

Newton Board of Appeals

2 Town Hall Road

Newton, NH 03858

MINUTES OF THE MEETING of December 14, 2020

CALL TO ORDER at 7:30 PM by Tom McElroy, Chairman

ROLL CALL: Tom McElroy (Chairman), Alan French (Vice Chairman), Jack Kozek, Frank Gibbs, Michael Connolly, Roger Hamel (alternate); Laura MacKenzie, recording Minutes.

Chairman McElroy made a motion to accept the minutes from November 9th. Jack Kozek proposed a change to the second paragraph, regarding 64 Amesbury Road. Voting for the approval of the minutes from November's meeting will be delayed and brought up again at January's meeting.

The first item on the agenda is the preliminary for Mr. David Nicholson.

Jack Kozek: I think Laura talked to the applicant about getting the numbers changed from 21.3 to actual feet and inches. I had a question about the proposed garage, 24' x 24' and I'm looking at the driveway and at the end of the driveway, just to the left of the existing dwelling, it looks like a place for two automobiles. I am looking at the proposed garage and where are the entries to the garage? Because if its straight the way it is right now, you can only get one in. Is it to the left?

David Nicholson: If you come straight up the driveway, you will come right up to a garage door.

Jack Kozek: So, you can only get one car in the garage at a time?

David Nicholson: Yeah.

Jack Kozek: Because you are not going to over to the left and putting in a garage door. Is the door attached to the house?

David Nicholson: Its going to be attached to the house. You can get in through the garage door or a walkthrough door somewhere in the back, we haven't located that yet.

Jack Kozek: I do not see the septic tank on the drawing.

David Nicholson: It is right where the deck is, it says "ST."

Jack Kozek: So, you could have possibly moved that garage over by the existing dwelling without asking for a variance then?

David Nicholson: Yeah, I was trying to avoid moving in to make access easier to get into it. Because you would have to swing in and make a left turn to get into the garage. You would also be approaching on the leach field.

Jack Kozek: Is there anything close to the lot line?

David Nicholson: Just that one side there is a neighbor you can see. The other two neighbors, you can't see them.

Jack Kozek: There is also nothing in the application about variances. We need two variances, and they need to be calculated by you. Also, are there any overhangs?

David Nicholson: It will be a shingled roof that will match the existing dwelling.

There is about an 8-inch overhang.

Jack Kozek: 12-feet is a pretty good-sized variance to ask for and again, I would reach out to the one abutter.

Michael Connolly: I would also suggest being a good neighbor and reaching out, that is where I would start.

Chairman McElroy: Stated that at this point, we can schedule a hearing for the 2nd Monday of January.

Alan French seconded that motion.

Chairman McElroy: Ok, so we can move on to the second item on the agenda, a preliminary meeting for Mr. Ken Anthony.

Barry Gier is present and representing Mr. Anthony.

Barry Gier: We have received the shoreline permit and we are here to seek an administrative decision regarding what we actually need for relief for the board. Mr. Wolfe believed we fell under section 11.3 under the regulations, expansion of a non-conforming structure and that would require us to obtain variances to that section. Its our opinion that it should fall under 11.5, the continuance section for a non-conforming use or structure. Section allows for a continuance of a structure that was placed prior to the adoption of the ordinance and it further indicates the structure can be expanded but with the applicable permits. The applicable permit in this case being the special exception for the shoreline requirements.

We believe we are covered under the continuance section and just need a special exception so that is what we're asking from the board before we continue further.

Jack Kozek: I was looking over things and must have previously missed this, but it looks like approximately 20,400 square feet are in Kingston and 10,950 square feet are in Newton. Should both communities be involved in these variance requests?

Barry Gier: Yes, we have met with both Kingston and Newton conservation commission and we will be meeting with the Kingston board tomorrow night. We have variances and special exceptions with both towns.

Jack Kozek: The second variance request is the section XI, non-conforming lot structures and uses and it says “non-conforming structures may be expanded in accordance with the terms of the special exception issued by the zoning board of adjustments. Five factors must exist before issuing a special exemption (page 11 of the Newton, NH zoning ordinance).”

