

CG *Paul*

## APPEALS BOARD

### PUBLIC HEARING MEETING MINUTES

Tuesday Oct. 10 2023

#### Board members present:

Michael Smith-Chairman

Chris Gilpatrick-Vice Chairman

Mike McChesney-Alternate

#### Public Present

Colleen Fleming-applicant

Glenn Griswold- Applicants Rep.

Steven Serewicz - Abutter

Andy LePage-Planning Board rep.

Kerrie Fleming – Daughter

L. Gaddini

### Minutes

Pledge of Allegiance.

Chairman, Mike Smith assigns Mike McChesney as a voting member to participate in hearing. Chairman, Mike Smith then asks if there are any conflicts of interest in the hearing with the present board members (Robert Travers was absent from proceedings). Mike McChesney states he is familiar with a property abutter present at the meeting, the gentleman delivers Mike's propane and there is no other relationship between the two gentlemen. Chairman Mike Smith asks if Mike McChesney can participate in hearing without bias. and Mike says yes. The board is asked if they have any issues with Mike participating, no one had any concerns. The applicant Colleen Fleming was asked she had any issues with proceeding with Mr. McChesney participating in the hearing, to which she had none.

Vice-Chairman, Chris Gilpatrick makes a motion to open the public hearing. Mike McChesney seconds his motion. The board votes all in favor.

Chairman Mike Smith discusses the response of Jeff Kalinich, Department of Environmental Protection's to the proposed hearing for setback variance. The DEP has no jurisdiction on setback variances and had no issues with the proposed structure being built. Chairman Mike Smith verifies all documents required were received from applicant. Chairman Mike Smith states to Colleen that this a hearing based on law and local ordinances and not the opinion of any board members. Mr. Glenn Griswold a project manager with Norway Plains Associates INC. is Colleen Fleming's representative and begins his presentation. He explains that this is a lot of record that was divided prior to the establishment of the local ordinances, and that is the reason that the project cannot meet the required setbacks. He further explained that the

house is placed as far back from boundaries as possible maintaining Colleen Fleming's design and size. Mr. Griswold also states the closest corner of the house to any boundary line would be 10ft 6in. from the driveway of abutter Steve Serewicz. All other corners are as far from boundaries as possible.

Mr. Griswold states the planning board was happy with the placement of the house except for not meeting the setback requirements. Mr. Griswold asks if there are any questions.

Vice-Chairman Chris Gilpatrick nor Chairman Mike Smith had any questions

Mike McChesney asked if lot was sold under the premise, that it could be built upon? Colleen answers yes, Mike states no one said the size of the structure that can be built on it? Colleen states she believes in has to be under 1500ft. Mike states he doesn't see where the abutters well or septic is. Mr. Griswold points them out to Mike. Chairman Mike Smith asks if this is all city water Mr. Griswold explains that there is a city waterline from Milton under the ground but no one knows where it is the only property Mr. Griswold believes that uses that line abutter, Steve Serewicz.

Mike McChesney asks if it has to be the size that it is and could the garage be eliminated to increase the distance from the road.

