

**Ashland Zoning Board of Adjustment  
Minutes  
February 8, 2018**

**ZBA Members Present:** Eli Badger, Susan MacLeod, Kathleen DeWolfe

**Public Present:** John McCormack (Attorney), Frank Yerkes (Surveyor), Chrisdel Tower (Abutter), William Carlson (Abutter)

The meeting was called to order by Chair Eli Badger at 6:30pm, in the Ashland Booster Club.

The Chair advised the applicant's agent (Attorney John McCormack) that only 3 ZBA members were present and, by RSA, a majority (3 members) of a full board (5 members) must agree in order to approve the variance request. Therefore, all three members must agree. The Chair offered the applicant's attorney the option of re-scheduling for a full board composition. Attorney McCormack agreed to proceed.

**Case #2018-01: Request by Waldhausen Farms Ltd. Partnership for a variance from Section 2.3c of the Ashland Zoning Ordinance for construction of a dwelling on a lot (TML 012-006-002, Leavitt Hill Road) that is less than two (2) acres in size, in the Rural Residential zone and the Little Squam Lake Overlay District.**

**A motion was made (DeWolfe) and seconded (MacLeod) to accept the application as complete. The motion was approved unanimously by roll call vote (Badger, DeWolfe, MacLeod).**

**Public Hearing**

The request for a variance was presented by Attorney John McCormack as the agent for Waldhausen Farms Ltd. Partnership, with assistance from Frank Yerkes, surveyor of the property.

The lot was created in 1931, as a buildable lot, with a steep slope to the lake. Original structures on the lot included a camp building (since removed) close to the lake and a garage (existing). The property is currently owned by Waldhausen Farms Ltd. Partnership. Based on the plans prepared for the shoreland application to NH DES, the proposal has received approval (Shoreland Impact Permit 2017-03542, dated January 3, 2018) with specific project conditions.

The submitted plans (dated October 19 and November 2, 2017) were prepared by Frank Yerkes, surveyor, for Mark Kelley, the prospective buyer of the property. The plans are comprised of 3 views – Existing Conditions; Proposed Conditions; and Stormwater Management Plan. The lot size is .79 acres, which is less than the minimum 2 acres required in the Little Squam Lake Overlay District. The proposed dwelling, which is further from the lake than the original building, meets all setbacks (35' front, 25' sides, and 50' rear shoreland setback).

Attorney McCormack reviewed the applicant's written responses (attached to the application) to the criteria for granting a variance. A summary of the key points is below:

1. Granting the variance would not be contrary to the public interest: It does not alter the basic character of the locality. It does not adversely affect the public interest.
2. The spirit of the ordinance is observed: The lot was created in 1931 as a lawful lot, with other surrounding lots. Nearly all the lots in the subdivision are less than the 2 acre minimum lot size and have been built on (as per submitted list of surrounding lots). The proposed use and requested variance allows the landowners reasonable use of their property, while preserving values and insuring the public health, safety and welfare.
3. Granting the variance would do substantial justice: The original subdivision contemplated residential use. Many of the properties have evolved into larger and more substantial year-round homes, and do not comply with setback requirements and minimum lot size. This proposed modest home is in keeping with the surrounding area.
4. The values of the surrounding properties will not be diminished: This new structure on a vacant lot is in keeping with the character of the area and will be more compliant than surrounding properties (respective lake, side and front setbacks).
5. Owing to special conditions of the premises that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship: This lot is a small, undeveloped lot which was permitted under prior subdivision regulations and has been taxed as a building lot. The proposed dwelling will comply with all legal requirements except for minimum lot size. A variance is necessary to enable a reasonable use of the property.
6. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property: The proposed use is consistent with historical uses and the structure will comply to a greater degree than structures on surrounding properties.
7. The proposed use is a reasonable one because it represents a perfect balance between the ordinance and reasonable use and the proposed land plan is in keeping with the spirit and intent of the ordinance.

### **Abutters**

Two abutters (Chrisdel Tower and William Carlson) of the properties immediately across from the proposed project raised questions about the height of the proposed dwelling and obstruction of view. Frank Yerkes explained that the proposed house will have one level for living space and one walk-out level below, and that disturbance of trees and vegetation will be minimal. He noted that the structure will not exceed the 35-foot height allowed for the zone/overlay district and that the abutters will probably look down upon the roof. Chrisdel Tower inquired about drainage from the road; Mr. Yerkes noted that one of the plans outlines the stormwater management plan and has been approved by NH DES. The new house will also be hooked up to the town water and sewer.

## **Deliberation**

The public hearing was closed at 6:59 and the ZBA members discussed the criteria for a variance relative to the present application. They determined that the proposed use of the property is consistent with the area, improves the condition of the buildable lot, takes the unique conditions of the lot into consideration, represents an orderly development of the lot, and will be more conforming to the ordinance than surrounding properties. They also noted that the project meets all appropriate setbacks, but does not meet the 2-acre minimum lot size (purpose of the variance request).

## **Decision**

**Criteria 1 – All 3 Board members agreed that the variance is not contrary to public interest. (Roll call vote: DeWolfe, MacLeod, Badger)**

**Criteria 2 – All 3 Board members agreed that the spirit of the ordinance is observed. (Roll call vote: DeWolfe, MacLeod, Badger)**

**Criteria 3 – All 3 Board members agreed that substantial justice is done. (Roll call vote: DeWolfe, MacLeod, Badger)**

**Criteria 4 – All 3 Board members agreed that the values of surrounding properties are not diminished. (Roll call vote: DeWolfe, MacLeod, Badger)**

**Criteria 5 – All 3 Board members agreed that literal enforcement of the ordinance would result in an unnecessary hardship and that the proposed use is fair and reasonable. (Roll call vote: DeWolfe, MacLeod, Badger)**

Chair Badger announced that the variance was approved and granted. Written notification will be sent to the applicant, the building inspector, the Board of Selectmen, and any other appropriate officials.

The meeting was adjourned at 7:05 pm.

*Minutes submitted by Mardean Badger*