

approved  
Town of Raymond  
ZONING BOARD OF APPEALS  
MINUTES  
Tuesday, May 27, 2003

**Members Present:** Peter Leavitt, Chairman; Lawrence Murch; and Michael Higgins. **Staff Present:** Jack Cooper, Code Enforcement Officer and Amanda Simpson, Secretary

1. Call to order. Peter Leavitt called the meeting to order at 7:00 pm.
2. Approval of Minutes – April 28, 2003

MOTION: Lawrence Murch moved to approve the Minutes of April 28, 2003 as written. Seconded by Michael Higgins. P. Leavitt requested that the final item of Other business regarding contacting of Robert Fey be corrected to reflect that he volunteered to contact Mr. Fey. VOTE: Unanimous with the corrections.

3. Hearings

- a. Map 17, Lot 43 – R/LRR1 Districts  
Inlet Point Road  
Robert Stevens  
Conditional Re-Zoning  
Expand the existing use: resort

P. Leavitt asked the agent, Pat Cayer, to review the request. P. Cayer introduced himself and noted that the request was for a Conditional Use as stated on the revised application. Robert and Michael Stevens, property owners, are present. His client is requesting as a conditional use the addition of 10 – 12 small cabins to the current use of property, to be located in the LRR1 and R portions of the parcel. The parcel consists of 70 acres and is on Notched Pond, with access from North Raymond Road and Inlet Point Road. The lodge has been in use since the early '70s. There is an open area and a gravel parking area adjacent to the lodge.

M. Stevens stated that they currently serve organizations for functions, weddings and private parties. There is no ability to accommodate guests overnight at this time. He sees this as currently a “private day resort”. P. Cayer added that the facility is very private.

P. Cayer continued that this use is not listed in either the LRR1 or R Districts, either as permitted or as a conditional use. He would like the Board to consider granting a conditional use as a resort/function hall. Uses close to this are motel, hotel, inn.

P. Cayer raised the letter from Town Attorney, Chris Vaniotis. He found that if a use is not listed in any district then the BOA has the authority to grant a Conditional Use. They have been before the Planning Board to review the use requested. The alternative is to subdivide the property. The Planning Board members are in favor of the use proposed.

Gary Bucklan, a neighbor, stated that he has had a year-round home adjacent to the property for ten years. He thinks it is a good use but the current access is over his property. There is another existing road that accesses the property and any expansion of use should include upgrading and using the access.

M. Stevens responded that a previous owner had looked into that.

Approved  
Town of Raymond - ZONING BOARD OF APPEALS  
MINUTES - Monday, May 27, 2003

M. Higgins questioned the jurisdiction of the Board and proceeded to ask the following questions (answers by the applicant follow):

1. What are the size of the cabins? Answer: 14 x 22 and 16 x 32.
2. Number of people to a cabin? 4 to 6 for each cabin
3. Number of cabins? 10-12 R. Stevens noted that one might be the caretakers cabin.
4. Distance between cabins? About 100 feet.
5. Views of the pond? No
6. Use of the pond? Yes, they would have access to the beach and waterfront.

L. Murch asked if they would eat at the lodge. The Applicant responded that the current lodge would remain the same and be offering meals. L. Murch expressed his concern over what plans were made if the business scenario that was presented fell through. R. Stevens responded that they would rent them as summer homes either weekly or seasonally. L. Murch continued asking what the construction price was. R. Stevens stated that they are between \$10 and 12,000 with them doing the construction. He continued that they expect to start with 3 or 4 this year.

M. Stevens added some more information. The main lodge has no overnight guests at this time. J. Cooper stated that it is a grandfathered use; it was never approved by the Board. G. Bucklin, abutter stated that he does not ever recall it being used overnight.

P. Leavitt asked the applicant to define the exact use they are proposing. The Board has an obligation to review the ordinances and determine if the use falls within any existing category. The two that he sees might apply are accessory structure and hotel/motel/inn. P. Cayer responded that this is not public, so it does not qualify as a motel. M. Higgins asked what would happen if someone approached them off the street for an overnight rental. R. Stevens responded that the concept is to stay away from individual rentals but they would not be ruled out.

