

HAMPSTEAD BOARD OF ADJUSTMENT MINUTES

JANUARY 5, 2022

Members present: Geoff Dowd, Dale Blaine, Proc Wentworth, Randy Clark and alternates Karen Hanides and Jaye Dimando. Also present was Chief Building Official, Kris Emerson.

ANDREA PETERS 8B/72

The hearing was continued from November and December. The original request for four variances was filed in October by Jim Lavelle to permit construction of a dwelling at 24 Shirley Street. A supplemental request was filed by Donahue, Tucker and Ciandella for a Special Exception stating that a variance from the wetlands was not required and that if the Special Exception was granted, there would be no need for the other variances. The applicants were represented by Justin Patey of the law firm and soil scientist, Bruce Gilday . A 1929 subdivision plan was presented showing that two lots had been involuntarily merged by the town. The lot is 11,200 square ft. with frontage on both Shirley Street and Matthews Drive. The lot is wooded and a fourth end of the lot has poorly drained soils. The proposed structure will meet side, rear and street setbacks and will be 20 ft. from poorly drained soils. It meets all State requirements for septic. Existing houses in the area are 13 ft. from the street. Mr. Gilday said he looked at the lot for jurisdictional wetlands in the back. He said it meets the three criteria. There should be protective measures. He recommended a gutter system into a drywell, a silt fence and sock. He said the project should be monitored on a weekly basis. He said there should be no lawn to the edge of the wetlands and no fertilizer. There should be the fewest number of trees cut. He also recommended plantings to attract birds and wildlife, berry shrubs and nestings. He said the clients are on board with his recommendations. Karen asked when he found the land dry. He said August 4 (2021). Randy asked why the applicant didn't combine the lot with the adjacent one which he also owns. Jim Lavelle said they are planning to put a garage on it. The attorney said these have been three distinct parcels for 100 years. He noted that there has been lots of experience among board members – Conservation Commission, Planning Board, etc. Jaye pointed out that if the property is sold, a new owner could remove the plantings. It was decided to address the Special Exception request first. The attorney addressed the requirements of Special Exception Article II Section 2:10B. He said the lot was created in 1929 and is an official lot of record since 1987. He said the septic is as far away from wetlands as can be; there is no threat to public health or safety; no contamination; all other setbacks are met. He said this is the only modest reasonable use of the property. Geoff asked the size of the proposed house. It will be 26 x 40. Randy asked to see a house plan. Jim Lavelle said there isn't one now but that he will be presenting a plan, showing erosion control, plantings, etc. He said the State has no setback guidelines from wetlands to the house. Jim said there is no plan for a porch or stairs – just a piece of granite to step up.

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Karen read from the Zone B Special Exception requirements - that there is no vacant abutting lots in common ownership; the road must be summer maintained by the Town; the lot is not owned in common with an approved abutting lot. The attorney asked what she was reading from. He said the other lot doesn't apply to the property and that he was surmising lots 49 and 50 were combined. He said the wetlands ordinance was adopted in 1986. Jaye said this is not a Town maintained road. Karen added that there is no road going by that land. Jim showed that some residents go through Matthew's Drive to get to houses on Shirley Street. He said there was no intent to use part of Shirley Street. Geoff said roads can be accepted Class V but non-maintained by the Town. Geoff asked Kris, who said that is the way it is written and that it will have to meet both Special Exceptions – Zone B and Wetlands before a building permit is issued. It was noted that Article III Section 3:3 refers to seasonal dwellings and Article III:3, 4, 5 requires 150 ft. frontage. A number of abutters spoke in opposition to the proposal citing flooding, poor drainage; describing the road as a cow path. Abutter, Jason Houle, presented the board with a petition signed by all the residents on Shirley St., plus 20 others, in opposition, noting that it is not in the spirit of the wetlands ordinance, lack of frontage, added traffic creating a hazard and added taxes if the Town has to maintain the road. Mr. Houle said the applicants knew the lot was unbuildable when they bought it. He said it is contrary to the public interest, there is no hardship. There was a water test from Sunset Lake reporting there was too much phosphorus resulting from runoff from land below. He also referenced a letter from the Conservation Commission identifying the wetlands as "extremely wet" and stating that "no structure should be built on the lot." At this point the attorney for the applicant requested a continuance to February 2, 2022. Geoff made a motion to permit the continuance of the supplemental hearing of both requests. Proc seconded the motion. Donna Shedd said everything is public information and questioned why the attorney wasn't able to find the information. Jason Houle said he was opposed to the continuance. He said the applicants had time to present their case and that it was not fair to people to continue. He was informed that abutters were not permitted the opportunity to vote on a continuance. The board voted 4-1 to grant the continuance. Karen voted against the motion.

