APPROVED

ANDOVER ZONING BOARD OF ADJUSTMENT

November 19, 2019

Members present: Steven Bowers, Chair; Jeff Newcomb; Todd Goings; Katherine Stearns; and Jon Warzocha

Also present for duration of appropriate item: Pat Moyer, Planning and Zoning Coordinator; Dave Powers

The meeting was opened by Chair Bowers at 7:00 p.m. with a full board.

Continued Public Hearing – A request from David Powers as agent for Catherine Williams and David Popp for a Special Exception as specified in the Andover Zoning Ordinance, Article IV Section E to construct a new home on an existing non-conforming lot. The property is located on Lower Ridge Road and is Tax Map 26, Lot 880,420 and is in the Rural / Residential Zone

Bowers has done a site visit. It was asked if there is any information for RMF&G is in the records. Powers responded that the president of RMF&G stated that he previously met with the Master Plan Committee and there is nothing in writing nor anything that was actually decided on. Warzocha stated that he does not understand how the taxes work regarding back taxes and would the town take the property in the event of back taxes. Powers responded that the club would pay the back taxes and address this with the member. Bowers asked how the club knows that there are back taxes and the response was that this is public knowledge and the board checks on them. Warzocha stated he has concerns with the zoning and the fact that there are no property rights for the homeowner. Bowers asked what happens should the club lose ten members and taxes end up in arears. The response was that the club can be dissolved and the property sold. Warzocha is concerned with subdivision of the property should it end up being sold due to setback requirements, etc. Popp stated that RMF&G and the Planning Board are in tune with addressing this through PUD or Conservation Zoning. Warzocha state the board needs to consider the implications of approving another home with no deeded rights. There being no further discussion, Stearns made a motion to close the public session at 7:29 p.m. Warzocha seconded the motion and the board voted unanimously in favor of closing the public session at 7:29 p.m.

The board reviewed the seven criteria for a Special Exception.

1. The proposed use must be specified in this Ordinance as a Special Exception which may be permitted in the district, or must be a town or public utility building, structure or use necessary for the service of the public, and must not be detrimental to the character of the district.

The use of the property is grandfathered and recognized in the Master Plan as being unique in Andover. This usage is unique because the owners only own their home as personal property, and do not own the land. Plots of land suitable for buildings are requested by members, which is then presented to the Planning and Zoning Boards for approval.

1. The proposed use must be in harmony with the general purposes and intent of this Ordinance and the Master Plan.

The proposed use is in harmony with the general purposes and intent of the Zoning Ordinance, recognizing that Ragged Mountain Fish & Game Club has a unique land usage agreement recognized in the Master Plan. Homes built since the advent of zoning ordinances have met the purpose and intent except for the one residence per lot requirement. Given the size of the lot, the spacing of residences on the lot, and the unique circumstances, the purpose and intent of the ordinance is met

1. The use will not adversely affect the adjacent area.

The plot the residence will sit on meets the intent of the zoning requirements and will be situated on the property in a manner consistent with rural residential zoning.

1. The proposed use will not create a hazard to pedestrians or vehicles, and must not be conflicting or incongruous to the neighborhood by reason of excessive traffic, assembly of persons or vehicles, proximity to travel routes or proximity to congregations of children or pedestrians.

The proposal will not create a hazard to pedestrians or vehicles, nor will it conflict with or be incongruous n its uses with the rest of the neighborhood. It will be a residence like other residences in the neighborhood and will sit off the end of the road.

1. The proposed use must not create a nuisance, and must not be objectionable by reason of noise, lights, vibration, emissions or other factors.

The proposed use is not a nuisance as it is the same use as the other buildings in the area. It is a single-family residence.

1. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

Adequate and appropriate facilities will be provided for proper operation. The property must have a well and approved septic, and the building must meet code.

1. The proposed use must comply with all the frontage, yard, minimum land area, sanitary protection, and parking requirements for such use or the use most similar thereto.

Newcomb stated that a non-conforming lot has always existed with numerous cabins and homes on the lot and has developed more over time. Prior applications have been approved due to the number of homes being limited by the by-laws. Warzocha stated this is complicated and what Newcomb stated is true; however, the perspective of legality and ownership is a concern for future possible troubles. Goings stated that this has been going on for years and asked when it will stop. Bowers stated that this should be addressed by the Planning Board for zoning. Newcomb stated this zone is Rural Residential but is more akin to the Village Zone. Bowers asked if the board should meet with the Planning Board to discuss this situation and indicated that the Zoning Board will not accept any more Special Exception applications for an additional home until zoning in this area is resolved. Newcomb reiterated the history of the property and the by-laws which include a limit on the number of homes allowed. Warzocha stated he concurs with Newcomb and that the Planning Board needs to address this issue as it puts the Zoning Board in a difficult position. Bowers stated that this needs to be addressed as it is pre-existing but not defined property in the Ordinance and the court states that precedence does not matter and that is important to him. There being no further discussion, Stearns made a motion to approve the Special Exception with the condition that the property must meet all zoning requirements for rural residential areas and other applicable general provisions in Article IV of the Ordinance. Note that this Special Exception is granted for Article IV, Section E, so it is not part of the condition. Warzocha seconded the motion and the board voted by a vote of four members in favor of the motion and one member against the motion to approve the Special Exception with the condition that the property must meet all zoning requirements for the rural residential areas and other applicable general provisions in Article IV of the Ordinance.

There being no further discussion, the meeting was adjourned at 8:10 p.m.

Respectfully submitted,

Lisa Meier, Secretary

Andover Zoning Board of Adjustment