P. Leavitt noted that a conditional use permit implies conditions. P. Cayer stated that the business plan and use could be tailored to a set of conditions. P. Leavitt confirmed that the subdivision was not approved. P. Cayer added that they have concurrent applications with the BOA and Planning Board (for an amendment). The amendment would add the use to R and LRR1 and may include RR and LRR2. P. Cayer continued that the problem is timing for a zoning amendment. It can take months and his client does not have the time to take that route. He has asked the Planning Board to continue the amendment effort regardless of if they are successful in front of the Board.

L. Murch asked the following questions (answers by the client follow).

1. Will the cabins be winterized? (yes)
2. How many employees would be hired? (5 to 6 total)

P. Cayer noted that Notched Pond cannot handle large boats. M. Stevens added that no power boats are available from Fairpoint at this time. If they were they would be less than 10 horsepower.

G. Bucklin asked about septic systems for the cabins. P. Cayer answered that each cluster will have a septic system. M. Higgins stated that he is satisfied that it is not a motel. P. Leavitt stated that he is not but does not consider it like a campground.

Approved  
Town of Raymond - ZONING BOARD OF APPEALS  
MINUTES - Monday, May 27, 2003

P. Leavitt then turned the discussion to “accessory structure”. J. Cooper stated that “accessory structure” is defined as incidental and subordinate to the primary structure or use. P. Leavitt was attempting to determine if the CEO has jurisdiction over these cabins in the LRR1 district. In order to define them as accessory structures in his opinion they could not offer overnight accommodations, so that definition does not work for him.

P. Cayer returned to the definition of motel. P. Leavitt asked if Fairpoint would require that you call and make reservations. L. Murch asked if the applicant would be willing to place a restriction on the cabins that all patrons take meals in the lodge. R. Stevens responded that there would need to be some kitchen facilities in the cabins for off hours cooking. In addition there may be winter groups that would rent the cabins and not require the lodge facility.

P. Leavitt stated that he is convinced that the jurisdiction for this matter lies with the Board for both the Land Use Ordinance and the Shoreland Zoning Ordinance. He continued by asking the applicant if there was any willingness to move the cabins out of the LRR2. P. Cayer noted that there were two in the LRR1 District. The Stevens agreed that they would move the cabins onto the R District.

P. Leavitt asked the applicant to address the subdivision alternative. P. Cayer stated that a subdivision would be for residential homes either by the open space or conventional method. The density is 3 acre lots. He stated that he wanted the Board to understand that subdivision is just a fallback situation. The applicant wants to have as little impact on the property as possible. P. Leavitt said that if they are unsuccessful with the Board that they can pursue a subdivision. It will remain a permanent option.

P. Cayer stated that if the Board approves a conditional use it will have to go to the Planning Board for site review.

M. Higgins stating that he is stilling struggling. He is concerned that if an approval is granted under any scenario that they are assured that the use reflects the intent of the approval. He does not feel the cabins can be looked at as accessory uses if they provide for a use not currently provided by the main lodge. P. Leavitt suggested that they need guidance from the Town Attorney. They need to treat each District separately and he is concerned that the applicant did not present the Board with a proposed definition of the use. Short of the use falling into a current definition he does not feel the application can be approved. P. Cayer responded by asking why the Board was not considering approving it as a specific conditional use, as that would make it an allowable use.

L. Murch pondered if the applicant could establish bedrooms in the lodge. P. Leavitt answered that in order for bedrooms to be considered in the main lodge, they would have to have been grandfathered. J. Cooper added that he could approve an accessory structure such as a shed or a bathhouse. P. Leavitt stated that the ordinance is not intended to accommodate every possible land use. If this were a nuclear power plant the request could be dismissed. It was the intent of the Shoreland Zoning Ordinance to control uses adjacent to the ponds, lakes, and streams. M. Higgins noted that this interpretation would effect the ability for summer camps to expand. P. Leavitt agreed that accessory structures that would expand the use of the property would not be permitted.

P. Cayer added that the existing use is grandfathered. They are asking for an expansion of the existing use of the property. The cabins would be used for business with the

Approved  
Town of Raymond - ZONING BOARD OF APPEALS  
MINUTES - Monday, May 27, 2003

function hall. They would not use the cabins separately. P. Leavitt stated that they need to show that the overnight accommodation use currently exists in the lodge.

P. Cayer responded by asking why he continually was going to the definition of accessory when they are asking for use of the cabins, asking to make it an allowed use.

