

**TOWN OF NORTHFIELD
ZONING BOARD OF ADJUSTMENT
MINUTES- JULY 27, 2005**

Members present: Roland Seymour, Ken Gorrell, Kent Finemore, Alternate James Knowlton. Also present: Dave Lorch, LRPC and Eliza Conde, Secretary.

Chairman Kent Finemore asked Alternate James Knowlton to join the board as a voting member.

Roland Seymour moved, seconded by Ken Gorrell to accept the minutes of June 22, 2005 as read. Motion passed.

Gary Coyne/Kenneth & Linda Partridge: Application for a Variance to the terms of Article 7, Table 1 of the Northfield Zoning Ordinance to create an elderly residential development on the north side of Scribner Road (Tax Map R5, Lot 35-1) in the C/I zone. Kent Finemore explained to the Board members and the audience that the first order of business is to determine whether the application is complete and that there needs to be some clarification from the applicant before this can be determined.

- John Rohke, Holden Engineering, representing the applicant, stated that the variance has been requested because residential use is not allowed in the C/I zone.
- Kent Finemore asked if the Open Space Ordinance will be utilized for this development. Mr. Rohke replied that there are many wetlands on the lot and most of the buildings would be in the current hay field.
- Kent Finemore asked if there is a NHRSA that defines “Elderly Housing”. Not sure. Mr. Rohke stated again that a variance is needed as it is residential use in the C/I zone.
- Mr. Rohke stated that they had used the requirements of the R2 zone to determine the number of units that would be allowed on this acreage. The plan is for approximately 100 units in duplexes with garages.
- It was determined that this entire lot is within the C/I zone, but it is surrounded by the R2 zone. The applicant proposes to bring municipal water and sewer to the site.
- Ken Gorrell noted that the application does not address all the variances that would be needed for this development.

Discussion followed relative to what variances would be needed for this project. If the Open Space Ordinance is utilized, a variance is needed to apply it within the C/I zone. Minimum lot size needs to be addressed and single family residences are not allowed in this zone. Kent Finemore stated that it is not appropriate for the Board to advise the applicant on the variances needed. Dave Lorch commented that he did not believe there is enough information in the application to determine density. The Board could grant a variance for residential use and then the applicant could re-apply for more variances. Mr. Lorch pointed out that the Board cannot use the density standards of another zone for this

application. Kent Finemore agreed that the Board could consider whether to allow residential use, but would need to consider all the variances required. It was determined that there would be variances needed for at least the use, the density and the open space ordinance. Roland Seymour commented that the plan doesn't fit under any of the articles the Board is reviewing. Kent Finemore suggested that if the Board doesn't feel they have enough information at this time, they can consider the application to be incomplete. John Rohke suggested that if a variance was granted for residential use, then the applicant could apply for the additional variances. James Knowlton suggested the applicant get all the variances in order before the Board considers the project.

Ken Gorrell asked if the applicant is asking to change this lot to the R2 zone, or asking for residential use in the C/I zone. They are asking for residential use in the C/I zone. Dave Lorch explained that the variance would provide relief from certain criteria of the zone, but the variance does not allow the board to switch density and other requirements of one zone to another. Kent Finemore noted that it would be difficult to consider the application for residential use without any guidelines for density. The Board does not have the ability to be creative with density issues. The applicant needs to state what the intent is and then the Board can consider the intent. Dave Lorch commented that with the Condo form of ownership with no subdivision, determining the density level will be difficult.

Discussion followed relative to "elderly housing" and since it is not mentioned as a use in any of the zones, a variance would be required to allow elderly housing also. It was generally agreed that there is not enough information at this time to consider the application as complete. Dave Lorch reminded the board that if this application does not look like it fits in the C/I zone, it could just deny the application at this time. Ken Gorrell moved, seconded by James Knowlton to declare the application as incomplete. Roland Seymour clarified that this motion is based upon the need for additional variances and it would be better to accept this application as incomplete rather than to deny it altogether. Motion passed. Kent Finemore explained that the applicant will need to submit a new application with all variances needed and abutters will be notified again.

Anthony & Gale Pucci: Application for a Special Exception as provided in Article 14, Section 1 of the Northfield Zoning Ordinance to allow construction of a garage within the 35' setback at 14 Haggett Farm Road (Tax Map R16, Lot 10) in the R1 zone. After review of the application, Ken Gorrell moved, seconded by Roland Seymour to accept the application as complete. Kent Finemore asked why Mr. Pucci applied for a Special Exception rather than a variance. The existing house, predating zoning, is 28 feet from the road and this was considered to be an expansion of a non-conforming use. Motion passed.

Tony Pucci explained to the board that he wanted to locate the garage at the end of the existing driveway and would like to save a healthy clump of Birch trees in his yard. The

garage would be 22'X24'' and be 24 feet from the road. Public hearing was opened and closed with no comment. Kent Finemore commented that the Birch trees are worth saving and this application is not adding a living unit. The Board reviewed the criteria for a Special Exception:

- a. The proposed site is appropriate for a garage and for the neighborhood.
- b. A garage in this location is compatible with the placement of homes in this neighborhood.
- c. No water or sewer needed
- d. No other related factors.

