

PRESENT: Dever, Chairman; Pelczar, Vice-Chairman, Flanders, Thorpe, Clark, Edney, Code Enforcement Officer, Tivnan, Clerk

Thorpe moved, Flanders seconded, THAT WE APPROVE THE MINUTES OF SEPTEMBER 9, 2010. Voted unanimously.

PUBLIC HEARING

2922: CRAIG T. SNOW: An appeal for a SPECIAL EXCEPTION (ARTICLE VII-SECTION B-1) to create an attached accessory apartment to the rear of an existing two car garage, Tax Map S11, Lot No. 10J, located at 95 Blueberry Hill Rd. in the Meredith Neck District.

Craig Snow - I am proposing to add an attached apartment for an elderly parent to my existing residence located at 95 Blueberry Hill Road. The existing residence consists of a 3,200 square foot single family home with attached two car garage located on 10.38 acres of land. The house was constructed by me in 1995 and is of Colonial design with wood clapboards, and traditional gable roof lines. The house is located at the end of a 400' driveway and is not visible from Blueberry Hill Road or neighboring houses. In addressing the criteria for granting a Special Exception for "Accessory Apartments" please find the following:

- a. The apartment will be 1080 sq. ft. or 25% of the sum of the net floor area of both the finished dwelling unit and the finished accessory apartment.
- b. The apartment will be a single story structure attached to the rear of the existing two car garage and matching the existing structure design in both materials and construction.
- c. The accessory apartment shall include one bedroom
- d. Accessory apartment will be created by adding to the rear of the existing structure.
- e. The principal dwelling unit will be occupied by the owner.
- f. The accessory apartment will house one elderly parent and will add one vehicle to the existing residence located on 10.38 acres of land.
- g. Means of egress for new apartment will be through existing garage and through a separate exterior door. Existing means of egress for principal dwelling will be unchanged by addition.
- h. Property can sustain parking both inside and outside well in excess of requirements.
- i. Existing structure has a 3 bedroom septic design and contains a Master bedroom utilized 100% of time and a second bedroom utilized 50% of time by a minor child.

Clark – Is the garage attached? Snow – Yes. Clark – There are two-bedrooms in the primary residence? Snow – Yes. Hearing closed at 7:10 PM

2923: JOHN BOWMAN: An appeal for a VARIANCE (ARTICLE IV, SECTION 7c 2b). to expand a non-conforming structure by more than 400 sq. ft., within the limit of existing encroachment, outside the 25' Natural Woodland Buffer but in excess of 16' or 50% of the length of the plane being expanded, Tax Map I14, Lot. No.18, located at 27 Pitchwood Island in the Shoreline District.

2924: JOHN BOWMAN: An appeal for a SPECIAL EXCEPTION (ARTICLE IV, SECTION 7 c 2) to expand a non-conforming structure by more than 400 sq. ft., but within the limit of existing encroachment, Tax Map I14, Lot. no.18, located at 27 Pitchwood Island in the Shoreline District.

Carl Johnson - This property is located on Pitchwood Island. There are three structures on this parcel. With this application we need a variance and a Special Exception. The zoning ordinance requires a variance if it is in excess of 16' or 50% of the length of the plane being expanded and then a Special Exception for the expansion over 400 sq. ft. The portion in red was removed due to safety concerns. We feel this small addition would not diminish the values of surrounding properties. It would not be contrary to the public interest because the building is a single family residence and is a permitted use in that zone and it would provide enjoyment for the owners. We have taken into consideration the environmental impact of this project. This is a modest addition to a modest existing structure. This addition is less non-conforming then the existing encroachment. Their ability to expand is limited. There is an approved Shoreland Permit. Hearing closed at 7:25 PM

2925: NEW ENGLAND PROPERTIES C/O STONEHAM SAVINGS BANK: An appeal for a SPECIAL EXCEPTION (ARTICLE V, SECTION D-9 G1a) to allow construction of a wetland crossing for purposes of access or utilities, such as a road, driveway, or sewer line, Tax Map U37, Lot No.21, located at 88 Powers Road in the Shoreline District.

