



ZONING BOARD OF ADJUSTMENT BELMONT, NH

Wednesday, July 28, 2021
Belmont Mill and Zoom
Belmont, NH 03220

Members Present: Chairman Peter Harris; Vice Chair Norma Patten; Members Mark Mastenbrook, David Dunham and Sharon Ciampi.
Alternates Present: John Froumy
Staff: Elaine Murphy and Dari Sassan.

The Chairman opened the meeting at 6pm and welcomed those in attendance. He announced that as Chairman of the Belmont Planning Board, he finds that due to the state of emergency declared by the governor, this public body is authorized to meet using both electronic means and in person. He said that the Board gave notice to the public of the necessary information for accessing the meeting using Zoom or telephone, and he announced that any party experiencing any difficulty in accessing the meeting at any point, should call 603-267-8300 x 101, and the meeting will be recessed until access can be restored for all parties.

ABUTTERS HEARING – JENNIFER BOUCHARD FOR SUNSET BEACH CONDOMINIUM:

Continuation of a request for two Variances of Article 5 Table 2 of the Zoning Ordinance to allow a carport.

- A. Closer (3.2') to the side property line than allowed (25'). ZBA # 2521Z
- B. Closer (17.15') to an unrelated structure (garage) than allowed (30'). ZBA # 2621Z

Property is located at 72 Sunset Drive in an "RS" Zone, Tax Lot 107-150-000-002.

The chairman stated this application is a continuation from last month. He read the lot history into the record. The tax card indicates that the existing structure was originally constructed in 1934. Following a denial and the granting of a rehearing, a Special Exception was granted in 1995 to allow for construction of a partial second floor. Also in 1995, permits were issued for a foundation and an addition. The current owner purchased the property in 2019 and 2 building permits were issued in 2019, one to install a porch within existing footprint and another to replace sills.

Atty. Jefferey Christenson, Ms. Jennifer & Mrs. Chris Bouchard and Mr. Joshua Brien were present for tonight's application.

Atty. Christenson stated that the property is a pre-existing nonconforming lot that is part of a condominium. There are 8 lots in the condominium and all the buildings are nonconforming due to setbacks.

The carport is in an unintrusive location that otherwise would be a parking area. It does not intrude on other people's property. It is tucked away in a location that does not harm anyone else. It does need a variance but it will not harm anyone. There are several letters of support from neighbors including those closest to the carport.

The carport was always contemplated as part of the original building permit application. It was anticipated that the carport might need DES approval so it was removed from the permit so they could get the building permit approved.

Atty. Christenson stated it is not uncommon for people to build first then apply for a variance. Mr. Bouchard is here to correct a mistake.

M. Mastenbrook stated one of the criteria for granting a variance is hardship, he does not know what the hardship is for a carport. Atty. Christenson stated the hardship is if it is a reasonable use of the property. Is it reasonable to have a carport in an area where parking is? The carport provides shade and the restriction of the zoning setbacks prevents reasonable use of the property. The reason for the restriction is to prevent overcrowding and impacts on the environment and neighbors. The things they are trying to prevent are not applicable, there is no environmental impact, no impact to neighbors, and is no detriment to the neighbor's property. Mr. Chris Bouchard stated they had an appraiser view the property and he stated that it is consistent with the style and design of the neighborhood. Atty. Christenson stated there is no reason that zoning be applicable on this property.

M. Mastenbrook stated that if it slipped through the cracks then they must have gotten a letter stating you don't meet the setback. If you got the letter, why would you move forward? Mr. Bouchard stated he started renovation then he got the letter from D. Sassan. He had 29 employees and he was in a hurry to get the project done because he was not sure if he would go out of business because of Covid. He forgot about the variance. Atty. Christenson stated they acknowledge the violation that is why they are here. There is no basis under the law to treat the violation any different before or after it is constructed. There is a no reason that because it is a violation that they have to tear it down and rebuild if a variance is approved. If the variance is denied then the carport can be removed. P. Harris stated it is not uncommon to build something and ask for forgiveness later.

