

Wolfeboro Zoning Board of Adjustment
July 19, 2021 7:00 PM
The Great Hall at Wolfeboro Town Hall
Meeting Minutes

Introduction:

Members Present/Roll call: Audrey Cline, Chairman; Luke Freudenburg, Vice Chairman ; Tim Cronin, Clerk; Sarah Silk, Member; Suzanne Ryan, Member.

Members Excused: Dave Senecal, Alternate

Staff Present: Tavis Austin, Director of Planning & Development; Mary Jane Shelton, Recording Assistant

I. Call to Order: The meeting was called to order at 7:00 pm.

Audrey Cline suggested rearranging the agenda and place the New Business after the Public Hearings. Suzanne Ryan made a suggestion of a 9:00 pm cut off time wherein the Board can decide whether to continue or not. The majority of Board members felt that decision/procedure should be discussed under New Business and that the Board should proceed as scheduled for this meeting.

Audrey Cline gave an overview of the order of business and procedures to be followed for the public hearings to be heard.

II. Public Hearings:

Case #:10-SE-21

Applicant: New Hampshire Boat Museum

Tax Map/Lot#: 163-2-1E, 399 Center Street

Formal Submission Date: 5/1/21

Project: Special Exception for Museum with Accessory Structures

Zoning District: Residential District

Agent: Randy Walker, Walker & Varney P.C.

This is a continued public hearing from 6/23/21. There was a site visit held prior to the meeting on this date attended by Audrey Cline, Sarah Silk, Luke Freudenburg, Suzanne Ryan, and Tim Cronin.

Audrey Cline clarified that for a Special Exception “a specific permitted land use that is allowed when clearly defined criteria and conditions contained in the ordinance are met”.

Public input was continued from the 6/23/21 hearing.

Jason Rymers with BCM Environmental and Land Law Firm representing the owners of five homes on Moose Point Drive.

1. Legal error to grant special exception, not only because the construction of the proposed warehouses do not meet the requirements of a special exception, but because they do not meet the requirements of a primary use in the zoning ordinance. A storage facility is a defined primary use in the zoning ordinance that is not permitted by right or by special exception in this residential district. These are not accessory, incidental structures. A storage facility is defined in the zoning ordinance as “a structure, or part of a structure, for storing goods, wares or merchandise whether for the owners or others. Storage facility includes: self storage, warehouse and wholesale distribution centers.”
2. The zoning ordinance clearly lays out what is allowed in a district by right and by special exception. Storage facilities are only allowed in the Pine Hill Road District and the C2 District. As the museum location is in a residential zone, a variance and not a special exception would be required for the construction of such.
3. Section 175:175 of the zoning ordinance defines accessory building or structure as “incidental and subordinate to the principal building” and thus a 12,000 square foot storage facility that looks like a warehouse is not incidental or subordinate when compared to the 4,500 square foot museum building.
4. Moose Point Road is a rural road leading past the rail trail to the lake. The zoning ordinance specifically states where storage facilities are allowed. This is not an approved location.
5. The proposed storage buildings are two to three times the size of the museum itself. They represent a separate primary use affiliated with the museum, and are not incidental to the museum.
6. The proposed relocation of the museum to Bay Street seems to be a foregone conclusion based upon the active fundraising being done. Their website describes the Boat Museum as “a museum on the move” and depicts the rendering of the new museum building. Once relocated, the Moose Point Road residents would be left with stand alone storage facilities that are not allowed in the district and that would not be affiliated with an on-site museum.

7. Jason Rymers then reviewed the eight criteria required for a special exception and the reasons the proposed storage facility buildings do not meet such. He specifically addressed the visibility of the buildings from Rte 109, the increase in impervious surface adjacent to wetlands, negative impact on the neighborhood, neighborhood integrity and property values, as well as consistency of the ordinance and adherence to intent of the master plan.