P. Leavitt stated that it was very clear what they were asking for, to allow the cabins as dwelling units for overnight accommodations and cooking facilities.

R. Stevens added that he does not believe this is a motel. It would not look like a motel, they are all one building. P. Leavitt indicated that this has no bearing on their request.

M. Higgins added that he is not convinced that the Board has the authority to do what they are asking. P. Cayer asked that the Board look at the conditions to be met for a conditional use, on page 34 of the Land Use Ordinance. P. Leavitt reviewed them and referred back to the intent of the Shoreland Zoning. He believes the intent of the ordinance is very clear, to control growth, not to manage. It is paramount that the Board enforce the strict guidelines for a conditional use. He believes it is clear that they cannot approve overnight accommodations.

M. Stevens asked if there were no kitchens and the lodge was open every day for meals, if that would make a difference. M. Higgins replied that the stalemate is over overnight accommodations; it does not have anything to do with the kitchen. P. Cayer asked if the granting of a conditional use would limit the property to the existing use.

P. Leavitt stated that in order to add a new use there needs to be a comprehensive test for the impact of that use. The Board has to go back to definition and language within the ordinance.

P. Cayer re-iterated that the use is a function specific facility that allows group use, the cabins are associated with the lodge, and they are just asking that the guests be able to spend the night. His client is asking that the Board allow the use as a conditional use.

P. Leavitt stated he would entertain a motion from a Board member.

**MOTION:** L. Murch moved to approve the use as submitted with the exceptions that the cabins be moved out of the LRR1 District and that there be no kitchen facilities installed. P. Leavitt seconded for discussion and asked if L. Murch intended to limit the number to ten in perpetuity, would the parking lot be able to be paved, can alcohol be used in the cabins. The motion was called and failed 1-2.

P. Leavitt moved to grant use of accessory buildings tied to the current use, to not include either kitchen facilities or be allowed for overnight accommodation, and that the access road is re-located to avoid the abutter's property. M. Higgins seconded the motion for discussion. Continued discussion with P. Cayer ensued, reviewing the authority of the Board. Motion failed 1 in favor, 1 opposed, 1 abstention.

**MOTION:** P. Leavitt moved to continue the hearing to June 30 to allow J. Cooper research the DEP's opinion on the uses as LRR1 is the state mandated district and to consult with Town Attorney. With a second by L. Murch, the motion passed unanimously.

Approved  
Town of Raymond - ZONING BOARD OF APPEALS  
MINUTES - Monday, May 27, 2003

- b. Map 39, Lot 7 – LRR1 District  
19 Conifer Cove Road  
Sharon & Gary Cox  
Setback Reduction for side setback from 20 to 10 feet for new garage

Gary Cox introduced himself and explained that they have lived at this location for seven years. There is an existing garage underneath the house. It is situated so that it is impossible to use the garage in the winter due to the steepness of the access. They have paved and that has not improved it. They wish to build a new garage. The ten feet would include the overhang. The addition will include a 24 x 28 garage and a breezeway to attach it to the house.

Janet Curren, abutter stated that her house lines up with their house and it will not alter her view.

M. Higgins asked how far from the water the garage would be. Answer: 126 feet.  
P. Leavitt asked the distance to the next home. Answer: more than 100 feet on one side, on the other side about 12/13 feet. J. Cooper stated that abutter had received a setback reduction approval as well. M. Higgins expressed his main concern of creating a wall around the lake. G. Cox responded that he has over an acre. P. Leavitt called for a motion.

**MOTION:** L. Murch moved to approve the setback reduction to not greater than 10 feet. With a second by M. Higgins the motion passed unanimously.

- c. Map 55, Lot 20 – LRR2 District  
20 Peterson Road  
Mary Sargent  
Setback Reduction for side setback from 20 to 14 feet for new garage  
Setback Reduction for front setback from 30 to 22 feet for new garage

Rudi Galipeau reviewed the plan with the Board. P. Leavitt asked for public input. None was offered.

**MOTION:** M. Higgins moved to approve the setback reduction as submitted. With a second by L. Murch the motion passed unanimously.

- d. Map 50, Lot 33 – VR1 District  
9 Canal Road  
Travis McClellan  
Variance for side setback from 20 to 13 feet to retain house foundation

Travis McClellan introduced himself and stated that they had violated the side setback and discovered it later in the building process. Don McClellan was recognized and stated that they were trying to get a mortgage on the property and the bank would not approve them with a zoning violation.

