

TOWN OF CUMBERLAND
BOARD OF ADJUSTMENT AND APPEALS MINUTES
Thursday, October 12, 2017

Roll Call: Present: R. Scott Wyman - Chairman, Andrew Black, Christian Lewis, Matthew Manahan, Sally Pierce & Amanda Vigue. **Staff:** Code Enforcement Officer Bill Longley & Amin. Asst. Christina Silberman. **Absent:** Ron Copp, Sr. & Michael Martin.

Chairman Wyman called the meeting to order at 7:00 pm and reviewed procedures.

Public Hearings:

1. Special Exception: Elvin Copp, owner, and EC Builders, contract purchaser, request a special exception to construct a single-family dwelling on Lot A on part of the lot at 33 Gray Road (Route 100), Tax Assessor Map U16, Lot 7C in the Village Office Commercial II (VOCII) district.

Code Enforcement Officer Bill Longley introduced the item. Nick Estes of EC Builders, contract purchaser, said a 1,600 sq. ft. house is being proposed on each of two lots. Mr. Estes said that the Board's packet has the DOT approved driveway location and the approved septic design for each lot. There is also a site plan showing the location of each house and a common driveway.

Chairman Wyman asked how the common driveway works. Mr. Estes said that there is one driveway in order to get the sight line distance from Range Road per the DOT.

Mr. Black asked what the size is of each of the lots. Mr. Estes said that each lot will be right over 1 acre.

Mr. Black referred to the septic systems and asked if Mr. Estes knows where the well and the septic system are located for the Hart Animal Shelter. Mr. Estes said he does not know but he will make sure they are the correct distance from the Hart Animal Shelter well.

Chairman Wyman said there has been some question on an old map with some wetland in the front of the property and asked if this has been evaluated. Mr. Estes said that this has not been evaluated. The area will not be disturbed other than getting the driveway in. Mr. Estes added that if they need to get a DEP permit they will.

Chairman Wyman asked if there is any member of the general public who would like to speak in favor of this application. There were no comments.

Chairman Wyman asked if there is anyone who would like to speak in opposition of this application. There were no comments.

Chairman Wyman asked if there is anyone who would like to speak on a neutral basis, neither for nor against but for informational purposes.

Stephanie Guyot said she abuts the property on the back side. Ms. Guyot said she has not looked at the zoning requirements for commercial lots, she has a residential lot and does not know what the differences are. Ms. Guyot plans to build a house on her lot and is curious about the well and septic locations relative to her lot. Ms. Guyot's well is

located near the front of her lot toward Range Rd. A map showing an aerial view of the area was shared amongst the Board. Chairman Wyman said it seems that all of the septic systems will be in proximity to each other.

Ms. Guyot asked what the exact special exception is that they are asking for. Mr. Longley replied that about 10 years ago, the area from the Falmouth line to the Gray line was rezoned. The Town encouraged more commercial development in this strip that is only 1 lot back. Ms. Guyot is in the Rural Residential zone. The subject lot, which is between her lot and Route 100, is in the Village Office Commercial II zone. Mr. Longley said the VOC II zone requires that if a home is going to be built, an application has to come before this Board. If the applicant meets the criteria for a special exception, and the finding of this Board is that the applicant has passed the burden of proof, then the Board will give approval for a house to be on the lot. Mr. Longley noted that the minimum lot size in the VOC II zone is 40,000 sf and this lot can be split virtually in half.

Chairman Wyman explained that a special exception is tantamount to a permitted use. When someone is petitioning for a variance, they have to prove to the Board that the variance meets zoning ordinances. Under the special exception rule, the Board takes testimony and makes the decision whether the petition actually does meet the special requirements and falls within the acceptable use.

Chairman Wyman read a letter that was not in the Board's packet written Oct. 3rd from Elvin Copp stating that Mr. Copp gives permission to Estes Custom Builders to apply for and receive any permits, special exceptions, etc. in regards to Mr. Copp's property at 33 Gray Rd. to be split into 2 buildable lots.

Chairman Wyman confirmed that the property is in the Village Office Commercial II District and said that under the Zoning Ordinance, Chapter 315-16, sec. C for the VOCII district, single family dwellings, detached dwellings and duplex dwellings are permitted.

Mr. Black asked Mr. Longley if he knows where the well is for the Hart Animal Shelter. Mr. Longley said he does not know but he can get the information and will make sure that the proper 100' setback is maintained from the well. Mr. Lewis said that he believes the well is in the front of the property. Mr. Manahan noted that presumably Hart Animal Shelter received notice about this application and had the opportunity to review it if they wanted to. Mr. Longley said he has not received any comments or questions from anybody.

