

July 15, 2010

Present: Katharine Leab, Polly Roberts, Randolph Snook, Peter Bowman

Alternates: Roderick Wyant III, Todd Peterson

Absent: Todd Catlin

Staff: Shelley White, Mike Ajello

Guests: Eliot Johnson, Marie Swanson, Paul Swanson, Vinnie Forese, Atty. Rob Fisher, Atty. Jim Kelly, Ben Nickoll, Bill Tynan, Paul Frank, Linda Frank

Chairman, Polly Roberts called the meeting to order at 7:32pm.

PUBLIC HEARING Continued

Seated: Polly Roberts, Katharine Leab, Randy Snook, Peter Bowman and Todd Peterson (for Todd Catlin)

ZBA-0869 – Request of Nauiokas/Harrison, 10 Loomarwick Road, for a Special Exception, Zoning Regulation(s) 17.5 (increasing non conformity), to rebuild patio on north side, construct new patio on west side of house, and construct pergola.

Mr. Eliot Johnson of West Mountain Builders was present to represent the applicants for this application. Mr. Johnson submitted the receipt and return postcard for the certified mailing to Mr. Kleinberg. The Commissioners and Mr. Johnson looked at the map entitled Septic System Feasibility Plan, for Keith Angell Residence, 10 Loomarwick Road, dated 12-15-08, by Brian Neff, Engineer. Mr. Johnson stated that he and Suzanne Von Holt, Town Sanitarian, reviewed the proposed plan and she did not have any concerns. Mr. Frank stated a well has been located near the proposed plan area and that it serves a property that is south of the 10 Loomarwick Road. Mr. Johnson stated that the applicants removed the fire pit and decreased the size of the patio by approximately 400 square feet from the proposed plan. Mr. Johnson submitted a revised elevation drawing entitled Pergola Plan and Elevations, by Consolidated Design Studios, Ltd. The Commissioners looked at the revised elevation plan and discussed the dimensions. The proposed lot coverage is reduced to 14.7% from 16.3%. Mr. Johnson stated that the grade between the finished floor and the point in the yard that the northwest corner of the patio would be located is 42 inches. He stated that there would be two steps out of the house onto the terrace and the grade would be brought up a few inches to equal approximately 2 feet. Ms. Frank stated that she was concerned about the underground water supply pipe and associated valves that comes through the property and is located approximately 15 feet off the front of the this house. She and Mr. Frank suggested that the pipe be located prior to any construction and then relocated. Ms. Roberts read the letter from the Franks, addressed to the ZBA, dated June 14, 2010(on file in Land Use Office), regarding this concern. Ms. Frank stated that this is not their primary water source but she does use it. Mr. Johnson stated that he has not located this pipe yet. The Commission agreed that the pipe should be located prior to any construction to determine that it is not within the footprint of the proposed plan and if it is, then it must be relocated. There were no additional questions or comments.

Motion:

to close ZBA-0869 – Request of Nauiokas/Harrison, 10 Loomarwick Road, for a Special Exception, Zoning Regulation(s) 17.5 (increasing non conformity), to rebuild patio on north side, construct new patio on west side of house, and construct pergola
by Mr. Snook, seconded by Ms. Leab, by 5-0 vote.

MEETING

Ms. Leab stated that Mr. Johnson did a great job representing his clients and bringing the ZBA the

additional information that was requested at the last meeting. She read Section 17.5.C.2 and stated that she thought the pergola was too large for the house and that this proposed plan does not meet the Special Exception requirements. Mr. Bowman stated that he was in support of the reduced patio plan but was concerned with the size of the pergola and does not feel it is in scale with the house and that it is not a necessity for supporting the continued use of this house. Mr. Peterson stated that he agreed with Ms. Leab and Mr. Bowman that the pergola was too large for the house and is not a necessity. Mr. Snook stated that he did not have objections to the pergola or the patio. He stated that the house is a small summer home and this proposed plan would extend the living space with outdoor living space. Ms. Roberts stated that she was in support of this application and agreed with Mr. Snook and stated that the house is a very small summer cottage and the proposed patio and pergola would be used in the summer. She stated that she believes it does meet the requirements of Section 17.5.C.2 and would be under the 15% lot coverage requirement.

