



ZONING BOARD OF APPEALS
Minutes*
Monday, March 14, 2011
Public Hearing

Present: Chairman Matt Schaefer, Elden Lingwood, Peter Leavitt, Mary Picavet and Larry Murch.

Absent: Sheila Philpot

Staff: Chris Hanson, Code Enforcement Officer; and Danielle Loring, Recording Secretary.

Other: Bonnie Jensen, Mark Jensen, Liz Maglaughlin, and Attorney Lee Lowry.

1. Call to order: Chairman Matt Schaefer called the meeting to order at 7:11pm and a quorum was declared.

2. Approval of previous minutes dated:

a) February 22, 2010

Mr. Schaefer explained that he did not see a reason for these minutes to still be on the agenda because the DVD was the official record.

MOTION: Matt Schaefer motioned to remove the minutes from the agenda and include them as is in the records of the Town with a note that they are not the official record; seconded by Peter Leavitt.

DISCUSSION: None.

VOTE: UNANIMOUS APPROVAL (5/0)

b) December 27, 2010

MOTION: Elden Lingwood motioned to accept the minutes from the December 27, 2010 meeting as submitted; seconded by Mary Picavet.

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DISCUSSION: None.

VOTE: APPROVED (3/0/2 Ab.[PL, LM])

3. Public Hearings:

- a) **Leo & Elizabeth Belill is asking for a variance at 158 Dryad Woods Road; Map 033, Lot 002, Sublot B00 in the LRR1 zone.**

Attorney Lee Lowry introduced himself as representing the interests of the applicants. He explained that they had withdrawn the second part of their original request, which was a side setback reduction, but was still pursuing the variance for a width requirement within 100 feet of high water mark. He reviewed that the Shoreland Zoning Ordinance required that any portion of a parcel, within 100 feet of the high water mark, had to have 225 feet of water frontage.

Mr. Lowry submitted copies of land surveys that he felt had been included in the original plans to build the house. He then mentioned the 1997 MLA land survey that showed the proposed building and explained the code file contained permits and certificate of occupancy, but the plans for the building were absent. He was not sure what the interpretation of the ordinance was before and how it differed from the present but wanted to know what the consequences would be to the Belill's because of the difference. Based on the Mortgage Inspection Plan, in order to bring the lot into compliance with the width requirement by moving the property lines, it would then be non-conforming in terms of other setback requirements.

Mr. Lowry then explained how he felt the application met the requirements for a variance in accordance with the Shoreland Zoning Ordinance §16(G)(2). He explained the financial losses that would occur if the applicant had to move the house. It was estimated that it would cost \$35,000-200,000, depending on the level of work that was required to move the house back. This would also reduce the real estate value of property an estimated \$120,000-125,000 from the current \$460,000. He continued by stating that the conditions for the parcel were unique because even though the property was fully reviewed and considered the provisions of the ordinance were misread. In terms of the effect on the character of the neighborhood, Mr. Lowry said that there would be no noticeable difference because the building would not be encroaching on neighboring setbacks or density requirements.

Mr. Schaefer wanted to know if there were other properties that were also under the 225 foot requirement and Mr. Hanson responded that most houses were more than the requirement and that most of the properties were newer because it was in the earlier stages of development. Mr. Lowry did not think that moving the house 30 feet was going to drastically change the conditions that currently existed.

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Mr Schaefer opened the forum for anyone from the public to speak for or against the application. Bonnie Jensen, abutter, spoke and said that if the Board voted in favor of this application that they would be asking for similar conditions for future use of their parcel. Mr. Schaefer reminder her that, without an application, they could not comment on the specifics of her circumstances and Mr. Murch stated that they were not setting a precedence in their ruling in matter and the Board agreed.

There was discussion about what the role of the Board was and what authority they had in granting the variance. Both Mr. Schaefer and Mr. Leavitt presented court cases that demonstrated that reasonable return was not the same as maximum return and that not only would the property have monetary value, but it would still be a useable parcel of land. Mr. Leavitt felt that the applicant was partially responsible for the situation that they were in because they did not do their due diligence. Mr. Lowry responded by stating that the owners should be able to rely on what is in writing, such as a building permit of C of O, that was issued by Jack Cooper, previous Code Enforcement Officer. He felt that it would have been a simple task to move the house back at the time that it was built if these facts were made apparent at the time.

Mr. Schaefer said that they should move through the conditions of the variance because it must meet all criteria in order to be granted:

MOTION: Moved by Matt Schaefer and seconded by Peter Leavitt that the Board find that the criteria of subsection c(i) of section 16(G)(2) is satisfied.

DISCUSSION: None.

VOTE: UNANIMOUS APPROVAL (5/0); motion carried.

In response to §16(G)(2)(c)(i)-Reasonable return

MOTION: Moved by Matt Schaefer and seconded by Peter Leavitt that the Board find that the property, according to the applicant's own submission, has a value, absent granting the variance, of an order of \$325,000.

DISCUSSION: None.

VOTE: UNANIMOUS APPROVAL (5/0); motion carried.

MOTION: Moved by Matt Schaefer and seconded by Peter Leavitt that the Board finds that the first criteria under section §16(G)(2)(c) has not been satisfied by the applicant.

DISCUSSION: None.

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VOTE: UNANIMOUS APPRIVAL (5/0); motion carried.

In response to §16(G)(2)(c)(ii)-Unique Circumstances

MOTION: Moved by Matt Schaefer and seconded by Peter Leavitt that the Board finds that the need for a variance is due to unique circumstances of the property, not the conditions of the neighborhood. Therefore the second criteria is satisfied.

DISCUSSION: Mr. Murch did not feel that they had convinced him.

VOTE: APPROVED (4/1 LM); motion carried.

In response to §16(G)(2)(c)(iii)-altering character of locality

MOTION: Moved by Peter Leavitt and seconded by Matt Schaefer that the Board finds that the criteria for number three (iii), under “hardship,” in granting the variance, will not alter the essential character of the locality; that it is the standard.

DISCUSSION: The Board had a short discussion pertaining to the unique characteristics of the property and its effect on the neighborhood.

VOTE: UNANIMOUS APPROVAL (5/0); motion carried.

In response to §16(G)(2)(c)(iv)

MOTION: Moved by Peter Leavitt and seconded by Elden Lingwood that the Board finds that under number four (iv) of the elements of hardship the standard is not met due to the lack of due diligence on the part of the buyer in researching, fully, the Shoreland Zoning Ordinance.

DISCUSSION: None.

VOTE: UNANIMOUS APPROVAL (5/0); motion carried.

CONCLUSION

MOTION: Moved by Matt Schaefer and seconded by Peter Leavitt that, based on the findings of fact and conclusions of the law reached by the Board, the request for a variance be denied.

DISCUSSION: None.

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VOTE: UNANIMOUS APPROVAL (5/0); motion carried.

Mr. Lowry stated that he had nothing to add because it was not going to change the outcome of the vote.

4. Adjournment

MOTION: Chairman Matt Schaefer motioned to adjourn. Seconded by Mary Picavet.

VOTE: UNANIMOUS APPROVAL (5/0)

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