

Zoning Board of Adjustment Meeting Minutes

Location: Strafford Town Hall Conference Room

Date & Time: June 20, 2024 6:30PM

Voting Board Members Present:

Ashley Rowe – Chairman
Aaron Leff
Jean Chartrand-Ewen

Alternate Board Members Present:

Charlie Burnham

Others Present:

Blair Haney, Strafford Regional Planning Commission, Regional Planner
Robert Fletcher, Minutes Recorder

The Chairman called the meeting to order at 6:30PM and indicated the closing date for new applications to be filed for the agenda for the regular July 18, 2024 meeting is Thursday, June 27, 2024. He recognized Board members Aaron Leff, Jean Ewen, and Charlie Burnham as present.

New Business

Case #24-005 SE. Peter and Heather Heigis are requesting a Special Exception under Article 1.7.1, Nonconforming Use of the Zoning and Land Use Ordinances in order to construct a replacement home that will come within 27.1 feet of Bow Lake, which is closer to the shore of Bow Lake than current ordinances require, but farther from Bow Lake than the currently existing structure. The new structure will have fewer square feet of living area within the required setback from Bow Lake than does the existing structure, and the new structure will be more nearly conforming to current ordinances. (187 Brown's Pasture Road, Tax Map 33, Lot 17).

The Chairman noted that a full Board was not present and stated that the applicant had the right to proceed or delay consideration due to the presence of only four Board members. The applicant chose to proceed.

Tobin Farwell of Farwell Engineering Services, representative for the applicant, described the property as an older lake-front camp with a non-conforming structure that does not meet current setback requirements. A new smaller less non-conforming structure is proposed to be constructed using a portion of the existing structure's footprint. A new septic system was installed in 2018 which incorporates pre-treatment technology. The large impervious driveway will be removed and replaced with a smaller driveway using pervious materials. The applicant will apply for and obtain a shore land permit prior to beginning construction.

Mr. Farwell addressed the Special Exception Criteria as follows:

1. The use, lot, or structure has not been made more non-conforming because:

There is less building area inside the building setback area. Currently there is 954 square feet of building in the building setback area. The proposed plan will have 936 square feet of building area in the building setback area. The existing building is all within the water body setback.

2. The change or expansion of the use is not detrimental or offensive to the owners of adjoining property or to the Town, does not adversely affect nearby property values, does not cause any hazard to health or safety, and does not adversely affect the character of the area in which the use will be located because:

The proposed layout provides a larger buffer to Bow Lake. The new residence will be of greater value thereby improving surrounding property values.

3. The use conforms to all other applicable regulations governing the district:

The use conforms to the agricultural – residential district.

4. The use has an adequate water supply and sewerage system and meets all other applicable requirements of the State of New Hampshire because:

There is a new septic system utilizing the Fujiclean system designed in 2018.

The Chairman asked if the Board members had any questions. Aaron Leff confirmed that the new residence was to be occupied year-round. Jean Ewen questioned the distance from the road to the new structure which was not indicated on the plan. Mr. Farwell estimated the distance to be approximately 65 feet. Charlie Burnham and Jean Ewen expressed concern about the new structure not meeting the 50-foot shoreline setback, and Jean asked if the structure could be moved further back from the shore. Mr. Farwell stated that moving the structure any further back would encroach on the septic system leach field and make it difficult to access to the garage. Charlie Burnham suggested moving the leach field; however, there did not appear to be an alternate location for the leach field due to the lot topography. Charlie stated that meeting the minimum setback is an important requirement to preserve lake water quality. Mr. Farwell believed that the new septic system on the property provided more lake water quality protection than the structure's close proximity to the shore and, in addition, the proposed structure will be less non-conforming regarding shoreline setback.

