



BELMONT LAND USE OFFICE

ZONING BOARD OF ADJUSTMENT

Wednesday, September 24, 2008
Belmont Corner Meeting House
Belmont, NH 03220

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

The Chairman opened the meeting at 7pm and appointed E. Hawkins as a voting member for the evening.

ABUTTERS HEARING –Mallards Landing for David and Judy Chordas: Request for:

- A. Special Exception of Article 11.A.3.d of the Zoning Ordinance to replace an existing shed closer (11.8') to an unrelated shed (Unit 511) than allowed (20') but not closer than the existing structure. ZBA #3008
- B. Variance of Article 5 Table 2 of the Zoning Ordinance to replace an existing shed closer (10.9') to an unrelated structure (Unit 511) than allowed (20'). ZBA #3108
Property is located at 19 Second Street in an "RS" Zone, Tax Lot 110/002/000/515.

Mr. & Mrs. Chordas were present for this application. At least three members have viewed the site. Mrs. Chordas noted they had provided most of the information in their packet. She read the project description from the Special Exception application. The shed will only be 10' x 14.9' to avoid needing a DES permit. The shed will become compliant with the unit at 46 Mallards Landing Road. It will also be closer to their own home to be further away from the unit at 17 Second Street. It is not completely compliant but improves the abutters view. It will not be heated, have electricity or running water, or be used as living space. They are just looking to enlarge from the existing shed because they lack storage space, have no basement and they are making an effort to move further away from the other units. There is not enough room to completely meet the required setbacks. They feel the property does not infringe on abutters or the road. It will be vinyl sided to add value for everyone and will meet all applicable building codes. It will be used it to store garden tools, bicycles and other such items.

P. Oberhausen stated he could not find in the Shoreland Rules where this was exempt from a permit. C. Daigle read the applicable section and Mrs. Chordas provided the cite as 1406.04(14). Staff will provide the members with a full copy of the Shoreland Rules. P. Harris asked about the electrical meter note from the building official. Mr. Chordas noted it will be approximately 3.5' from the shed.

The chairman opened the hearing to public comment. There were no abutters present. There being no further questions or comments the chairman closed the public hearing.

BOARD ACTION – Mallards Landing for David and Judy Chordas:

MOTION: L. Couture moved that the application for a Special Exception of Article 11.A.3.d to replace an existing shed closer (11.8') to an unrelated shed (Unit 511) than allowed (20') but not closer than the existing structure be granted on the following basis:

1. The use is allowed in the district.
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. Mallard's Landing has already approved the construction.
5. No nuisance or hazard is involved. This will actually alleviate the hazard related to the old existing shed.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal for the home.

And with the following conditions:

- A. Structures must otherwise meet all dimensional requirements of the Ordinance.
- B. All property bounds/existing footprint certified during construction as required.
- C. No structures or additions that do not meet setback, except for those approved herein are allowed.
- D. No fuel source or accessory structure shall be placed between unrelated structures.

The motion was seconded by P. Oberhausen and carried unanimously. (4-0-1 P. Harris abstained)

P. Harris feels the applicant did a good job on presenting the application, having included her comments regarding the variance portion of the application as part of the special exception presentation.

MOTION: L. Couture moved that the application for a Variance of Article 5 Table 2 to replace an existing shed closer (10.9') to an unrelated structure (Unit 511) than allowed (20') be granted on the following basis:

1. A Variance will not decrease surrounding property values, because the shed that is there now is in bad repair. The new one will be more compliant with the codes and match the area.
2. A Variance is not contrary to the public interest because property values will not decrease.
3. Denial would result in unnecessary hardship to the owner because the current structure is not functioning for the intended use:
 - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property, being the minimal lot size and the proximity to the other surrounding buildings.
 - B. and the benefit sought by the applicant cannot be achieved by some other reasonably feasible method, because it's a replacement of an existing structure that's broken and not functioning.
4. A Variance will result in substantial justice being done because it will enable the applicant to make full use of a storage area and their property.
5. A Variance will observe the spirit and intent of the ordinance because it is within the boundaries that are there and it meets the wetland rules.

And with the following conditions:

- A. All property bounds/existing footprint certified during construction as required.
- B. No structures or additions that do not meet setback, except for those approved herein are allowed.
- C. No fuel source or accessory structure shall be placed between unrelated structures.

E. Hawkins noted the motion was excellent, but suggested noting that the proposal will result in a decrease of the nonconformity; that being a key fact in the variance application and should be noted. L. Couture accepted the additional language.

