



6/15/2021 - Minutes

1. CALL TO ORDER

- S. Bogert read aloud the ZOOM meeting information.
- S. Bogert called the meeting to order at 6:38 PM

2. ROLL CALL

- Present: S. Bogert; M. Foote; R. Maheu; G. Ober; M. Dellavecchia (6:52 PM)
- Alternates: M. Hayward, J. LaRoche
- Alternate M. Hayward was seated as a voting member. It was noted that M. Dellavecchia was going to be late, M. Hayward will be seated as voting member until his arrival.

3. RECORDING SECRETARY

- K. Santoro, Zoning Technician

4. STAFF IN ATTENDANCE

- D. Trefethen, Director of Planning & Community Development

5. ACCEPTANCE OF MINUTES FROM PREVIOUS MEETINGS

- 5.I. May 18 2021 Zoning Board Of Adjustment Meeting Minutes (PDF)
 - R. Maheu made a motion to accept the minutes of May 18, 2021 as presented.
 - M. Hayward seconded the motion.
 - All in favor.

6. EXTENSIONS

- 6.I. ZO2019-0021EXT Endicott St East Extension Request (PDF)
 - Clarke Fenner, President & CEO of NESG and Michael Redding, Vice President of Engineering & Operations at NESG presented their request for extension of the special exception to allow the installation of a photovoltaic solar array. They explained that there were changes to the rules regarding solar and it delayed their permitting process to install the array.
 - G. Ober made a motion to grant the extension request to December 30, 2021 for application ZO2019-0021 Endicott St East.
 - R. Maheu seconded the motion.
 - All in favor.

7. CONTINUED PUBLIC HEARINGS, CONSIDERATION AND POSSIBLE VOTE Note: The Purpose Of This Agenda Section Is For The Board To Continue The Public Hearing For The Applicant And The Public To Provide Input. The Board May Also Deliberate The Application, Decide And Conduct A Final Vote At This Time.

- 7.I. ZO2021-0005VAR 57 Eastman Rd Variance (PDF)
 - G. Ober made a motion to grant the request to continue application ZO2021-0005 VAR for 57 Eastman Rd to the July 20, 2021 meeting.
 - M. Foote seconded the motion.
 - All in favor.

- 7.II. ZO2021-0018SE 33 Clearwater Place Special Exception (PDF)
 - M. Foote made a motion to grant the request to continue application ZO2021-0018SE 33 Clearwater Place to the July 20, 2021 meeting.
 - M. Hayward seconded the motion.
 - Four in favor. One opposed (G. Ober)

8. PUBLIC HEARINGS, POSSIBLE CONSIDERATION AND VOTE Note: The Purpose Of This Agenda Section Is For The Board To Have A Presentation From The Applicant And Open A Public Hearing For The Public To Provide Input. The Board May Also Deliberate The Application, Decide And Conduct A Final Vote At This Time.

- 8.I. ZO2021-0022VAR 44 Indian Path Variance (PDF)
 - Paul Cady, agent for the applicant, presented the application for the variance. He noted that overall the project will reduce the impervious surface, the relocation of the hot tub and expansion of the steps will make the lot more functional, safer and reduce the impact by moving further back from the shoreland. He noted that due to the small nonconforming size of the lot that it is nearly impossible to make improvements without relief from the Board.

The Board briefly discussed the application.
[M. Dellavecchia arrived (6:52), M. Hayward will remain seated as voting member until the completion of action on current application before the Board.]

At 6:56 PM S. Bogert opened the public hearing.
At 6:57 PM with no one to speak for or against the application, S. Bogert closed the public hearing.

M. Foote noted that any motion should be conditioned with the owner/applicant obtaining a Shoreland Permit.

G. Ober made a motion to approve application ZO2021-0022VAR 44 Indian Path (180-516-17) for a Variance from Article IV Section 235-19 to allow for the installation of a covered pavilion, expanded steps and a relocated hot tub.

- 1. Granting the variance would not be contrary to the public interest because:
 - It is consistent with the spirit of the ordinance.
- 2. If the variance were granted, the spirit of the ordinance would be observed because:
 - It would not alter the basic goals of §235-19. It will also not adversely affect the essential character of the neighborhood and poses no threat to the public health, safety or welfare.
- 3. Granting the variance would do substantial justice because:

Denying the variance would not provide any benefit to the general public that outweighs the benefit to the applicant. Additionally, substantial justice will be done because the construction and relocation of the pavilion, the addition of the steps and relocation of the hot tub will reduce the overall impervious surface of the lot.

- 4. If the variance were granted, the values of the surrounding properties would not be diminished because:
 - The granting of the variance has no deleterious effect on the surrounding neighborhood.

5. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one because:

The hardship is there is no fair and substantial relationship between the general public purposes of the ordinance and the request; the proposed use is a reasonable one.

