

**TOWN OF CUMBERLAND**  
**BOARD OF ADJUSTMENT AND APPEALS MINUTES**  
Thursday, May 10, 2018

**Roll Call: Present:** R. Scott Wyman - Chairman, Ronald Copp, Sr., Matthew Manahan, Michael Martin, Sally Pierce & Amanda Vigue. **Staff:** Code Enforcement Officer Bill Longley & Amin. Asst. Christina Silberman. **Absent:** Andrew Black & Christian Lewis.

Chairman Wyman called the meeting to order at 7:00 pm and reviewed Board procedures.

**Public Hearings:**

**1. Variance:** Adam and Kelly Copp of 94 Lakeside Drive Windham, request a Variance based on Practical Difficulty per section 315-77-B-2 of the Town of Cumberland Zoning Ordinance, in the required rear setback of 50' down to 25' for a total reduction of 25' at 210 Gray Road, Tax Assessor Map U20, Lots 57 / 58 in the Village Center Commercial District.

Chairman Wyman introduced the item. Code Enforcement Officer Bill Longley explained that this item is a public hearing for Adam and Kelly Copp of 94 Lakeside Drive, Windham who request a variance based on practical difficulty, per section 315-77-B-2 of the Cumberland Zoning Ordinance, in the required area rear setback of 50 feet down to 25 feet for a total reduction of 25 feet.

Mr. Longley noted that two lots are noted on agenda but the two lots were merged by the Assessor recently. There is now only one lot, #58, based on a recent deed that combined the two lots. The two lots were nonconforming in size. Mr. Longley noted that previously one of the lots was owned by the person that the Copps bought the parcel from and the other lot was owned by the Town. The Town sold their lot to the person the Copps bought from. It is one owner for one parcel.

Chairman Wyman asked the applicant to speak about their application. Adam Copp, 94 Lakeside Drive, Windham said he is looking for the setback to be reduced to 25 feet because the lot size is small and with the setbacks that we have now he would end up with a 5' x 45' building envelope which would be a very small building. Adam Copp said they would like to have a 30' wide building. Chairman Wyman confirmed that the lot is 100' x 100' currently.

Chairman Wyman asked if Adam Copp will raze the structure that is currently there. Adam Copp said there is a small structure there that he will take down to erect a new building.

Mr. Manahan asked what Adam Copp plans to do on the property. Adam Copp said he plans to erect a 30' x 40' garage for himself to have a shop/mechanics garage. Adam Copp said he plans to rent it out until he is ready to move into it. Mr. Manahan asked if he plans to rent it for use as a garage. Adam Copp replied that he would rent it for any use that falls in the commercial district.

Mr. Manahan asked Mr. Longley if the proposed use as an auto repair service garage is an allowed use. Mr. Longley replied that Adam Copp has not presented a particular use to him but they did discuss options. Mr. Longley noted that Adam Copp understands that he would need to go through the Planning Dept. for site plan review approval.

Mr. Manahan noted that there are requirements for a practical difficulty variance. Adam Copp bought the property recently and the parcels were combined. Mr. Manahan asked Adam Copp if he knew about the setback issue when he bought the property. Adam Copp said he knew there was a setback issue but he did not know what the setbacks were. Adam Copp said he was looking at the property as having a house on it that could be rebuilt. Adam Copp said it would be more feasible for him in the long term to keep the land. Adam Copp said he was going to flip the house but if he can do the shop structure, he will keep it for long term use for himself.

Mr. Manahan said that one of requirements is that not getting this variance would result in significant economic injury. Adam Copp indicated on his application that the lot would not be a buildable lot and so his purchase would not be a good long term investment. Mr. Manahan asked if Adam Copp's argument is that there is an injury because he bought the property in March and the amount of that expenditure would be the injury and asked what the actual injury is. Adam Copp replied that not being able to build what he wants on the lot is the injury. Mr. Manahan said that the Board has to find what the financial injury is and Adam Copp said it is the purchase of the lot.

Mr. Martin asked how much Adam Copp paid for the lot and Adam Copp said \$35,000. Mr. Martin said his understanding is that Adam Copp was going to fix up the building and flip it. Adam Copp thought he could do that but what he would like to do is build a shop. Mr. Martin asked if there was a change in the zoning since he bought the property that is affecting him. Adam Copp said no.

Adam Copp said that the lot was a buildable lot back when it was created and now it is a non-conforming lot due to ordinance changes over the years. Mr. Martin said all of this happened before Adam Copp bought it.

