

Zoning Board of Adjustment meeting minutes for August 9, 2011

Present: Chair John Smith, Lewis Major, Dorianne Almann, Todd Page, Alternate Mike McGrath and CDC Kathryn Lynch. Bernie Rideout was excused. Applicant was present; 7 members of the public were present.

7:00 pm Chair John Smith called the meeting to order and swore in Mike McGrath as alternate of Board. CDC Kathryn Lynch read the public notice submitted by David Smith of tax map 45 lot 53 of 18 Mohawk Dr., in the Residential District. Applicant seeks a variance from Article VII Section 3 Use Regulations. The applicant would like to build a carport within his setback. Chair John Smith asked David Smith to approach the Board to explain his case. David Smith explained that he is 70 years old, and getting pellets uncovered and covered in the winter and cleaning his car off is getting difficult. David Smith spoke to his immediate neighbor John and he didn't have a problem with it. The carport is engineered to carry the weight of New England snow, paid extra for a shed type roof, has a metal frame, concrete cast post that he will sink in the ground below the frost line. The carport will be 18' x 26'. Questions from the Board: Will it have walls or be open sided, (open sided, and has a gable type roof). Floor (gravel floor with 8" x 8" post sunk in). Do you have the measurement or a plot plan (Not with me). Board explained to David Smith that without a sketch, or plot plan to show dimensions they would need to postpone the hearing until the next meeting in September because they cannot vote on a variance without specific measurements. Chair John Smith asked if there were any members of the public present that are in favor or oppose the carport, hearing none the public portion of the meeting was closed. Chair John Smith postponed the meeting until September 13, 2011 at 7pm.

7:20 pm CDC Kathryn Lynch read the public notice submitted by Kevin Dodge of tax map 37 lot 7 of 515 Oxbow Rd., in the Rural Agricultural District. Applicant seeks a variance from Article V, Use Regulations #11. The applicant would like to restore/repair vintage motorcycles and have a NH State Inspection Station as a Home Occupation. Chair John Smith asked Kevin Dodge to approach the Board to explain his case. Kevin Dodge explained that he would like to open a shop so that he could access a dealer's license, auctions and buy parts at wholesale prices for motorcycles. Most of his shopping and selling would be on the internet. He has been laid off recently and wanted to have a shop for awhile and thought this was the best time to try. He would also like to be a NH State Inspection State for motorcycles. Questions from the Board: Where do you plan to do this (built new garage at my home). Type of motorcycles and how many (restoration of vintage motorcycles, no more than 15/20 at one time). How would you contain the fluids (oil containment system with a holding tank, holds 20 gallons at one time, inside spill container catches oil before it hits the floor. Two – three quarts per motor, Bond Auto on Putney Rd will pick up oil for free 5 gallons at one time. Without license State only allows Kevin Dodge to sell 5 motorcycles per year). Where would you display motorcycles (inside in office, never outside only motorcycles that are used for parts would be stored next to home, down the road I would like to have a carport to cover). How many do you have presently (some collected and working on as a hobby). Kevin Dodge then passed out pictures to the Board of garage, part of his motorcycle collection. Are they noisy (stock exhaust). Where is the garage on property (in front of home). Since this is an allowed use in other districts in town, why are you not pursuing this there (cannot afford).

Chair John Smith asked if any members of the public were present that were in favor of the variance. David Smith, resident explained that he commended him for trying in a bad economy, and compared the shop to shop on Flat Street in Brattleboro.

Hans Howard, 531 Oxbow Rd, abutter, lives at base of Dodge's driveway explained that he works nights, sleeps days, Dodge is a good neighbor, no problems with noise as he works on his hobby motorcycles.

James Burdo, 532 Oxbow Rd, abutter, lives across the street, explained he is looking forward to the shop.

Chair John Smith asked if any members of the public were present that apposed the variance.

Paula Renock, 505 Oxbow Rd, abutter, read a letter (attached to the minutes) stating items like noise, echo, has own business and leases a shop in the commercial district to sell antiques, works out of home, bought home in Rural Agricultural to get away from noise, worries about lowered property value if shop exists. Paula then explained that he receives deliveries from an 18 wheeler trucks and one night last winter specifically. Truck was backed up Dodge's drive with lights on shining in her bedroom for hours until midnight she called the Police Dept. and driver was asleep in truck. Paula mentioned that is was not his first delivery. She owns 5.75 acres and Oxbow Rd area echos and she can hear every time a motorcycle goes up or down Dodge's drive. Paula feels for Dodge because of the economy but feels that it is not allowed in the district they live in. Paula also explained as an antique dealer that vintage is anything that was not made today. Paula had questions for the Board to consider, what will Dodge do with waste, will the bikes need to be road tested, and where, what will the hours of operation be, signage. Paula read the definition of home occupation from the Hinsdale Zoning Ordinance, which does not include a motorcycle/auto repair shop. Paula gave CDC Kathryn Lynch the letter signed letter that she read.

