

**TOWN OF NEW HAMPTON
ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
TOWN OFFICES
NEW HAMPTON, NH 03256**

February 3, 2016

- MEMBERS PRESENT** Regular members: Mr. Tierney, Mrs. Erler, Mr. Frazier, and Mr. Orvis, and alternate member Mr. Smith.
- OTHERS PRESENT** Administrative Assistant Mrs. Vose
- CALL TO ORDER** Acting Chair Mr. Tierney called the meeting to order at 7:00 PM.
Mr. Tierney appointed Mr. Smith to vote in place of Mr. Hofling.
- MINUTES** A motion was made by Mr. Orvis, seconded by Mr. Smith, to accept the minutes of 10/7/15, as written. Vote was unanimous.
- PUBLIC HEARING** Roche Realty Rachel Xavier, was present to represent the JBR Keating Inc.
- Rachel Xavier for property belonging to JBR Keating Inc., 120 Gordon Hill Road, Tax Map R-3, Lot 22B, for an Equitable Waiver of Dimensional Requirement, Article IV, Section A(4)iii of the New Hampton Zoning Ordinance*
- Mrs. Vose advised that the applicant, Rachel Xavier, Roche Realty, has requested a Public Hearing in accordance with RSA 674:33-a, for an Equitable Waiver of Dimensional Requirement. The property owner, Richard Keating, JBR Keating Inc., constructed a barn/garage, within the 20 foot setback from the side property line. This was discovered when a mortgage plot plan was done for Red Door Title Company in preparation of the sale of the property. A licensed surveyor will submit a plan for the hearing with the exact distance from the side property line. The property is owned by JBR Keating Inc. and is located at 120 Gordon Hill Road, Tax Map R-3, Lot #22B, in the General Residential, Agricultural, and Rural District (GR).
- Mrs. Vose advised that all abutters were notified but heard from none. Abutters George and Ann Durfee and John Serlemitsos were present.
- Ms. Xavier explained that house is for sale and under contract. Due to the buyer's mortgage a survey was required which discovered the garage/barn encroached in the side setback. She said it was constructed in 2003.

Mrs. Vose showed the board the original permit when the building was constructed which Mr. Keating indicated met the setbacks to the property lines. Mrs. Vose advised she had a copy of a letter and mortgage plot plan from Red Door Title to Mr. Keating, description of the property, and photos taken of the property and building. She also noted a licensed surveyor has now submitted a stamped survey.

Mrs. Erler said the survey shows what appears to be the abutter's garage as being too close to the side property line. Mr. Durfee confirmed that was the case and that they had previously requested, and were granted, an equitable waiver for that distance.

Ms. Xavier advised that Mr. Keating wrote the statements addressing each finding.

The violation was not noticed or discovered by any owner, owner's agent, or municipal officials until after a structure in violation had been substantially completed: The applicant wrote *"the violation was discovered by the Red Door Title Co. during research for the sale of the property. The barn in violation was constructed in 2003 and has been in use continually for 13 years"*.

The board noted that the permit showed the setback distance of 40' while the survey plan shows it is actually 6' 8" from the side property line. Mrs. Erler asked the Durfees if they were aware of the discrepancy and Mr. Durfee said they constructed their home after the structure had already been built.

The violation was not an outcome of ignorance of law or ordinance, failure to inquire, misrepresentation or bad faith on the part of the owner or owner's agent: The applicant states *"the violation was the result of the owner making a measurement error in the distances between the property line and the construction of the barn"*.

Mr. Orvis asked if the barn was the size that was applied for in the building permit and the property assessment card reflected that it was. The board noted that the perspective of the barn to the house is very different between the permit application and the survey. Mrs. Erler asked if this area along the side property line is wooded, and Mr. Durfee said it is heavily wooded and there is a gully with a stream. He said the property lines are not perpendicular to the road making it very hard to determine the side property line, which is the mistake they had made. Mr. Tierney stated the distance between property markings is 540' through the woods.

The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, not interfere with or adversely affect any present or permissible future uses of any such property: The applicant states *“the barn in violation is on an open area on the property, surrounded by woods with no other houses close by and does not interfere or adversely affect any present or permissible future use of any property”*.

Mr. Orvis expressed concern with where the well might be in relation to the barn is case animals are put inside and Mr. Tierney advised this was not relevant to the waiver request.

That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected: The applicant states *“since the barn is on private property in a rural acreage setting, there is no public benefit to be gained by correcting the violation and the cost of correction would be considerable to no advantage”*.

Mrs. Erler said she agreed with this statement noting it’s been there for over 10 years. Mr. Durfee said the only problem had been with the junk that was left alongside the barn, which has now been cleaned up. Mr. Serlemitsos advised that they he was present to support the Durfees if they had any concerns, but as they did not, he was fine with the waiver.

Mr. Tierney advised the hearing was closed and the board would go into deliberations.

Mrs. Erler said she feels the owners realized this mistake after the mortgage company discovered it, the abutters have said the property line is difficult to determine, and the structure has been there over 12 years, so it wouldn’t make sense to have it removed. Mr. Orvis expressed frustration with this type of thing happening and said he hoped the town could get someone to check on setbacks when something is built. Mrs. Vose advised that the town does have a Permitting Assistant who reviews building permits to assure compliance with zoning, and will visit properties to confirm setbacks if they are very close. Mrs. Vose said a compliance officer would be the type of person to visit all properties that obtain building permits but the town has repeatedly voted it down. Mr. Orvis suggested that all property owners who obtain building permits should have to get a survey to assure they are meeting

setbacks. Mr. Tierney said it would be very costly for the property owner. Mr. Smith said that as it has been over 10 years he did not see the advantage to having the structure removed, but did express concern with the difference between the permit setback and the survey setback being so great.

Mr. Tierney pointed out that as the ZBA did not find the violation in a timely manner and that the mistake was made in good faith the owner can meet the first two criteria by demonstrating that the violation has existed for 10+ years and there was no enforcement action against it, by the municipality or anyone affected.

The board agreed this does not constitute a public or private nuisance. The board agreed that it would cost more to remove the structure versus the impact it has where it's located.

Mrs. Erler made a motion, seconded by Mr. Smith to approve the Equitable Waiver as presented. Vote was unanimous.

PUBLIC HEARING

Andrew Wrobel, 68 West Shore Road, Tax Map U-14, Lot 1, for two Variances, #1 being Article V, Section D; #2 being Article IV, Section A.4.ii, of the New Hampton Zoning Ordinance

Andrew Wrobel was present.

Mrs. Vose advised that the applicant, Andrew Wrobel, has requested a Public Hearing in accordance with RSA 676:7, for two Variances. The first Variance is under Article V, Section D, of the New Hampton Zoning Ordinance. The applicant's proposal is to construct a septic system within the 20-foot setback of the property line; the proposed location of the leach field being 8.2 feet from the front setback. The second Variance is under Article IV, Section A.4.ii of the New Hampton Zoning Ordinance. The applicant's proposal is to construct a 5 foot balcony within the 35-foot setback from the right of way, the balcony being 30 feet from the right of way. The property belonging to Andrew and Marian Wrobel is located at 68 West Shore Road, Tax Map U-14, Lot #1, in the General Residential, Agricultural and Rural District and the Waukegan Watershed Overlay District.

Mrs. Vose advised that all abutters were notified but heard from none and there were no abutters or members of the public present. She advised she had a copy of the septic design that has not yet been approved by the Selectmen due to the setback issue and a copy of the building permit submitted and approved for the replacement of the camp that Mr. Wrobel wants to add the balcony to.

Mr. Tierney advised the board would handle the Variances separately addressing the septic system first. Mr. Wrobel said they want to upgrade the current system explaining the road slopes from the road to the lake and they are proposing to place the new system

in the flattest area where they believe the old one is. It was noted the plan did not show where the existing system is located, which serves 2 cottages.

Mrs. Erler asked if these were year-round and Mr. Wrobel said both are seasonal and will remain seasonal. Water for both cottages comes from the lake, therefore they're not used in the winter. The plan does show an acceptable well location and it will be installed. Mrs. Vose said there is no record of the original septic system.

The variance will not be contrary to the public interest; the applicant states *"the upgraded tank is good for the lake water"*.

Mrs. Erler asked about the size of the lot, which is .57 acres.

The spirit of the ordinance is observed; the applicant wrote *"The septic doesn't infringe upon neighbors. The nearest affected neighbor is up the hill across the road"*. Mr. Wrobel said he thought it was for the purpose of protecting abutter's privacy and Mr. Tierney explained this setback is due to what takes place along the right-of-way. Mr. Wrobel said the property drops down right along the road. It was noted this was a private road that would likely never become a town road.

Substantial justice is done; the applicant wrote: *"There is very little, if any, harm to the general public for upgrading the septic in its believed current location. It is actually good for others"*.

Mr. Wrobel said it is currently green area and will remain that way.

The values of surrounding properties are not diminished; the applicant wrote *"Upgraded septic is good for the lake water quality so it's good for property values"*.

The board expressed agreement with this.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because special conditions of the property distinguish it from other properties in the area; no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific application of that provision to the property because: The applicant writes *"Zoning ordinance to protect privacy of abutters and keep density down. Septic field will remain green space"*.

Mr. Wrobel said he can't go closer to the lake and this is the only

flat place to locate the field. Mrs. Erler said this will improve the environmental quality of a lot along the lake.

The proposed use is a reasonable one because; the applicant writes *“this is upgrading the 30+ year old septic and the septic can’t be put anywhere else on narrow lakeside lot”*.

Mr. Tierney closed the hearing portion of the meeting for the variance on the septic system.

The board agreed that construction of a new system was good for the lake and not contrary to the public interest. Mrs. Erler said the spirit of the ordinance was to ensure property values hold and there’s not nuisance or hazard and this would be an improvement. Relative to substantial justice the board agreed this would be an improvement for the lake. Relative to surrounding property values not being diminished the board noted that this is an ongoing issue with old septic systems that most of the properties have been, and will continue to deal with. Relative to special conditions the board agreed the topo and proximity to the lake were and the use was reasonable.

