

## ZONING BOARD OF ADJUSTMENT

Wednesday, March 26, 2008  
Belmont Corner Meeting House  
Belmont, N.H.03220

Members Present: Chairman P. Harris; N. Patten, P. Oberhausen L. Couture and M. Ford.  
Alternates Present: P. Palombo.  
Alternates Absent: E. Hawkins (E)  
Staff: C. Daigle and E. Murphy.

The chairman opened the meeting at 7p.m. and welcomed M. Ford as a new member to the Board.

### **ABUTTERS' HEARING – EDWARD & CAROLE MANSUR:** Request for:

- An Equitable Waiver of Article 5 Table 2 of the Zoning Ordinance to permit an existing 4' x 10' addition to a pre-existing attached shed closer (5.5') to the side property line than allowed (12.5'). ZBA # 0508
- A Special Exception of Article 5 Table 2 of the Zoning Ordinance to permit an existing addition to a pre-existing dwelling closer (7.2') to the side property line than allowed (12.5') but not closer than the existing building. ZBA # 0608

Property is located at 33 Gilman Shore Road in an "RS" Zone, Tax Lot 109-002.

At least three members have viewed the site.

Atty. John Michaels presented the application.

Atty. Michaels submitted a revised site plan that was drawn up today. He explained that there was an existing dwelling that was 5.7' to the property line and the addition to the shed makes it 5.5' to the boundary line. They are asking for an equitable waiver for the shed. They are asking for a special exception for the addition to the bedroom which will be 7.2' to the property line but not closer than the existing shed addition before it was expanded.

Atty. Michaels explained that they are asking for the Equitable Waiver for the shed because the previous owner, Mr. Herrington, built the 4' x 10' extension on an existing shed. This happened between 1994 and 1996. There also was another shed on the property that they tore down after he put the extension on the shed. The addition to the shed brings it 3" closer to the property line. Mr. Herrington recalls building the addition to the shed around 1996 because on April 30, 1997 he bought a new water heater and he remembers buying that after he built the addition. Atty. Michaels submitted a copy of the bill for the water heater. At the time Mr. Herrington built the addition to the shed he thought the house

ran parallel to the property line. The existing condition plan was prepared for the new owners in 2007. Mr. Herrington thought he came to the town to get a permit for the shed but there are no records to verify that. He believed that he was not intruding further into setback. The applicants believe the work was done more than 10 years ago; around 11-1/2 years ago. In August 2007 they received a letter from the Town Planner stating that they need to cure the violations for the unpermitted structures. Atty. Michaels stated that there is no nuisance or hazard involved because the use is unchanged. There always was a shed there. There is no factual evidence that property values would be reduced. The addition in the setback is 1 square foot more than what was originally there. The cost to the applicant to remove the shed outweighs the public benefit. It cannot be viewed by the neighbors. Without the survey you would not know it is in the setback. He asked the Board to grant the Equitable Waiver because the shed addition has been there over 10 years.

Atty. Michaels addressed the special exception application. The addition is 7.2' to the property line instead of the required 12.5'. There is a bedroom in the corner of the house and they wanted to add two closets to the bedroom. The total square footage is less than 40% of structure and not closer than the existing building. It is a residential use which is allowed in the "RS" zone. Property values won't be reduced and there are no objections from abutters. There is no factual evidence that property values would be reduced. It is an allowed use. The neighborhood will be unchanged because they are only adding closets. There is adequate sewer disposal, they are on sewer.

