

SANBORNTON ZONING BOARD OF ADJUSTMENT

P.O. BOX 124

Sanbornton, NH 03269-0124

MEETING MINUTES

Thursday, January 25, 2024

Old Town Hall, 19 Meeting House Hill Rd

6:00pm

Members present: Chair Brittany Davis, Mark Ledgard, Kevin Riley

Alternates present: Randy Gaudette, Mark Brown, Erica Webb

(Randy and Mark B and Erica seated as voting members)

- a. **Minutes** – Mark Brown made a motion to approve the draft minutes of 12/28 with corrections. Chair Brittany Davis seconded the motion and the motion passed unanimously.
- b. **Cont'd discussion of "Application Types, Hearings, Appeals, and Application Instructions" document** – Mark L will look for a more appropriate word to use for "unreasonable" in the Application Instructions section. Audry asked Chair Davis if she has asked about getting a generic email address for the ZBA. She has asked the Town Administrator but has not received a response. Mark B stated that tax maps are required as part of the variance application, but not tax cards which list the information about the property, as members are not supposed to look for that information. Mark L stated that things available to the public can be looked at by members.
- c. **Public Hearing (7pm) – Application for Variance (ZBA 2024-1)**
Sanbornton Zoning Ordinance Article 6, Section A.4
Applicant: Marco and Magda Ferrari
Location: 5 Dailey Shore Dr, Tax Map 18, Lot 34-2
Applicant seeks variance for construction of barn structure one foot from side property line whereas ten feet is required per the ordinance.

Magda Ferrari explained that the barn layout shown in the application no longer applies; there will be sleeping space and hangout space but no kitchen. She added that there will be three generations living in Sanbornton and they would like a space for family to stay; it will not be rented out. She provided a letter to the Board from the Bombas, her direct abutters, stating that they are in favor of the variance request.

Kevin asked why the structure needs to be one foot from the property line. Builder Bill Butterfield stated that the Ferraris would lose the view of the lake if it was moved ten feet from the property line. Kevin asked if it could be moved to the other side of the house and still have a view. Bill responded that the building would have more privacy if it was in the proposed location.

Mark L stated that the zoning ordinance requires ten feet for a side setback in order to promote good civic design and arrangement and to not encroach on neighboring properties, and whether neighbors are for or against it does not matter. He added that there is room on the rest of the property where the building could be placed that would meet the ordinance and there is no hardship. Mark B stated that the building could be sized down to meet the ordinance and although the current abutters are in favor, future abutters may not be.

The ZBA reviewed the variance application against the five criteria and voted as follows:

Criterion #1: The variance will not be contrary to the public interest

Riley/No; Brown/No; Ledgard/No; Gaudette/No; Davis/No

Members agreed that the ordinance requirement of a ten-foot setback exists to create space between homes; variances transfer with the land and future owners may not be in favor.

Criterion #2: The spirit of the ordinance is observed

Riley/No; Brown/No; Ledgard/No; Gaudette/No; Davis/No

Members agreed that the spirit of the ordinance is to allow space between dwellings and to promote good civic design and arrangements and neighbors may change in the future.

Criterion #3: Substantial justice is done

Riley/No; Brown/No; Ledgard/No; Gaudette/No; Davis/No

Members agreed that the variance would not promote open space.

Criterion #4: The values of surrounding properties are not diminished

Riley/Unknown; Brown/No; Ledgard/No; Gaudette/Unknown; Davis/No

Members agreed that the property line is imaginary and a building one foot from that line leaves the possibility for encroachment; the view for neighboring properties could be diminished and errors during construction could lead to harm for neighboring properties.

Criterion #5: Literal enforcement of the ordinance would result in an unnecessary hardship

Riley/No; Brown/No; Ledgard/No; Gaudette/No; Davis/No

Members agreed that no hardship has been demonstrated and the structure can be easily moved to another part of the property and not require a variance.

Sub-Category A: “The Relationship Test” or “The Reasonable Use Test”

Riley/No; Brown/No; Ledgard/No; Gaudette/No; Davis/No

Members agreed that the request is not a reasonable one given the reasons stated above.

Kevin Riley made a motion to approve the variance. Mark Brown seconded the motion and the motion failed with unanimous No votes. The variance was denied and members agreed to the following findings of fact for the Notice of Decision:

- The spirit and intent of the ordinance will not be met as it requires a ten-foot setback to promote good civic design and arrangements and to not interfere with neighbors’ rights to enjoy their own properties.
- No unnecessary hardship has been demonstrated as there are other locations on the property that the structure could be placed that would meet all setbacks and still allow the enjoyment of the property.

Magda Ferrari thanked the ZBA. She added that there has been building on neighboring properties including an illegal apartment that has negatively affected her own property. She was advised by ZBA members to report this to the Selectmen as the ZBA is not an enforcing agent for the Town.

d. Public Hearing – Application for Variance (ZBA 2024-2)

Sanbornton Zoning Ordinance Article 15, Section F.1(b)

Applicant: KNM Holdings, LLC

Location: 461 Lower Bay Rd, Tax Map 12, Lot 2

Applicant seeks variance for replacement of septic system within 100’ of wetlands and construction of second floor deck within 75’ of wetlands.

Attorney Ethan Wood explained that this is a narrow lot that slopes back towards the wetlands which restricts what can be done there. The home on the lot was torn down last year; the exact location of the existing septic is unknown. Mark L asked if there is a State-approved septic plan and the owner

responded Yes. Mark L explained that there cannot be a State-approved septic plan unless all the Town's requirements have been met and they have not.

Attorney Wood explained that the preexisting house was twenty feet further from the wetlands but the added space between the road and house is needed for space for cars to turnaround and safely exit the driveway. He explained that the variance requests do not impact the health of welfare of other people and the new septic system will help protect the wetlands; substantial justice is done because the new system will be safer and the impact of the current system is unknown. He added that a new building will not harm the surrounds property values and the slope of the land is the hardship for the owner, with no other place for the septic system to go.

Mark B asked how far the deck will be from the wetlands and Attorney Wood responded that it will 65 feet from the wetlands, so a 10-foot variance is needed. Abutters Sharon and Chris Ryba were in attendance; Sharon Ryba stated that she is concerned about the second floor deck looking directly into her backyard.

Mark L stated that the spirit of the wetlands setback is to protect wetlands and it appears that the wetland area flows on to the neighboring property which could carry harmful substances. He added that the house could be moved closer to the road or the septic could be moved elsewhere on the property. Attorney Wood stated that if it was moved to the top of the property it would also require the well to be moved back which would mean bringing drilling equipment over the property, potentially damaging the wetlands. Kevin noted that moving the house forward to its original position would put the septic system 70 feet from wetlands versus 50, which would still require a variance but would provide more space from the wetlands.

Erica stated that there could be a better place to put the septic system and this is the right time to research that, as there is no building to work around yet. Chair Davis stated that she would like more information from an attorney regarding this case and members agreed to request the following information from the applicant:

- An engineering study that shows alternate locations for the house and for the septic that would be more cognizant of protecting the wetlands
- An approved septic plan from DES

Chair Davis made a motion to continue the public hearing to March 26th. Mark Ledgard seconded the motion and the motion passed unanimously.

- e. **Town Report entry** – Audry has compiled the list of ZBA cases heard in 2023; Chair Davis has provided a paragraph about the role of the ZBA to include as well. Audry will submit the report entry to Barb Vaughn by January 29th.

Meeting adjourned at 8:49pm. The next meeting is scheduled for February 27th at **6pm** (workshop start time).

Respectfully submitted,

Audry Barriault