Chairman Wyman reviewed the requirements for practical difficulty.

**A.**

**1. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.** Mr. Manahan reviewed the tax map and said there could be an issue with lots 64 and 65. Mr. Manahan said what the Town doesn't want to happen is that everyone can come and get a variance. Mr. Manahan asked if lots 64 and 65 are under separate ownership and subject to the same setback. Mr. Longley replied this is more than likely. Mr. Manahan said that the issue is with the two other properties with the same setback, if this is the general conditions of the neighborhood but he doesn't know.

**2. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties.** Mr. Manahan said presumably it will be an improvement.

**3. The practical difficulty is not the result of action taken by the petitioner or a prior owner.** The Board will revisit this requirement.

**4. No other feasible alternative to a variance is available to the petitioner.** The Board will revisit this requirement.

**5. The granting of a variance will not unreasonably adversely affect the natural environment.** Chairman Wyman said most likely it will improve this.

**6. The property is not located in whole or in part within the shoreland areas as described in 38 M.R.S.A § 435.** Mr. Longley reported that there is no shoreland zone.

**B. For the purposes of this definition, "dimensional standards" means and is limited to ordinance provisions relating to lot coverage, frontage, and setback requirements.** Chairman Wyman noted that this is the whole point of the petition.

Chairman Wyman asked if Adam Copp has anything else to tell the Board about the property and his intentions. Adam Copp replied that the structure that is there is really not re-buildable after looking at it further. If Adam Copp were to go this route, he would basically have to start over. Adam Copp said that what he is looking to do would be a big improvement to the neighborhood and it would look a lot better on the Route 100 corridor.

Mr. Martin asked how big the structure that is there is. Adam Copp replied that it is 16' x 20' and is a 2.5 story.

Board Member Ron Copp said that the house that is here now is decrepit and has been this way for years. It is a big eyesore. The house sits about 10 feet off of Forest Lane. To rebuild the house where it sits now would be more undesirable than if it would be set back. The lot is very small and never had any plumbing and it is not feasible to rebuild. Ron Copp said he thinks that what Adam Copp is proposing would make for a much better looking place and he doesn't think the neighbors would disagree.

Ron Copp disclosed that he is a second cousin to Adam Copp and said if the Board feels he should not vote on this matter than that is fine. Mr. Manahan asked Ron Copp if he would have any financial gain and Ron Copp replied no. Chairman Wyman asked if any member of the Board has a concern with Ron Copp voting on this. Ron Copp is a distant relative and has no financial gain in this decision. No concerns were raised. Mr. Manahan said that if anyone speaks in opposition to this matter, the Board should ask if they have a concern with Ron Copp voting.

Chairman Wyman asked if there is anyone present that would like to speak in favor of the application.

Tammy Bean, 6 Forest Ave., said her property is right behind this property. Ms. Bean said she and Scott Bean are fine with what Adam Copp wants to do and are okay with the variance. Ms. Bean said they did talk about Adam Copp purchasing some property but because of the leach field for their septic system this was not feasible. Ms. Bean noted that Adam Copp proposed building a fence along their area so as not to cause them any undue issues.

Chairman Wyman asked if there is anyone that would like to speak against the application. Nobody spoke.

Chairman Wyman asked if there is anyone that would like to testify on a neutral basis for informational purposes. Nobody spoke.

Chairman Wyman closed the public portion of the meeting.

Mr. Longley said that in 2007 the Town rezoned from the Gray line to the Falmouth line. This is one of the lots that would have been in the old Local Business (LB) zone. That zone had substantial setbacks similar to what there are today. Mr. Longley noted that prior to the LB zone, in 1972 the setbacks were a lot more lenient with 20' for the side or rear and 25' for the front, which would have left a buildable envelope. The zoning changes have been in setbacks and in uses. Mr. Longley said it is his opinion that the house has not been used in 30 years. Since 2007 a house hasn't been allowed on this lot. Mr. Longley said a house that is dilapidated, decrepit and not able to be fixed cannot be rebuilt in his opinion. Mr. Longley said he has talked with a lot of people asking what can be done on this lot. It has to be something that is currently allowed in the Village Center Commercial (VCC) district and any building on this lot will require some sort of variance relief.

