

**Town of Cumberland
Board of Adjustment and Appeals
Minutes of Meeting
April 13, 2006**

Present: Adrian Kendall, Ron Copp, Pete Wilson, Andrew Black, Matt Manahan

Absent: R. Scott Wyman, Mike Martin, Sam Wilkinson

Staff: William Longley, Code Enforcement Officer, Pam Bosarge, Clerk

The meeting was called to order at 7:05 p.m.

Mr. Kendall welcomed the applicants and gave an overview of the rules of procedure for the meeting. Stating there would be opportunity for public testimony.

Hearings and Presentations:

1, Special Permit: The Town of Cumberland requests a special permit for gravel extraction at the Town's gravel pit at Goose Pond Road, Tax Assessor Map R07, Lot 48 in the Industrial (I) district:

Mr. Steve Googins, Public Works Foreman stated the Town was asking for renewal of their annual special permit for the gravel pit at Goose Pond Road. There have been no changes in the use of the pit; the Town uses gravel for winter sand and Town projects.

Mr. Kendall stated this is a request mandated by the Zoning Ordinance.

Mr. Manahan asked if there had been any complaints regarding gravel operations from the abutters.

Mr. Googins stated no.

Mr. Kendall asked for testimony from the public that was in favor of the application. There was none, he asked for testimony that was in opposition, there was none. Mr. Kendall asked for testimony that was neither in favor or opposed but on a neutral basis. There was none. The public portion of the meeting was closed.

Mr. Manahan moved grant a special permit for gravel extraction at the Town's gravel pit located at Goose Pond Road; Tax Assessor Map R07, Lot 48 in the Industrial district and to incorporate the findings of fact and conclusions the same as last year's application, given evidence that nothing has changed.

Mr. Black seconded.

VOTE: Unanimous

Sec. 410 Extraction of Earth Materials

410.1 Top soil, rock, sand, gravel and similar earth materials may be removed from locations where permitted under the terms of this Ordinance only after the granting of a one year, annually renewable special permit for such operations as may be issued by the

Board of Adjustment and Appeals and under such terms and conditions as may be approved and provided for by the Board and as provided for in this Ordinance.

410.3 Standards:

.1 The operation shall be shielded from surrounding property by an adequate buffer area of not less than 200 feet from the top of the final grade to the property line, except that the Board of Adjustment and Appeals may reduce the buffer area from the minimum requirement of two hundred (200) feet to a minimum requirement of not less than one hundred (100) feet provided that any excavated property remaining will be left in a condition more useful for some future purpose conforming to the district requirements in which the excavation site is located.

The property is bordered on all sides by gravel pits. The common boundaries have been excavated with no buffers as allowed in the original site plan approval that was drafted by the Town Attorney.

The standards of this section have been met.

.2 An applicant may specifically apply as a part of his application for the excavation and removal of lands to the Board of Adjustment and Appeals for waiver of the requirement of the 200 foot buffer strip when the protective barrier serves only to separate two existing gravel pits. The Board of Adjustment and Appeals may only grant a waiver from this requirement of the Ordinance if (1) the protective buffer zones exist only between two existing gravel pits, (2) the owner of the respective properties mutually and voluntarily consent to the removal of the buffer zone, and (3) the Board of Adjustment and Appeals find that it shall not have a detrimental effect upon adjoining properties.

The Board determined this standard did not apply.

.3 Specific plans shall be established to avoid hazards from excessive slopes and/or standing water. In no case may soils be removed or excavated to closer than within five (5) feet of the seasonal high water table as may be determined by a competent authority. Where an embankment must be left upon the completion of operations, it shall be at a slope of not steeper than one (1) foot vertical to three (3) feet horizontal, except that where the required buffer area has been reduced to 100 feet the slope of the edge of the excavation area shall not exceed one (1) foot vertical to four (4) feet horizontal.

There are monitoring wells on the property and the soil is not excavated to closer than within five (5) feet of the seasonal high-water table.

The standards of this section have been met.

.4 No standing water shall be allowed to remain longer than two consecutive calendar weeks unless specifically provided for by the Board of Adjustment and Appeals.

There is no standing water in the pit, any standing water is melting snow and ice and does not remain longer than two consecutive calendar weeks.

The standards of this section have been met.

.5 In the case of any excavation to a depth of more than 20 feet below the surface there shall be constructed a substantial fence with suitable gates completely enclosing the

property or area in which the excavation is located. No portion of such fence shall be located closer than forty feet to the edge of such excavation. However, this condition shall not apply in the case of an excavation or removal of lands adding a slope of one-foot vertical to greater than 3 feet horizontal.

