

**Minutes**  
**Town of Raymond Zoning Board of Appeals**  
**401 Webbs Mills Road**

Monday June 27, 2005

**Members present:** Chairman Matthew Schaefer, Lawrence Murch, Mary Picavet and Michael Higgins. Peter Leavitt and Elden Lingwood were absent.

**Staff present:** Code Officer Jack Cooper and Karen Strout, Recording Secretary

**Call to order:** Chairman Schaefer called the meeting to order at 7:09 pm.

**Consideration of minutes dated May 23, 2005:**

Moved by Mike Higgins and seconded by Larry Murch to approve the minutes as submitted. Vote was unanimous 4/0.

**Election of Officers:**

Moved by Larry Murch and seconded by Mary Picavet to re-elect Matthew Schaefer to serve as Appeals Board Chairman for the upcoming term. Vote carried 3 in favor /1 abstention.

**Public Hearings:**

**Map 20, Lot 6 LRR1**

**Gary W. Bucklin**

**51 Inlet Point Rd**

**Rear setback reduction from 30' to 24' to build a garage**

Gary Bucklin was present to explain his SBR request. A private road splits his property. The Bucklins live on the side of the property that is on the lake. They would like to construct a garage on the other side of the road and are requesting a rear setback reduction of 6 (six) feet on the backlot to fit a garage there. They presently have a shed on that side. Mr. Bucklin commented that there are no buildings on the abutting properties on that side of the road.

**Comments from the public:**

There was no public comment.

**Comments from the board:**

Member Mike Higgins asked for clarification from the Chair that the applicant was requesting a setback reduction, not a variance. Chairman Schaefer responded that he was correct and that a SBR doesn't require a variance.

Chairman Schaefer asked CEO Cooper if there were any issues he knew about concerning the property. CEO Cooper only comment was that the applicant could not have two garages on one lot, and there aren't any on the lot at this time.

**MOTION:**

Moved by Mike Higgins and seconded by Mary Picavet to grant to the Bucklins' request for the Rear Setback Reduction of 6 feet for the rear setback. This permits a rear setback reduction of no less than 24' from the 30' required by the Land Use Ordinance.

**Map 12, Lot 44a RR  
Robert L. & Carol A. Fogg  
715 Webbs Mills Rd.  
Variance to allow an accessory structure on a lot that has no principle structure**

Robert & Carol Fogg were both present to present their request. They repeated what had been stated in their application:

“This variance is requested so that my daughter and family might be the sole owners of the property adjoining my storage/garage building. They will continue to use this building, as do we, but in order to allow my daughter and family to have their own home, we need to remove our name from that property. By doing that, it will make our garage/storage building non-conforming to Town regulations.

Please understand, that even though we own the storage/garage building, my daughter and her family will continue to use this building.

I am very limited at my present home (Raymond Pond-2 Acre Island), to be able to store all of my equipment- Motor home, Boat, snowmobile & trailer etc.”

**Comments from public:**

Cheryl and Richard Dwinell of 727 Webbs Mills Road submitted a letter along with documents from The Whiting Law firm for the purpose of bringing some information to the attention of the board. These have been included in the file for this property at the request of Chairman Matt Schaefer. The letter from the Dwinells states that “The variance that Robert & Carroll Fog(sic) are seeking does not meet the requirements of the protective covenant on that parcel of land. The covenant allows only residential uses for that property.” The Dwinells also submitted copies of information prepared by their lawyer that were prepared for them when the Fogs purchased the land.

Cheryl Dwinell spoke in opposition to the request for a variance. Her concerns centered around the parking of commercial vehicles on the property, noise of trucks backing up, use of the property for parking of equipment for commercial use in a rural zone. She expressed concern that the property was being used partially as residence and partially commercial. She referenced covenant violations that she felt the Fogs were aware of that restricted the use of the property.

**Comments from board:**

Chairman Matt Schaefer summarized for the board: there are two potential lots being discussed here- one would have a home, and the other an accessory structure. The applicant proposes to transfer the house to his daughter and retain title to the parcel with the garage. In order for a building to be an accessory there needs to be a primary structure. Chairman Schaefer read the definition of accessory from the ordinance: A use or structure on the same lot with and customarily incidental and subordinate to the principal use or building. Because the property is being separated it creates a non-conformity with the ordinance.

Larry Murch asked the Fogs why they didn't just give the garage to the kids? Mr. Fogg stated that you are talking another \$100,000. The kids could not afford another \$100,000 mortgage. He was trying to assist each member of his family to get established. The kids are running the business and he made a choice that they still wanted to keep the garage. Fogg stated that he needed the garage for his equipment and he was trying to keep it legal. Fogg also stated that he had another 3 acres that abutted this.

**Comments from public:**

Cheryl Dwinnell spoke again about her concerns and stated that it was very obvious to her that this was a faith and trust issue. She requested that the Foggs run their business without storing their business equipment on the residential property. The area is residentially zoned, and should not be parking for commercial trucks which create a lot of noise, and a storage area for their business.

**Comments from board:**

Chairman Schaefer thanked her Ms. Dwinnell for her comments and explained that the board could not address the issue of business use. The board needs to look and act upon the application in front of them. Her concerns would be better addressed by Code Enforcement or in reference to the restrictive covenants, a legal matter.

Chairman Schaefer read from Article VI of the ordinance to clarify the powers and duties of the board.

- a. A variance may be granted for lot areas, lot coverage by structure, and setbacks. A variance shall not be granted to permit a use or structure otherwise prohibited, except for non-conforming uses, structures and lots as described in Subsection d. below. A variance can only be granted where undue hardship is proven. Undue hardship is defined to mean:
  - 1) That the land in question cannot yield a reasonable return unless the variance is granted;
  - 2) That the need for a variance is because of unique circumstances of the property (such as location of existing structures, topographical features, etc.) and not to the general conditions of the neighborhood;
  - 3) That the granting of a variance will not change the essential character of the locality;
  - 4) That the hardship is not the result of action taken by the applicant or a prior owner;

Board member Higgins commented that it is really important to establish whether or not these hardship criteria apply. Higgins stated he felt they did, and if so, the applicant would have difficulty meeting criteria 1 and 4. This problem with the lot arises because of the action of the Foggs. If this is the standard that applies, he does not see how it could be met.

The Foggs shared some additional background information with the board and showed a copy of a portion of tax map 12 that included 3 lots- 44, 44a, and 44b. For purposes of the record 44a is depicted as 4.52 acres; there is also a 2.2 acre grandfathered lot. A parcel of 5.16 acres which was portion of 44, 44b was conveyed to a third party. The Chairman requested that this map become part of the file.

At this point member Higgins asked where the board's discussion was going?? It doesn't matter 3 vs 5 acres.

Chairman Schaefer commented the board needs to look at the four hardship criteria, and related that criteria 1 is very difficult to meet. Criteria 4 relates to the timing of the structure itself. When the Foggs built on the lot, that created an issue. The Foggs created the hardship. Chairman Schaefer stated he felt that criteria 1 and 4 could not be satisfied.

Mrs. Dwinnell spoke again and took issue with the comment that the Foggs were unaware of the covenant issue. She stated that they had been offered money at the time the Foggs were purchasing the property to have the covenant relinquished, but they had declined the Foggs' offer.

Chairman Schaefer made the following comments. The board is not making a judgment on the restrictive covenant. The board's decision is completely and totally unaffected by that information. Conceivable there are other creative options with estate planning that the applicant can apply.

**MOTION:**

Moved by Matt Schaefer and seconded by Mike Higgins to deny a variance which would allow a division of the existing parcel in a manner that would create a parcel with only an accessory structure to be built on their property. Vote unanimous 4/0.

Meeting was adjourned at 8:20 pm.

Karen Strout  
Recording Secretary