

Town of Farmington
Zoning Board of Adjustment Meeting Minutes
Thursday, March 7, 2024
Selectmen's Chambers
356 Main Street-Farmington, NH 03835

Board Members Present:

John Scruton, Chairman
Joe Pitre, Vice Chairman
John David Aylard, Clerk/Secretary
Bill Fisher
Bob Morgan

Others Present:

Donald Howard, applicant
Janet Hackett, abutter

1). Call to Order:

Chairman Scruton called the meeting to order at 7 p.m.

2). Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

3). Review of Minutes:

November 2, 2023-Public Meeting Minutes- No errors or omissions

Motion: (Pitre, second Aylard) to approve the minutes as written passed 5-0.

4). Old Business:

Mr. Scruton said Mr. Fisher has given his resignation and he wanted to publicly commend him for all the work he has done over the years on this board, the Planning Board and other places throughout the town. He said he really appreciated that and the town appreciates it. He said he is also encouraging the public to volunteer and there are openings throughout the town on many of the boards and we need to have people volunteer to serve that is certainly an important function.

Mr. Fisher thanked Mr. Scruton and said the EDC is also very under staffed.

5). New Business:

Public Hearing for an Equitable Waiver of Dimensional Requirements by Donald Howard, Tax Map U12, Lot 13. A request has been made for an Equitable Waiver of Dimensional Requirements under Table 2.04 (B) Space and Bulk Standards to allow a replacement shed within the 15 ft. minimum side setback. The property is in the Urban Residential District.

Mr. Scruton read the above notice of the public hearing aloud and then said for those who don't know what an Equitable Waiver is it deals with just an error related to the dimension of where the item is compared to the lot line. He said Planning Director Kyle Pimental has a memo in their packets that all of the public notices under RSA 676:7 have been met and then read the following: "When a lot or division of land or structure there upon is discovered to be in violation

of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16 the Zoning Board of Adjustment shall upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement if and only if you meet the following 4 findings: 1). The violation was not noticed or discovered by any owner, former owner, owner's agent, representative or municipal official until after a structure in violation had been substantially completed or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value; 2). The violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation or bad faith on the part of any owner, owner's agent or representative but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority; 3). That the physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property and 4). That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained that it would be inequitable to require the violation to be corrected."

Mr. Scruton said they have a request for that equitable waiver which has been submitted and he would like to clarify that there is an error on the application that needs to be corrected. He asked Donald Howard to come forward and showed him on the application where he checked No on question #1 (does the request involve a dimensional requirement, not a use restriction) and he believed that he meant to check Yes.

Mr. Howard read the question and said he meant to check Yes.

Mr. Scruton asked him to correct it and then initial it and he did so. He declared the public hearing open at 7:07 p.m. and then asked Mr. Howard to come forward and make his presentation. He said Mr. Howard had the first opportunity to address those 4 points and asked him to tell them what happened and what the situation is.

Mr. Howard said when he bought the house there was a shed in the back right corner of the property and the floor had rotted out so he and his father built a new shed and put it in the same spot just a usable shed a little taller for him. He said he wasn't aware of the zoning rules and the shed had been there for 15+ years so he assumed it was okay to put a shed back there.

Mr. Scruton asked if it was the same foot print as the prior one.

Mr. Howard said yes, it's the same size in the same corner but it's taller because it has a loft in it and he's 6'6". He said he wasn't trying to be malicious or hurt anybody. He said the property behind the shed had roughly 25-30 ft. of wetlands and woods that separate his yard and Mrs. Hackett's yard so he didn't see how that would impact her property at all. He said Pearl Lane is a quiet private road and he didn't feel he was implying on the street at all.

Mr. Pitre asked how far the shed is from Pearl Lane.

Mr. Howard said it's probably about 10 or 15 ft. from the road edge. He said Mrs. Hackett recently had it surveyed so there is now a post out there that shows his shed from the boundary line of Pearl Lane is probably 4 or 5 ft.

Mr. Scruton asked him if he knew if that is just an easement right-of-way or if there is a deeded strip that is part of the road.