Colleen states she would prefer not to. Mike McChesney states you are not giving much. Colleen states that it will be consistent with the other houses in the area. Mike states those were built prior to the ordinance. Colleen states that the planning board could have given her approval for the sideline setbacks and the only setback in play is the road side setback. Mr. Griswold states the abutter's Steve Serewicz house is completely within the setback. Mike McChesney states we aren't here for Steve Serewicz house. Mr. Griswold states that if they were to go with a much smaller house, they wouldn't be able to use the design that they are looking for and would have to go back to the architect to have it redesigned and it would significantly impact what they want to do with their property. Mike McChesney says he sees them pushing the setbacks quite a bit knowing that the lot was small in the first place. It was purchased as a non-conforming lot knowing that it may not be able to have this put on it. Colleen Stated that is not what she believed when she bought it. She was told it was a non-conforming lot and everything happened prior to and it was a buildable lot and it was to be a minimum of 1500ft. the house won't be very big, the house next to us is 1300 sq ft. Mike M. states we aren't here for that. Colleen states that this is a full-time home to us it will not be a vacation home and she has a husband with a disability and everything has to be on first floor and she doesn't think this house is out of character for the area. Mike McChesney emphasizes these are just his concerns, Mr. Griswold points out that the garage size was reduced to a single car size from the original design. Mike McChesney states this will set precedence for everyone else that wants to build on a non-conforming lot. Mr. Griswold states that other properties with existing buildings have similar setbacks. he believes that are balancing requirements with what the town has allowed and it would be no closer than any of the other houses in the area, in fact they would be further back than some of the abutters. Mike McChesney explains those houses were built prior to the ordinances being in place and you were aware of it when you bought the property. Colleen asks if the Board is trying to tell me I shouldn't be able to build on the property Mike McChesney states he is trying to have it settled in his mind why he should give you a variance. Mike M.

asks if he is out of line and Colleen says no. Vice-Chairman Chris Gilpatrick states he agrees with Mike McChesney if you allow one person to not follow the ordinance then you must allow everyone. Colleen states the planning board already said it is a buildable lot. Chairman Mike Smith agrees it is a buildable lot. Colleen states this design meets all your requirements. Chairman Mike Smith states the non-conforming lot allows you to build on the lot and not meet the 2-acre minimum requirement. It also states in the ordinance that you must obtain a variance if setbacks are not met. Colleen would like to see it in the ordinance. Chairman Mike Smith reads the ordinance and confirms that a variance will be needed from the appeals board Colleen disagrees and asks for it to be re-read. Mr. Griswold asks if the planning board can approve sideline distance and Chairman Mike Smith states not if it doesn't meet the setback requirements. Chairman Mike Smith has Colleen read the ordinance herself and hands her a copy. Chairman Mike Smith states we are not here for a planning board decision as this was tabled at the planning board to obtain a variance for setback requirements prior to proceeding. Colleen believes side setback can be approved by planning board. Both Mr. Griswold and Chairman Smith express their interpretation of the ordinance is that a variance is needed for side setbacks. Chairman Smith states to Colleen that we will agree to disagree and that even her representative agrees a variance is needed and he confirms that. Mr. Griswold states with the requirements of the ordinance the lot is not buildable.

Colleen asks Mike McChesney how close he and her abutter Steve Serewicz are. Mike States he delivers propane to my business. Colleen states so we cannot meet the setbacks so it is not a builder lot but was sold as a buildable lot and is taxed as a buildable lot. Chairman Mike Smith confirms it is a buildable lot in the regard to not meeting the 2-acre minimum requirement. Chairman Mike Smith also goes on to explain the difficulty in obtaining a variance meeting the four requirements. Colleen states go ahead and do what you need to do and it will be appealed to Superior Court. Colleen states this would have been nice to know at the planning stage at the planning board prior to spending all this time and money. Vice-Chair Chris Gilpatrick states it is too bad no one told you about setbacks. Colleen states it is a buildable lot and it's on record with both the planning board and the appeals board. Chairman Mike Smith asks the public and board if there are any more questions to the applicant or their representative. Being none the hearing move on to the planning board portion of the hearing.

Mike McChesney asks Andy LePage, Planning Board Chairman, about a change of use where it was an access to the lake for the old marina. Andy says no that non records were found of it ever being a business.

Mr. Griswold confirms there are no easements. Chairman Mike Smith asks if there are any more questions from board to the planning board being none. We move to the public. Any questions from public to planning board? Being none, we move on to the rebuttal from applicant.

