

March 20, 2003

Members Present: Edmund White, Katharine Leab, Reese Owens, Bradford Sedito, Polly Roberts

Alternates Present: Bruce Skoog

Guests: Jane Sarjeant, Curt Smith, David Grubb, Rick Spooner, Natalie Dyer, Ira Bloom, James Kelly, Scott Rudin, Janet Hill, Public, Press

The Chairman Edmund White called the meeting to order at 7:40pm and read the legal notice for tonight's public hearings.

Noting that there would not be a quorum for the first two (2) applications Mr. White started with number three (3) on the agenda.

PUBLIC HEARING

Mr. White seated regular members Katharine Leab, Reese Owens, Bradford Sedito, Polly Roberts and himself.

ZBA-0303, Request of Dean & Jane Sarjeant, 28 Tinker Hill Road/34 West Shore Road, for a variance from Zoning Regulation 11.6.1 (setback), to construct a boat house. Jane Sarjeant and Kurt Smith, of Bradford Smith & Sons were present to represent this application. Ms. Sarjeant read the applicant's letter of request into record and showed photos of the boat house as it appears now and as it appeared 20+ years ago before it burned down. She noted that the new boat house is much smaller than the old one and explained the location of the new boathouse on the property according to the map on file with the application. Janet Hill, Zoning Enforcement Officer, spoke about properties around the lake, there are two lot types ones that are two pieces of property on either side of the state road and ones that are all one piece but divided by the state road. When the Sarjeant's applied to her for a Zoning Permit to construct the boat house she felt they didn't need a variance because they met the setback requirements from Tinker Hill Road. Ms. Hill was questioned about her decision and asked for legal advice. She was told that the applicant must meet set back requirements from the public road (West Shore Road in this case). The boat house as constructed now is 42' from West Shore Road and requires a variance. Mr. Owens asked who built the boathouse and if it could have been built on the concrete portion of the preexisting boat house or can be moved to be conforming? Ms. Sarjeant said that her husband Dean built the boat house 4' back from the original foundation so the building wouldn't be over the water and didn't obstruct their neighbor's view. She doesn't know if it can be moved and doesn't understand the problem. Mr. White informed Ms. Sarjeant that the Zoning Board of Appeals has been tough on building around the lake and explained the purpose of the Zoning Board of Appeals, the granting of variances and proof of hardship. Mr. Smith interjected referencing Zoning Regulation 12.1 that the location of the new boat house is better because it is away from the lake. At this point Mr. Smith and ZBA members discussed the property line on the lake shore and the question as to whether according to the map on file if in fact the Sarjeant's own the boat house. Mr. Owens wants to be sure that the ZBA has the right to regulate and rule on this matter. Members felt this matter should be continued to gain better information about the location of the boat house and the lake side property line. Ms. Sarjeant agreed but asked if the public hearing could be continued until May because the Sarjeants would not be in town for the April ZBA meeting. Ms. Sarjeant agreed to submit a written request asking that the public hearing be continued until May.

MOTION: to continue ZBA-0303, Request of Dean & Jane Sarjeant, 28 Tinker Hill Road/34 West Shore Road, for a variance from Zoning Regulation 11.6.1 (setback), to construct a boat house, was made by Mr. Owens, seconded by Mr. Sedito, by a 5-0 vote.

PUBLIC HEARING

Mr. White excused himself from this hearing. Mr. Owens seated regular members Katharine Leab, Bradford Sedito, Polly Roberts, himself and alternate Bruce Skoog.

ZBA-0301, Request of Caroline & David Grubb, 4 Parsonage Lane, for a variance from Zoning Regulation 11.5.1 (lot coverage), to construct a walkway. David Grubb was present as applicant and read his letter of request into record. Mr. Grubb believes the walkway puts the lot coverage over 15%. Ms. Leab asked if the walkway has already been built before a variance was granted. Mr. Grubb explained that Edmund White (his neighbor) notified him that a variance was required to construct the walkway, at the time the walkway was already under construction. Ms. Leab asked if the applicant had any proof that there used to be a walkway or if the walkway was removed to grant another variance. Mr. Grubb suggested that Mr. White remembers the old walkway. Pam Osborne, secretary for ZBA stated that there are no earlier files pertaining to variances for this property. Mr. Sedito asked if prior to building this walkway there was no walkway to the house. Mr. Grubb stated that there was not a walkway. Members asked for a detailed percentage of lot coverage of the property. The map provided with the application does not show the entire property or proportions for existing buildings, driveway, walkway etc. Members requested details on lot coverage and precise proportions for the lot coverage.

MOTION: to continue ZBA-0301, Request of Caroline & David Grubb, 4 Parsonage Lane, for a variance from Zoning Regulation 11.5.1 (lot coverage), to construct a walkway, was made by Mr. Sedito, seconded by Ms. Roberts, by a 5-0 vote.

PUBLIC HEARING

Mr. White seated regular members Katharine Leab, Reese Owens, Polly Roberts, himself and alternate Bruce Skoog.

