# April 23, 2013 Zoning Board of Appeals Minutes

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North Yarmouth Zoning Board of Appeals

Meeting Minutes

Tuesday, April 23, 2013

7 PM @ Downstairs Meeting Room, Municipal Building

Michael Traister (Chairman), Shana Mueller, Thaddeus Day, Ande Smith, Alan Corrow, Barbara Skelton (Code Enforcement Officer)

Shana Mueller moved and Alan Corrow seconded to make Ande Smith a voting member at tonight's meeting. The vote was unanimous.

Michael encouraged residents to consider joining the Zoning Board of Appeals as they are in need of members.

1. Minutes of October 23, 2012

Shana commented that the findings are not indicated in the minutes. She asked if they are located in the document to the applicant. Barbara stated that the applicant gets a copy but she can also attach them to the minutes for additional record keeping.

Shana Mueller and Alan Corrow seconded to approve the minutes as drafted and to attach the findings to the minutes for the record. The vote was unanimous.

1. Public Hearing – Meyer Development Solutions, representing Jennifer and Edward Dillon, requests a front setback variance for a covered porch and garage at 87 Henry Road on Property Map 10 Lot 100-A in the Farm and Forest District.

Dan Meyer of Meyer Development Solutions presented the request. They have constructed a building for them and there is an issue with the front setback. He outlined the location from the right corner of the porch to the garage. The porch is over the set-back by 6' 3" and the garage is over by 1'9" and appears to be the overhang of the garage.

Michael commented on the cul de sac location. Dan stated that he did not believe it was a valid road and that the owners also owned this section. It was perceived to be a "paper street." Barbara commented that this subdivision has been through a few changes over time, including it being an abandoned subdivision, however the road issue was never addressed. The lot they purchased is from the abandoned sub-division. Alan asked who would be responsible to put the cul de sac in. Barbara stated that as is, there is no one in particular who would is responsible. She outlined Henry Road in relation to other roads and intersections in the area. There was a discussion on whether or not there can be a cul de sac in that location or not.

Thad commented that there is a map outlining the area in the application and that there needs to be corresponding lot numbers etc to go with this plan as it is recorded with the Registry of Deeds to match the information presented.

Barbara stated that this is what the applicant is looking for the variance. At the time the builder constructed the building he viewed it as a side line and not a front setback. Dan Meyer stated that he saw the layout of the road in that way and the cul de sac was not factored into his interpretation of the plans. While it is on the plans, it isn't there. Dan Meyer also commented on the major power

source located in the right-of-way.

Barbara gave an overview of what the applicant purchased. It was lots 108,109,110 and part of 100 which now became 100A and is now a full parcel. There was an extensive discussion on what is there now as well as the official abandonment of property process. Much of the original lots were dissolved prior to the applicant purchasing their property.

Michael and Ande asked if the cul de sac is part of the abandoned property. Alan stated that it appears that there will be no cul de sac and asked how this will be fixed. Barbara gave an overview of the circumstances to date and what, if anything, could be done. Alan believes that the cul de sac part of it is still an issue for safety. Barbara and Dan Meyer stated that there is sufficient ability to turn around.

There was a discussion on the ownership of the road and the responsibility for the subdivision. At some point the subdivision process, the ownership of the road gets transferred to the owners.

Thad asked when Dan Meyer became aware of the cul de sac issue. Dan stated that it was sometime in March/April when the mortgage surveyor came. Ande stated that the cul de sac is at the end of the approved subdivision with a road of which both don't exist.

Thad asked Dan Meyer what the options are from his perspective. Dan stated the variance would be the preferred option but that they could alter the roofline, garage, and porch to change the set-back but that will change the building.

Thad commented that the character of the other houses in the neighborhood is that there are trees in between the road and buildings etc and he would like to see that request be part of the approval.

Michael asked if there was any public comment. There was no public comment.

