



**ZONING BOARD OF ADJUSTMENT
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Meeting Minutes
July 28, 2011

Members in attendance: James Smith, Mike Tabory, Lue Snyder, Rob Sylvester, Bob Srnec.

Public in attendance: Joan Tasker Ball, Robert Gourlay, Linda Semco, Judy Gourlay, and Art Nickless.

Chairman James Smith called the meeting to order at 6:00 pm.

The Pledge of Allegiance was recited.

Lue Snyder stated that she was told that the members of the ZBA could have a meeting with the Town Attorney to explain the laws and the roles and responsibilities of the ZBA.

Discussion was held on Local Government Center (LGC) and Office of Energy and Planning (OEP) conferences held throughout the year for Zoning and Planning. Wendy Keane stated that she will keep the Board informed of upcoming conferences.

Case 2011-1: Joan Tasker Ball, property owner, is requesting a variance from Article VII, Section 3D of the Milton Zoning Ordinance to permit a garage on lot which does not meet the setbacks as required in the Table of Dimensional Requirements. Property is located at Map 38, Lot 35, 260 St. James Ave, Milton, NH.

Ms. Ball stated that she has been having mobility problems and has fallen a few times and would like to place the garage on her property as an aide to her. The garage would be most beneficial during bad weather. The garage would not inhibit anyone's view and would have doors opening on both ends for a clear view through to the property.

Bob Srnec asked if the garage is going on her immediate property where the primary home is located. Ms. Ball state that it will be on the parcel on which her home sits. Bob Srnec stated that he has a problem with the 4' setbacks to the sides and that no abutter has brought forth any concerns or approvals.

Mike Tabory inquired if there have been any surveys lately on the property. Ms. Ball stated there has not been recently, however a survey was done by Top Notch Property in the 70's and the markers are in place.

Bob Srnec stated again that he would like a letter from the abutting neighbor stating that they are not adverse to the proposed garage and are aware of the setbacks.

Mike Tabory stated that according to the drawing the garage will not be attached to the home. Ms. Ball stated that there is a wheelchair ramp in place and she would like to keep that in place for easier ingress and egress from her home, and place the garage door close to the end of the ramp.

Chairman Smith inquired if there was any further information or questions. There being none:

MOTION: Bob Srnec moved to enter in to executive session, seconded by Rob Sylvester. Motion carried 5-0.

The Board unanimously agreed to vote on each criteria of the application individually. It was noted that one failing criteria would thereby deny the application in its entirety.

1. The Variance will not be contrary to the public interest because:

Bob Srnec stated that he does not believe it will be a public safety issue and would not affect the view more than the house already is. Mike Tabory stated that based on the general character it is in keeping with the general area. Lue Snyder stated that the garage would be located on the same parcel as the home and not inhibit anyone's views of the water.

MOTION: James Smith moved to approve item #1. Seconded by Rob Sylvester. Motion carried 5-0.

2. The spirit of the ordinance is observed because;

Chairman Smith stated that it is his opinion that this case is not violating the spirit of the ordinance and that the ordinance and variance option is in place to protect neighbors. Neighbors are notified by certified return receipt letters to the date and time of the hearing and have the option to reply, attend the hearing, or do nothing at all. Bob Srnec stated that he would vote no until there is a letter from the neighbor saying they do not have a problem with it.

It was clarified that conditions could be placed on any motion of approval.

MOTION: Rob Sylvester moved to accept condition 2, provided there is a letter of support provided from abutter whose property the encroachment upon the setbacks will affect, within 30 days. Seconded by Lue Snyder. Motion carried 5-0.

3. Granting the variance would do substantial justice because:

Chairman Smith stated that in addition to this being a request for a garage, it is also a quality of life issue for the applicant who has been experiencing physical limitations. The proposed garage would allow Ms. Ball to continue with normal activities during inclement weather. **MOTION:** Bob Srnec moved to approve criteria #3. Seconded by Rob Sylvester. Motion carried 5-0.

- 4.) The values of surrounding properties are not diminished because.

Chairman Smith stated that being a resident on St. James Ave, he can attest that this is typical of the neighborhood.

