

**ZBA Minutes Meeting of May 6, 2009** – Ferguson

Members Present: Robert Cadle, Chase Duffy, Harris McWade, Alison Manugian, Cynthia Maxwell

Chairman Cadle reconvened the Ferguson hearing, noting that at the last hearing, the applicant submitted both plans and a structural analysis. He noted that a site walk was conducted 5/2/09 and read into the record an email from the Cons. Comm., dated 4/30/09.

Mr. Ferguson said that he would not construct the deck to go over water, noting that he has to do a Chapter 91 and doesn't have the time. He said that he has a meeting on the 12<sup>th</sup> but the Cons. Comm. has approved three sonar tubes and will finalize the plans then.

Chairman Cadle asked for questions from the Board.

Mrs. Maxwell asked whether the height of the roof would be staying at 35 feet or below. The applicant said that he would like to have a little leeway. The Board stressed that there is no leeway unless a separate variance from the height requirement is obtained.

Mrs. Manugian asked how to measure height, and from where.

Discussion ensued regarding how to measure height, particularly from what point on the ground and roof. Chairman Cadle cited definitions. The applicant said that it would be less than 35 feet for both the ridge roof at the front and the flat roof at the back.

Mrs. Manugian said that she wants to discuss the definition of a story. The applicant said that the basement is unfinished and doesn't have a ceiling height, and thus is not a story. Discussion ensued regarding what can be finished and then considered a story, with the applicant noting that seven feet is too low. Mrs. Manugian said that she felt that even if it is not a full basement story, with the loft, the dwelling is up to 3.5 stories. Discussion turned to section 218-20, where the required maximum height is three stories. Mrs. Duffy said that she thinks that storage space in the basement is not a story. The applicant noted that he has had to put in an attic because of heating ducts.

Mrs. Duffy asked about the heating system. The applicant said that he had a furnace on the first floor and planned to put one in the attic. He noted that the original one was not big enough for the addition.

Ms. McWade asked whether the heat from the boiler being installed would be going into the downstairs bedroom, and the applicant said that it was. He said that the second unit, with a/c, would be going upstairs in the attic space.

Mrs. Duffy asked for clarification regarding how high above the abutting houses this structure will be.

Mr. Ferguson said that he was unsure because he didn't measure the neighbors' houses.

Mrs. Duffy said that his house already seems to loom over the neighbors' houses and if 7.5 feet is added, it would seem ever so much more looming.

Mr. Ferguson said that he is just taking the loft and raising the roof and putting walls on it.

Further discussion ensued regarding what defines a story, and special permit criteria.

Discussion turned to getting permits and building the shed without first obtaining a building permit.

Mr. Ferguson said that he had no idea that he needed a permit for a shed until Barbara Ganem asked for a copy of the permit.

The Building Inspector had told the administrator that the applicant was aware that he needed a permit.

Mr. Ferguson said that he couldn't put the shed anywhere else on the lot, and that he didn't know he needed a permit.

Ms. McWade expressed concern about how safety vehicles would be getting by.

Mrs. Manugian said that the house is so close to the road that the Board could grant a variance for the shed. Chairman Cadle agreed that the crux of

the issue is not a self-imposed hardship. He then asked whether it would make sense to make the applicant tear down the shed and then ask for a variance, which would then likely be approved.

The applicant said that he has approval from the Cons. Comm., and put in all the required hay bales, etc. He said that the Cons. Comm. liked the location of the shed because it helped channel runoff.

Mrs. Maxwell said that access would be difficult if the shed was located lower down on the lot.

Mrs. Duffy said that the shed bothers her less than the height of the addition.

Chairman Cadle said that as a practical matter, it is not unusual to have a shed or house that close to the road in the Lost Lake area.

The Board moved to approve the application for a variance from setback for a shed as previous constructed on lots 129-159, 7 Baby Beach Rd. The motion was seconded and passed unanimously.

Chairman Cadle said that he has an issue with the 35-foot height. The Board wants to trust the Building Inspector on how to measure the height of the structure. Discussion ensued regarding how to follow the By-law regarding stories and whether this structure has more than three stories.

Of note: if over three stories under 218-20, the applicant will need to come back to get a height variance.

Discussion ensued regarding whether the Board could put the number of stories issue into the Building Inspector's hands, or whether a variance needs to be obtained for the extra story.

Mrs. Duffy said that when she drove down Lost Lake Drive, she got a great view of the house and it is nestled nicely into the lot/topography.

Ms. McWade said that she thinks the structure is 3.5 stories but feels that the 35 foot limit should allow the dwelling to fall into that regulation.

Mrs. Manugian disagreed, noting that she thinks adding eight feet to the top of the dwelling will not fit in with the neighborhood and will make the house

tower over abutting properties. She said that it would appear too big for the lot.

Ms. McWade agreed that the structure will tower over the abutting camp but it otherwise seems to fit in to the rest of the neighborhood.

Mr. Ferguson said that he thinks that most houses on the lake look significantly larger than his does now.

Mrs. Duffy said that his house fits in now.

Mrs. Maxwell agreed but noted that the lake area has changed so much that an additional story won't be out of place. She said that keeping the structure to 35 feet in height is important, and said that the Building Inspector should not ignore the intensity regulation that allows only three stories.

Chairman Cadle thinks that a maximum of three stories is within the 35 foot height requirement. He said that whether the dwelling fits in is a matter of some judgment, noting that there has been a lot of change in the area. He said that it is a good thing that the dwelling will continue to be restricted to a two-bedroom dwelling and this also forces the maintenance of the existing tight tank.