Carl Johnson – This property is located at 88 Powers Road. There is an existing homestead that is accessed from Powers Rd. There was a conceptual hearing before the planning board. The next public hearing with the planning board will be next month. The applicant is proposing 3 additional lots with two of them on the lake. The parcel is over 27 acres with 6.6 acres classified as wetlands. A single driveway, crossing a portion of the wetland, is being proposed to gain access to lot #2. There is a proposed 6' wide walking path to access the lake on lot #2 with wetland impact. Another lot would require a driveway within the buffer but no direct impact to the wetland. (Passed pictures to the Board showing the wetland crossing for the driveway and the footpath) All of the direct impacts will require NH DES approval. I believe you have a letter from the Conservation Commission. They had concerns with the building envelope on lot #3. (Presented to the board a plan from another development which showed the development of a 10,000 sq. ft. lot. The plan shows a 5,200 sq. ft. home with a septic system, driveway, and a yard within the buildable area.) Thorpe – The Conservation Commission also asked to consider a raised boardwalk or bridge instead of the walking

path. I agree with them. Johnson – I’m sure the applicant would be happy to do that.
Hearing closed at 7:45 PM

2926` : WILLIAM & REBECCA FULLER: An appeal for a VARIANCE (ARTICLE V, SECTION D-4B) to construct a new single-family dwelling with a front setback of 51’, 65’ required, Tax Map U25, Lot No. 33 located at 49 Cummings Cove Road in the Shoreline District.

Dave Dolan – This property is located at 49 Cummings Cove Road. We have an approved boundary line adjustment from the Planning Board. The property went from 30,300 sq. ft. to 36,850 sq. ft. and from 120’ to the minimum shoreline frontage of 150’. The new dwelling will have a greater assessed value which will have a positive affect on surrounding properties. The existing structure is less than 19’from the shoreline. We are asking for a 51’ setback. The net reduction in encroachment into the setback will be reduced by over 1,200 sq. ft. The proposed dwelling is more conforming with the zoning ordinance. There is only 195 sq. ft. of encroachment into the shoreline setback. That is a reduction from the existing encroachment of 1,434 sq. ft. There is no encroachment into the woodland buffer. This proposal is less intrusive than the alternative of expanding the footprint of the existing house by Special Exception. We will be replacing an outdated septic system. Clark – What alternatives have you looked at? Dolan – Moving it back may cause a problem with the leach field. There are some trees down at the shoreline so we wanted a better view. I believe you have a letter from an abutter. Dever – I will read this into the record.

September 27, 2010

To Whom It May Concern:

We have reviewed the plans for the proposed new dwelling at 49 Cummings Cove Road. We support the project and do not have any problem with the variance they are requesting.

John Cullen & Gail Cullen
45 Cummings Cove Road

Hearing closed at 8:00

DELIBERATION

2922: CRAIG T. SNOW:

Thorpe – Everything looks in order. The package is complete and well presented.

Thorpe moved, Pelczar seconded, IN CASE # 2922, CRAIG T. SNOW, I MOVE THE APPEAL FOR A SPECIAL EXCEPTION (ARTICLE VII-SECTION B-1) TO CREATE AN ATTACHED ACCESSORY APARTMENT TO THE REAR OF AN EXISTING TWO CAR

GARAGE, TAX MAP S11, LOT NO. 10J, LOCATED AT 95 BLUEBERRY HILL RD. IN THE MEREDITH NECK DISTRICT BE GRANTED, AS IT MEETS THE CRITERIA FOR A SPECIAL EXCEPTION. Voted 5-0- in favor.

2923: JOHN BOWMAN:

Clark – I believe the spirit of the ordinance is being observed and surrounding properties are going to be enhanced. It meets all the criteria.

Clark moved, Thorpe seconded, IN CASE # 2923, JOHN BOWMAN, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE IV, SECTION 7C 2B) TO EXPAND A NON-CONFORMING STRUCTURE BY MORE THAN 400 SQ. FT., WITHIN THE LIMIT OF EXISTING ENCROACHMENT, OUTSIDE THE 25' NATURAL WOODLAND BUFFER BUT IN EXCESS OF 16' OR 50% OF THE LENGTH OF THE PLANE BEING EXPANDED, TAX MAP I14, LOT NO.18, LOCATED AT 27 PITCHWOOD ISLAND IN THE SHORELINE DISTRICT BE GRANTED, AS IT MEETS THE CRITERIA FOR A VARIANCE. Vote 5-0 in favor.

2924: JOHN BOWMAN:

Clark – This would not be detrimental to the neighborhood, noxious or offensive. I believe it meets the criteria for a Special Exception. Flanders – I agree.

Clark moved, Flanders seconded, IN CASE # 2924, JOHN BOWMAN, I MOVE THE APPEAL FOR A SPECIAL EXCEPTION (ARTICLE IV, SECTION 7 C 2) TO EXPAND A NON-CONFORMING STRUCTURE BY MORE THAN 400 SQ. FT., BUT WITHIN THE LIMIT OF EXISTING ENCROACHMENT, TAX MAP I14, LOT. NO.18, LOCATED AT 27 PITCHWOOD ISLAND IN THE SHORELINE DISTRICT BE GRANTED, AS IT MEETS THE CRITERIA FOR A SPECIAL EXCEPTION. Voted 5-0 in favor.

2925: NEW ENGLAND PROPERTIES C/O STONEHAM SAVINGS BANK:

Thorpe – I have some concerns with this one. With regard to the Conservation Commission concerns on the planned fill for the walking path, I would like to see a raised boardwalk or a bridge. Dever – If you read the Conservation Commission's letter you notice that there are buffer impacts to Lot #3 for a driveway also. Clark – Would that require another Special Exception? Dever - Yes.

Clark moved, Thorpe seconded, IN CASE # 2925, NEW ENGLAND PROPERTIES C/O STONEHAM SAVINGS BANK, I MOVE THE APPEAL FOR A SPECIAL EXCEPTION (ARTICLE V, SECTION D-9 G1A) TO ALLOW CONSTRUCTION OF A WETLAND CROSSING FOR PURPOSES OF ACCESS OR UTILITIES, SUCH AS A ROAD, DRIVEWAY, OR SEWER LINE, TAX MAP U37, LOT NO.21, LOCATED AT 88 POWERS ROAD IN THE SHORELINE DISTRICT BE GRANTED WITH THE CONDITION THAT THE APPLICANT AGREES TO MODIFY THE PLAN TO INCLUDE A RAISED BOARDWALK OR BRIDGE THAT SATISFIES THE CONSERVATION COMMISSION, UNLESS SUCH MODIFICATION PROVES UNACCEPTABLE TO NH

DES AND AN ADDITIONAL SPECIAL EXCEPTION REQUIRED FOR BUFFER IMPACT TO LOT #3 FOR DRIVEWAY ACCESS.. Voted – 5-0 in favor.

2926` : WILLIAM & REBECCA FULLER:

Thorpe – I know the new building is more conforming but I can't find sufficient hardship. Flanders – I would argue that they have not ignored the 65' setback. They could have come to us with a proposal, which has happened in the past, to tear down that existing structure, and use their existing setback and add on to the back. Most of this proposal complies with the 65' setback. They have taken the time to push the house back and I feel like we are taking them to task on the fact that they have made an effort to make most of it comply when they could have come to us with the same front edge of the house and expand on it, which a lot of people have done. Clark – They are welcomed to do that but they didn't. It's not in the zoning ordinance that they get to violate the 65' setback if they are replacing an existing structure. Flanders – Where does the spirit of the law come in? Clark – The spirit of the law says that everyone who builds a new construction, which this is, goes back behind the 65'. New construction is to be back 65'. Pelczar – I agree with Brian. They have met the side setbacks, have brought it back further than the existing structure, and updated the leach field. I think they have taken some great steps. Clark – If they had a septic plan that showed they tried to put the house behind the 65' but can't because there is no place for a leach field would be a different case but we can't say because there might be a problem with the leaching field that makes this ok. If they showed here is what we tried to do but we couldn't do it, in this case I would ask why they hadn't moved the property line since they are the ones that established it to make room for the septic system or why didn't they build a house that fits. There is no hardship here. If you simply mirrored this, it would fit. They admitted that they didn't meet the 65' setback because they wanted to have a better view. Flanders – Because they have taken a few extra steps than someone else might have, we are going to penalize them as opposed to someone who didn't go through those steps and came in and expanded on the existing house. Clark – If they want to do that, they can. That's the law. Let me ask you a question. What if there was no other house? You would then agree with me? Flanders – Yes. Clark – Our criteria for granting a variance does not say if it is less non-conforming than what is there, that's a reason to grant a variance even if it doesn't pass the other criteria. The zoning ordinance could say that but it doesn't. Dever – You have to look at this application as if there is nothing on this lot. Flanders – You are right. We have a 65' setback and they are a few feet away from it and you are telling them, no we don't like your plan. Come back and show me something 18' from the water. Clark – This happens a lot. Developers come in and somehow meet the 50' but not the 65'. I think the reason for this is this board has been very willing under previous zoning rulings because there was a lot more latitude, we traditionally accepted all of this but now the laws have changed. The State won't allow them to get away with it but the ZBA under different laws has allowed them to get away with it. Flanders – The 65' was put in place before the State's 50'? Clark – If we think it is wrong, then we should go before the Planning Board and ask them to change it. Thorpe – That possibly could happen. Dever – We have the 65' because people were concerned about the impact from the water. Thorpe – I think common sense and how the law is written are in conflict