Charles Lester, abutter, stated that he had problems with having the foundation so close to his subdivision road right-of-way. There were three issues:

1. the setback for the adjacent lot would be hard to maintain

Approved  
Town of Raymond - ZONING BOARD OF APPEALS  
MINUTES - Monday, May 27, 2003

2. the well was drilled and the easement area falls within their property (P. Leavitt noted that the BOA has no jurisdiction for the well)
3. feels the variance would lessen the saleability of the subdivision lots, would prefer that the foundation be moved to the proper location

P. Leavitt stated that Hartley Lane was a paper road at that point and as he looked at the line it goes through the lot's side yard, 7 feet from the home. Charlotte Lester, abutter, stated that they are not willing to move the road location.

J. Cooper stated that when the project was initiated they were concerned about maintaining a 100 foot setback to Saddlebag Pond and the adjacent wetland as they were under the impression that it met the criteria for Shoreland Zoning. C. Lester stated that they hired a surveyor, LSI, and had the pins put in.

D. Buzzell, excavator for the project, indicated that someone had staked out the foundation where he dug. There was a plot plan available at that time that showed the setbacks. T. McClellan admitted that they made a mistake and understand that they will be very close to the road when it is built. The Board and the Lesters discussed the location of the ROW versus where the road might actually get built. The Lesters' intention is to keep the road in the center of the ROW the way it was designed. P. Leavitt asked if the McClellans had attempted to purchase land from the Lesters. C. Lester stated that they had no interest in amending the subdivision as it is non-conforming.

P. Leavitt asked for a review of the points for the variance or a motion.

M. Higgins noted that they cannot meet the hardship point as it is the result of the applicant. J. Cooper noted that they can remove three feet of the house, then they would be eligible to apply for a setback reduction to ten feet.

**MOTION:** M. Higgins moved to grant the variance. L. Murch seconded the motion stating that it was cost prohibitive and impractical to do anything else. P. Leavitt stated that point #1 of the variance criteria cannot be met. Motion passed 2-1.

- e. Map 49, Lot 15 – LRR1 District  
39 Wharf Road  
Roland Hannaford  
Expansion of a non-conforming structure (variance criteria apply)  
Variance for side setback from 20 to 12.5 feet for addition

R. Hannaford introduced himself and stated that the footprint shown is more than the 15% expansion. He is looking for access to the bathroom from other than the bedroom. He is also asking for a variance for a side setback.

P. Leavitt stated that there are two different issues, the 13 x 18 addition (exceeds lot coverage of more than 15%) and the 6 x 23 addition (variance for side setback). J. Cooper and P. Leavitt discussed that the 13 x 18 addition is placed over an existing patio. J. Cooper then determined that it does not increase the impervious surface and is currently non-conforming with respect to lot coverage; therefore no approval is needed as the addition meets all the setback requirements.

Regarding the second addition, 6 x 23, for a sideline variance, M. Higgins noted that it falls within the 100 foot setback and currently there is only 23 feet to the abutting

Approved  
Town of Raymond - ZONING BOARD OF APPEALS  
MINUTES - Monday, May 27, 2003

property. M. Higgins moved to deny the request. With a second by L. Murch the motion passed 3-0.

4. Other business

- a. P. Leavitt reported that he had spoken to Robert Fey and due to family and employment obligations he would be submitting his letter of resignation in writing.
- b. Regarding new appointments P. Leavitt moved to recommend to the Selectmen that Aurel Gagne be moved from an alternate member to a regular member. With a second by L. Murch the motion passed unanimously.
- c. New Application Form – P. Leavitt explained that A. Simpson had submitted a new application form for their review. A. Simpson noted that the office was already using it and apologized for not having it adopted by the Board. P. Leavitt moved to adopt the new form. With a second by L. Murch the motion passed unanimously.
- d. Appointment Protocol – P. Leavitt asked the Board members to review and sign the Code of Ethics statement.
- e. Discussion on Fairpoint – The Board reviewed the zoning definitions and procedure for handling the application. No decisions were made.

5. Adjournment – The Board unanimously voted to adjourn at approximately 10:00 p.m.

Submitted by Amanda Simpson  
Assessing/CEO Assistant