

**Town of Buxton
Board of Appeals**

Minutes

Tuesday, June 6, 2017 at 7:00 p.m.

Recorded by Krystal Dyer

Members in Attendance: Stephen Heroux, Charlene Libby, Scott Warchol, Patrick Hanna, Peter Leavitt

Members not in Attendance: none

Others in Attendance: Susan Nabor, Matthew & Kristen Wyatt, Dawn & Doug McClure and Marc Girard.

Stephen Heroux Called the meeting to Order at 7 p.m. He explained the appeal process to the applicants. A hardship is not, therefore, a condition experienced by an individual. It is a characteristic of the property itself.

- Stephen motioned to open the public hearing at 7:05 p.m., seconded by Scott, a unanimous vote.

Susan Nabor is requesting a sideline setback variance for a breezeway and garage on 6 Lowell Road. The parcel is a legal 3.37-acre lot located in the Residential District, Tax Map 1, Lot 5.

Susan Nabor stated she is requesting a variance to be legally within the property limits. She wants to construct a 28 x 26 garage and 25 x 8 breezeway. There is a level difference of three steps down to the breezeway. The reason for the length of the breezeway is that she wants the garage as far away from the house as possible due to her asthma and the exhaust fumes coming into the house. She added that she wants to 'Age in Place' and in the foreseeable future will need a handicapped ramp to enter the house. The parcel has two frontages. Stephen confirmed that the applicant is requesting a 9-foot side setback variance. Ms. Nabor was asked about the pins on the property, she explains the corner post of the proposed rear deck off the second floor of the garage, is what is encroaching. Peter Levitt confirms that the garage itself is within the required set back. She said yes and explains that in the event of a fire, the window is there to climb out and on to the deck. Patrick mentions moving the location of the window and shortening the deck. Stephen confirms with the applicant that the concern is with the setbacks not the design of the building.

Code Officer Peter Gordon said the property has two frontages, the required front setback is 40-feet vs. 30-feet required on the sides. Ms. Nabor could not meet this requirement, which is why he denied the permit. Ms. Nabor was instructed to take the measurement from the center of the road, but later was told to take it from her property marker. Scott read the definition of frontages, there was further discussion on this.

Charlene asked Peter G. where in the ordinance defines corner lot frontages. Peter said the 200-feet of frontage off Route 22 is the applicant's frontage, even though the driveway is off Lowell Road. A corner lot says the frontage is on both sides of the road, but her legal

frontage is on Route 22 because she is required to have 200-feet of road frontage. Peter G. added this is a legal conforming lot. There was further discussion on the definition of frontage.

Having no abutter or public comments,

- Stephen motioned to close public hearing, seconded by Charlene. A unanimous vote.

Discussion of the Board:

Charlene questioned the 6.2.b.2 guidelines to request a variance not to exceed 20%, which would allow an 8-foot setback variance. Stephen asked if she would take an 8-foot setback. Susan replied no. The applicant is still required to meet the three remaining hardships.

Straighten the garage

- Motioned by Stephen, seconded by Charlene to open the re-public hearing. The vote passed with a 4 - 1 vote, Peter opposed.

Article 6.2.B.2 allows the Board to grant a variance, where the majority of the board would have to agree. Stephen asked Ms. Nabor if an 8-foot variance would be an option. She wanted a nine foot variance.

- Stephen moved to close the public hearing, seconded by Charlene, a unanimous vote.

Since this application is the primary residence, the Board can skip the first hardship. Stephen explained that she needs to meet the three remaining cases of hardships:

Based upon the facts and provision of the Town of Buxton Zoning Ordinance and Sections cited, the Board members are unable to grant a 9-foot front setback variance. The Board voted to deny the request for a front setback Variance.

Hardship 2 -The need for a variance is due to the unique circumstances of the property and not the general condition in the neighborhood;

- Stephen asks who feel the applicant has met this hardship, a 3 - 2 vote, the vote passed.

Hardship 3 - The granting of a variance will not alter the essential character of the locality;

- Stephen asked do you feel the applicant has met this hardship, a 5 - 0 vote. The vote passed

Hardship 4 - These conditions are not the result of action taken by the applicant for a variance or a prior owner.

- Stephen asked the Board, do you feel the applicant has met this hardship, a 1 - 4 vote. The motion failed.

The explanation was that the setback exists and a corner lot has two frontages. The Board agreed that the applicant can still alter the structure and suggests that she work with the Code Officer to amend the proposed plan.

Stephen stated that the applicant did not meet the fourth case of hardship so the board cannot grant a variance.

- Motioned by Stephen, seconded by Charlene to re-open the public hearing. The motion passed with a 3 - 2 vote.

Stephen explained because you designed the plan that makes you the result of action taken by the applicant. You're not wanting to alter the plan is creating the issue.

- Stephen motioned to close the public hearing, seconded by Scott. A Unanimous vote.
- Stephen motion to deny the variance request for Susan Nabor for a reduction of the front yard setback under Article 6.2.B.2. Requires the applicant to meet three hardship standards, in this case the hardship four was unable to be met. Seconded by Charlene, a unanimous vote.

The applicant failed on the fourth cases of hardship the Board cannot grant the variance for this application.

Decision:

Based upon the aforementioned facts and conclusions, on June 6, 2017, the Buxton Board of Appeals voted to deny the application for a variance that could not meet the fourth hardship.

Stephen stated that the applicant did not meet the fourth case of hardship so the board cannot grant a variance.

