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Effingham Zoning Board of Adjustment Meeting Minutes June 1, 2022

Board Members Present: Jim Pittman (chair), Tim White (vice chair), Lawrence Edwards, Mike Cahalane, Alan Taylor.

Others Present: Nate Fogg, Rebecca Boyden; Zoning Enforcement Officer, Timothy and Dawn Marks; variance applicants

Call to order at 7:00 pm

Review of minutes of May 4, 2022.

Mr. White pointed out an error on the last page of the minutes where “role call vote” should be “roll call vote”.

Motion to accept the minutes, with the correction, made by Mr. Taylor, seconded by Mr. White. The motion was unanimously approved.

Discussion regarding NOD 100: The Chair observed that during the deliberations on NOD 100 reference was made to including a mention of Article 6, Section 602 as part of the decision, but that it had not been included in the published decision. The question before the Board was whether the NOD should be appended to include the reference.

The Chair questioned whether the reference was valid as it referred to subdivided lots. Mr. Cahalane suggested we should include the reference as he thought a lot line adjustment was a form of subdivision.

Mr. White believed we should include it if it was included in the discussion as recorded, which the Chairman confirmed it was.

Mr. Fogg noted that the case was scheduled to be held on June 2, which was the following day. The Chair observed that the Planning Board would not be impeded in its decision making whether we appended the NOD or not.

Mr. Edwards observed that it probably did not make a difference. Mr. White suggested that, as the Variance had been granted, there was no significant impact whether the change was made or not.

The Chair called for a vote to decide. Mr. White motioned to “Retain the Notice of Decision as presented since the omission is unimportant.” The motion was seconded by Mr. Edwards. The motion was unanimously approved.

Agenda Review. No additions to the agenda were put forth.

Hearing of Variance Application # 101. The hearing began at 7:14 pm

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The Chair recognized application 101 for a Variance presented by Timothy Marks regarding Article 14, Section 1402 to allow a second RV on his property at 49 Town House Road, Tax Map # 204, Lot 57 in the Village Overlay/Rural Agricultural District

The Chair presented the basic rules and procedures for the conduct of the hearing. It was noted that the applicants had not addressed the Five Criteria in their original application, but they had provided supplementary written information dated 5/31/22 at the time of the hearing.

Mr. Fogg stated that the hearing had been properly noticed. He noted that not all the return cards had yet been received back from the list of abutters though he confirmed all notices had been mailed.

The Chair invited the Marks to present their case for granting the requested variance.

Mrs. Marks stated they bought the property in 2019 because they believed they could park two RVs on the property based on the ordinance at the time. She noted that the property is essentially only used on weekends and holidays by themselves, family, and friends, and they do not reside there. Mr. Marks remarked that they get along well with their neighbors and have had no complaints.

The Chair asked that they expand their discussion by specifically addressing each of the five criteria. Mrs. Marks observed that they had some difficulty understanding the criteria but proceeded.

1. **The variance will not be contrary to the public interest.** Mrs. Marks repeated that they originally bought the property because they thought they could keep two RVs on it.
2. **The spirit of the ordinance is observed.** Mrs. Marks stated they are only using the RVs for the allowed 150 days and are not trying to make money off the property. Mr. Marks noted that the property is not used in the Winter.

The Chair questioned whether they had obtained the seasonal use permits for the RVs. They stated they were “in the process” and that they had not obtained them for the previous year because they didn’t realize they needed to do.

3. **Substantial justice is done.** Mr. Marks stated that a neighbor, Mr. Seamans, was willing to write a letter stating that they were fine with the two RVs on the property. They characterized their relationship with the abutter Vincent Griffin as a positive one. The Chair disclosed that he lived across the street from the Griffins, which made him a neighbor, though not an abutter.
4. **The values of surrounding properties are not diminished.** The Marks agreed that their printed statement that “due to the acreage surrounding their property, they were not diminishing the value of those other properties” was their position.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** The Marks did not expand on their written response, which did not directly address the hardship criteria, but was more of a summary of their overall argument.

The Chair invited the Marks to add any additional information or comments before proceeding to questioning by the Board. The Marks said they had nothing additional at the time.

Mr. Cahalane asked about water supply to the campers. Mr. Marks stated that the bathrooms in the RVs were not used and that only the bathroom in the cabin was used, which was connected to a septic system. However,

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gray water generated in the RVs went into holding tanks. Mr. Marks contended that a pumping company would come to empty those tanks.

The Marks stated that the septic system was in existence when they bought the property, and they know nothing about it. They further stated that they were intending to have someone replace it. Ms. Boyden added that the cabin had been built in 1960 and there was no record of a septic system at that time. Mr. Edwards observed that electronic records only go back to 1986, so anything before that might not be available.