Motion:

to deny ZBA-0869 – Request of Nauiokas/Harrison, 10 Loomarwick Road, for a Special Exception, Zoning Regulation(s) 17.5 (increasing non conformity), to rebuild patio on north side, construct new patio on west side of house, and construct pergola by 2-3 vote.

Ms. Leab, Mr. Bowman and Mr. Peterson voted against because they feel the proposed pergola is too large and does not comply with section 17.5.C.2.

PUBLIC HEARING

Seated: Polly Roberts, Katharine Leab, Randy Snook, Peter Bowman, Rod Wyant, Alt.

ZBA-0870 – Request of Swanson/Forese, 41 Horse Heaven Road, for Variance, Zoning Regulation(s) 11.4.5 (minimum 50' accessway width), to allow access strip of less than 50 feet to serve an interior lot. Atty. Robert Fisher, Mr. Forese and Ms. Swanson were present to represent this application. Atty. Fisher submitted a letter dated July 15, 2010, to the ZBA, regarding Forese – Swanson Variance Request, 41 Horse Heaven Road, which stated the history and explained the hardship that the owners face with this property regarding the accessway. Atty. Fisher explained how the Zoning Regulations have changed over the years and when the property was purchase in 1928 there was not a minimum width requirement for an accessway. He stated that when the right of way was created in 1962 it complied with the Zoning Regulations at that time. Atty. Fisher stated that Mr. Forese and Ms. Swanson would like to divide the property in order to pass it on to family and that there is no intent to subdivide the property and that the division among family would qualify as a free cut. Ms. Swanson and Mr. Forese would like to use the existing right of way for access, which has never had a specified width. Atty. Fisher stated that there should not be any impact on the neighbor's property if there is a second house at the end of this right of way. He stated that a dwelling usually generates around 4 passes a day. Atty. Fisher stated that this property is unique and that the Town has created an impossibility for the Swanson-Forese's with the changes in its regulations over the years. Ms. White read a letter from Mr. Chris Liotta, dated December 14, 2009 stating that the Liotta Family Trust does not oppose the Swanson-Forese's dividing the property but they are not in favor of increasing the right of way to 50 feet because it goes through their property and they believe, would decrease the value of their property. Atty. Fisher read the Deed for the right of way that runs through the Liotta property, which grants the right to pass and re-pass for all purposes. Ms. Roberts read a portion of a letter from Atty. Mike Zizka, to Ms. Janet Hill, Land Use Administrator, dated May 11, 2010 (on file in the Land Use Office). Ms Roberts stated that the Swanson-Forese's have explained that the hardship is that this is an interior lot that was created in 1928 with a right of way that was granted in 1962, which was before the Zoning Regulations required a 50 foot wide accessway to interior lots. She stated that the letters from neighbors do not oppose splitting the property but they are

not willing to grant a 50-foot right of way.

Motion:

to close ZBA-0870 – Request of Swanson/Forese, 41 Horse Heaven Road, for Variance, Zoning Regulation(s) 11.4.5 (minimum 50' accessway width), to allow access strip of less than 50 feet to serve an interior lot,
by Mr. Snook, seconded by Mr. Wyant, by 5-0 vote.

MEETING Ms. Leab stated that this is an unusual situation as this has always been an interior lot, which is a hardship, and that she is in favor of this application. Mr. Bowman stated that he agreed with Ms. Leab and the variance that is being requested is 'perfectly reasonable' and what is being proposed will not change the manner in which the accessway will be used as it has been in the past. He suggested that a right of way be granted to the second lot by the first lot when the property is divided. Mr. Wyant stated that he was in favor of this application and that the changes in the Zoning Regulations have created this hardship for the property owners. Mr. Snook stated that the property, as it exists now, has a house that is serviced by an accessway and he does not feel that adding another interior lot will change anything. Ms. Roberts stated that she is in favor of this application and that the hardship is the creation of a nonconforming interior lot back before Zoning Regulations required a 50-foot accessway. She stated that the applicant made an effort to work with the adjacent property owner to expand the width of the accessway and that the use of the accessway would not be much different other than a few more cars passing on a daily basis.

