

HAMILTON ZONING BOARD OF APPEALS

MINUTES

Memorial Room 299 Bay Road.

January 3, 2018

Members Present: Bill Bowler (Chairman), Kim Dietel, and John Rodenhizer.

Others Present: Bruce Gingrich (Associate Member)

This meeting was called to order by Bill Bowler at 7:00 pm with a quorum established.

**Public Hearing for an application submitted for 27 Elm St. to request relief to create a two family dwelling.** Marvin and Katherine Fromhagen and Cynthia Barrett were the applicants. A hearing was held in November, which was continued until January 3, 2018. The petitioner had filed a letter requesting withdrawal of the petition without prejudice, which was commonly granted, according to Bill Bowler. The petitioner could refile within two years if they chose to do so. Mr. Bowler recused himself as he had conducted legal work for the petitioners. Town Counsel had opined that Mr. Bowler could be present to obtain a quorum as a unanimous decision was not required.

Motion to accept the request to withdrawal without prejudice for the application for 27 Elm St. was made by John Rodenhizer.

Kim Dietel seconded.

Vote: Majority in favor with Bill Bowler abstaining.

Questions from the applicant were directed to Patrick Reffett.

**Public Hearing for the property located at 135 Lakeshore Ave. for relief of dimensional requirements.** Thomas Fleming was the applicant for an extension of a non-conforming structure. Bill Nolan (Savoy Nolan Architects) and Travis James represented the owner. The Flemings lived in New Hampshire at the time of the hearing. Mr. Nolan referred to the dimensional table with relief being requested as well as Section 5.6, reconstruction after catastrophe or demolition. The one and one half story structure had a great room in the back that had previously collapsed in November 2015 and was condemned by the previous Building Inspector on November 19, 2015.

According to Bill Nolan, the proposal to rebuild the structure would increase the volume of the house. Mr. Nolan referred to the three procedures within Section 5.6, one of which was to begin work within two years, which had been done. The ZBA application was time stamped December 11, 2017. The applicant obtained a Building Permit in March 2017 to tear down the existing structure and rebuild according to the proposed plans submitted to the Building Department. The original plan was to retain a significant portion of the building. The applicant had planned to tear down the side of building that had collapsed and modify the existing structure with dormers to increase the head height on the second floor. After realizing the damage suffered when the building was open to the elements as well as discovering the inadequate framing structure, the

applicant determined there would be diminishing returns by trying to save anything. In March, the applicant applied for an amended permit, which was issued by the previous Building Inspector to tear down the house and rebuild it according to the plans while keeping the same footprint.

The applicant filed a Notice of Intent with the Conservation Commission due to the resource area setback from the lake and was given approval. A permit was issued by the Building Department to tear down and rebuild the house, which was signed off by all of the Boards on the Building Permit form. Once the applicant had applied for a small modification, they were told they needed to apply to the ZBA for an increase in the volume by taking the one story section in the back of the house and increasing it to a two story area. There was a minor modification in the stair area. The applicant was proposing a 6" offset and a 12" offset for current construction standards for stairways. The footprint change was within the setbacks, which did not make the nonconformity any greater.

The building has been completely torn down. A significant portion of the dilapidated foundation was removed and a new foundation was constructed in the same area in the same footprint. An as-built plan was submitted to the Board. John Rodenhizer noted the absence of the deck. Plans showed an 11'3" deck extension off the front. The deck would not be increased and a condition to the requirement would be accepted.

The existing plan showed a 20.8' setback with a proposed setback of 20'. The corner had a 19.3' setback. The applicant indicated the proposal was not increasing the nonconformity on that side. The deck was at 14.8', which would bring it into compliance.

The existing site plan was submitted. The architect said they were issued a permit and thought they were clear to go and demolished the building, created a situation for which there were only the new plans to review. The new Building Inspector asked for an as-built plan. John Rodenhizer wanted to review the plans closer. The proposed plans had the existing building and proposed conditions to review.

Conditions for a catastrophe, which was possibly due to snowload rather than neglect, were discussed. The structure did not meet construction standards, according to the applicant. Bill Nolan said the structure could be rebuilt by right as long as the footprint or volume was not increased. Mr. Nolan was proposing an increase in volume and slight increase of the footprint, which caused the need for a Special Permit rather than relief from dimensional setbacks.

The building was an existing nonconforming structure based on the dimensional tables. The building was located in the R1a district, requiring 20,000 sf of land while the lot was only 9,053 sf. Frontage requirements were 125' while the lot only had 65'. Bill Nolan described the property as unique in that it had frontage on a paper street but was given a Lakeshore Ave. address. It was unclear who owned the road. The Building Inspector had previously made a ruling that it was considered a street with frontage for the lot. While requirements for a lot width included 100', the lot was only 65'. The maximum building height could be 35' and the proposed height of the peak was 2' under that based on a conservative average grade of the lot. Bill Nolan added that the chimney was exempt but the proposed feature would not extend

beyond the 35'. The building was proposed to be two stories with a partial walk out basement. While the maximum building coverage was limited to 25%, the proposed building would cover 50% of the lot due to the limited size of lot to be covered.

According to Bill Nolan, the overall footprint would not be increased because the size of the deck was being decreased. The front setbacks were 25' and 50'. The building was located 58.6' from property line and would remain at that distance. The side and rear setbacks were 15'. The right side of the house where the proposed increase would occur, was within the 15' as were the stairs. The left side of the house was nonconforming with a setback of 10.3'. The proposed building would be constructed on the same footprint as the previous building.

An abutter asked about the views from her house to the lake if the home were increased in height or width. Bill Bowler said the By-law said the applicant was entitled to build to 35' high. The nonconformity was due to the setbacks rather than height. The original height had a second floor as it was 1.5 stories. The proposal was constructing the building to be a full two stories. The difference in height was unknown. The proposed height would be 32.10' to the peak while the By-law allowed for the mean between the second floor and the peak to be 35'.

An abutter questioned the distance from the house to the property line on the driveway side. Bill Bowler did not believe the Board would increase any nonconformity and distances would be checked by the Building Inspector. John Rodenhizer summarized that the applicant was proposing to reconstruct the deck to 11.3' toward the lake and reduce the nonconformity on the side facing the road from 14.8' to 15'.

Jean Fucillo said there was a stairway going into the property at one time to which Bill Nolan responded that the edge of the building was exactly as it was. Bill Nolan said the original house was 1,455 sf and with a small addition and stairs would be 1,468. When the deck space was reduced from 453 sf to 416 sf, the total reduction would be from 1,908 sf to 1,885 sf with no more detriment or nonconformity than previously constructed. There would be no garrison effect on the second floor and a window would replace an existing entrance on one side of the building.

Jim Spittle asked about the septic system but it was determined that the Board of Health had purview over the feature. Travis James indicated that the septic was inspected and that he and Jim Hankin had visited the site and checked plans for Conservation issues.

John Rodenhizer made motion to approve the Special Permit with conditions to include that the deck would not encroach any further than the 11.3' as stated and shown on the existing plans and that the nonconformity was brought into conformity on the east elevation for the stairway toward Lakeshore Ave.

Kim Dietel seconded.

Vote: Unanimous in favor to grant the special permit with the condition as read.

### **Review and approval Meeting Minutes**

### **Updates from the Chair**

**Adjournment.**

Motion to adjourn made by Kim Dietel.

Seconded by John Rodenhizer

Vote Unanimous to adjourn at 7:47 pm.

Prepared by:

Marcie Ricker

*Marcie Ricker*

*[Signature]*  
Attest \_\_\_\_\_ Date *3/1/19*