

**TOWN OF NORTHFIELD  
ZONING BOARD OF ADJUSTMENT  
January 25, 2010**

**MINUTES**

**Members present:** Phil Cain, Keith Murray, Kent Finemore and Dave Liberatore. Also present: Peer Kraft-Lund, LRPC and Eliza Conde, Secretary.

**Minutes:** Dave Liberatore moved, seconded by Keith Murray to accept the minutes of December 23, 2009 as read, Motion passed.

**Mark Geremia: Application for a variance from Article 7 Section 2 of the Northfield Zoning Ordinance to allow a lean-to within the rear setback at 13 Cottage Street (Tax Map U8 Lot 50) in the R2 zone.** Dave Liberatore moved, seconded by Keith Murray to accept the application as complete. Motion passed. Mark Geremia explained that he plans to create an open lean-to roof from the garage to a fence which is located approximately 6" from the rear boundary line. He would install an asphalt roof so that snow will melt naturally and not slide off onto the abutting property. He did not believe the new roof would cause a drainage issue for the abutter. He also added that he had begun construction of the roof as he believed he had received permission for it when he was granted a variance in October, 2007. Members reviewed the minutes from that meeting and determined that he was granted a variance for the side shed only, but that shed also extended into the rear setback.

**Public Hearing:** George Flanders, abutter, stated he was opposed to granting this variance because of water draining into his back yard which is already wet. He also believed there is not a hardship because there is room to place a shed on the west side of the garage without being in the setbacks. Dave Liberatore asked if there has been additional water since Mr. Geremia built the first shed on the east of the garage. Mr. Flanders replied that it has not caused an issue. Dave Liberatore asked Mr. Geremia why he didn't want to build the shed on the west side of the garage. Mr. Geremia replied that this is the only area left on the property for the family to use the lot. The area behind the garage is not being used for anything else. Public hearing closed.

Kent Finemore reminded members that there had been concern about runoff and snow impacting the abutters when the first variance was requested. Peer Kraft-Lund commented that there are reasons for setbacks, in particular access to the building for maintenance, etc. He suggested that it might be necessary to obtain a maintenance easement from the abutter in order to maintain the shed and roof. Dave Liberatore added that when concerns about drainage and runoff were discussed in October 2007, the applicant stated he didn't need the back area and that this area would be used for drainage.

The criteria for a variance were discussed as follows:

1. Granting a variance could cause diminishing property values on abutting properties if there are water issues, however, this is an area of small lots with buildings close together.
2. Granting the variance would not necessarily be in the public interest
3. Denial of the variance would not cause unnecessary hardship as there is room on the property to build the shed elsewhere.
4. Granting the variance would do substantial justice for the owner so that he can use his yard for recreation
5. Granting the variance is contrary to the spirit of the ordinance which is to protect abutting properties.

Mr. Geremia added that not granting the variance would cause a hardship as there would be no family area on the lot and the back area is not currently used for anything. Kent Finemore explained that the ZBA works hard to balance the concerns of an abutter with the wants of an applicant within the parameters of the Zoning Ordinance. Mr. Finemore added that the roof will have to be shoveled if there is too much snow and that snow will end up on the abutter's property. Dave Liberatore commented that the first shed did not impact an abutter, however this one does.

Keith Murray moved, seconded by Dave Liberatore to deny the application of Mark Geremia (Tax Map U8 Lot 50) 13 Cottage Street for a variance from Article 7 Table 2 (side and rear setback) of the Northfield Zoning Ordinance to allow a lean-to within the rear setback because it violates the spirit of the Zoning Ordinance. Motion passed 3-0, variance denied.

**David & Barbara Foster: Application for a variance to Article 7 of the Northfield Zoning Ordinance for recognition of Tax Lot U8, Lot 71-1, created in 1986 as a non-buildable lot, as now being a separate buildable lot of record. Said lot is .607 acre with 103.71 feet frontage on Gale Avenue in the R1 zone.**

Peer Kraft-Lund clarified for the Board that this is really two variance requests, one for lot size and one for frontage requirements. He went on to explain that there are other issues with this lot and approving these variances does not clarify the status of the building lot. The applicant will still have to return to the Planning Board for that issue. He cautioned the Board to only discuss the lot size and frontage for this application.

