



COMMUNITY DEVELOPMENT

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Draft Zoning Board of Adjustment Minutes May 22, 2012

Board Members:

Mark Samsel, Chairman - Present
Heath Partington, Vice-Chairman - Present
Elizabeth Dunn, Member - Present
Jim Tierney, Member - Present
Jay Yennaco, Member - Present
Mike Scholz, Alternate - Present

Staff:

Nancy Prendergast, ZBA/Code Enforcement Administrator
Cathy Pinette, ZBA Minute Taker

Call to Order/Attendance

Chairman Samsel called the meeting to order at 7:34 pm, introduced the Board Members and staff, and explained the meeting process.

Public Hearings

Lot 24-F Lot 98, Case #17-2012

Applicant – Meisner Brem Corp.
Owner – James R. Jr. & Ruth-Anne Calandra
Location – 79 Heritage Hill Road
Zone – Rural

The following variances are requested from the Zoning Ordinance to permit construction of an in-ground swimming pool, patio, cabana, new lawn area and retaining wall on the subject property:

Section 601.3 Uses Permitted: to allow for a portion of an in-ground swimming pool and its surrounding patio, a cabana, new lawn area, and a retaining wall to be constructed within the Wetland and Watershed Protection District (WWPD) where it is currently not a permitted use.

Ms. Dunn read Case #17-2012 into the record. Ms. Dunn stated there was a letter from the conservation committee with no comments.

- Mr. Curt Meisner, of Meisner Brem Corp., representing the applicants James R. Jr. & Ruth-Anne Calandra spoke regarding the variance. Mr. Meisner stated that the property was at the end of a cul-de-sac, the subdivision was built in 2010, and to the rear of the house is a retaining wall with a brook bisecting the lot. He stated the lot is 2.8 acres but the applicant can only use one half an acre. There is a drainage easement on the left side of the property for the subdivision. They are asking to take a section of the wall and push it back a little and put

an inground swimming pool, patio, a cabana, a new lawn area, and a new retaining wall. The wetlands would be protected with fencing and hay bales. They will be putting in white pines and blueberry bushes for added protection. Mr. Meisner read the five criteria into the record. They would like a 60 foot buffer where 100 foot buffer is required.

- Mr. Partington asked why they were not asking for relief from 601.4.8.1. He asked why that was not necessary. Ms. Prendergast read Section 601.4.8.1, “No structure may be erected nor shall any alteration of the surface configuration of the land be permitted in the Wetland and Watershed Protection District, except as authorized by this approval”. Ms. Prendergast stated that he will still have a note on the drawing pertaining to that.
- Mr. Tierney asked Mr. Meisner how high the wall is and how high the proposed wall will be. Mr. Meisner stated the wall is approximately 5 feet and the new wall would be approximately between 8 and 10 feet because of the elevation changes. Mr. Meisner showed the Board some pictures of the area. Mr. Tierney asked about the fencing around the pool. Mr. Meisner stated it would be vinyl chain-link.
- Ms. Dunn asked if there was a reason why the pool could be not be moved closer to the house. Mr. Meisner stated the pool is only 10 feet from the house. Building codes require a separation.
- Mr. Yennaco asked where water would be discharge from the pool when necessary. Mr. Meisner said the intention was to leave it in the pool and cover it, or a company would come in. Mr. Yennaco asked about small discharges. Mr. Meisner stated that there is a lawn area that the water could be discharged into.
- Mr. Tierney asked with a pool filter location was. Mr. Meisner stated next to the cabana.
- Ms. Dunn asked if there would be changing area or if it would be a mechanical area. Mr. Meisner stated it could be an area that people can change clothes, store supplies, electrical and mechanicals.
- Mr. Tierney asked if there was any reason the cabana was placed in the WWPD area. Mr. Meisner stated it was close to the pool. Mr. Tierney stated he had a problem with the cabana shedding and being so close to the retaining wall and the roof would have run off. Mr. Meisner stated if it is the pleasure of the Board he could move the shed/cabana. Mr. Meisner stated it is currently being proposed in the most preferred location. Mr. Tierney stated perhaps they could do something with the other shed and that would serve a dual purpose. Mr. Meisner said he is open to that if the Board prefers, the Board could make it a condition, or he can make a public statement that he would do that and add it into the record.
- The Chairman stated that if that size proposed cabana was appended to the existing shed, the Board would not give a variance for the cabana.
- Mr. Scholz asked about the area around the pool and the significant lawn coverage, approximately 20 feet. Mr. Meisner stated it is approximately 15 feet. Mr. Scholz asked why that area had to be so big. Mr. Meisner stated it was a two fold reason, structurally for the pool and the retaining wall. The applicant also would like a safety area for their children. Mr.

Tierney stated there is a 12 foot to a retaining wall. He has no problem with the retaining wall because it will minimize the sheet flow. If the applicant can add the cabana to the shed he has no other issues.

- The Chairman accepted the photos provided by the applicant as Exhibit A.
- Mr. Scholz asked the applicant if the variance was granted without the cabana could he say there would not be a problem having it outside of the WW PDD area. Mr. Meisner doesn't see a problem with that. Mr. Scholz stated that they should possibly do two motions.

The Chairman opened the hearing to the public, hearing no comments, the public hearing was closed.

The Chairman entertained a motion to go into Deliberative session. Motion by Mr. Partington and seconded by Ms. Dunn. Motion passed 5 – 0.