Motion:

to approve ZBA-0870 – Request of Swanson/Forese, 41 Horse Heaven Road, for Variance, Zoning Regulation(s) 11.4.5 (minimum 50' accessway width), to allow access strip of less than 50 feet to serve an interior lot, by 5-0 vote.

PUBLIC HEARING

Seated: Polly Roberts, Katharine Leab, Randy Snook, Peter Bowman, Todd Peterson, Alt.

ZBA-0871 – Request of Nickoll/Armstrong, 9 Gunn Hill Road, for Special Exception, Zoning Regulation(s) 17.5 (increasing non conformity), to expand main house, terrace, barn and driveway, and add terrace behind barn.

Atty. Jim Kelly and Mr. Ben Nickoll were present to represent this application. Atty. Kelly submitted research that confirms that the property at 9 Gunn Hill Road is on the National Register of Historic Places. The Commission looked at historic photographs and present day aerial photographs of the property submitted by Atty. Kelly. Atty. Kelly stated that the Nickoll/Armstrongs own this property and the adjacent property with the old school house at 7 Gunn Hill Road. Mr. Nickoll, Atty. Kelly and the Commissioners looked at drawings entitled Project A+B, House + Barn, with a revision date of 5/23/10 for the Home of Ben Nickoll and Chrissy Armstrong, 9 Gunn Hill Road, drawing numbers T-002, T-003, T-004, Site Survey and Septic Easement Plan and Site Plan with Proposed Addition by Daniel Frisch Architect, P.C. Atty. Kelly explained that the Health Department required a septic reserve area when the property owners wanted to do some repairs to the 7 Gunn Hill Road property. This reserve septic was designed on a permanent easement that was granted from the 9 Gunn Hill Road Property as indicated on drawings T-003 and T-004. Atty. Kelly explained that the property owners would like to keep the existing timber framed kitchen, which they would reconstruct on the rear of the proposed addition. The proposed plan shows an increase of 360 sq. ft. in the front yard setback and an additional 227 sq. ft., which calculates to 16% lot coverage. Atty. Kelly stated they conservatively calculated lot coverage by

taking the parcel size of 1.64 acres and subtracting the .22 acres for the septic easement, but he said he was not sure if subtracting the easement was necessary. The Commission looked at drawing T.A-001, entitled Site Photos, revision date 5/13/10, by Daniel Frisch. The photos included views of the rear of the house from the east and northeast, the courtyard and the southwest view of the front of the house. Atty. Kelly presented the Floor Plans entitled Project A- House, Cellar Construction Plan, drawing number A.A-001, 1st Floor Construction Plan, drawing A.A.-002, 2nd Floor Construction Plan, drawing A.A.-003, all with a revision date of 6/24/10, and the New Elevations, drawings A.A.-005 & A.A.-006, A.A.-007, with a revision date of 4/7/10, by Daniel Frisch Architect. Atty. Kelly stated that the proposed changes would modify the existing modest size 3-bedroom home to a 4-bedroom home. He stated that the majority of the proposed changes are at the back of the house so that it would be as far away from the front setback as possible. Atty. Kelly presented drawings A.B.-001, 1st Floor Construction Plan and A.B.-002, 2nd Floor Construction Plan, titled Project B- Barn, revision date 6/21/10, by Daniel Frisch Architect. Mr. Nickoll stated that he would like to use the addition to the barn for a home office. Atty. Kelly stated that he felt that these proposed changes meet the requirements of the Special Exception in that it allows the continued use of a non-conforming structure and lot. Ms. Roberts stated that granting an easement to provide access to the reserve septic system is not the same as granting an easement of acreage. Atty. Kelly stated that they were required by the Health Department to have this reserve septic system because of the repairs the Nickoll/Armstrongs did to the school house. Mr. Nickoll gave a brief history of the property and stated that they added heating and repaired the roof of the old school house at 7 Gunn Hill Road. Mr. Snook stated that the main house is in great condition. Ms. Roberts stated that the acreage of 1.64 should be used to calculate the proposed lot coverage and that the proposed plans are well within the 15% requirement so the only reason for the Special Exception would be for the proposed 360 q. ft. that is within the front yard setback. Ms. White read a letter from The First Ecclesiastical Society of New Preston, dated July 12, 2010, stating that they have reviewed the plans and that they feel the proposed plans “appear to be in keeping with the appearance of the green and its surroundings.” Bill Tynan, an adjacent property owner stated that he was not protesting to the proposed plan but would like some consideration regarding times of construction. Mr. Nickoll stated that he and his family would not be living in the house during construction and he stated that he would like construction to start as soon as possible and that it would take approximately 9 months to finish. He stated that he would consider asking the contractors to work at set times of 8:30/9:00a.m. to 5:00 p.m. There were no further questions or comments from the Commissioners or the public.

