

**TOWN OF SEABROOK  
BOARD OF ADJUSTMENT  
AUGUST 26, 2009**

Members Present: Teresa Rowe, Henry Therriault, Dr. Robert Lebold, Lucille Moulton and Robin Fales

Others Present: Building Inspector Paul Garand and Secretary Jo-Anne Page

H. Therriault opened the meeting at 7PM. He explained the procedure of the meeting to all in attendance.

**OLD BUSINESS:**

**Minutes of July 22, 2009 Meeting**

Motion: T. Rowe Accept minutes of July 22, 2009 meeting with the change of June to July on  
Second: R. Fales page one  
Yes: Unanimous

Minutes of July 22, 2009 accepted with the change on page 1 of June to July.

**Case #2009-08 Steven J Peterson, 15 Cross Beach Road, Map 25, Lot 14 for Variance to Article VI to Permit Reduced Front Setback in Zone 1**

H. Therriault stated that there was an email request from the applicant requesting that this application be withdrawn without prejudice.

Motion: H. Therriault Grant the applicant's request to withdraw this application without prejudice  
Second: Dr. Lebold  
Yes: Unanimous

Request for Variance at 15 Cross Beach Road is withdrawn without prejudice at the request of the applicant.

**NEW BUSINESS:**

**Case #2009-20 Gregory T & Margaret L Brown, 71 Walton Road, Map 10, Lot 39 for Variance to Article VI, Table 2, Paragraph 2 to Permit Two Lots with Reduced Frontage in Zone 2R**

Margaret Brown appeared on behalf of this application. She stated that this request was so that they could subdivide their property. She said that there was enough square footage but not enough frontage. She said they wanted to give a home to their son.

P. Garand stated that there was no survey done on the property. He said that a brook surrounds the property, stonewall and railroad tracks. He said that on the left side of the property there is a house and garage and they would like to put a home on the second lot in the rear. He said that the lot on the left would be 15,000 square feet. He pointed out that this is a deep, narrow lot and they wanted to put a house in for their son.

L. Moulton asked if there was another home there.  
P. Garand said there was and the new one would make three.

Dr. Lebold asked about the garage. He also asked if the new lot would be behind the garage.  
P. Garand stated it would stay with the older house. He said that it would be behind the garage.

Dr. Lebold asked about a shared driveway.  
M. Brown said it would be a shared driveway and there would be the same number of cars and people there is now.

H. Therriault stated that there were two houses there now.  
M. Brown said that the new house would be on the large second lot down to the rear.  
P. Garand stated that there is 135 feet of frontage there.

H. Therriault stated he knows that there are a few lots that are deep lots in town. He said that he did not know what the hardship was. He wanted to know why the property could not be used.

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M. Brown stated that there were only two homes allowed on the property now. She said to subdivide they could add another one for their son. She said that there was no other way to divide this property.

H. Therriault stated that a variance is not for a financial hardship. He said that a variance would always be there on the property and he would like to know what the hardship was and why it was unique.

Dr. Lebold asked about a family apartment in the garage.

P. Garand stated that there were already two units there and that was all that was allowed.

L. Moulton pointed out that an apartment would not be adding another structure.

P. Garand stated that living units are counted by the number of kitchens.

P. Garand spoke as an abutter to the property. He stated that this is a long narrow lot and putting in a roadway could be dangerous. He said that the brook, stonewall and railroad tracks limit what can be done on the property.

H. Therriault said that the driveway is a concern.

P. Garand stated that a driveway would be better than a road and the entire lot is 60,000 square feet in size.

H. Therriault asked about the road frontage proposal.

P. Garand stated there is 135 feet on Walton road and it could be divided equally and made wider on back. He said that there have been multiple units and vehicles on this property for a number of years.

H. Therriault said that there are a number of lots in the area that are just like this one. He said that he is trying to see what the hardship is.

Dr. Lebold stated that the brook, stonewall and railroad tracks are a problem.

P. Garand asked if more information would be helpful to the board.

H. Therriault said that it might help.

R. Fales suggested continuing this case until the September 23<sup>rd</sup> meeting.

M. Brown said she would like to continue.

Motion: Dr. Lebold Continue this application to the September 23, 2009 meeting

Second: L. Moulton

Yes: Unanimous

Request for Variance at 71 Walton Road is continued to the September 23, 2009 meeting at the request of the applicant.

Case #2005-02 700 Lafayette Road

H. Therriault stated that there was a request from Attorney Walter Mitchell, town counsel, to send a letter to the property owner of Case 2005-02 because the Special Exception was about to expire and asking if an extension would be sought. He said that Attorney McNeill, counsel for the owner of 700 Lafayette Road, responded with a packet recapping the actions on the property over the years. He said that the bottom line was on the last page asking the extension be granted to January 12, 2011.

Attorney Malcolm McNeill appeared on behalf of 700 Lafayette Road and stated the following:

Jim Graffmeyer, DDR, was in attendance also

He was here to respond to the letter dated 8/12/2009

T. Rowe was the only one at the 2005 meeting

He needed to lay the groundwork for the property

Any member who was negative ...