Chairman Wyman reviewed the special exception rules and noted that the Board must find the following;

(a) The proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles.

(b) The proposed use will not cause water pollution, sedimentation, or erosion, contaminate any water supply or reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasant, or unhealthy condition may result. Mr. Black

suggested that the approval be conditioned on finding that the well for the shelter is located the proper distance from the septic. Mr. Black asked if the lot is already divided and Mr. Longley said no.

(c) The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants.

(d) The proposed use will be compatible with the uses that are adjacent to and neighboring the proposed location, as measured in terms of its physical size, intensity of use, visual impact, and proximity to other structures, and the scale and bulk of any new structures for the proposed use shall be compatible with structures existing or permitted to be constructed on neighboring properties.

(e) The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration, fire hazard or restrict access of light and air to neighboring properties.

(f) The proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties.

(g) The proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties.

(h) If located in a shoreland zone, the proposed use will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat; will conserve shoreland vegetation; will conserve visual points of access to waters as viewed from public facilities; will conserve actual points of access to waters; will conserve natural beauty; and will avoid problems associated with floodplain development and use.

Chairman Wyman noted that section H does not apply in this case.

Chairman Wyman reviewed the additional special exception performance standards. In addition to the standards contained in subsection B (3), all special exceptions must conform to the performance standards set forth herein. No use already established on the date of adoption of this chapter shall be so altered or modified as to conflict with or, if already in conflict with, to further conflict with these performance standards.

(a) The volume of sound, measured by a sound-level meter and frequency weighting network (manufactured according the standards prescribed by the American National Standards Institute), inherently and recurrently generated shall not exceed a maximum of 60 decibels at lot boundaries, excepting air raid sirens and similar warning devices;

(b) Vibration inherently and recurrently generated shall not exceed a peak particle velocity of 0.01 inch per second at lot boundaries;

(c) No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by regularly recurring natural causes or forces, and all materials which cause fumes or dust, constitute a fire hazard, or are edible or otherwise attractive to rodents or insects if stored out of doors shall be in closed containers;

(d) The emission of noxious, odorous matter across lot boundaries in such quantities as to be offensive to persons of ordinary sensibilities is prohibited; and

(e) No discharge into any private sewage disposal system or stream or into the ground of any materials in such nature or at such temperature as to contaminate any water supply or otherwise cause the emission of dangerous or unhealthful elements is

permitted, and no accumulation of solid waste conducive to the breeding of rodents or insects shall be allowed.

Mr. Black moved to grant Special Exception #1 on today's agenda for Map U16, Lot 7 C subject to the condition that the Code Enforcement Officer verify the location of the well on the abutting Hart property, seconded by Mr. Lewis and **VOTED, 6 yeas – unanimous, motion passes.**

2. Special Exception: Elvin Copp, owner, and EC Builders, contract purchaser, request a special exception to construct a single-family dwelling on Lot B on part of the lot at 33 Gray Road (Route 100), Tax Assessor Map U16, Lot 7C in the Village Office Commercial II (VOCII) district.

Chairman Wyman noted that the Board will waive the reading of the Code and the Board's findings because they are the same as the previous item.

Mr. Black moved to grant Special Exception #2 on today's agenda for Map U16, Lot 7 C subject to verification by the Code Enforcement Officer that the well located on the Hart property is outside of the restrictions, seconded by Mr. Lewis and **VOTED, 6 yeas – unanimous, motion passes.**

Chairman Wyman extended congratulations to the applicant for being granted a Special Exception on items #1 & #2 and requested that the applicant work closely with the Code Enforcement Officer as he moves forward. Chairman Wyman requested clarification from the Code Enforcement Officer that the question about the Hart well issue has been met.

Administrative Matters: Approval of the minutes from previous minutes was postponed.

Chairman Wyman noted that the Board usually has an annual meeting to confirm the officers, essentially to elect a Chair, and asked if the Board wishes to dispense with this. There was general consensus of the Board members to continue with Mr. Wyman as Chairman.

Adjournment: Mr. Manahan moved to adjourn the meeting at 7:26 pm, seconded by Mr. Lewis and **VOTED, 6 yeas – unanimous, motion passes.**

A TRUE COPY ATTEST:

R. Scott Wyman, BoAA Chairman

Christina Silberman, Admin. Asst.