



ZONING BOARD OF APPEALS
Minutes*
Monday, March 28, 2011

Public Hearing

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

Absent: Larry Murch

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

Others: Attorney Suzanne Scott, Peter Gilman, Bob Bauer, and Joe Sicony.

1. Call to order: Chairman Matt Schaeffer called the meeting to order at 7:08pm and a quorum was declared.

2. Approval of previous minutes dated March 14, 2011:

MOTION: Matt Schaefer motioned to table the consideration of the minutes until the next meeting; seconded by Peter Leavitt.

VOTE: UNANIMOUS APPROVAL (4/0)

3. Public Hearings:

a) Bauer & Gilman Construction, LLC are asking for an Administrative Appeal and Variance at 0 County Road; Map 053, Lot 006 in the LRR2 zone.

Attorney Suzanne Scott of Jensen Baird explained that the matter regarded two parcels that were side-by-side on County Road and the transactions that took place that led to them being combined. The first lot was purchased and it contained a building and a shed. Mr. Leavitt clarified that it was lot 6 she was referring too and she agreed. She then explained that there was a second lot purchased next to the first and it also had a building and was set up to be a self-sufficient lot. She said that these factors are what led them to feel that both parcels had primary structures and thus were no supposed to be combined.

Mr. Gilman explained that he had contacted the Code Enforcement Officer to discuss erosion control. Mr. Hanson confirmed this but said that there had been no mention of a demolition permit to him and he was never asked to visit the property before it was removed. He continued that, as far as he knew, the lot was being taxed as a vacant lot since 2005. He asked Mr. Gilman if the building had been in use and he responded that it had not been and clarified that it had been in existence

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when he bought it because there were dated pictures from the real estate agent. Mr. Hanson said he understood but the building had no value and was being taxed as such. Ms. Scott did not feel that whether the building was being used was germane to the case because it still constituted a principle lot and could remain separate from the other. Mr. Bauer added that the ordinance did not ask if the principle structure has value, only that it be in existence.

Mr. Schaefer wanted to know when the pictures were taken of the buildings. Mr. Sicony explained that pictures were taken in March of 2010, when the property was listed, and then again once it had been cleared in August of 2010. Mr. Gilman added that their intent was not to merge the properties but to rebuild the building that was torn down.

Mr. Schaefer wanted to know if Mr. Sicony represented the buyer or the seller in the original transactions and he explained that he was hired by the seller. He stated the parcels were listed separately and they kept reducing the price to get them to sell and that there were each bought separately, June and August of 2010.

Mr. Schaefer wanted to know what Mr. Hanson knew about the properties. Mr. Hanson said that he knew lot 6 had been assessed as a vacant lot since 2005 and that there were not plumbing, building or wastewater permits on file. He explained that former CEO, Jack Cooper, said that the building was dilapidated and falling in on itself. He explained that there were no demo permits tracking the structure that had been there and that the lot had to now be combined with lot 7, per the ordinance, to make the lots more conforming, whereas they had less acreage that required by current building standards.

Mr. Leavitt wanted to know if there was adequate space to rebuild on the lot and Mr. Hanson said that because he did not know where the building was, he cannot say if it met setbacks and because it is now gone, the ordinance says that they cannot rebuild because the lot was nonconforming.

There was discussion about what the use of the structure of was and the applicant was not sure but wanted to know if showing the plans that existed for buildings would suffice. Mr. Schaefer explained that though principle structure was not defined by the ordinance, the use of the structure of the building was important in determining whether there was a structure and the fact that it was being taxed with no parcel and the building was considered abandoned meant that it was considered nonexistent. Mr. Lingwood wanted to know when the applicant had applied for a building permit and Mr. Bauer explained that it was after the building was already demolished and after Mr. Hanson had called to inform him that the two lots were being combined.

Mr. Gilman explained that he had called about erosion control and there had been no discussion about the building but that conversation had occurred before purchasing the second lot. Mr. Schaefer wanted to know how Bauer & Gilman had used the lot and Ms. Scott explained that they had not used it because they had not even seen the building. Mr. Sicony explained that they had warned people to stay out of the building because of the roof being unsafe, but that there was stuff being stored in there. Mr. Schaefer clarified that the stuff in the building was more "toss out" items that were left by the previous owner, rather than being stored there, and Mr. Sicony confirmed.

