

**MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT**

October 20, 2009 approved 11-30-09

MEMBERS PRESENT: William Bonney, Chair; Bruce Kudrick, Vice Chair; Dana Carlucci, Tom Hebert

ALTERNATES PRESENT: Mick Pinard, Paul Paradis

EXCUSED: Mark Simard, Tom LoPizzo

STAFF PRESENT: Everett Hodge, Code Enforcement Officer; Susan Gifford, Recording Secretary

Chairman Bonney called the meeting to order at 7:10 p.m.

Dana Carlucci recused himself for Case #09-20-Z. Mick Pinard was designated to vote for Dana Carlucci and Paul Paradis was designated to vote for Tom LoPizzo.

PUBLIC HEARING

Case #09-20-Z

Applicant: Kathy O'Donnell
 61 Clough Sanborn Road
 Contoocook NH

Property Owner(s): Kathy O'Donnell
 813 Bachelder Road
 Pembroke, NH 03275

Property Address: 813 Bachelder Road
 Pembroke, NH 03275
 Tax Map 868 Lot 10 located in the R3, AC and SP zoning district and the
 Flood Zone B.

Use Variance under section 143-105. The applicant is requesting a variance from the two year time limit to restore a house located at 813 Bachelder Road, Map 868, Lot 10, damaged in the April 2007 flood. Ms. O'Donnell is seeking a variance from the 2 year time limit to complete the necessary repairs to return the premises to a safe and habitable condition. The property is located in the R3 Rural/Agricultural-Residential, AC Aquifer Conservation District, SP Shoreland Protection Districts and the Flood Zone B.

Mr. Everett Hodge confirmed that all abutters were notified and that the only card received back was from Kathy O'Donnell. Some of the abutters notified are present at the hearing.

Chairman Bonney opened the public hearing at 7:15 p.m.

There were 3 regular members and 2 alternate members present; therefore, there was a full five member board present for this hearing. Chairman Bonney explained the rules of the hearing.

Letters dated January 9, 2009 to Country Wide Home Loans, Santa Barbara CA from Everett Hodge, Code Enforcement Officer, and dated January 12, 2009 to Richard Durofchalk detailed violations to Section 143-106 Repairs and Maintenance, and lack of progress with the foundation. The deadline for completing repairs was May 1, 2009. David Jodoin, Town Administrator, sent an email to Everett Hodge

recommending that an engineer provide the town with a base flood elevation so the home can be built in accordance with current conditions.

The property was damaged by the April 2007 flood,. Restoration of the house required that it be raised off the foundation to accommodate extensive foundation repair, which would allow repairs to the rest of the house. A legal notice to stop work on the premises was issued May 5, 2009 while the property was subject to a foreclosure proceeding. At the time it was issued, the house was elevated on temporary supports and remains in that condition. The stop work notice indicates violation of 143-105 due to the prior owner's failure to complete the necessary repairs within two years. Ms. O'Donnell subsequently acquired the premises from the foreclosing lender on August 17, 2009. Ms. O'Donnell now seeks a variance from the 2 year time limit to complete the necessary repairs to return the premises to a safe and habitable condition.

Attorney Erik Newman, Gallagher, Callahan Gartrell PC, 214 North Main Street, Concord NH, representing the applicant Kathy O'Donnell gave some background on the property. The house was substantially damaged in the floods of April 2007 and required foundation repair. The predecessor in title, an unrelated party, commenced repair work based on a FEMA approved plan. The house remains up on supports. The Town of Pembroke issued a stop work notification on May 5, 2009. The pre-existing non-conforming structure was supposed to be repaired within two years. On May 15, 2009 the lender acquired the property at auction and on 8/17/09 sold the property to Ms. O'Donnell.

Attorney Newman addressed the 5 points necessary for a Use Variance:

- 1) Granting the variance would not be contrary to the public interest because *granting the variance would enable the house to be removed from temporary supports and reset on a repaired foundation. This will prevent further deterioration to the property and return it to a habitable condition. This serves the public interest in having safe and productive uses of property.*
- 2A) How does the Zoning Ordinance interfere with your ability to reasonably use your property, considering you property's unique setting in its environment? *Unless a variance is granted allowing the house to be restored in its historic footprint, Ms. O'Donnell cannot take the house off the temporary supports and return the property to residential use. The house could not be located anywhere else on the property due to the location of the abutting Soucook River, setback requirements, under the town ordinance and restrictions on development imposed by the Shoreland Protection Act.*
- 2B) Explain why the proposed use can not be achieved through some other reasonable method other than a use variance. *The general purpose of the ordinance in promoting health, safety, and general welfare is undermined by having a house stuck on temporary supports and subject to continued deterioration. Those objectives would be best served by granting a variance from 143-105 to permit completion of the necessary repairs. Doing so would enable the property to be returned to a safe and habitable condition.*
- 2 C) Please state how granting the variance will not hurt the public or private rights of others. *Granting the variance will allow the house to be restored to the same size and location that existed prior to the flood. There will be no expansion or intensification of use on the property. The repairs amount to a replacement in kind which will not hurt the public or private rights of others.*
- 3) How would granting the variance be consistent with the Spirit of the Ordinance? *Granting the variance would enable the house to come down off the temporary supports and return the property to a safe and habitable condition. This relief would be consistent with the spirit of the ordinance in promoting the safe and productive use of land.*
- 4) How would granting the variance ensure that substantial justice is done? *Substantial justice would be done by granting a variance because Ms. O'Donnell had no influence over or involvement in the circumstances that contributed to the delay in completing the repairs within the 2 year time frame.*

Ms. O'Donnell acquired title as a means of protecting her son's valuable foundation repair trade materials that are used to stabilize the elevated house. Her son had been hired by the prior foreclosed owner to work on the foundation repair. Those supports cannot be removed unless a variance is granted and the foundation repairs are permitted to resume. Also, repair work during the 2 year time frame under 143-105 was impeded by a number of intervening events. While the flood occurred in April 2007, FEMA funding for the foundation work was not obtained until 6 months later in November 2007. Before work could be commenced after the initial FEMA funding was secured, foundation plans had to be developed and additional FEMA funding secured when it was discovered that the sills were damaged. Also, jacking cannot occur during early winter months when the ground experiences freeze and thaw cycles, further delaying the start of construction. Foreclosure of the prior owner's mortgage further delayed construction. The foreclosure commenced by legal notice of foreclosure dated February 11, 2009. The foreclosing lender acquired the premises at an auction sale on May 15, 2009 and subsequently sold the premises to Ms. O'Donnell on August 11, 2009. To the best of Ms. O'Donnell's knowledge, no work was undertaken by the prior owner after the foreclosure was initiated

- 5) Granting the variance will not diminish surrounding property values because: *Granting the variance will enable the house to be repaired and restored to a comparable or better condition than existed prior to the flood. Taking the house off the temporary supports will alleviate a potential eyesore. The repairs amount to improvements that will not diminish surrounding property values.*

William Allaire, 817 Bachelder Road, stated that the property was put up for auction. The previous owner bid on it, but the bank wanted \$157,000. The permits ran out. Potential purchasers were told that the house would have to be torn down and that the lot could be used for a camper on a slab.

Joseph Paul, 818 Bachelder Road, asked is the house in repairable condition right now, considering the wetlands, the river, the Shoreland Protection Act and the trees that were taken down on the lot? What happened during the gap in 2008 between putting the cribs underneath, until the foreclosure date of May 2009?

Everett Hodge reviewed the timeline of events, as presented in his letter of January 9, 2009 to Country Wide Home Loans, Inc., Santa Barbara, CA.

- April 16, 2007 House damaged by flood waters.
- May 1, 2007 House declared unsafe and not habitable
- May 1, 2007 Determination of Loss filed with FEMA
- May 17, 2007 Permit issued to do repairs
- September 5, 2007 Permit issued to construct new foundation
- November 30, 2007 Permit issued to do interior repairs to first floor
- April 07 to February 08 No work was done to the structure
- February 08 Structure was raised off existing foundation
- March 08 Old foundation walls were removed
- April 08 Minor work was done by the new foundation contractor
- April 5, 2008 Letter sent to Richard Durofchalk inquiring about the lack of progress
- May 08 to September 08 No work was done on the site
- October 08 Some minor work was done by the new foundation contractor
- October 27, 2008 Owner removed his personal items from the house and property
- November 08 to present (January 9, 2009) No work has been done

Everett Hodge has photographs in the file to substantiate this sequence of events.

Ron Swiggard, 815 Bachelder Road, asked what would the town require as a completion date? Would the use of the property be strictly residential, with no storage of heavy equipment? Everett Hodge stated that there is no commercial use allowed in the R3 zoning district, only single family and 2-family dwellings and some agricultural uses. A person could have a minor home occupation - phone, paperwork, but no outside storage. A major home occupation would require a ZBA Special Exception. A person could not run a business from that lot.

Kathy O'Donnell, 61 Clough Sanborn Road, Contoocook NH, stated the reason work was halted was that payments from the property owner stopped. The foundation was not approved.

Sandra Paul, 818 Bachelder Road, stated the house has been sitting on supports over two years. The house is settling down. If a variance is not approved, what happens to the house? It cannot remain in its current state.

The family that owned the house previously kept coming back. Ms. O'Donnell is unrelated to the prior owner. Part of the delay was availability of FEMA funding. The prior owner applied for FEMA funding in late fall 2007 and received some funding in early 2008. Board members and neighbors questioned what transpired in 2008? Attorney Newman theorized that the owner had financial problems, that possibly led to foreclosure. The contractor had a reasonable time to complete the work, and some neighbors dispute the contention that Ms. O'Donnell was buying the property to save her son's assets (equipment).

The town could order the house removed as a safety hazard. FEMA has immunity from court action. However, the property is now owned by a private party. The Town could remove the house and bill the owner. The lot would become a non-buildable lot because the setbacks are insufficient. The usefulness of the lot is that it has town water and septic, and could be used as a seasonal camp on a slab. Everett Hodge noted that recreational vehicle use is permitted in that zone, but is not conducive to year round neighbors. Ms. O'Connell plans to improve the property by putting in a foundation. Neighbors questioned, is the house livable right now? Ms. O'Connell stated she has no plans to occupy the house. There is no application from my family for a business use. The property itself is an eyesore, and every step will be taken to improve the property. Ms. O'Connell stated that she would consider using the house as a summer property. The river is very silty, and there are no immediate plans to sell the property once it is improved. Ms. O'Connell has a history of successfully restoring similar properties. She has carpenters who work with her. She will landscape the lot.

Everett Hodge clarified that Ms. O'Donnell can improve the current structure, but is limited to the existing footprint. She can repair or rebuild, but must comply with current town building codes. Ms. O'Donnell stated she has resources available to undertake whatever is needed to bring the house back to a safe and habitable condition.

William Allaire, 817 Bachelder Road, asked if the house will be put above the flood plain. Everett Hodge stated it has to be determined that the house is raised above flood level. The septic system must be approved as adequate for the number of bedrooms,.

Joseph Paul, 818 Bachelder Road, stated I have been in the house and observed two bedrooms upstairs. There was no tax card information in the information packet. After retrieving the tax card, Everett Hodge stated there is an open concept layout downstairs totaling 576 square feet and 288 square feet in the attic, for a total area of 864 square feet. There is 130 feet of shoreline, and the lot size is .67 acres. The house is just over 50 feet from the river and can't be any closer to the shoreline, per the State Shoreline Protection Act. Is the shoreline stabilized? Neighbors say no. Mr. Allaire stated that during the last flood, water was over the

road. A surveyor/engineer marked the last guardrail as the 500 year flood mark.

Ron Swiggard, 815 Bachelder Road stated that when his wife inquired about the property, she was told the only use of the property is for a seasonal camp. Year round neighbors would not like to see the property become a camp. If Ms. O'Donnell can bring the property back to a single family residence they would prefer that over a camp. Mr. Allaire stated that he has a nail in the utility pole, trees and barn on his property to mark the flood line.

Chairman Bonney summarized the case. The previous owner hired the applicant's son to jack up the house. In May 2009, the Town Code Enforcement Officer issued a stop work notice, as the 2 year period for repair had expired. The property was taken in foreclosure by the bank. The bank bid for the full amount owed and Ms. O'Donnell has been negotiating with the bank since March 2009. The bank sold the house to Ms. O'Donnell on 8/17/09. She purchased the property to protect her son's assets, and wants to remove the house from the supports. The house cannot be located anywhere else on the property due to zoning restrictions and the river. If a variance is approved, the house would be restored to the same size and footprint.

Ms. O'Donnell plans to restore the house and landscape the property. The house must be raised above the flood line. The house footprint must remain 24' x 24'. The property has 120' of shoreline and is 52' from the seasonal high water mark. The house is listed on the tax card as a 3 bedroom, one bath dwelling. Ms. O'Donnell would like to get started on a new foundation before this winter, assuming FEMA approves the foundation. Ms. O'Donnell needs to obtain a new certificate of elevation. FEMA designs to their specifications. Ms. O'Donnell is starting with a clean slate as new construction, and must obtain all of the permits, including the Shoreline Protection permit that is needed.

Joan Swiggard, 815 Bachelder Road, stated that the yard at 813 Bachelder Road needs dirt brought in, as the shoreline is eroding. Ms. Swiggard is afraid the property may become a target of Halloween pranks by younger kids, and would like to see Ms. O'Donnell seal the property off or put up 'Keep Out' signs. As the new property owner, it is Ms. O'Donnell's responsibility and liability to safeguard the property.

There being no further input, Chairman Bonney closed the public hearing at 8:20 p.m.

The ZBA discussed that the previous owner was given permission to repair the house and did obtain some of the permits necessary in 2007. All of the approvals have expired, as has the time period approved for property repairs of the flood damage from 2007. Tom Hebert asked if the final flood elevation had been determined. It has not.

The ZBA reviewed each of the five variance criteria. 1) There are houses on both sides of this property where the residents have completed all the repairs in the 2-year time period. Both houses were raised to an elevation approved by FEMA. The new owner invested in this property knowing that the site might not be approved for a home. The previous owner started the work, but it appears he walked away from the property with his belongings. A variance is only good for two years. The applicant is starting all over, and the unknown variable is how quickly can the applicant can get new permits and approvals? Did FEMA give anyone any funding for repairs in this area? Everett Hodge stated that once the two abutters completed a new foundation, they sent a letter to the insurance adjuster and then FEMA provided final payment to complete the work. The foundation must be set by a registered licensed land surveyor and approved by FEMA. Chairman Bonney stated that 'some people' have had a long time to complete the repairs on 813 Bachelder Road. Two other properties went through the whole process, and this potential eyesore may be limited to use

as a rented camp space. The ZBA reviewed each of the criteria. 1) Undertaking the repairs will prevent further deterioration of the structure. The code inspector could order the house torn down at the owner's cost as a safety issue. 2A) The original property owner was given a 2-year variance and did not complete the repairs before the house went into foreclosure. Is an additional two year variance too long? What if the process cannot be completed in a year? What was the timeframe for the abutting two properties? Everett Hodge stated each of the abutting property owners took about a year a half to obtain all the approvals and complete the repairs. Everett stated that the Shoreline Protection Act is new and imposes State requirements, including engineering studies. With winter coming, and the possibility that it will take at least a year to get all the approvals, it is feasible that with approvals in hand, the work should take no more than six months. 2B) The house as it sits on supports is dangerous. The applicant needs to either finish it or take it down. 2C) The house could be restored to the way it was, but elevated higher. 3) The house must remain the same size it was, and repairs would promote safe use of the land. Otherwise, it could leave neighbors with an empty, non-buildable lot. 4) Yes, the house would be restored and updated to today's standards. Because the house does not meet side and front setbacks, it is already an existing non-conforming structure. Again, Ms. O'Donnell knew exactly what she was getting into when she purchased the property and 5) yes, property values will improve when the property is safe and returns to the tax rolls. The Board discussed the possibility of granting a one year extension over the two-year time limit that has already expired, starting today.

Motion: Bruce Kudrick moved to approve a ONE YEAR Use Variance from the two year time limit to restore a house located at 813 Bachelder Road damaged in the April 2007 flood, effective 10/20/09. The property is located at 813 Bachelder Road, Map 868 Lot 10 in the R3, AC, SP and Flood Zone B districts. Kathy O'Donnell will have ONE YEAR from 10/20/09 to complete the necessary repairs to return the premises to a safe and habitable condition with the following conditions:

1. The footprint of the house must stay 24' x 24'.
2. All work must be completed within one year from 10/20/09.
3. A licensed surveyor will provide an elevation certificate.
4. The house will have a FEMA certified foundation.
5. The house will remain a three bedroom or less dwelling.
6. The septic system must be approved for the appropriate number of bedrooms.
7. Applicant must follow all applicable Federal, State and Town regulations.
8. Applicant must obtain all permits needed, including Shoreline Protection Act, in her name.
9. Property owner must protect the property from vandalism, using signs and barricades as necessary.
10. Landscaping must be done around the house, including bushes to buffer neighbor's property line.

Mick Pinard seconded.

VOTE: MICK - Y PAUL - Y BRUCE- Y
TOM H Y BILL - Y

MOTION TO GRANT A ONE YEAR USE VARIANCE FROM THE TWO YEAR TIME LIMIT TO RESTORE A HOUSE AT 813 BACHELDER ROAD, MAP 868 LOT 10, TO A SAFE AND HABITABLE CONDITION APPROVED FOR **ONE YEAR** WITH CONDITIONS ON A 5-0 VOTE

MINUTES OF PREVIOUS MEETINGS

Motion: Bruce Kudrick moved to approve the minutes of September 28, 2009 as amended. Mick Pinard seconded.

VOTE: MICK - Y PAUL - Y BRUCE- Y
TOM H Y BILL - Y

MINUTES OF SEPTEMBER 28, 2009 APPROVED AS AMENDED ON A 5-0 VOTE.

OTHER

Equitable Waiver - Everett Hodge described a case that will be on a future ZBA meeting agenda. Everett Hodge inadvertently approved a building permit for a duplex on Pembroke Street that is short on required frontage and on acreage. Framing, plumbing and electrical work is substantially complete under RSA 674-3-a, therefore the town will bear the cost of notification.

Date of next ZBA meeting – The ZBA November 2009 meeting will be on Monday, November 30, 2009.

ADJOURN Motion: Dana Carlucci moved to adjourn. Mick Pinard seconded. Vote was unanimous in favor of motion. Meeting adjourned at 8:45 p.m.

Respectfully submitted,

Susan P. Gifford
Recording Secretary