

Members present: Vern Gardner, Craig Wilson, Brian Boyle, Norm Leon

Members absent: Brett Costa

Staff: Heather Ross, Code Enforcement Officer

The meeting was called to order at 7:09 p.m.
Pledge to the Flag

Mr. Gardner advised the applicant there are only four members present, requiring all four like votes to be approved. The applicants agreed to continue.

Mr. Wilson noted Title 16.1.5.2.F.4.a. authorizes the Board of Appeals to hear the following miscellaneous variation appeals.

ITEM 1: Stephen Tetreault – 30 Adams Road, Map 60 Lot 32A, R-RL

Stephen Tetreault requesting a Miscellaneous Variation to the terms of Title 16 Section 3.2.1B1 in order to replace a mobile home destroyed by fire.

Pat Bedard, Attorney, summarized the variation request and noted that the applicant has lived in the mobile home since 1981, until made unlivable by a fire on September 20, 2013. The mobile home was 20 feet by 48 feet. The applicant is requesting the placement of a new mobile home measuring 28 feet by 56 feet. Mr. Bedard addressed the setback issues relative to the new mobile home. Mr. Wilson noted this issue of setbacks is Item 2. Mr. Gardner directed Mr. Bedard to continue. Mr. Bedard offered copies of MRSA 30-A§4358 Regulation of Manufactured Housing to Board members. Mr. Gardner stated this written information cannot be presented to the Board but can be read into the record. Mr. Bedard read: *Municipalities shall permit manufactured housing to be placed or erected on individual house lots in a number of locations on undeveloped lots where single-family dwellings are allowed, subject to the same requirements as single family dwellings, except as otherwise provided in this section.* There is nothing that prevents the continued non-conforming use of a mobile home in the Rural Residential zone. He also explained the need for a larger mobile home, and still be in compliance with code regarding nonconforming structure relocation. Also, Title 16.7.3.5.5 allows expansion of the structure providing it is no more non-conforming than the existing structure and, the application meets this requirement.

There was no public testimony. The CEO provided:

1. This is a non-conforming lot with a non-conforming structure and non-conforming use located within the Residential Rural Zone. This zone allows, as a permanent use, dwellings, exclusive of mobile homes.
2. Mr. Tetreault's mobile home was damaged by fire on 9/20/13. He is proposing to remove the damaged mobile home from the property and replace with a new mobile home.
3. This would continue a non-conforming use, though no more non-conforming than what existed prior to the fire.
4. This appeal request is for continuation of a non-conforming use.

Mr. Wilson noted he is familiar with the state statute, and noted a municipality is not required to allow mobile homes in all zones, and this has not been challenged. He suggested this is a grandfathered use, as this is not a request to place a new mobile home on a vacant lot in the zone. The fire was not a willful act of the owner and he supports the miscellaneous variation request.

Mr. Boyle and Mr. Leon concurred with Mr. Wilson's summary.

Mr. Gardner asked about the front setback. The CEO read the definition of Yard, Front: *means an open area unoccupied by any structure, excluding cornices, eaves, or gutters projecting not more than twenty-four (24) inches, on the same lot with the building between the front line of the building and the front line of the lot and extending the full width of the lot as it abuts along a public or private street.* The private street, or ROW, does not extend the full length of the lot, so the distance is measured from the corner of the ROW, and any other setback would be considered a side or rear yard setback. Mr. Gardner asked about the width of the ROW. Mr. Bedard stated the deed states it is 15 feet wide. Mr. Tetreault explained the mobile home would be delivered in two sections and could pass along the existing ROW.

Mr. Wilson asked if the Board will be voting on both variations at this time as the prior testimony and Chairman's setback question has mixed both miscellaneous variation requests together. Mr. Gardner polled the Board and the CEO who agreed to treat both items in a single motion.

Mr. Boyle moved to grant to Stephen Tetreault, 30 Adams Road, Map 60 Lot 32A, in the Residential-Rural zone, a Miscellaneous Variation to the terms of Title 16.3.2.1.B.1 to allow the continuance of a nonconforming use, and to Title 16.3.2.1.D.2, to allow the placement of a new mobile home no closer than previously existing mobile home.

Mr. Leon seconded

Motion carried unanimously by all members present

Findings of Fact

1. Title 16.6.6 Basis for Decision has been substantially met by the applications.
2. Patrick Bedard, Attorney, represented the applicant, Stephen Tetreault.
3. Mr. Tetreault inherited the property from his parents and has lived in the mobile home at 30 Adams Road since 1981.
4. The structure was significantly damaged by fire on September 20, 2013, and considered a total loss.
5. Reference was made to MRS 30-A§4358, stating mobile homes shall be permitted in a number of locations in a municipality.
6. The CEO stated this is a non-conforming lot with a non-conforming structure and non-conforming use located within the Residential Rural Zone. This zone allows, as a permanent use, dwellings, exclusive of mobile homes.
7. The structure was 20 x 48 feet, and Mr. Tetreault wishes to replace the mobile home with a larger, 48 x 56-foot, structure.
8. It was determined that the side yard setback was 19 feet from the existing ROW, where 20 feet is required, but no closer than what previously existed.
9. This proposal is no more non-conforming.

Mr. Leon moved to accept the Findings of Fact

Mr. Boyle seconded

Motion carried unanimously by all members present

Conclusion

Under Title 16.7.3.5.5 Nonconforming Structure Repair and Expansion, the Board finds the proposed structure will be no-closer than what previously existed, and an expansion may be allowed. The Board also considered the non-conforming use was grandfathered, allowing for placement of a mobile home at this location.

Mr. Boyle moved to accept the Conclusion

Mr. Leon seconded

Motion carried unanimously by all members present

Mr. Gardner noted this approval is not the issuance of a building permit, and any aggrieved party has 45 days to appeal this decision to Superior Court.

Board members discussed the date of Board decision and notice of decision per Code. The CEO read Title 16.6.5.4.D *Written notice of the decision of the Board of Appeals must be sent to the appellant or petitioner, the Code Enforcement Officer, Conservation Commission, Planning Board and municipal department heads within seven (7) days of the decision. The vote of each member must be part of the record. The written notice of the decision of the Board of Appeals must include the statement of findings. In the case of denials, the statement of findings must include the reason for the denial.*

Mr. Wilson explained that the letters of decision are based on the minutes. He signs the letters as Board Secretary. However, the minutes are not approved until after the letters have been written and distributed, anytime from two weeks or months from the date of decision.

The CEO noted the ordinance has been changed to eliminate the need of a written decision prior to appeal. Title 16.6.5.1 *Making an Appeal/Request. An administrative decision appeal, variance request, or miscellaneous variation request may be submitted to the Board of Appeals. An administrative appeal must be submitted within thirty (30) days of the date of the official, written decision being appealed. Other requests may be filed at will.*

Mr. Gardner will be in touch with Attorney McEachern requesting this issue be addressed and corrected.

Minutes: October 8, 2013

Following discussion, review of the minutes were deferred to the next BoA meeting.

Mr. Leon moved to adjourn

Mr. Gardner seconded

Motion carried by all members present

The Board of Appeals meeting of October 22, 2013 adjourned at 7:55 p.m.