

Wilmington Zoning Board of Appeals

May 22, 2013

Wilmington Community Center

BOARD MEMBERS PRESENT: Jerry Bottcher (Acting Chairman), Bob Girardin and Jim Carmelitano .

PUBLIC PRESENT: Bob Guynup, Ralph Schissler, Brian Smith, Louis Adragna, Ricky Adragna, David Lawrence and Shirley Lawrence.

CALL TO ORDER: Call to order at 7:00 by Jerry Bottcher, Acting Chairman.

PUBLIC HEARING: Called to order at 7:05 p.m.

1. Area Variance Application for side yard setback relief at 146 John Bliss Rd.

***Brian Smith explained that he wishes to build an addition on the back of his garage (15x28). He does not meet the setback on one corner. He would need an additional 15' feet.**

*No responses from the neighbors.

*No questions from the audience.

*No further questions by the board.

Motion presented to approve the application as submitted by Bob Girardin, seconded by Jim Carmelitano; carried with all in favor; none opposed.

Public hearing closed at 7:10 p.m.

Public Hearing called to order at 7:10:20 p.m.

2. Area Variance Application from Both Side Setbacks for property on Route 86 Tax Map #16.19-2-44.000. Ralph Schissler was present representing the owner, Paul Brooks.

*The board has held two meetings on this application.

*Jerry read an email to the town attorney, James Martineau and the reply received by Robert Guynup as follows:

March 21, 2013-To: James Martineau

The Wilmington Zoning Board of Appeals is considering an area variance for Paul Brooks. Please review the letter from Ralph Schissler, Mr. Brook's legal representative, and advise. I have enclosed the section of the code that applies to non-conforming lots. Also is it possible to make an applicant record a ZBA or Planning Board decision at the county clerk's office to show in the deed.

Mr. Martineau's reply 3 days later:

I would say it could be filed as a miscellaneous document. The lot pre--dates our code. If I remember correctly one was granted for the lot on Haselton Road next to Lawrence's where Mowry is building for the same reason. I believe hence they must grant same.

*Jerry Bottcher stated that a precedent was set at that time on Haselton Road. Previously each application was

*Jerry stated that our previous attorney had said that the State says that anything that pre-dates zoning, the rights to build go with the deed.

*Bob Girardin stated that they always judged each case on its own merit.

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*Property was purchased in 1978. It has never changed hands and nothing has ever been built on it.

*8 of the 10 replies from the neighbors were against the application.

Comments from the public:

Louis Adragna-neighbor; Grand View Motel

*We are in a 1 acre zone.

*We all have to abide by one acre; this is 1/2 acre.

*He also had 10 years prior to the zoning change to build something on that lot.

*When the zoning laws changed we got down to one acre. That should have ended

his opportunity to do it. Grandfathering something from 40 years ago does not make sense to me. It doesn't make sense of have zoning laws then. Plus the property is only 49 ft wide. To support any kind of decent house it is pretty hard to do. He wants to be 10 ft away from the line where would the driveway go. It would probably be a dirt driveway that would affect us. Our view could be affected depending on where they build. As well as privacy with the pool right there; along with the view of Whiteface. It is just too small for a house. We all live in a one acre zone and everyone in the area had to buy one acre.

*Louis was of the opinion that Mr. Brooks originally owned the whole property in that area and sold it off and kept the small portion for himself thinking that the former owner of the Grand View Motel was going to buy it.

*Mr. Fenlon, the owner on the other side of the property in question, was also against the project. He purchased his property in 1996 from High Peaks Properties.

*Louis: to put a home on 1/2 acre is small for this area. This defeats the purpose of having beautiful homes in Wilmington.

Jerry Bottcher feels the issue is the legality of turning this down. The decision of the board can be appealed by anyone.

David Lawrence: Doesn't know the intent of the owner but the lot shouldn't be sold as a buildable lot to a new owner. The owner had the opportunity to build on this lot 10 years before the zoning laws went to effect. Once the lot is sold it should abide by the new laws.