There is a berm along Goose Pond Road until the woods line, the entrance is cabled and the other access is gated.

The standards of this section have been met.

.6 No excavation shall be extended below the grade of adjacent streets unless a 200-foot buffer strip shall be provided from the edge of the right-of-way except in cases where a specific condition has been made with the consent of the Board of Adjustment and Appeals and other involved parties such as the Cumberland Highway Department, Maine State Department of Transportation and other property owners for the reconstruction of the right-of-way and street at a different level.

The elevation is not below the adjacent streets.

The standards of this section have been met.

.7 Provision shall be made for the control of stormwater runoff to prevent on-site erosion, and to ensure that stormwater runoff leaves the site at the same location and is not significantly increased.

The stormwater pit is internally drained. There is no off site impact.

The standards of this section have been met.

.8 Sufficient topsoil shall be retained on the site or otherwise provided sufficient to cover all disturbed areas with an average depth of not less than two (2) inches. All disturbed areas resulting from the excavation and removal of lands or soils shall be graded and sloped to conform to the provisions of this Ordinance, reloaded and seeded with grasses indigenous to the area and such trees as the Board of Adjustment and Appeals may require and otherwise restored to a natural condition. In the case of topsoil removal, the upper six inches of topsoil shall be stockpiled and restored to a depth of six (6) inches throughout the site.

The Board determined this standard did not apply.

.9 Loaded vehicles shall be suitably covered to prevent dust and contents from spilling or blowing from the load.

Based on testimony from the applicant all trucks are covered with tarps. There will be no dust and contents spilling or blowing from the load.

The standards of this section have been met.

.10 All access roads leading from the extraction site to public ways shall be treated with stone, calcium or other suitable materials to reduce mud and dust.

The applicant has not used calcium, there have been no complaints of dust, and the exit surface is re-claim pavement.

The standards of this section have been met.

410.4 A surety bond shall be posted with the Town Treasurer by the applicant in an amount and form approved by the Board of Adjustment and Appeals with the advice of the Town Manager sufficient to guarantee performance and conformity with the provisions of this Ordinance and approval of the special permit for the excavation and removal of lands.

The Board determined this standard did not apply.

410.5 The foregoing provisions shall not apply to any lawful use of land for the removal of sand or gravel and the quarrying of stone, existing at the time of adoption of this Ordinance provided, however (a) that no such existing operation shall expand closer to or within two hundred feet to any adjoining property line or to the line of any existing public way, (b) that no such existing operation which may be within two hundred feet to any such adjoining property line or the line of any existing public right-of-way shall be permitted to expand closer to such line or lines, and (c) existing restrictions as may have been previously provided for previous approvals shall continue in full force and effect, and (d) further provided the Board of Adjustment and Appeals shall have the authority to approve applications for the expansion of such existing pits or quarries into such areas, under the same terms and conditions as it may approve applications for new gravel pits and quarries for the excavation and removal of lands pursuant to the provisions of this ordinance.

The Board determined this standard did not apply.

410.6 This subsection shall not apply to (a) extraction necessarily incidental to construction, alteration, excavation, or grading for which a building permit has been issued, (b) to extraction from one portion of a lot for use on another portion of the same lot, or contiguous lot of the same owner, or (c) removal of topsoil from a site that is less than one acre in area during a one-year period.

The Board determined this standard did not apply.

410.7 Violations of this section of the Ordinance shall be punishable by a fine as established by order of the Town Council. Each day such violations are permitted to continue to exist shall constitute a separate violation. [Amended, effective 9/1/98]

The Board determined this standard did not apply.

The Board heard item # 3 out of order.

2. Variance: Patrick & Daria McGillicuddy request a 20' side setback variance to construct a garage at 457 Greely Road Extension, Tax Assessor Map R06, Lot 31A in the Rural Residential 2 (RR2) district.

Mr. McGillicuddy presented a letter of support from an abutter. Mr. McGillicuddy stated reasons for the variance request as follows:

1. They need to expand the area of the house to gain more space for a licensed home daycare (they have been in business 17 years). The current attached garage will be converted into living area, keeping the same footprint. Competition from larger daycares is making it necessary for home-based businesses to offer more space for learning activities and equipment. The house is currently 1600 sq. ft. which is shared by family members and day care clients.

2. The need for expansion is partially due to financial reasons. If they convert the garage into living space and cannot replace the garage they cannot expect a reasonable return on their property.

3. The current attached garage is too small to adequately accommodate two cars (19' wide and 22' deep on the west side - 18' deep on the east side). They can only open the car doors on one side.