Motion:

to close ZBA-0871 – Request of Nickoll/Armstrong, 9 Gunn Hill Road, for Special Exception, Zoning Regulation(s) 17.5 (increasing non conformity), to expand main house, terrace, barn and driveway, and add terrace behind barn,

by Mr. Snook, seconded by Ms. Leab, by 5-0 vote.

MEETING

Ms. Roberts read the public policy goals of Section 17.5.C.1.2 and Section 17.5.C.2, Special Exceptions for Nonconforming Structures and stated that she felt that the proposed plan met all of these requirements. Ms. Leab stated that this is what the Special Exception Regulation is for and that it is reasonable in scope and that the existing house is just not big enough for a family of four. Mr. Bowman stated that he agreed with Ms. Leab and that lot coverage is not an issue and that the proposed plans are sensitive to the historic location. Mr. Peterson agreed with the rest of the Commission and is glad to see a historic home preserved. Mr. Snook stated that if the renovation is done with the same level of consideration to the way the existing house has been maintained, he would not have any objections. Ms. Roberts stated that she was at the site today and that she agrees with Mr. Snook that the house has been well maintained.

Motion:

to approve ZBA-0871 – Request of Nickoll/Armstrong, 9 Gunn Hill Road, for Special Exception, Zoning Regulation(s) 17.5 (increasing non conformity), to expand main house, terrace, barn and driveway, and add terrace behind barn, by 5-0 vote.

Consideration of the Minutes

The minutes of June 17th, 2010 were considered.

Corrections:

Page 3:

Top of page 3 should read: Regular member Todd Catlin arrived at 8:30pm.

Under ZBA-0869, 11th sentence beginning with Mr. Bowman, should read: Mr. Bowman asked about septic location and questioned the top of the patio vs. top of the finished grade. Mr. Johnson agreed there would be a difference between the two, and after some discussion, promised to determine what the distance would be between the top of grade and top of patio and would bring this information to the next meeting.

12th sentence, should read: Mr. Johnson answered that the septic was beyond the proposed patio.

Motion:

to approve the minutes of the June 17, 2010 regular meeting of the Washington Zoning Board of Appeals as amended,

by Ms. Roberts, seconded by Mr. Snook, by 5-0 vote.

Other Business/Discretion of the Chair

Ms. Roberts stated that she would like to work more on the proposed language for 12.14.5 before submitting it to the Zoning Commission. The Commission briefly discussed methods of reading decibels with meters.

Motion: to adjourn at 9:35pm, by Ms. Roberts, seconded by Mr. Snook, by 5-0 vote.

Submitted Subject to approval,
Shelley White, Land Use Clerk