

**GREENLAND ZONING BOARD
PUBLIC MEETING**

TUESDAY, May 19, 2009

Members Present: Mr. Chris Halligan, Chair
Ms. Liz Cummings, Vice Chair
Mr. Don Arsenault
Mr. Sean Conner
Ms. Stephanie Glennon

Staff: Mr. Robert Cushman, Building Inspector
Ms. Amy Leonard, Secretary

Chairman Halligan opened the public meeting of the Greenland Zoning Board of Adjustment at 7:00 P.M. and a roll call was taken. He announced the procedures of the Zoning Board of Adjustment and stated that a quorum was present and they would proceed with the meeting. Mr. Halligan noted the meeting was being recorded and the minutes would be available to the public when completed.

Public Meeting

1. Appeal from an Administrative Decision, 22 Brackett's Point Road, Owner/Applicant: Thomas & Allison Brackett, (Map R14, Lot 14).

Applicant is seeking an appeal from an administrative decision regarding Article XIV, Section 14.3, of the zoning ordinance: applicant does not consider Units 1, 1A & 2 abandoned.

Mr. Dave Engel approached the Board and stated he was representing the applicants, Thomas and Allison Brackett. He respectfully advised the Board they could not go forward and hear this application for an appeal from an administrative decision. Mr. Engel indicated that per the Town's zoning ordinance, under Board of Adjustment procedure, public notice of the hearing would be mailed to the applicant and all abutters, at least five days before the date of the hearing. He further indicated notification is also required by RSA 676:7 and proceeded to submit copies of both documents (attachment 1), as well as, a copy of the court case: Hussey v. Town of Barrington as a reference. He stated the Brackett's had not received the required notice; therefore, they wished for a continuance until the next meeting and requested the appropriate notification be sent. Chair Halligan read RSA 676:7 IV, which stated: the cost of notice, whether mailed, posted or published, shall be paid in advance by the applicant. Failure to pay such costs constitute valid grounds for the Board to terminate further consideration and to deny the appeal without public hearing. He asked the secretary if this had been done. Ms. Leonard explained that Mr. Brackett did not supply the money or label to notify himself, as is the usual process and noted most applicants do not feel notification is necessary, as they are the ones requesting the hearing and know the date of the meeting. Ms. Cummings noted when she was the secretary, prior to Ms. Leonard; she too only notified the abutters/people that the labels provided were addressed to and indicated it has never before

been an issue. Mr. Engel indicated it has not been an issue, because it probably has not happened before. Ms. Cummings disagreed and again stated the Town only notifies abutters that labels are provided for. Mr. Engel stated he did not dare go forward with something that is not enforceable. Mr. Arsenault stated the applicant is not going for a variance, but rather an appeal from an administrative decision (Mr. Engel's reference to the court case in attachment 1) and did not feel all the submitted documents applied to this particular application. Ms. Glennon indicated if the Board continues this matter until their next meeting, the abutters would not need to be renoticed, only Mr. Brackett. With that said, the following motion was made:

Motion 1: Stephanie Glennon moved to continue the Appeal from an Administrative Decision for Thomas and Allison Brackett, 22 Brackett's Point Road until the June 16, 2009 meeting. Sean Conner seconded the motion. There was a vote of 5 for and 0 against. MOTION CARRIED.

Mr. Halligan asked for confirmation as to exactly what needs to be sent to Mr. Brackett. Mr. Engel stated a certified notice of the June 16th meeting would be appropriate. Ms. Cummings recommended the secretary send all the abutters a copy of the June 16th meeting agenda, via regular mail, at the Town's expense, so everyone knows the application has been continued. Ms. Cummings also noted that while reviewing the application, she noticed Mr. Brackett had submitted it to the Town Clerk for receipt. For future consideration, she advised Mr. Engel that the Instructions for Appeals to the Greenland Zoning Board of Adjustment states and requires the application be filed with the Secretary of the Board, Building Department and/or the Town Administrator, not the Town Clerk. Ms. Leonard asked if the Town would bear the expense of mailing the certified notice to Mr. Brackett and the Board stated yes for this application.

2. Request for an Area Variance, 1 Coombs Farm Road, Owner/Applicant: Randall Tompkins, (Map R7, Lot 11A). Applicant is requesting an area variance from Article IV, Section 4.2, Subsection F of the zoning ordinance: to permit construction of an addition to the existing garage that will encroach 5 feet into the required 20 foot side-yard setback.