Bob Girardin agreed that he has always been of the opinion that variances should not be given for people to sell but given to the owner. He feels this would be a blatant exception.

Rick Adragna: The board should consider that the board should not give a blanket exception to a setback until they have heard what the intention of the owners are. The board should hear the plans prior to approval.

Ralph Schissler: When it is purchased the purchaser will have to come back to this board to have the plans reviewed. If the plans are not acceptable, they would have to be modified.

Bob Guynup stated the reason for his wish to have the decisions placed in the deed and filed in the County in case there are other people on the board or in his position office.

Jerry Bottcher: This board has the right to very strict conditions on the approval.

Louis Adragna: This would be creating overcrowding his neighborhood.

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Rick Adragna: This would be squeezing another driveway and house in between Max Hunt's and the Motel property.

Jerry Bottcher went over the size of house that could be built there with the current setbacks; 9 ft house....asking for a 50% variance. Setback would be 10' if the variance was approved. The board questioned if they were empowered to grant this.

Jim Carmelitano and Bob Girardin did not like the idea of granting this not knowing what was going to be build there.

Ralph Schissler: Your attorney has brought up the state law issue. You are opening the town and the board up to an Article 78 for a law suit because it is state law. The board has to do this they just need to figure out how to word this to be acceptable to them.

Jerry Bottcher: The board has the option to have this setback area fully screened.

Jim Carmelitano stated that this is a buildable lot as it is and the new owner could come to the board at that time for a variance.

Ricky Adragna: Does not see how you can grant a variance without knowing what it is going to be built there.

Jerry Bottcher reminded everyone that there is an appeal process if anyone wishes to challenge the board's decision.

Bob Guynup stated that there was a 60 day time limit to appeal a decision.

Bob Guynup read the section of the code regarding non-conforming lots.

The Board discussed where a house could be set. Ralph Schissler feels this is something the board cannot address because he meets the front yard setbacks.

Ricky Adragna felt the board could deny the application and let the applicant appeal the decision.

Ralph Schissler stated that according to the town's code and State law, the board cannot deny this application. He stated that if they did not want 10' setbacks they could approve something else.

Ricky Adragna could see a legal issue with granting this application with the new owner coming in and finding things are not as they think.

There was discussion on limiting the height of a building on the property to preserve the view of Whiteface for the adjoining property owners. Also on the area in which a building should be required to be placed. There are already height limits in the code.

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Jerry Bottcher stated that the board is making a compromise to make everyone happy. He stated that he would vote to grant this because of State Law and what the attorney says and that the conditions would help the neighborhood. He also is of the opinion that the building rights follow the deed.

Ricky Adragna does not feel the board should approve the application on the threat of a future lawsuit by the owner. He has no problem with the present owner submitting an application to build and showing what he wishes to build.

Bob Girardin stated that the majority of the neighbors were against this application and are not being considered and someone that we don't even know will be building there. He feels the board should do what they feel is right regardless of the State law.

Bob Guynup read the code regarding non-conforming lots. Jerry Bottcher read the area of the code that regards area variances.

Ricky Adragna asked if the house could be limited to one story.
The board is not allowed to put a height restriction.

Ralph Schissler would not agree to one story; he would agree to 1 1/2 stories.

Motion was presented by Jim Carmelitano to approve the application with the following conditions:

1. The easterly setback (Adragna side) would be 14'
The westerly setback (Fenlon side) would be 10'

2. The setback area would remain screened with live trees;
3. Any building would be located at least even or parallel with the motel as it existed in 2013;
4. The new owner would need to come before this board for plan review prior to the issuance of a building permit.

Motion seconded by Jerry Bottcher:

Roll call vote:

Jim Carmelitano-yes

Robert Girardin-no

Jerry Bottcher-yes

Variance is approved subject to conditions.

Public Hearing closed at 8:45 p.m.

OLD BUSINESS:

Approval of the April 24, 2013 minutes.

Motion to approve by Jim Carmelitano, seconded by Robert Girardin; carried unanimously.

Meeting adjourned at 8:48 p.m.