

EXETER ZONING BOARD OF ADJUSTMENT FEBRUARY 16, 2010 MEETING MINUTES

Present:

Chairman: Hank Ouimet.

Regular Members: Robert Prior, John Hauschildt.

Alternate Member: Mike Dawley

Code Enforcement Officer: Douglas Eastman.

The meeting convened at 7:00 PM.

Agenda:

1. Case #1392. 9 Colcord Pond Drive – C. Williams. Equitable Waiver request.
2. Case #1325. Felder Kuehl properties – Epping Road. Variance extension request cont.
3. Case #1300. Felder Kuehl properties – Epping Road. Spec. Excep. extension request cont.

New Business:

1. Case #1392:

The application of Carmen M. Williams for an Equitable Waiver of Dimensional Requirements to permit an existing mobile home that encroaches within the required minimum front and side yard setbacks to remain as situated. The subject property is located at 9 Colcord Pond Drive, in the MS-Manufactured Housing Subdivision zoning district. Tax Map Parcel #55-12.

Chairman Ouimet began the meeting by outlining how the hearing would proceed and by mentioning that only three zoning board members were present. Continuing, he stated that the three members did constitute a quorum and he asked the applicant if she would like to proceed. Mr. Dawley clarified that the applicant would have to receive three Ayes for her request to be approved.

Ms. Snow, the representative for the applicant, stated that this would be okay.

Chairman Ouimet then read the application aloud and invited the applicant to address the board.

Ms. Joyce Snow introduced herself and the applicant Carmen Williams. Ms. Snow mentioned that the mobile home owned by the applicant encroaches on the side setback by five (5) feet and the front yard setback by fifteen (15) feet. She also mentioned that the home is in the process of being sold and the buyer wants to get title insurance, therefore the seller needs to get an equitable waiver. Ms. Snow then stated that Ms. Williams has owned the home for twenty five years and that everything was fine with building permits.

Mr. Dawley asked if there was any sense of history regarding how the placement of these units got off track when the subdivision was built.

Mr. Prior mentioned that records show the certificate of occupancy was issued in 1983 to Ms. Boisvert and that zoning was around at that time.

Mr. Dawley stated that it appears all of the setbacks for the homes in that subdivision will be wrong.

Mr. Eastman stated that he was not sure that they were all placed wrong.

Ms. Snow stated that building permits were issued and asked how did that happen?

Mr. Eastman mentioned that research in the office had taken place and that there is no evidence that zoning was different for mobile homes at that time.

Mr. Prior asked if the land was owned jointly then subdivided.

Mr. Eastman mentioned that this was a planned subdivision.

(At this time, regular zoning board member John Hauschildt joined the meeting.)

Chairman Ouimet introduced Mr. Hauschildt than mentioned that the board could take a brief pause to update him on the hearing if this was okay with the applicant. It was explained that Mr. Hauschildt would then deliberate with the board and become a voting member.

The applicant replied yes, it was okay with her for Mr. Hauschildt to be a voting member.

At this time, Chairman Ouimet gave an outline and description of the early portion of the hearing that Mr. Hauschildt missed.

Mr. Eastman stated that surveyors typically find problems such as this and that we will need to handle these on a case by case basis. He also stated that if this was a park, we could possibly grant a waiver for the totality of the subdivision, but these are individual lots and therefore separate situations.

Mr. Dawley asked the applicant if there was a homeowners association and Ms. Williams answered no.

At this time, Mr. Ouimet opened the hearing to public testimony. There was none.

Mr. Dawley asked if any of the neighbors were opposed to this request and the applicant answered no.

Chairman Ouimet closed the public hearing at this time and opened deliberations.

DELIBERATIONS

Chairman Ouimet clarified that this was a request for an equitable waiver as dictated by RSA and not by the Exeter code. He mentioned that there is a four part test for granting equitable waivers and the four items could be found in the ZBA handbook on page 20.

Continuing, Chairman Ouimet mentioned that the applicant meets part 1 and 2 whereas the violation has been in existence for at least ten years and that there has been no action by the municipality since 1983. Number three pertains to the issue being a private or public nuisance and number four that the cost of correcting the issue outweighs the problem.

Mr. Prior said that in considering the area, there seems to be no nuisance issues and that a correction of the placement of the home would be seemingly impossible.

Chairman Ouimet mentioned that he didn't think it would be impossible, but that it would not be cost effective and that he did not see any public or private issues.

Mr. Dawley mentioned that all of the lots in that subdivision seemed to be pushed around.

Ms. Snow mentioned that there is drainage in the back of the lot.

Mr. Eastman stated that the subdivision backs up to a commercial lot.

Mr. Hauschildt mentioned that if the tax maps were accurate, it looks like the property conforms to the rest of the neighborhood. It was also mentioned that there have been no complaints about the property and that there is no public interest in making the building be moved.

Mr. Dawley asked if the board should consider mentioning the encroachment dimensions in the motion.

Chairman Ouimet stated that that should not be needed. He did clarify that the side yard encroachment was five (5) feet and the front yard encroachment was fifteen (15) feet.

MOTION: Mr. Prior made a motion that the board grants the request for an Equitable Waiver of Dimensional Requirements as outlined in the application.

Mr. Hauschildt seconded.

The motion passed unanimously.

Continued business:

Chairman Ouimet read the descriptions of continued cases #1325 and #1300 into the record. He then gave the board a recap of the discussion regarding the cases from the last hearing. He mentioned that there is no vehicle in our ordinance to extend a time limit and that the board decided to ask legal counsel for their opinion on the matter whereas a legal opinion was argued by legal counsel for the applicant.

Continuing, Chairman Ouimet referenced a letter addressed to the Code Enforcement Officer from legal counsel regarding this issue. In the letter, legal counsel advises the board to require the applicant to apply for a variance to obtain relief from the three year limit and advises Mr. Eastman to have the applicant withdraw these requests and apply for a variance. They could appear before the board at the next hearing.

At this time, a brief discussion took place regarding the difference between the Planning Board being able to grant extensions and the ZBA being a quasi-judicial board where decisions need to be more formal.

Chairman Ouimet stated that the board will need to focus their deliberations on the variance which would be sought for the time extension.

Mr. Dawley mentioned that this issue in the ordinance may need to be re-written by ZORC but that a cap is still needed.

Mr. Hauschildt asked where it states that the board can grant a variance for an extension. Chairman Ouimet mentioned that he check the handbook and that this will be the course of action the board will follow regarding these continued cases.

Chairman Ouimet then asked if the board should dismiss the cases without prejudice. Mr. Dawley mentioned that the applicant should be present. Chairman Ouimet clarified that the applicant would need to withdraw these two cases and apply for a variance before the next meeting.

Chairman Ouimet then stated that the board will officially continue case #1325 and #1300 until next month.

Other Business:

1. Minutes: *January 19, 2010* meeting minutes:

MOTION: Mr. Hauschildt made a motion to approve the January 19, 2010 meeting minutes as presented.
Mr. Prior seconded.
The motion passed unanimously. (Mr. Dawley abstained).

2. Letter from Attorney regarding extension requests. The board discussed the letter briefly and asked Mr. Eastman to follow up with the wording in paragraph three for further discussion.

3. ZORC review. It was mentioned that language needs to be changed/ adopted for the zoning ordinance regarding the extension issue. Mr. Dawley stated that a cap still needs to be in place. Mr. Hauschildt mentioned that other towns limit time to six months to one year as opposed to Exeter's three year deadline.

MOTION: Mr. Hauschildt made a motion to adjourn.
The motion was seconded.
The motion passed unanimously.

The meeting adjourned at 8:30PM.

The next meeting of the Exeter Zoning Board of Adjustment will be held, Tuesday, March 16, 2010 at 7:00pm in the Novak Room at the Town Offices.

Respectfully Submitted,

Christine Szostak
Planning & Building Department