Deb Denby of Moose Point Road spoke against granting a special exception to the Boat Museum. She submitted her notes and a transcript of a video to the Board (a copy of which is available in the public record) and verbally gave the following reasons:

1. Negatively change the character of the neighborhood.
2. Is contrary to the vision of the museum founders and volunteers
3. Removal of 20+ pine trees that are over 100 years old would be unsightly and cause road erosion

Kathy Fairman spoke in support of a special exception and/or variance for the museum for the following reasons:

1. Museum is an historic asset to the community preserving heritage of our lakes
2. It is a recreational asset for both year round and seasonal residents
3. From an economic aspect, it follows our master plan goal to grow our town as a “community of museums”
4. Museum provides a living history exhibit through the Millie B. The museum will be able to preserve the boats that the Millie B represents by having the appropriate storage facilities to house them.
5. Feels a precedent in favor of this project was set by allowing the Wright Museum to building a similar facility on Trotting Track Road

Hugh Crawford of 62 Moose Point Road spoke in opposition to the building of storage facilities by the Boat Museum.

1. There is no mention in the Museum’s application of the Moose Point Road residents/neighborhood and the effect it will have upon them

2. Moose Point Road is the only access these residents have to their home and without mention of that fact, the application is incomplete
3. The museum's current storage building on Albee Beach Road is a much better location
4. His concerns include: effects of rainwater/stormwater drainage and surrounding wetlands

Cindy Spence of 60 Moose Point Road spoke in opposition to the proposed storage buildings.

1. Her family has lived for 5 generations, just over 100 years, approximately 300 to 350 steps from the proposed location of the storage facilities.
2. Concerned about safety. Proposed location of facilities will impede traffic including blocking of emergency vehicles. This will not only affect Moose Point residents but also any emergency on the Cotton Valley Rail Trail.

Pamela Thomas of 56 Moose Point Road spoke in opposition focusing her concern in the potential change in use of the proposed storage buildings by either the museum or future owners. (A statement was submitted and is available in the public record.)

Dave Denby, a Moose Point Road resident, spoke in opposition stating that his family has owned their property for 90+ years. His concerns related to:

1. Road maintenance
2. Traffic
3. Property values
4. Destruction of the beauty of Moose Point Road for current and future property owners

Michael Spence spoke in opposition and gave a history of the ownership of the museum property by the Lake Wentworth Association and subsequent sale to the museum. His concern related to not only the current issues to the neighborhood and Lake Wentworth Watershed Association, but also to the potential expansion of the commercial character being proposed to a residential area. (A statement was submitted and is available in the public record.)

Andrea Dudley of 74 Moose Point Road spoke in opposition representing not only herself but two abutters to the Museum property.

1. Sandy and John Kristoferson of 365 Center Street, Sandbox Drive, Wolfeboro, NH. who are listed as abutters. Their concerns focused on the proposed relocation of the museum and, as a result, the current property will become more challenging to use and maintain.

Unresolved questions for the current property, with or without the museum on site, include storage unit fencing, lighting, security, wash bays and repair/restoration services, setbacks, driveway and garage door widths, etc. (A more detailed statement was submitted and is available in the public record.)

2. Tony Albee, an abutter to the museum property, opposed the proposed storage structures as they would be located at one of the main entrances to town and will affect the character of Wolfeboro. The proposed buildings, similar in size to a football field on a small residential road leading to waterfront property, will negatively impact surrounding property values. (A more detailed statement was submitted and is available in the public record.)
3. Andrea Dudley, a Moose Point resident, opposed the special exception/variance requested by the Boat Museum. She stated that the Moose Point residents have been strong supporters of the museum, but feel in this proposal the museum is not acknowledging their Moose Point neighbors exist. The museum's proposal ignores the impact on the neighborhood and fails to meet the criteria of a special exception or variance. The fact that the museum is an asset to the community should not give them the ability to use their property in an irresponsible way. While "saving the boats" is a noble endeavor it should not be at the cost of doing irreparable harm to taxpayers and residents. (A statement was submitted and is available in the public record.)

Randy Walker

1. Moose Point Road residents are not abutters. They are not in the same residential zone as the Boat Museum. Moose Point Road is in the Shorefront Residential District. There has been a strong demarcation between the two zones since 1872, whenever the railroad went through. The space between Route 28 and the railroad, from the Boat Museum to the 7-11 is virtually all commercial. The Lake Wentworth side of the railroad tracks is all shorefront residential. Any road you access to Lake Wentworth has commercial buildings on it.
2. There is a heavy forested buffer on both sides of the rail trail which will prevent the proposed buildings from being visible by Moose Point Road residences. They will only see the structures when they drive past them. The structures will be on museum property and will not diminish property values merely due to the fact they drive by it as is the case with many commercial properties in town.

