

ZONING BOARD OF ADJUSTMENT
JUNE 1, 2010

APPROVED:

7/6/10__jrl_____

AGENDA: CONTINUED VARIANCES: JOHN MESSINA, Holiday Hills Drive, #110-049
CONTINUED VARIANCE: PETER VANNAH, 975 West Shore Rd., #101-002 & -003
CONTINUED VARIANCE: DANIEL WILCOX/AUDREY McKINNEY, 55 Lake St., #113-021

ATTENDING: Alan DeStefano (Chairman), Sandra Heaney (ViceChairman), Larry Denton, Ashley Dolloff
Alternate: Sara Shattuck

ABSENT: Lorraine Bohmiller (funeral)

OTHER: Michelle Bonsteel (Land Use Officer), Janice DellaCroce (Planning Board)

The meeting opened at 6:00 pm. Ms. Shattuck sat in for Ms. Bohmiller. Mr. DeStefano explained the order of procedures for hearings.

CONT. VARIANCES: JOHN MESSINA

Mr. Messina asked for a continuation as they have not met with the Conservation Commission as yet.

S. Heaney made a MOTION, second by L. Denton, to CONTINUE THE HEARING FOR JOHN MESSINA TO JULY 6, 2010. The motion CARRIED.

CONT. VARIANCE: PETER VANNAH

The requested calculations had been received and the Board determined that they had everything needed to continue.

Mr. Vannah stated that his wife needs the ability to work from home and needs an office. They would like to add to the back of the building for this and would have a deck above the office.

Mr. DeStefano asked if they would be changing the roof line and was told that they will not. Ms. Heaney questioned the difference in the DES calculations. Ms. Bonsteel felt that DES may have included drainage.

VANNAH VARIANCE continued:

Mr. Vannah was then asked to go through the 5 criteria:

The Variance will not be contrary to the public interest: The addition will be located in the rear of the house so the view from the street or lake will be completely unchanged. The abutters who will be in view have provided a letter expressing their agreement to the plan. We have sized the addition as small as is functionally possible.

The Spirit of the Ordinance is observed: The existing home is a single family home and it will remain as such after the addition is completed. It will meet all set back requirements and will be an asset to the area. We have hired an architect to ensure the addition is pleasing to the eye.

Substantial Justice is done: In allowing the addition, all surrounding properties will increase in value. My property value will increase and nothing will appear to have changed when viewed from the street.

The values of the surrounding properties are not diminished: This addition in no way will have negative effects on the surrounding properties. I personally maintain the surrounding properties and take great pride in the looks of the entire area.

Literal enforcement of the provisions of the ordinance would result in unnecessary hardship: When the original lots were approved by the Zoning Board in 1988, they were non-conforming. We have located the addition in the rear of the house which allows all the set back regulations to be met. If the addition were to be located elsewhere, the setbacks would be violated. The zoning restriction as applied interferes with the landowner's reasonable use of the property in its environment. The addition is necessary to accommodate my wife's need for a home office so she can work from home and continue to provide financial support for our family. The existing home does not have a proper area to get away and work without interruption. The addition simply modernizes the existing home to meet basic needs and does not add additional bedrooms. The abutter's who are directly impacted by this addition have provided letters stating their support for this project. Where the addition is to be located does not violate any set back requirements allowing the building to conform to all set back regulations. Due to the size of the addition, it will in no way be noticeable from the street and if the addition were to be located in a different location, then set back requirements would be violated.

Mr. DeStefano asked the Board if they had any further questions. Hearing none, he asked for public input, both for and against, and none was forthcoming. Mr. DeStefano then closed the public portion of the hearing.

VANNAH VARIANCE continued:

Mr. Denton felt that, in the criteria of contrary to the public interest, it was a great start to have the abutter letters in favor submitted.

Ms. Heaney asked the size of livable square feet of the present home. Mr. Vannah was not sure. Ms. Heaney asked if they had a full basement and was told that they do. She then stated that, typically, we are not to make a non-conforming lot more non-conforming. The house is quite large already and she is having a little trouble with hardship. A little cottage would make this easier. Zoning was so as to keep from becoming more non-conforming.

Mr. DeStefano said that a condominium encompasses a lot more land and Ms. Heaney answered that the 3 buildings would require 90,000 sq. ft. today and this has only 20,000 sq. ft. Mr. Denton agreed that this is hard. Ms. Shattuck asked if it matters that it is for an office. Mr. DeStefano answered that it does not; the zoning ordinance is per square feet only. Ms. Heaney stated that uses are only pertinent when it is not an allowed use.

Ms. Shattuck said that hardship is hard. The argument is difficult if the use is not considered. The Board continued to discuss the difficulty of hardship. Ms. Bonsteel stated that, if it is a legitimate need, it has to be considered. Ms. Shattuck added that the Board can't tell if they have a room that can be used now. Mr. Denton is concerned that almost every building there would need a variance to do anything. Ms. Heaney stated that the Planning Board goes through all that work on the Zoning Ordinances, hold public hearings, and then it gets voted on at Town Meeting.

Mr. DeStefano then read the introduction to the Lake District section of the ordinance. Ms. Bonsteel stated that it is the weighing of the impact against the ordinance. Each case is unique. The Planning Board is worried about population, overcrowding, the view to the Lake, etc.