The motion was seconded by P. Oberhausen and carried unanimously. (4-0-1 P. Harris abstained)

ABUTTERS HEARING –Cameron and Diana Cormier: Request for a Variance of Article 4 of the Wetland Ordinance to remove and replace an existing deck previously permitted by Variance with an enclosed porch closer (11.6') to the highwater mark than allowed (50'), but not closer than the existing building. Property is located at 6 Elaine Drive in an "RS" Zone, Tax Lot 107/124, ZBA #3208.

Mr. & Mrs. Cormier were present for this application. Mrs. Cormier stated they want to see if they can have their previous variance amended to allow them to roof and screen the permitted deck. E. Hawkins noted the proposal would reduce the deck size to keep the depth of the deck within the originally approved footprint. Mrs. Cormier agreed they did that to accommodate the

roof overhang in that direction. The plan shows the original footprint, though, not the reduced size, as it was drafted for the original variance.

The chairman opened the hearing to public comment. There were no abutters present.

M. Ford asked why they were required to keep it screened and could not add glass or other weatherproofing sidewalls as the weather would hasten the deterioration of the decking. Mr. Cormier noted that the deck would not be heated and would not be on a foundation. DES allows this only with screens. L. Couture noted that reference on the Variance application. Mr. Cormier noted those conditions were fine with them.

L. Couture asked about the awning over the driveway. Mr. Cormier noted they did not know they needed a permit, but they had intended to take it down anyway.

There being no further questions or comments the chairman closed the public hearing.

BOARD ACTION – Cameron and Diana Cormier:

MOTION: E. Hawkins moved that the application for a Variance of Article 4 of the Wetland Ordinance to remove and replace an existing deck previously permitted by Variance with an enclosed porch closer (11.6') to the highwater mark than allowed (50'), but not closer than the existing building be granted on the following basis:

1. A Variance will not decrease surrounding property values because no factual evidence exists to indicate that such diminution will take place due to the proposed construction.
2. A Variance is not contrary to the public interest because it will not alter the essential character or threaten public health, safety or welfare.
3. Denial would result in unnecessary hardship to the owner because the conformable footprint allowed prohibits them from any construction without a variance
 - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property being the dimensions and allowable conformable footprint
 - B. and the benefit sought by the applicant cannot be achieved by some other reasonably feasible method for that same reason
4. A Variance will result in substantial justice being done because the loss to the applicant if denied is not outweighed by any gain to the general public in relation to water quality and fire access due to the dimension and nature of the project
5. A Variance will observe the spirit and intent of the ordinance because given the legitimate purpose and the reason it was enacted in light of zoning goals and the master plan to protect general safety, health and welfare there is no reason to believe that the construction of this deck will violate those principles.

And with the following conditions:

- A. All property bounds/existing footprint certified during construction as required.
- B. Open screen sides cannot be replaced with glass or other weather barrier material without first obtaining NH DES Shoreland and Town of Belmont approvals.
- C. No structures or additions that do not meet setback, except for those approved herein are allowed.
- D. The membrane structure shall be removed before the construction commences on the screen room.

The motion was seconded by P. Oberhausen and carried unanimously. (4-0-1 P. Harris abstained)

ABUTTERS HEARING –Tim Therrien: Request for a Special Exception of Article 5 Table 1 of the Zoning Ordinance to allow a contractor's yard (chimney business) in a rural zone. Property is located at 183 Horne Road, Tax Lot 209/002, ZBA #3308.

Mr. & Mrs. Therrien were present for this application. At least three members have viewed the site. The Chairman noted the history of the site from the printed staff report. Mr. Therrien referred to his submitted application. He has had a chimney business for several years. They are in the process of buying this home and he has downsized this business. Right now he has three vans on the road. It is a small chimney concern. There are three fulltime employees and himself with his truck and two vans in operation. The third van is used some during the year. His request is for up to five vehicles, but he does not believe he will grow any larger. Two or three employees come to the shop in the morning. They're in and out in 15 minutes. They punch out at the end of the day, straighten out their van and leave. Intentions are to keep the business lean and mean and run a well tuned small concern. There is a small, 10x10 office in garage and a 20x20 main storage area. Between the barn and the house they have a few areas with odds and ends, like bricks and masonry supplies. His trucks are kept looking well, but people don't want to see the lettered vehicles and it's not his intention to advertise from the site. His intent is to keep them back. The property lends itself for a nice fence so people can't see the vehicles and such a fence would also help deter theft. He runs a little business. No work is done on the premises.

