

**Town of Milford
Zoning Board of Adjustment Minutes
November 3, 2011
Case #22-11
Bob Trudel
Special Exception**

Present: Kevin Johnson, Chairman
Laura Horning
Fletcher Seagroves
Zach Tripp, Alternate

Absent: Steve Bonczar
Steve Winder

Secretary: Peg Ouellette

The applicant, Bob Trudel along with Davina Ferguson, owner of 105 Old Brookline Rd, Map 47, Lot 33, in the Residence "R" district, is requesting a Special Exception from Article V, Section 5.04.2:A.7 to permit a "temporary" carport three (3) ft +/- from the front property line for a period of not more than four (4) years.

MINUTES FOR CASE #22-11 AT THE NOVEMBER 3, 2011 MEETING WERE APPROVED ON JAN 19, 2012.

K. Johnson read the Notice of Hearing into the record as well as the list of abutters. The applicant, Bob Trudel and Davina Ferguson owner of 105 Old Brookline Road, were present.

K. Johnson advised the applicants that they had the right to be heard by a full five-member Board. They can choose to be heard by a four-member Board, but a three vote affirmative is still required for approval. If they choose to be heard by the four-member Board, they must sign a waiver. They signed a waiver.

K. Johnson asked the applicants to present the case.

B. Trudel stated the carport was placed in the only flat surface on the property at the time, to provide protection to vehicles because of oak trees on the property. While it was being erected, a neighbor and friend helped clear the top end of the driveway for the purpose of building a garage and the temporary carport was erected. He is not originally from Milford and did not realize that a permit was needed for a temporary structure. It is movable. After it was assembled he was injured at work on January 20 and with many medical issues it may be necessary to build a handicapped ramp on the side of the building. At the time the carport was erected it would not fit at the side of the house at the top of the driveway because it would have blocked the rear entrance where the deck is. There is a large oak tree on the property line where it would hit. He placed it in the best location. It was flat and easy because when they had the driveway cleared it was at the end and the plow man didn't have to do the whole driveway for Ms. Ferguson to get out; the plow man could come back later and finish clearing the driveway. The reason for asking for the extension is because with his physical limitations from the injury he is unable to remove the carport.

K. Johnson said the application refers to pictures, to get a better view.

B. Trudel said he has them on his phone; they lost power this week and his computer was down. He can show the pictures on his phone.

K. Johnson asked to see them, being concerned as to how it relates to Old Brookline Road and whether it blocks the view of traffic.

B. Trudel stated that when backing down the driveway one can pass the carport completely by 12 feet before reaching the paved street. He showed a picture that illustrates this.

L. Horning asked him to clarify which lot is theirs on the picture submitted with the application.

K. Johnson stated the phone picture showed exactly what he needed to see, and showed it to the other Board members.

B. Trudel said there is a telephone pole and had spoken to PSNH.

L. Horning expressed concern about it being very close to the pole.

B. Trudel said he spoke to PSNH twice.

L. Horning asked if they had any concern regarding being able to access it to repair it, etc., because the Board has to address not just his property, but public safety.

D. Ferguson said PSNH has already had to fix something there.

L. Horning said she would have liked to have seen a letter from PSNH

B. Trudel said the frame is 12 inches from the pole.

D. Ferguson said PSNH already has come out to fix something and had no problem.

B. Trudel said he spoke to the men in the lift truck.

The Board members looked at the photos on the phone.

B. Trudel said there is also a rock that is the property line.

L. Horning asked if this is for a second vehicle?

B. Trudel said yes; it was specially made. It is wider and longer. It is 24' across and 20' deep; enough to fit his truck and wide enough to fit two vehicles side by side.