3. Boat Museum has taken care to make sure the proposed structures are as unobtrusive as possible, comparing them to the two buildings adjacent to and running perpendicular to the Lake Wentworth Inn.
4. Examples were given of other buildings in Town - i.e., the Libby Museum, Kingswood High School, Arts Center, Crescent Lake School, Huggins Hospital, Crescent Lake Inn, etc. - which do not have a detrimental impact on the surrounding residential neighborhoods.
5. Wright Museum was presented as an example of a similar situation in which that museum was granted permission to construct a storage building to support their mission.
6. Additional examples of commercial buildings - i.e., Lake Wentworth Inn, Heckman's Flooring, Youth Center, Bible Church, Auto Care, Bartlett Tree Service, etc. - located on access roads to Lake Wentworth which do not diminish the value of the neighboring residential areas.
7. Moose Point Road residents currently drive by the quonset hut which houses the museum and there is no diminution in property values as a result of such.
8. The proposed buildings will not be visible from Lake Wentworth.
9. Tax assessments for waterfront property on Lake Wentworth had a baseline of \$400,000 no matter where they were located or what you had to drive by to get there. The value is in the waterfront.
10. Statements from two real estate agents, Adam Dow and Stephanie Englis, were read into the record supporting the museum proposal. (A copy of these statements will be available in the public record.)
11. Reference was made to a statement from the Wolfeboro Tax Assessor, (which is part of the public record), stating that the proposed museum structures will not diminish the property values of those properties accessed via Moose Point Road.
12. The Museum has been in operation for over 20 years and the Board Members have a vested interest in ensuring that the proposed project is done properly.
13. The proposed storage of boats is a quiet, low traffic activity.
14. Museum plans on maintaining this site even if they relocate to Bay Street. The Museum has had several issues with the Bay Street property - i.e., alteration of terrain and special use permits - in order to move forward.
15. Storage buildings are permissible in the residential district, whether they are an accessory or primary use. This is a primary use for the museum as it is part of its mission.
16. Museum Board got an estimate of \$21,000 for the cost of plans, which is significant expense for a 501C organization.

17. Stamped surveyor plans were presented showing proposed buildings would be 30' from wetlands, 25' between the buildings, closest point of a building is 21' off of the road and over 30' at the farthest end. There are no setbacks from the road as the Boat Museum owns the road.
18. If the Boat Museum receives approval at this meeting, they still have to go through a site plan review/approval by the Planning Board.
19. The Boat Museum met with the Moose Point residents and came up with a proposal that was sensitive to the residents' concerns. The museum is not trying to increase attendance nor traffic, but simply want a place to centralize their storage needs.

Sarah Silk inquired as to the size of the Lake Wentworth buildings which he referenced as being similar to the proposed structures. Randy Walker responded that he did not have specific dimensions but did a visual comparison of the two. Sarah Silk then asked Tavis Austin what are the dimensions of a standard parking space at the Lake Wentworth Inn. Tavis responded that a standard space is 9' x 20' by zoning. A Boat Museum representative stated they believe the Lake Wentworth buildings being referred to are 152' in length.

Audrey Cline inquired about the height of the buildings and garage door dimensions. Bob Sterndale stated they do not have a final design but the height of the one depicted in the brochure is 25' and he believes the doors will be close to 12' x 12'.

Audrey Cline read the definition of a museum from the zoning ordinance. She inquired if the storage facilities would be used to house items utilized by the recreational programs sponsored by the museum. Randy Walker responded that the storage facilities will be used to store museum artifacts and possibly support those sponsored programs. Audrey Cline stated that, based on her research, the educational and recreational programs are accessory to the museum. She then inquired as to what the proposed structures become once the Boat Museum relocates to Bay Street. Randy Walker stated that the museum is proposing to open a second location on Bay Street and not abandoning the current location. Audrey Cline asked if they will be displaying boats at the second location. She also asked for confirmation that when the second location opens, the exhibit of boats and other activities would still exist at the current location.

