

NELSON ZONING BOARD OF ADJUSTMENT

Minutes

Date & Time meeting Convened: Oct 30, 2012 7:06 PM

Location: Nelson Town Office

Board Members Present: Richard Popovic, Chairman, Michelle Lange, Jason Walter and Peter Smith, Alternate. John Cucchi recused himself. Meeting called to order by RP at 7:06.

Petitioners present: John & Anne Cucchi; Wendy Stankevich & Karen Castelli

Abutters present: Daniel & Kim Shawver; Robert & Bette Lenox

Old Business: The minutes from the June 13, 2012 meeting were read and approved.

New Business:

Hearing - ZBA Case Z12-04 - John & Anne Cucchi

Clerk report was read by Julia Lennon. Certified letters were sent to the listed abutters. Notices were posted on the 3 Town Boards and legal notices were published in the Keene Sentinel on 10/19, 20 & 21. Richard P. read the rules for this hearing. RP gave a summary of the NH Superior Court's decision on the Cucchi appeal and stated that the ZBA must now focus on the 3 criteria: 1) public interest and spirit of the ordinance; 2) substantial justice and 3) unnecessary hardship. Anne Cucchi presented the history and background for this appeal and spoke to the above mentioned criteria. She also read the court's decree. The Cucchi's have requested to build a 3 bedroom house on their property known as the Mill Pond site, which is on a non-conforming lot. The lot plans for septic, well, and driveway have been inspected and approved. The property meets DES requirements for the wetland. John Cucchi addressed the protective clause issue and asked if the town of Nelson has a "Permissive Ordinance". AC presented the lot plan for their .71 acre property to the board.

The Board asked the following questions:

ML - How did you decide on a 3 bedroom house? Answer: Septic system design would only allow for that house size. The house will either be utilized for a rental or for family use.

RP - What was your intention when you purchased the lot? Answer: To build a house that would not disrupt the character of the land but to enhance it.

RP asked to hear from any abutters that were in favor. He read a letter from Ron Lyon who was in support of the Cucchi's efforts. There were no abutters who were opposed. Daniel Shawver, an abutter commented that he is a neutral party and that the mill site does need improvement. He is concerned about traffic, the placement of the well and the site the septic system. After looking at the site plan, it was pointed out that this is now a moot point. His concerns about the placement of the driveway were also alleviated. Kim Shawver was concerned about the traffic visibility, especially during the winter. There were no more comments from the abutters. The public part of the meeting was then closed.

RP proposed that the board evaluate the 3 criteria one by one:

1) Unnecessary Hardship: The property is surrounded by roads on 3 sides and the lake on the other side, allowing no options for expansion. JW commented on the financial burden to the Cucchi's. PS felt that nothing about their plan met the requirements, that it looked like a "can of worms". RP pointed out that no matter what we feel personally about the proposed use, the court has stated that the argument of 'creating your own hardship' cannot be the only factor to be considered. We must look at the bigger picture and consider all factors. Mose discussion followed. A vote was then taken. The board voted unanimously that the denial of this variance will cause unnecessary hardship.

2) Spirit of the Ordinance: RP pointed out that the "spirit of the ordinance" is captured in the town of Nelson's Zoning Ordinance. RP read the Preamble's purpose of supporting and promoting the health, safety, and general welfare of its citizens; protecting the value of homes and lands and encouraging wise and efficient expenditure of public funds. The question was asked if a house on that site would alter the essential character of that historical locality. All board members agreed that it would not. The issue of safety was addressed, both Mike Tarr and the state have approved the driveway plans. The board voted unanimously that the granting of the variance to the petitioner is in the spirit of the ordinance.

3) Substantial justice: The board was asked by RP to weigh the justice to private gain or public gain. Sight lines, increase traffic and noise were discussed as to how they would affect the general public versus the financial loss to the Cucchi's. The house will be lower than others in the area and not higher than the trees. The proposed house would be consistent with what's already there, nothing out of the ordinary. The board voted unanimously that the loss to the individuals in this case would be greater than any gain to the general public.

The Cucchi appeal was granted. The clerk will fill the paperwork with the County Register of Deeds.

Hearing - ZBA Case Z12-05 - Karen Castelli, Wendy & James Stankevich

Clerk gave her report. Certified letters were sent to the listed abutters. Notices were posted on the 3 Town Boards and legal notices in were published in the Keene Sentinel on 10/18, 19 & 20. Richard P. read the rules for this hearing. Wendy Stankevich gave a brief history of what has occurred in the past in regards to their property. The owners are now requesting permission of this ZBA board to hook up the septic system which is already in place to the 2 bedroom cabin on their property similar to what other property owner in the area have done. Permission in the past was initially granted to them but then denied by a previous Selectboard. RP asked about the approval for the well. The Board looked over the lot plan. JW asked "Who shut you down?"; answer - the selectboard. JW stated that the variance never came to the ZBA at that time. There were no further questions from the board. Abutters in favor: Betty Lenox - no problem with this appeal. Bob Lenox - No objection and he gave some further history about this case. He felt that it was unjust. No abutters opposed. Dennis Dellagreca gave his opinion of the matter, especially in regards to a "Certificate of Occupancy". He felt that there was no legitimate reason for this ever happening. The public part of the meeting was closed. RP informed the board about his phone conversation with the Local Government Center. He was told that it was valid to apply for a variance to get relief from a condition formerly agreed to. However, he was concerned that the initial decision was recorded at the Registry of Deeds, can we change what was already recorded. RP suggested that we postpone a decision on this case so that the board can do more research.

A motion was made to adjourn the meeting by RP at 9:10 pm and seconded by PS.

Next Meeting: The Stankevich & Castelli hearing has been rescheduled for Nov 27, 2012

Respectfully submitted,

Julia Lennon, Clerk

Date signed: _____

