

SANBORNTON ZONING BOARD OF ADJUSTMENT

P.O. Box 124
Sanbornton, New Hampshire 03269-0124

MEETING MINUTES

November 24, 2009

INFORMAL BUSINESS

Bill Whalen spoke of the importance of posting meeting minutes in a timely fashion. Meeting minutes from August 25, 2009 were briefly reviewed. Bill Whalen made a motion to accept the minutes as written. Wayne Elliott seconded the motion. A vote was taken and the motion passed unanimously. Voting were Jim VanValkenburgh, Bill Whalen, Wayne Elliott, Don Bormes, John Olmstead, and Jim Wells. The two newest members to the board, John Olmstead and Jim Wells, were welcomed. They have both been sworn in as alternate members.

PUBLIC HEARING

Chairman Jim VanValkenburgh called the meeting of the Zoning Board of Adjustment to order. In attendance were members Bill Whalen, Don Bormes, and Wayne Elliott; alternates John Olmstead, Jim Wells, and Ann Littlefield (acting clerk). Public notice was posted, abutters were notified by certified mail, and the notice was published in *The Citizen* on November 17, 2009.

CASE # 446 – A request from Joseph Plonski to hear an *An Appeal From An Administrative Decision* related to Article 10, Section C and Article 12, Section D(3) of the zoning ordinance. Applicant is appealing the issuance of a Building Permit. The property is located on Broadview Drive in the Commercial, Shorefront, and Aquifer Districts (TM 18 Lot 87-1).

Jim VanValkenburgh stated that he would be willing to recuse himself if there was a desire from members of the board, the applicant, and/or the property owners for him to do so. He explained that he had removed himself in the past during proceedings when Mr. Plonski was involved. He stated he felt he could act objectively in these proceedings. Attorney John Cronin, representing the property owners, wanted the chairman to explain himself a bit further. Chairman VanValkenburgh explained that the Co-Chair was not in attendance and that his earlier instances of recusal were related more to the other parties involved, than to Mr. Plonski. Attorney Cronin stated no objection; zoning board members stated no objection.

Joe Plonski presented his appeal to board members. He stated that he was not in objection to the intended building project by the property owners but, rather, felt the Zoning Enforcement Officer lacked the authority to issue the building permit. His primary concern that prompted application to the zoning board was related to his view that the

intended building project encroaches into the required 30' right-of-way setback and so should have required the property owners to obtain a Variance from the zoning board.

Mr. Plonski provided a brief history of the original subdivision, the property and Mr. Fortin's building plan. Mr. Plonski stated that he had suggested to Mr. Fortin that he would likely need to apply to the zoning board because the garage to be renovated sits seven feet from Mr. Plonski's property line. Mr. Plonski said that his thinking was that if the grandfathered structure or footprint was to be changed, a Variance would be required before a building permit could be issued. Mr. Plonski said that he was required to apply for a Variance for construction on his own property within the 30' setback from the same right-of-way.

Continuing, Mr. Plonski said he called Bob Ward, the Zoning Enforcement Officer, telling him the existing structure on Mr. Fortin's property is non-compliant with regard to the right-of-way setback; the existing structure is approximately five feet off the right-of-way. Mr. Plonski explained that the right-of-way supports all of the surrounding households (30+/-) in the original subdivision for lakefront access. This right-of-way also supports a 1984 utility company easement which blocks further development of the right-of-way. He emailed a letter as follow-up to Bob Ward.

The Willis Sanborn subdivision map of origin was referred to by Mr. Plonski and shown; the deed calls the right-of-way a highway. In the 1980's and in 1986 drawn plans disclaimed the existence of the same right-of-way. The 1998 deed shows the shed/garage in question; right-of-ways available to all properties within the subdivision; a new right-of way is shown on the 1998 plan.

Mr. Plonski maintained that the grandfathered shed/garage structure can be replaced, renovated, etc. if the original footprint is used. One year ago Mr. Plonski applied for a Variance for expansion of a guest cottage on his own property. At that time, he was challenged by abutters who took exception to his development due to the Aquifer District overlay. Mr. Fortin will have living space in the shed/garage and Mr. Plonski maintained that zoning is a conflict. Mr. Plonski is not opposed to the seeming error in zoning. He did not feel Mr. Ward could make an appropriate determination for a building permit issuance; it should have been left to the Zoning Board.

Ultimately, Mr. Plonski was surprised to find the building permit had been issued. Mr. Plonski felt he was not duly informed and Mr. Ward could have at least let Mr. Plonski know of his determination to issue the building permit. Bill Whalen asked if the Selectmen responded to Mr. Plonski. The Selectmen told Mr. Plonski they would take no position before the ZBA responded to Mr. Plonski's concern(s). Mr. Plonski requested the Zoning Board overturn the issuance of the building permit and recommend the Board of Selectmen investigate the process by which the building permit was issued.

Jim VanValkenburgh stated that he would continue to chair the hearing but would like to turn his vote over to another member; the member declined and other members felt confident that Jim would vote equitably and objectively.