MOTION: Mike Tabory moved to approve criteria #4. Seconded by Lue Snyder. Motion carried 5-0.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area because:

(A) Denial of the variance would result in unnecessary hardship because:

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

(ii) The proposed use is a reasonable one because:

(B) If the criteria in subparagraph (A) above are not established, explain why the property cannot be used in strict conformance with the ordinance and why a variance is therefore necessary to enable a reasonable use of it:

Rob Sylvester stated that he believes both parts of #5 are true and many of the lots in that area do not have the required setbacks. Furthermore, the applicant is requesting a garage on her primary property adjacent to her home.

MOTION: Rob Sylvester moved to approve criteria #5. Seconded by Bob Srnec. Motion carried 5-0.

MOTION: Bob Srnec moved to accept the variance with the condition of letter from neighbor acknowledging that they are aware of the encroachment on the setbacks. Seconded by Rob Sylvester. Motion carried 5-0.

Chairman Smith made Joan Tasker Ball aware that her variance has been approved with the condition of a letter from the abutter on which the setbacks will affect, stating that they are not adverse to the proposed garage.

Ms. Ball inquired when she could start building. Chairman Smith stated that she could begin the process, however, abutters have a 30 day appeal period and any commencement of construction would be at her own risk.

Case 2011-2: Steve Strogoff, property owner, is requesting a variance from Article VII, Section 3C of the Milton Zoning Ordinance to permit a permit a garage on lot which does not meet the setbacks as required in the Table of Dimensional Requirements. Property is located at Map 38, Lot 80, St. James Ave, Milton, NH

Art Nickless was present to speak on behalf of the property owner. James Smith read the letter from the owner of the property in to record giving permission for Mr. Nickless and Mac Ford to Speak on his behalf.

Mr. Nickless stated that he is here to speak on behalf of Mr. Strogoff, who owns two lots and is proposing a garage on the smaller of the two lots which is all intents and purposes is the same as the garage next to the proposed site of the garage which also belongs to a person on the easterly side of the

property (across the street from the house). Mr. Nickless further stated that with all setbacks it is difficult to meet, however will meet all setbacks with the exception of the rear setback. In keeping with all of the new criteria it is obvious from case law that any loss of the applicant is not outweighed by the gains of the public. In this case, not allowing Mr. Strogoff a garage on his property is not going to be outweighed by any advantage to the town or neighbors.

1. The Variance will not be contrary to the public interest because: The public interest will not be harmed as there is an identical garage located on an abutting lot that shares the same setback issues. The building will not create a public nuisance or threat to the safety of others. It will be located totally on the property of the applicant and is in keeping with similar buildings in the area.
2. The spirit of the ordinance is observed because; The ordinance allows for the development of non-conforming lots. Section X.C states that any lot created prior to the passage of the ordinance may be built upon without exception. It is the language of item X,D,3 that seems to contradict the terms of Section X,C.
3. Granting the variance would do substantial justice because: It will allow the applicant to use his property in a manner consistent with property located directly adjacent to his lot.
4. The values of surrounding properties are not diminished because: There are other garages located in this area, particularly on the lot directly abutting the subject tract.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area because: It is a non conforming lot that cannot not comply with the terms of the ordinance despite the use of similar lots by others in this area.

(A) Denial of the variance would result in unnecessary hardship because: (i) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because: While the ordinance allows for a reduced side yard for non conforming lots of record, there is no such relief for front or rear yards. Also, with a similar structure right next door, it doesn't seem fair or reasonable to deny this owner the same relief.

(ii) The proposed use is a reasonable one because: The use of the lot is reasonable given similar uses made by others in the neighborhood.

(B) If the criteria in subparagraph (A) above are not established, explain why the property cannot be used in strict conformance with the ordinance and why a variance is therefore necessary to enable a reasonable use of it: The lot is so small that when the front and rear yard setbacks are applied there is no room left to build on.

Joan Tasker Ball inquired the state insisted when she was separating the lots, that the lots be saved for future septic use which is what she then told those people building behind the lots what the state had told her. Ms. Ball then stated that she certainly would not have given away those small pieces of land if she could have sold them as buildable lots.

