

MIDDLESEX ZONING BOARD OF ADJUSTMENT

Thursday, July 13, 2017

6:00 PM

Middlesex Town Clerk's Office

5 Church Street

Middlesex, Vermont 05602

(802) 223-5915

MINUTES

Carl Dupont Zoning Permit #17-12 Hearing

Prior to hearing, a site visit convenes at the property of Carl Dupont, at 69 Center Road at 6:05 pm.

Present: ZBA members Charlene Bohl, Daniel Crisp, John Demeter, Phil Hyjek and Roger Hirt; Zoning Administrator Mitch Osiecki. Also present is Carl Dupont, appellant, Linda Moulton and Neal Ference.

John introduces members of the ZBA to Carl and Linda.

Carl shows the layout of his property and explains where he proposes to site a mobile home on the property. He describes work he's already done to improve the property.

Call to Order

Hearing formally convenes at Middlesex Town Clerk's Office at 6:23 pm.

Present: ZBA members Charlene Bohl, Daniel Crisp, John Demeter, Phil Hyjek and Roger Hirt; Zoning Administrator Mitch Osiecki. Also present is Carl Dupont, appellant, Linda Moulton (Carl's partner) and Neal Ference (Carl's attorney). Also in attendance is Jim Colby (abutting property owner), via speakerphone.

John explains the procedures that will be observed for the hearing.

John reads into the record the public warning of the hearing.

John polls members of the ZBA and confirms that no one has any conflicts of interest that would prevent them from rendering a fair and impartial decision.

John polls members of the ZBA and affirms that no ex parte communication has taken place by any ZBA members prior to hearing.

John explains definition of an Interested Person and affirms that Carl Dupont and Linda Moulton, Neal Ference, and Jim Colby all meet the definition of Interested Persons.

John swears in all Interested Persons.

Carl explains that he wishes to return a mobile home to his property, but emphasizes that he would ensure that it would be in compliance with local zoning regulations as well as State Regulations (the trailer that was originally on the property did not have a septic system).

Discussion by ZBA members as to the merits of a variance vs. a waiver. Members to considering a variance, provided that Carl feels prepared to offer necessary evidence at this time. He affirms that he is prepared to do so.

Jim Colby raises a question about regulations concerning lot size and affirms he has no objections to Carl's desired use of the lot.

Neal raises the issue of undue hardship.

Discussion of which characteristics can be considered under the hardship question.

Discussion of nonconforming use. There is general agreement that the property is a nonconforming lot.

Members review the definition of a variance. Consensus of the members is that they need to resolve whether the ZBA can consider a variance.

Neal offers his argument that the unique physical characteristics of the lot present an undue hardship to Carl.

Further discussion of whether the ZBA has the authority to grant a variance.

Jim Colby suggests applying Zoning Regulation 3.4 (Pre-Existing Small Lots). Members are concerned that the prior mobile home did not have functioning septic, as required in paragraph (B) of this section.

Jim suggests that the ZBA's interpretation of Section 3.4 is incorrect. He believes only paragraph (A) needs to be satisfied, not paragraph (B). Paragraph (B), which requires that septic and other wastewater regulations are complied with, only applies to a small lot which subsequently comes into ownership with an abutting lot. That is not the case with Carl Dupont's lot.

ZBA concurs that the definition of a Pre-Existing Small Lot is satisfied. However, it is still not clear that the ZBA has the authority to allow a mobile home on the undersized lot.

Daniel raises a concern that was brought up earlier, namely that is unclear whether the ZBA has the authority to grant a variance as outlined in Section 7.6 (Variances and Setback Waivers). Section 7.6 is modeled after State statute 4412.

In the interest of efficiency, the ZBA agrees consider the merits of this case under the criteria outlined in Section 7.6 at this hearing, and will make a determination about whether they are have the authority to grant a variance under at a later time.

In the interest of efficiency, the ZBA agrees consider the merits of this case under the criteria outlined in Section 7.6 of the zoning regulations at this hearing, and will make a determination about whether they are have the authority to grant the variance in deliberative session.

Under Section 7.6 (B), the ZBA may grant a variance and render a decision in favor of the appellant only if the following facts are found and if the findings are specified in its written decision:

- (1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topography or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provision of these regulations in the neighborhood or district in which the property is located;
- (2) Because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the regulations, and that the variance is therefore necessary to enable the reasonable use of the property;
- (3) The unnecessary hardship has not been created by the applicant;
- (4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair appropriate use or development of adjacent property, reduce access to renewable energy sources, or be detrimental to the public welfare; and
- (5) The variance, if authorized, will represent the minimum that will afford relief and will present the least deviation possible from these regulations and from the Town Plan.

With respect to these criteria the appellant, Mr. Dupont, argued that:

- (1) Lot size constitutes a unique physical circumstance;
- (2) There is no possibility of development of the lot without a variance;
- (3) This hardship was not created by the appellant;
- (4) Allowing the development of the lot will not change the character of the neighborhood, and further, no neighbors have come forward to object to his proposal;
- (5) This variance is the minimum deviation that will afford the relief he seeks.

In general, the ZBA members concur that the five criteria are largely met. There are, however, a couple of points that remain unclear.

Specifically, Charlene points out that when this the sale of this lot originally came before the ZBA in 2009, plans were to use the lot as a right-of-way access and development of the lot was not a criteria that was given consideration.

Daniel also expresses reservations on a few points.

Daniel is still weighing the merits of the argument that the small lot size constitutes a unique physical hardship.

Also, the original proposal was to sell this parcel to Jim Colby, who owns the adjacent property. Had that sale been consummated, the parcel would have been merged into a larger, conforming lot. There may be an argument that the appellant created the physical hardship by purchasing an undersized lot.

And finally, there could be an argument that this variance is not the minimum that could be done to meet the criteria. It's possible that acquiring additional land from Jim Colby might be considered an alternative avenue for relief.

Motion: Charlene moves that the ZBA go into deliberative session to consider the authority of the ZBA to grant this variance. Roger seconds.

Votes for the above motion: Yes – Charlene, Daniel, John, Roger, Phil. No – None.

Motion carries.

Meeting adjourns at 8:02 pm.

Respectfully submitted,

Mitch Osiecki, Zoning Administrator