

recommending that Ms. Eklund's variance be approved, which it was. So there is a variance in place for the violation on the Eklund property.

Mr. Hill referred to the timeline that was provided to the members which documents the sequence of events that have taken place. Mr. Hill noted a few excerpts from the timeline, noting the lot was purchased in 1994 from the Town. He provided an excerpt for the original subdivision. The deed from the Town states 55' of frontage. In March 2008 the building permit was issued for the foundation, was installed and inspected by the Code Enforcement Officer (CEO) later in March. Later on Ms. Eklund approached the CEO, stating she thought the foundation was too close, and the CEO said that it would be appropriate for her to get a survey. She hired Mr. Wood, who prepared the sketch which the board has, dated June 15th 2009. Mr. Madison had only installed the foundation at that time. In June 2012 the building permit was issued by the CEO for the home to be built on the existing foundation. On August 20th, 2012, the CEO inspected the property and recorded in his file that the structure was substantially complete. The walls, sheathing and roof were up. The doors, windows, plumbing and heating were in place. On October 30th, 2012, the CEO contacted Mr. Madison and stated he had just been given the Harry Woods' sketch showing there was an encroachment. The Woods' sketch was dated June 2009, but wasn't given to Mr. Madison, when it came through the CEO, until October 2012. Work stopped then, except that the contractor erroneously went ahead with the deck.

The results of the Dolan survey determined there is an encroachment, which is why they are here and have filed for the equitable waiver. Mr. Hill stated that this case is precisely why the equitable waiver law was passed. The building was determined substantially complete before the Wood sketch was given to Mr. Madison. Going back to when the initial building permit was pulled, the builder did the sketch, showing that there were the appropriate 20' setbacks. Mr. Madison relied on the contractor, who said he knew where the lines were and knew that that the setbacks were 20'. There was no ignorance of what the dimension was, but the error was where the line was. In 20/20 hind sight, they'd say get a survey before you start work, but that was a big expense, there was no legal requirement to do one and it was not done. Mr. Hill illustrated how the house was placed and showed examples of how confusing of a situation it is in that area. Mr. Hill scaled off of the recorded plan showing that there is approximately 36' at the Lake End and approximately 40' at the front, leaving plenty of space to put a 28' house in. The problem is that the lot doesn't look like that. It is easy to see that a mistake could be made. The mistake was measuring from the water. There were no monuments at the road. The side lines aren't parallel which makes it further difficult to line up.

Mr. Hill stated that they have not applied for an equitable waiver for the deck and are not expecting to get one. It shouldn't have been started and understand that it will have to be taken down and made smaller to conform. It was done in error after the Town sent Mr. Madison the notice that there had been a sketch plan prepared by Harry Wood that showed there was an encroachment.

Mr. Hill briefly reviewed each of the sections of RSA 674:33-a Equitable Waiver of Dimensional Requirement. He stated first that it was a dimensional regulation. It was a residential use in a residential district. Second, the problem was not revealed until after the foundation had been in the ground for four years and the building had been substantially completed. If the Woods sketch had been delivered than the issue could have been addressed. It is their position that this was an honest, regrettable mistake and it now would be expensive and inequitable to take down the house, jack hammer the foundation and start over again just four feet over. They believe that it doesn't significantly hurt anyone. The small variation does not change the character of the neighborhood. Cutting it off, for Ms. Eklund's benefit, wouldn't actually benefit her. Mr. Hill noted the view from Ms. Eklund's deck is south east out to the lake. The Madison property is looking towards the north. Mr. Hill showed on the plan that the view lines would not change if the house were to be removed and moved over four feet. It is not a nuisance, and it doesn't harm anybody's values. The statute says "The cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected."

Mr. Hill stated there was an issue about grading, which is not before the zoning board tonight, but it has been raised and discussed. He stated they understand that they are responsible for properly grading and taking care so that water doesn't flow onto the neighbors or the road. They are working with a landscape contractor for that. The CEO partially lifted the stop work order so that the grounds work can be done to address that. Another question that has arisen on the project is the height of the building. Again, they understand that until that is correctly addressed there won't be any Certificate of Occupancy, but that is the jurisdiction of the CEO. Lastly Mr. Hill stated that this was not a popularity contest, it ultimately is the Board's judgment whether it's inequitable to require the building and foundation to be destroyed. All land use regulations involve a balance between public and private interests. What needs to be decided is 'The cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.' The statute was passed to deal with situations like this, essentially where the community doesn't gain anything by the waste of taking it down and moving it over four feet.

Mr. Stephens commented that a statement was made that the equitable waiver they were looking at was the line abutting the Eklund property. He noted on the Dolan plan that there was an encroachment on the other side. Mr. Woodruff commented that the Board had requested the survey to do fact finding, to find out exactly where the foundation and structure was. What came out of the survey was that there is an inequity on three corners and that is what is before the Board.