Ms. Scott stated that the structure did not have to be in present use but that it was considered a structure for its intended use. Mr. Schaeffer clarified that it was not a matter of whether the building was in use but the building was not maintained for any use and they were bound to rule in

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accordance with the ordinance. Mr. Leavitt explained that the purpose of the ordinance was to bring this into conformance.

Mr. Bauer explained that the previous lot was twice the size of the other lots in the area and it fit in with character of the neighborhood. After the joining of the lots, the house lot was now four times the size of any of the other house lots and it had met the set backs. Mr. Hanson explained that combined the lot came to 1.25 acres, which was nonconforming because the requirement was 3 acres.

Mr. Schaefer explained to the applicant that the Board only had the power to rule if they found that the Code Officer made an error in judgment, in terms of the administrative appeal. Ms. Scott explained that they felt that this was the case because there were structures on each lot when they were purchased. Mr. Schaefer explained that the argument hinged on the fact that a building was knocked down after purchasing both lots.

There was discussion about the structures and whether the preexisting structure constituted a legal building. Mr. Hanson explained that the building had to have some use in order to be considered legitimate. They found that there was a building but that because it was vacant and it was taxed as having no value since 1996, it showed that the lot was essentially considered vacant.

The Board conducted a finding of fact:

MOTION: Moved by Matt Schaefer and seconded by Peter Leavitt that the Board find that, as of March, 2010, there was a structure located on the property in question.

Vote: 4/0; motion carried.

MOTION: Moved by Matt Schaefer and seconded by Peter Leavitt that the Board find that at some point, not later than August, 2010, the structure on subject lot was removed.

Vote: 4/0; motion carried.

MOTION: Moved by Matt Schaefer and seconded by Mary Picavet that the Board finds that, at least until 1996, the subject property was used as a camp.

Vote: 4/0; motion carried.

MOTION: Moved by Matt Schaefer and seconded by Peter Leavitt that the Board finds that on June 17, 1995, parcel had utilities and separate driveway.

Vote: 4/0; motion carried.

MOTION: Moved by Matt Schaefer and seconded by Mary Picavet that the Board finds that lot 006 and 007 were individual lots that did not meet the dimensional standards.

Vote: 4/0; motion carried.

MOTION: Moved by Matt Schaefer and seconded by Mary Picavet that the Board finds that the decision of the Code Enforcement Officer denying the building permit, on the grounds that lot 006 did not contain a primary

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structure, is not clearly contrary to the provisions of the Shoreland Zoning Ordinance, section 12(E)3.
Vote: 4/0; motion carried.

The Board discussed whether the applicant had grounds for the a variance. Ms. Scott said that they felt that the applicant met the requirement of hardship because the action was due to the actions of the applicant but due to the enforcement of the Code Enforcement Officer. Mr. Schaefer explained that he did not feel that a variance of this scope was not allowed. Mr. Lingwood added that allowing a variance of this sort would be equivalent to rewriting the ordinance and Mr. Leavitt stated that 2E states that a variance cannot be granted for uses that are contrary to the ordinance.

MOTION: Moved by Matt Schaefer and seconded by Peter Leavitt that the Board find that the request for a variance be denied because the Board does not have the authority to grant a variance that would circumvent the ordinance provisions.
Vote: 4/0; motion carried.

4. Code Enforcement Officer Update- Chris Hanson

Mr. Hanson explained that the Belill case that they had heard the month before was going before the Selectmen to discuss a consent agreement at their April 5, 2011 meeting. He felt that it was important to have a representative from the Appeals Board present to answer questions.

5. Adjournment

MOTION: Elden Lingwood motioned to adjourn; seconded by Mary Picavet.

VOTE: UNANIMOUS APPROVAL (4/0)

Chairman Matt Schaefer adjourned the meeting at 9:04pm.

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