P. Oberhausen stated that the applicant claims the addition to the shed was done between 1994 and 1996 but the Town Planner's letter in November 2007 indicated that when they applied for an after-the-fact building permit in 2006 she told them that the addition was 7' from the property line and didn't comply with zoning so the building permit was denied. The applicant tends to do the work then apply for the permit. They were aware of the violation but seemed to drag their feet before coming to the Board to bring the property into compliance. It is up to the applicant to prove that they meet the equitable waiver requirements for the time line. P. Oberhausen stated that he doesn't feel that they met the good faith error by owner/agent requirement in a timely fashion because the applicant has received letters from the town stating their violations. Atty. Michaels stated that his clients don't live here and it has taken them a long time but they were trying to bring things into compliance. They went to a surveyor but because of the economy at the time it took them a long time to get one who was able to do the work. An Equitable Waiver has to prove that the structure has to have existed for 10 years without knowledge of the violation. The owners didn't know before December 2006 and they have tried to square things away when they became aware of the situation. That was beyond the 10 year period. The owners purchased the property from Carol Mansur's father and he may not have gotten the permits when necessary. They are trying to get the permits in order. The shed is over 10 years old and the addition to it is only 16 square feet. Mr. Herrington thought he got the permit for the addition. L. Couture stated that if he applied for a permit there would be a permit in the Town's records. C. Daigle stated that she doesn't think the permit would have been granted because it would not meet setbacks. There would have been a denial letter issued. P. Harris stated that there is no evidence as to when it was built. Atty. Michaels stated that the only evidence they have is the piece of paper showing when the water heater was purchased. It was a small addition so there was not a lot of material purchased so they have no receipts. There was an existing shed at the time the 1984 plan was done. It shows the 4' x 6' shed and now it is 4' x 10'. P.

Harris stated that the Town has better enforcement and have found numerous after-the-fact construction where people have tried to build first and get a permit after because they don't believe they will have to tear down something that was already built. Atty. Michaels stated that he has no additional proof as to when the addition was built.

M. Ford wanted to know how the shed was positioned in relation to the road. Atty. Michaels stated that the 6' is parallel to the road and the 4' is perpendicular. The shed is attached to the house and is part of the house. The original shed was 5.7' to the property line and the addition is 5.5'. M. Ford stated that the 6' runs with the width of the house. L. Couture wanted to know what is stored in the shed. Atty. Michaels stated tools and a workbench.

P. Harris wanted to know if there is any chance of doing a lot line adjustment because it is 5' from the boundary line. Atty. Michaels stated the 5.7' infringement has been there for years and is grandfathered. The house is more than 30' from the adjacent home. The front part of the house with the bedroom is the closet point to the adjacent home and the addition fits within the special exception criteria because the addition is not increasing the footprint by more than 40% of the house and is not closer than the existing structure.

The chairman asked if anyone in the audience had any questions or comments. There being none he closed the public hearing.

P. Harris read the criteria necessary to grant an Equitable Waiver.

- a. Violation was not discovered by owner/agent or town official until structure was substantially complete (structure violation) or lot was sold (lot layout violation);
- b. Violation was not outcome of ignorance of law, failure to inquire, obfuscation, misrepresentation or bad faith by owner/agent, but was caused by good faith error by owner/agent or error in ordinance interpretation by town official;
- c. Violation does not constitute nuisance, diminish value of other property, nor interfere/affect any present or permissible future uses of any such property;
- d. Due to degree of construction/investment made in ignorance of violation, cost of correction outweighs public benefit to be gained so as to be inequitable to require correction.

He stated that according to the assessment records the addition was made between 2003 and 2006 and has not existed more than 10 years. The applicant has submitted a water heater bill that he stated was installed after the addition but that is all that he submitted. N. Patten stated that they don't even know where the tank went. It doesn't say it went to this address; it could have been sent to another house. It would have been good to have pictures or support from neighbors supporting its existence for 10 years.

#### **BOARD ACTION – EDWARD & CAROLE MANSUR:**

**MOTION:** P. Oberhausen moved to deny an Equitable Waiver of Article 5 Table 2 of the Zoning Ordinance to permit an existing 4' x 10' addition to a pre-existing attached shed closer

(5.5') to the side property line than allowed (12.5') for the following reasons:

1. The burden of proof has not been met with evidence that the addition existed for 10 years. The Board believes the addition was made between 2003 and 2006 and has not existed for 10 years. The addition did not show on 1996 or 2003 assessment sketch. It first showed on the next assessment sketch dated 2006.
2. Violation was the outcome of ignorance of law, failure to inquire, obfuscation, misrepresentation or bad faith by owner/agent, or caused by good faith error by owner/agent or error in ordinance interpretation by town official. Any inquiry would have revealed both the tax map and a 1984 recorded plan which clearly showed that this addition would have been closer to the sideline than the existing building and needed a variance.