This expansion of non-conforming structure I am not sure, does this affect property values? This looks like the building inspector could follow through with these items.

Barry Gier: We are expanding the building by about 203 square feet. I believe we do not fall under number 3; we fall under number 5. Number 5 indicates that all non-conforming structures and uses, which pre-date the adoption or amendment of this ordinance may continue in their present use.

Change or expansion of uses should not be permitted until the property owner or authorized lessee has made an application with the town of Newton code enforcement agent for administrative decision.

We believe we fall under 5. We did file for the variance, originally the special exception, which I believe we still fall under. But after talking to the building inspector, we decided to hedge our bet and also file for the variance request. We are here tonight for an administrative decision to see if we fall under number 5, which would then require us to just have a special exception.

Alan French: That may be up to the building inspector

Michael Connolly: Now we are talking about dates.

This structure was in place prior to the code being put in place.

Barry Gier: Because we fall under the building predates in section number 5 allows us to expand, with the required permit which would be a special exception.

Roger Hamel: The continuance is for an expansion of use, not an expansion of the building. Under the special exceptions, we need to either grant or not grant. You can't give a variance to the requirements of the special exception. You might be able to not give the special exception and then give him variances to the underlying parts of the zoning ordinance, for the setbacks but that wouldn't be this section, that would be from the zoning ordinance portion of the other setbacks.

Michael Connolly: Barry talk to us about use. You are adding 200-plus square feet for what?

Barry Gier: To the house, to the building.

For a lot of record that predates the shoreline requirements, we can build on the lot with a special exception from the ZBA and that is why we submitted one. The building inspector's interpretation is that we are an existing use that is non-conforming because we never received a

special exception because we predate the shoreline requirements. So, he believed that we fall under section 11.3, expansion of non-conforming structures.

Barry Gier: If this house did not currently exist, we could file for a special exception to build it the size we want to and that is a hardship.

We believe we do not need variance because we predate the shoreline regulations.

Jack Kozek: Doesn't it say the code enforcement officer for an administrative decision?

Alan French: Like we said, its not really changing the use, we are expanding the size.

Jack Kozek: If we gave you the variance for XI, that includes 1-5.

Barry Gier: Under 5 we do not need a variance at all. But if the board decides that we fall under 3, then we would need a variance to 3A and 3B under that section.

Roger Hamel: You cannot give variances to the requirements of a special exception. Therefore, you would leave that section completely and ask for variances for section 15 of the ordinance and also section 29.

Barry Gier: We are not asking for a variance to the special exception.

Roger Hamel: If you are saying you want a variance to one of the paragraphs in section 3, those are the requirements for the special exception.

Alan French: We can't give you an exception to the exception.

Barry Gier: Can you repeat what sections you think we would need a variance to?

Roger Hamel: Section 15, the residential zoning setbacks and 29, which gives the setbacks for the shoreline protection district.

Roger Hamel: I believe your setbacks are not within the requirements. How far are you from the road?

Barry Gier: We are probably like 60-feet from the road and more than 25-feet from our side setback.

Michael Connolly: I think we need to figure out if it falls under 11.3 or 11.5.

Barry Gier: That is the big question because if it falls under 5 then we don't require variance, we require special exception.

Michael Connolly: Another key factor is the date of the building vs. the date of the ordinance going in.

Barry Gier: It is from the 30's.

Barry Gier: In my opinion, is that the board only needs to act on the special exception under the shoreline permit, or shoreline protection district because it has a special exception for a lot of

record. So, under that, which we filed originally, we should be able to reconstruct this house because we meet all the criteria A through D of the special exception for a lot of record.

Jack Kozek: What does the board want to do?

Chairman McElroy: I think we should go with the special exception and vote one way or another to approve or disapprove and then go from there. If they need anything else, it would be up to the building inspector and we should be dealing strictly with the special exception.

Jack Kozek: I would like to make a motion to adjourn

Alan French: I second that