Attorney John Cronin spoke to the board. He pointed out that neither zoning boards nor planning boards have the power to make a determination related to a right-of-way. Attorney Cronin stated the historical perspective presented is irrelevant to the issue at hand. He recognized Mr. Plonski's thorough understanding of the property area and its historical life. Attorney Cronin stated the violation of 10' setback was remedied by the property owners by placement plan for shed/garage. AS to the right-of-way setback requirement, Attorney Cronin stated that this right-of-way does not fit the definition; it may qualify as an easement but he also disputes that. Further, the property has no obligation for a setback from an easement. Attorney Cronin stated his client's structure does not qualify as a dwelling unit, per the town ordinance He stated it is an accessory structure, only. There is no requirement for Mr. Fortin to seek a Variance and he supports the decision of the Zoning Enforcement Officer.

Bill Whalen expressed concern about a non-conforming structure being expanded; this would indicate a need for a Variance. Attorney Cronin stated the new structure becomes conforming because of the footprint shift on the property. The structure will be moved off the setback. The lot is non-conforming but grandfathered, it does not need to meet the minimum acreage requirement for the district.

Mr. Plonski stated that the Supreme Court did not accept the town definition of right-of-way; and right-of-way labeled on maps is not correct. Lester Pearl, abutter, spoke to the board stating that the right-of-way has always been used as a walking path not a way of travel. Jim VanValkenburgh stated that the concern of the evening is whether or not the building permit should have been issued prior to an application to the Zoning Board was made. Joe Plonski stated that the right-of-way has been used as a road over the last twenty years. Through repeated use by many, it becomes a road. He disputed Mr. Pearl's claim that it has not been traveled on by motorized vehicles. At the time of this application, Attorney Cronin stated that this right-of-way was not recognized by the town as a roadway. Dwayne Valley, abutter, stated that his property deed describes this passageway as access to the lake.

Bob Ward, Zoning Enforcement Officer, has the authority to grant building permits for the town and he granted the permit under contention. He directed his comments to two points from the zoning ordinance: Article 10, Section C – re: setbacks: 10' side setback requirement met and the plan shows new footprint to be in compliance for rear; front 30' setback requirement, right-of-way along side does not fit within right-of-way definition found in the zoning ordinance. The property abuts one right-of-way: Broadview Drive. If there is a public right-of-way abutting the property, the building must be 30' feet back but Mr. Ward did not interpret this to be the case. Mr. Ward stated the historical information presented was not relevant. Of relevance is what roads are in existence at the time of building permit issuance.

Bill Whalen asked if Bob Ward had conveyed to Mr. Plonski what he knew and upon what he based his decision, in light of Mr. Plonski's stated concerns. Mr. Ward stated he only had an obligation to communicate with Mr. Fortin. Bill Whalen stated that Bob Ward should have provided follow-up communication with Mr. Plonski, as a town official to whom a resident had directed concerns.

Mr. Ward continued to his second point from the zoning ordinance: Article 12, Section D(3) – re: Aquifer District: single-family residential is permitted and Mr. Fortin's plan for a new building meets the criteria for single-family dwelling because the plan showed no definitive intent for sleeping quarters, plan showed three-fixture bathroom, plan showed no kitchen, a kitchen sink but no indication of cooking purposes; therefore, Mr. Ward determined the structure not a dwelling unit. Further, this is not a multi-family use because there would need to be three or more units. As to the minimum lot size requirement: the property is part of a subdivision and this lot was previously approved for substandard non-conforming lot size from the zoning board. There can be a site plan approval requirement by the Planning Board but such is not required for single-family residential site plans; the Planning Board has no authority in such an instance. Other points from the Article being discussed have no application/requirement for consideration ... subsurface disposal, excavation/earth moving, proposed roads, movement of surface water, 10% maximum impervious lot coverage: Mr. Ward's calculations shows under the 10% limit. Mr. Ward's point-by-point determination for building permit issuance concluded that the plan complied with all the requirements of the zoning ordinance and so the building permit could be issued.

Mr. Fortin wanted everyone to be sure they were aware of their desire to follow appropriate protocol during this process. He indicated that construction could have begun but has waited until this could be decided.

At this time, the Chairman CLOSED CASE #446.
REOPENING CASE #446 - Voting members would include John Olmstead, Bill Whalen, Jim VanValkenburgh, Don Bormes, and Wayne Elliott. Bill Whalen said a thorough job was done by Bob Ward. He recommended that the building permit issuance be upheld and Mr. Plonski's appeal be denied. Don Bormes made a motion to uphold the building permit issuance, thereby denying Mr. Plonski's appeal. Bill Whalen seconded the motion. A vote was taken and the motion carried by a 3:2 vote. Voting in favor of the motion were Don Bormes, Bill Whalen, John Olmstead. Voting in opposition of the motion were Jim VanValkenburgh and Wayne Elliott.

OTHER BUSINESS

The next scheduled public hearing date is Tuesday, December 22, 2009 at 7:15 p.m.
Respectfully submitted, Ann E. Littlefield, Clerk.

These minutes are subject to the review and approval of the Zoning Board of Adjustment. Until such time as approval by vote is recorded, posted and/or website minutes are representational of the Public Hearing and are for informational purposes only.