Betsy Hutchin, 505 Oxbow Rd, abutter, explained that she does not approve of a motorized business in the Rural Agricultural District, especially Oxbow Rd due to the echo.

Dan Hubler, 502 Oxbow Rd, abutter, explained that he moved to Hinsdale two years ago, looked for home in Rural Agricultural, loves working on his own motorcycles, applauds Dodge for trying, but loves his quiet neighborhood, wildlife in the area, has conservation on one side and forest on the other side of property, owns 7 acres, but feels a motorcycle repair shop would not be beneficial in this area would prefer him to have in a district that allowed it and would be a customer of the shop.

Rebecca Hubler, 502 Oxbow Rd, abutter, explained that it was her mom's dream to move to a quiet neighborhood in the country when she retired, is worried about traffic problems due to the narrow road, also concerned with noise due to the echo.

Lewis Major explained to Kevin Dodge that for as many years that he has sat on the Zoning Board he has never seen a variance for this type of change, feels it would be opening a can of worms since it is clearly stated in our ordinance that it is not allowed in Rural Agricultural.

Kevin Dodge explained that the tractor trailer incident was a one time occurrence, the driver was delivering motorcycles that he purchased on the internet.

Board read comments from Department Heads.

Board worked on the Finding of Facts for the case. Chair John Smith read the Finding of Facts listing 21:

1. Dodge would like to open a shop to access dealer's license, auctions, and purchase items at cost.
2. Buys and sells items on the internet.
3. Planned to do business in the future but was laid off so would like to begin now.
4. Constructed garage in 2010.
5. Proposed NH State Inspection Station for motorcycles.
6. Would have 15 to 20 motorcycles at one time.
7. Has an oil containment system holds 20 gallons at one time.
8. Bond Auto will pick up used oil for free, 5 gallons at a time.
9. Prior to State license State allows him to sell 5 motorcycles per year.
10. Will display motorcycles in office.
11. Has a containment system now in garage.
12. Pictures of garage and motorcycles shown to Board.
13. Motorcycle shop is allowed in Roadside Commercial and Business District but cannot afford to purchase property.
14. David Smith compared to shop in Brattleboro.
15. Hans Howard works at night and sleeps during day, no problems.
16. James Burdo is looking forward to the shop.
17. Paula Renock read a statement of her opposition of shop, 18 wheeler delivery, noise, echo, not allowed in district.
18. Elizabeth Hutchins stated motorized vehicles echo and are not allowed in district.
19. Dan Hublar moved to R/A to be in the country, wildlife, and quiet.
20. Rebecca Hublar stated traffic concerns, and noise.
21. Lewis Major, member of the Board many years, has never seen a variance of this type.

Dorianne Almann made a motion to approve the Summary of Facts as read, seconded by Todd Page. Chair John Smith repeated the motion and called for individual vote, Todd Page (aye), Mike McGrath (aye), Lewis Major (aye), Dorianne Almann (aye), and Chair John Smith (aye). Motion passed unanimously.

Board members then worked on the Statement of Reasons and determined:

1. There ~~would/would not~~ be a diminution in value of surrounding properties as a result of the granting of this variance because: ***applicant is proposing a use that is not permitted in the R/A District and abutters have concerns of traffic, noise, and echoing.***
2. The granting of this variance ~~would/would not~~ be of benefit to the public interest because: ***as a whole the general public would not benefit because the proposed business type is not an allowed use in the R/A District.***

3. Since:
- a. the zoning restriction as applied to the property ~~does~~/**does not** interfere with the reasonable use of the property, considering the unique setting of the property in its environment such that: ***it is a rural area and per zoning ordinance definition of home occupancy it is not an approved home occupancy for this district.***
- and:
- b. there ~~is/is not~~ a fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property because: ***the ordinance is clear explaining the types of home occupancies that are allowed in the R/A District.***
- and:
- c. that the variance ~~would/would not~~ injure the public or private rights of others since: ***people purchased homes to be in the country and this would be contrary to the ordinances.***
4. By granting this variance substantial justice ~~would~~/**would not** be done because: ***it is an R/A District and ZBA has not given variances to others in that district for these types of businesses.***
5. The use contemplated by petitioner as a result of obtaining this variance ~~would/would not~~ be contrary to the spirit of the ordinance because: ***the zoning ordinance was designed and written to have areas of residence, business, and rural, to have a business in R/A would be contrary to the ordinance.***

Dorianne Almann made a motion to approve the Statement of Reasons, seconded by Lewis Major. Chair John Smith repeated the motion and called for individual vote, Todd Page (aye), Mike McGrath (aye), Lewis Major (aye), Dorianne Almann (aye), and Chair John Smith (aye). Motion passed unanimously.

Todd Page made a motion to deny the variance seconded by Dorianne Almann. Chair John Smith repeated the motion and called for individual vote, Todd Page (aye), Mike McGrath (aye), Lewis Major (aye), Dorianne Almann (aye), and Chair John Smith (aye). Motion passed unanimously.

8:25 pm During the meeting David Smith located a Building Permit that included measurements of the carport and location on the property, Board invited him continue his hearing with the public portion closed. David Smith showed the Board the sketch, carport would be 5' from side property line, 4' from home and 8' back from corner of home. Driveway would not need to be enlarged, pavement is to house in drive. Carport will have a metal shed like roof that will be painted to match the shutters and trim on home. Board worked on Finding of Facts for the case. Chair John Smith read the Finding of Facts listing 13.

1. David Smith would like to build a carport on property closer to the side border than allowed in the Residential District.

2. Carport will be used to store pellets and car from weather.
3. Carport will be 18' x 26'
4. No walls, one panel around top.
5. Carport was ordered and engineered to handle New England snow.
6. Flat roof.
7. With be mounted to the ground by posts below frost line.
8. Gable end trim painted to match trim.
9. Five feet from side of carport to property line.
10. Four feet from carport to house.
11. Eight feet aligned with home.
12. Gravel packed floors, no extension of pavement.
13. No public opposition.

Lewis Major made a motion to approve the Finding of Facts as read, seconded by Mike McGrath. Chair John Smith repeated the motion and called for individual vote, Todd Page (aye), Mike McGrath (aye), Lewis Major (aye), Dorianne Almann (aye), and Chair John Smith (aye). Motion passed unanimously.

Board worked on Statement of Reasons.

1. There ~~would~~/**would not** be a diminution in value of surrounding properties as a result of the granting of this variance because: ***it is a carport, and many are in this neighbor.***
2. The granting of this variance **would**/~~would not~~ be of benefit to the public interest because: ***it is an allowed use, has been done in the past, not changing use of the property.***
3. Since:
 - a. the following special conditions of the property make an area variance necessary in order to allow the development as designed: ***lots are small, when subdivision was originally done there was no thought of future use.***
 - b. the same benefit cannot be achieved by some other reasonable feasible method that would not impose an undue financial burden because: ***no more land is available.***
4. By granting this variance substantial justice **would**/~~would not~~ be done because: ***there is no other way to allow Mr. Smith to put carport on his property without allowing this variance, no public objections.***
5. The use contemplated by petitioner as a result of obtaining this variance ~~would~~/**would not** be contrary to the spirit of the ordinance because: ***the use of the property has not changed.***

Dorianne Almann made a motion to approve the Statement of Reasons, seconded by Lewis Major. Chair John Smith repeated the motion and called for individual vote, Todd Page (aye), Mike McGrath (aye), Lewis Major (aye), Dorianne Almann (aye), and Chair John Smith (aye). Motion passed unanimously.

Dorianne Almann made a motion to grant the variance seconded by Lewis Major. Chair John Smith repeated the motion and called for individual vote, Todd Page (aye), Mike McGrath (aye), Lewis Major (aye), Dorianne Almann (aye), and Chair John Smith (aye). Motion passed unanimously.

Lewis Major made a motion to approve the minutes from May 10, 2011, seconded by Todd Page. Chair John Smith repeated the motion and called for a vote, motion passed with Mike McGrath abstaining.

CDC Kathryn Lynch passed out correspondence to make the Board aware of some issues in town that we are now being advised by our Town Attorney of how to move forward. Also reminded the Board of the sub-committee meeting August 30th at 7pm to review the sign ordinance.

9:10 pm Lewis Major made a motion to adjourn, seconded by Dorianne Almann, motion to adjourn unanimous.

Respectfully submitted by,

CDC Kathryn Lynch

Draft of minutes until approved and signed