

Newton Board of Appeals

2 Town Hall Road

Newton, NH 03858

MINUTES OF THE MEETING of February 8, 2021

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

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

Tom appointed Trisha as a voting member.

Motion carries to accept the minutes from January's minutes.

Chairman McElroy: First item on the agenda is a preliminary meeting for 20 Wilders Grove.

Jack Kozec: Referenced a couple concerning e-mails pertaining to 20 Wilders Grove, one from the building inspector and another from Cathy Ross, a neighboring abutter.

Chairman McElroy noted that there is a substantial amount of paperwork and new information to digest pertaining to this property.

Jack Kozec stated that the building inspector initially issued a denial due to the shoreline setback requirements of 150 feet (XXIX), which is an administrative decision not a variance.

Jack Kozec made a motion to continue the preliminary meeting of 20 Wilders Grove to March 8th and that motion was seconded by Alan French and motion carried.

Chairman McElroy: Ok, we will now open the hearing for 13 Quaker street.

Trisha asked to be removed as a voting member because she was not familiar with the case. Tom appointed Roger as a voting member.

David Nicholson stated that he spoke with his abutter that is on the call, Tom Keely and they both mutually agreed that the garage is not a problem.

Chairman McElroy: We are really looking at two variances, right? For each corner of the garage?

Jack Kozec: Yes, and the biggest one is the 12' 11."

Alan French: Now that 12' 11" from the property line, you still have another 250' to where the house is, right?

Nick, Haseltine Builders: 245.

Jack Kozec: I look at 12' 11" as a pretty large variance. We seldom give that out, unless the abutter says they have no problem with that.

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Nick, Haseltine Builders: The abutter that is closer and more impacted is on and has no problem.

Chairman McElroy: What are the actual two dimensions, in feet and inches we are looking for?

Nick: The front-corner is 3' 8" over the setback and that's to the outside of the overhang and in the rear-corner its 12' 11" also to the overhang.

Jack Kozec: Just shy of 13' is huge.

Alan French: There is no way to adjust the garage?

David Nicholson: I just do not know. Looking at the property and the setbacks that are required, half of that house could not be built today. Part of it is in wetlands.

Nick: The only way the garage could be re-configured, the doors on one side would be moved and would be basically on top of the leach field.

Michael Connolly: How many feet from the leach field to the right-hand bottom-corner to the garage?

Nick: We do not know exactly where the leach field is, this was the surveyor's best estimate where it is, which would be roughly 5-feet.

Michael Connolly: Is there a way to take that proposed garage and make it 5-feet over so that 12' 11" is just shy of the 10' mark?

Nick: We had talked about potentially doing that, the one thing we were trying to do is keep the door on the front-side so the house-side of the garage so we didn't have doors on the side. Because there are some trees that he would have to trim back or remove to be able to swing that corner into the garage. And we didn't want to do that because of the one abutter didn't want any trees taken out and otherwise, they were ok with it.

Chairman McElroy: Any other comments from the board?

-Chairman McElroy went through the five criteria:

1. The variance is not contrary to the public interest, such that it would alter the essential character of the neighborhood or threaten the public health, safety, or welfare.

The board unanimously agreed that the applicant met the above criteria.

2. The spirit of the ordinance is observed. (Explanation for 1 & 2: The proposed use must not conflict with the explicit or implicit purpose of the ordinance, and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights".)

Jack disagreed, Alan abstained, Michael agreed, Tom agreed, Roger voted aye; motion carried.

3. Substantial justice is done. (Explanation: The benefit to the applicant should not be outweighed by harm to the general public or other individuals.)

The board unanimously agreed that the applicant met the above criteria.

4. The values of surrounding properties are not diminished. (Explanation: Expert testimony on this question is not conclusive, but cannot be ignored. The Board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

The board unanimously agreed that the applicant met the above criteria.

5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship means: (Explanation: The applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other similarly situated property.) Because of special conditions of the property that distinguish it from other properties in the area: (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; (Explanation: The applicant must establish that, because of the conditions of the property, the restriction as applied to the property does not serve that purpose in a "fair and substantial" way.) AND (b) The proposed use is a reasonable one. (Explanation: The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood.) Alternatively, unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict performance with the ordinance.

Jack disagreed with the applicant meeting these particular criteria. Michael, Alan, Roger and Tom agreed that the requirements of the criteria 5 were met.

Jack Kozec made a motion that we approve the variance for 13 Quaker street Tax map 12, Block 3, lot 1, Newton. Alan French seconded that motion, and motion was agreed on and variance granted.

Jack Kozec made a motion to close the hearing for 13 Quaker street, which was seconded by Alan French and carried.

Chairman McElroy: Ok we will open up the hearing for Cheryl Bousquet.

Cheryl Bousquet: Referencing the 8' x 12' attached shed, we thought it only needed to be a certain amount of feet from the property line. The closest lot line is 6 feet 11 inches from the addition and the overhang is in the far corner furthest from the street and there's a ramp there. The 8' x 12' addition is 6' 11" furthest from the street and the other corner that's closest to the street is 8' 8" so the variance is for the difference.

Jack Kozec: I received an email from an abutter, Bonnie Griskevich relating to this case.

Bonnie Griskevich: This appears to be an addition that protrudes into the setbacks that is supposed to be 25'. The barn is situated at only 15' and that is protruding within 9' of the property line. The structure is set into sauna tubes and sticks up 5 feet in the air. And it can be seen from my deck and all the windows in my house, above my fence and above my landscaping.

Jack Kozec: What do you feel about this addition?

