

Approved: _____
Approved with changes: _____
Unapproved: _____

Zoning Board of Adjustment **April 4, 2018**

Members Present: Dave Strauss, Tim White, Tom Hart, John Davis, Mike Cahalane (a)

Members Absent: Chuck Fuller (a), Jory Augenti

Others Present: Dianne Park, Gina Detorio, Rebecca Boyden, Albert & Susan Cutter

Meeting called to order at 7:00pm.

Mike Cahalane is a full member in place of Jory Augenti.

Minutes

A motion was made by Tom, seconded by Dave, to approve the minutes from April 2, 2018 as written. All were in favor.

Website Document Update

Theresa is working on the new Zoning Ordinance updates. The Zoning Board Rules of Procedure date issues, on the website, were corrected.

Public Hearing

Case #087-Albert & Susan Cutter of 14 Bailey Rd., Effingham, NH, Tax Map 103/Lot 26 – Applicant seeks a variance from Section 402 of the Zoning Ordinance (Lot Requirements).

Started at 7:15pm

All board members introduced themselves and the rules for the hearing were announced.

Albert and Susan Cutter were present for the hearing.

Dave requested the Cutters provide background on the case.

Albert stated he built a concrete pad and a deck 3 years ago and the application had all the correct information

Dave requested the Zoning Enforcement Officer (ZEO) detail her letter sent to the Cutters.

The ZEO detailed that she received a note from the Tax Assessors Office stating they did not have a building permit for the concrete pad and deck. The Zoning Enforcement Officer (ZEO) then sent a letter to the applicant asking for their building permit application. Albert then sent the ZEO a building permit application. The ZEO then responded back to the applicant stating the project did not meet the side and rear setbacks further stating she was denying the permit explaining they would have to come before the Zoning Board of Adjustment (ZBA) and apply for a variance for the side & rear set-backs.

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Dave read the required setbacks of Zoning Ordinance Section 402 which is front and rear setback of 50 feet and side setback of 30 feet. He noted that the existing structure was 20 feet from the rear setback and 19 feet from the side setback.

Board Comments

Mike asked the applicants if they knew they needed a building permit before they built the pad & deck. Albert said yes he knew he needed a building permit further stating that when he received the letter from the ZEO asking for their building permit application.

Mike then asked the applicants how not having a deck would impact their property. Albert then stated without the deck the property has no outdoor social area because of the house size and lot environment. The ZEO then stated most lots on that side of the road range from 150' to 180' deep. The Cutters lot is 150' deep and in terms of comparable use the Cutter property line is closer than most.

Mike gave historical data stating properties on Bailey Road have been granted a variance for setback issues due to the smaller lots in their neighborhood.

Public Comment closed

Board Comments

- The lot is a non-conforming lot.
- There is a vacant lot on the right from which a mobile home was removed 2 to 3 years ago.
- The shed structure behind the lot is not on their property but the Applicant has been maintaining and using the structure since they bought the property in 1995.
- The depth of the adjacent lot is greater than this lot.
- Road frontage is comparable to other lots on the road.
- Other properties on the road have received variances for similar uses.
- Deck is 16'x16' with a small adjacent concrete slab.
- The concrete slab is not involved in the variance.
- Applicant was given notice by the ZEO for no building permit.
- The house was removed and re-built on the same footprint per special exception.
- Zoning Ordinances that pertain are Section 402 (Lot Requirements) and Section 701 (Non-Conforming Uses and Structures).

Public Hearing Closed at 7:45pm.

Dave explained to the applicants that the board would now deliberate the application noting that the decision would be made within 30 days. He informed them that once a decision was made a Notice of Decision would be sent within 5 days. The ZEO explained how the paperwork goes forward. The Applicants left the meeting

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Points Deliberated:

- There can be no deck without the variance.
- By approving the deck the non-conformity increases.
- The building is not centered on the lot and if the ZBA had seen the lot without the house they would have centrally located the building.
- The spirit of the ordinance and applying the ordinance in a reasonable manner.
- Would the board have allowed a deck if the applicants came before the board for a variance before putting on the current deck?
- ZBA is not a punitive body but concentrates on the issue of a variance.
- The Hardship is the lot size.
- No abutters had any objections.
- Using the Province Lake District set-back might be a fair standard for this case.

A motion was made by Dave, seconded by Tom, to do a non-binding straw poll, using the five points in RSA 674:33. A future meeting will be set for final vote and Notice of Decision.

The five points in RSA 674:33	John	Tom	Dave	Tim	Mike
Not Contrary to Public Interest	Y	Y	Y	Y	Y
Spirit of the Ordinance Observed	Y	Y	Y	Y	Y
Substantial Justice Done	Y	Y	Y	Y	Y
Values of Surrounding Properties not Diminished	Y	Y	Y	Y	Y
Literal Enforcement of Ordinance will Result in Unnecessary Hardship	Y	Y	N	Y	Y

Case #087 is continued until April 18, 2018 at 7:00pm. A deliberation, final vote and Notice of Decision will be taken at that time.

The ZEO gave the board information on Accessory Structure set-backs.

A motion was made by Tom, seconded by Tim, to adjourn the meeting.
 Meeting adjourned at 8:55pm.