



ZONING BOARD OF ADJUSTMENT

Town of Greenland · Greenland, NH 03840

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, January 15, 2019 – 7:00 p.m. – Town Hall Conference Room

Members Present: Liz Cummings, Lindsey Franck, Steve Gerrato, Ron Gross

Members Absent: Leonard Schwab

Staff: Jim Marchese – Building Inspector

Chair Cummings opened the Board of Adjustment meeting at 7:00 p.m. and a roll call was taken. The Chair explained the procedures of the Zoning Board of Adjustment, stating that a quorum was present, and the meeting was being recorded. Minutes will be available in accordance with the RSA 91-A, and will also be available on the Town's website.

1. 292 Bayside Road: R16, 27 – Residential Zone

Request for a Variance

Owner/Applicant: Heidi Choate

The owner/applicant is seeking a Variance for a lot line adjustment that will change the angle of the side lot line to allow the driveway located at 280 Bayside Road to be completely on its own lot. The lot area for each lot will not change; land area will be equally exchanged. The frontage for 292 Bayside Road will decrease to 157.49'; the frontage for 280 Bayside Road will increase to 182.94'. Relief is being sought from the Greenland Zoning Ordinance, Article IV – Sections 4.1 and 4.2.

Monica F. Kieser, Esquire - Hoefle, Phoenix, Gormley & Roberts, P.A. and representing the owner/applicant, addressed the Board; also present was Heidi Choate, property owner of 292 Bayside Road. Attorney Kieser stated they have been involved in a project with Joe Adamaitis, the owner of 280 Bayside Road; from that project they were brought into contact with Heidi Choate, property owner of 292 Bayside Road, to resolve the problem between the two properties. The driveway on 280 Bayside Road encroaches on 292 Bayside Road. After discussion between the two parties, they decided to make an adjustment in the lot line between the properties. There will be no change in the lot area of the properties and the lot line adjustment would cure the encroachment. By fixing the encroachment, there will be reduction in the frontage for H. Choate's lot and a slight increase in the frontage for J. Adamaitis' lot. In consultation with the Building Inspector, it was determined that H. Choate should seek the Variance.

Attorney Kieser stated that nothing on the ground would change. J. Adamaitis may have future plans to build a garage but that was not what was before the Board. The purpose in adjusting the lot line was to resolve the driveway issue. The required frontage is 200'; H. Choate currently has 175.5'. After the adjustment, she will have 157.49'. The frontage for 280 Bayside Road will increase to 182.94' and will take care of the encroachment.

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Attorney Kieser reviewed the Variance criteria (see file). She noted that the frontage for pedestrians and motorists will be unchanged. There will not be any obstruction that prevents adequate sight lines. Chair Cummings asked if moving the monument markers would create a problem with a change in the frontage. Attorney Kieser didn't think it would impact the people who were there. H. Choate stated there is a fence in between the properties and that the pin is dead center in the driveway of 280 Bayside Road. The pin will be moved. New survey markers will be installed. There was a brief discussion about the fence which is located at 280 Bayside Road. A few links will be on the 280 Bayside Road property when the lot line adjustment is done; the remainder will go down the line.

S. Gerrato asked if the deed would match; Attorney Kieser has not looked at H. Choate's deed; H. Choate felt it did match. Attorney Kieser felt that the surveyor identified everything; it's the deed descriptions that are being relied on. S. Gerrato clarified that the land should be matched to the deed. R. Gross asked if the deed specified the location of the pins. Chair Cummings stated that the problem was the driveway pin. Attorney Kieser suggested the Board look at Exhibit 2, which is the plan of all the lots. The Board felt the driveway was put in the wrong place. R. Gross stated that the deed should be updated properly to reflect any changes. Attorney Kieser assured the Board that updates will be done and the lot line adjustment would be recorded at Rockingham Registry of Deeds. Attorney Kieser continued with her review of the Variance criteria. Chair Cummings clarified that the change is 18.06' at the rear and 18' in the front.

Chair Cummings opened the hearing to public comments. David Choate, H. Choate's father, stated this was a last resort resolution. He had discussed an easement with J. Adamaitis; an easement across someone's property could be a "nightmare". They felt there could be title issues when conveying property. The Variance seemed to be the cleanest way to make the adjustment. D. Choate felt it could be an Equitable Waiver to correct something that happened years ago. He pointed out that there is a birch tree to the right of the current driveway. If the Variance isn't granted, the driveway will have to be moved and the birch tree will have to come down. The Adamaitis' didn't want to take down the birch tree. Attorney Kieser noted that the Adamaitis' supported the application. An email was received from J. Adamaitis stating his support.

Chair Cummings stated that the Variance would be to grant the frontages on the properties. The actual lot line adjustment would need to come from the Planning Board. A condominium plan was recently approved by the Planning Board for 280 Bayside Road. J. Marchese agreed that the lot line adjustment would need to go to the Planning Board. R. Gross stated that granting the Variance would lessen the size, but it didn't necessarily mean a lot line adjustment. It meant the ZBA was allowing a change in frontage.

There being no further comments, Chair Cummings closed the public hearing and returned to the Board for discussion. J. Marchese, in his personal opinion, didn't feel that a Variance was the way to correct the situation. He agreed that an easement may create some adversity in the title of the property. However, there were many different types of easements and they were found everywhere; they are pretty clear and easy to define. J. Marchese felt the hardship was going to be hard to prove; an easement would handle the situation. For the Zoning Board to allow a non-conforming lot to become even more non-conforming was not right.