Mr. Fogg maintained there were no septic rules in place before 1967, which suggests the configuration of the system currently on the property cannot be determined.

Mr. White asked if the septic pumping company had any information on how many gallons had been removed when they last serviced it. The Marks replied that they had never had the tank pumped. Further questioning related to whether the Marks were sure that a septic system existed, and they replied “yes” because they had looked inside it. Other than observing that it appeared to have a stone wall, they could not provide more information.

The Chair questioned whether there was a well on the property. The Marks responded that there was a dug well when they bought the property, but they had a new well drilled last year that was about 150 feet deep and provided 150 gallons per hour.

Mr. Cahalane mentioned he reached out to New Hampshire Municipal Association (NHMA) questioning Steve Buckley about whether a seasonally permitted use could be grand-fathered. Ms. Boyden noted that there are currently two or three properties in town where two RVs have been present, and she has allowed them to continue because the owners have consistently maintained their permits every year. Ms. Boyden added that, because there was no history of the Marks ever applying for a seasonal RV permit, in her opinion there was no way they would be subject to the same reasoning.

Mr. Taylor observed that the RVs essentially serve as extra bedrooms. Mr. Marks agreed and maintained that nobody ever hears them, to which the Chair, based on direct experience, did not fully agree with that assumption.

Mr. White sought to confirm that the ordinance had in fact changed from allowing two RVs to only one. Ms. Boyden confirmed that two RVs had been allowed since 2015 until this year, when a change in the ordinance to only one was successfully voted in during the March election.

A discussion ensued to clarify the difference between storing multiple RVs on a property and occupying them, which requires a permit. The Marks stated that they moved RVs onto the property in 2020, and when contacted by Ms. Boyden in the Fall of 2021 claimed that the RVs were not in use, and so, did not require permits. Mrs. Marks reasoning was that they were not in use at the time, but Mr. Marks admitted that they had been used for two or three weekends that season.

Mr. White observed that a variance goes with the property, so we were potentially enacting a “permanent solution to a temporary problem” if we granted a variance. Mr. Cahalane agreed with the observation.

Mr. Taylor questioned whether having someone bring a camper temporarily onto a property to camp for a week would require the same permitting requirement. Mr. Cahalane offered that in practice there is usually no issue with such short term uses, but the permit is intended for when an RV is brought onto a property and remains for an extended period.

He further commented that he has seen an increasing number of community complaints over the last seven years related to RVs being placed long term on properties that often have inadequate facilities for wastewater

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and sewage handling, resulting in problematic health and environmental impacts. As a result, the Planning Board took the unusual step of reversing a previous decision to allow two RVs back to one RV this year. The motion passed with the widest margin of any articles on the ballot by a two-thirds majority of support. Mr. Cahalane said he was concerned that well-intentioned relief provided by the Zoning Board could have the unintended consequence of making the broader problem worse.

The Chair offered that for the benefit of the applicants that it should be made clear that Mr. Cahalane serves as Effingham's Health Officer as well as being a ZBA member.

The Chair questioned the Marks if they knew where the wetland boundaries were related to the stream that runs behind their property. The Marks did not know, but thought it was far away from their occupied area, and it was a seasonal stream that dries up in the Summer.

For the record, the Chair noted that they are on a non-conforming lot of less than two acres, possibly 1.5 acres. Mr. Cahalane noted that the lot was grandfathered in from before the ordinance.

The Chair questioned whether the RVs currently on the property were registered. Mr. Marks said no, but he intended to register the RV that was owned by him. Questioned as to how he got them there if they were unregistered, he responded they were brought there by someone he hired that had dealer plates. He said he had no intention of registering the RV until Ms. Boyden informed him that it would be necessary. Further questioned about whether the RVs retained the capacity of being towed away they answered that they did.

The Chair observed that there appeared to be permanent structures attached to the RVs. Mr. Marks answered that he had obtained a building permit for the structure on his camper but was waiting until he received the variance to do so for the second RV. Ms. Boyden confirmed she had issued a permit for the "porch" on the RV though she did not have a permit for the RV itself. She added that she had not issued the permit for the RV because it had no registration number, which is required, and the question of sewage disposal had not been resolved. Ms. Boyden also shared that she had advised the Marks of the requirement to obtain a variance before they could potentially obtain a permit for the second RV.