Vice-Chairman Chris Gilpatrick states he agrees with Mike McChesney on setbacks. Colleen asks about other cases and if there were any. Mike McChesney says no and Vice-Chairman Chris Gilpatrick corrects him about the case on Shapleigh Rd. Mr. Griswold asks if there was a setback issue and was told yes and a variance was not granted. Chairman Mike Smith informs Colleen of her right to abuttal and she states no you are going to deny it anyway. Vice-Chairman Chris Gilpatrick informs Colleen that it isn't what we want to do, it's what the town tells us what they want us to do. Colleen asks more questions to Andy on

the planning boards feelings on where the house would sit and if the house was in the best possible location and Andy agrees with her with the ability of them having to approve it. Colleen confirms what Andy has said and asks if the information was shared with the appeals board. Chairman Mike Smith confirms it was and that he watched the planning board meeting when he was asked by Colleen. Colleen also asks if Chairman Mike was aware of the drainage discussions and he said yes. Chairman Mike Smith Reminds everyone we are here for a setback variance. Colleen states the property is unique and is the best possible fit and is under the required 1500sqft. Colleen mentions she wants to be on the appeals board and how we got on this board Mike McChesney says you need to fill out an application and she asks if he did and he said yes. Mr. Griswold begins to discuss what size structure can be built on the property and Mike Smith says we are here for a setback variance not to discuss what can be built on the lot. Colleen states we do have the ability to grant variances. Chairman Mike Smith says we absolutely do when the requirements are met. Colleen states well two people are not willing to. Chairman Mike Smith tells Colleen that is not true and when she is done with her rebuttal, we will proceed with reviewing the 4 questions, deliberate and have a vote. Colleen states she doesn't feel there will be any deliberation. Chairman Mike Smith asks Colleen if she is done with her rebuttal and she says yes. Chairman Mike Smith asks for a motion to close the public hearing. Vice-Chairman Chris Gilpatrick makes a motion to close the public hearing. Colleen asks when will she find out the decision? Chairman Mike Smith explains the process it can be up to 35 days for decision and she must be informed in 7 days of the decision. Colleen expresses appreciation if we could just make a decision tonight.

Mike McChesney seconded the motion to close the hearing. The hearing was closed with all members in favor.

Chairman Mike Smith explains the deliberation process and that public participation is over. He also encourages everyone to stay for the deliberation.

Mike McChesney is confirming where the shoreline setback is. Vice-Chairman Chris Gilpatrick agrees with Mike McChesney.

Chairman Mike Smith expresses his agreement with both Chairman Mike Smith and Vice-Chairman Chris Gilpatrick and asks if they are ready to review the questions and vote.

Chairman Mike Smith reads the question allowed and asks Vice-Chairman Chris Gilpatrick for his vote.

Mr. Griswold brings up another project and is informed that public participation is over and the hearing is closed and we are proceeding with deliberation.

Question D.

The hardship is not the result of the action taken by the applicant or a prior owner of the property

Vice-Chairman Chris Gilpatrick answers No

Michael McChesney No

Chairman Mike Smith No

Question C

The granting of a variance will not alter the essential character of the locality.

Vice-Chairman Chris Gilpatrick - No

Mike McChesney-No

Chairman Mike Smith-Yes

Question B

The need for a variance is due to the unique circumstances of the property

Vice-Chairman Chris Gilpatrick-Yes

Mike McChesney-Yes

Chairman Mike Smith-Yes

Question A

The Land in Question cannot yield a reasonable return unless a variance is granted.

Vice-Chairman Chris Gilpatrick -Yes, a reasonable return can be yielded

Mike McChesney-Yes, a reasonable return can be yielded

Chairman Mike Smith-Yes, a reasonable return can be yielded

Chairman Mike Smith tells Colleen that the four requirements have not been met to grant a variance and therefore her variance has been denied. Colleen asks how she goes about appealing to Superior court. Chairman Mike Smith tells her she can get that from Jenn Griffin Code and Land Use Admin.

Chairman Mike Smith makes a motion to adjourn meeting Mike McChesney seconded the motion and all board members ~~all board members~~ in favor and meeting is adjourned.