Chairman Wyman said that no residential is allowed here and Mr. Longley confirmed that there is no residential use allowed in the VCC. Chairman Wyman confirmed that the only way to use the current structure is to make it non-residential and Mr. Longley agreed. Chairman Wyman asked if the structure is a safety concern and Mr. Longley said it could pose a safety concern. Mr. Longley said he has not been inside the building but he did visit the property and took pictures and it appears to be ready for removal.

Chairman Wyman said that under Practical Difficulty, the Board has to first determine that the Practical Difficulty is not a result of an action taken by the petitioner or the prior owner.

Mr. Manahan said that the Board should determine if there is a significant economic injury. Mr. Copp bought the property knowing there was an issue and could have avoided the economic injury by not buying the property. The current owner would have a hard time selling the property. Mr. Manahan said if someone can buy a property that has this kind of problem and then say their economic injury is that they bought the property then anyone could come in and get a practical difficulty variance, arguably. If you put yourself in the shoes of the prior owner, would there be a significant economic injury for that owner if they didn't get a variance? Mr. Manahan said that there are cases that say that you can buy a property knowing about the problems and that does not necessarily mean that the problem was self-created. Mr. Manahan said he thinks he is okay with this as long as the Board finds that the prior owner would have had an economic injury.

Mr. Manahan said he is worried about the precedent with the Board and people coming back with properties nearby. Mr. Manahan said perhaps this is a Town Council issue to say that there are properties in the area where they should change the setbacks so the property is developable.

Ron Copp said that the economic injury is that Adam Copp cannot build a house on the lot because of the zoning. Mr. Manahan said you could argue that it is a taking without just compensation except that there is an existing structure on the lot that could possibly be fixed up and converted to a commercial use.

Ms. Vigue asked if there is history of the owners doing their due diligence before purchasing the property. Mr. Manahan said that it sounds like he knew about this issue before he bought it. Mr. Manahan said he is not really concerned about whether he knew but whether there is a significant financial injury.

Mr. Martin said he has a problem with the possibility of someone buying a non-buildable lot and then coming to the Board with an application to turn it into something that has value as a precedent.

Ms. Vigue said that the proper channels were not followed and this should have occurred before the purchase of the property. Mr. Manahan said the question is if the previous owner had come in for a variance, would the Board find that they would have a significant financial injury. Ms. Vigue said she is not opposed to what is happening here but she does not think it was handled properly.

Chairman Wyman said that in 2007 the Town adopted "practical difficulty" because variances were rarely issued under the structure of the zoning then. Chairman Wyman said the application seems practical and makes sense but will the Board set a precedent with other lots in the neighborhood.

Chairman Wyman confirmed that the Town of Cumberland sold a piece of this lot. Mr. Longley said that originally this was a 50' x 100' lot that was purchased by the previous owner in 2002. Then the Town sold a 50' x 100' adjacent lot to the previous owner as an abutter in 2005. Mr. Longley continued that the Town rezoned this area in 2007. Had the previous owner wanted to tear down and rebuild the house in 2002 he could have done this exactly where the house is. The ordinance change in 2007 didn't allow the previous owner to rebuild the house and doesn't allow for anything other than a commercial building that can pass a variance of some type and gain Planning Department approval for the commercial, non-residential use.

Ms. Vigue asked if the lot is big enough for septic. Mr. Longley said there will be a septic system and they propose to connect to Town water. The septic is designed for commercial use with only a few employees so it is a very small septic tucked along the edge. Ms. Vigue asked if the septic will affect any of the abutters and Mr. Longley said no.

Chairman Wyman confirmed that the Town owned the 50' x 100' lot. Mr. Longley said the Town owned it until 2005 and it was land acquired for taxes. Chairman Wyman said that the Town sold the lot and put it into a potentially non-conforming situation when the Town rezoned the area. Mr. Longley said that by selling the lot to the abutter it doubled the lot size and was a better situation than it was previously. The Town didn't sell a non-conforming lot to become more non-conforming, it was an improvement.

Ms. Vigue said as the lot is now, they could still build something but it would be small and for commercial use. Mr. Longley replied it would be 5' wide by 40' long. Mr. Martin asked if a commercial building could be rebuilt on the same spot as the structure that is



there now. Mr. Longley said that it is only about 10' from the road. Mr. Manahan said that the structure is grandfathered in the current location. Mr. Longley said that it is grandfathered but the current structure is not safe and has to be removed. A commercial building 16' x 20' could be built in the same footprint.

