

**TOWN OF NORTHFIELD
ZONING BOARD OF ADJUSTMENT
JULY 23, 2018
MINUTES**

Present: Kent Finemore, Chairman, Scott Haskins (Selectmen Representative), David Curdie, Brian Brown, Kaitlin Lounsbury

Public: Wayne Crowley, Cathy Keyser, John Guay, Tom Worthington, Allyson Worthington

The meeting is called to order at 7:04 p.m. Scott Haskins, Selectman's Representative, is appointed as a voting member.

Meeting Minutes: June 26, 2017 – Keith Murray is not in attendance, minutes will be held until the next Zoning Board Meeting.

February 26, 2018 – Scott Haskins, moved to accept the minutes, seconded by Kaitlin Lounsbury. Minutes approved by unanimous vote.

Tom Worthington – Application for Variance for 164 Sandogardy Pond Road, Map R08, Lot 54, Relief from Article 7, Table 2, discussion among the board relative to the completeness of the application. The sketch is reviewed by the board, discussion on the sketch.

David Curdie makes a motion to accept the Application for Variance, Seconded by Brian Brown. Discussion on the Motion. No further discussion on the Application. All in favor, unanimous.

Application is accepted as complete.

Tom Worthington stated that the deck would not be wider than the house and will be built 35 feet from the shoreline. The deck would add to the value of the property as well as the surrounding properties. The septic system was installed in 1984 and check by Rowell's Septic in 2016 when the Worthington's purchased the property.

Kent Finemore – Any questions to the applicant from the board.

The Board asked the Worthington's questions regarding the sketch, the deck having a set of stairs down to ground level. The Board also discussed the requirements on Table 2, the setbacks on Sandogardy Pond, which is in Conservation, the set back from the pond is 250 feet and the side and rear setbacks are 50 feet. The board asked if there were any photos of the property and the Worthington's indicated that there were not. The board members indicated that they were familiar with the property.

Kent Finemore - Any further questions from the applicant to the board:

Tom Worthington – No I don't.

Kent Finemore – I will take this opportunity to open the public hearing and take testimony of those present. No discussion from the public. Discussion back to the board.

Kent Finemore – The relief that is being sought in the application is referenced in Article 7, Table 2, the setbacks from the lake. The board discussed the setbacks and those of which are the town's setbacks. The applicant will still be subject to any other permit required by the state.

Kent Finemore – Are there any more questions from the Board?

David Curdie – I make a motion to accept the application for variance, reference Article 7, Table 2, for Tom Worthington and Allyson Worthington, at 164 Sandogardy Pond Road, Tax Map R08, Lot 54. Which is due to the setbacks from the water and one side putting on a deck addition and no closer to the side set back that currently is 10 feet and 35 feet to the water.

Kent Finemore – motion changed from accept the application to grant the application.

David Curdie/Kaitlin Lounsbury – made a motion/seconded to Grant the Application for Variance

Kent Finemore – Discussion on the motion. Seeing none. Those in favor of granting the motion, the vote is unanimous.

Motion passed to Grant the Application for Variance. You will have to apply for the building permit and also seek any permits from the state that may be required.

Cathy Keyser - Application for Variance, 95 Park Street, Tax Map #U08 Lot 7, 1.19 acres, in commercial/industrial district. Property is not within the groundwater protection district. Applicant seeking relief from Article 7, Section 7.10 of the Zoning Ordinance.

Brian Brown/David Curdie– Motion/seconded to accept the Application as Complete.

Kent Finemore – moved and seconded to accept the application as complete. Discussion on the motion. None noted. Those in favor of the motion, unanimous vote.

Motion to accept the Application as Complete Passed.

Kent Finemore - Cathy if you would like to make a brief presentation of what you are seeking relief from.

Cathy Keyser – ultimately you cannot have two residences in two buildings on the same piece of property.

We want to live in the apartment on the second floor of the garage as we cannot rent the space on the second floor of the garage as it is not handicap accessible. The house is rented and we will be occupying the entire top floor of the garage.

Kent Finemore – Further questions for the applicant from the board.

Scott Haskins – so I'm guessing you are planning on putting a deck on the building, is that correct?

Cathy Keyser – yes we are, looking at the building on the left side. John Guay, it's not really a deck, It is meant more for ventilation, when the windows were installed to get the circulation going.

We will be installing a deck with stairs for access to the second floor.

Kent Finemore – I am not sure if you meet the setbacks.

Cathy Keyser – you need a setback even knowing that the deck is up that high?

Kent Finemore – it depends on how far you are from the property line.

Cathy Keyser – you would need an additional variance. What is the setback requirements?

Kent Finemore – The setbacks for the property are 35 feet front set back and 20 feet side and rear setbacks. I don't know if they meet the setbacks because I don't have a sketch of the property.