R. Gross asked J. Marchese if there was something else going on. J. Marchese responded that another avenue was an adverse possession that would be settled in a court of law. If it's been used openly and notoriously for a period of more than 20 years, they may have rights to the piece of property that's looked at by the court system. Chair Cummings stated if it was an adverse possession and it went to

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court, it would make a non-conforming lot even more non-conforming. J. Marchese responded that it would be a judge making that call rather than the ZBA. S. Gerrato felt the Board could make a decision at this meeting.

MOTION: S. Gerrato moved to grant the Variance for the lot line adjustment at 292 Bayside Road as shown on Exhibit 3, dated November 2018. Second - L. Franck

DISCUSSION: R. Gross stated that J. Marchese's discussion got him thinking; he wanted to read the "unnecessary hardship" portion again before a vote was taken. Chair Cummings stated that a lot of what constitutes some of the hardship requirements no longer states that it's the only way to solve the problem that is created by the zoning regulations relative to the land. It's now: is it reasonable for the applicant to request an ultimate "want it". The "unnecessary hardship" has been made kinder and gentler. R. Gross stated that J. Adamaitis had previously created a condominium; was there anything here that could affect that now or down the road? J. Marchese wasn't aware of anything.

Chair Cummings stated that she read the application and discussion regarding requirements for the granting of a Variance. She found it very concise and believed it addressed the points very well in terms of position of the applicant. L. Franck, addressing J. Marchese, asked if H. Choate or J. Adamaitis would have to bring the other to court. She continued it would be easier to settle this in the Zoning Board rather than have them go to court. J. Marchese stated that he wasn't sure a Variance is the correct way to fix the situation; it may be a court of law and the settlement of an adverse possession case would be the way to settle it. Attorney Kieser added "brought by J. Adamaitis against this applicant". Chair Cummings' personal opinion was that if J. Adamaitis was that adamant, he would have given the Board an indication one way or the other; he was notified. He has indicated via email (he's in Florida) that he is aware of the action. Chair Cummings agreed it could be considered an adverse possession with the length of time that's gone by. She didn't believe that the two parties saw it that way. The easement seemed the simplest solution; however, it wasn't the method chosen by the applicant.

Chair Cummings discussed the motion. Although it could be an adverse possession, that wasn't before the Board. R. Gross asked about an Equitable Waiver; Chair Cummings stated it wasn't before the Board. R. Gross felt there may be the better way. The violation existed for 10 years or more. Chair Cummings stated the Board would be in an area they had no business entering. The Board was trying to decide what the applicant should do to fix the problem.

S. Gerrato stated there could be more of these applications and the Board needed to make the process as simple as possible and not drag it out. Attorney Kieser stated that an Equitable Waiver would require J. Adamaitis to file. Chair Cummings stated that it wasn't the Board's role to decide which way it should have gone. It was the applicant's choice. From her standpoint, it wasn't the Board's decision to decide which way to go; what was before them was a Variance. In her opinion, the applicant's attorney has very clearly outlined that granting the Variance wouldn't be terrible. It's moving 18', not putting up a neon sign.

MOTION: S. Gerrato moved to grant the Variance for the lot line adjustment at 292 Bayside Road as shown on Exhibit 3, dated November 2018. Second - L. Franck; three in favor, one opposed (R. Gross).
MOTION CARRIED

Chair Cummings noted that L. Schwab had contacted her about granting the Variance. Although it had no pertinence and couldn't be discussed, he indicated he saw nothing wrong with the request. Chair Cummings stated the job of the Zoning Board was to follow the rules, unless they were too stringent or

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wrong. If the Ordinance were read as written, there would be no Zoning Board. The Zoning Board didn't get to decide how the applicant went before them.

2. Approval of ZBA Guidelines

MOTION: R. Gross moved to accept the ZBA Guidelines as written. Second – Chair Cummings; all in favor. MOTION CARRIED

3. Approval of Minutes

MOTION: Chair Cummings moved to approve the minutes of Tuesday, October 16, 2018. Second – R. Gross; three in favor, one abstain (L. Franck). MOTION CARRIED

4. Other Business

R. Gross mentioned that at the Budget Public Hearing a resident asked to have how Boards voted included in the Voter Guide. R. Gross asked the same be done for ZBA meetings. After discussion, it was determined that was how votes were indicated in the minutes.

Chair Cummings preferred not to vote on Variance criteria separately. R. Gross stated the hardest to determine was “unnecessary hardship” and the one that is the most misunderstood. Chair Cummings added the State Legislature had the chance to vote for that, and they chose not to. What used to be “there is only one way to do this”, is now “what is the reasonable approach”. The applicant’s approach, although not the only approach, was reasonable. The Board of Adjustment section of the OEP (Office of Energy and Planning) Handbook explains a lot of what is changing; it’s not as hard (“mean”) as it was at one time. R. Gross recommended that members of the ZBA attend the OEP annual meeting to be up-to-date on the latest information. *Note: OEP is now the Office of Strategic Initiatives.* R. Gross noted that the Board had a copy of the 2017 OEP Handbook. Chair Cummings reminded Board members that the Town paid for conferences.

L. Franck will be signing up to run for ZBA. There was a discussion about serving on two Boards (ZBA and Planning).

5. Adjournment

MOTION: R. Gross moved to adjourn at 7:56 p.m. Second – S. Gerrato; all in favor. MOTION CARRIED

NEXT MEETING

Tuesday, February 19, 2019 – 7 p.m., Town Hall Conference Room

Respectfully Submitted: Charlotte Hussey, Secretary to the Boards

Approved: