

Approved: _____

Approved with changes: _____

Effingham Zoning Board of Adjustment Meeting minutes July 6, 2022

Board members present: Jim Pittman (chair), Tim White (vice chair), Lawrence Edwards, Mike Cahalane, Alan Taylor

Others Present: Nate Fogg, Nicole Maltese, Timothy and Dawn Marks (Applicants), Chuck Fuller (Selectman)

Call to order at 7:10pm

Agenda Review: No changes were put forth

Review of Minutes of June 1, 2022

Discussion of referring to NOD 100 by the number only instead of including applicant name. It was decided it was a judgement call and people could know by the identifier. No corrections, or additions. Motion to accept made by Tim White seconded by Mr. Cahalane. All in favor of Accepting the minutes with none opposed.

Hearing of Variance Application 101. The hearing resumed at 7:25

The Marks provided letters from the abutters the Seaman's, and the Griffins. No comments on the letters received. Resumption of the public hearing.

Mr. Pittman informed the room of Attorney Matthew Serge' opinion of the grandfathered status; and shared information from the New Hampshire Supreme Court which was "a landowner cannot be vested from changes in permitting requirements. Thus, even if one could argue that he or she has the right to store more than one RV on a lot, they do not have the right to a permit to allow the use of more than RV for what is essentially dwelling use."

Discussion ensued over the variance and permit being for temporary seasonal use and the variance being possible for said usage due to there being no guarantee that regulations will remain the same yearly.

The Marks maintained that the second RV should be allowed due to the fact you can have use of more than one RV on a property for a span of 10 days and he uses his second RV only 6 or 7 times so he should be under code because he has 10 days to use it.

Mr. Cahalane replied with the fact that, that only applies to people using an RV for up to 10 days then removing it from the property. If it stays longer than that then a permit is required and the RV must be

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disconnected from utilities, and you need a permit for second RV for occupancy. If gutted and used for storage, then it can stay.

Discussion ensued over the septic issue and the fact that it should be separate from the allowance of the two RVs even though proper wastewater removal is necessary.

Mr. Fogg confirmed that all notice return cards had been received from all abutters.

At 7:54pm the public hearing closed.

Mr. Pittman explained the specifics of Article 14, recreational vehicle section 1402, RV seasonal use permit.

- A. no recreational vehicle may be used as a permanent dwelling or residence in Effingham.
- B. to use an RV for the purposes set forth in this section a landowner must first obtain an RV seasonal use permit.
- C. a landowner may place one RV for noncommercial recreational purposes on his or her property for 150 consecutive days between April 1st and October 31st. The RV must either be removed or closed up and not in use per section 1401 but may be used for storage the other 5 months. All RV septic shall be decommissioned and winterized from November 1st until march 31st.
- D. all RVs must be mobile and be legally registered. RVs must meet the setbacks for principal structures for the zoning district in which they're located. Lack or expiration of registration will void the RV seasonal use permit and RVs lacking valid registration must meet the Effingham zoning ordinance for a structure.
- E. RV must have adequate sanitary facilities. Applicant must demonstrate how solid waste and sewage will be disposed of in a lawful manner per New Hampshire law and Effingham health ordinance. Any unlawful disposal of solid waste or sewage will void this permit. Upon expiration of a permit under this section an RV must comply with all aspects of section 1401.

Decision for a variance will be based on the guidance of the five criteria

1. The variance will not be contrary to the public interest.

The board discussed whether approving this variance would be in the public's best interest. Mr. Cahalane thinks this is in line with the public interest due to the towns vote to the reduce use to one RV. Mr. Pittman stated that he believes the approval of the variance by definition is contrary to the public interest based on the recent vote to lessen the impact of RV usage. Mr. Cahalane agrees with said statement.

Mr. Pittman stated his opinion is that 2/3rds of the voting population in town voted to impose the one RV limitation and the board would be going against the wishes of the voters by approving the variance.

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2. The spirit of the ordinance is observed.