ZBA-0302, Request of Rumsey Hall School, 201 Romford Road, for a variance from Zoning Regulation 12.1.3 (building within 200 feet of Bantam River), 17.4 (increase the nonconformity of a nonconforming structure), for reconstruction of a dormitory/faculty apartment. Curt Smith, surveyor/engineer, and Rick Spooner, associate headmaster were present to represent this application. Mr. Smith began by explaining the location of the proposed reconstruction of Gros Cottage. He presented photos of the existing cottage and described the reconstruction process and site plan referencing plans on file with the application. Mr. Smith stated that they were seeking a variance because the building is within 200' of the Bantam River and they are adding a second story to the building. The new structure is being kept within the footprint of the old structure. Mr. Smith read a letter from Dorota Habib dated March 12, 2003 into the record. At present this cottage houses eight (8) students and one (1) faculty member. The reconstructed cottage will house the same number of students on the first floor with the faculty apartment being on the second floor. Because of the ADA building code they had to enlarge the bathroom facilities to accommodate a handicapped student, they also added one (1) bedroom to make all student rooms doubles (two were triples prior to reconstruction), this reduced the space for the faculty apartment, which is proposed to now be on the second floor. The total increase is stated to be 418 sq. feet. Mr. Smith informed members that they received Inland Wetland approval in January. Members understand the need for the bathrooms to be brought up to code, but asked about other considerations such as reducing the number of students in the building, keeping the cottage one story or other possible locations on school property. Members need to see an overall site plan of Rumsey Hall School and a comprehensive plan which includes enrollment and projected enrollment. Stephanie Fenwick, a resident of Romford Road read her letter in to the record.

MOTION: to continue ZBA-0302, Request of Rumsey Hall School, 201 Romford Road, for a

variance from Zoning Regulation 12.1.3 (building within 200 feet of Bantam River), 17.4 (increase the nonconformity of a nonconforming structure), for reconstruction of a dormitory/faculty apartment, was made by Ms. Roberts, seconded by Mr. Skoog, by a 5-0 vote.

PUBLIC HEARING

Mr. White seated Katharine Leab, Reese Owens, Bradford Sedito, Polly Roberts and himself.

ZBA-0304, Appeal by Arnold J. Herrmann, Trustee, 328 Nettleton Hollow Road, of Zoning Enforcement Officer's 2/25/2003 denial of permit for second floor addition. Ira Bloom, Esq. was present to represent this appeal. Atty. Bloom began by stating that he felt the Zoning Enforcement Officer's decision was in error on three (3) grounds. Mr. Bloom feels the first error was based upon language in the Regulations. He feels that the property complies with regulations except for the front setback requirements but that within 17.4.a there is a window to allow an increase in nonconformity. Atty. Bloom feels that the window of tolerance is that going up doesn't add to the non conformity, and they are not enlarging the building into the front setback. He feels that the Zoning Enforcement Officer (ZEO) historically precluded any enlargement of a nonconforming structure and feels this is not what the regulations say. Secondly Mr. Bloom believes that the ZEO went against the advice of legal opinion. And lastly Atty. Bloom referenced Doyen v. Zoning Board of Appeals of the Town of Essex as a new development for the Zoning Board of Appeals to consider. Mr. White read into record a letter from Atty. Zizka dated March 19, 2003 in which Mr. Zizka strongly disagrees that the ZEO "did not follow the town council advice." At this point Janet Hill the Zoning Enforcement Officer also spoke to Atty. Bloom's comments that she didn't follow legal opinion. Ms. Hill read from Atty. Zizka letter of February 6th in which he stated "I recommend that you follow the historical approach" and "seek guidance from the Commission right away." Ms. Hill went on to state that she sought advice from town council and they both said to deny the application, if the ZBA should decide to uphold this appeal the message being sent to the ZEO is to second guest legal opinion and would set an unwise president for the town of Washington. Mr. White continued by stating that the Zoning Commission is in the process of amending Section 17.4 and changes are coming in the near future. Mr. White believes that Janet Hill has operated with consistency and hopes that commissions will not have to start reacting from potential fear of legal action. Atty. Bloom and members of ZBA went back and forth on the interpretation of Section 17.4. Mr. Bloom closed by stating that this is a modest application from his client who wants to keep the home where it is and to keep its historical nature in tact. Mr. White asked for comments from the public.

MOTION: to close the Public Hearing Re: ZBA-0304 Appeal by Arnold J. Herrmann, Trustee, 328 Nettleton Hollow Road, of Zoning Enforcement Officer's 2/25/2003 denial of permit for second floor addition, was made by Mr. Sedito, seconded by Ms. Leab, by a 5-0 vote

MEETING

Ms. Leab felt that put with the commission's accretiative practices and Janet Hill's seeking of advice from both council and the zoning commission. This appeal should be turned down. Ms. Roberts feels the commission should support the ZEO, referencing the two (2) letters from council and the unanimous support of the zoning commission to turn down the application. Washington has a very strong precedent of how they view increase in volume. Mr. Sedito agreed with Ms. Leab and Ms. Roberts he felt Ms. Hill did everything reasonably possible. Mr. Owens feels Janet is diligent, he agrees with her actions and interpretations. Mr. White agrees with the other members and thinks Janet acted correctly.