Michael reviewed the criteria for granting the variance with Dan Meyer and the Board discussed the request. Thad reiterated that the building design is not the end product that was constructed. Dan Meyer stated that there were circumstances (drainage and like) that changed the placement of the building. He understood that he was within the allowed setbacks and was surprised that this was in error as he did not believe that there was a cul de sac. Shana stated that while there was no cul de sac, the deed outlines one.

There was a discussion on the septic system in relation to the setbacks and building. Thad suggested cleaning up the cul de sac boundary to resolve the issue. Others believed that would be difficult for the applicant to be responsible for. Alan asked if future buyers could fall into the same problem. There was a discussion on the accuracy of the subdivision drawings and surveys.

The Board discussed the variance criteria to see if there is one or more that are issues for them. Thad stated that he asks if the applicant has created the problem him/herself. He asked if this would have been an easier decision if this issue could have been resolved prior to building the home. Ande stated that he could accept the fact that the hardship exists in that there is a cul de sac that exists on paper but will never be built. Michael asked Barbara if she believes as built, the placement is considered the front in relation to the road. She stated that she understood it to be the front.

*Note: The Board voted on the variance criteria individually.*

Ande Smith moved and Shana seconded that criteria 2 A has been satisfied *(as outlined in the findings below*). The vote was 5 Yes.

Shana Mueller moved and Ande Smith seconded that criteria 2 B has been satisfied *(as outlined in the findings below*). The vote was 5 Yes.

Thad stated that he would like to see trees planted along his property line. Dana Meyer stated that some could be planted and Jennifer Dillon asked what types of trees he would prefer. Dan Meyer

stated that there was a lot of disturbance in preparing the lot and some trees, as a result were taken down. But, as many trees as possible were left. Alan stated that he did not see requesting trees as a necessity.

Ande Smith moved and Alan Corrow seconded that criteria 2 C has been satisfied *(as outlined in the findings below*). The vote was 4 Yes/ 1 No (Thaddeus Day)

Ande Smith moved and Shana Mueller seconded that criteria 2D has been satisfied *(as outlined in the findings below*). The vote was 5 Yes.

Ande Smith moved and Alan Corrow seconded 2E has been satisfied. There was further discussion Shana Mueller moved and Ande Smith seconded to amend the motion (*as outlined in the findings below).* The amended motion was 5 Yes. The motion as amended was 4 Yes/ 1 No (Thaddeus Day).

The Board made the following findings pursuant to Article 6-3.B.2:

1. With respect to variance criteria (a), the Board finds that the existence of the paper only cul-de-sac constitutes a unique circumstance of the property and not a general condition of the neighborhood.
2. With respect to variance criteria (b), the Board finds that the variance will not alter the essential character of the locality because it is a residential structure and it is setback from the existing road sufficiently.
3. With respect to variance criteria (c), the Board finds that the failure to remove the cul-de-sac in the subdivision plan where there is no current intention to place it and it's deviation from the placement of the existing road is not a hardship that is undertaken by the applicant or a prior owner.
4. With respect to variance criteria (d), the Board finds granting the variance as a reflection of the placement of the property of existing road will not substantially reduce or impair the use of abutting property
5. With respect to variance criteria (e), the Board finds that there is a demonstrated need and not convenience due to the placement of the property on the cul-de-sac. There is no feasible alternative because of other site conditions on the property, such as the placement of the septic field and the presence of ledge which dictated where the building was constructed.

1. Any other items as the Chair may deem appropriate.

There was a discussion on reviewing minutes given the distance of time in between meetings. Shana suggested that that they could be distributed for review so be prepared for the next meeting. Thaddeus asked if a signature block can be included for the group to sign off on. The group stated that a formal, publicly noted meeting is necessary.

Ande suggested convening the ZBA a few minutes prior to the Town Meeting in June to approve the minutes from this meeting. Alan suggested a brief meeting next month to review and approve this. Thaddeus suggested including some type of Board workshop meeting.

Shana Mueller moved and Alan Corrow seconded to adjourn the meeting. The meeting ended at 8:10pm.