

**GREENLAND ZONING BOARD
PUBLIC HEARING**

TUESDAY, August 18, 2009

Members Present: Mr. Chris Halligan, Chair
Ms. Liz Cummings, Vice Chair
Mr. Don Arsenault
Mr. Sean Conner
Ms. Stephanie Glennon

Staff: Mr. Robert Cushman, Building Inspector
Ms. Amy Leonard, Secretary

Chairman Halligan opened the public hearing of the Greenland Zoning Board of Adjustment at 7:00 P.M. and a roll call was taken. He announced the procedures of the Zoning Board of Adjustment and stated that a quorum was present and they would proceed with the meeting. Mr. Halligan noted the meeting was being recorded and the minutes would be available to the public when completed.

Public Hearing

1. Appeal from an Administrative Decision, 6 Drake Drive, Owner/Applicant: Kona Realty Trust, (Map R12, Lot 6). Applicant is seeking an appeal from the Building Inspector's determination that several variances are required before a driveway permit is granted. The applicant is exercising their requirement to appeal the Building Inspector's decision within 30 days.

Attorney Tom Keane, representing the applicant Peter Goodman of Kona Realty Trust, along with Larry Morse from New Hampshire Soil Consultants, approached the Board to present an appeal from an administrative decision. Mr. Keane gave a brief history of this application to date, which included: two continuations from this Board while waiting for a wetlands permit approval from the State. He noted he was informed by Mr. Morse, after the last meeting, that the Board would not continue the matter another month and indicated the applicant would need to proceed with the application at tonight's meeting. Mr. Keane stated the Building Inspector's denial of the driveway permit was based on the fact that the applicant would need to obtain six variances from Article XVIII, Wetlands Conservation Area before a driveway permit would be issued. He stated all the sections (18.5.1, 18.6.1B, 18.7.1A, 18.8.1B, 18.9.1, and 18.9.2A) that the Building Inspector listed as sections needing variances from, are obtainable with a Conditional Use Permit (C.U.P.) through the Planning Board per Section 18.10. Ms. Glennon asked Mr. Keane if a C.U.P. were granted from the Planning Board, did he believe that would mute out the Building Inspector's denial action. Mr. Keane responded no, they would still need approval for a driveway permit from the Building Inspector. Mr. Keane felt the Building Inspector was confused with his interpretation and determination of Article 18, because if an applicant meets the 4 criteria of the C.U.P. and is granted one, variances would not be needed. He noted the C.U.P. provision was drafted for that intent and

if that wasn't the case, it would make it an unusable section within the zoning ordinances. Ms. Glennon stated even if the Planning Board granted a C.U.P., State law and the Town ordinances indicate the more restrictive provision applies; so variances would still be needed, as well as a C.U.P. She stated the variances the Building Inspector listed are routinely the ones this Board grants when dealing in the wetlands area. Mr. Keane explained that the role of the ZBA is zoning and the Planning Board role is planning. The applicant's first step should have been to go to the Planning Board. Mr. Halligan asked if the Planning Board application has been filed yet. Mr. Keane replied no; due to the fact that they have not received the State permits yet. Ms. Cummings questioned why the applicant was before them then and noted they did not follow the correct process as he is indicating. Mr. Morse explained the Building Inspector originally denied the driveway permit on a use basis, but when the applicant received the denials and the letter dated April 24, 2009, the use was not included. Mr. Arsenault asked how the applicant wishes to proceed. Mr. Keane stated they would like to make application to the Planning Board for a C.U.P. first (after obtaining the State permits), then based on that decision, seek a use variance and/or the variances the Building Inspector listed if the Planning Board requires that. Ms. Cummings stated the applicant cannot meet the criteria for a C.U.P. because criteria D requires "all other necessary permits have been obtained" and a driveway permit was not issued. Ms. Glennon asked Mr. Keane if he agreed that Section 18.10 is an innovative land use control. Mr. Keane did not agree. Ms. Glennon stated the applicant has an existing driveway/access way; this is an expansion of the driveway. She asked if Mr. Keane believed a C.U.P. would negate the other requirements. Mr. Keane responded yes. Mr. Keane stated the Building Inspector's error was his denial should have been for the use and felt he had been premature on his determination that six variances were needed, especially when there is a specific provision in place that allows the Planning Board to grant that very activity. He stated the Building Inspector should have informed the applicant to go before the Planning Board first to obtain a C.U.P. Mr. Arsenault felt the Board should continue this matter so the applicant can go before the Planning Board and see if a C.U.P. is granted. Mr. Halligan stated based on this new information and having a better understanding of the applicant's reasoning for this appeal and their belief that a C.U.P. is obtainable through the Planning Board, he would lean towards continuing this matter for one more month. Ms. Glennon stated there is an active administrative appeal and felt the Board needs to conclude that issue. Mr. Keane stated if the Town has an ordinance that allows a particular activity, based on a C.U.P.; until it is determined as to whether or not they have satisfied the C.U.P., it is not appropriate to deny it based on the need for variances that would not be necessary if a C.U.P. were granted.

