

EXETER ZONING BOARD OF ADJUSTMENT APRIL 16, 2013 MEETING MINUTES

Present:

Regular Members: Bob Prior, Martha Pennell and Rick Thielbar
Alternate Members: Steve Cole
Building Inspector/Code Enforcement Officer: Doug Eastman
Deputy Code Enforcement Officer: Barbara McEvoy

The meeting was convened at 7:00 PM. Vice Chairman Bob Prior introduced the Board members and explained the protocol for the meeting. Noting there were only four board members present, he explained that the Board could still legally act on the applications, however, the Applicant did have the opportunity to request postponement until the Board's next meeting to present their application before a full (five-member) board should they wish to do so. Both applicants present indicated that they wished to move forward this evening.

Acting Chairman Prior announced that Case #1450, the application of Felder Kuehl Properties, LLC had been postponed at the Applicant's request until the Board's next meeting on May 21, 2013.

AGENDA:

1. Case # 1449: Martin B. Stollar and Terry Eustis
Equitable Waiver of Dimensional Requirements – 157 Court Street
2. Case #1451: Eric Klemarczyk
Special Exception Request - 18 Hobart Street

NEW BUSINESS:

1. Case # 1449: Martin B. Stollar and Terry Eustis

The application of Martin B. Stollar and Terry Eustis for an Equitable Waiver of Dimensional Requirements to permit an existing structure (shed) that encroaches within the required minimum side yard setback to remain as situated. The subject property is located at 157 Court Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel #104-36-1. Case #1449.

Ms. Terry Eustis addressed the Board and provided some background relative to the request. She stated that the building (shed) in question had existed on the property since 1958 when her husband's parents originally purchased the property. She indicated that the family property had been subdivided between family members in 2001 and during this same time, a building permit had been obtained to rebuild the shed structure on its existing footprint. She explained that the encroachment had not been discovered nor had they been aware of the notation on the subdivision plan that the shed was labeled "to be razed" until this recent issue was raised. She noted that the subdivision and rebuilding of the shed structure had occurred over twelve years ago. Ms. Eustis indicated in her application that the current location of the shed structure did not constitute a public or private nuisance and did not diminish the value of the property in the area. She indicated that the shed structure was used for storage for her husband's construction business and that the cost of correction would outweigh any public benefit to be gained.

Acting Chairman Prior mentioned that although the Applicant was not asking for specific relief, he questioned how close the structure was to the property line and what the required setback was. Ms. Eustis indicated that the structure was approximately ten feet (10') from the property line. Code Enforcement Officer Doug Eastman confirmed that the required side yard setback was fifteen feet (15').

Mr. Thielbar inquired as to how the Applicant discovered the mistake. Ms. Eustis replied that the abutting property owner had brought it to their attention. She also indicated that the abutting property owner (a family member) was part of the subdivision process and had agreed to the plan layout.

Ms. Pennell inquired about the notation on the plan "to be razed". Ms. Eustis responded they had obtained a building permit to rebuild the structure around the same time they were going through the subdivision process. She stated that they had not noticed the notation until just recently when reviewing the plan. Mr. Thielbar suggested that it may have been a misunderstanding on the surveyor's part.

Ms. Pennell asked if the subdivision went through the Planning Board. Mr. Eastman confirmed that it had received Planning Board approval and had subsequently been recorded at the Registry.

There being no further discussion at this time, Acting Chairman Prior asked if there were any abutters or interested parties who wished to speak on the application.

Mr. Andrew Stollar, representing Stollar Family Trust (owner of the adjacent property) at 155 Court Street, addressed the Board. He submitted a written statement and photographs to the Board. He commented that it appeared from reading the agenda that the petitioners had initiated this issue. He indicated that was not the case and proceeded to explain that he had been pursuing the setback violation as well as the issue of junk cars being stored on the subject property with Building Inspector Doug Eastman for approximately 4-6 months.

Mr. Stollar continued and described the presentation made by Ms. Eustis, the property owner, as disingenuous. He stated that he had also had the property surveyed some time ago by a different surveyor (Millennium Engineering?? on Hampton Road) and would maintain that the building location was in violation of the zoning regulations.

In rebuttal, Ms. Eustis indicated that she did not have any photographs of the barn/shed building in question. She noted that the pictures presented to the Board by Mr. (Andrew) Stollar depict a much smaller shed moved off of his property approximately two years ago. Ms. Eustis indicated that the building in question was never razed but was 're-conditioned'.

It was acknowledged that there appeared to be some inconsistencies between what was represented by the Applicant and the immediate abutter, Mr. Stollar with respect to their descriptions of building locations and dimensions. Mr. Cole indicated that the "he said" – "she said" conversation was very confusing and he was not prepared to make any decision without visiting the site. Ms. Pennell agreed and also expressed the desire to review the original subdivision plan file. Other board members agreed that a site walk would be beneficial.

DELIBERATIONS

MOTION: *Mr. Cole moved to table further discussion on the application until the Board's next meeting subject to a visual inspection of the property being conducted.*
Ms. Pennell seconded the motion.

VOTE: The motion passed unanimously.

A visual inspection of the property was scheduled for Tuesday, May 21st, 2013 at 6:00 P.M. (prior to the next regularly scheduled ZBA meeting).

2. Case # 1451: Eric Klemarczyk

The application of Eric Klemarczyk for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit an existing single family residence with an ‘in-law/extended family’ unit situated at 18 Hobart Street to be converted into to a two-family home. The subject property is in an R-2, Single Family Residential zoning district. Tax Map Parcel #74-89. Case #1451.

Mr. Klemarczyk addressed the Board. He explained that he wished to convert the existing residence into a two-family home. He indicated that there were several other multi-family residences in the immediate neighborhood.

Acting Chairman Prior inquired if there was any reason why the Applicant had not requested relief for an accessory dwelling unit. Mr. Klemarczyk responded that he wanted the flexibility for both units to be rental units.

Ms. Pennell inquired as to the legality of the “in-law” unit. Mr. Klemarczyk provided some history of the family property noting that he had purchased it from his mother. He indicated that a building permit for the “in-law” apartment on the second floor had been obtained in 1997. He stated that he had subsequently divorced and the “in-law” unit was currently occupied by his sister. He represented that the units share the same address and are designated as Units “A” and “B” for mail delivery purposes.

Mr. Eastman clarified that the “in-law” use would not allow for the unit to be rented. He indicated that an ‘accessory dwelling unit’ would allow for the unit to be rented although imposes the restriction that the property must remain being ‘owner-occupied’. He explained that the Applicant’s request for a ‘two-family’ use was required to meet the minimum lot area requirement in the R-2 zoning district. He noted that this requirement has just recently been amended in March 2013 to 12,000 square feet/unit (a total of 24,000 square feet for a ‘two-family’). Mr. Eastman added that the Applicant had just obtained a lot line adjustment approval from the Planning Board (PB Case #21306, 3/28/13) which involved a land swap with the abutting property at 20 Hobart Street owned by his brother, David Klemarczyk.

Acting Chairman Prior asked about the availability of parking and for clarification as to where the public right-of-way (ROW) ended. Mr. Klemarczyk indicated that the driveway easily accommodated four vehicles. He identified the approximate location of the end of the public ROW noting that the 50’ wide ROW also provided the frontage and access for his brother’s property (20 Hobart Street).

There being no further questions at this time, Acting Chairman Prior opened the hearing for public testimony. There being none, the hearing was closed and the Board moved into deliberations.

DELIBERATIONS

Acknowledging that “in-law” units are not defined in the zoning ordinance, Ms. Pennell asked if the appropriate permits had been obtained. Mr. Eastman reiterated that “in-law” or “extended-

family” units have not been required to obtain ZBA approval, however, most recently anyone wishing to create such a unit has been required to document the ‘in-law/extended-family’ use by recording a deed addendum at the Rockingham County Registry of Deeds indicating that the unit cannot become a rental unit. A copy of this documentation is made part of the permanent building permit file. It was noted that citizens inquiring about this process are also advised of the provision in the zoning ordinance for an ‘accessory dwelling unit’ which does require ZBA approval and does allow for the unit to be occupied by other than family members (i.e. rental).

Mr. Thielbar led the Board through review of the special exception criteria. It was represented that three other properties in the surrounding neighborhood had obtained ZBA special exception approval for conversions of the surrounding properties had neighborhood

MOTION: *Mr. Thielbar moved to approve the special exception request, as presented, on the basis that the Applicant satisfied all applicable criteria.*
 Ms. Pennell seconded the motion.
 VOTE: *The motion passed unanimously.*

APPROVAL OF MINUTES: February 19, 2013

The February 19th, 2013 meeting minutes were provided to board members at the meeting. Board consensus was to mail the revised minutes out in the next mailing for all members to review prior to acting on them.

OTHER BUSINESS: None

CHAIRMAN’S ITEMS: None

There being no further business, Acting Chairman Prior indicated he would entertain a motion to adjourn.

MOTION: *Mr. Cole moved to adjourn.*
 Ms. Pennell seconded.
 VOTE: *The motion passed unanimously.*

The meeting was adjourned at 8:15 P.M.

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, May 21, 2013 at 7:00 P.M. in the Nowak Room at the Exeter Town Offices.

Respectfully submitted,

Barbara S. McEvoy
Deputy Code Enforcement Officer
Planning & Building Department