

**NORTHFIELD BOARD OF ADJUSTMENT
MINUTES
April 25, 2016**

Present: Brian Brown, Jacqueline Roy, Bob Southworth, Keith Murray, Paula Benski and Kent Finemore.

Minutes: Jackie Roy moved, seconded by Paula Benski to approve the minutes of March 28, 2016 as read. Motion passed.

Diane Elliott: Continuation of an application for a variance from Article 7 Table 2 of the Northfield Zoning Ordinance to allow a camper to be placed within the setbacks on Tax Map R8 Lot 69 on East Side Road in the Conservation Zone. Chairman Finemore recused himself as he is an abutter of this property. Vice Chair Murray appointed Bob Southworth as a voting member for this case. Board members reviewed the status of this application to date:

- Bob Southworth commented that this application seemed to be a new variance application rather than an appeal of the first decision as the applicant was not asking for the same thing as in the original application.
- Keith Murray stated that the Board had agreed to rehear the case because of new evidence available.
- Brian Brown explained that the Board decided to continue the case at last month's meeting as there were only two members who had heard the entire case, but then realized that it seemed to be a new application.
- Paula Benski commented that the Board was not really clear what the applicant is asking for. She added that there were questions about whether a camper really needed to meet setbacks as it is a portable structure that would only be occupied for 90 days.
- Jackie Roy added that the letter from the Code Enforcement Officer stated that a camper can be occupied for 90 days and then simply stored on the property as per the Zoning Ordinance and therefore she didn't think a variance was necessary.
- Keith Murray stated that he was of the opinion that Article 10.1.d of the Zoning Ordinance is referring to the primary residence of the owner and not on an empty lot.
- Bob Southworth questioned whether a variance is needed as per Article 10.1.c.
- Keith Murray stated that the camper would still need to meet setbacks.
- Brian Brown noted that the letter from DES indicates that the camper is not a structure as per RSA and as it is not in a fixed position does not have to comply with shoreland setbacks.
- Jackie Roy asked if the camper is on the lot for 12 months, when does it become a structure and how does the Board grant a variance on something that does not require a variance.
- Keith Murray stated that he believes the spirit of the ordinance is to limit people living in campers by allowing only a 90 day occupancy permit. He added that he believes it needs to be considered as a structure that needs to meet setbacks. He also noted that the abutter had concerns about the camper lowering property values of surrounding properties.
- Brian Brown added that even if she doesn't occupy the camper, she can store it on the property permanently without any permit as per Article 10.1.c

- Keith Murray replied that he believes the spirit of the ordinance refers to a main residence and that it needs to be treated as a structure that needs to meet setback requirements.
- Bob Southworth responded that the camper is not attached to any foundation and is still on wheels.
- After reviewing definitions, Jackie Roy noted that if it is indeed a structure it would have to comply with setbacks. The definition of a dwelling unit in the Zoning Ordinance does include campers.

Keith Murray informed the Board that since this application was originally accepted in December, the Board does not have to accept it as complete again.

Diane Elliott presented photos of the camper and the abutting property. She noted that the letter from DES indicated that the state does not consider the camper to be a structure. The properties in the area are vacation properties and she believes the camper fits in with vacation properties. Diane stated she has visited with neighboring towns and found that they do allow campers close to water and allow occupancy without considering setbacks as they are not permanent structures. She had originally asked the Code Enforcement Officer for an occupancy permit and she suggested requesting a variance just to be sure she can use the property. Keith Murray recalled that one abutter had suggested that property values would be lowered if the camper was allowed. Diane Elliott responded that the abutting camp is about 5 feet from the water and is a vacation camp used only part time. She added that she is willing to move the camper off the property off season and willing to be limited to a small camper which shouldn't impact the abutters. Large trees on the lot limit the visibility of the camper.

Public hearing opened: Kent Finemore reminded the Board that it had accepted the request for a rehearing although he does not believe the letter from DES is really new evidence. He advised the board not to get caught up in code enforcement issues as it doesn't matter what other towns do. The Board should base its decision on whether to change or uphold its original decision based upon any new evidence. Diane Elliott reminded the Board that the original application was denied based upon it being an impervious structure and not complying with Shore Land Protection regulations. Public hearing closed.

Discussion of the Board:

- Jackie Roy commented that the variance application is referring to Article 7 Table 2 which is for a permanent residence and the Shore Land Protection regulations were considered originally because they apply to permanent residences.
- Keith Murray noted that the variance was denied originally because the camper did not meet setback requirements. DES is not concerned about the setbacks, but Northfield's Zoning Ordinance does.
- Jackie Roy noted that the letter from the Code Enforcement Officer stated that the application should have been for a variance from Article 10.1.d but it was submitted for Article 7.2.
- Keith Murray reminded the Board that it either needs to uphold its original ruling or not.

After further discussion, Jackie Roy moved, seconded by Bob Southworth to uphold the ZBA's original decision made on December 28, 2015. Motion passed.

Diane Elliott asked what her recourse is and whether she should re-apply for a variance from Article 10.1.d. The Board did not provide any guidance.

Nawaz Azam: Continuation of an application for a variance from Article 11 section C of the Northfield Zoning Ordinance to allow a driveway within the setback requirements at 6 Holmes Ave (Tax Map U8 Lot 21) in the R2 zone. Chairman Finemore returned to the Board. Mr. Azam presented a drawing of the property showing 10 feet between the structure and the presumed property line. He is asking for a 9 foot paved driveway leaving 1 foot setback from the boundary. Kent Finemore expressed concern about whether the building really is 10 feet from the boundary as the boundary line is not clear and the sketch doesn't really verify the distance. Mr. Azam stated that the Code Enforcement office measured the distance with him and it is 12 feet to the neighbor's fence which is presumed to be 2 feet from the boundary.

Public Hearing opened: Abutter Charles Plummer expressed concern about the setback requirements and also that the property slopes toward the fence and the driveway could impact his property. Bob Southworth noted that the Highway Superintendent will have to decide whether he can issue a driveway permit but the Board is only considering the setback. Public hearing closed.

Brian Brown asked whether there is a grandfather clause that would apply in this situation where the lot is so small. Kent Finemore agreed that this is a challenge as there would only be 1 foot setback from the property line. Jackie Roy asked about whether there is room for the driveway to be built up and provide for a sloped runoff. Kent Finemore suggested that it would be a lot easier if there were accurate measurements as this is a very tight situation with only 1 foot setback.

Public hearing opened: Mr. Azam stated that he would be happy to cut the driveway back to 8 feet width and that he could remove the porch which would allow more space and still have a 25 foot driveway. He would also be willing to limit the driveway to 2 vehicles only. Andrea Charron asked if the amount of impervious ground cover is an issue on this lot. Mr. Azam responded that he is leaving the back lot unpaved and he has removed the garage. Public hearing closed.

Brian Brown asked if a survey should be required. Bob Southworth agreed that he would like more information with real measurements and the location of the boundary line. Jackie Roy agreed that a variance shouldn't be approved without exact measurements. She also expressed concern about the elevation of the driveway. After further discussion, Keith Murray moved, seconded by Jackie Roy to deny the application for a variance from Article 11 section C of the Northfield Zoning Ordinance to allow a driveway within the setback requirements at 6 Holmes Ave (Tax Map U8 Lot 21) in the R2 zone because there is not enough remaining setback from the property line. Motion passed.

Meeting adjourned at 8:45 pm.

Respectfully submitted,
Eliza Conde, Secretary

Minutes approved 06-27-2016