The applicant said that Lacombe's septic pumping comes once every five weeks to pump the tank.

Mrs. Duffy said that this is not an unattractive project like some other difficult decisions the Board has had to make.

Chairman Cadle said that it is not about aesthetics, but about enforcement of the By-laws.

Chairman Cadle said that he had a difficulty with the story limitation and he felt that the Board could not even get to the special permit criteria until that issue was dealt with.

Mr. Ferguson said that the height of the loft is 3.5 to 4 feet, which is just enough room for a furnace, duct work, etc. He said that the whole attic space is going to be full of heating equipment and won't even have room for much, if any, storage.

Mrs. Manugian said that she feels the attic won't be used for more than heating equipment but the issue needs to be addressed by a variance, as noted in the by-laws.

Discussion ensued regarding how to read the by-law and whether the proposed space is a ½ story and in need of a variance.

Mrs. Duffy said that she wants to be careful of granting because this could set a precedence regarding more than three stories on other structures.

Discussion ensued regarding putting in cathedral ceilings and keeping to the 35 foot height requirement, whereby a variance would not be required. Mrs. Maxwell suggested having a half loft for the heating equipment and a cathedral ceiling for the rest of the addition.

Mrs. Duffy said that she feels that the Board has the authority to grant a permit if it doesn't have adverse effects on the neighborhood.

Chairman Cadle said that the applicant still has to comply with the three story limit. He said that Section 218-31C doesn't allow the Board to underwrite any Bylaw.

Mrs. Duffy suggested having a cathedral ceiling and moving the heating/ac into the basement.

Mr. Ferguson said that he would have to install 14 inch ducts in a 14 foot wide house and this does not give him a lot to work with.

Mrs. Manugian said that she either wants to advertise the entire application, or just advertise for the height variance, but noted that the applicant's time crunch isn't the Board's problem. She said that she doesn't think it appropriate for the Board to compromise its standards because the applicant didn't apply soon enough.

Discussion ensued on a further basis regarding how to handle the three story issue and whether it makes a difference if it is living space or not.

Mrs. Duffy questioned why a cellar is not considered a story and an attic space of four feet is a story. She said that it isn't living space, but storage space.

The Board suggested continuing for a week, to allow the Building Inspector to answer that question.

Ms. McWade asked whether the Board could move to grant the permit and let the Building Inspector determine whether a variance is required.

The Board discussed the Special Permit criteria, noting that a written determination has to be made that the project would not have an adverse effect on either the town or neighborhood, nor derogate from the intent of the Bylaw. Additionally, the dwelling will increase in value and thus bring in more tax revenue, but is still limited to two bedrooms.

1) Social, economic or community needs are met by making a family with a new baby coming more comfortable.

2) Traffic flow will not be noticeably impacted.

3) Utilities are adequate, including a two bedroom capacity septic tight tank and town water is available.

5) Impacts on the environment will be minimal due to the two bedroom capacity Title V approved septic system, and the Cons. Comm. Order of Conditions.

4) Impacts on the character of the neighborhood would be minimal as there are several big houses in the neighborhood and the whole area has changed to a huge degree, including larger dwellings and general improvements to aging camps.

6) The fiscal impact would be positive.

Conditions: BOH requirements will be met, Conservation Commission requirements shall be met, the dwelling shall remain at two bedrooms and be no higher than 35 feet.

The Board notes that a variance is likely required for the additional ½ story.

Discussion Section: There was considerable discussion whether the structure will be 3.5 stories and there was considerable discussion whether a special permit could issue under the three-story limit requirement of 218-20.

The Board moved that the plan as presented in consideration of the Groton By-laws is for a three and one-half story building. The motion was seconded and passed, four to one.

Chairman Cadle asked the Board about their opinions on the grant of the special permit again.

Mrs. Maxwell said that she has no problem with the special permit, noting that she wants to give the Building Inspector some leeway to grant a permit for the plan as submitted.

Mrs. Manugian said that she wants to give the BI enough support such that he can ask for a variance to be obtained.

Ms. McWade said that it is splitting hairs to require a variance for storage space.

Mrs. Manugian said that she has issue with the appearance from the lake side, even if other structures in the neighborhood have a similar appearance. She said that she could not justify making a bad matter worse.

Ms. McWade said that she does not have too much of an issue with the appearance of the structure, particularly due to the elevation on the street side. She said that she thinks the Board needs to be clear on the three story issue and if the Building Inspector determines that a variance is required, then the applicant needs to go before the Board.

Mrs. Duffy suggested waiting a week to ask for the Building Inspector's opinion.

Mrs. Manugian said that that could delay for a further week advertising, etc.

Ms. McWade said that the Board needs to follow procedure but she also doesn't want to tie the hands of the Building Inspector.

Chairman Cadle said that he thinks this should be a special permit/variance case, noting that he doesn't feel comfortable with a change in notice without notice. He said that he agreed with Mrs. Maxwell that the Board's job is to interpret the Bylaws. He said that it seems pretty clear what to vote on, that the structure is 3.5 stories and it is a tautology as to whether the Board can vote on just the special permit in this case.

Of note: the Board thinks the dwelling is 3.5 stories.

The Board moved to grant a special permit to Mr. Ferguson, 7 Baby Beach Rd., to alter a non-conforming structure to raise the roof in accordance with the plans as drawn, approximately eight feet and such that the building will not exceed 35 feet in height and will be in conformance with section 218-20. The motion was seconded and passed four to one, with Mrs. Manugian voting against the grant.

The meeting adjourned at 10:00 pm.