

**ZONING BOARD OF ADJUSTMENT
MINUTES - DECEMBER 1, 2004**

Members present: Dave Liberatore, Kent Finemore, Roland Seymour, Chris Dunne.
Also present, Dave Lorch, LRPC and Eliza Conde, Secretary.

Dave Lorch reminded the Board of the communication from Atty. Maher relative to the clarification of variance requirements and that the variance criteria need to be adhered to. Kent Finemore commented that the Board's role is to rule on an application as it believes it affects the town and that if the ruling is appealed beyond the ZBA, then the Town's Attorney will address the issue.

Dave Liberatore moved, seconded by Chris Dunne to accept the minutes of Oct. 27, 2004 as read. Motion passed.

Robert Bollinger General Construction LLC: Application for a variance to the terms of Article 17.5 to allow the location of an approved septic system within the 75 foot wetlands buffer area and to the terms of Article 7, Table 2 of the Northfield Zoning Ordinance to allow the construction of a single family home within the 75 foot wetlands buffer area off Blueberry Lane (Tax Map R15, Lot 17) in the Conservation zone. Chris Dunne stepped down from the board with a conflict of interest. Kent Finemore explained that since there are only three members left, he will be required to vote on this issue.

Dave Lorch stated that the application is complete if in fact state permits have been obtained. Since the permits have been obtained, Dave Liberatore moved, seconded by Roland Seymour, to accept the application as complete. Motion passed.

Robert Bollinger explained that this is a lot of record, subdivided over 30 years ago, it has a private drive which has been approved by the Selectmen and upgraded for safety vehicles. The septic system meets the State DES setback, but not the Town's wetland setback requirements. He is also looking for a variance to the 100 foot front setback in the Conservation zone. Kent Finemore asked if he has the Selectmen's decision in writing relative to allowing building on the lot without frontage on a town maintained road. Dave Lorch stated he had visited the lot and it is all on a side hill and wet. He is concerned that the whole lot is in fact wetland and the ZBA has the authority to require wetland delineation by a certified soil scientist. Kent Finemore was curious to know how the Selectmen can issue a building permit on a private road without frontage, when the Board has had this issue come before them previously. Dave Lorch suggested the Board request documentation of the Selectmen's decision. Mr. Bollinger stated he bought the lot with the understanding that it could be built upon.

Discussion followed concerning what and how many variances are required for this lot. It needs variances for:

- The front setback
- The building setback from the wetlands
- The septic system setback from the wetlands
- The driveway setback from the wetlands.

Roland Seymour asked how the wetlands are determined as he didn't observe any water on the lot. Wetlands are determined by a soil scientist by the vegetation and soil types. Mr. Perreault, representing Mr. Bollinger, stated that this is Hydric B or poorly drained soil, not actual wetlands. Dave Lorch questioned how it cannot be wetlands if the water table is only 1.5 to 2 feet below the surface. The State does not allow a septic system if the water table is less than 12 inches below the surface. Dave Lorch commented that because there are so many variances required on this lot, it would make sense to have it delineated by a certified wetland scientist to be sure of the wetland boundaries. Roland Seymour questioned the septic system being so close to the abutting lot. It has been approved by DES.

Public Hearing: Kent Finemore read a letter from the Conservation Commission for the record, supporting the variances with conditions. Chris Dunne noted that the State of NH had reviewed this whole area for possible violations and this particular lot was not even considered. There are 14 developed lots similar to this one and none of the septic systems have failed and no problems with wetlands. Public hearing closed.

Dave Liberatore commented that he didn't see how they can do anything differently on this lot as the dry area is limited in size. Roland Seymour stated he questioned the septic system being so close to the boundary, but the state has approved it. Kent Finemore commented that the state only looks at the distance from the well and the setback from the boundary. Kent again stated he is concerned about the lack of frontage on a town road and the Selectmen's decision to allow a building permit. He is also very concerned that the Board respect the Wetlands Ordinance recently passed by the Town. This building is only about 2 feet from the wetland area and there will certainly be disturbance in the wetlands. He believed the Board is really waiving the whole Wetlands Ordinance by granting a variance for this lot. Dave Liberatore rebutted that this lot requires the setback variances as it is a lot of record which cannot meet the current setbacks. Dave Lorch commented that purchasing a pre-existing lot does not grant an inherent right to build.

Kent Finemore explained that because there are only three voting members in attendance, in order to grant a variance the vote must be unanimous. Dave Lorch noted that the applicant can ask to continue until next meeting when there will be more members.

