APPROVED

ANDOVER ZONING BOARD OF ADJUSTMENT

October 15, 2019

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

Also present for duration of appropriate item: Pat Moyer, Planning and Zoning Coordinator; Dave Powers; Gillian Smith; AJ Giglio; Brian McKenzie; Catherine Williams; David Popp; Julie Cooper; Mr. Wetherford; Mr. Gouirand

Minutes of September 17, 2019

The board did not act on the minutes.

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 opened the public hearing at 7:05 p.m. and Powers described the proposal as a single family dwelling to be located on the property of Ragged Mountain Fish & Game Club. The Club was created in 1901 which was prior to the creation of zoning in Andover. Powers explained that then President of the Club, Bud Rice, came before the Planning Board approximately ten years ago to discuss the future of Ragged Mountain Fish & Game Club – i.e. number of homes allowed. The by-laws of the club indicate they are allowed fifty members with a right to a site; however, it is not guaranteed. The Planning Board stated that any new homes to be constructed will require approval of the Zoning Board of Adjustment for a Special Exception. There have been two additional homes to date. There is currently 1000 acres of property in Andover and two hundred forty-one in Danbury. There is a conservation easement in force for all except 250 acres. There are currently 46 members and there are no talks of expanding the membership at this time. A Google Earth map was presented indicating the area and the proposed home location. The home will have fourteen to fifteen hundred square feet with five hundred to six hundred square feet of deck and a screen house. This proposal also needs to go before the Ragged Mountain Fish & Game Club board for approval.

Bowers asked if the special agreement with the Planning Board put in place and the response was no. Stearns asked if there were any previous minutes regarding this agreement and the response was unsure; however the Ragged Mountain Fish & Game Club is in agreement to work with the boards. Stearns stated she has reservations as a request concerning non-conforming lots were denied at a prior meeting. Moyer stated she had received a letter from one abutter in favor of the proposal and another abutter with concerns as to whether this would impact his site. Powers stated there is an eighteen acre pond on site for fire protection; there are privately maintained roads with year-round access. Bowers asked if there was anyone present that would like to speak in opposition to the proposal and there was no response. Bowers closed the hearing to public discussion at 7:25 p.m.

The board reviewed the five 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.

The proposed use will comply with all requirements for residential areas, with minimum land area in this case not applicable because of the unique grandfathered lot usage in pace throughout RMF&G.

Stearns is concerned with continuing to make a non-conforming lot more non-conforming. Bowers stated the proper documentation regarding the agreement with the Planning Board needs to be found and more information is needed prior to making a decision. Newcomb stated he has worked at the Club with contractors and septic for some homes have been updated. Bowers would like a site visit and will look at a decision at the November meeting.

Newcomb made a motion to continue the deliberative session to the November 19, 2019 meeting. Stearns seconded the motion and the board voted unanimously in favor of the motion.

Public Hearing – A request from Anthony Giglio of The Refinery for a Variance under Article IV Section F to add a porch, deck and entry vestibule to the existing building. New construction will impact the town setback as previously reviewed but not the state setback. The property is located at 4 Mill Road and is Tax Map 28, Lot 294,195

Bowers opened the public hearing at 7:46 p.m. and advised that because there was not a full board, the applicant can opt to proceed with four board members rather than five; however, in the event the application is denied, the applicant cannot appeal based on less than a full board. The applicant opted to proceed with less than a full board. Giglio presented a diagram with the proposed deck ( 20 x 60’ ), porch (135’) and entry vestibule. The covered porch will run the full length of the building fifteen feet deep, with another five feet deep for the vestibule. The state has been consulted and has no concerns with the proposal. Stearns stated it looks like the vestibule won’t encroach any further than the west corner of the building and asked what dimension for the variance. The response was 20’ or 5’ but can go less. A letter from an abutter in favor of the proposal was received. There being no further discussion, the public hearing was closed at 8:05 p.m. The board reviewed the criteria for a Variance.

1. Granting the variance would not be contrary to the public interest – The encroachment into the setback is minimal and already contains a paved area in use for the establishment. It does not violate the ordinance to any significant degree, nor does it violate zoning objectives, as the encroachment is less than 5 feet based on the side setback and 10 feet based on the front yard setback.
2. If the variance were granted, the spirit of the ordinance would be observed – The use of this lot ad building has been commercial for some time, and due to special circumstances unique to this building, the setback has been encroached on since the building of the structure. The purpose of the ordinance is to maintain space between buildings and lot lines/right of ways, which is a safety consideration as well as an effort to prevent congestion bordering on the road. Tis encroachment does not present a safety concern as it will be partially enclosed. It will also not change the level of congestion bordering on the lot line/road/right of way.
3. Granting the variance would do substantial justice – The proposed development is consistent with other uses in the area, which are predominantly commercial in nature. Substantial injustice would occur to the applicant as not granting the Variance could impact the business by not protecting the patrons from the weather, decreasing potential seating space, and increased crowding inside the building as patrons are waiting to be seated. Allowing the setback to e encroached on is a gain to the general public as it alleviates crowding in the entry and protects them from the weather.
4. If the variance were granted, the values of surrounding properties would not be diminished – The additions to the structure should increase the values as it increases the value and usage of the structure itself.
5. Unnecessary hardship – owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship – an unnecessary hardship would be caused by a denial as the structure was built with one corner encroaching on the setback, preventing usage of much of the western and northern sides of the building if using a strict reading of the ordinance. This condition does not exist on surrounding properties. Providing this relief does not negate the purpose to deny the Variance. The proposed use is also reasonable as it will be an enhancement to the business and customer satisfaction and safety. The addition will fit with the purpose/use of the property.

Discussion was closed at 8:06 p.m. Bowers made a motion to approve the variance of 10’ based on the front yard and 5’ based on the side of the building. Newcomb seconded the motion and the board voted unanimously in favor of approving the variance of 10’ based on the front yard and 5’ based on the side of the building.

There being no further discussion, the meeting was adjourned at 8:40 p.m.

Respectfully submitted,

Lisa Meier, Secretary

Andover Zoning Board of Adjustment