Further questions to the applicant from the board:

Kaitlin Lounsbury – What is the unit going to entail? Is it going to have a bathroom? Kitchenette?

Cathy Keyser – It is going to be an apartment, full kitchen and bath. We thought about putting two apartments up there but the tenants would have to access my reception area in order to gain access to the apartment and I don't want people going through my shop.

Kent Finemore – So when a variance is granted it goes with the property. That is what the current owner’s intention is. The point of reference is Table 1, Article 7 of the Zoning Ordinance, single two family, multiple family residences of 4 units or less are not permitted in the Commercial/Industrial Zone. Discussion amongst the board about the zoning restrictions for multi-family units was brought forward.

Cathy Keyser – There are several people in the area that have two residences on one piece of property, they are George Flanders, Cullen Concrete and John Raffaely.

Kent Finemore – The Zoning Ordinance came into effect, I believe in 1979, and some of the properties could have predated the zoning ordinance.

Kent Finemore – Further discussion from the board, questions for the applicant.

Scott Haskins – I first thought there was going to be two apartments, but now I realize you cannot rent out the upstairs due to the business in the lower level. Thank you for explaining that to me.

Cathy Keyser/John Guay – We had no intention of putting an apartment in the upper floor of the garage, there was a leak, when we went to fix the leak, the wall was taken down and we found a small deck. Instead of putting more sheetrock up, we decided it would be less expensive to put windows in. We had the plan to put Cathy’s screen printing business on the second floor but soon realized that there was not enough ventilation.

Kent Finemore – **Open Public Hearing and invite testimony.**

Wayne Crowley – I’m not for or against the variance, I want the board to consider some of these things. One is, if the variance is granted, then that is setting a precedence that has never occurred here since zoning has been enacted, meaning multiple single residences on one lot. We have code enforcement action occurring today in other areas of the town against those kinds of things, where someone put an apartment in the garage on the same lot as their primary residence and they want to rent out the garage. Because the zoning doesn’t allow it, Code Enforcement is taking action against this resident.

Up until a month ago, the Planning Board as well as the administration at Town Hall thought that it was not permitted even with a variance. The Planning Board went and got a legal opinion on that, the legal opinion came back that yes you can do a variance for anything in the zoning. That is why the Planning Board advised the applicant to seek a variance. If the Zoning Board is contemplating granting the variance, put conditions/restrictions on the variance that would be specific to that lot, that individual situation. You could indicate in the restriction that the owner of the business must occupy the apartment above, rather than opening it up to a general apartment house approval, you are tying it to the lot. This decision could set a precedence in town and I am just asking the board to be careful.

Kent Finemore – Further testimony from the public.

Cathy Keyser – The people who have the apartment up above their garage, did they have a permit? Did they seek a variance? The answer was indicated as no to both questions from the board. Cathy asked if there were consequences for that, the board indicated that is why the matter is with Code Enforcement at this time.

John Guay – I think it is unfair that you are using them as an example in this situation when they are being investigated by Code Enforcement. They didn't do it right, and we are trying to do things right, I don't think it is right that you are telling the board to take the matter into consideration.

Wayne Crowley – The original zoning was put in to control situations just like this, the intent was to have a residence on a single lot. If you want to do an apartment house, you have to be in a specific zone and have a minimum number of apartments. This doesn't fit that.

Kent Finemore – The Public Hearing is still open, we can accept testimony, once we get back to the board, unless the board specifically asks others questions, it is not really an open forum. We can always reopen the public hearing.

David Curdie to Wayne Crowley – Is it more than one that we are going after for code enforcement or is there more than one? Wayne Crowley indicated that the town had more than one action pending with code enforcement.

Kent Finemore – Anything further while we have the public hearing open?

Brian Brown – I am asking this question to Wayne Crowley, if the board was to grant the variance, to put restrictions on it, that if in 10 or 20 years down the road, the property was sold, the variance is tied to the property. What happens if someone comes along and doesn't own a business and just wants to use the apartment above the garage as their living space, that living space is tied to that property.

Wayne Crowley - That condition has to be met as the way the variance was granted, otherwise, the variance is no longer in effect.

Kent Finemore – That is correct, so the board can put any conditions they want on granting any special exception or variance. It becomes the matter of enforceability that is a problem and has been a real problem for Northfield. A fair effort on the part of the board at times to accommodate an applicant to help them do what they want to do and at the same time come up with these conditions that are just not enforceable and it's very difficult to enforce even if you wanted to. Don't underestimate the power of the applicant/land owner to hire an attorney basically turning the condition upside down. The board has tried at times to use the town's attorney to come up with the most reasonable conditions that can help if it is the boards desire to approve an application, help the town maintain some enforceability on that. Relative to precedent it's in the court of public opinion it's setting a sort of precedent, however, if you read case law, supposedly no action by the board sets a precedent for what it does going in to the future. The board's authority ends at handling applications for relief in the ordinance. The reason for the Zoning Board of Adjustment is to allow for adjustments to the Zoning Regulations.

Scott Haskins – Obviously I am new to this, what I see happening, you are on a main drag, people driving by seeing what you did, they say I can do that, they come before the board and I am going to get approved. Why even have ordinances if people can come in and just do this. I am fine with it, I mean you guys are living there, that is what I feel what folks are thinking.

Kent Finemore – I know that is what they think, but they're still supposed to follow the process. I respect what Wayne was saying about placing a condition, but that would be a very difficult thing to enforce going forward, not with these guys, it's their property and that is what they have intended to do, but you never know what's going to happen, they may still own the property and want to rent it out or they may want to sell the property. Now you have a different issue on your hands, you can try to enforce it, saying you can only use the apartment if you own the business.

Kaitlin Lounsbury – If you make it so restrictive when someone wants to buy the property, they will feel it has too many barriers, we want good buyers in the future.

Kent Finemore - We can continue the application so we can get a legal opinion from the town's attorney, that can be very helpful and it gives the board something to hang their hat on. It gives us an opportunity to take all of what we heard tonight into consideration and to get some legal guidance.

Scott Haskins - what happens if the application gets denied? Can they use this space for an office?

Kent Finemore – I don't know about that, if the application gets denied, the applicant will have 30 days to appeal the decision. The bar is kind of set and you have to bring new evidence to the scene and if you bring additional evidence that wasn't heard the first time, then you could be considered for an appeal. That is up to the board whether they accept the request for an appeal.

Reopen Public Hearing

Cathy Keyser – We are working on making the place look better, trying to bring new business into the area. We are trying to clean up this portion of the street. You state that you are going to seek the advice of an attorney regarding the application, who pays for this attorney, the tax payers, correct?

Kent Finemore – Yes we have a budget, a line item in the budget for this. The Zoning Board does not typically use the attorney too often because we do not meet very often. I reviewed the minutes from the Planning Board Meeting of June 4, 2018, were they there for this issue?

Discussion between Kent Finemore and Wayne Crowley – If there was an application submitted to the Planning Board, there was not, it was conceptual. The Planning Board could not have approved the application. The matter does not need site plan approval. Single family, multi-family units are not allowed in Commercial/Industrial District, in order to do that it would need additional relief. Variances are supposed to be given because of mitigating circumstances, on a given site, there is supposed a reasoning due to that site that meets the five criteria and allows you to grant the variance. The responses to the criteria do not do a good job representing that desire, not that you saw that coming when you making the application out. It doesn't give the board a lot to go on for that part of it. Like I said, this is not a simple application. Brian Brown asked the question of denial of the building permit. It was explained that the building permit did not meet the zoning requirement. The main reason we see applications before the Zoning Board is because it is usually related to setbacks other violations. The application goes through the code enforcement officer for a ruling but the ultimate decision is through the board of selectmen who make the final ruling on building permits that are issued through the boards.

Close the Public Hearing

Scott Haskins/Kent Finemore – Discussion on the matter of the criteria, there are a lot of different things going on at this property, there could be mitigating factors. There is more than one business there, mixed uses, business underneath where this is, a house long predating zoning, commercial use on the property that long predates zoning, there are all kinds of things going on at this property that could mitigate concerns that the board would have.

The Board discussed seeking counsel's advice as to what restrictions could be put on the variance.

Further Discussion From the Board

The Board reaffirmed seeking counsel's advice, the materials that will be sent to counsel will be the minutes from this meeting, the planning board minutes and the application. We are primarily looking at this property, in this district and known history of the property. We have testimony here that should be in the minutes so that there is concern about other similar situations that are requiring code enforcement in other parts of town.

Dave Curdie – I will make a Motion to Continue until we hear from our attorney.

Kent Finemore – just need a date certain when we are continuing to our next scheduled meeting which will be on August 27, 2018 at 7:30 pm

David Curdie/Brian Brown - Motion to Continue until the next schedule meeting of August 27, 2018, made by David Curdie, seconded by Brian Brown to Continue Cathy Keyser/John Guay Application for Variance 7.10 until the next regularly scheduled meeting until we get input from our attorney concerning the conditions we can put on the property in regard to the concerns that were raised during this meeting.

Kent Finemore – Moved and Seconded to continue the application to the next regular meeting on August 27, 2018.

Any discussion on the motion. None noted

All in favor of the motion. All affirmative. Motion passed.

Other Business that the board would like to bring up at this time. None noted.

The Chair would entertain a motion to adjourn. Moved by David Curdie/Seconded By Kaitlin Lounsbury.

Moved and seconded, any discussion on that. All in favor of the motion. All affirmative.

Meeting adjourned at 8:25 pm

Minutes Approved August 27, 2018