

**Ashland Zoning Board of Adjustment Meeting
Draft Minutes
December 8, 2016**

Members Present: Eli Badger, Susan MacLeod, Tim Sweetsir

Others Present:

Edward Adamsky, Anthony Adamsky, John March (Mountain Mapping), Christopher Salomon (Samyn-D'Elia Architects)

Richard Fecteau, Jeanette Fecteau, Darice Ciampa, Chris Ciampa, Gabriel Nizetic (attorney), Joseph Bartoszewicz, Richard Cushing.

The meeting was called to order at 6:30pm by Chairman Eli Badger. Pertaining to reorganization of the Board, **a motion was made (MacLeod) and seconded (Sweetsir) to elect Eli Badger as Chair of the Zoning Board of Adjustment. The motion passed, 3-0.**

NEW BUSINESS

(1) Case #2016-01, Edward Adamsky, La Roca Enterprises: Equitable Waiver of Dimensional Requirements for property located at 44 Main Street (Tax Map Lot #016-002-002; Commercial Zone).

The application submitted by Edward Adamsky, La Roca Enterprises, is for an equitable waiver of dimension (NH RSA 674:33-a). John March, surveyor for Mountain Mapping, presented the application. Susan MacLeod, Chair of the Planning Board, reviewed the action of the Planning Board (12/7/2016) which continued the application for site plan review, to a joint meeting with the ZBA on 1/4/2017.

A motion was made (MacLeod) and seconded (Sweetsir) to accept the application for an equitable waiver of dimension for Tax Map Lot #016-002-002. The motion passed, 3-0.

Chris Salomon (Samyn-D'Elia Architects) explained that the application is for an equitable waiver of dimension because the proposal does not meet setbacks, the proposed expansion (handicapped ramp) is outside of the property line, and the applicant has reached an agreement with the Memorial Park Trustees for landscaping value of \$5000 in exchange for the encroachment. John March (surveyor) researched the property, found limited boundary information, and subsequently estimated where the boundary line might be ("*recommended BLA line*" on the submitted plan) by splitting the difference between the current building (44 Main Street) and the previous building ("*Rose Rice house from 1936 NHDOT plan*"). The space required for the proposed handicapped ramp is estimated at 366 square feet, which includes about 1 foot beyond the ramp.

The ZBA explained that the Board of Selectmen (Town of Ashland) is researching the property in question to determine how the property was acquired by the town and how to legally resolve the issue. Two possible options are for the town to either (a) grant an easement or (b) transfer the portion through a lot line adjustment. The ZBA also explained the difference between an *equitable waiver of dimension* and a *variance for setbacks*. The applicant stated they would prefer a fee simple transfer of the property.

There were no abutters present. The public portion of the hearing was closed.

The ZBA Chair stated that he was uncomfortable granting anything, because the Town has not made any decision on the property. A new application for a variance for side setbacks would be the correct request, which would also require re-notifying the abutters. December 23 would be the deadline for the proper newspaper notice for a joint meeting (Planning Board and Zoning Board) on January 4.

A motion was made (Badger) and seconded (Sweetsir) to deny the application for an equitable waiver of dimension. The motion passed, 3-0.

(2) Case #2016-02, Richard and Jeanette Fecteau: Application for Variance. The Fecteaus wish a variance for setbacks to put a house on the lot at 16 Candle Shores Lane (Tax Map Lot #013-004-005; Rural Residential Zone)

Richard and Jeanette Fecteau presented their application for a variance for setbacks, for a house to be erected on Lot #013-004-005, 16 Candle Shores Lane, in the Rural Residential zone. While the applicants did not complete section 5 of the application (“written explanation and supporting evidence” for the variance criteria), the ZBA agreed to allow them to address the criteria orally. **A motion was made (MacLeod) and seconded (Sweetsir) to accept the application with an oral presentation of the criteria. The motion passed, 3-0.**

