

Draft
Town of Raymond
ZONING BOARD OF APPEALS
MINUTES
Monday, June 30, 2003

Members Present: Peter Leavitt, Chairman; Lawrence Murch; Aurel Gagne Jr.; Michael Higgins; and Matthew Schaefer. **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. Welcome to Matthew Schaefer, new alternate member
3. Approval of Minutes – May 27, 2003 Approval of Minutes – May 27, 2003

MOTION: Lawrence Murch moved to approve the Minutes of May 27, 2003 as written. Seconded by Matthew Schaefer. Motion passed unanimously.

4. Hearings

- a. Map 66, Lot 12&13 – LRR2 Districts
42 Blueberry Point Road
James & Kim Tees
Setback Reduction – front setback from 30' to 26' due to updated survey

P. Leavitt reviewed the purpose of the request. James Tees introduced himself and indicated that they were between 1 and 1 1/2 feet too close to the line according to the new survey but were asking for 4 feet just to be sure.

P. Leavitt asked for any public comment, either for or against the request. There was none. L. Murch asked if a survey had been completed when the property was purchased. J. Tees explained that the survey used was the survey from the original subdivision in the mid 50s-60s. Kim Tees further explained that when the original survey was used to plot the lot on the ground the math did not work, the lot would not close. J. Cooper added that when the house was built he used the existing survey to measure setbacks.

P. Leavitt recalled that there was a variance granted to 75 feet to the water for the existing building. The setbacks for the garage were discussed and found to be in compliance with the current ordinance. It was restated that the reduction request would have no impact on the waterfront.

MOTION: M. Higgins moved to grant the four foot reduction from 30 to 26 feet from the front lot line. With a second by A. Gagne, Jr. the motion passed unanimously.

- b. Map 60, Lot 23 – LRR2 District
142 Deep Cove Road
Daniel & Maureen Mackay
Setback Reduction – side setback reduction from 20' to 13' for the placement of a deck

Clifford Corb introduced himself as representative for the applicant. The request is a setback reduction for 7 feet to accommodate a deck. The neighbors have been contacted and have not expressed any opinion one way or the other. There is a good pine tree buffer along that property line. The addition will not bring the structure any closer to the lake.

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M. Higgins asked if any portion was within the 100 foot setback from the water. The plot plan indicates it is 89 feet from the water. J. Cooper noted that they can create additions that do not increase the encroachment on the setback. A. Gagne Jr. stated he was familiar with the site.

P. Leavitt noted that his concern is the "walling in effect" of the lake. As homes are enlarged the public view from the road of the lake diminishes. In this case there is a significant slope to the water and it is not visible from the road. J. Cooper noted that the deck could not be enclosed. A. Gagne Jr. recalled that the variance for the deck initially stipulates that it cannot be enclosed. M. Higgins reviewed the guidelines which include no unreasonable interference of abutting owners. He noted that you would be able to see the deck from the lake.

MOTION: A. Gagne Jr. moved to grant the setback reduction to 13 feet for the side setback with the stipulation that the deck can never be enclosed. With a second by M. Higgins, the motion passed unanimously.

- c. Map 59, Lot 20 – LRR2 District
78 Deep Cove Road
Paul J. Borriello
Administrative Appeal – Shoreland Zoning, Section 12, C.1.c.

P. Borriello introduced himself and indicated that he had an existing porch on his house and wanted to expand it across the front and enclose it for a year- round dining area. The dimensions would be 8' x 21'. The addition would not bring the home any closer to the waterfront. He has a survey from Owen Haskell showing that the current porch is more than 100 feet from the high water mark. There is a difference of opinion between the survey and the J. Cooper when he measured the setback.

Marian and John Wright, abutters, stated that they do not have any problem with the proposal. Mr. Borriello sets the standard for property maintenance in the neighborhood.

J. Cooper stated he has measured the setback at 85 feet to the current porch. He agrees that there is a discrepancy between the measurements, but is confident in the methodology he uses. The Board reviewed the survey and pictures distributed by P. Borriello. L. Murch asked when the survey was completed, at what time of year. It was determined that it was October. P. Borriello discussed with the Board the reconstruction of the stone retaining walls. He indicated that they were approved by DEP and were inspected.

P. Cayer of LSI indicated that he was a surveyor and has tried to get the towns on Sebago to consider adopting a set elevation for Sebago Lake and other lakes and ponds so that this situation could be avoided in the future.

The Board continued their review of the survey which many found difficult to read as it was a copy that had been reduced. P. Leavitt stated that the real question here is whether or not the structure is non-conforming. If it is conforming, meets the setback then the issue of an addition is outside the Board's jurisdiction. If it is non-conforming then a permit cannot be issued.

The Board discussed that the zoning language had been amended in 2002 to address the prohibit the enclosure of non-conforming decks.