After review of abutters, Keith Murray moved, seconded by Dave Liberatore to accept the application as complete. Motion passed. Regina Nadeau, representing the applicant, gave a synopsis of the history of this lot which was part of a subdivision in 1986 with the recorded plan showing this lot as being an unbuildable lot. At the time of the subdivision, this lot met the zoning requirements for size and frontage. Since zoning has changed to larger lots, Ms. Nedeau pointed out that almost all lots in the area are now non-conforming. The current zoning would allow the applicant to request a waiver from the Selectmen to allow a building on this lot except for the plan which labels it as a "non-

buildable” lot. Ms. Nedeau reviewed the new criteria for granting a variance which were adopted by the state on January 10, 2010 as follows:

1. Granting the variance would not be contrary to the public interest because it would allow the lot to become developed and it would not result in adverse safety or health issues as water and sewer are available.
2. The spirit of the Ordinance will be observed in granting the variance as this lot has all the assets of a building lot.
3. Substantial justice would be done if the variance is granted as the surrounding lots are all developed.
4. The values of the surrounding properties would not be diminished as this lot is larger than most of the other lots and leaving it vacant could lead to neglect and vandalism.
5. Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship because:
  - a. No fair and substantial relationship exists between the general purposes of the Ordinance provision and the specific application of that provision to the property because the zoning restriction was placed upon a predominantly developed area rendering the majority of lots non-conforming
  - b. The proposed use is a reasonable one as single family homes are allowed in this zoning district.

Or 6. Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable reasonable use of it. The condition placed upon this lot was based upon a subdivision application technicality.

Ms. Nedeau stated that she believed this variance request meets all the criteria for a variance and that it would be blatantly unfair not to allow a building on this lot as it is larger than surrounding lots and water and sewer are available. It met all the requirements of a building lot at the time of the subdivision and the only reason the lot was declared unbuildable was because the owner did not want to go through the process of a Major subdivision.

Members discussed the reason this application has been submitted being the recorded plan having the lot designated as a “Non-buildable” lot. Were this not the case, the applicant could request a waiver from the Selectmen and be granted a building permit. The applicant wishes to clear up this issue and ask the Planning Board to sign a new plan that can be recorded showing this as a building lot. The deed to this lot does not indicate that it is not a buildable lot and it is separate from all other deeds.

Public hearing opened: Regina Nedeau presented two letters from abutters stating they have no objection to this variance request. Public hearing closed.

Dave Liberatore commented that the lot is large enough for development and has water and sewer. Kent Finemore noted that the intent of the original subdivision was that this

lot was to be merged with the Foster's lot and would not be a buildable lot. Peer Kraft-Lund added that the deed has not reflected that decision, but it was included on the recorded subdivision plan. Phil Cain added that the Fosters have been paying taxes on the separate lot for several years. Keith Murray concluded that this is an existing non-conforming lot. Members then discussed the steps needed to clarify this issue being that if the variances are approved, the applicant will still need to return to the Planning Board to solve the issue of the recorded designation as "non-buildable".

Dave Liberatore moved, seconded by Phil Cain to approve the application of David & Barbara Foster (Tax Map U8 Lot 71-1) on Gale Avenue for a variance to Article 7 Table 2 of the Northfield Zoning Ordinance for frontage requirements and minimum lot size with the condition that before any new plan is filed, the applicant must return to the Northfield Planning Board for their acknowledgement. Motion passed. 3-0, variance granted.

Mark Geremia asked for a clarification of why his application was denied. He was advised that he has 30 days to file a request for a rehearing.

Meeting adjourned at 9:00 PM.

Respectfully submitted,

Eliza Conde, Secretary

*Minutes approved 04-26-2010*