- Motioned by Stephen, seconded by Charlene to re-open the public hearing. The motion passed with a 3 - 2 vote.
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Stephen explained because Ms. Nabor designed the plan that makes her the result of action taken by the applicant. She did not want to alter the plan, which is what created the issue.

Matthew Wyatt is requesting a sideline setback variance for an attached garage at 37 Deer Run Drive. The parcel is a legal non-conforming lot with .93-acres, located in the Residential District, Tax Map 9, Lot 5-6.

- Motioned by Stephen, seconded by Charlene to open the public hearing. A unanimous vote.

Matthew Wyatt gave an over view of his request for a variance in order to reduce the left side setback down to 12-feet from the required 30-foot setback, allowing for an attached two car garage. Mr. Wyatt is requesting an 18-foot variance.

Questions from the Board:

Scott asked if he was the owner in the letter for the unattached garage, Mr. Wyatt stated, he was not. Stephen added that there is a letter from the previous code officer stating a previous owner could have an unattached two car garage, but this letter has no relevance with your application.

The applicant was asked if he would consider building a 1 ½ or 1 car garage. Mr. Wyatt stated that the proposed plan would give the most for his value and resale.

Code officer Peter Gordon stated the lot is not a straight forward rectangle it slants at an angle making it a very tight window for the applicant. Logically and economically it would not fit on the right side of house, the left side is the location for a garage.

Scott said he drove through the neighborhood and saw the other homes with attached two car garages. Stephen stated the board has an option to use 6.2.B.2, this allows them to reduce the lot to a 24 foot setback. There were no further questions or comments.

- Motioned by Stephen seconded by Peter to close the public hearing, a unanimous vote.

Discussion of the board:

Scott asked for clarification the 30% of non-conforming structure. Having .93 of an acre this parcel is a legal non-conforming lot.

Stephen explained that in Article 6.2.B.2 a variance granted under this paragraph may not exceed 20% of a setback. Meaning the side yard setback can be reduced 20%, in this case it brings it down to 30-feet which is the required setback in the residential zone. So Mr. Wyatt will have to meet all four hardships.

Stephen read the four hardships:

1. The land in question cannot yield a reasonable return under the requirements of this ordinance;
 - Stephen asked the Board does the applicant meet the first hardship, a 0 - 5 vote, the motion failed.
2. The need for a variance is due to the unique circumstances of the property and not the general condition in the neighborhood;
 - Stephen asked the board does the applicant meet the second hardship, a 2 - 3 the vote fails vote.
3. The granting of a variance will not alter the essential character of the locality;
 - Stephen asked does the applicant meet this hardship, a 5 - 0 passed
4. These conditions are not the result of action taken by the applicant for a variance or a prior owner.

Stephen asked does the applicant meet the fourth hardship, a 0 - 5 failed, the motion failed.

- Stephen motioned to deny request for 18 foot side yard setback for garage due to only meeting one hardship, seconded by Scott. A unanimous vote.

The applicant failed on the first, second and fourth cases of hardship, the Board cannot grant the variance for this application.

Decision:

Based upon the aforementioned facts and conclusions, on June 6, 2017, the Buxton Board of Appeals voted to deny the application for a variance that could not meet three of the four hardships.

Approval of Minutes:

~April 7, 2015 -

- Motioned by Charlene, seconded by Stephen to approve the minutes as written. The motion passed with a 4 - 0 - 1 vote with on abstention.

~September 1, 2015 -

- Motioned by Stephen, seconded by Scott to approve the minutes as written. The motion passed with a 0 - 5 vote.

CEO Report: Peter G. explains that he tries not to discourage or encourage the applicants. And asks is it acceptable to discuss with chairman or the Board before sending the applicant for a variance.

Stephen said it is the way to go and he looks forward to continue working with the code office. Peter L feels it should be discussed here at a meeting. Charlene suggest for him to discuss alternatives with the applicant before they come before the Board of Appeals, adding that we want to help make it fit.

Approval of bills:

~Approve to pay Portland Press \$58.70 for legal ad from the May 5th, 2015 meeting.

- Motioned by Stephen, seconded by Scott to pay Portland Press Herald \$58.70. A unanimous vote.
- Motioned by Stephen, seconded by Charlene to pay Portland Press Herald \$53.00. A unanimous vote.

~ Approve to pay Maine Municipal Association in the amount of \$110.00 for a Dec. 2, 2015 MMA workshop.

- Stephen motioned, Charlene seconded to pay Maine Municipal Association in the amount of \$110.00. A unanimous vote.

Communications:

Maine Townsman's

Treasurer

Notice of upcoming MMA workshops

Other Business:

Budget approval 2016-2017 and 2017-2018

Election of officers:

- Charlene nominated Stephen for chairman, seconded by Peter L. A unanimous vote.
- Scott nominated Peter L. for vice chair, seconded by Charlene. A unanimous vote.

It was discussed to emailing draft minutes to the board members, this way the members can make notes and at the next meeting, they can approve the minutes. Stephen also suggested if there is no activity the Board should hold a workshop every three months, to approve minutes and pay bills. The Board agrees.

Scott asked for clarification on Article 6.2.b.2. Stephen explained if it is the applicant's primary residence, the board can only reduce the setback by 20%, and the applicant does not have to meet the first hardship. If not the primary residents, then the applicant has to meet all four hardships.

Adjourn. The meeting adjourned at 8:17p.m.

Date approved _____

Stephen Heroux, Chairman

Date