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P. Leavitt read the minutes from the July 28, 1997 BOA meeting regarding this property. [These minutes are on record in the CEO Office.] A variance was granted for the construction of the current porch because the Board could not determine what force changed the shoreline. M. Schaefer noted that the criteria have been amended since that vote. P. Borriello stated that the question is whether the surveyor or the CEO is accurate.

A. Gagne Jr. replied that in his review of the site there was no mistaking the fact that the current deck is less than 100 feet from the current water mark, and it is not high water yet. The 100 foot line would be at the back of the deck. M. Schaefer stated that there was conflicting evidence of the location of the setback line.

J. Cooper reviewed the 30% clause for expansion. The deck could be expanded but cannot be enclosed. He offered that the hearing could be continued and the full Board could review the site. P. Leavitt asked J. Cooper how many times this year has he measured the setback for high water mark. J. Cooper responded many dozens. P. Leavitt stated that if the Board reversed the CEO's decision it could have repercussions on many other properties. They need to decide whether they can rely on Jack or not. P. Leavitt said he would ask for a motion to uphold the CEO's decision, to approve or deny, or to ask for additional information from DEP.

M. Schaefer stated that the burden is on the applicant in the context of an Administrative Appeal to come forth with something to refute his decision.

MOTION: M. Higgins moved to uphold the CEO's decision. With a second by A. Gagne Jr. the motion passes 4 in favor with 1 abstention.

- d. Continued Hearing
Map 17, Lot 43 – R/LRR1 Districts
Inlet Point Road
Robert Stevens
Conditional Use for addition of cabins

P. Leavitt stated that this was a continued hearing and the Board is familiar with the proposal as stated previously. He asked the applicant for any updates.

P. Cayer, agent for the Stevens, indicated that they had no new significant information. He believes it comes down to the Board determining whether or not the proposed use falls within a listed use in the ordinance. If so, then it cannot be considered as a conditional use. If not, it can be considered by the Board to be added as a conditional use specific to this property. P. Leavitt concurred with P. Cayer. He asked if the applicant had more clearly defined the use requested.

P. Cayer stated the existing use of the lodge is a private day resort used for functions such as corporate retreats, reunions, and training. The proposal is to allow cabins for overnight accommodations of those individuals attending functions. He added that the facility is not for people coming off the street. R. Stevens added that keeping the resort private has been its success. The abutters are close and are not currently affected by functions.

P. Leavitt stated that the conditional use if approved would be for 10-12 housekeeping cabins. If the previous owners had used the site for overnight accommodations the burden is on the applicant to produce evidence to that effect that would persuade the

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Board. A discussion between the Board and applicant ensued regarding the determination of non-conformity. It was concluded by the Board that it would be to be proven that there has not been a more than 12 month gap between use of the site for overnight accommodation during its inception prior to the ordinance going into effect.

P. Leavitt continued, indicating that he had a concern about their jurisdiction if an amendment is in front of the Planning Board that would address this matter. If the BOA approves or denies this request they could be getting ahead of a vote on the matter. The BOA cannot alter the ordinance. He is concerned that the language granting them jurisdiction is one sentence is a definition.

P. Cayer indicated that there were 2 applications due to the timing of the proposal. His client wishes to move ahead as soon as possible and with the Planning Board researching this amendment in terms of the whole town; the time frame is much longer than what his client desires. If the BOA decides that they do not have jurisdiction he wanted to have the amendment in process with the Planning Board. Their goal is to have several cabins constructed this year.

P. Leavitt stated he would like to open the discussion up to the Board at this time. P. Cayer asked if they would be handling this application differently if they did not have the amendment in front of the Planning Board. P. Leavitt responded that the Board has to make a decision about whether the use is listed or not. If this was a request for a nuclear power station, the intent of the voters would be easy to determine.

M. Schaefer asked the applicant if they could characterize the use in a more particular way. P. Cayer responded that they cannot find the use in the ordinance. Uses listed include hotel/motel/inn which are establishments for transient uses. P. Leavitt offered that bed & breakfast is listed in the RR District.

P. Leavitt began looking at conditions that might be placed on an approval.

1. use of housekeeping cabins would have to be directly related to the use of the lodge

R. Stevens noted that the lodge would always be available, such as the game room or the beach. P. Leavitt stated that he was implying that there was to be a function at the lodge scheduled.

A. Gagne asked what effect a town vote would have on an approval of the BOA. P. Leavitt answered that it would remain in effect.

P. Cayer stated the options that the Planning Board were considering included staying out of LRR1; the use would be added to R only. P. Leavitt noted that the BOA could add conditions and the project would be subject to site review by the Planning Board. He is operating with the understanding that the BOA can be more stringent but not less stringent than other authorities. A. Gagne Jr. stated that he has not visited the site and would be uncomfortable voting for provisions. P. Leavitt suggested that while he understands the time constraint with developing the business the hearing could be continued for another month. A. Gagne Jr. suggested they could hold a special meeting.