P. Oberhausen asked about sanitary facilities. Mr. Therrien explained that there are three bathrooms in the house. The garage where the employees come to punch in/out is three steps down from the downstairs bathroom house level. His employees are welcome to use it. His employees are sent into people's homes, so he does thorough background checks on them. So they're allowed to come into the house. One is his nephew and one is his son. P. Oberhausen noted the application also has to go before the planning board for site plan. All the businesses in town require separate sanitary facilities for the employees related or not. When asked about hours of operation, Mr. Therrien explained that they start at 7am. Usually the day ends at 5pm, although if they are working some distance away travel time may make them later. However, in that case, employees may also just take the van home and not stop back into the shop. The vehicles do not have backup alarms. They are very quiet, basically residential vans.

P. Harris asked if vehicles repairs or fueling occurred on site. Mr. Therrien stated that Salta Tire does all his vehicle work. The only fueling that occurs on site is for his residential lawn mowers.

E. Hawkins asked about use of the barn for any business use, including storage. Mr. Therrien said the old timers say the barn is safe, but it is in poor condition. They would need to reinforce the structure, put it on a new foundation, etc. to use it. They have no intention at all to use it for any business related use.

P. Oberhausen asked if Mr. Therrien was comfortable with comments from staff requesting that the driveways be paved, restricting business use of the barn and completing annual aquifer inspection. Mr. Therrien asked about the inspection. P. Harris explained that there is questionnaire to be completed and the building official inspects the operation of the business, what type of materials are used, how they are stored and disposed of, all related to water quality protection. P. Oberhausen asked about acid used in the chimney business. Mr. Therrien explained they buy it only one gallon at a time and it's kept in the vans. He agreed if he proceeds with the business all the driveway aprons need to be paved, there will be no business use of the barn structure and he will accommodate successful annual aquifer inspections.

P. Oberhausen gave the example of the new contractor's yard on Durrell Mountain Road where the driveway had to be paved back a certain number of feet. Mr. DeVivo, who applied for the same permits across from Mr. Therrien also had to put in an apron. Mr. Therrien stated he'll do what they want to comply.

M. Ford noted the Therrien driveway is part of the old road. Mr. Therrien noted they have respect for the rules and for people around them. P. Harris noted the ZBA grants the use and then it goes to the planning board. The plan for the Planning Board will need to be more detailed. Mr. Therrien noted his proposal is pretty simple so it's easy to stick to.

Mr. Therrien stated he heard the original complaint about his non-permitted business came from his neighbor to the left because of his commercial parking and the backup alarms from across the street. They got a letter from the Town and responded with this application.

The chairman opened the hearing to public comment.

Elaine Bonnette, an abutter, stated she had no objections.

Peter and Sarah Harlow, abutters, stated they have no objections.

Mr. Therrien stated he is aware that he has to go through site plan approval also. He presented pictures of the types and sizes of his vehicles and trailer and storage area.

There being no further questions or comments the chairman closed the public hearing.

BOARD ACTION – Tim Therrien:

MOTION: P. Oberhausen moved that the application for a Special Exception of Article 5 Table 1 of the Zoning Ordinance to allow a contractor's yard (chimney business) in a rural zone be granted on the following basis:

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.
5. No nuisance or hazard is involved and water quality will be safeguarded through the aquifer inspections.
6. Adequate and appropriate facilities will be provided for the workers and the business.
7. There is adequate sewage disposal for the house and it will be provided for the business.

And with the following conditions:

- A. Structures must otherwise meet all dimensional requirements of the Ordinance.
- B. Pave all driveway aprons.
- C. Annually successfully complete required aquifer inspections.
- D. No business use of barn structure.
- E. Use requires site plan approval by the planning board.

The motion was seconded by L. Couture and carried unanimously. (4-0-1 P. Harris abstained)

OTHER BUSINESS:

1. **Minutes:**

MOTION: On a motion by P. Oberhausen, seconded by L. Couture it was voted unanimously to accept the minutes of August 27, 2008 as written. (3-0-2 P. Harris and E. Hawkins abstained)

2. **Adjournment:**

MOTION: On a motion by P. Oberhausen seconded by L. Couture it was voted unanimously to adjourn at 8pm. (5-0)

Respectfully submitted,



Candace L. Daigle, Town Planner