

LYMAN ZONING BOARD of ADJUSTMENT MINUTES

July 24, 2019

Call to Order: Chairman Robert Chenevert called the meeting to order at 6:00 pm.

Roll Call:

Members – Robert Chenevert, Larry Schieman, Michael O'Brien, Patricia O'Brien

Absent – David Simpson

Alternates – None

Meeting Minutes:

The minutes for the June 18, 2019 regular meeting were reviewed. Robert Chenevert motioned to approve the minutes as written, Patricia O'Brien 2nd, all voted in favor.

Correspondence:

NH Town and City magazine July/August 2019 was provided. Chairman Robert Chenevert looked at the publication quickly and offered board members to take a closer look as well. Any pertinent information will be shared at the October 2019 meeting.

Old Business:

The need for ZBA alternates was discussed briefly. The Chairman addressed the people who were there to attend the upcoming hearing to share some information on the duties and responsibilities of ZBA members. He stated the need for ZBA alternates is great. Debra Heathe was one of the residents in attendance that was invited to attend the meeting by Patricia O'Brien. She asked about the responsibility board members have as well as their meeting schedule. The Chairman answered these questions. The board will continue efforts to find ZBA alternates.

New Business:

Potential ZBA Alternate Craig Simpson was in attendance. He had no additional questions about the expectations and duties of a ZBA Board Member.

Public Hearing:

Chairman Robert Chenevert opened the public hearing at 6:15 pm to address the application for a variance received from Michael & Mary Loughran, Trustees of the Loughran Family Trust of 2018 for a property located at 250 Wilderness Acres Rd, Map 209 Lot 020. The following people were present for the hearing:

Applicants: Michael & Mary Loughran

Abutters: David Pratt

Other Attendees: Roland Bosse, Stephen Delfino, Craig Simpson, Debra Heathe, Bruce Beane

Selectmen Liaison: James Trudell

Town Counsel: Steven Whitley

The hearing was noticed in the Courier, on the Town of Lyman Website, and posted at the Lyman Town Hall. Abutters were noticed via certified mail.

Chairman Robert Chenevert addressed the Loughrans and explained that they did not have a full board as only four members were in attendance and therefore a tied vote would result in a denial for variance. Chenevert asked if the Loughrans would like to continue with the hearing or if they would like to wait until the board was able to offer a full board. Mr. Loughran stated that they would be fine proceeding without the full board. The application for the following variances in the Lyman Zoning Ordinance: Article 7 Section 704 - Side and Rear Yards and Section 705:2 - Height Standard was read aloud by Patricia O'Brien. Chairman Robert Chenevert asked Mr. Loughran if he would like to speak. Mr. Loughran stated that the reasons for the appeal were not valid as the security and location of the wind tower were addressed in the previous hearing and deemed acceptable. He also stated that they had replaced the previously cut wires and that the pole was now securely attached to the oak tree. He then provided photos that showed the new wires as well as the height of the tower beyond the trees. He stated that any concerns that were brought up in Mr. Pratt's motion for rehearing were addressed and answered in the application and at the prior meeting and that he had nothing further to add. Chairman Chenevert asked Mr. Loughran to consider whether or not they would be able to erect a similar wind tower on their property that would not require a variance. Loughran responded stating that although installing a wind tower on a different part of the property was possible the current location was the most efficient location as it is the highest point on their property and therefore is the best location for wind generation. He also addressed the fact that the height of the tower is necessary so that it is able to reach above the tree line to generate energy. Town Council Steven Whitley asked the Loughrans if they could speak to the uniqueness of their property. Mr. Loughran stated that the property was not unique in comparison to surrounding properties.

He also brought up an agreement for a Grant of Easement Release that Mr. Pratt signed in 2016. The Chairman immediately addressed that although this private agreement may be valid it would not factor into the board's decision and does not pertain to the ZBA variance process.

