

TOWN OF SUTTON
Zoning Board of Adjustment
Pillsbury Memorial Hall
Meeting Minutes
January 16, 2013

Present: Zoning Board of Adjustment Members: Derek Lick; Ed Canane; and alternates: Carla Krajewski and Sue Reel; Laurie Hayward, Land Use Coordinator; (Bill Hallahan, Chair; Dane Headley; and Doug Sweet were absent); and interested members of the public: Amy Palmer, Wendy Palmer, and Wayne Stark, who left after the first hearing; and Roger Wells, Daniel and Sara Sundquist; and Walter Baker Jr. of the Board of Selectmen.

Derek Lick came forward sit for Bill Hallahan, Chair. Carla Krajewski came forward to sit for Dane Headley and Sue Reel can forward to sit for Doug Sweet.

The meeting was called to order at 7:04 PM, by Derek Lick.

Derek Lick explained that as the Board is usually 5 members and now has 4 members only. Applicants have the option of holding off until next month. If they decide to go forward, applicants must understand that they have to have at least 3 members vote in favor of approval. Derek described the process and asked each of the two applicants if they wished to go forward with the Public Hearing at this time. Both Amy Palmer and Roger Wells answered that they did wish to go forward at this time.

Public Hearings: Mr. Lick moved to open public hearing; the motion was seconded and approved. Laurie Hayward read the notice regarding the applications of Amy Palmer for a Variance and Roger Wells for three Variances. Mr. Lick asked about fees. The Land Use Coordinator (LUC) stated that all fees have been paid.

Public Hearing: Palmer Case 2013-01, Amy Palmer present: Ms. Palmer approached the board. Board Chair Lick read the ordinance, Article III.J and Article III.K, and noted that the applicant is constructing a new home and the new house location would be further back from the road than the old. The applicant would like to be able to inhabit the original house until a new house to be built on the same lot is substantially completed instead of living elsewhere and/or using a temporary construction trailer. There will never be a time when she is living in both houses. She plans to have the first house demolished prior to completion of the new house. Ed Canane questioned whether she needed a variance if she did not expect to live in both. There was a brief discussion. It was noted that, in doing the variance, they could place a condition of the variance that the first house be demolished prior to occupancy. There was also a discussion regarding the intent of the ordinance that allows a temporary travel trailer. Variance to K would allow the first house to remain and be used in the same way a construction trailer until the Certificate of Occupancy for the new building. Walter Baker Jr., Selectman, reminded the Board and the applicant that there would need to be a permit for demolition of the house and that could be included in the decision. The Chair asked whether there was any additional input. There being no additional input, Ed Canane moved to close and Sue Reel seconded and it was voted unanimously to close the public portion of this hearing. The members of The Zoning Board of Adjustment began by discussing allowing the applicant to live in the current principle building/residence as long as there is no Certificate of Occupancy on the building to be constructed. Derek Lick called for worksheets. It was noted that there were no comments from neighbors. It was further noted that Ms. Palmer's statement that the standing house would be more attractive than a travel trailer was something that

should be taken into consideration in support of approval. There was a short discussion on the reasonableness of using the original house while the new is being constructed. Derek asked for additional comments. Sue Reel noted that allowing the applicant to keep the items that are to be removed from the current house and installed in the new one in place does better protect those architectural elements from the damage that might occur if left outside.

Motion: It was moved that the Variance to Article III:J and K be approved and conditioned on the existing building on the property being demolished and demolished in accordance to town policy prior to the issuance of a Certificate of Occupancy. The chair called for a roll call vote. The roll call was taken and the votes as follows: Derek- "yes", Ed - "yes", Carla- "yes", and Sue- "yes". The application for Variance is unanimously approved. Derek reminded the applicant that there is a 30 day window during which an appeal can be made to the decision. The applicant asked about what next and was told that she could go to Elly Phillips about obtaining the Building Permit now that the Zoning Board of Adjustment has approved the request for a Variance.

Public Hearing: Wells Case 2013-02, Roger Wells present: Mr. Wells approached the board. It was noted that there were possibly 3 Variances needed. The 2nd Public Hearing was opened by Derek Lick, meeting chair. Mr. Wells explained that this involves an almost 3 acre lot on Kezar Lake that his daughter Heather has recently purchased. He provided a brief history of how part of the road, Park Avenue, was discontinued and a portion was deeded back to her. He also explained that there have been problems for years about how to handle snow build up in that area. Roger Wells spoke with The Board of Selectmen and the Highway Department about using a part of the property in question to allow plows to turn around and store some snow. The issue that creates is with the front door and with access to a garage. He explained that with modifications and a change in location for the garage, it could work and they would give the town a deed restricted easement to provide for the snow turnaround. The original house was already partially within the property setback. There is an issue regarding trees on the lot and the telephone pole which would need to be moved.

Variance 1 (1.a) There is an issue regarding snow removal and storage. They propose to build a 14' x 20' garage within the front setback. They cannot relocate the proposed garage without taking down trees and/or running into wetland setback issues. They do have a nonconforming structure that is "grandfathered". But, they propose to build not exactly on the footprint-but on a different footprint which is further from the property line, making it less non-conforming.

Variance 2 (1.b) There is a secondary question that arises assuming that the garage is approved. And that relates to the current standing addition which is "grandfathered" and which they wish to relocate slightly so that it is 3 feet further from the property line. The question was posed: why move the few feet. Mr. Wells says that the design is better and the flow is better and will have to change the front door to enable the plan. He is not rebuilding on the footprint; but, he is making it better. His question is: does this "L" require a variance when there would be no variance required if he rebuilt on the same footprint and he is making the structure less nonconforming. Derek Lick clarified that the original structure is 33 feet from the line where the ordinance calls for 46.5 feet. If the structure was torn down and replaced in the same foot-print, there would not be any need for a variance. However, the applicant proposes to move the structure a few feet further from the line, less nonconforming; but, not in the same foot-print. Wally Baker suggested that whether it is nonconforming or not is irrelevant in any case of a nonconforming structure. It still requires a variance. Derek asked why the structure needs to be moved. There was a brief discussion and agreement that the variance is needed. Mr. Wells replied that it makes a better design, further from the snow storage and

it connects better to the house and garage. Mr. Wells indicated that they will have to remove and rebuild anyway because it was built on a slab without frost protection. And, they must remove and replace the front door anyway in order to allow the town turnaround and accommodate the town. So, they must put a certain amount of costs to allow the changes necessary for the configuration to work in light of the snowplow turn around and for town snow storage.

Variance 3 There was discussion regarding a variance for a screen porch on the west end of the house, to be within 11' of the property line rather than the 15' of the setback requirement. What used to be a front setback is now a side setback which changes the requirement. Derek Lick pointed out that the situation was unusual with ½ of the house fronted by Park Avenue and having a 46.5 foot setback, and the remaining portion of the house where the town discontinued the road and deeded ½ to each abutter, there is now only a 15 foot side setback. There was a discussion regarding "hardship". Derek pointed out that it is an important consideration whether the literal enforcement of the ordinance provides a hardship. Roger Wells explained that there are a few different possibilities for the property. However, he felt that this was the best and had the least impact.

