-law apartment as defined on Page 92 of the Land Use Ordinance which include size limitations, restriction of use by immediate family members and on the re-sale of the apartment.

Public input was taken. Keith Thomas of 13 Woodland Road asked about the restrictions. He indicated he enjoys privacy on his lot. David Johnson expressed his concerns about the restrictions and was concerned about future subdivision. It was explained that the restrictions run permanently with the land as does the approval.

The driveway location was reviewed and it was determined that the driveway would be required to come off the existing driveway as the maximum number of access points has been reached.

M. Higgins called for a motion.

**MOTION:** A. Gagne moved to grant the request for a detached in-law apartment as defined on Page 92 of the Land Use Ordinance. L. Murch seconded the motion. Motion passed unanimously.

M. Higgins asked if there was any other business.

The Board discussed a site walk on September 22, 2002, with no formal business to be conducted. The next formal meeting of the Board is September 30, 2002 at the Town Hall. Election of officers will be conducted at the next meeting.

A. Gagne moved to adjourn the meeting with a second by P. Leavitt. Motion passed unanimously. Meeting adjourned at 8:45 p.m.

Respectfully submitted,  
Amanda L. Simpson  
Recording Clerk