Bonnie: Its within 9-feet of the property line and its in addition to the barn which was already within 15-feet of the property line so its coming closer to the setback.

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Chairman McElroy: Cheryl, do you know what the height of this structure is from the ground up?

Cheryl Bousquet: About 10-feet. Originally, we were going to put a shed there for storage of the snow blower and bicycles. So, we were looking at the specs. For a shed and thought we were in good shape. And I said lets just attach it to the barn. We had an ugly old storm window there and used that as a doorway opening to get into the shed, which we are now calling an addition. Initially, that was the purpose of it. So, if it were a shed, it would have been ok. And I have pictures attached that you can't see Bonnie's property from the shed. We have all the materials to finish it. Its going to be sided, painted and blended in. It's beige siding with a slant roof. I can't help that the property lines are the way they are.

Michael Connolly: Is the height of the structure 10' from the floor or the ground?

Chairman McElroy: How tall is that ramp at the highest point?

Cheryl Bousquet: Maybe 5-feet.

Jack Kozec: You could have put that shed 5-feet from the property line out back and not had any effect on the neighbor.

Roger Hamel: Also, you can only have one auxiliary structure within the 25-foot setback and the pool is within the setback so they can't have a shed there on that side because of the other structure.

Bonnie: And the barn is already within 15-feet of the property line so that is within the setback as well.

Its non-conforming. The building itself is a non-conforming structure and expanding a non-conforming structure, that starts to impact my view. Expansion of the footprint of the barn starts to protrude into the setback of 15-feet. That was grandfathered, but everything is getting closer. There's a lot going on along the property line.

I face an entire wall of house, barn and pool and it just got closer.

Alan French: I talked to the other abutter that moved into my old house. I explained where it was, and they really didn't have a problem.

Bonnie: Read a text from another abutter who expressed concern.

There wasn't even an application put in for this, it was just done.

Cheryl Bousquet: I explained why, because we thought it was considered a shed.

Bonnie: Sheds usually rest on the ground; this is in the air.

Jack Kozec: Who said you could build it, Cheryl without a permit?

Cheryl Bousquet: Nobody. We were looking at the specs. for a shed and thought this was considered a shed. We didn't look at it like it was an addition.

Alan French: What about removing it and putting up another shed?

Cheryl Bousquet: It cost quite a bit to put that up and it would cost us quite a bit to move it and that's the location for its purpose. So, if it can't be there, it's pretty much useless to me.

Bonnie: We are talking about a 3-story barn and in addition to that, there are 4-cars out there all the time. There seems to be a basement level underneath. That's a lot of storage space. Its about the ordinance and that is expansion of a non-conforming structure.

The 15-feet when its supposed to be 25 is already 10-feet inside the setback. And then to bring it even closer, you haven't been at my level, but that ramp sticks up above the fence and the entire addition sticks up above the fence. Its dangling in the air. I know from your driveway its cute. I see why you did it from your angle but its not a nice view from my windows and my deck.

Jack Kozec: Do we want to move on? It's a huge variance, 18' 1" and one of the largest variances we have ever approved, if we approve it. We are listening to the abutter, which effects more than anything else. To me, its ugly and for the neighbor, looking from her house, because of how the barn is and the structure to the side, there's a real drop off and it sticks up in the air.

Tom McElroy: Lets go through the five criteria:

1. The variance is not contrary to the public interest, such that it would alter the essential character of the neighborhood or threaten the public health, safety, or welfare.

Jack disagrees as there is public interest effected and totally disagree with the statement of it being invisible from the public. The rest of the board members disagreed, as well.

2. The spirit of the ordinance is observed. (Explanation for 1 & 2: The proposed use must not conflict with the explicit or implicit purpose of the ordinance, and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights".)

Jack Kozec disagrees as it would change the character of the neighborhood. The rest of the board disagreed, as well.

3. Substantial justice is done. (Explanation: The benefit to the applicant should not be outweighed by harm to the general public or other individuals.)

Jack Kozec disagreed. The abutter that expressed her concern and even gave us some alternate plans and made some valid points. The rest of the board disagreed, as well.

4. The values of surrounding properties are not diminished. (Explanation: Expert testimony on this question is not conclusive, but cannot be ignored. The Board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

Jack Kozec disagrees as the applicant refers to her house but if you are looking from the neighbors' house it would definitely have an effect on the value. The rest of the board disagreed, except Michael and Roger who were neutral and unsure if it would actually decrease surrounding property values.

5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship means: (Explanation: The applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other similarly situated property.) Because of special conditions of the property that distinguish it from other properties in the area: (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; (Explanation: The applicant must establish that, because

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of the conditions of the property, the restriction as applied to the property does not serve that purpose in a "fair and substantial" way.) AND (b) The proposed use is a reasonable one. (Explanation: The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood.) Alternatively, unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict performance with the ordinance.

Jack Kozec disagreed as there's no hardship in this case and she has more than enough room to put a shed without interfering with the neighbor. The rest of the board disagreed, as well.

Jack Kozec made a motion to deny the variance request for 64 Amesbury Road, Tax map 16, Block 5, Lot 19, Newton. Alan French seconded the motion and the rest of the vote agreed, motion carried.

Jack Kozec made a motion to close the hearing for 64 Amesbury Road. Alan French seconded the motion and the rest of the vote agreed, motion carried.

Jack Kozec made a motion to adjourn the meeting. Alan French seconded the motion and the rest of the vote agreed, motion carried.

Jack Kozec made a motion to go into a non-public meeting. Alan French seconded the motion and the rest of the vote agreed, motion carried. Roger recused himself from this item and did not go into the non-public meeting.