M. Higgins noted that the minutes of the last meeting indicated that Jack was waiting for information back from DEP. That correspondence was copied and handed out for Board review. M. Schaefer stated that he understood that the Board has to make positive findings for all criteria listed under Article IX A. Conditional Use.

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P. Cayer asked the Board to keep in mind that the Planning Board was looking at a townwide amendment. This conditional use would be for a specific property with specific conditions for a specific use. LRR1 would be kept out of the proposal.

P. Leavitt stated that his reading of the DEP memo emphasizes the fact that this is new territory for everyone. It is an extraordinary situation.

M. Higgins expressed his reluctance to try and formulate a motion as his experience is interpreting the ordinance not developing comprehensive policy for a use.

P. Leavitt stated he agreed with Mike, that there does not seem to be a problem with meeting the criteria, but the BOA is not a policy board. It makes no logical sense for the Board to have authority to add uses to the ordinance. It means that the Board could entertain any use in a district.

M. Schaefer noted that Article 9 places limitations on the use such as it cannot depart from the intent of the ordinance and must be compatible with permitted uses.

A. Gagne Jr. asked where the cabins would be placed. R. Stevens responded that originally 2 would be in the LRR1 district but they would be moved to the R District.

P. Leavitt reviewed the motions from the last meeting that failed. L. Murch noted that he is in favor of the conditional use. M Higgins agreed but feels that his lack of familiarity with the process leaves him without the skill set necessary to craft a motion. He also stated that he is not familiar with the Planning Board's review process for site review.

P. Leavitt iterated that it would be appropriate to review the criteria to develop a series of conditions. M. Schaefer asked the applicant to summarize the intended use. P. Cayer responded that it is for overnight accommodations for groups that book the lodge facility for specific functions such as retreats, reunions and weddings. M. Schaefer asked if extended stays would be permitted. The Board discussed in depth the repercussions of extended stays and how that would circumvent the notion that this use is different than a hotel or motel. They discussed as well their obligation to make findings based on information provided by the applicant, including the 10 criteria outlined in Article IV.'

M. Higgins expressed that he is not concerned with precedent setting as this is specific to this piece of property. He would like to make a motion to approve with conditions but needs help in speaking to the ten criteria.

The Board began developing a list of conditions as follows:

1. cottages must be moved outside the LRR1 District
2. adequate septic design
3. Planning Board site review
4. rental of cabins must coincide with lodge rental
5. length of stay

The Board and applicant had a lengthy discussion over how to tie the use of the cabins to the use of the lodge at which point A. Simpson suggested that the applicant submit a definition of the use and address the criteria in writing so that the Board has something to respond to rather than having to speculate on the proposed operation. P. Cayer asked if the Board could place conditions on the existing use as well as the additional use. The Board discussed the business plan with the applicant and it was concluded that some of

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the specifics that might effect conditions have not been determined. The discussion turned to the number of events that could occur on the site at one time and how they could overlap. R. Stevens informed the Board that he does not accept less than groups of 35 on the weekdays and less than 50 on the weekends for catered functions. M. Higgins responded that these were new details of the operations and felt the Board needs to know all the details of how the business is run now.

A. Gagne Jr. stated that the discussion was making him less comfortable with an approval. P. Leavitt reviewed the criteria the applicant would have to meet for a subdivision. He feels this conditional use approval is similar to the back lot provisions which allow property owners to circumvent the details of an approval.

P. Leavitt stated that he feels the applicant should come with a business plan clearly articulated and address the criteria as there is no list of requirements in the ordinance. M. Higgins asked that the Board get whatever is submitted in advance of the meeting. A. Gagne Jr. wants to visit the site prior to the next meeting.

MOTION: M. Higgins moved to continue the hearing to July 28, 2003 at 7:00 p.m. to allow the applicant to submit in writing the details of the proposed use and to address the criteria under Article IV. A. Gagne Jr. seconded the motion and added that a site visit should be scheduled. A site visit was proposed for July 20th at 10:00 am at the site. R. Stevens was concerned about disrupting a function but agreed to the date and time. The motion passed unanimously.

e. Reconsideration Hearing

Map 72, Lot 8 – LRR2

40 Lombard Road

Kenneth R. Thompson

Administrative Appeal of Notice of Violation and Stop Work Order

J. Cooper announce that Chris Vaniotis, Town Attorney, had contacted him and requested that the Board continue the hearing to July 28 as the attorney for the applicant was unavailable for tonight's meeting.

The Board unanimously voted to continue the hearing to July 28, 2003 at 7:00 p.m.

4. Other business

a. Robert Fey resignation

The Board acknowledged Mr. Fey's resignation and voted unanimously to recommend to the Selectmen that Matthew Schaefer be moved from an alternate member to a regular member.

5. Adjourn – Board adjourned at 10:00 p.m.

Submitted by Amanda L. Simpson