



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 18, 2014
APPROVED MEETING OF SEPTEMBER 15, 2014

Present: S. Bogert, **Chair**; S. Perley, **Vice-Chair**; O. Gibbs; M. Foote; D. Greski; K. Geraci, **Alternate**; R. Smith, **Alternate**

Absent: None

Staff: S. Saunders, Planning Director; K. Snow, Zoning Technician

The board met with legal counsel at 7 pm.

S. Bogert called the meeting to order at 7:20 pm. He apologized for the late start of the meeting and welcomed everyone to the August 18, 2014 Zoning Board of Adjustment meeting.

S. Bogert let the public know that the application for Big Island, 2004-0014, has been withdrawn and that they will be noticed when it is placed on the agenda again.

MINUTES: The minutes from the ZBA meeting of July 21, 2014 were discussed and voted upon. The motion to accept the minutes, as written, was made by O. Gibbs and seconded by D. Greski, with all voting in favor of approval.

R. Smith and O. Gibbs recused themselves. K. Geraci was seated as a full board member.

CONTINUED HEARING: UPON REMAND FROM THE SUPERIOR COURT

Application # 2012-0025	MSL # 244-430-32	RS Zone
The Gables on Paugus Bay Condo Assoc	Davidson Drive	Variance

The applicant is requesting a variance from the 1987 Zoning Ordinance, Section 14.45 (b) (3), Lot Coverage, to allow the coverage to increase from a maximum of 20% to a maximum of 30%.

Motion: K. Geraci made the motion to deny Application # 2012-0025, as the board determined that none of the criteria are met.

The variance will not be contrary to the public interest nor will the spirit of the ordinance be observed; Granting of the variance will be contrary to the public interest and will not be consistent with the spirit of the ordinance. As the Court instructed, the board further discussed this criteria and determined that the granting of the variance could threaten the public health, safety and welfare because one of the purposes of limiting pervious space is to provide for storm water runoff. The board finds that there are already issues with the infiltration of storm water, and the applicant failed to meet its burden of providing evidence that the proposed increase in pervious space would not

exacerbate this issue. The board also noted the potential cumulative impact if all 19 villages sought similar variances.

Substantial justice is done; Granting of the variance will not do substantial justice. As required by the Court, the board considered whether denial of the variance would result in a gain to the general public. The board finds that it would. Specifically, the board again expressed concern about the lack of information presented by the applicant regarding how the increase in impervious surface would affect water runoff and other properties. Denying the variance would retain the status quo, which is already somewhat worrisome. The board therefore finds that the gain to the public by the denial of the variance outweighs the loss to the applicant by that denial, particularly since the applicant may retain its current use and has an alternative means to achieve its stated goal, namely, the use of pervious pavers.

The value of surrounding properties are not diminished; The granting of the variance will result in the diminution of surrounding property values. As noted by the Court, there is no evidence in the record to support the applicant's assertions that the variance will not decrease surrounding property values and the board, using its own personal knowledge and judgment, finds that it is likely that surrounding property values would, in fact, decrease as a result of the granting of the variance.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: The denial of the variance would not result in unnecessary hardship because the property is not unique. There is nothing about The Gables' property which distinguishes it from the other 18 villages at Southdown, all of which were developed under the same zoning scheme as was The Gables.

- i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;** A fair and substantial relationship exists between the public purposes of the coverage provision and its application to The Gables. In addition to the concerns about storm water and runoff, the board also noted that The Gables has a realistic alternative to achieve its goals, namely, the use of pervious pavers.
- ii. The proposed use is a reasonable use.**

S. Perley seconded the motion to deny.

Board Discussion: S. Perley said she voted against this the first time and is still not comfortable with adding almost an acre of impervious pavement.

D. Greski said this property is not unique so he sees no unnecessary hardship. They are no different than the other villages.

S. Bogert said he had to do additional research on this. He does agree with the diminution of surrounding properties as this may give The Gables an unfair advantage that the other villages may not have. The entire group can go to the master board and request relief. That would keep the balance similar as it is being used in the same way. He did not see where the applicant proved this. No evidence was submitted in support.

All voted in favor of denial, 5-0.

