

Westmoreland Zoning Board of Adjustment
Minutes of November 19, 2014 Hearings
These minutes were approved by the Board On December 17, 2014

Present: Chairman Peter Remy, Brian Merry, Barry Shonbeck, Russ Huntley, Nancy Ranson, and Alternate member, Ernie Perham.

Chairman Remy opened the hearing at 7:00 pm and asked the Board to review the minutes of the previous hearing of June 18, 2014. Mr. Merry moved that the minutes be approved as read and Ms. Ranson seconded the motion. All voted in favor. Ms. Ranson asked if the minutes could be sent by email prior to the hearing. The clerk agreed that it could be done.

The Board discussed the issue of whether zoning permits expire. A recent letter from Selectmen to a property owner stated that zoning permits expire one year after being issued and the owners may apply for a one year extension. Chairman Remy said that the Board had the power to grant as many extensions as they wished.

Chairman Remy read a section of a letter from the Town Attorney, Silas Little commending the board for the thoroughness of the hearings which led the court to uphold the Board's decision on the Graves application.

The Board took note of a recent communication from the Planning Board on the work they have done clarifying the difference between a 'home business' and a 'home based occupation'.

Watts Hearing

At 7:30pm Chairman Remy opened the hearing on the application of Heidi Watts who applied for a Special Exception to add an accessory dwelling unit (ADU) to a one family house with no change to the footprint of the house. The property is located at 68 Mt. Gilboa Road, Map R-14, Lot 8.

Chairman Remy invited Ms. Watts to address the Board. Ms. Watts explained that she is 83 years old and looking toward a time when she might need a caregiver and would like to convert space within the present footprint of her house into a one bedroom apartment to house the caregiver. Until the need

arises for the caregiver the space will be rented out. The Board examined copies of the floor plans she submitted.

Ms. Watts explained that the apartment would be on the ground floor, and Ms. Watts would have space on the ground floor and the second floor. There was already a bathroom in the downstairs space and all that was needed for the conversion is one small partition and a kitchen. There is one bedroom in the apartment and two bedrooms in her space.

Mr. Remy said that the Ordinance about Accessory Dwelling Units states that the unit cannot occupy more than 30% of the original structure and the architectural drawings stated that the rental unit would be 28% of the original structure.

Mr. Merry asked about entry doors. Ms. Watts said that the front door would be a shared entry into a hallway space with doors to each apartment. Those doors will have to be fire proof doors. Each side also has an additional exit out to the field. The house is hard-wired with fire alarms.

Mr. Merry also asked whether the septic system was designed to handle the Accessory Dwelling Unit. Ms. Watts said the occupancy of the house would be only three people at most, herself and a single tenant or a couple, which is fewer people living in the house than there were when the house was built. Originally her married children lived and/or visited there.

The septic system was designed for more than three occupants. The only thing added to the septic system is the kitchen drain.

Mr. Remy asked how many cars could be parked in her yard. Ms. Watts said that her parking is in a field and she has had parties with fifteen or twenty cars there.

Mr. Shonbeck asked which zone her house was in. Ms. Watts was not able to say. After looking at the map Mr. Shonbeck concluded that she was in a medium density zone.

Mr. Merry asked if granting the Special Exception would make the property into a permanent two family house.

Chairman Remy said that the Ordinance specifies that the homeowner must reside in the house and could use it as a single family or a two family house, so there is no danger of an absentee landlord.

There were no more questions from the Board and no abutters or members of the public present to comment on the application. Chairman Remy closed the public hearing for the deliberations of the board. Mr. Shonbeck asked whether Ms. Watts had a building permit for the conversion. Ms. Watts did have one.

Mr. Shonbeck asked whether there were any conditions attached to granting the Special Exception. Mr. Remy mentioned the septic system.