L. Moulton stated that she was at the 2005 hearing.

Attorney McNeill stated:

Anyone should recuse themselves if they stood against the planning end of these proposals

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T. Rowe stated:

That would be her  
She had spoken at the planning board meeting as a representative from the Rocks Road neighborhood  
It was never against the project only asking for safety precautions to be taken  
She was from the road being affected  
She had approved the proposal in 2005  
There was no plan at the meeting in 2005  
She would recuse herself for the town not because of Attorney McNeill's request  
She has never spoken negative towards the project

Attorney McNeill stated:

He was aware of negative comments anyone had spoken against the project  
She was an abutter  
There was no specific plan in 2005  
He wanted T. Rowe to recuse herself because of negative comments

L. Moulton stated that she had no idea what property was being talked about.

Attorney McNeill said this was the former Venture property.

Attorney McNeill stated:

Special Exception was granted in January 2005  
First notice of expiration was 4 ½ years later  
He spoke with Attorney Mitchell questioning the date of 9/11/2009  
Told due to Planning Board approval and gave another 30 days for appeal  
If starting a cutoff date it is requested to be 10/14/2009 as the planning board  
This was just a response to a letter not a public hearing tonight  
This subject should not be opened as public hearing  
Questioning why all people in attendance  
Mr. Greene challenged the ZBA decision in Superior Court  
This meeting was never public noticed  
Commented on the attendance of the meeting without public notice  
The ZBA needs to decide on a deadline date  
The ZBA needs to address the submission packet

Dr. Lebold stated that this could be set up for next month and have the property owner apply for an extension which would mean a public hearing.

Attorney McNeill stated:

Letter received on August 13, 2009  
Sent response letter and got all things together quickly  
Believe they complied and there is no need to file for a formal hearing  
This letter was received just two weeks before the meeting of ZBA  
All the letter stated was give a response  
This was the first time he had heard of this January 2005 ZBA decision

H. Therriault stated that he did respond quickly and thanked him for that. He also stated that he had not followed the Planning Board meetings on this property. He said that everything was laid out well for what has gone on over the years.

P. Garand stated that Attorney Mitchell said the ZBA could work with the Planning Board deadline. He said that the Notice of Decision on this case had been sent to the property owner in 2005. He stated he received an email from Attorney Mitchell and it was suggested that the ZBA date be tied in with the Planning Board dates. He was advised that as long as this was handled at the next meeting it would be okay. He brought the expiration to the attention of town attorney.

Attorney McNeill said:

Not questioning the decision  
Aware that the notice went to property owner  
They were never notified in 2006 when decision expired  
A date was picked on August 13, 2009 letter  
He was aware of the Notice of Decision in 2005 on the generic form

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Notice of this meeting was not given to him until August 13<sup>th</sup>  
August 2009 letter came out of the blue  
Wanted to know who notified him of an expiration date

L. Moulton stated that she thought that if the project was in process it would not expire.

P. Garand stated that to him Phase I has a date about to be finalized and Phase II is going forward. Phase I is about to expire and the property owner needed to be notified.

Attorney McNeill stated:

Phase I could have started October 2008  
Special Exception litigated for 1 ½ years  
Phase I date 10/14/2008  
No notice until now that Special Exception was about to expire  
Phase II was denied in May 2009 and will be in Superior Court 10/6/2009  
2005 there were no plans or engineering studies – This was approved and appealed  
No developers will go to Planning Board without ZBA approvals  
Mid 2006 DDR applied for project  
September 2006 Special Exception was affirmed

P. Garand stated that this meeting was getting out of hand and this was just to get the dates to coincide. He pointed out that the ZBA could extend the decision date or request a hearing.

J. Page asked Chairman Therriault to speak to this matter. She stated the following:

The generic forms are the ones provided to the ZBA by state regulations  
She composed the letter at the request of town counsel  
She only notified ZBA members of the letter and his response

Attorney McNeill said:

He was just stating his reasons for his response  
Planning date is January 2011  
If they prevail on 10/6/2009 – project will be filed for Phase II and at the same time limits as Phase I – 2 year extension  
He wants the Planning Board time line used

L. Moulton stated she felt this needs a public hearing.

Attorney McNeill said the extension date needs to coincide with the Planning Board.

H. Therriault said the 9/11/2009 date should add 30 days.

Attorney McNeill stated:

Yes, 30 days should be added to the date  
He had covered the time line of the property and given it to the ZBA (see attached response of Attorney McNeill)  
Planning Board gave extensions to January 12, 2011

H. Therriault said this should be continued so that the board members could sift through all the information given to them.

P. Garand said that there could be substantial completion of Phase I in two years.

Attorney McNeill said that depends on the outcome on 10/6/2009.

L. Moulton said that she would not vote at this meeting because she had just received the information.

H. Therriault said that there was a lot of information and all members need time to review it. He suggested the board act on this at the September meeting.

Attorney McNeill said he responded to the letter in a timely fashion and would like to proceed to closure.

Motion: H. Therriault Given that this is a unique situation, continue this matter to September 2009 meeting  
Second: Dr. Lebold  
Yes: Unanimous

Case 2005-02 extension of Special Exception expiration is continued to September 23, 2009.

Attorney McNeill said this was a unique matter.

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Representative from Market Basket said that he had come to the meeting because it was a public hearing. H. Therriault said this was for discussion only and not a public hearing on this matter.

**Rules of Procedure**

Dr. Lebold requested changes in spelling on Page 2 #5b and Page 3 #1a&b

These will be voted on at the September 23, 2009 meeting.

Motion:           R. Fales           Adjourn  
Second:          T. Rowe  
Yes:               Unanimous

Meeting adjourned at 8:20 PM.

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Henry Therriault, Chairman  
Board of Adjustment

DATED: \_\_\_\_\_