Mr. Nolin commented since this is an equitable waiver of dimensions, so they are talking about the three sides, he asked about the height dimension. Mr. Stephens stated that was not before this board. Mr. Woodruff cautioned the board that that issue, which has not been determined 100% yet, is a ministerial action that is still in the purview of the CEO and that depending on the outcome could come before the ZBA. If they talk about it now, they could be showing bias for a potential case that could come before them. Mr. Nolin wanted to make certain that the request for equitable waiver of dimension did not include the height. It was noted their application did not. That could be contained in a Notice of Decision if and when a decision is crafted.

Mr. Hopkins noted that he had a few questions regarding the time line. He questioned what the May 2008 abutter letter was notifying non-conformity. Mr. Hill believes that it was a letter sent to the CEO that stated they believe the property is out of conformity and the CEO's response was that he thought it needed to be surveyed. Mr. Hopkins then questioned the June 2008 letter, asking who that was to. It was to Ms. Eklund. Mr. Hopkins asked if the applicant was copied on that letter. It was stated no. Mr. Hopkins asked when the applicant became aware of the non-conformity. Mr. Cahoon stated in 2012 when he got the copy of the 2009 Wood survey. He sent a letter on 10/30/12 saying there was a violation. Mr. Hopkins questioned the status of the structure at that time. Mr. Cahoon noted it was fairly well built.

Mr. King asked what the cost of moving it is. Mr. Hill stated that they did not know exactly. At the prior hearing Mr. Madison estimated it to be about \$200,000 to tear it down, jack hammer the foundation, construct a new foundation and rebuild the house. So to get it to be conforming, moving it four feet over, will cost approximately \$200,000. Mr. King asked how much for a building mover, as that would be far less expensive. Mr. Hill stated that it would still be too wide. All you would be doing is moving it over to create another violation on the other side. Mr. King commented that you could move it towards the road. Mr. Hill stated they don't have any figures on that. Mr. King stated he'd like that figure since that's question #4, and the board needs to have that in front of them. Mr. King commented that at the onsite visit he had measured twenty feet from the foundation and that was in the middle of the pavement, the Eklund driveway, and he felt that that should have sent up a red flag for Mr. Madison that there may be an issue with the setback from the property line.

Mr. Woodruff commented that he thought the most important thing that comes out of this is the timeline and the testimony from Mr. Cahoon with regard to the amount that the structure was completed. When the 2009 survey was actually submitted to the Town, those are very important facts. What comes

out of it in his professional opinion is that this is probably the most complete classic case for granting an equitable waiver of dimensional requirements that he has ever seen, and recommended that the board do so.

A comment was made that it was almost impossible for the Board to determine the mindset of the applicant.

Mr. Stephens opened the hearing for public input, first from abutters, then the general public.

Korina Kobylarz, daughter of abutter Frances Eklund, 19 Myrtle Drive, stated there was an inconsistency with what Attorney Hill has stated. She noted complaints which related to the CEO's integrity, the incringement [sic] of their setback by the Madison building, and several other comments that related to events between the two property owners. Ms. Kobylarz stated that they were against the ZBA granting the equitable waiver.

Ken Kasarjian voiced his opinion in regards as to how the Board should adjudicate the request for the equitable waiver and stated that he was not in favor of the Board granting the request.

Mr. Stephens asked if there were any other members of the public who wished to enter testimony into the record this evening. There was none at this time.

Mr. Stephens asked if there were any additional questions from the board at this time, it was noted there were none. The board went into deliberative session to discuss each of the criteria for the granting of an Equitable Waiver of Dimensional Requirements at 8:19 PM and came out of deliberative session at 9:02 PM.

Mr. Hill pointed out that Mr. King's comment that if you measure 20' from the structure that it is into the abutting driveway, he did not think that was the case, and even if it were, the driveway's not a boundary. He understood what Mr. Kind said, that it should alert you to something, but on the other hand there are all sorts of features that encroach. Mr. Hill referred to the plan, noting that the abutter to the north encroaches on Mr. Madison's lot with his landscaping.

Ms. Kobylarz stated that they had measured the line to be in the driveway and acknowledged that that was not a formal survey, but it did inform the applicant that there was an issue and that he should have been sure of the lot line before he built.

Ken Kasarjian made two comments, one relative to property values and second was "what did you know, when did you know it or you should have known". This has been brought up here.

The voting members were Bob S., Russ, Joe, Bob Z., and Ken.

Motion: Mr. Bickford moved to deny the request for **Richard Madison, TM 99 Lot 196**, for an Equitable Waiver of Dimensional Requirements, close the public hearing, and to direct staff to draft a formal Notice of Decision, for Board discussion only, based on the Finding of Facts during tonight's hearing, which will be reviewed for accuracy only, and signed by the Chair at the next scheduled meeting, seconded by Mr. Crowe, passed three (3) in favor (Bickford, Crowe, Nolin and two (2) opposed (Stephens, Zewski).