Mr. Nickless pointed out that he has been working with the state on projects for 35 years, and that Ms. Ball more than likely had to add the additional land with the subdivision so that there was enough land area to cover for the septic system, not meaning that they had to place the septic over there but it is a land coverage issue. There is no where in the state approval, town records or deeds saying that this land can only be used for septic. Basically it is so that there is enough reserve of dirt to not put an overabundance of sewerage in the ground.

Mr. Nickless stated that 15 minutes ago it was said that Ms. Ball's garage was not going to block anyone's view but that this garage will. Robert Gourlay, who lives behind where the proposed garage will be, stated that his views of the street will be blocked. Mr. Gourlay then explained that he thought that area was actually a part of their land until Ms. Ball explained it to them. He stated that where the garage is proposed to be placed will be right in front of their picture window; it will diminish their view, quality of life and re sale ability of the property. There are trees there now and trailers on the site. There was an old shed there for years and they now see trees and have a view. Jody Gourlay stated that there are not any other garages that are placed directly in front of any other house as this one would be. It is not precedented and in her opinion would set a bad precedence. Mr. Gourlay stated that although he is on St. James Ave, his end of the street has slightly larger lots and is a generally different area from the beginning of the road where houses are closer together.

Mike Tabory inquired if there was a for sale sign near the property. Mr. Gourlay said there is not.

Ron Sylvester asked about the shed that was previously on the property. Jody Gourlay stated that it was a small vinyl 8x10 shed.

Chairman Smith asked if there was any reason why the garage could not be built on the house side. Mr. Nickless stated that he does not have a good answer for that and also stated that if Mr. Strogoff wanted to place an 8x10 shed on the property he would also need a variance.

Art stated that he does not want to rebut everything, his comments pertain to law and that one of the things Simplex decision provides for is, and one of the things the ZBA needs to look at, is the neighborhood as a whole and in this case, it does not make sense to apply to the strict letter of the law.

MS. Ball inquired if Mr. Nickless was saying that the state "may" have said to create these extra pieces but that they were not necessarily required for approval, because at the time she was told she HAD to do this.

Mr. Nickless stated that the surveyor who did the subdivision was one of the best surveyors of his time and he did great work, but if there was a restriction on these lots, then why was it not noted on the deeds or the plans?

Mr. Nickless made the Board aware that one of the things that could be done is that DES could be contacted and go in to their archives and search for this plan. Mr. Nickless stated that he would be willing to get that information from the State.

Lue Snyder inquired why Mr. Strogoff could not build on his property directly in front of his house. She spent quite a bit of time in the area and it seems that it could be done with a variance.

Robert Sylvester stated that there is a precedent that people do have garages directly in front of their own homes.

Linda Semco stated that she lives next door to Rob and Jodi Gourlay and lives next to the existing garage which belongs to the man who lives across the street. She showed pictures from her driveway showing that if this is allowed then it would allow for her neighbor to build different and possibly in front of her home.

Jodi Gourlay stated that it is her opinion that what they are being asked is that they would decrease their property value of a full time home.

Bob Srnc stated that he would like obtain the information from the State and continue to a date specific.

Joan Tasker Ball stated that at the time that the existing garage went up, the neighbors tried to stop it from being erected.

Robert Sylvester stated that the comment made regarding the lot adhering to prior zoning at the time of creation is a huge concern in that the lot could be sold and then who knows what could go on at that lot.

Bob Srnc stated that he has a concern that over time, some garages turn into camps and just get bigger and bigger.

MOTION: Bob Srnc moved to go in to executive session. Seconded by Rob Sylvester. Motion carried 5-0.

MOTION: Bob Srnc moved to continue this hearing on the Strogoff garage variance request until a date specific of August 25, 2011 with the condition that Art Nickless provide the information on the original subdivision plan from the State at that time. Seconded by Rob Sylvester. Motion carried 5-0.

MOTION: Bob Srnc moved to adjourn. Seconded by Rob Sylvester. Motion carried 5-0.

Meeting adjourned at 7:11pm.

Respectfully submitted,

Wendy L. Keane
Land Use Clerk