Chairman Wyman described the location and noted that there is no way for the owner to buy additional land. The Board heard from a neighbor that the current owner is unable to buy land from them because of the location of their leech field.

Mr. Manahan confirmed that the owner is asking to build a building that is 30' x 40'. Mr. Manahan said that it is unusual that the Town has rezoned a property to make it non-buildable if it is vacant or has a dilapidated structure on it. Mr. Manahan said that if a property becomes unbuildable by action of the Town's subsequent rezoning, then this is a significant economic injury to whomever owns the property and asked if this is a reasonable conclusion. Mr. Martin said this sounds like you are basically negating the zoning change. Mr. Manahan continued that there is the criterion which the Board has to find that it is due to the unique circumstances of the property and not to the general conditions in the neighborhood and this is the safety valve for this issue. Mr. Manahan said if there were a dozen properties that are vacant in this area then there would be a problem but there is no evidence that there are more than two other properties and at least one of these is not vacant.

Mr. Manahan said he is willing to say that it is a significant economic injury because it is relatively unique based on the information the Board has and that the Town's rezoning caused the lot to be unbuildable, effectively, for commercial purposes and therefore the applicant meets the significant economic injury criterion. Mr. Manahan said that he does not think that buying the property is sufficient to be an action taken by the applicant that caused the practical difficulty. The practical difficulty isn't buying the property. The practical difficulty is the Town's rezoning of the property to shrink the building window.

Mr. Longley said that he has heard the neighbors say that they are looking for a fence for a buffer. As the applicant goes through the site plan approval process, the Planner and/or the Planning Board will take this into consideration and will come to some resolution.

Mr. Manahan moved to grant the practical difficulty variance application in the name of Adam and Kelly Copp, who live at 94 Lakeside Drive, Windham, ME, at 210 Gray Road, Tax Assessor Map U20, Lot 58 in the Village Center Commercial District to reduce the rear setback of 50' down to 25' as set forth in the application, seconded by Ms. Pierce. Mr. Manahan said that in terms of fact finding, the change in the Town's zoning has rendered a non-buildable lot, effectively, which has caused significant economic injury and therefore that critical criterion is met but it's due really to the unique circumstances of this property and would not necessarily apply to a similar property unless they convince the Board that they meet the significant financial injury criterion and it was not self-created.

Chairman Wyman said that granting the variance will not produce an undesirable change in the character of the neighborhood, the Board agrees to this. Chairman

Wyman continued that the variance will not unreasonably detrimentally affect the use or market value of abutting properties and actually should improve it. The practical difficulty is not the result of an action taken by the applicant or the prior owner. The zoning changes were a significant impact on the prior owner who took action by buying the adjoining lot to make the lot more conforming. No other feasible alternative to a variance is available to the petitioner. The Board cannot ask the applicant to sell the lot because it is not really sellable. The granting of a variance will not unreasonably adversely affect the natural environment. There will be a connection to the public water system so environmentally this is a plus and there is a septic design. The property is in a shoreland zone so there is no issue with this. The motion was then **VOTED, 5 yeas, 1 nay (Martin), motion carries.**

Chairman Wyman told the applicant they have been granted their practical difficulty variance and to please work closely and carefully with Mr. Longley so there are no further upsets with this property.

**Administrative Matters:** Approval of the minutes for the January 14, 2016, February 11, 2016, March 10, 2016 and October 12, 2017 meetings.

Mr. Martin moved to approve the minutes of the January 14, 2016 meeting, seconded by Mr. Manahan and **VOTED, 4 yeas, 2 abstained (Copp & Pierce), motion carries.**

Mr. Copp moved to accept the minutes of the February 11, 2016 meeting as written, seconded by Ms. Vigue and **VOTED, 4 yeas, 2 abstained (Manahan & Martin), motion carries.**

Approval of the March 10, 2016 meeting minutes was postponed because only 3 of the members who were present at that meeting are here tonight to vote and there needs to be at least 4 members present to vote.

Mr. Manahan moved to approve the minutes of the October 12, 2017 meeting, seconded by Ms. Vigue and **VOTED, 4 yeas, 2 abstained (Copp & Martin), motion carries.**

**Adjournment:** Ms. Pierce moved to adjourn the meeting at 7:54 pm, seconded by Mr. Copp and **VOTED, 6 yeas – unanimous, motion passes.**

A TRUE COPY ATTEST:

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R. Scott Wyman, BoAA Chairman

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Christina Silberman, Admin. Asst.