

Arundel Zoning Board of Appeals
Minutes
April 7, 2009
Draft Copy

Members Present: James Martemucci, Chairman; Norm Cloutier, Vice Chairman; Erick Van Sickle, John Webb Sr., Roger Scannell and Roland Drew

Also Present: Sarah McDaniel, Esq., Barry Acker of the Landing School of Boat Building Design, Katherine Bassett and Wendy Lank, Recording Secretary

1. Jim Martemucci opened the meeting at 7:05 P.M. in the meeting room of the Arundel Fire Station.
2. **GENERAL VARIANCE REQUEST – Landing School of Boat Building Design, Owner** – 286 River Road; Map 42, Lot 4B; Zoned R-4 Rural Conservation District.

Jim Martemucci asked that we add to the exhibits the approved Proposed Site Plan for Phase III Development for The Landing School of Boat Building Design signed by the Arundel Planning Board. Martemucci also went through all of the exhibits submitted with the application on March 13, 2009.

Martemucci asked Sarah McDaniel to go through her application for a General Variance with the Board.

Sarah McDaniel stated that she is from the firm Murray Plumb & Murray and she is here representing The Landing School of Boat Building Design. McDaniel wanted to make clear that there is no new building planned at all.

McDaniel stated that in 1999 the school received a Conditional Use Permit and a Building Permit for a System Building. The building was built in accordance to those permits. When the school came to the Planning Board in 2000 for their Boat Building Shop it was discovered at that time that the Systems Building violated the side yard setback requirements of the Arundel Land Use Ordinance. The Planning Board informed the school that as a condition of approval they would need to resolve the setback violation.

In May of 2001 The Landing School of Boat Building Design received a Consent Agreement from the Town of Arundel and is recording at the York County Registry of Deeds in book 10718, page 46.

McDaniel stated that The Landing School of Boat Building Design is trying to do some refinancing and one of the conditions for them to receive funding is that they need to receive a variance for the setback violation.

Martemucci asked the applicant why the school did not pursue a variance before.

McDaniel and Barry Acker, of the Landing School of Boat Building Design stated that neither one of them were around at that time so they are not sure why a variance was not pursued.

Roland Drew asked the applicant about their reasonable return on the property.

McDaniel stated that Katherine Bassett would not or could not sell any abutting property. McDaniel stated that because of the building being constructed of steel and connected to another part of the building that it could not just be simply moved.

Martemucci asked Bassett if she objected to the granting of a variance and after some discussion she stated that she did not.

Martemucci asked if there were any other questions and there were none.

The land in question cannot yield a reasonable return unless the variance is granted.

Erick Van Sickle made a motion that because of the inability for the owners to receive funding, the land can not yield a reasonable return unless a variance is granted. Roger Scannell seconded the motion with the vote being 5 in favor 1 opposed.

The need for the variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

Erick Van Sickle made a motion that because of the shape of the lot in question, the need for the variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood. Roger Scannell seconded the motion with the vote being 6-0 in favor.

The granting of the variance will not alter the essential character of the locality.

Erick Van Sickle made a motion that because of its existing barn like structure, the granting of the variance will not alter the essential character of the locality. Roger Scannell seconded the motion with the vote being 6-0 in favor.

The hardship is not the result of action taken by the applicant or a prior owner.

Erick Van Sickle made a motion that because of inaction of the property owner and the Town of Arundel, the hardship is not the result of action taken by the applicant. Roger Scannell seconded the motion with the vote being 6-0 in favor.

Based on clear and convincing evidence presented by the applicant, the proposed use would not cause unsafe, or unhealthful or nuisance conditions.

Erick Van Sickle made a motion that because of the location and layout of the property, the proposed use would not cause unsafe, or unhealthful or nuisance conditions. Roger Scannell seconded the motion with the vote being 6-0 in favor.

Findings of Fact

1. The owner of the property located at 286 River Road is the Landing School of Boat Building Design.
2. The applicant is Sarah A. McDaniel, Esq. of Murray Plumb & Murray in Portland, Maine.
3. The completed Application for Variance was filed on March 13, 2009.
4. The Applicant has demonstrated a legal interest in the subject property and that the subject property has been a lot of record since before 1978.
5. The Applicant is found to have standing for this property located on Arundel Tax Maps as Map 42, Lot 4B.
6. A Certificate of Occupancy was issued by the Arundel Building Inspector for 286 River Road on August 7, 1999.
7. The Applicant received a Consent Agreement from the Town of Arundel in May of 2001.
8. The Consent Agreement was filed with the York County Registry of Deeds and recorded in Book 10718, Page 46 on June 15, 2001.
9. On August 10, 2006 the Arundel Planning Board approved plan dated April 27, 2006 for Phase III of the Development.
10. The Applicant has provided a copy of the Planning Board Decisions dated October 18, 2000 and August 16, 2006.
11. The Landing School of Boat Building Design can not receive funding because their financial institution is requesting them to first receive an After-the-Fact Variance.
12. The property is located in the R4 Land Use District or Rural Conservation District.
13. The Marine Systems Building does not meet the required side setback of 35 feet.
14. The Applicant is looking for an 18 foot side yard setback variance.
15. Because the Marine Systems Building is constructed of metal and is connected to the Boat Building Shop it would be almost impossible to move that section of building without having to dismantle both buildings.

16. The Applicant meets the five relevant criteria for a variance in that:

- (a) Because of the inability for the owners to receive funding, the land **can not** yield a reasonable return unless a variance is granted.
- (b) Because of the shape of the lot in question, the need for the variance **is due** to the unique circumstances of the property and not to the general conditions in the neighborhood.
- (c) Because of its existing barn like structure, the granting of the variance **will not** alter the essential character of the locality.
- (d) Because of inaction of the property owner and the Town of Arundel, the hardship **is not** the result of action taken by the applicant.
- (e) Because of the location and layout of the property, the proposed use **would not** cause unsafe, or unhealthful or nuisance conditions.

Based on the above facts, the Board has concluded that the Application for an After-the-Fact Variance is hereby granted.

3. MINUTES

Erick Van Sickle made a motion to accept the minutes of October 29, 2008 as written. John Webb seconded the motion with the vote being 5 in favor and one abstention.

4. ADJOURNMENT

Jim Martemucci made a motion to adjourn the meeting at 8:15 P.M. Roland Drew seconded the motion with the vote being 6-0 in favor.

Respectfully Submitted,

Wendy E. Lank
Recording Secretary