L. Horning asked which lot owner helped him clear the area.

B. Trudel said the once closest to his land; the neighbor also helped put the carport up.

F. Seagroves asked if the carport is a canvas, framed unit.

B. Trudel said it is.
F. Seagroves said it could probably be moved by six men.
B. Trudel said it is quite large.
F. Seagroves asked if it is temporary.
B. Trudel said it is; the reason for the permit is because..
L. Horning said the Board understands that with his health issues.
B. Trudel said he also wants Ms. Ferguson to be able to get out of the driveway in winter.
S. Seagroves asked if it is sitting on bare ground.
B. Trudel said yes, and it is flat ground. It is where the excavator was when the house was built and when he raked out leaves, etc. it was a flat piece of ground and the right size.
L. Horning asked what happens if an animal like a raccoon moves in.
B. Trudel said it is up off the ground, six feet above the ground. He doesn't lower the side because of concern with the wind tearing zippers, etc. It stays open year-round and there is nothing else in it except for two cars and once in awhile a motorcycle.
F. Seagroves asked if it is staked down.
B. Trudel said there are four original screw-in stakes.
F. Seagroves said he had a similar structure but much smaller and the wind did pick it up and move it.
B. Trudel said he had the original four and then two extras and put one on each small pole as well. Those are three feet long.
F. Seagroves said his concern was that the wind would pick it up.
B. Trudel stated the cover would tear off before the frame would move because the screws are all the way into the ground and then chained.
L. Horning said she asked about animals is because it is so close to the street, with children riding bikes of people walking past, etc., and if there were a raccoon or feral cats, etc in there it would be a public safety issue.
B. Trudel said the rear cover is off the ground and can be pulled tighter or looser to let air pass through, so there is no place that is warm for anything to want to stay because there is always an airflow through.
K. Johnson opened the meeting for public comment.
B. Parker, Community Development Director/Zoning Administrator added that our Residential Code Enforcement Officer, Dana McAllister, has spoken with the applicant several times and as far as the solidity or integrity of the structure, he has had no issues with what he has inspected.
B. Trudel confirmed that he had spoken to Mr. McAllister many times on the phone and Mr. McAllister was extremely helpful and willing to work with him because it was a medical issue; it is not possible at this time for him to move it.
L. Horning asked if is Mr. Trudel's vehicle being parked in it.
B. Trudel and Ms. Ferguson said it's both of theirs; that is why it is 24 feet wide.
K. Johnson asked for any further comments. There were none, so he closed the public portion of the meeting. There were no letters, e-mails, comments received by the Board regarding this case. He requested the applicant to read the application into the record.

Description of proposed use: to get a temporary permit for 24' by 21' carport, approximately 12 feet from the property line being the road and three feet from the neighbor's property line, for a period of not more than four years or until January 2016, whichever comes first.

Facts supporting this request:

1. The proposed use shall be similar to those permitted in the district.

There are several other carports on Old Brookline Rd. It is only for residential use and not used for car repairs, etc. It is a temporary structure and the neighbors have two of them.

2. The specific site is an appropriate one for the proposed use.

Because of acorns and branches falling into the driveway and damaging vehicles; medical conditions prevent snow removal of entire driveway so it needed to be close to the road. The only other level area would hinder possible handicap ramp access in future if needed.

3. The use as developed will not adversely affect the adjacent area because:

It is for residential use in a residential area. It is extremely well maintained and snow is removed from "street" side after large storms by hired tractor similar to other uses in area.

4. There will be no nuisance or serious hazard to vehicles or pedestrians:

It is set back from road and does not hinder visual field of roadway at all. There are no hazards to pedestrians or other vehicles and no signs or flags are hung on it. As stated above, after storms between shelter and road, snow is removed by tractor for hire. (applicant stated that it is tied down and will be maintained properly.)

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

It has been for 1 ½ years and has been meticulously maintained and has not been a burden to anyone or unkempt. Have been in contact with PSNH who have worked on pole for house. Had no issue accessing utility pole. Carport was no a hindrance for utility pole when asked.

Garage was being planned for top of driveway but injuries halted and prevented forward progress.

K. Johnson asked if there were any other questions. There were none.

K. Johnson cited the Town of Milford Zoning Ordinance Article V, Section 5.04.2:A.7 Acceptable Uses and Yard Requirements by Special Exception : 7. Reduced Front, Side and Rear Setbacks. So the special exception is one that is allowed by the ordinance.

The Board then discussed the five criteria for granting a special exception under Section 10.02.1:

1. The proposed use shall be similar to those permitted in the district:

F. Seagroves said that in Residential R reduced side and rear setback is allowed by special exception.

Z. Tripp said it is allowed by special exception. Applicant stated the neighbors have two carports so it is not uncommon.

L. Horning said it is by special exception allowed in the district.

K. Johnson said the use is allowed by special exception and carports are common residential areas.

2. The specific site is an appropriate location for the proposed use:

F. Seagroves said the applicant stated the location was the only flat place to place it at the time. The applicant said yes, and he was not able to put it at the top of the driveway because of the tree on the property line and the steps from the deck.