The motion was seconded by N. Patten and carried. (5-0)

Atty. Michaels further addressed the Special Exception application. A special exception allows you to build into the setback providing you don't go further into the setbacks than the closet point of the existing structure and the expansion is less than 40% of the existing building. The addition for the closet is 7.2' to the property line but not closer than the existing house.

The chairman asked if anyone in the audience had any questions or comments. There being none he closed the public hearing.

P. Harris stated that there are no objections from abutters. It is a small addition to an existing structure and will not create any nuisance. There are no abutters close to that area and it is similar to others on the lake.

**MOTION** N. Patten moved to grant a Special Exception of Article 5 Table 2 of the Zoning Ordinance to permit an existing addition to a pre-existing dwelling closer (7.2') to the side property line than allowed (12.5') but not closer than the existing building as it meets the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted.
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact. No abutters were present.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

Additional conditions:

1. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by M. Ford and carried. (5-0)

Atty. Michaels wanted to clarify his client's alternatives for the shed. They can get a variance or get a special exception by cutting off part of the shed.

**SEAN GILLIGAN FOR MALLARDS LANDING:** Request for a Special Exception of Article 10.A.3.c. of the Zoning Ordinance to reconstruct a pre-existing nonconforming seasonal camp adding useable space (extension of 2<sup>nd</sup> story) in a preexisting nonconforming footprint. Property is located at 96 Mallards Landing Road in an "RS" Zone, Tax Lot 110-002-000-631, ZBA # 0808.

At least three members have viewed the site.

Mr. Bryan Bailey and Mr. Sean Gilligan presented the application.

Mr. Bailey explained that this is a small camp in Mallard's Landing on Lake Winnisquam. The camp is on the water's edge and abuts an interior road. The proposal is to construct a more modern structure and fix up deficiencies bringing the structure up to current building codes. Mr. Gilligan has received approval from Mallards Landing Association and has received his Shoreland Protection permit. The proposal will be an improvement and lessen the impervious ground allowing the rain water to be absorbed into the more permeable ground. He has received all his DES permits. This is a minor expansion of the overall building area. On the western side of the unit there is a bump out and he wants to enclose the second floor of that area over the entry way. It is a 8.5' x 5' area that is not expanding outward but is adding living space to the second floor.

It is an appropriate location within the existing footprint. Property values would not be diminished because it is the same use and is a replacement. No nuisance or hazard is involved. It is a single family seasonal dwelling. There is adequate facilities provided because it is on municipal water and sewer. They will be upgrading the internal plumbing and electricals and will enhance the structure.

M. Ford wanted to know if they would be using the existing foundation. Mr. Gilligan stated that there will be a new slab. They are replacing it before it deteriorates so they can enjoy it in the future. P. Harris stated that it has to remain a seasonal dwelling. The Fire Department requires smoke detectors and the building must meet all building codes.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

**BOARD ACTION – SEAN GILLIGAN FOR MALLARDS LANDING:**

**MOTION:** P. Oberhausen moved to grant a Special Exception of Article 10.A.3.c. of the Zoning Ordinance to reconstruct a pre-existing nonconforming seasonal camp adding useable

space (extension of 2<sup>nd</sup> story) in a preexisting nonconforming footprint as it meets all the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted.
2. The specific site is appropriate for the use. It is a seasonal home.
3. No factual evidence is found that property values in the district will be reduced. It is an improvement to the area.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

The following conditions apply:

1. All property bounds/existing footprint certified during construction as required.
2. All required floodplain/Shoreland Protection documents to be submitted. Approval has been submitted. Concrete slab to be removed and all other Shoreland conditions to be complied with.
3. No structures or additions that do not meet setback, except for those approved herein are allowed.
4. Use shall remain seasonal.

The motion was seconded by L. Couture and carried. (5-0)

**ABUTTERS' HEARING – JANE JORDAN:** Request for a Variance of Article 4 of the Wetlands Ordinance to permit an existing 8' x 10' extension to a deck closer (16') to the highwater mark than allowed (50'). Property is located at 157 Gardners Grove Road in an "RS" Zone, Tax Lot 120-016, ZBA # 0908.