Bob Sterndale, Trustee at the Boat Museum, stated that although Audrey Cline read the definition of a museum per the zoning ordinance, he does not feel that is a totally inclusive definition. He stated a museum is not just an exhibit. The primary exhibit that exists at the Center Street location is anticipated to move to Bay Street, however a large portion of the other programs and a large portion of the museum's collection will remain at the current location. He

stated that storage is not an accessory function of a museum. Museums own artifacts and must have a means of storage. Audrey Cline believed Mr. Sterndale's response confirmed her position that the primary function of the museum will be moving to Bay Street and the accessory functions, including storage, will remain at the Center Street location. She further stated that she does not feel having those functions remain at Center Street without the museum's primary function being located at the same location fulfills the definition of accessory structure. Bob Sterndale stated that caring for the collection should be considered part of the primary use and referenced the museum definition as including the "acquisition, preservation and exhibit of works". Preserving an antique boat should be considered a primary use of the museum. Bob Sterndale referenced the NH State RSA 201:E:II, definition of museum as an institution located in New Hampshire operated by a nonprofit corporation or agency primarily for educational, scientific, historic preservation or aesthetic purposes which owns, cares for, exhibits, studies, archives or catalogs property. The distinction between primary and accessory use is covered by state law. Audrey Cline reiterated her belief that when the museum relocates the primary use will be moved and only the accessory uses will remain on the current property. Randy Walker argued that the Boat Museum is today requesting these structures as an accessory use period. The Boat Museum currently does not have permission to move to Bay Street, thus they are requesting at this time a primary use, and alternatively an accessory use, to build storage facilities at their current primary location.

Tim Cronin questioned why the opposition's attorney stated that an accessory storage facility could only be located in the Pine Hill Road or C2 districts. Randy Walker responded that the Boat Museum, based on case law presented in the administrative appeal should have been granted an accessory use, and believes that such storage facilities are allowed per town ordinance. Storage of a museum's artifacts are part of a museum's primary function and mission. He cited the Wright Museum's request for a storage facility to support their primary mission. Audrey Cline clarified that the Wright Museum applied for a variance for their storage facility, because storage facilities are not a primary usage. Randy Walker reiterated that the museum was allowed by special exception and allowing a museum to store boats for use of the museum is part of their mission and therefore part of the use of the property.

Joy Pheeny Messineo, a 20 year realtor in Wolfeboro, spoke in favor of the Boat Museum's application for storage facilities. She has sold in excess of \$100,000 in waterfront real estate for dozens of waterfront properties on the various area lakes in the region, and, in her professional opinion, the proposed storage buildings will not affect property values on Moose Point Road. Her position is that sales of lakefront homes have not been affected by commercial properties on the similar access roads.

Bob Sterndale concluded the Boat Museum's position requesting a special exception, stating that the NH Boat Museum is a non-profit organization in support of freshwater boats and culture run by volunteers and a professional executive director. Our Moose Point neighbors have expressed general support for the Museum and for that the museum is grateful. Regrettably their support does not extend to all of the Museum's needs. Although the Moose Point neighbors have not supported other proposed projects over the years, the current Museum Board decided to apply to the Town of Wolfeboro for fair consideration of their current proposal.

The objections raised have been:

1. Stormwater runoff will present considerable issues;
2. Development near the wetland area will cause runoff which will imperil the wetland
3. The buildings don't look nice;
4. Storage is perhaps not a primary use for a museum.

Addressing each objection:

1. Stormwater runoff must be mitigated in accordance with the ordinance 175-23;
2. Stormwater management will be straight forward at the site with the use of low impact development techniques as noted by a licensed engineer;
3. A licensed engineer has stated that adequate mitigation should be achievable;
4. Wet areas are protected by buffers and setbacks in the ordinance;
5. The museum has an inherent interest in maintaining a desirable appearance and such opted for a wood exterior building, etc. versus metal buildings;
6. No structures will be visible from area residences and deeds to such residences do not grant a right of view;
7. The Museum has made good faith efforts and met with the Moose Point residents to try and come to an agreement on a location, etc.
8. Although it is a residential district, the area has not been residential in nature in many years;
9. The proposal offers a more green area than is generally seen along this stretch or the highway;
10. Tree removal will be outside the wetlands buffer;
11. The 100+ year old pines that will be removed may actually remove a potential threat to the surrounding homes rather than a detriment;
12. The traffic volume related to the storage facilities will be insignificant;

13. Museum boat storage access is an insignificant activity which will not generate traffic nor noise;
14. Proposed building site plans meet all requirements for wetlands setbacks, etc.;
15. Construction will comply with subsequent Planning Board review;
16. Storage buildings will not be visible from any residences in the area and there are no residences abutting the property;
17. Use proposed is museum storage only, and anticipated boat moves are less than 20 per year as museum exhibits change annually;
18. Required stormwater management will prevent impact to the road;
19. Neighbors' conjecture about future use may only be relevant if the Museum is forced to look elsewhere to meet its needs;
20. The tax assessment of neighboring properties shows that the bulk of the value is in the land and the waterfront;
21. The proposed use is in compliance with the spirit of the ordinance and the master plan. The proposed structures are merely components of a museum defined by both town ordinance and state statute.
22. The master plan supports museum facilities and planned expansion;
23. In its proposal the Boat Museum has strived to meet the town's requirements for reasonable development, applicable to all town properties, and followed the process applicable for Town approval.
24. The Boat Museum intends to expand its educational and exhibit offerings at its proposed Bay Street facility while maintaining its collection and preservation activities at the Center Street location in the current and proposed buildings.
25. The Bay Street site will not accommodate the needs of the museum.

Suzanne Ryan asked what the easement is and the size of the wetlands of the 12 acres. Bob Sterndale surmised that the wetlands consists of 8 to 9 acres of the total lot.

Audrey Cline asked if the original wetlands plans were identified as poorly drained, etc. and whether the wetlands need to be re-monumented from 2005. She further asked if the wetlands setbacks can be verified, as they may have changed. Audrey would like a stamped plan from a wetlands scientist. Luke Freudenberg inquired if this would be addressed by the Planning Board, which Tavis Austin concerned. Tavis Austin explained that if the ZBA were to approve, and the wetlands delineation has changed in the meantime, the applicant would have to come back before the ZBA.

Dan Coombs offered that in 2003, there was a blanket 50' setback from all wetlands which was subsequently changed to 30'.

The lot coverage in defined in RSA 175:175 is the area that may be covered by impervious surfaces, including but not limited to structures, driveways, parking surfaces, etc., excluding travel ways/right of ways for access to other lots. It does not separate out wetlands areas.

Bob Conrad, a museum trustee, offered that the total impervious area is 11% of the total 12 acres, far below the allowable 30%. Jim Rines, the engineering surveyor, had the original wetlands scientist come back and visit the site in December, 2020 and verify the wetlands area/setback.

Donny McClean of 44 N. Main Street, Wolfeboro who manages a large property on Lake Wentworth and maintains a road which is a deeded right of way for residents on the lake spoke in favor of the proposed project. He maintains a large storage shed at the entrance to the residential area. Although he is respectful of those residents, he does not believe his building affects their property values.

Carl Crosley, Vice Chairman of the Lake Wentworth Watershed Association, in opposition of the proposed project referenced RSA 175-7 Wetland Buffer which is totally undisturbed land as being 25'. He believes it would be very difficult with only a 30' setback to complete the construction of proposed buildings and still remain outside the wetland buffer regulation.

Rich Masse of Moose Point Road in opposition of the proposed structures stated that 12,000 square feet of

Footprints of buildings are 325' of building and setback down the length of Moose Point Road. Need to go outside the footprint to perform the construction Disruption on Moose Point Road Plans tonight show buildings coming even closer to Center Street. Original application described proposed buildings as "nestled in a wooded forest" Buildings would be exposed to Center Street on three sides. He submitted photos of the condition of Moose Point Road after a recent, modest rain storm, with all the trees and ground cover in place. The impact, both visual and as a result of stormwater runoff, will be significant with the proposed impervious surface. The criteria for a special exception does not ask what the impact is on "abutters", rather it asks what the impact is on the "neighborhood". Moose Point Road residents are the neighborhood. Feels there is no comparison to the proposed project to Lake Wentworth Inn nor the Libby Museum.

Burden of proof for impact on the property values is on the applicant who has not provided any documented study demonstrating such. He further stated that no one has changed any rules on the Boat Museum, the property being discussed is the same property with its wetlands and conservation easement, which the Museum has known was in effect when they purchased the property. It should not be borne by individuals who will take a loss in property value and quality of life if approval of this application is given.

Jason Reimers distributed a printout from the Boat Museum website showing the existing building and the proposed building. From these materials, he stated it was clear as to where the museum primary operation would be located and that the Center Street location would be allocated to accessory use. He reiterated that the ordinance defines accessory use as incidental and subordinate to the primary use. Storage facilities of this size is a primary use. The Boat Museum must meet all eight criteria of a Special Exception. It is the applicant's burden to prove there is no diminution of property value which has not been provided.

Public hearing was closed at 9:15pm.

Suzanne Ryan read from the residential district definition and the other uses that could be underlying for RSA 175:81 and 175:82 as well as the definition of accessory buildings and/or structures. What is being proposed is not incidental nor subordinate to the residential zone in which it is located. It will be a major change.

Luke Freudenburg focused on two issues: 1) whether the Boat Museum will be moving to Bay Street and the current location will become their storage facility (Bay Street is not approved and is a hypothetical); and 2) focusing on presentation solely, he feels the board originally approved a museum and a storage for artifacts would be a natural progression from that.

Sarah Silk agreed with museums needing space to store artifacts, however she is not convinced that it is a special exception use and should be considered as a variance.

Tim Cronin feels that the subject property has the right to request a special exception for an accessory use on the existing property.

Tavis Austin clarified that the applicant was asking for an accessory structure, not an accessory use, on the subject property. The request would be accessory structures for a special exception use.

Suzanne Ryan stated that 12,000 square feet is not subordinate nor accessory to the museum.

Audrey Cline stated that she felt subordinate and accessory was solely defined by location, but more by location.

Sarah Silk focused on accessory use being proportional to the size of the primary use, while Audrey Cline focused on the location of the primary use versus accessory use. Audrey Cline does not believe that you can separate the primary use and the accessory use locations.

Audrey Cline then reviewed the criteria for a special exception:

1. Site suitability - there are some challenges including 12,000 square feet of roof runoff, which will come back for other approvals if necessary. The number of trees to be removed is significant.
2. Immediate neighborhood impact - Audrey Cline does not believe that the physical impacts described in this criteria will be significant. Suzanne Ryan feels there will be some impact.
3. Nuisance to neighborhood - Sarah Silk stated there could be bi-annual issues with traffic egress/ingress.
4. Availability of public services or utilities - not applicable
5. Appropriateness of site plan - no site plan to review from Planning Board - deficient - no traffic, signage, lighting, landscaping, fencing, screening etc. info.
6. Immediate neighborhood integrity - opposition brought up issues about the neighborhood which access via Moose Point Road and those resident concerns should be considered
7. Impact to property values - a formal study/analysis needs to be submitted/reviewed as to the actual effect of property valuation. In addition, Audrey Cline commented that she would include a condition that the building adhere to the wooden frame structure to make it more like residential structure as proposed be required, as opposed to a stereotypical metal storage structure.

8. The proposed structure is consistent with the ordinance and the intent of the master plan. Suzanne Ryan believes the Master Plan when looking at gateway entrances to Wolfeboro, looked at what was currently existing and did not anticipate the size/scope of the proposed structure.

Tim Cronin made a motion on Case # 10-SE-2021, the New Hampshire Boat Museum, 399 Center Street, Tax Map 163- 2-1E to approve the special exception to allow the museum to add accessory structures on the property. Motion was seconded by Luke Freudenberg. Roll call vote: 2 in favor; 3 opposed. Motion failed.

Suzanne Ryan made a motion, which Luke Freudenberg seconded, to deny the special exception Case # 10-SE-2021, Tax Map 163-2-1E for two 40' x 150' storage buildings which are not defined as storage facilities under Section 175-82 as it does not meet the eight criteria required for a special exception.

Suzanne Ryan withdrew her motion and Luke Freudentberg withdrew his second of the same.

Suzanne Ryan made a motion to deny special exception Case #10-SE-2021, Tax Map 163-2-1E, which was seconded by Sarah Silk, as it does not meet the eight criteria. Roll call vote was: three in favor and two opposed.

Attorney Randy Walker requested to withdraw the Boat Museum's application for a variance.

Audrey Cline adjourned the meeting at 10:08pm, to resume at 10:15pm.

Case #:14-V-21

Applicant: Elaine Devereaux

Tax Map/Lot#: 235-015, 399 Pleasant Valley Road

Formal Submission Date: 6/28/21

Project: Variance under 175, Section 88.2-C, Minimum Lot Frontage Under 200 Feet

Zoning District: Rural Residential District

Agent: Randy Walker, Walker & Varney P.C.

Site visit was attended today by Tim Cronin, Sarah Silk, Suzanne Ryan, Luke Freudenberg and Audrey Cline.

Randy Walker, representing Elaine Devereaux, described the property at 399 Pleasant Valley Road as consisting of 9.7 acres, with 382 feet of road frontage, which his client would like to

subdivide into two lots. The road frontage is 18 feet short of the required 400 feet. A plan by Norway Plains was referenced as part of the application. The proposal is to create two lots, each with 191 feet of road frontage. A deed and plan (Plan Book 214, Page 79) were referenced and submitted as part of the public record showing the road frontage as 383.71 feet.

Randy Walker then reviewed his client's compliance with each of the eight criteria for the variance. He summarized that his client's proposed subdivision is in keeping with the zoning district. They have more than sufficient acreage to subdivide and are simply lacking 18 feet of road frontage.

Audrey Cline addressed that the criteria requiring the variance "not alter the essential character of the neighborhood" is meant to exist in conjunction with other elements of the criteria - i.e., what is the special issue with the subject lot that creates a situation where it is different from every other lot and therefore deserves a variance. Because, even if it does not alter the essential character of the neighborhood, if it doesn't meet the other prong then the statement doesn't hold true. The reason being that the purpose of zoning is that, over time, to not change the essential character of the neighborhood and that question must work in conjunction with the other criteria. Audrey Cline questioned what is the special issue with this property that distinguishes it from other properties in the area that would warrant a variance.

Randy Walker explained that virtually every other lot in the area is smaller. In fact, 75% of the adjacent lots are smaller. The variance requested is only for road frontage.

Audrey Cline inquired as to what is the special condition of the road frontage that warrants a variance. She also noted that her experience has shown that it is preferred to create one lot that is in compliance and one that is not, rather than two lots that both do not meet the regulation.

Randy Walker offered that rather than splitting the road frontage in half, his client would be willing to subdivide with one lot having the required 200 feet of road frontage and the other with the remaining frontage. He explained that the special condition of this particular lot is that it is only 18 feet, or 9 feet per lot, under the required road frontage which is not significant enough to alter the character of the neighborhood. Further, he cited the road frontage of surrounding lots, many of which are less than the required 200 feet.

Audrey Cline explained she was not concerned about other non-conforming lots in the neighborhood as they were developed under different zoning regulations. What she was interested in was whether the subject lot was unique in that its road frontage was very close to that frontage required to subdivide while the other neighborhood lots did not have the similar circumstances to request a similar variance based on a small shortage in road frontage. If there were multiple other lots with a similar situation, the situation would not be unique in considering a variance.

Suzanne Ryan inquired why the applicant did not propose subdividing into one conforming 200 foot lot and a second lot 18 feet short of compliance.

Randy Walker stated that the applicant thought the fairest way was to divide the road frontage equally but is fine with subdividing with the 200 foot frontage for the lot with the current house.

Audrey Cline explained that her preference would be to have one conforming and one non-conforming lot, and for the applicant to possibly consider a shared driveway.

Randy Walker stated his client would be agreeable to making a condition of the variance be that one lot is conforming and the other is non-conforming.

Audrey Cline read from the zoning handbook, "the controlling policy of zoning law is to carefully limit the expansion of non-conforming uses with the goal of reducing them to conforming uses altogether over time". Zoning looks very far ahead -- 10 to 20 years, or even 50 years out.

Suzanne Ryan outlined the various options available to the ZBA at this juncture.

Audrey Cline suggested that the proposed lot to the east could be the one designated to have the 200 feet of road frontage and the one to the west would be the lot for which they would consider granting a variance for.

Audrey Cline opened the public hearing.

Phillip Quartarro of 56 Highland View, formerly the Pleasant Valley Camp, initially intended to speak in opposition of the variance. After attending this meeting and understanding the scope and intent of the proposal, he is in support of the proposed subdivision.

Audrey Cline closed the public hearing.

The Board then reviewed the five variance criteria:

- 1) Variance not contrary to public interest because the proposed lots would fit in with the existing neighborhood lot sizes;
- 2) The spirit of the ordinance is observed by designating 200 feet of road frontage to the eastern most lot and the remaining road frontage to the western lot, resulting in only one non-conforming lot;
- 3) Substantial justice is done because the original lot is fairly large;
- 4) Values of surrounding properties will not be diminished because many of them are smaller and more non-conforming as what is being proposed;
- 5) Literal enforcement of the provisions would result in an unnecessary hardship because of the special condition that the road frontage is almost, but not quite, the required distance to allow for subdivision without a variance. The applicant is willing to slightly alter subdivision to make one lot conforming and one non-conforming, resulting in only one barely non-conforming lot of record.
- 6) No fair and substantial relationship exists between the purpose of the ordinance applicable to the specific application;

7) The use is reasonable as single family lots are a permitted use in this situation.

Suzanne Ryan made a motion, which was seconded by Tim Cronin, to approve Case #14-V-21. Sarah Silk made an amendment to the motion that Case #14-V-21 be approved with the condition that the eastern lot of the subdivision be conforming with 200 feet of road frontage and the western lot have approximately 180 feet of road frontage. Tim Cronin seconded the amendment. Board voted unanimously in favor of the motion and the amendment.

Suzanne Ryan requested an additional amendment to the motion. She wanted to include the standard conditions that are typically included. Tavis Austin stated that the only standard condition which typically applies relates to the applicant being responsible for all recording fees, which is required under the law.

Case #:13-V-21

Applicant: Michael Travis

Tax Map/Lot#: 177-031, 315 Center Street

Formal Submission Date: 6/15/2021

Project: Requested Variance Relief from Section 175, Section 64 A (4)

Zoning District: Shorefront Residential District

Agent: Daniel Coons - Ilex Wetland Consultants

Daniel Coons explained that the application is for a variance to permit construction of a two-level deck within the 50 foot shorefront setback. He presented to the Board photographs of the existing structure and a conceptual drawing, both of which will be made part of the public record.

A prior application was submitted to and approved by DES for the decks. Impervious surface area has been reduced and drainage improved. The water basin is Fernald Basin created when the railroad was installed in the 1800's. Daniel Coons reviewed the standard criteria and the applicant's response to such.

Mike Travis, the owner of subject property, described his intent in renovating the home.

Audrey Cline opened the public hearing.

The Board then discussed the five criteria. Suzanne Ryan asked about the 5/4/21 Shoreland Permit denial. Tavis Austin clarified that the primary issue is whether to allow a structure within the 50 foot shoreland setback.

Audrey Cline quoted the purpose of the shorefront residential district and the spirit of the ordinance. She further stated that she felt the "thousand tiny cuts" theory applies in this instance and would not say the proposal was in line with the public interest nor spirit of the ordinance.

The Board then reviewed the criteria:

1. Variance will not be contrary to the public interest. Audrey Cline reiterated that the “thousand tiny cuts” is a legitimate concern particularly if it sets a precedence for variances affecting the shoreline.
2. Spirit of the ordinance is observed. There was concern expressed that the setback requirements for shoreland residential district are there to protect the shoreland from over development and that the proposed project is contrary to that.
3. Substantial justice is done. Can property be reasonably used without a variance. Audrey Cline stated the property can be used without the requested deck and thus the variance is not a reasonable need. Sarah Silk inquired what existed prior on the exterior of the building and does not feel the public will be negatively impacted.
4. Values of surrounding properties will not be diminished. Tim Cronin reinforced that the renovations represented an improvement to the neighborhood
5. Literal enforcement of provisions of the ordinance would result in an unnecessary hardship. Discussion continued regarding replacing a previous non-conforming deck or stairs which there is no evidence existed. Tavis Austin stated that it is the applicant’s burden to prove what was legally present previously.

In response to the applicant’s assertion that the need for the second story deck is based on a safety issue. Audrey Cline stated that 90% of single family homes do not have an egress, aside from windows, from the second floor.

The public hearing was closed.

Tavis Austin pulled the historical file on the subject property which showed that there were windows not sliding doors on the shorefront side of the building in 1983 without a deck.

The applicant described his intent to have two risers out of the sliding doors down to a deck which is less than 24 inches off the grade so that there is no need for a railing. Audrey Cline inquired if the grade could be increased eliminating the need for a deck.

Audrey Cline stated that based on the historical file and the fact that the grade can be raised, her position is that a deck is not necessary to use the sliders out of the lake side of the house without any further construction.

Tim Cronin made a motion that the Board approve the application as presented due to the pre-existing non-conformity of the property. Luke Freudenberg seconded the motion. Motion passes by a 3 to 2 vote in favor.

Suzanne Ryan made a motion that the Board attend to the other business stated on the meeting agenda at a future meeting. Luke Freudenberg seconded the motion. The Board voted unanimously in favor by a 5-0 vote.

Meeting adjourned at 11:56pm

Respectfully submitted,

Mary Jane Shelton, Recording Assistant