Paul & Janice Frank 12/144

The request was for a variance to create a vacant lot (by subdivision) which will not meet lot size by soils at 20 Bonnies Way, owned by Alan and Judith Woodman. The applicants were represented by Attorney Bernard Campbell. Geoff and Dale recused themselves. Jaye stepped in and Randy chaired the meeting. The hearing was continued from December. Att. Campbell said the subdivision was created in 1996. He said the lot has 900 feet of frontage on Bonnies Way. The existing house is at the southerly end of the lot.

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The remaining area is wooded and undeveloped. He said the proposal meets all applicable setbacks. The plan is to divide the property for a single family dwelling. The proposed lot will have 89 percent of the required area – more than 48,000 square feet where 54,000 is required, according to certified soils scientist at Gove Environmental – Luke Hurley. He said the town has soil- based lot sizing and this lot will be 5,000 square feet short. There will be 400 feet of frontage on Bonnies Way. He said it will have a community well system. Att. Campbell went through the variance criteria. He said it will not be contrary to the public interest and there will be no change in the character of the neighborhood. The health, safety and general welfare will have zero effect. It meets spirit and intent because there's no requirement for off-site water. Randy said there is nothing in the town's ordinance that addresses off-site water because there was no provision for off-site water at that time. He said the Planning Board has been holding public hearings to propose an amendment . The proposal has not been posted but the most recent public hearing was January 3, 2022. He said the proposed verbiage will be more distinct for no allowance for off-site water. Att. Campbell said there will be no diminution of property values because it is a permitted use. He said there will be no significant impact on the values of houses. He said there are special conditions – there will be 582 ft. of frontage – nearly double the size of other lots. He said the lot will be larger than many lots in the neighborhood. He said there is reasonable use because it will have a single family home. He added that he believes the request meets all five criteria. Mr. Hurley said the State allows that if there is off-site water, the minimum lot size can be 20,000 square ft. The town requires 45,000. He said the soils on this lot are good, well-drained soils. Karen asked how big the wetland area is. It is not in a floodplain. Proc asked about a deck or stairs on the house. There will be no deck or steps on the front. Att. Campbell said it is their obligation to meet the setbacks. There were several abutters and neighbors who spoke in opposition to the proposal to subdivide the lot and build a dwelling. Among their reasons : no information about the size of the proposed house; the 12% variance is significant; concern that the new house value will be less than the surrounding houses; the new house will not be part of the association so will not be subject to its guidelines and regulations; diminished property values; will decrease esthetic appeal; congested look; assumed the lot was unbuildable; will add to water usage. Owner of the lot under consideration, Alan Woodman, said the owner of the new lot would have to meet the existing covenants. He said no one had ever said that a house could not be built there because with a variance it might be developable. He said there has already been a precedent set because although the original subdivision had 19 lots,

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10 years ago another lot was subdivided to allow for a garage. He said a new home could be just as esthetic as the others in the association. Att. Campbell said the house will be substantial and would have to meet the covenants. He said although it is an unpopular idea with the neighbors, the proposal just needs to meet the statutory criteria and that they have met the criteria. He said the proposal will not be out of character; there will be no harm or safety issues and it will not diminish the value of the neighborhood.

Randy read a letter from the Hampstead Area Water Company stating they will supply water to the new house. Randy said three affirmative votes were needed to grant the request. Proc made a motion to grant a variance to permit the creation of a vacant lot, by subdivision, which will not meet size by soils. Jaye seconded the motion. Members filled out their variance worksheets. The vote was 3-1 to deny the request. Proc voted in favor.

OTHER BUSINESS –

Minutes: It was decided to table the vote because there were not enough members present who were at the December meeting.

Respectfully submitted,