R. Maheu seconded the motion.

All in favor (5-0)

8.II. ZO2021-0023VAR 228 Paugus Park Rd Variance (PDF)

Applicant for the agent, Steven Smith, outlined the application to the Board. He outlined the existing conditions and the proposal to demolish the existing nonconforming home and garage and replace them with a new structure that will conform to side setbacks, is farther away from the lake but will encroach into the front setback. He did note that they have received their Shoreland Permit from DES. Steve Smith informed the Board that they prioritized the buffer. The design is substantially better and allows for off street parking.

At 7:12 PM S. Bogert opened the public hearing.

At 7:13 PM with no one to speak for or against the application, S. Bogert closed the public hearing.

The Board briefly discussed the application. Members commented that it is a good plan for a small lot.

G. Ober made a motion to approve application ZO2021-0023VAR 228 Paugus Park Rd for a Variance from Article VI Section 235-35A Front setback to allow for the replacement of a nonconforming residential structure with attached garage, with a more conforming residential structure with attached garage and deck.

1. Granting the variance would not be contrary to the public interest because:

This lot is 1/3 rd. the size of a lot currently permitted in this Zoning District. The subject lot was created in 1944 as part of the original Paugus Park Shores Subdivision and was developed prior to the adoption of Zoning. The footprint of the proposed new residential structure attached garage and deck will be substantially more conforming than the existing structure. The new layout will meet the side setback requirements and waterfront buffer for the RS Zone, provide for parking on site and has been granted a shoreland permit by the NHDES.

2. If the variance were granted, the spirit of the ordinance would be observed because:

The proposed new residential structure will eliminate side setback violations, waterfront buffer impacts and reduce the front setback violation substantially providing protection for the abutting residential lots and the surrounding neighborhood while allowing the owner reasonable use of their property.

3. Granting the variance would do substantial justice because:

It would allow the owners reasonable use of their property while protecting the abutting property owners by maintaining the required side setback and Paugus Bay by maintaining the Waterfront Buffer. Additionally, it will promote public health, safety and welfare and protect the essential character of the neighborhood.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The new proposed residential structure will meet all Building and Life Safety Codes. The structure will be substantially more conforming. The side setback violation will be eliminated. The waterfront buffer will be maintained, and the proposed new structure will be in keeping with the numerous new residential structures along Paugus Road.

5. Unnecessary Hardship:

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

The proposal is to remove the existing nonconforming residential structure, deck, garage and shed and construct a new residential structure, attached deck and garage substantially more conforming on a preexisting nonconforming lot. Because of the existing nonconforming situation, applying a rigid interpretation of the requirements of the Zoning Ordinance would make it impossible for the owners to have reasonable use of there property as has been allowed along Paugus Park Road.

i. No fair and substantial relationship exists between the general public purposes of the ordinance provisions and the specific application of that provision to the property because:

The Zoning Ordinance was adopted in part to promote good civic design and the appropriate use of land and buildings. The Ordinance recognizes the need- even in the Shoreland Protection Overlay District to treat nonconforming lots in a manner different from conforming lots. The unusual configuration of the owner's property is such that the existing residential structure could not be built upon the lot let alone the proposed structure. The owners' proposal is designed to do exactly what the Zoning Ordinance promotes, good design to use the property in a safe and appropriate manner in a way that improves overall safety and does not disturb the neighborhood or the neighbors.

ii. The proposed use is a reasonable one because:

The replacement of the existing nonconforming structure with a substantially more conforming residential structure that meets both current Building and Life Safety Codes is reasonable. Keeping the new residential structure substantially within the required setbacks is reasonable. The owners have designed and located the new residential structure in a manner which limits any additional impacts to abutters and the surrounding neighborhood, protects the waterfront and lessens the impact on Paugus Park Road by increasing the front setback and will be in keeping with the numerous new residential structures along Paugus Park Road.

b. If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The owners believe the criteria in subparagraph (a) are establish, nevertheless, this particular property presents some very difficult conditions. This zone requires a (and area of 40,000sf with a front setback of 25 feet, side setback of 10 feet, and a rear setback of 15 feet. The subject site contains only 12,562sf, one third the size required within this zone. Additionally, this zone requires only a 15 rear setback but because the subject property fronts on the lake the rear setback becomes 50 feet eliminating 35 feet of building area or 3,000sf. Given these challenges the owner has proposed a new residential structure that will be keeping with the numerous new residential structures along Paugus Park Road. They have done their best to locate the structure thereby minimizing the proposed nonconformity and protecting the immediate abutters and Paugus Bay. In addition, the owners are using porous technology, and infiltration trenches to capture treat and recharge the ground water to further protect Paugus Bay. The variance request for the replacement structure is made necessary because of these special conditions of the property.

S. Bogert seconded the motion

All in favor. (5-0)

G. Ober briefly left the meeting. (7:16PM)

M. Hayward was reseated as a voting member for the next application.

8.III. ZO2021-0024VAR 99 McGrath St Variance (PDF)

Applicant Ryan Dickson outlined his request for a variance of the side setback to allow for the construction of a dormer on his home to expand the living space. He explained the home was built in 1940, and is partially in the side setback. The addition of the dormer will not extend past the current footprint, nor will it go above the existing ridge line.

At 7:20 PM S. Bogert opened the public hearing.

At 7:21 PM with no one to speak for or against the application, S. Bogert closed the public hearing.

The Board discussed the application and noted that it is a reasonable expansion that does not expand or impact the current footprint and allows for additional living space.

M. Foote made a motion to approve application ZO2021-0024VAR 99 McGrath St for a Variance from Article IV Section 235-35B Side and Rear Setbacks to allow for the construction of a dormer on the north side of the home.

1. Granting the variance would not be contrary to the public interest because:

Construction of proposed dormer would increase the appearance and value of the home, therefore increasing curb appeal and overall neighborhood curb appeal.

2. If the variance were granted, the spirit of the ordinance would be observed because:

The ordinance is in place to prevent encroachment upon nearby properties and neighborhood congestion, the proposed construction will not further encroach any neighboring properties.

3. Granting the variance would do substantial justice because:

It would allow the owners reasonable use of their property. The variance should not negatively affect the general public in any way, but will benefit the applicant by making the space in the home much more useable.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

Construction of the proposed dormer will only enhance property and neighborhood appearance, and it will not exceed the height or footprint of the existing building. Proposed dormer will not encroach on neighboring properties.

5. Unnecessary Hardship:

The lot is very small and undersized for the RG Zone. The proposed use is a reasonable one because the purpose of the construction is to merely increase useable living space and headroom in the home, not to alter the use of the property.

M. Dellavecchia seconded the motion.

All in favor (5-0)

G. Ober returned, M. Hayward returned to alternate.

8.IV. ZO2021-0025VAR 126 Clinton St Variance (PDF)

Applicants Daniel and Julie Fallon outlined their request to allow agricultural animals (goats and ducks) on their lot located at 126 Clinton St. They explained that their lot is unusual for the zone as it is nearly ten acres (9.8). The applicants noted that they are requesting 2-3 goats and 4-6 ducks, as pets for their family.

M. Foote asked if they were planning on any chickens, guinea hens, etc. The Fallons restated that they are only requesting for goats and ducks, no chickens, roosters, etc.

At 7:38 PM S. Bogert opened the public hearing.

At 7:39 PM with no one to speak for or against the application, S. Bogert closed the public hearing.

G. Ober stated that she does not support agricultural animals in a residential zone. The ordinance is fairly new and she does not want to set a precedent. M. Dellavecchia stated that they have over 9 acres, he recommends that they be allowed the animals, it is a unique lot, a large property and they are asking for a small number of goats and ducks. He commented that this is why we have the variance process, for the unusual situations.

S. Bogert commented that they need to look at the property, the special circumstance in this case being the large lot size. He noted one size does not fit all.

G. Ober noted that it is a unique lot. M. Foote commented that they have enough room, it would not be impacting residents. Possible conditions were discussed, including limiting the number of animals, that the variance would cease if the owners sold or subdivided the property.

The Board discussed the resurgence of Lakeport and the impact of the ordinance.

G. Ober made a motion to deny application ZO2021-0025VAR 126 Clinton St for a Variance from Article II Section 235-28 Uses Not Permitted to allow for the housing of agricultural animals.

1. Granting the variance would not be contrary to the public interest because:

It is contrary to the public interest, Council does not want agricultural animals in residential zone.

2. If the variance were granted, the spirit of the ordinance would be observed because:

The spirit of the ordinance will not be observed as this would be detrimental to the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

Substantial justice would not be done as there could be a loss to the general public in the long term.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The value of surrounding properties may or may not be diminished.

5. Unnecessary Hardship:

There is no hardship, the criteria have not been met.

R. Maheu seconded the motion.

Three in favor (G. Ober, R. Maheu, S. Bogert); Two opposed (M. Foote; M. Dellavecchia)

8.V. ZO2021-0027VAR 206 Belvidere St Variance (PDF)

Applicant Jay Carignan outlined his application to the Board. He is requesting a variance for lot frontage to allow a subdivision of his lot. He explained his current lot has 90' of road frontage. The new lot would have 15' of frontage and the remaining lot would have 75' of frontage.

At 8:09 PM S. Bogert opened the public hearing.

At 8:10 PM with no one to speak for or against the application, S. Bogert closed the public hearing.