Ms. Boyden offered, that regarding the sewage disposal issue, in her opinion DES would not allow "extra bedrooms", as characterized by Mr. Taylor, on this property without a new septic system. Mr. Taylor responded that they could use the storage tanks on the RV. Ms. Boyden responded that the Marks could not have it both ways; they already claimed they did not use the systems in the RVs, so the additional load on the house system was implied. They could change to using the RV systems but would need to prove that the black and gray water tanks are being properly serviced by a reputable septic pumping service. Discharging into the existing home system would not be acceptable as the State of NH requires that a new septic system needs to be put in place when an additional bedroom is added on properties under five acres. In a back-and-forth exchange with the Marks, Ms. Boyden explained that even adding just one RV onto the property likely exceeds the capacity of the existing septic system because there are already two bedrooms in the house.

Mr. Cahalane discussed that the State of NH DES regulates septic systems and potable water supplies in campgrounds and extend those requirements to the towns for RVs as well. He observed that the State requirements represent a minimum level of compliance, and many towns add more stringent ones on top of those. His opinion is that the State Health Ordinance is not likely to make the standards more lenient. Regarding relying on the pumping of waste tanks in RVs, he does not see any way to confirm compliance with so many individual units, which, because of their limited capacities, will need to be serviced often to be effective. Consequently, it makes more sense to pursue upgrading the septic system to handle waste waters as it will likely be required soon for all RVs anyway.

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Ms. Boyden observed that we had focused a great deal on the question of waste disposal, but it was tangential to the variance being sought. Mr. White felt it was important as it had long term impact.

Mr. Edwards observed that a septic designer looking at the setup with two RVs added to the house would probably result in a six-bedroom size septic system, which might be difficult to implement on that small lot. Mr. Cahalane agreed. Mr. Edwards added that the lot might not even be adequate for a four-bedroom system, including the leach field, and factoring in the wetlands area.

Mr. Cahalane returned to Tim's assertion that issuing a variance for a seasonal use situation is problematic as it is a permanent solution to a temporary situation that is likely to change over time and ownership transfers.

The Marks sought clarification on how the variance relates to the property instead of just the owner. They also misunderstood the two-year limitation on implementation as a requirement to seek approval every two years. They further asked about other properties they looked at on smaller lots that had multiple structures. It was explained that they were probably grandfathered from before the zoning ordinance was adopted.

An extended discussion ensued discussing how use variances might be abandoned under various circumstances after two years. The discussion was largely anecdotal and not directed related to the variance application under review.

The Chair reiterated that the ZBA existed to provide relief from an imperfect ordinance. Consequently, an inability to achieve a perfect solution does not mean a solution is unobtainable. The ZBA needs to apply the five criteria to the decision process so the result is not arbitrary.

The Chair emphasized that the "spirit of the ordinance" was demonstrated by the voters who approved the change at the polls in March, so this must be factored into the discussion.

"Substantial justice" is particularly important to the applicants who wish to use their property in a certain manner.

"Diminishing the value of surrounding properties" seems straightforward as the current abutters are unconcerned, but the impact on future neighbors is to be considered as well.

The Chair asked the Board if they had any additional questions, as well as whether Ms. Boyden had more information to share. She expressed that the application of the five criteria may be complicated in this case, which is a "use" variance.

The Chair informed the applicants that he had been on their property the day before to hopefully see them about submitting the requested information related to the five criteria. The Marks had no objections.

Mr. Fogg pointed out that the 2021 tax card show two campers being taxed. He observed that it proved they were there, though not registered. Ms. Boyden stated they were picked up as taxable property because they were not registered as vehicles. She emphasized that the ordinance specifically addresses this issue. However, it does not address their use as campers or not.

Mr. Cahalane asked that we obtain a legal opinion on the grandfathered status of seasonal use. As previously noted, he was already waiting for an answer from NHMA. He also observed that, considering the late hour, the Board was unlikely to deliberate at this point.

The Chair stated that he would entertain a motion to continue the public hearing to a date certain.

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Ms. Boyden discussed with the Marks that they still needed to obtain a registration and permit for the one RV that was to remain on the property, regardless of the continuation of this hearing.

The Chair polled the Board as to whether there was reason to not continue the hearing to the sixth of July at 7:00 PM.

The Marks asked if their attendance at that meeting was required. They were told they did not have to be present, though it was recommended that they might want to be present for their own benefit.

The Chair asked for a motion to continue the hearing. The motion was made by Mr. Cahalane to “Continue this hearing until July 6th, no earlier than 7:00 PM at the start of our regular meeting, and we will continue with having the public comment open at that point”. Mr. White seconded. There was no discussion. The motion was unanimously approved.

The Chair and Mr. Cahalane agreed to communicate with one another to decide how we would obtain legal advice.

Other Business: None

Meeting adjourned at 8:41 PM. A motion to adjourn was made by Mr. Taylor and seconded by Mr. White.

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