Applicant discussion of the variance criteria --

- *Criteria 1 (variance will not be contrary to the public interest)* – Applicants stated that all the neighbors also have to go through this process, because all the lots in the area are similarly small.
- *Criteria 2 (spirit of the ordinance is observed)* – Applicants stated that there was originally a 16x40 cottage on the lot and the new house will be similar to the others in the area.
- *Criteria 3 (substantial justice is done)* – Applicants stated they wish to have a home in the community and that the new home will do no harm to the community.
- *Criteria 4 (values of surrounding properties are not diminished)* – Applicants stated most of the homes in the area are seasonal and that their new year-round home will increase values of the surrounding properties.
- *Criteria 5 (literal enforcement of the ordinance would result in unnecessary hardship)* – Applicants stated that they would not be able to put a home on the lot without obtaining setback variances; the lots in the area have been sold and taxed as buildable lots, even before any shore-land protection measures. The house will be 1 level, 2 bedrooms, on town water and sewer, on a pre-existing non-conforming lot. Front and side setback variances are needed for the house and driveway.

Richard Cushing (neighbor, 10 Candle Shores Lane, non-abutter) asked if the road will sustain the weight of the house being moved, if the road will have to be widened for the moving trailers, or if any trees or wires have to come down? Mr. Fecteau responded that the road will handle the house, only 2 trees in the right-of-way have to be taken down, and no wires will have to be taken down (only possibly lifted temporarily).

Attorney Nizetic, representing Ken Rydzewski (Lot 013-004-006) made several comments relative to the criteria. He stated that the house would change the nature of the seasonal neighborhood, would be out of character with the nature and current uses of the neighborhood, and that the year-round house is too close and too big. He stated that the Fecteaus did not address any of the criteria and that just wanting to build a house there is not a valid rationale. Darice and Chris Ciampa (co-owner with Rydzewski) objected to having a home that close to them.

When questioned by MacLeod if any of the surrounding community sites have any covenants restricting year-round homes, Attorney Nizetic responded that they do not.

Mr. and Mrs. Fecteau made several points -- there are 2 other year-round homes; there are other homes that are similar in size or that have been expanded larger; two or three of the cottages are longer than the house they are proposing. Locating the house at the front of the lot would make it uniform with the other lots. When asked if the house could be moved back, Mr. Fecteau stated that it could, but would destroy the extensive gardens on the lot.

Mrs. MacLeod noted that Ashland zoning ordinances require that homes being constructed must be at least 750 sq ft in size. This proposed house is 960 sq ft.

The ZBA closed the hearing and discussed the criteria.

- *Criteria 1 (variance will not be contrary to the public interest)* – Having a house on a lot is not contrary to the public interest. The abutters are distinguishing between seasonal and year-round homes, but both entail people residing in a home.
- *Criteria 2 (spirit of the ordinance is observed)* – The plan makes the best use of the property, providing an orderly use within what the town wants the area to look like in development. It allows people to make use of their property within the town’s criteria. It does not jeopardize the health, safety and welfare of the community.
- *Criteria 3 (substantial justice is done)* – The Fecteaus maintain that being able to put a house on their property is substantial justice. The abutters disagree, in that the closeness of the Fecteau house would have negative impact on their property.
- *Criteria 4 (values of surrounding properties are not diminished)* – Values are not diminished and it does not jeopardize health, safety and welfare of the community. But the closeness to neighboring houses is an issue – does it diminish the value of a property next door if the neighbor sells it?
- *Criteria 5 (literal enforcement of the ordinance would result in unnecessary hardship)* – As the plan is presented, the inability to meet setbacks on this lot does not provide sufficient space between properties. Denial of the requested variance does not prevent the applicant from use of the property, nor does it prevent them from returning with another plan.

Before voting on the criteria, it was noted that since there are only 3 members of the ZBA, all 5 criteria must be rated True to approve the variance.

- *Criteria 1:* MacLeod-True; Badger-True; Sweetsir-True
- *Criteria 2:* MacLeod-True; Badger-True; Sweetsir-True
- *Criteria 3:* --- Badger-False ---

The voting ceased at this point and the variance for setbacks was denied. Chair Badger explained the appeal process to the applicants.

Other Business

Sue MacLeod raised a concern about the Special Exception granted on May 22, 2014, to Judith Holt (Casey and Sara Hixon, agents) for Tax Map Lot #008-001-015, 717 NH Route 175. The special exception was granted for removal of a mobile home and construction of a 2-bay garage, 40x60ft or smaller, with a requirement that the work be completed within 2 years. It was noted that the work has not been done and that the 2-year period has expired.

The meeting was adjourned at 8:25pm.

Minutes submitted by Mardean Badger