

Effingham Zoning Board of Adjustment
Meeting Minutes December 3, 2014

5 Present: Jory Augenti, Tim White, Mike Cahalane, Jim Pittman, Paul Bartoswicz
Guests: David and Chris Seamans, Jim McLame (abutter)
Minutes prepared by Barbara Thompson

The meeting was called to order at 7:00 pm.

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Approval of Minutes:

Paul moved and Jory seconded to accept the minutes of the November 5th as presented.
The motion passed.

15 **Correspondence:** LRPC notice of annual meeting November 17th.

Public Comment: Paul commented that Fran has sold his house in Effingham which means he can no longer participate as an alternate.

20 **New Business:** Jim brought up the fact that terms are expiring. Mike's term is up this year and he stated he would not seek re-election. This leaves an opening on the board.

Old Business:

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- The board reviewed the letter prepared by Jim to Province Shore Campground discussing input from the Town attorney regarding violations at the campground. It was agreed to send the letter as is. A copy is in the campground file.
- Carlson RV application: The application to allow 2 RVs on his property has been withdrawn. The Planning Board has proposed an amendment to allow 2 RVs on a property for an aggregate of 150 days. If the warrant article passes, Mr. Carlson would not need to file for the variance. This was explained to him and he decided to wait for the outcome of voting at Town meeting and reapply should the article fail. His application was returned to him.

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Public Hearing 7:15 PM

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Case #077

David Seamans

Application for Variance re: Sect 402 (Lot Requirements) for forgiveness of a 30' road frontage shortfall

Tax Map 204, Lot 70

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Mike recused himself from the hearing. His reason was he had various conversations with a number of people involved in the case and the Planning Board (PB) and felt this might be a conflict. He felt his input might be more pertinent when Mr. Seamans case comes before the Planning Board for his subdivision. Jim explained the ramifications of a 4 member board versus a 5 member board to Mr. Seamans and asked if he had any

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Approved _____
Approved with changes _____
Unapproved _____

concerns about going ahead with the hearing. Mr. Seamans had no issues with a reduced board. Jim honored Mike's recusal.

50 Jim opened the hearing with roll call, an explanation of the procedure the board will follow and a reading of the application.

Public Comment and Discussion

55 Chris presented a map prepared by their surveyor which uses existing pins to verify footage for the proposed subdivision and road frontage. The surveyor was supposed to attend the hearing but was unable to make it. Chris explained the measurement on the application was off by 6 inches and should be 30'6" instead of 30'. Jim felt this was not a significant change and Jory said the application could be amended.

60 Mr. McLame asked if 2 of the boundary lines followed stone walls. The answer was yes. Jory brought up the alternative to platting a road to give the lot more road frontage. Chris explained this option was discussed in a preliminary meeting with the PB with the result that the PB would require that the road actually be constructed resulting in a substantial cost to Mr. Seamans. This steered the Seamans away from this option. Tim brought up
65 the fact that putting in the road would also cause setback issues.

70 Jim said he was willing to accept the figures presented based on existing pins as valid for deliberation even though there is not a plat to confirm the figures and asked the members if they were in accord. They were.

Jim closed public comment at 8:18 pm.

Deliberation

75 Tim suggested they jump to criteria 5 (hardship) as he did not see any issues with the first 4 criteria and brought up the fact that in some instances topography is not the deciding factor when granting relief from hardship.

80 Jim brought up a consideration in interpreting hardship as limitation. In this particular case the unique configuration of the lot is a limitation/hardship relative to road frontage. Jory reiterated that there is another option. Tim questioned the reasonableness in interpreting the zoning ordinance strictly. But if the road is not required, what might the long term issue be if the remaining lot was to be subdivided further in the future?

85 Paul expressed a concern that there are no written rules about roads in the zoning ordinance. Depending on the PB membership, it seems in some cases platted roads may be accepted and sometimes they are not. If you look at the whole picture there is a remedy but it is onerous and a hardship in itself to make it happen without any written regulations about whether a road can be platted or must be constructed.

90 Jim directed the board back to the issue at hand which is relief from the frontage requirement and not what the PB might require. He felt reasonableness was key. If the

Approved _____
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ZBA adheres strictly to the ordinance then the ZBA isn't needed. This has a limitation/hardship that cannot really be remedied because putting in a road makes the problem worse.

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Jim asked the board for further comments and finding none asked if they were ready for a straw vote.

Motion

100 Paul moved and Tim seconded to have a straw poll on the 5 criteria. The motion passed.

Poll of Criteria

1. Not contrary to public interest. All voted yes.
2. Not contrary to the spirit of the ordinance. All voted yes.
- 105 3. Granting variance will do substantial justice. All voted yes.
4. Value of surrounding properties is not diminished. All voted yes.
5. Literal enforcement of the provisions of the ordinance will result in an unnecessary hardship. There were 3 yeses and Jory voted no.

110 Jory commented that although he voted no he agreed with Paul that the PB solution was onerous and might make him reconsider his vote, but since the outcome would be the same in the decision he did not want to change his vote.

Motion

115 Based on the straw poll, Jory moved and Tim seconded to accept the results of the straw poll results as the decision of the board which will include discussion of possible conditions. The motion passed.

Conditions

120 Jory moved and Paul seconded to grant the variance for no more than 30'6" of the lack of frontage on lot 70. The motion passed.

Jim will prepare the Notice of Decision and have it ready for distribution for Monday December 8th.

125 Jim closed the Public Hearing at 9:00 pm.

Tim moved and Mike seconded to adjourn the meeting. The motion passed and the meeting adjourned at 9:10 pm.

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These minutes are considered draft until approved at a future regular meeting of the ZBA. Any changes or corrections will be noted in the next meeting minutes.