

Place: Raymond High School, Media Center

Call to Order: 7:38 p.m.

Members Present: Sharon Weldy, Chairman; Chuck White, Vice Chairman; Joyce Wood, Clerk; Nick Moccia; Paul McCoy, James Canney, Alternate. **Also present:** Richard Mailhot, Code Enforcement Officer; Kathy Cramer, Recording Secretary.

Pledge of Allegiance

Approval of Minutes

Joyce Wood made changes to the minutes of July 25, 2007, the Board had no objections to them.

Joyce Wood made a motion to approve the minutes of July 25, 2007 as amended. Chuck White seconded. Voted unanimously in the affirmative.

Joyce Wood made a request that the minutes from the training session be typed up and she would sign them.

Public Hearings

Case # 2007-014 An application for an Area Variance has been submitted by John Harmon to construct a swimming pool in an area with a 13 foot setback where 37.5 feet is required. The property is shown on Raymond Tax Map 33, Lot 87, Long Hill Road.

John Harmon came forward and handed out a map to the Board depicting his property and where he would like to place the pool.

The abutters list was read and let the record reflect no abutters were present.

Nick Moccia asked Mr. Harmon if it was to be an inground pool. Mr. Harmon stated yes.

Joyce Wood asked Mr. Harmon if there were going to be any outbuildings, a pool house, pump room or other building? Mr. Harmon stated that he did not anticipate any outbuildings at this time.

Joyce Wood asked Mr. Harmon where his closest neighbors were and he showed her on the map. None were close. Mr. Harmon's house is surrounded by woods.

Chairman Weldy asked if there was going to be a cement slab around the pool. Mr. Harmon stated that the skirt of cement slab is 4 feet deep on the 36 foot side of the pool and 8 feet on the 18 foot side of the pool.

Chairman Weldy asked if Mr. Harmon was going to place a fence around the pool. Mr. Harmon stated that he was looking into the regulations for the that and would place a fence according to them.

Chuck White stated that with the cement slab around the pool it brings the pool 4 feet closer to the property line. Mr. Harmon agreed with this statement.

Code Enforcement Office Richard Mailhot stated that construction of a patio on the ground doesn't require a permit as it is not considered a building.

Paul McCoy asked Mr. Harmon if he thought about moving the pool or twisting it a little on his property. Mr. Harmon stated that he had several people come and look and this is the only place it could be put on his property. The pool needs to be as far away from his leach field as possible.

Joyce Wood asked Mr. Harmon if he considered placing the pool on the other side of the stone wall. Mr. Harmon stated that his leach field is in that area.

Code Enforcement Office Richard Mailhot stated that where the pool is proposed on the property is the only usable area on his property.

Chairman Weldy asked if the Board felt they needed to go into deliberative on this case. Everyone agreed that there was no need to go into deliberative.

VOTE ON THE CRITERIA FOR AN AREA VARIANCE:

1. The proposed use (would or would not) diminish surrounding property values:

Paul McCoy – Would Not
Chuck White – Would Not
Joyce Wood – Would Not
Nick Moccia – Would Not
Sharon Weldy – Would Not

Vote Criteria #1: Would Not, 5-0

2. The granting of this variance (would or would not) be of benefit to the public interest:

Paul McCoy – Would
Chuck White – Would
Joyce Wood – Would
Nick Moccia – Would
Sharon Weldy – Would

Vote on Criteria #2: Would , 5-0

3. Special conditions (do – do not) exist such that literal enforcement of the ordinance results in unnecessary hardship because

- a. An area variance is needed to enable the applicant’s proposed use of the property given the special conditions of the property (true or false):

Paul McCoy – True
Chuck White – True
Joyce Wood – True
Nick Moccia – True
Sharon Weldy – True

Vote on Criteria 3a: True, 5-0

- b. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance (true or false):

Paul McCoy – True
Chuck White – True
Joyce Wood – True
Nick Moccia – True
Sharon Weldy – True

Vote on Criteria 3b: True, 5-0

- c. An area variance is required to avoid undue financial burden on the applicant (true or false):

Paul McCoy – True
Chuck White – True
Joyce Wood – True
Nick Moccia – True
Sharon Weldy – True

Vote on Criteria 3c: True, 5-0

Vote on Criteria #3: Do, 5-0

4. Granting the variance (would – would not) be consistent with the spirit of the ordinance:

Paul McCoy – Would
Chuck White – Would
Joyce Wood – Would
Nick Moccia – Would
Sharon Weldy – Would

proceeded to Court to have the crusher removed as the highway project was progressing and that particular use was done there for providing rock for the highway.

Paul McCoy stated that he believes there is no new evidence for a rehearing.

Code Enforcement Officer Richard Mailhot stated that the Midway letter is a new letter, however it is not inconsistent with the prior evidence.

Code Enforcement Officer Mailhot stated that a special exception was what was called for. **INSERT DATE** Code Enforcement Officer Mailhot stated that his most recent determination, although it is a repeat of ones given a number of years ago, was very current. That is what actually got his original application before you, seeking a variance. He is not sure what the time frame is from that Notice of Decision, but he could potentially appeal that one if the time frame is okay. Joyce Wood stated that her point is that he must have believed your administration decision was correct because he filed for a variance, but not he is saying your administration decision is wrong. Code Enforcement Officer Mailhot stated that at the time of the special exception was filed for, that was what was necessary in the zoning at that time. So the request to operate the crusher has actually happened twice, with the first being a **Special Exception** and the second being a **Variance**. Joyce Wood stated that if Waldoborough honestly believed he had an ongoing crushing operation there that was grandfathered, he wouldn't have applied for a variance, period, or a special exception.

Paul McCoy stated that Waldoborough in the motion stated he does not need a variance to operate a processing plant in Zone C1.

Joyce Wood asked if he believes he doesn't need a variance, then why is he coming before the ZBA for a variance.

Chairman Weldy stated that they would go over point by point where the Motion states the Board erred. The applicants appeal points are lettered. A copy of some is attached. The following letter designations follow the applicants appeal points.

- a. After discussion the Board finds that he did need a variance. The Board has not made an error.
- b. After discussion the Board finds that it is not a preexisting nonconforming use (the crushing). Waldoborough can blast on site, he just can't crush and it has not continuously been maintained as a crushing/processing operation.
- c. After discussion the Board does not agree that the crushing has been ongoing. Paul McCoy stated that applicant's statement is not true, it was a very short time when the State was putting the highway in when it was used for crushing.
- d. Joyce Wood disagreed with the assertion that the ordinance is vague.

Code Enforcement Officer Mailhot stated that in subparagraph c Waldoborough speaks about the ERR (Earth Removal Regulations) order and

in item d he is speaking about the Zoning. The Zoning Ordinance is what was used in the determination, the applicant is going back and forth. Code Enforcement Officer Mailhot used the zoning ordinances for his decision. The ERR was not used in his determination.

Code Enforcement Officer Mailhot stated that the applicant has conflicting statements throughout the appeal.

- e. Nick Moccia asked about the zoning at the other plant. Joyce Wood stated that they are two separate situations. One is on a highway, the other is surrounded by residential units.

The Board disagrees that the property is similarly situated.

- f. Nick Moccia stated that (1) is incorrect, he believes it does affect the surrounding property values. Joyce Wood also believes it would affect the property values. Joyce Wood also disagrees, as there is continuous noise while operations are going. What the property would look like when he is done is irrelevant. The Board disagrees with 2 through 4.
- 5. Joyce Wood stated that the applicant has been using the property without a crusher on site and has had no trouble. The fact that his business of blasting and removal of material from the site has been running all this time is contrary to his statement. The Board disagrees with 5. No error, no new information.
- 6. The Board disagrees with 6. Nick Moccia stated there was a lot of silica coming out of the rock which is detrimental to the environment. Silica dust is same as black lung and it is going into the water table. Joyce Wood stated that a finding has already been made and it does not interfere with the continued use of the blasting and removal of material from the site. It would injure the public and private rights of others and it would diminish property values. No error is found, no new information provided.

Paul McCoy stated that the Board has covered everything and the decision made by the Board was proper. No error was made, no new information provided. Joyce Wood agrees with the above, Nick Moccia agrees with the above, Chuck White agrees with the above, Sharon Weldy agrees with the above.

MOTION: Motion by Nick Moccia that there is no cause for a rehearing or appeal and the applicant's Motion for Rehearing is denied. Chuck White seconded. Motion unanimously passed in the affirmative.

There was no other business.

Adjournment

MOTION: Joyce Wood made a motion to adjourn. Chuck White seconded. Voted unanimously in the affirmative. Meeting adjourned at approximately 8:30 p.m.

Respectfully Submitted,

Kathy Cramer
Recording Secretary