Abutter, David Pratt, stated that the wind tower is more than 80ft high and that in its current location poses a threat of injury as it would land on his property if it were to fall. He presented a property survey map to show the location of the structure. Mr. Pratt stated that he had plans to build a home in the exact location that the structure would hit if it were to fall and stated that Chris Hodge visited the property and inspected the wind tower recently. Mr. Hodge was not in attendance. Mr. Pratt stated that he doesn't believe the structure is secure and that it is only being held up with steel sprinkler pipe. He then suggested a site visit take place with the board. Chairman Chenevert stated that this wasn't necessary as the board members had previously visited the site. Mr. Loughran referenced the photo he had provided showing some other chains also securing the structure. He also referenced the Non-Encroachment Agreement again and stated that it was because of this that he didn't believe Mr. Pratt had any intention of building on that site.

Patricia O'Brien asked Mr. Loughran to explain why he couldn't move the structure. Loughran stated that moving the structure would be very costly as it would require heavy machinery. He also explained that accessing the structure would require the heavy machinery to drive across his leach field and that the potential damage that this could cause would be a significant hardship. Mr. Pratt approached with another map that showed topography and pointed out a path on the map in which he stated that he would be able to access and move the pole without causing damage to the Loughran's leach field. Loughran explained that moving the structure wouldn't be as easy as picking it up and relocating it. He explained that there are buried wires that would need to be moved along with it and reconnected.

Chairman Robert Chenevert asked if anyone had any questions or concerns. There were none. Chairman Chenevert closed the public hearing at 6:53 pm.

The ZBA had a non-meeting with town council privately from 6:55-7:15 pm. The public was then invited back into the town hall.

Chairman Robert Chenevert reviewed the 5 Criteria

1. Granting the variance WOULD NOT be contrary to the public interest because the variance for height standards isn't an issue as the structure blends in with its surrounding and can't be seen easily. Patricia O'Brien stated that she could barely see the structure and Robert Chenevert agreed stating that it took him some time to find the structure when he visited the site. All of the board members agreed.
2. The spirit of the ordinance WOULD be observed because it will have no effect on the abutters' views. Larry Schieman stated that the structure is unobtrusive and there wouldn't be any over-crowding issues.
3. Granting the variance WOULD do substantial justice because this structure provides a significant portion of the energy needed for the applicant's house. Patricia O'Brien stated that it would maintain the integrity of its current use. Larry Schieman stated the obvious importance of allowing the applicant to maintain a power supply. Michael O'Brien believed it was reasonable.
4. For the following reasons, the values of the surrounding properties WOULD NOT be diminished because it was very difficult for the board members that were able to do a site visit to find the structure as it blended in with the surrounding trees. Patricia O'Brien stated that she didn't believe that the structure would negatively impact surrounding properties. The other members agreed.
5. Unnecessary Hardships:
 1. There IS a fair & substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property because no obvious uniqueness to the property was presented that would prevent the structure from being moved to a location that would meet the height and setback requirements. Chairman Chenevert stated that while

the tower may perform best at the highest point on the property it could function in a different location.

2. The proposed use IS NOT a reasonable one because the board agrees that beyond cost they haven't heard enough about why the structure couldn't be moved. Patricia O'Brien states that the only reasons given for the structure not being moved to comply with the zoning regulations pertains to expense which cannot be considered.

The board discussed the application further before making a decision. Chairman Chenevert stated that only four out of the five criteria have been met and that an unnecessary hardship had not been proved. The Chairman motioned to deny the variance as there are no unique restrictions on the property preventing the relocation of the structure, Patricia O'Brien 2nd, all voted in favor.

Chairman Chenevert motioned to appoint Debra Heathe as a ZBA alternate with a term expiring in 2020, Patricia O'Brien 2nd, all voted in favor.

Chairman Chenevert motioned to appoint Craig Simpson as a ZBA alternate with a term expiring in 2021, Larry Schieman 2nd, all voted in favor.

They were given the Town Clerk's hours so that they can be sworn into these positions. They will begin attending the regular meetings as alternates once this process is complete.

Next Regular Meeting Date: October 9, 2019

Adjourn:

Robert Chenevert motioned to adjourn the meeting at 7:43 pm, Michael O'Brien 2nd, all voted in favor.

Approved Date: _____