Chair Halligan stated this application was received as complete and the Board members have had time to review it. Randall Tompkins, owner / applicant, approached the Board to discuss the application for the construction of an addition to the existing garage that will encroach 5 feet into the required 20 foot side-yard setback. He submitted two abutter letters (attachment 2) stating they are in favor of this request. Mr. Tompkins stated he would like to construct a 12' x 30' addition to the existing garage. He showed photographs (attached to application) of his existing house and pointed out where the proposed addition would be constructed. He stated this area is the only appropriate spot for the garage addition as the septic system is in the back of the property and a bedroom is on the other end of the house. He further stated if he did put it at the other end of the house, he would still need a variance for the side yard setback. Mr. Tompkins proceeded to read the five criteria facts supporting this variance request:

1. The proposed use would not diminish surrounding property values because it would maintain a neat appearance and allows the storage of seasonal equipment.
2. Granting the variance would not be contrary to the public interest because the property would continue to be neat and

orderly. 3. Denial of the variance would result in unnecessary hardship to the owner because: a. there is no other place on the property to put the garage addition, b. the same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because the current configuration of the house makes this the only location for addition. 4. Granting the variance would do substantial justice because it would allow him to maintain a neat appearance in the neighborhood and shelter for his vehicle. 5. The use is not contrary to the spirit of the ordinance because it is the only location to put the addition.

Chair Halligan opened the hearing for public comments. Hearing none, the hearing was closed and the following motion was made:

Motion 2: Stephanie Glennon moved to grant the area variance as requested for the construction of a garage addition, which will encroach the side yard setback by 5 feet and Liz Cummings seconded the motion.

Ms. Glennon went through the five criteria to back up her motion. She found that all the criteria had been met per the reasons listed on the application (see above). She noted she had visited the said property and found this request very reasonable. She also noted due to the fact that there were no public comments speaking against this, she would vote in favor of the variance request. Ms. Cummings agreed and added that the proposed area would be the only appropriate spot for this addition. Mr. Halligan agreed and added this request is no different than what is already on the surrounding properties. After the discussion, a vote was taken on the motion.

There was a vote of 5 in favor of granting the variance and 0 against.
MOTION CARRIED.

Mr. Tompkins asked if he should wait 30 days before starting construction in case any appeals on this decision are submitted. The Board responded there is a 30 day time frame for appeals, but due to the fact there was not one abutter present speaking against it, it was probably safe to say no one would submit an appeal, but noted it is a possibility he may want to consider. They also directed him to obtain a building permit prior to beginning the construction.

3. Any business that may legally come before the Board but does not call for public hearing, including: review of previous meeting minutes, consideration of their approval, consideration of timely-filed motions for rehearing, and consideration of further motions.

1). Ms. Glennon stated she understood that Mr. Dave Engel (attorney representing Mr. Brackett on agenda item 1) may have represented the Town as its attorney in the past. She felt that if he represented the Town and its boards before, Town Counsel might have an opinion on whether the ZBA, as a former client, can hear from its former counsel in an appeal against the Town. Especially given that several decades of town history concerning the same property may be involved as background for an administrative appeal. She further did not know the dates involved, but asked if any issue would be created if an applicant had been Planning Board Chair possibly while his current

attorney had been representing or was an official for the Town. With that said, the following motion was made:

Motion 3: Stephanie Glennon moved to inquire from Town Attorney, his legal written opinion, as to whether or not we can proceed to have a former Town Counsel represent a client before this Board, at least in the absence of a written waiver by the Town as a former client. Lizbeth Cummings seconded the motion. There was a vote of 5 for and 0 against. MOTION CARRIED.

2). Due to the issue raised during agenda item 1, Ms. Cummings suggested the Instructions for Appeals to the Greenland Zoning Board of Adjustment be amended to add the words "applicant and representative" to all areas in the document that address abutter notices. The Board agreed to the suggestion. Ms. Cummings stated she would work with Ms. Leonard and they would submit a draft for review and approval at the next meeting. With that said, the following motion was made:

Motion 4: Lizbeth Cummings moved to amend the Instructions for Appeals to the Greenland Zoning Board of Adjustment by adding the words "applicant and representative" to all areas in the document that address abutter notices and have it reviewed for approval at the June 16, 2009 meeting. Stephanie Glennon seconded the motion. There was a vote of 5 for and 0 against. MOTION CARRIED.

3). The Board reviewed the minutes of April 21, 2009. After the review, the following motion was made:

Motion 5: Lizbeth Cummings moved to accept the minutes of April 21, 2009, as written and Sean Conner seconded the motion. There was a vote of 4 for and 1 abstained (S. Glennon). MOTION CARRIED.

Being no further business, the meeting was adjourned at 7:33 P.M.

Motion 6: Chris Halligan moved to adjourn the meeting at 7:33 P.M. and Lizbeth Cummings seconded the motion. All were in favor. MOTION CARRIED.

Recorded, transcribed and typed by:

Amy Leonard
Secretary, Zoning Board of Adjustment

Attachments:

1. RSA 676:7 & 3 other pages, re: 22 Brackett's Point
2. Abutter letters (2), re: 1 Coombs Farm Road
3. Agenda, dated 5-19-09

Approved by the Greenland Zoning Board on June 16, 2009.