Chairman Remy asked the Board to vote on each of the criteria for granting a Special Exception:

1. The specific site is an appropriate location for such a use. All voted in favor.
2. Such approval would not reduce the value of any property within the district or otherwise be injurious, obnoxious or offensive to the neighborhood. All voted in favor
3. There will be no nuisance or hazard to vehicles or pedestrians. All voted in favor
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. All voted in favor

Mr. Shonbeck moved to grant the Special Exception conditioned on a state approved septic system design. Mr. Merry seconded the motion and the five regular Board members voted to grant the Special Exception.

Perry /Szuch Hearing

Chairman Remy called for the next hearing. Deborah Perry and James Szuch applied for a Variance from the setback requirements as stated in Table 505 of the Westmoreland Zoning Ordinances, to obtain a Building Permit for a new house on their property located at 22 Ferry Road on Map R-11, Lot 12 in the Rural Residential District.

Chairman Remy asked the applicants to state the reasons for seeking the Variance.

Deborah Perry addressed the Board saying that the property was long and narrow with a lot of ledge. Following both the road frontage requirement (50 foot setback) and the river setback requirement (also 50 feet) would leave them with only a very narrow corridor in which to place their house. They have 546 feet of road frontage. With the Variance they are hoping to have a 30 foot wide house. The lot drops off in a series of ledges to the Connecticut River. The house site is 35 feet above the river.

They have met with a septic design engineer, Tom Forrest, who specializes in designing septic systems near water features. The septic system will be above the grade of the house.

Ms. Perry showed the Board a sketch of the property and the proposed site for the house and the septic system.

Mr. Shonbeck asked if anyone had informed them that the land they had bought might be in a flood plain.

Ms. Perry said that during Hurricane Irene the river had risen to the first platform of the ledges. But scarier than that was the brook above the house which came tearing through toward the river and took out two-thirds of the road and swung over to the driveway and took out half of the driveway.

Ernie Perham said that the whole area along the river bank all the way to Earl McLenning's property was floodplain. He knew this because of working on the nursing home project.

Mr. Shonbeck said that there are rules that have to be followed if a property is in a floodplain.

Mr. Remy asked what zone the property is in. Mr. Shonbeck found a map to consult. Mr. Remy invited audience members to come up and look at the map. Mr. Remy said and Ms. Perry agreed that it was likely the land was included in the floodplain. Mr. Remy said that the board would need more exact measurements to determine if it is actually in the flood plain but the information they had was a good starting place.

Mr. Merry asked if the septic system would be a pump system which pumps the water up.

Mr. Szuch said that it is a standard system but the water that emerges is cleaner than a standard septic system. It is gray water.

Mr. Huntley asked if Mr. Forrest had done measurements to determine that the setbacks for the septic system would be observed at the location he had selected. Ms. Perry said that he had.

Mr. Remy asked if the property went all the way to the water or ended where the ledge began. Ms. Perry read from the deed that the property line was at the Connecticut River.

Mr. Merry asked if the land had been surveyed. Ms. Perry said the sides of the property had been surveyed but not the whole property. The neighbors' property had been surveyed and pins were placed which they had found.

Mr. Huntley said that the important measurement was the width of the property where the house would be placed. Ms. Perry added it up from the map she had and said it was 110 feet.

Mr. Huntley asked how the setback from the road had been measured. Ms. Perry said from the edge of the road which is 16 feet wide. Mr. Huntley said that frequently the old roads are actually much wider, even 66 feet wide. Making the distance from the center of the road to the property line a much wider distance.

Mr. Shonbeck asked if they had looked at the floodplain and water restrictions which are in the Westmoreland zoning ordinances which the Board must look at. Ms. Perry said they had looked at them but she couldn't quote them from memory.

Mr. Huntley said according to the ordinances the septic would have to be 75 feet from the river and the house would have to be 100 feet away.

Mr. Shonbeck said that not only is Westmoreland interested in this but the State of New Hampshire also takes an interest.

Mr. Huntley said that Mr. Forrest would need to draw a topographic map to scale of the section of the property where the house and the septic system would be located. He should also determine the width of Ferry Road which could affect the width of the property.