NEW HEARINGS:

R. Smith and O. Gibbs were re-seated as full members. K. Geraci returned to alternate status.

Application # 2014-0012

MSL # 35-153-3

RRII Zone

Shane Ball

460 Meredith Center Rd

Variance

The applicant is requesting a variance from 235-35 (A), front setbacks, in order to construct a 24' x 12' deck on the rear of the existing structure. The front setback in this zone is 75'. The entire structure is currently non-conforming. The proposed deck infringes about 2-3 feet into the setback area in one corner as the house is built at an angle.

Applicant: Shane and Collette Ball appeared. S. Ball said they are requesting a variance for a deck. There is a 75' front setback, and the house was built on an angle so just one small corner of the deck infringes into the setback. That small area is where the entrance would be.

They want to build a deck in the rear of their house but found that the entire house was located within the 75' front setback, and that a small portion of the deck would be as well. He showed the infringement area.

S. Bogert said the hardship is that any modification is an issue because it was built before this setback came into being.

S. Perley said no one is being affected by this proposal. She asked if the deck would be open or closed and was told it would be open.

R. Smith said the idea of having such a large setback was done in 1998/99.

Public: Linda Spagnuolo, 448 Meredith Center Road, said her property has the same issue as this one. She has no objections to this but said she is afraid of what might happen when she goes to sell her own house. Does this leave enough room in between the properties? S. Bogert said this proposal doesn't appear to have any effect on the side setbacks. D. Greski said the setbacks should not be an issue anyway because this would be grandfathered. O. Gibbs said just in taking a quick look at this it appears that the side setback is over 70 ft. so she would be fine.

No one else from the public spoke or against the application.

There were no further questions from the board and no further applicant comments so S. Bogert closed the hearing to the public.

Board: D. Greski said this was built before these setbacks came into play so he has no issues with this project. S. Perley said they certainly have enough land for a deck.

Motion: D. Greski voted to approve Application # 2014-0012 for the variance to allow the small infringement into the 75' front setback.

The proposal won't be contrary to public interest as it won't alter the essential character of the neighborhood. The proposal won't impact the neighbors and won't threaten the public health, safety or welfare. The structure was built before the current setbacks came in in the 90's. Holding them to the strict letter of the law would essentially block them from doing anything to the house.

The spirit of the ordinance will be observed as there is no substantial change in use.

Substantial justice would be done in granting the variance as this won't harm any abutters, and one abutter spoke saying she had no issues with it. This is an appropriate use, and any negatives to the public is outweighed by gain to the property owner.

Surrounding property values won't be diminished in the granting of the variance. The deck is located in the rear of the house and only a small portion sits within the 75' setback. There is no change in the character of the area and the setbacks came into effect after the house was built.

Literal enforcement of the provision of the ordinance would result in a hardship as there is no change to the character of the area and the setbacks came into effect after the house was built. There is only about 2-3 feet of the deck which will fall into the setback.

The proposed use is reasonable and is permitted in the zone.

O. Gibbs seconded the motion to approve the application and all voted in favor, 5-0.

Application # 2014-0013
Steven Whalley

MSL # 148-271-11
54 Pendleton Beach Rd

SFR Zone
Variance

The applicant is requesting a variance from 235-35 (B), side setback, in order to rebuild a garage. The proposed structure infringes into the 10' setback about 2.5' in one corner.

Applicant: S. Whalley appeared for the application. He got a wetland permit from the state. They are rebuilding on the same foundation. They want to change the front to a two story. That is the road side, and that infringes into the setback. In order to raise the height of the wall and the peak of the roof, they will need the variance. This will improve the looks and value of their house which would have a positive impact to the neighborhood. The current structure was built in sections and with several additions.

At some point the previous owner turned what was the garage into an apartment, and they want to turn this back into a garage. It will be scaled better and look like it belongs here. This will upgrade what is currently a cottage and bring it more in line with the other homes located here.

S. Whalley explained where the change will be made.

D. Greski clarified that this is currently an in law apartment, and was told yes. S. Whalley showed a picture on his I-Pad to the board. He wants to bring the wall up, put a taller pitch on the roof, and the peak will run the other way. It will be about 5 ft taller. He showed where the garage door will be located. D. Greski asked about the wetland permit he mentioned and S. Saunders said it is a shoreland permit, which he received.

