



ZONING BOARD OF APPEALS
MINUTES*
November 28, 2011

Present: Peter Leavitt, Elden Lingwood and Larry Murch

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

Others: Erdine & Randy Campbell (Applicants) and Randy Perkins (Agent)

MOTION: Peter Leavitt motioned to have Larry Murch chair the meeting; seconded by Elden Lingwood.

DISCUSSION: None.

VOTE: MOTION CARRIED (2/o/1 [ab LM])

1) Call to order: Interim-Chair Larry Murch called the meeting to order at 7:05 pm and quorum was declared.

2) Minutes of previous meeting dated:

- **October 31, 2011**

MOTION: Peter Leavitt motioned to approve October 31, 2011 minutes; seconded by Elden Lingwood.

DISCUSSION: None.

VOTE: UNANIMOUS APPROVAL (3/o)

3) Tabled Applications:

a) Map 016, Lot 053

22 Dyer Road, R zone

Randy Campbell on behalf of Erdine Fisher for setback reduction

Randy Campbell explained that he went out and got quotes for the removal of the barn, as he was instructed to at the last meeting. Mr. Murch read the three quotes into record and asked why one of the quotes only included the cost of removing the building. Mr. Campbell explained that it was the only service that he requested from that contractor.

Mr. Murch explained that the building had gone through several owners since 1995 but the title company was requiring action before releasing for financing because the Campbells were interested in purchasing the property. They were currently requesting a reduction to 11' from 20' for the existing barn.

MOTION: Larry Murch motioned to grant the reduction down to 11 because it was nothing that was done by this owner and it has gone through several purchases.

DISCUSSION: Elden Lingwood stated that the garage was not built to specifications of the building

*Per the "Minutes Policy," reviewed and approved August 17, 2010 by the Board of Selectmen, written minutes will only serve as a supplement or guide to the official record, which is the DVD. DVD's can be purchased for a nominal fee or borrowed at the Town Office

permit and there was also a time constraint within the ordinance. Mr. Hanson agreed and reiterated that a setback reductions can only be granted for lots in existence as of 1986 and this lot was not, but he was not sure the history of that rule.

Mr. Leavitt said that because the applicant did not qualify for a setback reduction, at the last meeting the Board had requested that the applicants request a variance but the four level hardship are hard to show. Also, does not know the rational behind the 1986 date but the fact remains that the lot was created in 1989 and the next step was to investigate the hardship levels.

Mr. Leavitt started with the first condition, which was reasonable return. He clarified for the applicant that this was not a maximum return. He asked what the value of the property was and Mr. Campbell said that it was a 3 acre lot and was worth about \$98,000. Mr. Leavitt stated that it meant that the Board could be asking them to take 10% loss in order to resolve this issue. The two remedies that are under Article 6, Section b says that a variance can only be granted if undo hardship was shown and he read the effects of granting the variance. Section b, Subsection c states that a variance was available only if the property could not get a reasonable return. However, he was having trouble granting a variance because the issue was created due to a previous owner.

Mr. Campbell stated that he submitted a survey from the 2003 showing that stone wall was the boundary line and the garage is shown to be only 11'. Mr. Leavitt stated that he felt that the previous owner was unclear where the lot line were and did not feel that the hardship was caused by the previous owner, but the date issue precludes that application from getting a reduction. He also did not find that the variance can be issued either.

Mr. Hanson stated that he felt that the 1986 date came from the fact that it was when the first code officer was employed.

Mr. Murch wanted to know if the applicants had spoken to the previous owner to reduce the price in order to compensate and Mr. Campbell said they had not because it was a family sale. Mr. Lingwood said that he agreed with Mr. Leavitt that they could not go against the ordinance. He wanted to know if the applicants could appeal this with the Selectmen and Mr. Hanson responded that they can either go to the superior court or get a letter of non-action from the Selectmen, but, in the past, the Selectmen had granted letters when the town was involved but, with this application, the town was at no fault this time.

Mr. Campbell asked for clarification about what Mr. Hanson meant. Mr. Hanson explain that just because a permit was issued, there was no evidence that an inspection was ever done.

MOTION: Peter Leavitt made a motion to deny the variance request because not meet condition number 3 or 5; seconded by Elden Lingwood.

DISCUSSION: None.

VOTE: MOTION CARRIES (2/1 [LM])

*Per the "Minutes Policy," reviewed and approved August 17, 2010 by the Board of Selectmen, written minutes will only serve as a supplement or guide to the official record, which is the DVD. DVD's can be purchased for a nominal fee or borrowed at the Town Office

The Board proceeded to do a fact finding for the Variance conditions (Article 6, Section b, Subsection c):

- 1) The need for the variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood- MEETS;
- 2) The granting of the variance will not alter the essential character of the locality- MEETS (No issues brought up by abutters);
- 3) The hardship is not the result of action taken by the applicant or a prior owner- DOES NOT MEET (condition created by previous owner);
- 4) The granting of the variance will not substantially reduce or impair the use of abutting property- MEETS;
- 5) That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available- DOES NOT MEET (feasible alternative, though pricy).

Mr. Leavitt explained that even if the Board were able to grant it, they would have only be able to give 20% which is 4 feet, and they were requesting 9.

4) Other Business

Peter Leavitt said there was a State model for an ordinance, created in 1992, that goes along with Section c to grant a variance (MRSA 40A-4353) with written consent from the abutter.

Mr. Lingwood said that he wanted to find out more on the 1986 date and recommended taking the date out.

5) Adjournment:

MOTION: Elden Lingwood motioned to adjourn; seconded by Peter Leavitt.

VOTE: UNANIMOUS APPROVAL (3/0)

Interim-Chair Larry Murch adjourned the meeting at 7:47 pm.

Danielle Loring
Recording Secretary

*Per the "Minutes Policy," reviewed and approved August 17, 2010 by the Board of Selectmen, written minutes will only serve as a supplement or guide to the official record, which is the DVD. DVD's can be purchased for a nominal fee or borrowed at the Town Office