Northfield ZBA

Minutes 12-01-04 Page 3

Roland Seymour still questioned the determining of this area being wetlands as he has lived on this road and it is not that wet. Kent Finemore replied that the application states that this is wetlands, it is not up to the Board to make that determination. Roland Seymour commented that if there are other options for the building location, they need to be considered. Kent Finemore noted that it would be possible to locate the home further back from the front boundary, but it does not change the wetland setback issue. Mr. Bollinger stated they could move the home back, but there would be no yard and the rest of the homes are less than 75 feet from the front.

After questioning about the frontage requirement, Kent Finemore determined that there is a 50 foot right of way on a recorded subdivision which must be the reason the Selectmen granted the building permit.

Dave Liberatore moved, seconded by Roland Seymour to grant a variance to the terms of Article 7, Table 2 to allow the residence to be located no closer than 75 feet from the front property line. Motion passed 3-0.

Kent Finemore reviewed the Wetlands Ordinance and stated that the town does not take such an ordinance lightly and it was passed by a 2/3 majority ballot vote of registered voters. Dave Liberatore referred to the Conservation Commission's letter in favor of the variance with conditions. Roland Seymour expressed concern that the town voted the Wetland Ordinance in and the ZBA should respect it. If we adhere to the ordinance, we can't vote in favor of a variance, however, that would render the lot unbuildable.

The Board reviewed the applicant's responses to the 5 criteria questions. Kent Finemore stated that it is pretty clear that the spirit of the Wetlands Ordinance is to protect wetlands, however it is fair to say that this is not a wetland area of concern. Dave Liberatore noted that this is merely poorly drained soil, not an actual wetland area. Mr. Liberatore moved, seconded by Roland Seymour, to grant a variance from Article 17.5 for the setbacks for the building, septic system and driveway with the following conditions:

1. That the driveway be moved as far as possible from the wetlands toward the septic system.
2. That a silt fencing of hay bales be installed as per Best Management Practices to protect the wetland areas.

Kent Finemore commented that "as far as possible" does not define the location and would not be enforceable, therefore he suggested a definite location would be in order. The board continued its discomfort with allowing the variances and essentially ignoring the Wetlands Ordinance and the balance between allowing normal use of a lot versus respecting the ordinance. The criteria for granting the variances were:

1. That the proposed use will not diminish surrounding property values.
2. Granting the variance would not be of disbenefit to the public interest.

Northfield ZBA

Minutes 12-01-04 Page 4

3. Denial of the variance would result in a hardship as the lot does not allow the space to adhere to the setback requirements.
4. Granting of the variance would do substantial justice to allow the lot to be used as intended.
5. Granting the variance would not be contrary to the spirit of the ordinance as the Conservation Commission reviewed the application and suggested two conditions.

Motion passed, 3-0.

Chris Dunne returned to the Board.

Joyce McKenney/Peg O'Toole: Application for special exception to the terms of Article 7, Table 1, for Service Business (Plumbing/Heating Office/Warehouse) at 86 Bay Hill Road, Northfield (Tax Map U16, Lot 35) in the R1 zone. Dave Liberatore moved, seconded by Roland Seymour to accept the application as complete. Motion passed.

Joyce McKenney stated that the purchaser of the building is Lakes Region Heating and Air Conditioning of Belmont and they plan to store materials in the building only. It will not be an office or have customers on site. There are no plans at this time to expand the building. The use will be a warehouse storage for his materials. The question was raised by Kent Finemore whether this is a "service business" as in the application or a "warehouse". The use as described by the applicant seems to fit the definition of a "warehouse" which would need a variance in the R1 zone and would require a new application.

Public hearing: Chris Hunt commented that one of the reasons the ordinance allows special exceptions is to allow the ZBA to decide if a use is appropriate and to establish conditions. Since this is a commercial use in a residential zone, it is important to consider conditions such as hours of operation to help protect the residents from a non-conforming use in the residential area. Public hearing closed.

The applicant stated that there would be no manufacturing at the building, but storage of supplies and materials. Traffic would be delivery of the materials and restocking the 4-6 work vans. There would be less impact on the neighbors than the previous use as a machine shop. Discussion followed to determine whether to allow this use as a special exception as it appears that the use is really a warehouse requiring a variance. Roland Seymour pointed out that the building has always been commercial and conditions can be attached to keep it within the spirit of the ordinance.

Northfield ZBA

Minutes 12-01-04 Page 5

Dave Liberatore moved, seconded by Chris Dunne, to grant a special exception for a Service Business (Plumbing/Heating Office/Warehouse) at 86 Bay Hill Road, Northfield (Tax Map U16, Lot 35) in the R1 zone with the following conditions:

1. That there shall be no expansion of the existing building
2. That the hours of operation be limited to 6:00 am to 6:00 pm.
3. That there be no manufacturing or production of materials on site.