Mr. Tierney opened the hearing again to review the variance request for the balcony.

Mr. Wrobel showed on the drawing where he is proposing a 4 foot balcony, off an upstairs bedroom. He said he was asking for 5 feet as it was difficult to determine where the road is and didn’t want to have to come back and ask for another foot. On the floor level there would be some sort of a porch and stairs with the 4’ balcony above. He said the rest of the house faces east and this balcony would allow them to enjoy the western exposure.

Mr. Smith asked how long the balcony was and Mr. Wrobel said it was 10 feet, centered on the 18’ portion that juts out, which would match the porch down below, with columns as supports. Mrs. Vose asked if his intention was also constructing a porch which would also be encroaching the right of way. Mr. Wrobel said he thought the porch was exempt. Asked what it would be constructed of Mr. Wrobel said it would be wood, 10’ by 4’, with steps leading up. Mrs. Vose explained that he may have been referring to the fact that many entrances to homes are not assessed, but they do need to meet setback distances, confirmed by a definition in the ordinance. Mr. Wrobel said he could construct just the balcony now and come back later to ask for a variance for the porch.

The variance will not be contrary to the public interest; Mr. Wrobel said it didn't affect anybody else due to the slope and it will make the house look nicer.

The spirit of the ordinance is observed; Mr. Wrobel said he thought the spirit was to keep privacy for the abutters and this will face the road, not any neighbors. Mr. Smith asked if there was a home across the street and Mr. Wrobel said there is, but not directly across the road.

Substantial justice is done; Mr. Wrobel said it doesn't seem to create any negative impact, it makes living in the home better, and due to the slopes and trees he doesn't feel there is an injustice.

Mr. Orvis noted that there were no abutters present.

The values of surrounding properties are not diminished. The board agreed that the balcony would not diminish the property values and noted that the deck is small.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because special conditions of the property distinguish it from other properties in the area; no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific application of that provision to the property because: Mr. Wrobel said it would be a hardship not to have the balcony as it is the only western exposure. Mrs. Erler asked if it was the intention to someday make this a year round home and Mr. Wrobel said it was not. Mrs. Erler expressed frustration that this balcony was not incorporated into the design of the new construction to meet the setback requirements.

The proposed use is a reasonable one. Mr. Orvis pointed out that the current plans shows the balcony, and the entry porch, with the porch not being part of the variance request.

Mr. Tierney closed the hearing to begin deliberations to discuss the balcony variance.

Relative to not being contrary to the public interest the applicant had written that it would raise property taxes, it was small, 30' from the road and behind trees. The board agreed.

Relative to the spirit of the ordinance being observed the board agreed the lots are all small in this area and the road was never designed to be used as it is now.

Relative to substantial justice being done, the board said this was difficult to decide. Mr. Tierney asked if the board felt there was any injustice being done and the board agreed there was not.

The board agreed that the values of surrounding properties could only be improved.

Relative to an unnecessary hardship and special conditions of the property the board agreed that all the properties are substandard, being laid out prior to zoning. Mrs. Erler said she doesn't feel this is a hardship, but understands Mr. Wrobel wants a western exposure, wishing he had not enlarged the cottage to the point where the addition of this balcony is an issue. The board agreed the use was reasonable and no abutters were present with concerns. Mr. Tierney asked where most of the abutters live, and Mr. Wrobel confirmed they lived out of the area. Mr. Tierney asked the board if the proposed use was reasonable enough to ask for a variance. Mr. Orvis expressed concern will granting this variance as he doesn't see it's a hardship and Mrs. Erler and Mr. Frazier agreed. Mr. Smith said the substandard lot size is a hardship for adding the balcony. Mr. Tierney advised he didn't think it was a hardship under the 1st two criteria but sees the small lot size as a special condition as the house can't go any closer to the lake and because the balcony is in the air, not on the ground. Mr. Orvis stated his agreement with Mrs. Erler's comment that he could have designed the home to have the balcony and meet the setback.

The board agreed there did not need to be any further discussion before acting on the two variance requests.

Mr. Smith made a motion, seconded by Mr. Frazier, to approve the variance for the setback distance of 8.2 feet from the front property line to the leach field. Vote was unanimous.

Mr. Smith made a motion, seconded by Mr. Orvis, to approve the variance for the balcony with the following conditions:

1. No means of egress will be constructed from the balcony to the ground.
2. No porch is to be constructed under the balcony, on the ground.

The vote was unanimous.

OTHER BUSINESS

Mrs. Vose handed out an overview of RSA 674:33, I (b) which may be helpful in understanding the variance criteria during a hearing.

Planning & Zoning Conference scheduled for 4/23/16. Mrs. Vose to send further information when available.

CORRESPONDENCE There was none.

ADJOURNMENT Mr. Orvis made a motion, seconded by Mrs. Erler, to adjourn at 8:49 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose
Administrative Assistant

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