Mr. Shonbeck said that they also need to know whether the property is officially in the floodplain.

Mr. Huntley said Mr. Forrest could point them toward a person who was qualified to make that determination.

Mr. Remy said that Marshall Patmos of the Westmoreland Conservation Commission could also be a resource for them. He said they do not need a complete survey just a survey of the portion where the house and septic would be located.

Mr. Huntley suggested that once the setback lines are determined the house placement could be determined.

Mr. Merry said that the hearing would have to be continued.

Mr. Remy acknowledged the presence of several abutters and asked if anyone would like to speak.

Elizabeth McKenney, an abutter, said that she was concerned about affecting a feature of the property which is the abutment of the historic bridge that was the scene of an elephant and his keepers breaking through, a real piece of Westmoreland history.

She also was concerned about any blasting that might be done and the design of the proposed house because it would be something she would be looking at rather than the present open land. Ms. Perry brought the map over to her and assured her that she did not want an ugly house there, either.

Bob Harke, a neighbor but not an abutter, said in general he is in favor of having a house there if the setbacks can be satisfied but hopes that the Board would make sure that any and all old trailers on the property be taken away. He said that when his daughter and son-in-law, who are abutters to the property wanted to put an expansion on their home, Lynn Starkey said there was no point in asking for a Zoning Permit because it would just make a non-conforming lot even more non-conforming. But if this application is permitted and sets a precedence he hopes that his daughter and son-in-law would be more successful if they did come to the Board for that expansion.

Mr. Shonbeck said in reference to Mr. Harke's light hearted comment about precedence that he wanted to clarify that the Board's decisions do not set precedence. Each application is on a case by case basis.

Chairman Remy said that Ms. Perry and Mr. Szuch needed to have time to get the information needed to proceed. Would they be able to have it by the next scheduled meeting on December 17th. They said they hoped to because the weather after that might make it more difficult to do the necessary measurements.

Mr. Shonbeck said that the Board also needed to determine which map they should be using to determine floodplains and how elevation above the river figures into that determination.

Mr. Remy asked the clerk to read the letter that had been sent by another abutter, Lisa O'Neill. The clerk read the following letter into the record.

Date: 11/9/14
JackCleary
Zoning Board Clerk
Westmoreland Zoning Board of Adjustment
PO Box 55
Westmoreland, NH
03467

To whom it May concern:

This letter is in regard to the request for a variance from the setback requirements located at 22 Ferry Road, on Map R-11, Lot 12 in the Rural Residential District

Most neighbors have concerns when a request for a variance arises. Perhaps some of the same concerns if the situation were reversed. I believe the owners are good responsible neighbors and that they hold the same respect for the river as I do, but I still have concerns.

First, when we purchased our property on Ferry Road, we did so with the understanding that the property stated above was determined a non-buildable lot due to the Westmoreland Zoning Ordinances. In addition, it is well known that the Historical Elephant [Horatio] Bridge is situated on the abutment of the said property. A change to the appearance of the land would compromise Westmoreland history.

Secondly we recently observed, due to storms last June, that Ferry Road and the property in question have the potential for severe washouts. These washouts have already caused extensive damage to the property, mainly in the area of a permanent run-off. If heavy rains and an associated washout were to re-occur, could it impact the wastewater treatment unit? We are concerned about the cause of a potential environmental hazard. Such a failure would interfere with the use and enjoyment of our property on the river, along with others who access the river, as well as the precious wildlife that survive on the Connecticut River. Thank you for your consideration.

Sincerely
Lisa O'Neil

The Board and the applicants agreed to continue the hearing to December 17, 2014 at 7:30 pm at the Town Hall.

Nancy Ranson made a motion to adjourn and Brian Merry seconded the motion and all voted in favor.

The hearing adjourned at approximately 8:50PM.

Respectfully submitted by Jackie Cleary, Zoning Board Clerk