Mr. Howard said that he is not sure of.

Mr. Scruton said in this picture it looks like it sits on cement blocks and asked if that was correct.

Mr. Howard said it sits on cement blocks because he didn't want it to rot out like the last 1 did.

He noted that he stopped construction once he got the notice and he hasn't sided it yet.

Mr. Fisher said looking at these 2 pictures he sees power lines running in front of the shed and asked how close to the shed those power lines are.

Mr. Howard said those are his cable and internet lines and they are probably 4 to 5 ft. in front of the shed. They come through the trees next to the shed and then cross my yard 4 to 5 ft. in front of the shed and I put the metal roof on without hitting the wires he said.

Mr. Fisher asked how hard it would be to, if they were to go that way and he wasn't saying that they are, to get a shed moving company to come in and pick that up and move it.

Mr. Howard asked if he meant moving it to the left.

Mr. Fisher said behind it he's well within...

Mr. Scruton said the problem is the back side of the shed.

Mr. Howard said the trees behind it are Mrs. Hackett's property.

Mr. Fisher said he thought the 5 feet was between the building and asked if this was Pearl Lane on the map.

Mr. Scruton said that's correct but it's not a Pearl Lane issue it's Mrs. Hackett's issue behind it.

Mr. Fisher asked how close he is to Mrs. Hackett's property.

Mr. Howard said her property is the tree line behind the shed and it's probably 5 or 6 ft. away. He said the actual movement of the shed wouldn't be all that difficult it's the placement of the shed afterwards that's going to be practically in the middle of his yard where his children play and the 15 x 15 ft. is almost right under the cable lines as well.

Mr. Howard said there was nothing else he wanted to add so Mr. Scruton asked Mrs. Hackett to come forward and present her survey.

Mr. Pitre asked if one of the pictures provided is what she has.

Mrs. Hackett said this survey was when the original marker was put in by Gordon Tibbits back in 1993 and it shows her property line.

Mr. Scruton pointed to survey and asked if this corner is where the issue is.

Mrs. Hackett pointed out where the 4' x 4' granite marker was and said it got broken off when she was on vacation.

Mr. Scruton asked if there is a stone wall there.

Mrs. Hackett said there was a stone wall but this property has been pushed back, disturbed and whatever so it has been pretty well filled in. She said he has another shed that is up here further

that is actually over her property line.

Mr. Scruton said she could put in a complaint to the Code Enforcement Officer for that and that would start his process. Today we're dealing with the shed in the corner he said.

Mrs. Hackett showed the board several pictures of the shed and the markers on her phone.

Members discussed the scale used for measurement on the survey and Mr. Scruton said it's probably 5 ft.

Mrs. Hackett said she measured it with a tape and it's 50 inches.

Mr. Scruton said that's a little over 4 ft. He asked if Mr. Howard knew how long his side boundary is on Pearl Lane.

Mr. Howard said he thinks it is 125 ft.

Mrs. Hackett said it's on the survey.

Mr. Scruton said on the survey it looks to be 229 ft. and asked him if that sounded about right.

Mr. Howard said it might be.

Mrs. Hackett said the town did accept Pearl Lane just up above her house as a road and she has a paper in her safe that says it is a Town road. She said the further part belongs to Tibbets but there was 32 ft. r-o-w for Pearl Lane originally and then through the years the Town started maintaining it and the Town accepted part of it and she has a paper in her safe that says that.

Mr. Scruton said he wished she brought the paper with her as he would like to have seen it.

Mrs. Hackett said it shows on this one there was a marker out closer to Mount Vernon St. that showed the actual width of Pearl Lane on that end too.

Mr. Scruton asked if Mr. Tibbets owns Pearl Lane.

Mrs. Hackett said technically not he owns further up. She said years ago the Town accepted it as a Town road from just above her property down.

Mr. Scruton said unless a deed was given, he could well own the under lying land rights but the Town burdens it with an easement which is the Town road. He asked if it was a fee title easement but that was only 1 of the dimensions they were dealing with.