MOTION: to deny ZBA-0304 Appeal by Arnold J. Herrmann, Trustee, 328 Nettleton Hollow Road, of Zoning Enforcement Officer's 2/25/2003 denial of permit for second floor addition, by a 5-0 vote.

PUBLIC HEARING

Mr. White seated Katharine Leab, Reese Owens, Bradford Sedito, Polly Roberts and himself.

ZBA-0305, Request of Arnold J. Herrmann, Trustee, 328 Nettleton Hollow Road, for a variance from Zoning Regulations 11.6 (setback), to construct a second floor addition to an existing residence. Ira Bloom Esq. was present to represent Arnold J. Herrmann, Trustee for Scott Rudin, property located at 328 Nettleton Hollow Road. Mr. Bloom stated for the record that he does not feel a variance is needed but is proceeding with a variance. They want to construct a second floor addition that would consist of a master bedroom and bath adding about 450 sq. feet. Ms. Hill interrupted by stating that this variance should include 17.4.a increasing the non conformity of a non conforming structure. Atty. Bloom made the modification to the application. At this point Mr. Rudin came forward to explain the second floor addition. They will be building on top of the existing structure. The point was to try to make the "added on portion" of the house more historically true. Other bedrooms are on the second floor, the safety issue of having visiting nieces & nephews unsupervised. The master bedroom is now located on the first floor. Atty. Bloom referenced the topography of the area there is a large tree in the rear of the house, the well and paved driveway are on the other side, the property has steep slopes up behind the house. He feels there is classic hardship in the topography of the land. Mr. Owens sympathizes with people who own houses like this one provided the applicant demonstrate that it is a reasonable adaptation of the house and can the need be justified. Mr. Rudin answered that he expects to move into this house and needs to create work space, have safety for the visiting children, and would like to finish off the 1960's addition. Restore the house to what it was, finish it right. Atty. Bloom stated that the house is a legal non conforming structure within the front setback requirements (located 25' from the street line, 15' from the property line), on a 5.01 acre parcel. This along with the topography is a true hardship according to Mr. Bloom. Atty. Bloom cited legal cases included in his letter. Mr. Bloom mentioned that at a later date the three (3) lots will become two (2) lots. Atty. Bloom added to the record a letter from Jean Pierre Delbecq dated March 17th in support of Mr. Rudin's request. John Morsan of Rock Creek Corporation was present and stated for the record that he felt this would be a fine addition and had no problem with it. Mr. Owens asked about the state of completion. They are in the final stages and will be finished in April. If they receive a variance completion will be in September. Mr. White asked if members needed a site visit, they didn't feel a site visit was necessary. Mr. White asked for further questions or comments from the public.

MOTION: to close the Public Hearing Re: ZBA-0305 Request of Arnold J. Herrmann, Trustee, 328 Nettleton Hollow Road, for a variance from Zoning Regulations 11.6 (setback), to construct a second floor addition to an existing residence, was made by Ms. Leab, seconded by Mr. Sedito, by a 5-0 vote.

MEETING

Ms. Roberts favors granting this variance and understands a hardship. It defers best to the house by completing the extension. Ms. Roberts questioned the call to add 17.4.a. Mr. White reference 17.4 and special exceptions and questioned hardship. Ms. Leab understands the physical hardship. Historically and architecturally this proposal makes sense. Much less objection to this application than the first one. Mr. Sedito feels it is a reasonable request. Mr. Owens is sympathetic to the houses need to grow, does the land position constitute a hardship.

MOTION: to approve ZBA-0305 Request of Arnold J. Herrmann, Trustee, 328 Nettleton Hollow Road, for a variance from Zoning Regulations 11.6 (setback)and 17.4.a (increasing the non conformity of a non conforming building), to construct a second floor addition to an existing residence by a 4-1 vote.

Ms. Leab, Mr. Owens, Mr. Sedito and Ms. Roberts voted to approve

Mr. White voted to deny.

MOTION: to accept the minutes of the February 20, 2003 meeting as submitted, was made by Ms. Roberts, seconded by Mr. Sedito, by a 5-0 vote.

OTHER BUSINESS

Members were given a memo from Janet Hill about the final draft of revisions to Zoning Regulations 17.4, 18.1.4 and 18.2.1. Members were quite concerned with the changes to 17.4. Mr. White will communicate Zebra's concerns to Ms. Hill.

ZBA has received a copy of Mr. Herrmann motion to withdraw his appeal.

The Conservation Commission is looking for a volunteer for two subcommittees it has formed, a data management and land use pamphlet subcommittee.

MOTION: to adjourn was made by Ms. Roberts, seconded by Mr. Owens, by a 5-0 vote.

Submitted subject to approval,

Pamela L. Osborne, Secretary