The Board discussed the application. The members noted that it would create two nonconforming lots, not just one. Each lot is required to have 80' of frontage, the remaining lot would only have 75' also making it a nonconforming lot. G. Ober asked if a detached Accessory Dwelling Unit (ADU) would be an option.

D. Trefethen clarified that the road frontage requirements were put in place primarily to control density.

M. Dellavecchia noted that several lots in that area are deep, if everyone did this it could become very crowded. The board asked if it would meet all other lot requirements (size, density, etc.). It would meet the other requirements as outlined on the sketch. It was noted that if, when calculated, greenspace were an issue, the proposed lot line could be adjusted slightly to meet this requirement.

M. Foote made a motion to approve application ZO2021-0027VAR 206 Belvidere St for a Variance from Article VI Section 235-34 Minimum Lot Frontage to allow for the subdivision of a lot.

1. Granting the variance would not be contrary to the public interest because:

It is not contrary to the public interest, it is a large deep lot and utilities already exist, and increasing housing availability.

2. If the variance were granted, the spirit of the ordinance would be observed because:

The spirit of the ordinance is being observed as it will increase housing availability.

3. Granting the variance would do substantial justice because:

Substantial justice will be done by increasing housing availability and giving homeowner the ability to utilize the lot.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The value of surrounding properties would not be diminished as a new structure would be built to current building codes.

5. Unnecessary Hardship:

The request is in character with the neighborhood, it has no fair and substantial relationship with the general public, the lot is deep and can support it. The request is a reasonable one.

G. Ober seconded the motion.

Two in favor (M. Foote; R. Maheu); Three opposed (G. Ober; S. Bogert; M. Dellavecchia)

S. Bogert made a motion to deny application ZO2021-0027VAR 206 Belvidere St for a Variance from Article VI Section 235-34 Minimum Lot Frontage to allow for the subdivision of a lot.

1. Granting the variance would not be contrary to the public interest because:

It is contrary to the public interest, it starts to carve out lots and change the character of the larger lots.

2. If the variance were granted, the spirit of the ordinance would be observed because:

The spirit of the ordinance is being observed by denying the variance as there are minimum requirements that keep neighborhood in the same character.

3. Granting the variance would do substantial justice because:

Substantial justice will be done by denial as the rules are being followed and the character of the neighborhood is maintained.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The value of surrounding properties may or may not be diminished.

5. Unnecessary Hardship:

There is no hardship, the criteria have not been met. Lot is currently a conforming lot, would be creating two nonconforming lots.

R. Maheu seconded the motion.

All in favor (5-0)

9. OTHER BUSINESS

9.I. Motion To Rehear Application ZO2021-0013SE Watson Rd (PDF)

The Board discussed the request to rehear the Watson Road application for the use as a campground. G. Ober stated she supported the request as she is concerned about traffic and that she argues that it is not a campground, it's a manufactured home park. M. Foote noted that the spaces are leased annually, it is not condominiumized.

S. Bogert responded to the type of use, he noted that the Planning Department is the one that told the Board that this is the type of use. He also noted that the Planning Board would review the traffic concerns at their level, this is for the use only.

G. Ober read aloud the definition of a campground, Once the units are built around with deck, etc they have to be sold, not moved. S. Bogert read the description of a camping unit. He noted that the challenge is more an administrative challenge. The Board discussed if new information was presented in the request for rehearing. S. Bogert noted that there was no new information provided.

G. Ober made a motion to rehear Application ZO2021-0013SE Watson Rd.

Reason for the motion is based on the information provided to the Board and the belief that it is not a campground, it is an RV park, and that the decision made by the Board was in honest error.

It was noted during discussion of the motion that there is a definition of a campground in the Ordinance, but there is not a definition for an RV park. G. Ober read definition of campground; S. Bogert read aloud the definition of camping unit from the Ordinance.

Motion failed due to lack of second.

M. Foote made a motion to deny the request to rehear Application ZO2021-0013SE Watson Rd.

Reason for denial: No new information was provided; units could be removed, they are not permanent; and the issues of concern that have been raised will be addressed at the Planning Board level.

M. Dellavecchia seconded the motion.

Four in favor; one opposed (G. Ober)

G. Ober asked, as part of Other Business, that, in regard to Short Term Lodging, that examples of evidence that the Board is looking for when reviewing a Special Exception for Short Term Lodging. D. Trefethen noted that administratively the application can be updated to include examples.

D. Trefethen addressed the Board. He requested a consensus of the Board regarding ZOOM. The Board briefly discussed the ZOOM option. It was the consensus of the Board that the Board return to full "in person" meetings and discontinue ZOOM. It was noted that if in the future, the circumstances dictate, this could be reconsidered.

10. ADJOURNMENT

At 9:06 PM M. Dellavecchia made a motion to adjourn the meeting.

G. Ober seconded the motion.

All in favor.