Kent Finemore suggested an amendment to the first condition might be in order so to allow the applicant to expand the business in the future with the approval of the board. Dave Liberatore moved, seconded by Chris Dunne to amend condition #1 to: that the granting of this special exception for a service business applies to the existing building and any future expansion or enhancement of the building will require an additional special exception or variance. This amendment allows the expansion of the business but only with the approval of the board. Amendment passed 3-0.

Motion as amended passed 3-0.

Kevin Watters: Application for variance to terms of Article 7, Table 1, for an Assisted Living Facility at 130 Shaker Road (Tax Map R15, Lot 5) in the Conservation zone. Dave Liberatore moved, seconded by Chris Dunne to accept the application as complete. Motion passed.

Kevin Watters presented a map and plans with 20 individual units and 2 larger buildings and asked the board to consider whether the use is appropriate in the Conservation zone before deciding on number of units or location. Chris Dunne noted that the Board has previously approved 28 units for a conference center. Kevin Watters stated that his intention is to provide Assisted Living where residents require some services, but not at the Nursing Home level. There would be nurses' aides, etc. but not a full time medical staff. Dave Liberatore asked how many beds or units would be required to make a facility financially viable. Mr. Watters presented figures from 180 similar facilities showing that 75 units would be the most desirable. When asked about the look and height of the buildings, Mr. Watters responded that he wants to keep the "look and feel" of the Shaker Road area and would place the individual units in the wooded area while the 2 buildings would not be very visible from the road. Dave Liberatore pointed out that the individual units would generate traffic as well as the services required for nursing, cafeteria, etc. Mr. Liberatore expressed grave concern about the density issue in the Conservation zone as it changes the whole concept of Conservation and would not conform to the zoning ordinance.

Public hearing: Chris Hunt noted that at last month's meeting residential care was denied by the board and this is just another name for the same thing. The decision last month was based on density and it is not up to the ZBA to allow the most profitable use of the land. Odie Cormier thinks the project would have better acceptance by residents and investors if the separate units were included. Chris Hunt stated the board needs to

determine whether this is an appropriate use in the Conservation zone. Kevin Watters explained that he had applied for a special exception but it was determined that a variance was required. Chris Hunt responded that the density issue was a crucial factor in the decision to deny the special exception. Odie Cormier commented that the current unsightly building would be improved with this project. Kevin Watters stated that he believes this is the highest and best use for the land while preserving the look and feel of the property. Chris Hunt noted that the "highest and best use" of the land is economical and not a zoning issue. Public hearing closed.

Dave Lorch reviewed the minutes of last month and determined that the stand alone units did not fit the definition of a "home care facility". Dave Liberatore again expressed his concern about the density in the Conservation zone. Kent Finemore stated that he personally likes the idea of the individual units, but as far as complying with zoning, it probably should be in one or two buildings. This use is different from the Conference Center as it will generate more traffic, employees, etc. Chris Dunne did not feel the traffic would be an issue. Roland Seymour pointed out that with 75 residents and 30 employees there would definitely be more traffic with supplies, food, etc. and would not be acceptable in the Conservation zone. Kevin Watters suggested that if the board wants to eliminate the individual units, limiting the project to 2 buildings, it would not change the look and feel of the property as the buildings would be in the back behind the current structure. He is trying to put together a project that is marketable and is requesting a variance that he feels will be good for the town and the property.

Kent Finemore advised the board that it needs to decide whether this use is appropriate in the Conservation zone, before deciding upon the number of units or the layout. Chris Dunne didn't feel there would be a problem with just 2 buildings. Roland Seymour commented that he initially had thought this was a good idea, but does not think the traffic generated by 75 beds and employees would be appropriate. Kevin Watters asked if fewer units would be acceptable. Dave Lorch noted that a standard subdivision using the Open Space Development, would allow 10 units and the purpose of the Conservation Zone is to keep the density lower. Granting a variance for this density would not be in keeping with the spirit of the ordinance. Dave Liberatore noted that to make the facility economically attractive to any buyer there has to be 60-70 units at least, so the number of units is important to discuss when deciding the appropriateness of the use.

Dave Liberatore moved, seconded by Roland Seymour, to deny the application for a variance to terms of Article 7, Table 1, for an Assisted Living Facility at 130 Shaker Road (Tax Map R15, Lot 5) in the Conservation zone. Motion passed 2-1.

Meeting adjourned at 11:00 pm.

Respectfully submitted,
Eliza Conde, Secretary