There was also a question whether there was a fourth variance needed for a stone terrace that he proposed for the lake front side of the building. He explained that he was not certain that it required a variance and that depended on one's reading of Table D.1 of the Zoning Ordinance and the setbacks for a Dwelling that was built prior to 2006, and whether the addition of a terrace to replace a deck is a structure. So, the Board needs to decide whether Table D.1 applies and if the stone terrace is a structure and is it something that he needs a variance for. It was noted that he will need to submit to DES for a wetlands permit. Derek stated that he is inclined to say that the terrace is not a structure and, that it may not need a variance at all. Mr. Lick asked for more questions. Ed Canane asked whether the terrace is not impervious surface. Mr. Wells stated that it is stone but not cemented or concreted and that is to allow for drainage. The definition of "structure" was read. Mr. Wells noted that he could "flip" the covered porch and the terrace and not need a variance for either. But, he feels the proposed is a much better option. Mr. Lick clarified that the question is whether the terrace is a structure and whether it can be deemed to be an attached addition. If so, then the structure falls in the 50 foot setback for an addition to a building built before 2006. If it is not a structure, then there is no setback requirement. So, whichever it is; there is no variance required. They should determine whether it is a structure or not; but, that does not change that there is no variance needed. After some discussion, Mr. Lick stated that he was inclined to say that this terrace is not a structure and therefore does not require a variance. Mr. Wells says he has taken into account all requirements of DES for Shoreland.

Mr. Lick called for comments from the public. Dan Sundquist and his wife Sara were in attendance. They are abutters and Dan has lived there for twelve years. Dan spoke and said that the plan does provide some improvement. He says the snow plow turnaround is conditional at this point. He thinks that there may be an issue with the utility pole. Electrical service to the Sundquist property comes off the pole on the Wells property and that pole is directly in the way of the proposed snow turnaround. Originally, Heather Wells sought to get confirmation from PSNH that they would move the pole – there is an easement to allow a pole and line. Dan brought a map to show the issue he has with PSNH and that he will have to pay for all of the resetting of his electric service which would represent a financial hardship to him and his wife. Roger and Dan both have the same issue in that neither of them feels they should have to bear the costs to have PSNH's pole moved. Dan stated that the issue involves more than the pole location alone; that PSNH wants him to rewire his house so that the power comes into the house at a different location. Derek Lick asked whether it was reasonable to condition this on Mr. Wells getting an agreement from PSNH to move the pole. There was some discussion of whether this is a reasonable condition. The question was posed whether the movement of the electric pole was required to do the rest of the building project? Mr. Wells strongly prefers that the

pole be moved; but, its movement is not absolutely necessary to do the project. Dan indicated that he supported the plan/design; but he really wanted to see the cost to himself resolved before hand. Ed Canane pointed out that costs to the abutter speak directly to the issue of the requirements that there be no damage to the abutters. Derek pointed out that what is under discussion and what the application for variance is about is not the snow turnaround or the need to move a pole. Walter Baker stated that the pole did absolutely impact the town's ability to use the easement for a snow turnaround and this is a benefit to the town and a cost saver for the town. Roger suggested that Dan, Roger, and the Board of Selectmen all approach PSNH to resolve the movement of the pole. Roger stated that he was not going to give a deeded easement until the issue of the pole is resolved. Walter Baker agreed that the three entities should work together to resolve the pole issue before the snow easement goes forward. Derek said that for him the problem with the pole starts with that PSNH overburdened their easement and that was not something that affects whether the variances are approved. It is the town that wishes to have the pole moved. Derek asked if there was any additional comment. He asked the LUC if there was any correspondence. She stated that she had received a call from an abutter, Mr. Bystricky, and that he asked the LUC to describe the location of the things that were in the notice. She did that and asked him whether he wanted any comments read into the hearing minutes. He said to simply state that he had "no comment". **A roll call was taken and the public session closed.**

The initial point of discussion centered on the question: are the values of abutter property diminished. Ed Canane stated that the variances being granted do not seem affected by the pole; but, there is an unintended consequence. Ed stated that he feels it does hurt the abutter. Carla disagreed, saying that she felt that the variances do not necessarily require that the pole be moved and she is not sure we should consider side issues where we have no authority. Sue Reel noted that she does not feel that the Board has authority over and therefore cannot apply a clear condition in connection with the pole.