The Chairman stated that this request for a Special Exception, not a Variance. It is a grandfathered non-conforming structure whose replacement is not more non-conforming. Charlie Burnham and Jean Ewen questioned the determination that this proposal falls under a Special Exception rather than a Variance. The new proposed structure does not completely use the current grandfathered foot print. The Chairman indicated that the State, under a "more and nearly conforming" process, allows expansion of a grandfathered footprint within the 50-foot setback as long as there is some use of the existing footprint and the structure not more non-conforming. The Town Code Enforcement Office determined the request to fall under a Special Exception, and it is not within the Board's authority to change that determination. The Board must approve or disapprove the Special Exception based on meeting the criteria, not on other factors that may be unsatisfactory or undesirable.

The Chairman opened the meeting for public comments at 6:50PM. Heather Heigis, 187 Browns Pasture Rd, stated that the roadway to this property is narrow, and a short/narrow driveway will force vehicles to maneuver in the roadway. There being no further comments, the Chairman closed the

meeting to public comments at 6:51PM. He indicated that the Board received a letter regarding the application which he read for the record as follows:

“The letter is dated June 18, 2024 from Robert and JoAnn Watson at 191 Browns Pasture Rd. This letter is in response to the Application for a Special Exception under Article 1.7.1 Nonconforming Use of the Zoning and Land Use Ordinances brought forward by Tobin Farwell, Farwell Engineering Services. Since we may be unable to attend the meeting, we have a few comments and concerns. During the construction and remodel of our home, we had to abide by the 50-foot setback and modify our plans. Everyone in this area was required to abide by the 50-foot setback regulation. If the proposed new home is allowed to be constructed within the 50-foot setback, the 30-foot building height will likely limit and restrict our view of the lake. We are concerned about the runoff and drainage that might impact our property. With all that said, we are not opposed to the removal of the existing structure and construction of the new home.”

The Chairman asked if Mr. Farwell had any additional comments. Mr. Farwell stated that he was “taken-a-back” by the Board’s negativity regarding the project which reduced the living space and moved the structure 10 feet further back from the shore – a decrease in non-conformity.

JoAnn Watson asked to address the Board; however, the Chairman stated that the meeting was closed to public comment. The Board members had no further questions or comments, and the Chairman asked for a motion to either approve or deny the Special Exception. Aaron Leff made a motion to approve the Special Exception which was seconded by Jean Ewen. Aaron Leff voted in favor, Jean Ewen and Charlie Burnham voted not in favor, and the Chairman was only allowed to vote in case of a tie. The motion did not pass. Jean Ewen asked if the meeting could be reopened for public comments to allow JoAnn Watson to speak. The Chairman indicated this could be allowed if the applicant had no objection. Mr. Farwell did not object, but requested an opportunity to address the Board following any comments.

JoAnn Watson, 191 Brown’s Pasture Rd, indicated that moving the structure back to achieve a 50 foot setback would help preserve lake water quality which is the intent of the regulation. Peter Heigis, the applicant, stated that they purposely moved the structure back 10 feet and installed the new septic system which will result in less impact to lake water quality. The alternative to the proposal is to build exactly on the current foot print which does not provide additional setback. It’s up to the Board to decide the best course of action.

Mr. Farwell stated that he’s worked on a number of projects similar to this one, and the number one factor impacting water quality is the effectiveness of the septic system to reduce phosphates and sulfates. The system on this property is one of the cleanest systems available that incorporates pre-treatment technology. Suspended solids also impact water quality, and the proposed pervious driveway will greatly reduce the entry of these solids into the lake water. The applicant had not decided on the type of driveway surface, and the Chairman suggested use of a maintenance-free technology product.

The Chairman reiterated that a motion to deny the Special Exception must be based on the applicant not meeting the Special Exception criteria. If the Board is not able to approve or deny the Special Exception at this meeting, the applicant has the right to request a continuance. Mr. Farwell requested a continuance, but asked what changes to the proposal would the Board suggest for subsequent consideration. The Chairman suggested placement of an overlay of current and proposed structure location on the plan. Jean Ewen suggested depiction of all setback distances on the plan and changing the driveway to allow further setback of the structure from Bow Lake. She also felt the applicant did not meet the second criteria due to an abutter's objection to the non-conforming shore line setback. Aaron Leff made a motion to grant a continuance to the July 18, 2024 meeting, which was seconded by Jean Ewen and voted upon verbally in the affirmative by all Board members. The motion passed.