He said the dimension they were dealing with today-she says 50 inches and it looks like 4 ft. He asked if anyone had any questions as to what the situation is. He then asked if the 2 of them have tried to resolve some issue.

Mrs. Hackett said no but she would be willing to allow him to have that shed within 10 ft. of her boundary line if he will move that other shed back 10 ft. also.

Mr. Howard said he had no problem with that and he had no idea.

Mrs. Hackett said she told him when he put the shed back there it was over her boundary line.

Mr. Scruton asked Mr. Howard if that was something he would agree to-10 ft. for both of them.

Mr. Howard said that seems reasonable to him and he is halfway there now and that doesn't really impede on his yard and if Janet is happy with that, he is okay with it.

Mr. Pitre asked Mrs. Hackett if she was happy with 10 ft.

Mrs. Hackett said yes if that's agreed to and enforced she would be happy with that and she wants to be fair too.

Mr. Howard asked if that was 10' to the left from Pearl Lane and the other one was 10' forward.

Mr. Pitre said yes.

Mr. Aylard asked who is going to verify that.

Mr. Scruton said the Code Enforcement Officer would do that especially if the granite pin was there that helps.

Mrs. Hackett said they were putting some type of stone dust around the back of the shed is when the post got broken.

Mr. Scruton said granite posts are not very strong and they do not last.

Mrs. Hackett said there is a pin there also, they found it and set it right on here.

Mr. Scruton said they need to answer 4 questions and he thought they had a solution here but they need to go through the process.

Mrs. Hackett asked if they would like her to bring that letter in that says Pearl Lane is (a Town road).

Mr. Scruton said he didn't think they needed it today. He turned to the Equitable Waiver of Dimensional Requirements and asked the following:

1). Is there agreement that the violation was not noticed or discovered by the owner or somebody in the past and that it was ignorance of the location of the line that led to the location of the new shed.

Consensus of the board was yes.

Mrs. Hackett said neither one of them realized there was a distance of the 15 ft.

2). Mr. Scruton said that answered this question too that the violation was not an outcome of ignorance of the law it was the location.

3). The physical dimension does not constitute a public or private nuisance or diminish the value of the property.

4). Due to the degree of past construction or investment made in ignorance of the facts the cost of correction outweighs any public benefit to be gained and would be inequitable to require correction.

Mr. Scruton said he thought #3 and #4 depend upon moving it 10 ft. away but if they move it 10 ft., they can grant an Equitable Waiver for the remaining 5 ft. He asked if that was the consensus of the board.

Consensus of the board was yes, they agreed with Mr. Scruton.

Motion: (Pitre, second Aylard) to grant the waiver as presented with the 10 foot adjustment on both sheds as agreed to by both Donald Howard and Janet Hackett;

Discussion: Mr. Aylard asked if he was going to put any time limit on it.

Mr. Pitre said no and that he has to do it.

Vote: the motion passed 5-0.

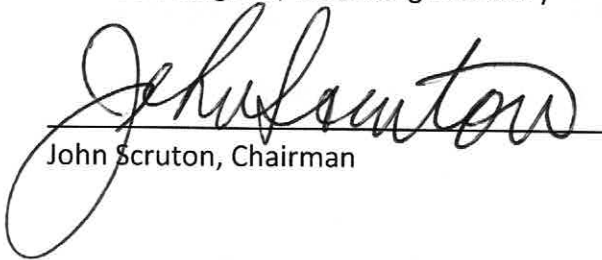
Mr. Scruton thanked Mrs. Hackett for being agreeable to come to an equitable solution for the equitable waiver.

6). Any Other Business before the Board: None

7). Adjournment:

Motion: (Pitre, second Aylard) to adjourn the meeting passed 5-0 at 7:25 p.m.

Kathleen Magoon, Recording Secretary

A handwritten signature in cursive script, appearing to read "John Scruton", is written over a horizontal line. The signature is fluid and stylized, with the first letter "J" being particularly large and looping.

John Scruton, Chairman