Ms. Shattuck thought that putting the addition in the rear gives the least amount of impact. Mr. Denton added that they have considered the set backs. He asked if there is a reason for the size of the addition. Mr. Vannah answered that it would be pleasing to the design of the house. Mr. Denton asked if this is the minimal square footage needed. Ms. Heaney added that it is a big room and that an office is usually much smaller. This is the size of a family room.

VANNAH VARIANCE continued:

Mr. DeStefano said that they did not consider to make this a 2-story and he asked the Board to give hardship some thought while we consider the other criteria. Being consistent with the ordinance has already been addressed, Ms. Heaney explained. They would need a Variance to build this building today due to the small lot. Ashley felt that it will not overcrowd the lot and it does not add a bedroom. She is torn.

Mr. DeStefano mentioned that it will be adding impervious surface. Mr. Denton brought up that they attempted to meet the setbacks and to place the addition where it is least conspicuous. Ms. Shattuck agreed with Mr. Denton but also understands Ms. Heaney's issues. This is hard. It is easier to think with the heart than with the brain. Ms. Heaney reminded her that this is a semi-judicial board. Ms. Shattuck felt that this plan is not hurting the lake and is not adding people.

As to substantial justice, Mr. Denton thought that running an office would be a good reason. Mr. Vannah explained that his wife works for Verizon in Dracut, Ma. and this would allow her not to have to commute.

Value to surrounding properties would be fine, Ms. Shattuck stated. Mr. Denton felt that the placement is good and the abutters approve. He only questions hardship.

With no other comments or questions, Mr. DeStefano brought the hearing to a vote. Granted = 3 votes, Against = 1 vote. The Variance for Peter Vannah has CARRIED. Mr. DeStefano explained the 30-day appeal time limit and then signed the Notice of Decision.

CONTINUED VARIANCE: DANIEL WILCOX/AUDREY McKINNEY

The required calculations had been submitted and the Board determined that they had everything to continue.

Ms. McKinney addressed the 5 criteria:

The variance is not contrary to the public interest: The project is no closer to the street and won't be beyond the building.

The spirit of the ordinance is observed: The house pre-dates all of us, as well as the ordinance.

Substantial justice is done: It improves the look of the house

The values of surrounding properties are not diminished: Ms. McKinney thought that the project would probably increase values.

WILCOX/McKINNEY VARIANCE continued:

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship: The project will not be going into the setback by much. The original footprint happened before the Zoning Ordinance.

Ms. Shattuck asked if the roof or the whole porch is in the setback. Ms. Bonsteel stated that the required setback is 20' and they can only do 14' so it is only 6' out of conformance. Mr. Denton asked why they don't leave the 6' off and Mr. Wilcox answered that it did not look right esthetically. The whole house is 50' and he is trying to break up that long length.

With no other questions from the Board, Mr. DeStefano asked if there were any public comments, either for or against. None were forthcoming. He then closed the public portion of the hearing and the Board went into deliberations.

Ms. Heaney was fine with not contrary to the ordinance. No comments came for spirit of the ordinance other than the building being built before the ordinance. As to substantial justice, Ms. Heaney felt that it looks better this way. Ms. Shattuck added that it will not look as long and Mr. Denton agreed. For surrounding properties, Mr. Denton felt that it does not affect anyone else. Mr. DeStefano stated that it doesn't affect the surrounding but it does to the existing. Ms. Heaney felt that hardship was fine in this case. Ms. Shattuck added that it is flush with the home. Mr. Denton said that the house is already in the setback. He asked if the whole thing was the original footprint. Mr. Wilcox answered that the part closest to the street is original but the rear 30' towards the river was added later. The original is said to be from 1820 but there are hand hewn beams that look older. Ms. Bonsteel said that sometimes the authorities lumped years together,

With no other comments, the hearing was brought to a vote:
Grant = 4, Against = 0. The motion CARRIED. Mr. DeStefano explained the 30-day appeal time and then signed the Notice of Decision.

MINUTES OF MAY 4, 2010:

S. Heaney made a motion, second by L. Denton, to approve the minutes as read. The motion carried.

CORRESPONDENCE:

The Board received a copy of the Fahey/Waugh letter and the e-mail of Don Milbrand/Waugh for their information.

-6-
ZBA Minutes
6/1/10

OTHER:

Ms. Bonsteel stated that she gave all alternatives to Dr. Carlson. The Selectmen have determined to have that one case videotaped. Problems are with the ownership and with two building permit issues. Attorney Waugh can help write the decision from the tape.

A discussion was held as to the procedure for rehearing. Also discussed were previous court cases and what created them to go to court.

UNFINISHED BUSINESS:

None.

NEW BUSINESS:

None.

NEXT MEETING:

Tuesday, July 6, 2010 at 6:00 p.m. Have the continued Messina case but nothing else yet. Applicants have until June 11 to get any to the ZBA office from the Land Use Officer.

With no other business, L. Denton made a motion, second by A. Dolloff, to adjourn at 7:25 p.m.

Respectfully submitted,
Jan Laferriere, secretary