4. Safety - There is no breezeway between the current attached garage and the living space of the house. When the door from the garage is used the draft brings undesirable fumes into the kitchen. The kitchen table is 6' from the kitchen-garage door. They feel these fumes or odors are potentially harmful.

Mr. Manahan asked if cars were left idling in the garage.

Mr. McGillicuddy stated no, the smell is not exhaust fumes; it is the smell of the engine or motor oil.

Mr. Black asked if his carbon monoxide detectors had ever been activated.

Mr. McGillicuddy stated no.

Mr. Kendall asked if they had installed a vent to the outside of the garage.

Mr. McGillicuddy stated no.

Mr. Wilson asked if they had considered putting a new garage behind the house.

Mr. McGillicuddy stated he had thought of other locations, but there aren't any feasible spots. His lot was created in the early 70's and is small and doesn't conform to current zoning. If he put the garage in the back he would need a driveway variance to access the garage. The back of his property has a steep hill.

Mr. Manahan asked why the proposed garage couldn't connect to the existing garage; or why it couldn't be in the stone walk location.

Mr. McGillicuddy stated a garage in front of the house would block the view from the bedrooms and living room. It is not feasible to access the garage from that end of the house.

Mr. Black asked about the distance to the property lines of the current house.

Mr. Kendall stated it appeared the variance request could be reduced if the garage was moved to the apron of the driveway.

Mr. Manahan stated one of the Ordinance criteria for granting a variance is "economic injury"; Mr. Manahan asked Mr. McGillicuddy if he didn't receive a variance what

“economic injury” he would sustain, and how not receiving the variance would prevent him from pursuing an allowed use in the zoning district.

Mr. McGillicuddy stated the economic injury would be lack of living space.

Mr. Manahan stated his testimony had made the argument that the “significant economic” injury was be that your daycare business would suffer.

Mr. Manahan stated the Board is not authorized to grant a variance; unless not doing so would prevent the homeowner from using their property. There is already a two-car garage on the property.

Mr. McGillicuddy stated their current garage is inadequate; the previous owner used the garage for their cow.

Mr. Copp asked if they had added onto the house since they bought it.

Mr. McGillicuddy stated they had added an 8’ x 12’ mudroom.

Mr. Copp stated the scale of the plot plan may not be accurate, but it appears the corner of the garage could be moved and the garage set in such a way as to meet the setbacks. A survey may be required to determine actual setback distances.

Mr. McGillicuddy agreed, but the garage would look terrible.

Mr. Copp asked if the garage could be located to the left of the utility lines.

Mr. McGillicuddy stated that is a long way from the house.

Mr. Copp asked why the garage couldn’t be located in the front left of the house.

Mr. Manahan recommended that the applicant explore the options of building a garage that could be built within the setback requirements. It appears there are other alternates to build the garage within the setbacks.

Mr. Kendall stated Mr. McGillicuddy would have the option to ask the Board to table his request, or if he proceeds and was denied he would not be able to come back before the Board for one year.

Mr. McGillicuddy asked to have the Board table his request.

Mr. Manahan stated he would vote against a request to table, the applicant has an existing 2-car garage.

Mr. McGillicuddy asked if he would be able to get a variance for a driveway.

Mr. Kendall stated the Board can't speculate or guide applicants; the Board must address the current application.

Mr. Black stated a third option would be to withdraw the application.

Mr. McGillicuddy asked to have his application tabled.

Mr. Manahan moved to table the request of Patrick and Daria McGillicuddy for a 20' side setback variance to construct a garage at 457 Greely Road Extension; Tax Assessor Map R06, Lot 31A in the Rural Residential 2 (RR2) district.

Mr. Wilson seconded.

Mr. Black and Mr. Copp agreed with Mr. Manahan there appears to be other options available to the applicant.

Mr. Wilson asked if the applicant was before the Board with a driveway variance request would that be significantly different, or would they have to wait 12 months.

Mr. Manahan stated the decision is up to the Chair to determine if an application is substantially different and can be re-heard.

VOTE: 0 in favor
Unanimous opposed

The public portion of the meeting was opened. There were no public comments other than the letter in support from Genthner / Turner which was submitted a part of the record.

The public portion of the meeting was closed.

Mr. Manahan moved to grant Patrick and Daria McGillicuddy a 20' side setback variance to construct a garage at 457 Greely Road Extension, Tax Assessor Map R06, Lot 31A in the Rural Residential 2 (RR2) district.

Mr. Copp seconded. VOTE: 0 in favor
Unanimous opposed

Mr. Longley stated the applicant, Mr. McGillicuddy, was counseled to exhaust all other options for the garage.

3. Special Exception: Ervin Bracy requests a special exception for an accessory apartment at 153 Gray Road, Tax Assessor Map U19, Lot 18 in the Local Business (LB) district.