Z. Tripp said the applicant testified it is the flat piece on the lot to place it.

L. Horning agreed with the rest of the Board, as per the application and pictures shown by the applicant that the specific site is the only appropriate location on the lot for this proposed use.

K. Johnson said it is an appropriate site.

3. The use as developed will not adversely affect the adjacent areas:

F. Seagroves said he did not feel it would affect the adjacent areas.

Z. Tripp said the adjacent areas would be neighbors and since the neighbor helped install it he did not think there would be an impact; in the application it was stated it has been there for a year and a half and there is no evidence that there has been any negative impact over that time.

L. Horning said, as was pointed out by Z. Tripp, it has been there for a year and a half and there have been no complaints, letters received, disagreeing or expressing discontent as to the carport being in the current location.

K. Johnson said that, as Z. Tripp stated, it will not adversely affect the neighbor's property; the one he is closest to is the one who helped install it.

4. There will be no nuisance or serious hazard to vehicles or pedestrians.

F. Seagroves said it is a little close to the line by the road, but he did not see it would affect drivers or pedestrians.

Z. Tripp said the Board viewed the pictures showing a clear line of sight.

L. Horning said the applicant stated that PSNH had no concerns with accessing the utility pole, and it had been addressed in the application. She hoped the applicant would print out the photos and to be included with the application in the event any member of the public comes back to look at the application, so they can see the allotment to allow for curvature of the road. She stated there was plenty of space from what the Board saw for visual for pedestrians and vehicles.

K. Johnson said as Z. Tripp pointed out it has been there a year and a half and there have been no issues they have heard of with vehicles.

5. Appropriate facilities will be provided for the proper operation of the proposed use because:

F. Seagroves said the only thing he saw, as discussed, that it is tied down and will be maintained properly so he didn't see any problems.

Z. Tripp said the experience of the Board member has shown it was installed properly.

L. Horning said as the applicant stated it is open-ended which addressed the concern of animals, as well as the fly-away issue. It has been stated by the Zoning Administrator that it has been inspected so she did believe that adequate and appropriate facilities are provided for proper operation for this conditional use.

K. Johnson said that as both Z. Tripp and F. Seagroves pointed out, the applicant took the time to properly install it, it is securely anchored. What the applicant has done is the best that can be done for that nature of item.

K. Johnson said before the vote the Board needs to discuss a condition to it. The Office would like a condition placed on the carport that at some point in the future, whether a specific date or time frame, be added to the Special Exception. He read the specific comment: " Applicant is seeking permission to allow a 25' x 24' temporary structure to remain as currently located, structure encroaches in both side and front setbacks. Applicant is requesting a 4-year permission. If granted would recommend the approval period be made part of the conditions of approval to allow for enforcement action, if necessary. "

K. Johnson stated the applicant put a date of January 2016 in the application; the easiest way to word it would be that a condition of granting the exception would be that the carport be removed no later than January 1, 2016.

F. Seagroves said if, due to health reasons, etc., it can't be removed, the applicant can come back to the ZBA.

B. Trudel said Mr. McAllister had informed him of that; he hopes not to have to do so.

F. Seagroves said the Board is just informing him that if he has to, he can come back and request an extension.

Z. Tripp made a motion, if Case 22-11 is approved, a condition that the carport be removed from the setbacks on or before January 1, 2016.

L. Horning seconded the motion.

K. Johnson asked for those in favor. All in favor; none opposed.

B. Trudel thanked the Board for their time.

K. Johnson said, taking into consideration the attached conditions and after reviewing

the petition and hearing all of the evidence and taking into consideration the personal knowledge of the property in question, this Board of Adjustment member has determined the following findings of fact:

1. Is the exception allowed by the Ordinance?

F. Seagroves – yes L. Horning – yes Z. Tripp – yes K. Johnson – yes

2. Are the specified conditions present under which the exception may be granted, including the conditions which the Board attached?

F. Seagroves – yes L. Horning – yes Z. Tripp – yes K. Johnson – yes.

K. Johnson asked for a motion to approve.

L. Horning made a motion to approve Case #22-11/

Z. Tripp seconded the motion.

Final Vote:

F. Seagroves – yes

L. Horning – yes

Z. Tripp – yes

K. Johnson – yes

Case #22-11 was unanimously approved with the condition that the carport be removed no later than January 1, 2016. He reminded the applicant of the 30 day appeal period.