Mr. Stephens noted the right to file a motion for rehearing in accordance with NH RSA 677:2 would begin tomorrow.

2. K.A. Clason – Fine Woodworking Corp., for David & Ann Harrington (194-39)
(14 Falcon Way) Variance from Article III B(3)

Mr. Stephens stated that this was an application for a variance to allow for demolition of a grandfathered non-conforming cottage 15 feet from the property sideline and 20 feet from the shoreline.

Kurt Clason was present representing Ann & Dave Harrington. Mr. Clason presented the application for variance. Mr. Clason briefly described the existing building, a small bunkhouse, original to the site which was built by the applicant's parents. The proposal is to remove the existing cottage and replace it with another cottage in the same footprint, same pervious area. Mr. Clason described the lot and the location of the cottage, which encroaches 5' into the setback. They could move the cottage to comply but that would bring it into the driveway. He stated that the applicant's mother, who is a paraplegic, is concerned about access into the site. If the driveway is moved over they will encroach on the south side. They are looking for the least impact to the site if they are granted permission to rebuild the cottage. There is a mature stand of trees that would need to be removed if they moved it down. To rebuild where it is would be the least impact to the neighborhood and the environment. Mr. Clason explained why they could not rebuild into any other conforming areas on the site, due to a turnaround area, the septic and the main house. They are requesting to rebuild the cottage in the same footprint. The neighbor to the north provided an email in favor of the proposal. There currently is a half bath in the cottage and the building proposed will have a half bath and will be hooked up to the new septic system. Mr. Clason addressed the criteria for the granting of a variance and answered any questions from the board.

Mr. Nolin asked what the proposed foundation would be. Mr. Clason stated sonatubes.

Mr. Bickford questioned the height of the new building. Mr. Clason stated it would be about 1 ½ feet higher as they are changing the pitch of the roof from about a 3 pitch to an 8 pitch.

Mr. Bickford noted the drawing appears to have an outdoor shower and asked if that was allowed. Mr. Clason noted the proposed outdoor shower would be located in a conforming area and is not included in the variance they were requesting. Mr. Stephens stated this would be a Code Enforcement related issue and would be addressed with the septic if there are any for an outdoor shower. The board has dealt with a similar situation before. It must be tied into the septic system. If the board were to make a motion to grant the variance it could be a part of the notice of decision requiring the shower to be compliant with code requirements. Mr. Woodruff stated the footprint can be increased by 20% which is allowed in the zoning ordinance.

Mr. Clason provided several photos of the site, showing the existing cottage and the view of the site coming in the driveway, showing the narrow lot and the cottage.

Mr. King stated that he felt that the building could be tweaked and the new building could be brought into compliance.

Mr. Stephens asked the members if they would like to schedule an onsite visit of the property. There were three members that did not feel it was necessary. Mr. King felt that it was important to go.

Mr. Stephens opened the hearing for public input. There was none noted.

Mr. Stephens asked if there were any additional questions from the board at this time, it was noted there were none. The board went into deliberative session to discuss each of the criteria for granting the variance at 9:30 PM and came out of deliberative session at 9:37 PM.

Mr. Stephens asked if there were any additional questions from the board at this time. Mr. King asked for the Planners opinion on the proposal. Mr. King asked the Planner if it was not the intent of our Zoning Ordinance to bring non-conforming structures into conformance when possible. Mr. Woodruff stated yes, every ordinance, it is in our ordinance. Mr. Woodruff referred to his Staff Memo of October 29th, noting that he was not in favor of granting the variance and read the reasons why from his memo. Mr. Woodruff recommended a site visit.

Motion: Mr. Crowe moved that the board conduct an on-site visit for the David & Ann Harrington property (194-39) on Saturday, November 9th, 2013 at 7:45 a.m., seconded by Mr. Nolin, carried unanimously.

Motion: Mr. Stephens moved to table the application for K.A. Clason – Fine Woodworking Corp., for David & Ann Harrington (194-39) and to continue the public hearing until November 20, 2013, seconded by Mr. Bickford, carried unanimously.

V. Correspondence

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for the October 16th, 2013, denial of a variance for Brian Lynah (130-57)(40 Gansy Lane).

The Board reviewed the Draft Notice of Decision prepared by staff, as directed by the Board at the hearing on October 16th. There were no changes made to the draft.

Motion: Mr. Bickford moved to direct the Chairman to sign the Notice of Decision as written, for **Brian Lynah, Tax Map 130 Lot 57** and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Crowe.

2. The Board was provided with a draft of the 2014 ZBA Meeting Dates. Mr. Woodruff questioned if there were any changes the board would like to make at this time. None were noted.

Motion: Mr. Stephens moved to approve the 2014 ZBA Meeting Dates as presented, seconded by Mr. Crowe, carried unanimously.

VI. Unfinished Business

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 9:44 PM, seconded by Mr. Crowe, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant