

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

October 1, 2014

MEMBERS PRESENT Regular members: Mr. Hofling, Mr. Tierney, Mrs. Erler, Mr. Frazier, and Mr. Orvis
Alternate members: Mr. Smith, and Ms. Karnis

OTHERS PRESENT Mrs. Vose

CALL TO ORDER Mr. Hofling called the meeting to order at 7:00 PM.

PUBLIC HEARING Wesley Hays, Northstar Contractors LLC, was present to represent the application.

*Northstar Contractors LLC
for property belonging to
Paul Yager, 4 Carter
Mountain Road, Tax Map R-
12, Lot 25, for an Appeal
from an Administrative
Decision and a Variance,
Article IV, Section A.4.ii, of
the New Hampton Zoning
Ordinance*

Mrs. Vose advised that the applicant, Northstar Contractors LLC, has requested a Public Hearing in accordance with RSA 676:7, for an Appeal from an Administrative Decision on the denial by the Board of Selectmen on a building permit for property owner Paul Yager, which was based on a 35 foot front setback from Carter Mountain Road in accordance with Article IV, Section A.4.ii. If necessary the applicant will request a Variance under Article IV, Section A.4.ii of the New Hampton Zoning Ordinance. The applicant's proposal is to construct a 24' by 18' garage, 28 feet from the front right-of-way, which is within the 35 foot setback. The property is located at 4 Carter Mountain Road, Tax Map R-12, Lot #25, in the General Residential, Agricultural, and Rural District.

Mr. Hays explained that Mr. Yager's property has road frontage on Carter Mountain Road and Old Bristol Road. His house faces Old Bristol Road and the proposed garage is 48' from that, but his driveway is on Carter Mountain Road, and the garage would be 28' from that. Mr. Hays said his interpretation was that as the house faced Old Bristol Road that was the right-of-way he needed to meet the 35' setback from. He considered Carter Mountain Road to be a side property line for which it was a 20' setback. Mr. Hays said that the Selectmen determined it would need to be 35' from either road. Mrs. Vose advised that the ordinance states the setback is from "any public or private road right-of-ways".

Mrs. Erler asked where the current driveway was and Mr. Hays it was a straight shot to the existing house, from Carter Mountain Road.

Relative to an Appeal from an Administrative Decision, Mr. Tierney stated he felt that the way the ordinance reads, the setback of 35' should be from either roadway, therefore the Selectmen acted correctly in denying the building permit. Mr. Smith agreed that this would be the case on a corner

lot. Mr. Orvis made a motion, seconded by Mr. Tierney, to deny the appeal from an Administrative Decision as the Selectmen were correct in denying Mr. Yager's building permit for a garage, 28' from Carter Mountain Road. Vote was unanimous.

The board began discussion on the Variance request.

Mr. Hofling advised that the applicant wishes to construct an 18' by 24' garage which does not meet the 35' setback from the right-of-way, as it is proposed to be 28' from Carter Mountain Road.

Mrs. Erler asked why that location was determined to be the only one for the garage. Mr. Hays that the septic system is to the east of the driveway and this is the only level portion of the property as it slopes up from this location. The lower portion of the lot has the view, which was the reason Mr. Yager's purchased this property. Attaching the garage to the home would have been very costly. Mrs. Erler asked why the garage couldn't be turned 90° so it could meet the setback. Mr. Hays explained that the flat section of the lot would not have allowed for him pull into the garage from the roadway, if it was turned.

There was discussion on whether a site visit would be necessary. The board agreed that the board should perform a site visit and to continue this hearing to a site visit at 4 Carter Mountain Road on October 2, 2014 at 5:00 PM.

CORRESPONDENCE

There was none

MINUTES

A motion was made by Mr. Tierney, seconded by Mr. Frazier, to accept the minutes of 5/7/14, as amended:

1. Page 3, last paragraph, 6th line from the bottom: Change the word "plan" to "plant".

Vote passed.

PUBLIC HEARING

William Cannon II, 29 Old Bristol Road, Tax Map U-1, Lot 11, for a Variance, Article IV, Section F.4.ii, and Article VI, Section H.3.ii, of the New Hampton Zoning Ordinance

William Cannon II, were present to represent the application.

Will Cannon III, and Darcel & Christopher Sanborn (abutters), were also in attendance.

Mrs. Vose advised that the applicant, William C. Cannon, II, has requested a Public Hearing in accordance with RSA 676:7, for a Variance under Article IV, Section F.4.iii and Article IV, Section H.3.ii, of the New Hampton Zoning Ordinance for property belonging to William C. Cannon, II. The applicant's proposal is to subdivide the ± 5.34 acre lot, to create a 3± acre lot, with 2± acres remaining with the house. This lot is in both the Village District (V) and the Pemigewasset River Overlay District (PO). Under Article IV, Section F.4.iii, the ordinance requires that a lot in the Village District have a minimum of 125 feet of road frontage if Precinct water and Precinct sewer are provided, which this lot would not have. For lots with on-site water and septic system, or with either Precinct water or Precinct sewer, 175 feet of road frontage is required. This proposed lot #1

consisting of 3 acres would have \pm 136.75 feet of road frontage. Under Article IV, Section H.3.ii, the Pemigewasset River Overlay District requires that a lot have a minimum of 150 feet of road frontage.

The property is located at 29 Old Bristol Road, Tax Map U-4, Lot #11, in the Village District and Pemigewasset River Overlay District.

Mrs. Vose advised that all abutters were notified and that there were two abutters present. She said another abutter, had stopped by the Town Office to review the plan, and said they thought they would attend this hearing.

Mrs. Vose distributed plans for the proposed subdivision.

Mr. Hofling advised that this lot is unique due to its shape and the fact it is in two different zoning districts.

The Variance will not be contrary to the public interest because:

Mr. Cannon said that the proposed use of a single family home is consistent with the neighborhood and objectives of the Village and Overlay Districts. The 3 acres lot exceeds the minimum V District by 2 acres, and the PO District by 1 acre. He pointed out some steep slopes on the western end of the lot, along the river. He said the proposed lot 1 is remote and essentially cut off from the main portion of the pre-existing parcel, where the current house is. He said in 1992 the two parcels (Tax Map U1, Lots 10 & 11A) in the middle of the property were subdivided creating the odd shape of the property.

Mr. Cannon explained the work they've done on the original old home, restoring it, and that it is 99% complete.

Mr. Tierney asked acreage for proposed lot 1 is remote and cut-off from the remainder of the property. Mr. Cannon advised due to the nature of how it was subdivided, his home has frontage, then there are two more homes and that frontage, then the remainder of the frontage for his lot. He explained that the land behind the two subdivided lots cannot be developed and is narrow. Mr. Cannon pointed out that the Precinct water and sewer does not reach that portion of the property, though agreed with Mr. Tierney that is not "cut-off".

The spirit of the ordinance is observed because:

Mr. Cannon explained that the single family home is appropriate and will conserve the natural resources near the river and prevents overcrowding and undue concentrations of population in a subdivision of minimum lot size. He pointed out that the PO District allows a 2 acre lot size and the Village allows for a 1 acre lot size, and this proposed lot is 3 acres.

Mr. Tierney asked Mr. Cannon if he was intending to say that this subdivision would prevent further subdivision and Mr. Cannon said yes. Mr. Cannon said that creating this as a single family home was a better use than if it were developed for multiple dwellings. He advised that this 3 acre lot has some steep slopes towards the river.

Mrs. Erler asked what the setback was to the river. Mrs. Vose explained it was 200' for a structure and 125' for a septic system, and these distances are to be horizontal, from the Normal High Water Mark of the Pemi River. Mrs. Vose said this would have to be shown if a building permit was requested.

Mr. Cannon advised that the resulting lot development would likely equal or exceed current market values which would stabilize or improve the market values in the area.

Mr. Cannon explained that proposed on-site water and septic will not put demand on the existing precinct facilities. Mr. Orvis asked about proposed sewer and water lines being shown on the plan. Mr. Cannon said this was done conceptually to determine the cost. Mrs. Erler asked if the existing house, and the 2 abutting lots, have precinct services and Mr. Cannon said they did.

Mr. Cannon explained that the proposed lot is restricted by the lack of 38.25 feet of road frontage for the V District, and lacks 13.25 feet for the requirement of frontage for the PO District. He said this doesn't create an inconsistency with the purposes of the ordinance. He doesn't believe that whether or not this lot is serviced by water or sewer has any bearing on frontage due to the size and capability of the lot. He advised that the Village Precinct Commissioners agree.

Ms. Karnis asked Mr. Cannon how he sees that the minimum road frontage requirements as not being applicable to prevent overcrowding. Mr. Cannon said in this particular case the frontage doesn't have anything to do with the capability of having on-site water and sewer. If frontage is there to prevent overcrowding, in this case it is a 3 acre lot for one home. Mr. Hofling asked about the intention to have a 50' ROW access across the abutter's (Sanborn) lot and Mr. Cannon said they have a verbal agreement currently and it is one option for access. Mr. Cannon said that was not the only option for access. Mrs. Erler said she did not feel the lack of road frontage should be an issue due to the layout of the property and the fact there is substantial acreage to place a home and septic area away from the river. She said that comparing it to other homes in the area this would be reasonable. Ms. Karnis said she understands the reason for the requirement on road frontage - to avoid subdivisions that create dense developments and expressed concern with setting a precedent as the lot across the street is another lot that is large for this district and could potentially be subdivided. There was discussion on a condition that it be a single family home only. Mrs. Erler suggested the shape of the lot makes this unique and the board agreed. Everyone present agreed that access at the frontage of the proposed lot would be very difficult due to steep slopes, so the ROW was a good way to access the lot.