Derek called for a vote as to whether the movement of the pole should be considered. Derek Lick moved that as a board they deem any potential movement of the electric pole not be a consideration, including, in particular, no impact on the value of an abutter's property. Carla seconded the motion. A Roll Call vote was unanimous. Next the question came whether to deem the terrace is a structure. Derek moved that the terrace is indeed a structure and is deemed to be a structure and within 50' as requested for prior to 2006 building. A Roll Call vote was unanimous that the terrace is a structure; but does not require a variance because it is within the setback of 50'. The Chair called for worksheets. Discussion began with the garage. Ed Canane stated that if the Board is not considering the pole movement or not moving and then that also means that the snow removal is irrelevant as a point of consideration. Derek Lick said the issue of Public Interest is worthy of consideration. Ed Canane said that the requirement that "substantial justice is done" may not be met as there may be alternatives to locate differently. He explained that he would feel more supportive if applicant provided the easement for the town and that was made a condition of approval. Derek suggested that a condition could be that the town uses the property for the snow turnaround and storage. Derek explained that the garage could be placed elsewhere except if the town easement is given. It is the snow turnaround that makes the hardship that requires the variance for the garage. **Derek Lick moved that we grant the variance 1, the garage setback of 33' not 46.5' and that variance be conditioned on the applicant entering in to an easement with the town. A Roll Call vote was taken and all four Board members voted in favor. Variance 1 is approved with condition unanimously.**

Variance 2, for the relocation of the "L" to be less nonconforming but still 36' from abutter was taken up next. The question was posed: does the L relocation meet the spirit of the Ordinance. Carla noted it was actually an improvement. Derek agreed with Carla. **Derek Lick moved to approve Variance 2 and Carla seconded the motion. A Roll Call vote was taken and the Variance approved unanimously.**

Variance 3, for the new porch setback encroaching side setback by 1 foot. Ed Canane asked about drainage Roger says there will be a drip strip put down a pipe which is perforated and discharges in place. Derek Lick noted that the porch does not meet the hardship test. Roger was addressed and he indicated that he could use a different configuration for the design that would not require variance BUT he felt that would not be as much of an enhancement to the property. Mr. Wells noted that there is an unusual 4 foot buffer that exists because of an easement that Heather Wells has. Derek Lick noted that because the easement is connected to another property, not the one in question, and when or if Heather sells the other property; then the buffer, in effect, no longer exists as it is not owned by the property owner and so is no longer her buffer. Carla indicated that she had no concern on this and feels that if there is no harm done, she should approve. Carla moved that the variance for the screen porch be approved. Derek Lick said that he feels that the porch could be made non-encroaching by reducing it by 4 feet or by relocating it so that it could be built without requiring a Variance. The chair called for a Roll Call vote. The roll call was taken and the votes as follows: Sue Reel- "yes", Carla - "yes", Ed Canane "no", and Derek- "no". The application for Variance is not approved. Immediately Ed asked if the easement could be assigned to the property under consideration and states that if so, then he would be in favor. Let the record reflect that Ed Canane would like to reconsider his vote. **Ed Canane moved that the Board revote on the screen porch. A Roll Call vote was taken as follows: Sue Reel- "yes" Ed Canane - "yes", Carla Krajewski - "yes", and Derek Lick - "no". The variance is approved with Derek Lick the only dissenter. The Variance for the Porch setback is approved.**

This ended the Public Hearings.

Administrative:

Derek Lick stated that with the formal Planning Board unanimous vote to recommend the Zoning Ordinance Revision as written, the remaining step to be undertaken is for the ZBA to vote to approve the revision as written and dated January 4, 2013. **A motion was made to approve the Zoning Ordinance revision as presented at the January 15, 2013 Planning Board Public Hearing, seconded, and voted unanimously.**

Previous minutes: Minutes of the meeting of November 27, 2012 were unanimously approved as written.

There being no additional business, Ed Canane moved to adjourn, Derek Lick seconded the motion and it was voted unanimously.

Next meeting is to be held Wednesday February 20, 2013 at 7pm.

There being no further business, the meeting was adjourned at 10:15 PM.

Respectfully submitted,

Laurie Hayward
Land Use Coordinator