Atty. Christenson stated they built the carport over where the car parks so there is no concern about overcrowding. They had to pave the area before constructing the carport. The carport could reduce parking because of the post. From an overcrowding standpoint it is in an unintrusive location, has no walls and the location has no material impact on anyone. Restriction is on the condominium area and this is permitted under the condominium documents. The Zoning Board doesn't have any enforcement over the condominium documents. Ms. Bouchard stated she is vice-president of the association.

P. Harris stated that fire congestion could be an issue. Ms. Bouchard stated that everyone has a garage. Atty. Christenson stated that almost everyone submitted a letter that they are in agreement with allowing the carport. The use of the condominium common area is up to the condominium association. P. Harris stated the hardship is reducing setback. Atty. Christenson stated every variance is considered on its own merits. Most other condos already have garages.

J. Froumy stated that he is an alternate on the Board and will not be voting tonight but he is allowed to participate in the discussion. He stated that the neighbors are positive about the variance but a variance is awarded to the property not the owner. The relief is from the ordinance that the citizens voted on. While the letters are good he is not affected by them. There is reasonable use of the property. The property is a residential property with a house on it that people can live in. A shelter for a car is not a reasonable use, there are numerous people that don't have a carport.

Atty. Christenson stated that there needs to be a reasonable use in order to establish hardship, it doesn't have to be the only use. The carport meets that test, it is a reasonable use not the only use. A denial of the variance prevents that use. Substantial justice will be done because there is no loss to public or neighborhood. There are several people in neighborhood who have garages and the carport will not impair other properties or their use. He believes this is a reasonable use.

J. Froumy stated it is difficult to segregate out the overcrowding in relation to the reasonable use. The distance is 3.2' from the property line. Atty. Christenson asked, is it reasonable to prevent the carport due to overcrowding within the setback? There is no reason to deny the variance given the nature of the structure, it has no walls it is just posts and a roof. There is no impact on the environment or safety. Fire is not an issue. It is in a location that is out of the way and will not impact anyone's view. The property is the unique situation.

M. Mastenbrook stated the owner came forward stating that the area can be used for parking. As a Board member his number one concern is safety. The proposal is only 3.2' to the property line and 17.15' from the adjacent building. Safety is the Board's concern.

S. Ciampi stated she visited the site and when she stood in the driveway and looked around she had concerns about fire spreading to other structures.

D. Sassan stated that the carport is 3.2' or a little less to the property line and 17.15' to an adjacent building. Atty. Christenson stated concern about safety shouldn't be an issue as this structure has no walls and is not an enclosed building. S. Ciampi stated there is a carport, house and garage all made wood. If a fire starts in the garage with the wind, off the water, what would stop the carport from catching fire. Mr. Bouchard stated it is not a fire hazard because the carport is made of steel.

Atty. Christenson stated this is a preexisting nonconforming property and things can happen. P. Harris stated the structures in the area were original camps that have now been overbuilt and are being used as houses. They are asking for 21' relief from a 25' setback. If they grant this other may want it too. The Board's concern is how many camps that are in old campgrounds are turned into year-round houses.

Atty. Christenson stated the carport is not a garage and is less intrusive than a structure is. P. Harris stated that a carport can get enclosed, then they add a second story. Atty. Christenson stated that the variance doesn't mean they can expand down the road. They would have to come before the Board again. It is not unreasonable that they grant the variance with the condition that they never enclose it or increase the height.

S. Ciampi stated that you have a carport that got built without a variance. What happens in ten years and another one builds without a permit or variance and walls go up and it gets enclosed. Atty. Christenson stated if denied the carport has to come down and any future owners would need a variance. In a perfect world no one violates the ordinance, and if someone in the future does, they run the risk of coming before the Board. The Bouchards made a mistake and are trying to correct it.

The chairman reopened the hearing to public comment.

Ms. Claire Peterson, 78 Sunset Drive, stated that when the paving was put in the people on the water side had no objection because the runoff didn't affect them but it affected her property. Ms. Peterson stated that between 6:38 to 7:58 there was a flatbed truck that remained running creating sufficient noise that it affected her. P. Harris stated that any expansion of runoff from Mr. Bouchard's property that affects her property is a civil issue.

There being no further questions or comments the chairman closed the public hearing.

M. Mastenbrook stated that he does appreciate that the Bouchards are taking responsibility for building the carport without approval. He also agrees with the lawyer that the carport is a lot safer than a garage but he is not a fan of a 3.2' setback. The Board has the option to decline the variance and have it taken down. If they don't deny the variance, they are opening it up for the next person with a 3.2' setback to build it then come before the Board.

J. Froumy understands the attorney's argument that it is a reasonable use but the intent of the ordinance is to prevent overcrowding. The subject of reasonable use is subjective but the issue of safety is not. The subject of overcrowding defeats reasonable use. Not having a carport does not render the property useless. The fact that the carport is already built is not a reason for denial. All the other concerns, including safety and overcrowding, have to be taken into consideration.

P Harris stated that if this goes forward and is approved then there needs to be conditions applied making sure that it can't be expanded or enclosed. He understands that there are letters in support of the carport but the hardship goes against other decisions they have made in the past. He stated that when you buy on the lake you know where the lots line are, you don't concern yourself with them after the fact.

N. Patten stated that she is opposed to this and can't believe they constructed the carport before coming to the Board. If the Board allows this then everyone that doesn't have a garage will want a carport. D. Dunham wanted to know if they had come before the Board before they built it would the Board have approved it. J. Froumy stated that the Board cannot take punitive actions because it is an after the fact application. The fact that it is an after the fact application is irrelevant.

BOARD ACTION – JENNIFER BOUCHARD FOR SUNSET BEACH CONDOMINIUM:

MOTION: M. Mastenbrook moved to deny a Variance of Article 5 Table 2 of the Zoning Ordinance to allow a carport closer (3.2') to the side property line than allowed (25') as it doesn't meet the criteria:

1. The variance will be contrary to the public interest because this is not a small or insignificant proposal. Setbacks were established to prevent overcrowding and density of buildings. The carport is in close proximity to other buildings.
2. The spirit of the ordinance is not observed because it is too close to the property line in an already overcrowded area.
3. Substantial justice will not be done because the additional structure within the setback confers a significant benefit to the applicant to the detriment of the surrounding property through overcrowding.
4. The variance would not diminish the value of surrounding properties because there is no evidence it will diminish surrounding property values.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would not result in unnecessary hardship because of the following:
 - a. fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the current owner purchased the property knowing its condition, size and limitations. It is an unreasonable and unsustainable overcrowding and over use of the property.

The motion was seconded by D. Dunham and carried (4-0-1) N. Patten abstained

MOTION: M. Mastenbrook moved to deny a Variance of Article 5 Table 2 of the Zoning Ordinance to allow a carport closer (17.15') to an unrelated structure (garage) than allowed (30') as it doesn't meet the criteria.

1. The variance will be contrary to the public interest because this is not a small or insignificant proposal. Setbacks were established to prevent overcrowding and density of buildings. The carport is in close proximity to other buildings.
2. The spirit of the ordinance is not observed because it is too close to the property line in an already overcrowded area.
3. Substantial justice will not be done because the additional structure within the setback confers a significant benefit to the applicant to the detriment of the surrounding property through overcrowding.
4. The variance would not diminish the value of surrounding properties because there is no evidence it will diminish surrounding property values.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would not result in unnecessary hardship because of the following:
 - a. fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the current owner purchased the property knowing its condition, size and limitations. It is an unreasonable and unsustainable overcrowding and over use of the property.

The motion was seconded by D. Dunham and carried. (4-0-1) N. Patten abstained.

OTHER BUSINESS:

BOARD'S ACTION -MINUTES:

MOTION: On a motion by M. Mastenbrook, seconded by D. Dunham it was voted unanimously to accept the minutes of June 23, 2021 as written. (5-0)

D. Sassan informed the Board that this was his last meeting as he has taken a position in another town. He told the Board that it was a pleasure working with them.

ADJOURNMENT:

MOTION: On a motion by N. Patten, seconded by S. Ciampi it was voted unanimously to adjourn at 7:20pm. (5-0)

Respectfully submitted,

Elaine M. Murphy
Administrative Assistant