Chair Halligan opened the hearing for public comments. Hearing none, the hearing was closed. Ms. Glennon stated this appeal is not complicated in the ZBA's role; it was the Building Inspector's job to make a decision at the time the driveway permit request was received. She stated her assessment is that not only do those provisions the Building Inspector cited apply, but he could have cited additional variances that were needed; i.e. 18.12.1. Ms. Glennon felt the Building Inspector was correct with his decision and that decision did not even address the use issue, which, in itself, is not allowed. After the discussion, the following motion was made:

Motion 1: Stephanie Glennon moved to deny the Appeal of an Administrator's Decision and uphold the Building Inspector's decision to deny the driveway permit request, based on the need that six variances would be required. Lizbeth Cummings seconded the motion.

Ms. Cummings stated her concern is that the Town has a regulation that deals with the wetlands conservation area, which the applicant's driveway is in, and the Board needs to read that regulation as a whole; they can't look at one section alone. She believed their argument that the Building Inspector should have directed the applicant to the Planning Board first is not necessarily in the Building Inspector's pervue. She felt the Building Inspector was correct in his determination to deny the driveway permit. Ms. Glennon wanted to clearly state that no one has applied for a use variance, but when looking at an administrative appeal, they need to realize other factors in which the Building Inspector made his determination, such as his knowledge of the potential use to park tractor trailers on the property. She stated when looking at the variances cited, these are the ones the Board routinely considers when dealing with the wetlands area; but there are other provisions which are the threshold that guides the Building Inspector and determines that the use complies with what is allowed in the specific districts. She felt the language of the provisions alone clearly sustains the Building Inspector's decision. Mr. Conner stated it may not be evident on the surface, but it seems the best path forward is to deny this appeal so the applicant can move forward with the Planning Board. Mr. Arsenault felt Mr. Keane pointed out some very good facts. He believed the applicant was right that an error had been made on the Building Inspector's part and the Planning Board should have heard this matter first. After the discussion, the following vote was taken on the motion:

There was a vote of 4 in favor, to uphold the Building Inspector's decision and 1 against (D. Arsenault). MOTION CARRIED.

2a. Equitable Waiver of Dimensional Requirements, 26 Vernita Drive, Owner/Applicant: Robyn Sealock, (Map U7, Lot 29). Applicant is seeking an equitable waiver of dimensional requirements from Article IV, Section 4.2, Sub-section F of the zoning ordinance, in order to comply with the existing house side yard setback requirements prior to expanding the structure.

Robyn Sealock, applicant, approached the Board to present her application for an equitable waiver of dimensional requirements. Ms. Sealock stated this request is needed because the Building Inspector denied the permit based on the fact that the house encroaches 5 feet into the side yard setback (only set back 15 feet, where 20 feet is required). She informed the Board that her intention is to take off the existing addition in the back of the house and rebuild and expand it with a more energy efficient and modern addition. She noted it is quite weathered. Ms. Sealock indicated she purchased the property two years ago without any known issues. The addition existed since the house was built, which was in the 1960's. She noted it was originally a screened porch that had been enclosed and weatherized throughout the years. Ms. Sealock stated the addition would be no closer to the abutting property, just expanded 5 feet towards the back of the

property. She submitted an abutter letter stating they were in favor of this request.

Chair Halligan opened the hearing for public comments. Hearing none, the hearing was closed. There were no Board questions or comments and the following motion was made:

Motion 2: Stephanie Glennon moved to grant the Equitable Waiver of Dimensional Requirements for 26 Vernita Drive, as presented. Lizbeth Cummings seconded the motion. All were in favor. MOTION CARRIED.

2b. Request for an Area Variance, 26 Vernita Drive, Owner/Applicant: Robyn Sealock, (Map U7, Lot 29). Applicant is requesting an area variance from Article IV, Section 4.2, Sub-section F of the zoning ordinance, in order to replace and expand the existing 15' x 16' addition, which currently encroaches the required 20' side yard setback requirement by approximately 5'.

Ms. Sealock continued with the application for an area variance to replace and expand the existing addition that was discussed during agenda item 2a. No additional information was submitted for this request. Ms. Cummings asked if there was any other place on the property that the addition could go. Ms. Sealock responded no, due to the location of the septic system and driveway.

Chair Halligan opened the hearing for public comments. Hearing none, the hearing was closed. There were no Board questions or comments and the following motion was made:

Motion 3: Stephanie Glennon moved to grant the Area Variance for 26 Vernita Drive, as presented. Don Arsenault seconded the motion. MOTION CARRIED.

Ms. Cummings stated she felt the addition would enhance the property and proceeded to go through the variance criteria. She agreed with all the facts listed in support of this request, which included: 1. The proposed use would not diminish surrounding property values because the new addition would meet code, it would be on the back side of the house and difficult to see from the street; 2. Granting the variance would not be contrary to the public interest because it will improve the property, thereby increasing value and it will repair and modernize it due to structural deficiencies; 3. Denial of the variance would result in unnecessary hardship to the owner because: a. the property was purchased with no knowledge that there was not an existing permit for the existing addition, b. the same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because it is the only location on the property and house where the addition would be practical, and there is no option to buy additional land; 4. Granting the variance would do substantial justice because it would be an improvement to upgrade the deteriorating, existing addition and would only improve property value; 5. The use is not contrary to the spirit of the ordinance because the structure has existed for some time and rebuilding it would improve it. Mr. Halligan agreed all criteria had been met.

After the discussion, the following vote was taken on the motion:

There was a vote of 5 for and 0 against the motion to grant the Area Variance. MOTION CARRIED.

3. Any business that may legally come before the Board but does not call for public hearing, including: review of previous meeting minutes, consideration of their approval, consideration of timely-filed motions for rehearing, and consideration of further motions.

The Board reviewed the minutes of July 21, 2009. There were no suggested changes made to the minutes and the following motion was made:

Motion 4: Lizbeth Cummings moved to approve the minutes of July 21, 2009 as presented and Chris Halligan seconded the motion. All were in favor, with a vote of 5 for and 0 against. MOTION CARRIED.

Being no further business, the meeting was adjourned at 8:10 P.M.

Motion 5: Lizbeth Cummings moved to adjourn the meeting at 8:10 P.M. and Don Arsenault seconded the motion. All were in favor, with a vote of 5 for and 0 against. MOTION CARRIED.

Recorded, transcribed and typed by:

Amy Leonard
Secretary, Zoning Board of Adjustment

Attachments:

1. Agenda, dated 8-18-09

Approved by the Greenland Zoning Board on September 15, 2009.