Mr. Cahalane's feeling is that the reduction of RVs is being posed by the town so both the public interest and spirit of ordinance are linked by town's vote to reduce RV usage.

Mr. Pittman reiterated his opinion that it would be going against the wishes of the voters by approving the variance, so to him that's the definition of not observing the spirit of the ordinance.

3. Substantial justice is done.

The Chair makes the point that if this was approved and later another resident came forward requesting the same variance and was denied there wouldn't be justice for them. Mr. Pittman believes this criteria doesn't have enough sway to be a big deciding factor.

Mr. Taylor stated it would be justice for the Marks because when they bought their property two RVs were allowed.

4. The values of surrounding properties are not diminished.

Mr. Cahalane believes there are accumulative effects. Ultimately multiple RVs and trailers effect your town's valuation. Mr. Cahalane states when you have a buildup of RVs it takes away value of properties throughout the whole town, which means taxpayers' money does not go as far.

The Chair agrees there's a diminishment of properties by allowing multiple RVs.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Mr. Cahalane believes there isn't anything extraneous that makes this property unique in its environment. A hardship would result if there's a unique setting of the property. The property must be burdened by the zoning ordinance in a manner that is distinct from similarly situated properties.

Mr. Pittman doesn't think there are any impediments that makes it unique to other properties so it wouldn't fall under unnecessary hardship.

Mr. White says the ordinance itself would be the hardship, but as far as the land goes there's no hardship. The situation is unique in the fact the Marks had been allowed two RVs by the Ordinance at the time they bought the property. But since then the ordinance changed to allow only one RV, but that does not constitute a hardship.

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Mr. Taylor said they did this with good intent, wanting to come up here and enjoy their property and vacations and that it is wrong to limit them and their use of their RVs as taxpayers.

Mr. Pittman responded back about there being specific ordinances landowners and board members must follow even though allowances can sometimes be made; the ordinances can't be changed.

Mr. White remained unsure of whether a variance is appropriate for the issue as he believes it to be a permanent solution for a temporary problem. Mr. White also voiced concerns over the downstream ramifications of allowing the Marks to have two RVs on their property.

Discussion ensued over having the RVs registered and the fact they both still need permits unless one is just used as storage, and that sewage needs to be disposed of properly because the health ordinance overrides the zoning ordinance.

Mr. Cahalane suggested the Board move forward and discuss what the pros and cons are.

Mr. White believes there isn't a huge pro for anyone besides the landowner but there isn't a huge con for anyone else either, although he remains unsure of whether approving the variance will have wider consequences down the line.

Mr. Edwards suggests changing the variance by allowing the second RV only until it is no longer usable then it will go back to only the one RV and stay that way.

Mr. Cahalane and Mr. Edwards then discussed the matter of that suggestion meeting the spirit of the ordinance and the public interest criteria.

Mr. White and Mr. Cahalane continue to discuss the matter of issuing a variance for temporary seasonal use and it being a permanent solution for a temporary problem and if the variance and issuing a permit even applies.

The board deliberated over the hardship criteria and if it applied to the situation.

The chair informs the board that for the variance to prevail a minimum of three of the five members of the board must vote that all five criteria are met.

Motion made by Mr. Taylor to approve variance 101, seconded by Mr. Edwards

Roll call vote

Mr. Taylor voted yes.

Mr. Cahalane voted no due to criteria 1, 2, and 5.

Mr. Edwards voted yes.

Mr. White votes no due to criteria 5.

Mr. Pittman votes no due to criteria 5.

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Result of the vote is three no's and two yes.

The variance is denied.

Four of the five Board members were in favor of recommending to the Board of Selectmen that the applicants be allowed to maintain the two RVs on their property until the end of the current season. It was recognized that it would be a non-binding motion by the Board. Mr. Cahalane did not support the proposal.

The Chair informed the applicants that they had 30 days to appeal the decision from the date the NOD is published, which would be within 5 business days.

Motion to adjourn made by Mr. Taylor, seconded by Mr. White

Meeting adjourned at 9:26 PM.

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