Case #24-006 VAR. KRJ Finance, LLC is requesting a Variance under Article 1.9.1 to the requirements of Article 1.4.1, Section A, Frontage, of the Zoning and Land Use Ordinances in order to allow the merger of Tax Map 37, Lots 54 through 62 to create one building lot with less than the 200 feet of frontage required by current ordinances. (Leavitt Lane, Tax Map 37, Lots 54 through 62).

Mike Whitcher indicated the need for a continuance, because the surveyor, Chris Berry of Berry Surveying & Engineering, was not present at the meeting. However, the Chairman did not ask for a continuance motion, but briefly described the circumstances which result in the need for a Variance as follows:

- KRJ Finance purchased Lots 54 through 62 and 50-foot roadway area providing access to the lots.
- KRJ Finance proposes the merger of all the lots and roadway area into one large building lot.
- The merger will result in only 50 feet of frontage for the single lot at the termination of the current roadway-Leavitt Lane.
- Ordinance standards regarding lot mergers require merged lot(s) meet the current 200-foot frontage minimum.
- The current lot configuration with lack of an access roadway also does not meet the Ordinance standard.
- The Town Planning Board cannot approve the lot mergers without Zoning Board of Adjustment approval of a Variance for less than required lot frontage.

The Chairman opened the meeting for public comment at 7:29PM. Jessica Arneil of 36 Beaver Road expressed concern regarding the following:

- Adherence to covenants applicable to all properties in the subdivision. The Chairman indicated that this would be a civil matter to be addressed when non-compliance is evident.
- Creating a back lot after lot mergers. The Chairman indicated the a back lot would not be authorized, because the new single lot was created after the back lot Ordinance was adopted.
- Narrow roadway prior to proposed lot merger presents safety concerns with additional residential traffic.
- Merger of nine lots into one lot will reduce potential subdivision Association per-lot dues.

- Due to the short time between meeting notification and the meeting, the subdivision association would need more time for legal consultation and presentation to the Board before their decision. The Chairman advised Jessica that an abutter was not allowed to request a continuance, but would have the right to appeal the Board's decision which would stop all further consideration until the appeal was heard.

Tony Spadafora of 38 Leavitt Lane expressed concern about vehicles turning around in his driveway at the end of Leavitt Lane, and a cul-de-sac is needed to eliminate this problem. He was also concerned about any further subdivision of the merged area and addition traffic. Mr. Witcher indicated that he just wanted to make one building lot and build a nice house on the 14 acres. Jean Ewen stated that the single lot might support a multi-residential unit.

The Chairman suggested the abutters address most of these concerns with the Planning Board when they consider the lot merger.

Mr. Leavitt, son of the family who initially sold the land, provided some background on the subdivision.

There being no further comments, the Chairman closed the meeting to public comments at 7:48PM. The applicant had requested a continuance earlier, and the Chairman asked that the applicant have the surveyor provide a sketch with a building site and driveway location for the next meeting. Jean Ewen made a motion to grant a continuance to the July 18, 2024 meeting which was seconded by Aaron Leff and voted upon verbally in the affirmative by all Board members. The motion passed.

Other Business

The Chairman asked the Board to review the minutes from the May 16, 2024 meeting. Jean Ewen made a motion to accept the May 16, 2024 meeting minutes as written, which was seconded by Aaron Leff and voted upon verbally in the affirmative by all Board members. The motion passed.

There being no further business before the Board, the Chairman called for a motion to adjourn. Aaron Leff moved to adjourn, which was seconded by Jean Ewen and voted on in the affirmative by all Board members. The meeting adjourned at 7:49PM.