

Minutes Meeting of September 7, 2005 – Royal, Kelly/Moseley, Pineridge, Blouin

Members Present: Stuart Schulman, Chase Duffy, Robert Cadle, Jay Prager, Cindy Maxwell, Mark Mulligan

The Chairman convened the Royal hearing by reading the legal notice.

David and Cindy Royal, applicants, and David French, contractor were present with a petition for a new addition. The structure is non conforming and they are proposing to increase the non-conformity because the proposed addition encroaches closer on the road. Mr. Royal noted that they can't move the addition because of the location of the septic system. He also noted that the proposed addition is further from the street than neighboring setbacks, and the driveway will be further from Rt. 119. Mr. Royal noted that the only non-conformity is 49 feet setback on one corner, and this setback will be 38 feet.

Mrs. Duffy noted that Nate Nutting Road connects to Indian Hill Road and at the end there will be some limited development.

Mr. Royal said that 20 Nate Nutting had a 34 foot setback.

Mr. French said that he will be moving the driveway, which will make it further back from Rt. 119.

Mr. Royal said that they will remove the car port and add a garage that will have an extra bedroom in the second story. He noted that he has been through the BOH and the Con. Comm. and received approvals from both boards. He said that the house was built in 1955 and is the only house without a garage on the street.

The Chairman said that they have an above ground pool which is a man made hardship, but noted that he doesn't want the addition to go closer to 119.

Mr. French said that if he ever needed to move the septic system, there would be no place to put it if the addition was not in that location.

Mr. Royal said that he had to move the existing well because it would be under the proposed addition. He noted that the well will be towards the front of the house and no closer to the street, but closer to the house. He said that the well will be further from the wetland area and lined and sealed off from road salt, etc., and stressed that it will be much safer than what is there now.

Mr. Mulligan said that he was fine with the variance.

Mrs. Duffy said that she was in agreement.

The Board moved to grant a variance to the Royals to allow them to build an addition 38 feet from Nate Nutting Road.

The motion was seconded and passed unanimously.

The Chairman reconvened Kelly Moseley. They asked for a withdrawal of the variance application. The motion was seconded and passed unanimously.

The Chairman reconvened the Hicks/Pineridge 40B hearing. They requested a continuation and the Board decided on November 2 at 7:45 pm.

The Chairman suggested scheduling the 40B rules hearing on the 2nd of November at 7:30 pm. The Board agreed.

The Chairman reconvened the Blouin hearing.

Mr. Blouin said that the BOH told him that his steps are not in order.

Atty. Vander Linden noted that he had nothing new to present but would like to summarize the Trust's position and stated six issues:

- 1) Burden of proof, that the applicant needs to prove, which if equal, than the Board needs to deny.
- 2) Credibility, which is not usually an issue, but is here. He said that it is better to face that head on, and noted that Mr. Tusino stated what he saw on the property. He said that Mr. Blouin has different a view but stressed that the Building Inspector has given direct evidence of non use.
- 3) The Board's own finding, which is that it has been clearly proven not to have been used for more than two years, and there has been no evidence against this finding.
- 4) What evidence is actually in front of board, ie competing statements from the applicant, etc. He said that the one bit of real contemporaneous evidence is from GELD, that no electrical service has been provided for more than 10 years, that there is record of no service.
- 5) The legal standard itself: Town Counsel said that even if affidavits that have been submitted are deemed submissible, they don't prove residential use. He said that the structure should at least conform to the basic State Sanitary Code, which it didn't.
- 6) Proposed findings of fact: we are here because the Superior Court Judge said that the Board should look at the facts more carefully.

Mr. Blouin said that he wanted a yes or no answer from the Board.

The Chairman suggested closing the public hearing.

The Board moved to close public hearing. One Board Member didn't want to close the public hearing unless it was only temporarily. He said that the hearing would only need to be reopened if the Board doesn't find for non-use for more than two years, but he wanted that option left open. Thus, the Board moved and seconded to closed the public hearing unanimously, with the caveat that the hearing will reopen if the Board doesn't find for non-use.

Mrs. Duffy felt that intermittent camping doesn't construe use and said that there is no real evidence to support use.

Mr. Mulligan said that it is a gray area regarding what is a period of non-use and when does it not apply.

The Chairman said that any period of non use in the history of the dwelling is relevant, particularly between 1994 and 2000.

Mr. Cadle said that this was a cottage and the by-law needs to be interpreted for this particular area. He said that many cottages have been not used for periods of time.

Discussion ensued regarding what to look for in a non-use situation.

Mr. Cadle asked if conditions could be issued for a conversion permit.

Mr. Mulligan said that he is torn because there is some level of unfairness but it is not up to the Board to give the applicant what he wants and to circumvent the by-law.

The Chairman noted that in the opinion of Town Counsel, one weekend a year of camping wouldn't count and that a stronger standard needs to be set. He also felt that many of the affidavits submitted by the applicant are vague at best.

The Board found that there was at least a two year period that the camp was not used in any measurable fashion.

The Chairman said that in looking at Atty. Vander Linden's six criteria, he would have crafted something along those lines. He said that he can't change his opinion based on these facts and noted that he went back over Atty. Lyons' arguments from 2002 and felt that there weren't too compelling. He said that by definition of Groton Zoning, no year round abutting residents have sworn that he lived there and in fact, they argue that he didn't live there, nor was the camp used for many more than two years.

The Board noted that if it is not a lawfully existing residence, the Board must deny the special permit.

Mrs. Duffy asked where the applicant could go if the permit is denied.

The Chairman said that that is not up to the Board, but upholding the By-Law is.

Mr. Mulligan noted that it is an unfortunate outcome.

The Board moved to deny Mr. Blouin's application for a special permit for a seasonal conversion because the Board found that there has been a period of non use for more than two years under 218-6B and therefore the premises at 35 whitewood road are not a lawful existing seasonal residence, which is a precondition for granting a special permit for a seasonal conversion.

The Chairman said that Atty. Vander Linden's findings of fact should be incorporated into the Board's decision.

The motion was seconded and the permit was denied unanimously.

The meeting adjourned at 9:30 pm.