Ken Gorrell moved, seconded by Roland Seymour to grant a special exception for Tax Map R16, Lot 10 located at 14 Haggett Farm Road to build a garage within the front setback with the condition that the garage be no closer than 24 feet from the road. James Knowlton moved, seconded by Roland Seymour to amend the motion to add the condition that the garage be no larger than 22'X24' as proposed in the application. Amendment passed. Motion as amended with the two conditions passed.

Nancy & Paul Mason: Application for a Variance to the terms of Article 9 of the Northfield Zoning Ordinance to add an above ground pool with deck within the front setback at 48 Summer Street (Tax Map U9, Lot 12) in the R1 zone. After review of the application, Ken Gorrell moved, seconded by Roland Seymour to accept the application as complete. Motion passed. Paul Mason explained to the board that they were not aware of setback regulations when they installed the pool. The pool itself is 35 feet from the curb and the deck is 22 feet from the curb. Dave Lorch noted that the right of way of the road is not necessarily the curb and they are in fact closer to the bound than stated. Mr. Lorch commented that the Road Agent has expressed some concern that there could be damage from snow plowing. Public hearing opened. Dan Clark stated that when the State re-worked Summer Street the pins were removed and the road was moved 8 feet closer to these homes. No one knows exactly where the front bound is. He had no complaint relative to the pool. Public hearing closed.

Roland Seymour was not concerned about snow damage to the deck, but suggested that they could move the deck to the side of the pool away from the road. The applicant did not feel it would be possible to move the deck. Roland Seymour suggested a condition could be placed on the variance that the town is not liable for damage to the deck. Kent Finemore did not feel that condition would hold up in court. Roland Seymour questioned whether allowing this deck within the setback simply because it has already been built would set a precedent. Kent replied that each case is considered independently and no precedence is set.

Ken Gorrell moved to grant a variance of 25 feet for Tax Map U9, Lot 12 located at 48 Summer Street for the existing swimming pool and deck within the front setback with the condition that no further construction occur to the pool or deck on the street side and that

the town does not accept any liability for damage to the deck located within the setback due to road maintenance. After discussion, Ken Gorrell added that there would be no further re-construction of the existing pool or deck. James Knowlton seconded the motion. Kent Finemore explained that the intent is to not allow replacement of this pool and deck, but maintenance of the current deck is allowed. Motion passed.

William Forsythe: Application for a Variance to the terms of Article 7, Section 2 of the Northfield Zoning Ordinance to install an above ground pool and deck within the rear setback at 51 Park St. (Tax Map U7, Lot 7) in the C/I zone. This application includes a shed along with the pool and deck. Ken Gorrell moved, seconded by James Knowlton to accept the application as complete. Motion passed.

Mr. Forsythe explained that the proposed pool location is to place it far enough from the house deck so that kids would not be able to jump into the pool from the house deck. Kent Finemore asked if the property lines are clearly delineated. Mr. Forsythe stated that they can be easily determined. The proposed shed is located so that parking would be available between the shed and the house.

Public hearing opened: Dave Lake expressed concern about the noise to be generated from the pool and his displeasure with the general condition of the applicant's property. He asked that the board require screening around the pool to buffer the noise. Public hearing closed.

James Knowlton expressed concern about granting a variance for use so close to a boundary line. Dave Lorch suggested the Board could request a modification of the application so that the shed and pool wouldn't be as close to the boundary. The Board needs to consider the impact on the setback and its affect on the surrounding properties. Roland noted that surrounding property values could be diminished with the pool and shed so close to the property line. Mr. Forsythe replied that he couldn't locate the pool anywhere on his property without a variance. Roland Seymour stated he would like to see the pool moved back from the property line and include a fence. Ken Gorrell agreed that he was uncomfortable with the 4 foot setback and noted that the board has a choice of asking the applicant to revise the plan, approve the application with conditions, or denying the application. If the application is denied, does that create a hardship by not allowing the applicant to install a pool. Kent Finemore replied that the board needs to deal with the application as it was submitted which is specifically 4 feet from the boundary.

The Board reviewed the criteria for a variance:

1. The proposed use could potentially diminish the property value of surrounding properties.
2. There would be no benefit to the general public.

3. Denial would not necessarily create a hardship as it could be re-arranged to fit the lot.
4. Granting the variance would do substantial justice.
5. Granting the variance would not be contrary to the spirit of the ordinance.

Ken Gorrell moved, seconded by Roland Seymour, to deny a variance of 16 feet for Map U7, Lot 7 at 51 Park street to construct a swimming pool with deck and a utility shed within the rear lot setback because the request does not meet all five criteria for a variance, specifically a 4 foot setback would diminish the surrounding property values. The board was concerned about the 4 foot setback and believed the pool and shed could be located on the lot allowing a larger buffer. Motion passed. Mr. Forsythe asked for guidance from the board as to what they would accept for a setback. Ken Gorrell replied that the diagram submitted to the board shows that there is room to locate the shed and pool on the lot.

Other: John Wolf, 406 Bay Hill Road, has received a complaint relative to his addition of a garage. He had received a setback variance for the garage from the Board of Adjustment. He has raised the level of the roof to allow use of the second story, but has not changed the footprint. Kent Finemore replied that this is not a ZBA issue as he has complied with the variance. This would be a building issue, not a variance issue.

Meeting adjourned at 9:55 pm.

Respectfully submitted,

Eliza Conde, Secretary