with each other. We don't have any choice but to follow the law. Dever – Let's go down through the criteria.

1. Granting the variance would not diminish the values of surrounding properties: All agreed it would not.
2. Granting the variance would not be contrary to the public interest: Clark – I think the public interest is best met by everyone complying equally with the zoning ordinance but this is not one of the criteria that I would base a no vote on. Thorpe – I'm concerned with fairness for everybody, therefore; if we grant this we are against the public interest. The public interest is to follow the zoning ordinance. Flanders – I think it is in the public interest to have it 30' back from where they could put it. Pelczar – I agree.
3. Granting the variance would do substantial justice. Clark – I don't think granting this variance would do substantial justice. Thorpe – I agree with that. Flanders – I disagree. Pelczar - So do I. Clark – I think the hurdle for granting the variance has not been satisfied. Pelczar – So how is the general public being hurt by this? Clark – Everybody who lives in Cummings Cove will lose because... Pelczar – Because it's not set further back? Clark – You are comparing this with what currently exists and is this better than what currently exists? Sure. Does it meet the zoning ordinance, does it meet the criteria for a variance, no. Is this better for the general public than a design that does meet the zoning ordinance, no. It is very possible for the applicant to come up with a design that does meet the zoning ordinance. Flanders – They could come up with a design that is 19' away. Dever – You have to look at the property as if there is nothing there. With the new changes in the law, we are going to face this a few times.
4. Granting the variance would observe the spirit of the ordinance: Clark & Thorpe – No. Flanders – I feel it does. Pelczar – I'm with Brian.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

A. Owing to special conditions of the property that distinguish it from other properties in the area:

1. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
2. The proposed use is a reasonable use.

Dever- I understand where Warren and Dave are coming from. What about you? Do you feel there are special conditions of the property that distinguish it from other properties in the area? Flanders – No, because all the properties in that area are small and tough to build on. It's not special in any way other than it is tough to build on because of its size. Pelczar – They're doing what we asked them to do. Dever- What we asked them to do is build a building that is 65' from the water. Clark – I am going to make a motion in the affirmative. If that fails that is the end of things.

Clark moved, IN CASE # 2926, WILLIAM & REBECCA FULLER, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V, SECTION D-4B) TO CONSTRUCT A NEW SINGLE-FAMILY DWELLING WITH A FRONT SETBACK OF 51', 65' REQUIRED, TAX MAP U25, LOT NO. 33 LOCATED AT 29 CUMMINGS COVE ROAD IN THE SHORELINE DISTRICT BE GRANTED.

Thorpe – It is 49 Cummings Cove, not 29. Dever – Right.

Clark moved, Thorpe seconded, IN CASE # 2926, WILLIAM & REBECCA FULLER, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V, SECTION D-4B) TO CONSTRUCT A NEW SINGLE-FAMILY DWELLING WITH A FRONT SETBACK OF 51', 65' REQUIRED, TAX MAP U25, LOT NO. 33 LOCATED AT 49 CUMMINGS COVE ROAD IN THE SHORELINE DISTRICT BE GRANTED. Voted 3-2 opposed.

Meeting adjourned at 9:00 PM

Respectfully submitted,

Christine Tivnan
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on November 10, 2010

Jack Dever - Chairman