- The Chairman stated he had no issues with the application and Mr. Scholz made in excellent point to split the motions.
- Ms. Dunn stated the application is in the spirit and intent of the ordinance, the request is a reasonable one, there is nowhere else on the property for the pool, there is no diminishment of property values, and it meets the criteria. Mr. Partington and Mr. Yennaco agree with Ms. Dunn.
- Mr. Tierney would like to see the cabana moved out of the WWPD. He agrees with Mr. Scholz to split the motion.

Motion by Ms. Dunn to grant Case #17-2012 relief from Section 601.3 in consideration of the 5 points, a variance to allow a portion of an inground swimming pool and it's surrounding patio, a new law area, and a retaining wall to be constructed in the WWPD per plan submitted. Seconded by Mr. Tierney. Motion passed 5 – 0.

The Chairman advised all of the 30 day appeal period.

Motion by Mr. Tierney to deny without prejudice a portion of Case #17-2012 for a cabana as shown on the plan of April 16, 2012 located in the WWPD. Seconded by Mr. Partington. Motion passed 5 – 0.

The Chairman advised all of the 30 day appeal period.

ZBA Alternate Appointments

- The Chairman stated there were four candidates interviewed. The Chairman stated they could appoint five alternates. Mr. Tierney stated the Board needs to determine the number of alternates. Mr. Yennaco, Ms. Dunn, Mr. Tierney, and Mr. Partington each stated three. The Board voted for a total of three alternates. The Chairman stated they will pick two tonight. Mr. Yennaco stated they should discuss in nonpublic at the end of the meeting. The board agreed.

Review and Approval of Draft Meeting Minutes:

- Mr. Yennaco motioned to approve the draft meeting minutes of April 10, 2012, seconded by Mr. Partington. Approved 5 -0.
- Mr. Partington motion to approve the draft meeting minutes of April 24, 2012, seconded by Ms. Dunn. Approved 5 -0. Mr. Scholz voted for Mr. Tierney.
- Mr. Partington motion to approve the draft meeting minutes of May 8, 2012, seconded by Mr. Scholz. Approved 5-0. Mr. Scholz voted for Mr. Yennaco.

Old/New Business

- Ms. Prendergast stated the fees have changed and Board members were asked to update their folders. She stated Mr. Partington has been working on the spreadsheet. She stated Ms. King will be adding to the variance spreadsheet consistent issues for the Planning Board.
- Mr. Partington spoke about the bylaws. He has referenced and two sections were approved by the Board and not included in the bylaws. One is, alternative rotation, he cannot find information in the minutes so he will need to find them on the tapes. The other is, joint meetings, there is no joint meeting section but he is fairly certain the board did add it. He will need to watch the videos. The Chairman and Mr. Scholz believe joint meetings are in the bylaws. Mr. Partington stated it is not in the current bylaws. Ms. Prendergast can look into the old bylaws. Ms. Dunn stated bylaws are supposed to be filed with the Town Clerk. Ms. Dunn stated she believed the board should adopt new bylaws and delete old ones. They should be structured with numbers. Mr. Yennaco stated reorganization and housekeeping is a good idea. Mr. Partington stated the minutes of September 10, 2010 are not posted on the website. Ms. Dunn and Mr. Partington stated the bylaws need to be renumbered. The Chairman stated he will look into his records. Mr. Tierney has the old bylaws. He has crossed out the actual fees, put the new ones in and taken out the pricing. He stated the application fee must be received before the application is processed. He will check his records. The Chairman stated they shall look at their bylaws before Mr. Partington has to look at the videos.
- Correspondence received from attorney Campbell dated May 17, 2012 is an informational letter regarding his appearance at court.
- Ms. Dunn stated in the packet last week there was confidential legal documentation and she would like to know if the Board would be meeting with Attorney Campbell. Ms. Prendergast stated he has been in contact with the staff. The Chairman stated that it is typical that he meets with the Board before court. Ms. Prendergast stated staff is putting together files for him. Mr. Tierney stated the certified record has not been given to him yet. Ms. Dunn stated the Board needs to meet with him before going to court. Ms. Prendergast stated she will let Ms. Scott know as she is dealing with Attorney Campbell.
- Ms. Dunn asked about the memo she received two weeks ago. Ms. Dunn asked for the court decision. Ms. Prendergast will scan and send to Ms. Dunn and Mr. Scholz.

- The Chairman stated he received a decision today and would like to know if the Board would like an electronic copy. It is confidential legal. Ms. Prendergast stated she will send a copy to the Board. Mr. Scholz suggested password protected e-mails.

Non Public

- **Ms. Dunn motioned and Mr. Partington seconded for the Board to go into Non Public Session at 8:35 PM in accordance with RSA 91-A:3, II (c). Motion passed 5 – 0.**
- **The Board returned from nonpublic session at 8:57 PM.**
- The Chairman stated the Board would have three alternate members. Mr. Scholz was currently an alternative number.
- **Mr. Yennaco motioned to appoint Mr. Tony Pellegrini to a one-year term and ending in 2013 and Mr. Mike Mazalewski to a two year term ending in 2014, affective June 1, 2012. Seconded by Ms. Dunn. Motion passed 5 – 0.**
- The Chairman stated letters will be sent to all applicants. The Board thanked the applicants for their time. They will need to be sworn in by the Town Clerk. Ms. Prendergast will provide handbooks for the new alternates.

Adjournment

Mr. Partington made a motion to adjourn, seconded by Mr. Yennaco. Motion passed 5 – 0. Meeting adjourned at 9:02 PM.

These minutes are in draft form and respectfully submitted for your approval by Cathy Pinette,
ZBA Minute Taker