Substantial justice is done because: Mr. Cannon advised that there are no services for water a sewer offered to this proposed site and the cost to connect to these services represents a deprivation of the appropriate use for

this lot 1. He said that creation of this lot will provide incentive for future owners to maintain the property, enhancing the neighborhood. He suggested the proposed easement access through the Sanborn lot provides virtual frontage to the new lot. Mr. Tierney stated his disagreement relative to providing virtual frontage. Mr. Cannon said that due to topography, layout and lot configuration, the ordinance creates an unfair deprivation of the appropriate use of the existing parcel.

The values of surrounding properties are not diminished because: Mr. Cannon said that development of the lot will likely have a positive impact on surrounding properties as it would likely exceed current market values.

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:

(A)ii. 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. Cannon pointed out that the ordinance states that the Village consists primarily of private residences, public buildings and a private boarding school and that these are serviced by existing water and/or sewer. The proposed lot is not served by the Precinct because of topographical constraints. Mr. Cannon explained the distances any services would have to travel to reach this proposed lot. He said the application of the frontage requirements for the Village and Overlay district are not consistent with the general purposes of the ordinance and the proposed lots ability to accommodate on-site water and septic.

Mr. Cannon advised that the connection to Precinct water and sewer would be very costly and explained what steps would be necessary to accomplish it. This information was obtained from licensed engineer, Jennifer McCourt, and was noted on the plan submitted. Mr. Cannon advised that to comply with the frontage requirement would cause an unnecessary burden and deprivation of the use of his land for anything but agricultural use which is low value and inconsistent with the neighborhood. He pointed out that he would not be asking for another curb cut, but will use existing curb cuts on the abutter's property.

Based on his experience, Mr. Frazier pointed out that installation of new sewer line connection to the Precinct would require a pump system for the distance and agrees that a septic system would be the best way to go.

Mrs. Erler advised that it was her understanding that the Precinct has had difficulties in the past with supplying appropriate water to the area it currently services. Mr. Tierney pointed out the inability of the Precinct to supply water to the new Public Safety Building and advised of a recent water shortage in the Precinct.

For these reasons the board agreed that on-site water and septic made sense. The board agreed that though there wasn't adequate frontage the lot size was adequate.

The proposed use is a reasonable one because: Mr. Cannon said the proposed single family use is consistent with existing uses on Old Bristol Road and the lot is capable of providing on-site water and septic.

Mr. Hofling closed the public portion of the hearing, moving on to the deliberations.

Relative to the Variance not being contrary to the public interest, Mrs. Erler stated her agreement in keeping with other uses in the area, adequate area for development a distance from the river and capable of handling on-site water and septic. Mrs. Erler made a motion, seconded by Mr. Orvis that this criterion was met. Vote was unanimous.

Relative to the spirit of the ordinance being observed Mr. Orvis said the lot is very large and the nature of the topography is a good solution for the property, especially given that it would be a single family home. Mr. Frazier advised that accessing the lot through an existing access point is desirable. Mrs. Erler agreed and pointed out that the applicant would still be going through the subdivision process with the Planning Board. Mr. Tierney advised that he didn't support the spirit of the ordinance reasons, given by the applicant, but agreed with the board determining that it is met by other factors not listed in the application but discussed at this hearing. Mrs. Erler made a motion, seconded by Mr. Orvis that this criterion was met. Vote was unanimous.

Relative to substantial justice being done Mrs. Erler stated she feels this criterion is met as the property is very uniquely shaped and is a good use of the property. She said it did not make sense to add water and sewer lines to connect to an inadequate Precinct system. Mr. Tierney pointed out that there was no requirement that the applicant put these lines in. The board agreed on the finding that the applicant can provide for on-site water and septic.

Relative to the values of surrounding properties not being diminished the board agreed that this criterion was met.

Relative to the literal enforcement of the provisions of the ordinance resulting in an unnecessary hardship because Special Conditions of the property distinguish it from other properties in the area Mr. Tierney pointed out that the applicant does not have to put in water and sewer lines. He said that as the Precinct water system is inadequate the lot can support its own well and septic. Mrs. Erler said that no fair and substantial relationship exists between the ordinance, the reduced road frontage, and Mr. Cannon's proposed use of the property. The remainder of the Village District is mostly smaller lots and this will be much larger than most. Mr. Orvis advised that there are the topographical constraints of the property making connection to the Precinct difficult also. The board agreed that this criterion was met.

There was discussion that this lot be used for a single family home only

with not additional curb cuts. It was pointed out that any additional curb cut would need approval from the Public Works Director for a driveway permit and that the Planning Board would consider that also.

Mr. Tierney made a motion, seconded by Mr. Frazier, to approve the Variance contingent upon:

1. Subdivision approval must be obtained by the Planning Board.
2. Recommendation to the planning board that no additional curb cuts be made outside of what currently exists.

Vote was unanimous.

OTHER BUSINESS

There was none.

ADJOURNMENT

Mrs. Erler made a motion, seconded by Mr. Frazier, to adjourn at 8:56 pm.

Vote was unanimous.

Respectfully Submitted,

Pam Vose
Secretary

DRAFT