Mr. Bracy, applicant apologized for arriving late. Mr. Bracy stated his mother; Mrs. Shaw lived in the downstairs of the house, with a one-bedroom, kitchen, bath, and living room.

Mr. Manahan asked if the unit exceeded the allowable 40% of total living area.

Mr. Longley stated he had not calculated the numbers.

Mr. Black asked if there were separate entrances for each unit.

Mr. Bracy stated yes.

The Board reviewed the square footage areas of the two units.

Mr. Copp stated this building has been used as a 2-family for as long as he could remember, Mrs. Shaw lived upstairs.

Mr. Black asked if assessing records indicated the building was a duplex.

Mr. Longley stated the tax card states two kitchens.

Mr. Copp stated he didn't remember anyone living downstairs, until Mrs. Shaw got older and couldn't climb stairs.

Mr. Longley stated 760 sq. ft. would be the 40% of the 1904 sq. ft. of living area as recorded in assessing records.

Mr. Longley stated the drawing provided by the applicant indicates the area for the accessory apartment. The septic requirements are different for an accessory apartment than a single family house. The applicant should have a septic design that includes the accessory apartment.

Mr. Copp asked the age of the septic system.

Mr. Bracy stated there is a septic system; and he could show them the location.

Mr. Kendall asked for testimony from the public that was in favor of the application, there was none. He asked for testimony that was opposed to the application, there was none. He asked for testimony that was neither for nor against, but neutral; there was none. The public portion of the meeting was closed.

Mr. Kendall thanked the applicant and his interrupter.

Mr. Manahan moved to grant a special exception to Mr. Ervin Bracy for an accessory apartment at 153 Gray Road; Tax Assessor Map U19, Lot 18 in the Local Business district; provided that the unit shall not be more than 760 sq. ft. and will not exceed the

40% allowable by ordinance, and that the applicant provide the Code Enforcement Officer (CEO) with evidence that the CEO finds sufficient of that 40% and secondly that the applicant provide information that the septic system has adequate capacity to comply with the Maine State Plumbing Code.

Mr. Copp seconded.

VOTE: Unanimous

4. Discussion: Proposed Amendments to Home Occupations Section 414 and 104.60 of the Zoning Ordinance.

Mr. Longley stated the amendments are a result of a subcommittee of the Town Council which included George Turner, Bill Shane, Steve Moriarty, and himself. The amendments are an attempt to address inconsistencies with home occupations. Some home based offices which assumed they did not require Town approvals have had violations. The Board will not discuss any particulars hearings. The Committee looked at a number of options; and checked zoning in other communities; some other options where to have home occupation allowed as a matter or right, and administered as an administrative appeal if it met certain standards or criteria. It was the general consensus of the Town Manager and Councilors that we move forward with a clarity that is proposed to make it clearer that every business operated in a home will need this approval. The current zoning on home occupations does not review home based businesses where work is done off-site. The proposed draft amendments will have two definitions; Home Occupations and Home Based Occupations.

Mr. Kendall stated basically .60 is divided into two definitions recognizing there are some types of businesses that haven't been dealt with in the past; such as a construction company with company vehicles parked in the yard.

Mr. Manahan stated there was some discussion whether that was necessary, because there is some conceptual differences between a home based occupation verses a home occupation operated at the residence. It is fine, but they are treated virtually the same.

Mr. Longley gave some examples of home based businesses such as plumbers, electricians, builders who work at other locations, a landscaper might have trucks and equipment at home, but the work is performed off site.

Mr. Black asked about a regional salesman who might have an office in the basement, which has not been traditionally treated as a home occupation.

The Board discussed definitions of a home occupation and home based occupation. The Board discussed whether a salesman with a computer and working from home would need approval, or whether there needed to be some external evidence of a home based occupation, such as a sign, vehicles etc. The current special exception standards require that there be no adverse impact to the neighborhood or surrounding properties that would affect the character of the neighborhood.

Mr. Manahan stated he would draft the discussed changes to the amendments and send them to the Board members via e-mail for review and comment.

5. Minutes

Mr. Black moved to approve the minutes of the February 9, 2006 meeting.

Mr. Copp seconded.

VOTE: Unanimous

Mr. Black moved to approve the minutes of the March 9, 2006 workshop.

Mr. Manahan seconded.

VOTE: Unanimous

Mr. Manahan commended the vice-chair Mr. Kendall on his job as chair of the meeting.

Adjournment: 9:25 p.m.

A TRUE COPY ATTEST

Adrian Kendall, Board Vice-Chair

Pam Bosarge, Board Clerk