S. Whalley said they are going to minimize all impacts and there will be no further encroachments.

Public: Alain Rousset said he lives on the other side, and that he has no issues with this after looking at the plan.

No one else from the public spoke for or against the application.

There were no further board questions or comments from the applicant so S. Bogert closed the hearing to the public.

Board Discussion: R. Smith said this is an improvement over what currently exists. M. Foote said they are removing some density on the lot by removing the in-law apartment.

Motion: M. Foote moved to approve Application # 2014-0013, to permit a small encroachment into the front setback.

The variance will not be contrary to public interest as the applicant will be reusing the existing foundation. Only about 12 SF infringes into the setback. They will be increasing the wall height and adding a new roof, which will be taller. This will be a garage and not living space and the size and architecture will fit with the neighboring homes.

The spirit of the ordinance is observed as the structure was built before setbacks were considered. They are reusing the same footprint to minimize impacts on the property. They are not making the property any more non-conforming.

Substantial justice is done in granting of the variance as the original structure was built before setbacks were considered.

The value of the surrounding properties are not diminished and should be improved since the neighboring structures are more modern and are substantially improved homes. They are replacing an older camp that has been added onto, with an up to date and well scaled structure.

Literal enforcement would result in unnecessary hardship to the applicant and to the neighbors. If not permitted to improve the entire structure, the lack of improvement could leave an ugly portion on the roadside rear corner or create a large and unneeded expense to remove that corner of the existing foundation and cause excavation to remove about three feet on that corner. That would leave an odd looking variation in the structure and ruin the scale.

S. Perley seconded the motion to approve and all voted in favor, 5-0.

The following application was withdrawn until further notice.

**Application # 2014-0014
NH Big Island Co**

**MSL 263-178-1
Big Island on Paugus Bay**

**RS Zone
Variance**

The applicant is requesting a variance from 235-28 and 29 in order to create a summer camp for underprivileged children on Big Island. The use of a campground is not permitted in the RS Zone.

OTHER BUSINESS: ZBA Rules Approval

S. Perley said she took another look at the rules and wanted some additional input.

She asked when an applicant applies do they pay for the certified fee for mailings to the abutters and was told yes. She wondered if we should add language stating if we have to re-notice, they pay again. S. Saunders said if we continue to date certain there is no issue. If a short board is the reason they are requesting the continuation, more than 2 or 3 times, we should pay. When it becomes an issue, then we can ask for them to re-notice. S. Perley wondered if that language belongs in the rules and S. Saunders said yes.

M. Foote asked if we should do that after the second or third continuation and S. Saunders said she will talk to Laura and get her input. The board can also deny without prejudice and have them resubmit if we get multiple continuances. S. Bogert said those are not board initiated continuances, but applicant initiated continuance requests.

S. Saunders asked if they choose to continue because we have a short board, should they have to pay for re-certs. D. Greski said if there is a short board, why can't we just continue with the hearing and S. Saunders said it is in the state regulations that they have the option to wait for a full board or go with the short board.

S. Perley will do some additional research on this and will resubmit to the board.

S. Saunders said that one thing legal mentioned is to stress to all of the board members to share the burden of the motion making. The same people tend to make them over and over. Everyone needs to step up and make a motion, and have a voice on the board.

M. Foote said he has bent the ears of some people about the recent City Council interviews for reappointments. He said he wants to thank everyone who participates on the boards - that is what makes a community. If people don't recognize the validity of having a board like this, it befuddles him. S. Saunders said she got calls after that meeting with people who were upset.

She feels this board is very articulate. They do a good job, they talk, discuss, and help the applicant. She said she spoke with the City Manager about on-going projects and he reports to the City Council. She thinks we should let them know what we approve. They only see the disgruntled people.

D. Greski said that he feels the public meeting was not the right time or place to question the two ZBA members who were being re-appointed, regarding a decision made by a board of five. If there was a concern there is a process to follow. The action taken certainly does not foster an attitude that would excite residents to volunteer for city boards. S. Saunders said the developers want things to be clear and know what they are dealing with and that is how they look at Laconia.

Adjournment: The motion to adjourn was made by S. Perley, with the second by M. Foote. All voted in favor, 5-0, and the meeting adjourned at 8:20 pm.

RESPECTFULLY SUBMITTED:

Kristine Y. Snow
Zoning Technician