Ms. Jane Jordan presented the application.

Ms. Jordan explained that basically she was not aware of the expansion to the deck until after it was done. She went away for a weekend and he boyfriend extended the deck to the end of house. It is on the back side of the house and won't affect the neighbors. It enhances property values and does not harm the environment.

P. Oberhausen wanted to know if she has her Shoreland Protection permit yet. Ms. Jordan wanted to know if she could get the Town's variance first to bring it into compliance. P. Oberhausen stated that if it is not approved by the State then she would have to remove it. Ms. Jordan stated that she would like to proceed tonight so she would not have to come back. P. Harris wanted to know if there are other properties in the area similar to this one. Ms. Jordan stated that they have to measure off the

highwater mark but that is not always the same. Water on Silver Lake varies and the highwater mark they are referring to would be over her well head. She stated that abutters can't see the deck from any direction.

N. Patten wanted to know how long ago the addition was added. Ms. Jordan stated that she bought the property in June of 2003 and the addition was put on in the fall of 2005.

P. Harris stated that they could put a condition on the approval that a Shoreland Permit is needed. Ms. Jordan stated she will apply for one tomorrow.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

### **BOARD ACTION – JANE JORDAN:**

**MOTION:** P. Oberhausen moved to grant a Variance of Article 4 of the Wetlands Ordinance to permit an existing 8' x 10' extension to a deck closer (16') to the highwater mark than allowed (50') as it meets the criteria.

1. A Variance will not decrease surrounding property values, because it enhances the look of the area and adds value to the house.
2. A Variance is not contrary to the public interest; because there were no objections from abutters.
3. Denial would result in unnecessary hardship to the owner because of the cost to the applicant to remove it:
  - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property, because the deck is centered in the back of the house and cannot be seen.  
and
  - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method, because the deck is attached to the existing house.
4. A Variance will result in substantial justice being done.
5. A Variance will observe the spirit and intent of the ordinance.

The following conditions apply:

1. No structures or additions that do not meet setback, except for those approved herein are allowed.
2. Deck to remain open (unenclosed, unroofed).
3. All required floodplain/Shoreland Protection documents to be submitted prior to the issuance of a building permit. If not obtained the existing deck is to be removed at the owner's expense

The motion was seconded by N. Patten and carried. (5-0)

**OTHER BUSINESS:**

**BOARD'S ACTION - MINUTES:**

**MOTION:** P. Oberhausen made a motion to approve the minutes of March 12, 2008. L. Couture seconded. Carried (5-0)

**STAFF REPORT:**

**CUSTOMER SERVICE QUESTIONNAIRE APPROVAL:**

C. Daigle explained that in order to better serve the public the Land Use Office will be providing a customer service questionnaire. The questionnaire will be sent to applicants that have gone through the land use process. Questionnaires will also be available on the web and in the office. They can be mailed back or deposited in a drop box outside the land use office.

**JOINT MEETING:**

C. Daigle on behalf of the Planning Board invited the Zoning Board to a joint meeting with the Planning Board, Conservation Commission, Board of Selectmen and School Board scheduled for April 14<sup>th</sup> at 7PM.

**TOWN NEWS:**

C. Daigle explained that she and Code Enforcement Officer, Steve Dalton, have been working on ways to get more information out to the public since there is no more Belmont Better Times. They want to keep the citizens updated with the latest information. They want to put some snippets on the website each week with news from each department. For example, the Land Use office could put up what applications have been approved at a public meeting. The Tax Collector could use it to remind people to license their dogs, the Water Department could let people know they are flushing hydrants and the Public Works Department can let the public know what roads they will be working on. Just a few sentences once a week would keep the public informed on what is happening. Each department would be responsible to submit a few sentences once a week and the Town's receptionist, Sharill Conley, would post it on the web.

**ROAD SAFETY:**

Public Works Director, Jim Fortin, wants to thank the Board for recognizing the importance of road safety. By making sure that the Public Works Department has enough room the plow and maintain the roads in Belmont it makes for a safer environment for everyone.

**ADJOURNMENT:**

**MOTION:** On a motion by P. Oberhausen, seconded by N. Patten, it was voted unanimously to adjourn at 8:21p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy