

**MINUTES**  
**NEW DURHAM ZONING BOARD OF**  
**ADJUSTMENT**  
**JUNE 10, 2009**

Vice-Chairperson Larry Prelli called the meeting to order at 7:10 PM.

**Roll Call:** Larry Prelli (Vice-Chair), Bill McGrew, Wendy Anderson, Mike Hoffman, Helen Wellman

**Others Present:** Lees Brown

**Election of Chair:** Vice-Chair Prelli announced that Terry Jarvis had resigned from the ZBA upon her election as a member of the Town Select board, making it necessary to elect a new chair.

Mike Hoffman nominated Larry Prelli as chair. Bill McGrew seconded. Mr. Prelli was elected unanimously with no abstentions.

**Brown Variance:** Chair Prelli invited Mr. Lees Brown to present his request for a variance.

Mr. Brown said he wanted to build a garage that would be 5' away from the property line, instead of the 15' required by Article IV, Section C.2 of the Zoning Ordinance. The garage would be alongside the property line to the left side of the house, facing the house from the road, and set forward slightly toward the road from the front of the house. He said there was no other viable option for location of the garage.

Mike Hoffman asked if the abutters had been notified of the variance request and if any abutters had expressed concerns. David Allen said they had been notified and he had not heard from either of the two abutters.

Mr. Brown reported that he had asked a contractor to look at other potential locations for the garage, and the contractor had told him there were significant disadvantages to any other potential location.

To build the garage on the right side of the house would require removal of some trees that form a visual barrier between his house and the house of the abutter on the right side. That abutter, Vernon Balsler, had specifically told Mr. Brown he did not want to lose the tree barrier. The trees could be protected by placing the garage directly adjacent to the right side of the house and underneath the deck on the right side of the house.

However, the contractor told Mr. Brown that location would require considerable excavation and additional water sealing, and he (the contractor) could not guarantee that it would be waterproof. Mr. Brown added that it would disrupt drainage troughs he had dug to eliminate water in his basement, it would be considerably more expensive than a garage in the proposed location, and it would require driving in the south leg of the driveway which is quite steep, creating a safety problem in snowy or icy weather.

Wendy Anderson asked about the feasibility of placing the garage in front of the house in the semicircle created by the U-shaped driveway. Mr. Brown said he had explored that option and rejected it for a couple of reasons. It would require rerouting his water supply pipe, it would be expensive because of the amount of ledge in that part of the lot, and it would require a sharper turn from the driveway into the garage making it more difficult to get the car in and out.

Mr. Brown also pointed out that the septic system is located to the left and back of the house, so that prevents putting the garage in that location.

Bill McGrew asked if it would be possible to move the garage a little to the right to bring it a few feet further away from the property line. Mr. Brown said that would bring the corner of the garage into the area of the driveway and make it difficult for a service truck or other wide vehicle to get in and out of the driveway. Mr. McGrew asked about angling the back right hand corner of the garage a little toward the house, and Mr. Brown said that the angle he has placed the garage at is the ideal angle for getting a vehicle in and out of the garage and moving it away from that angle would be a problem.

Chair Larry Prelli closed the public comment period at 8:08 PM. He noted that Mr. Brown's request is for an area variance, not a use variance. A garage is a legitimate land use in this zoning district. He said the Boccia decision says that the test for the ZBA to use in an area variance is to determine if the area variance is the only feasible way for the property owner to be able to locate an allowable use on the property. He added that there must be something unique in the natural features of the property that makes it infeasible without the area variance.

Wendy Anderson noted that she wanted to be sure that the Board was not setting a precedent that would invite other variance requests. Bill McGrew said he would prefer to have more precise measurements to review. Mike Hoffman asked for confirmation that the abutting property owner on the left side of the lot (facing the house from the road) had been notified and had returned the receipt. Mr. Allen confirmed.

Mr. McGrew said he thought the proposed garage was a reasonable size (18' x 10') and it would not harm the abutter's property rights because there is no structure on it

at this time, and he could site his house far enough back from the road to avoid any visual problem that the garage might create. He said he was convinced that there were significant problems with any other place on the lot.

Larry Prelli said he was particularly persuaded by the safety concerns in trying to build to the right of the house. Not only could the property owner risk injury from sliding on ice on the steep right side of the driveway, but if a car slipped or rolled backwards down the driveway it would go directly in the front center of the lot across the street, creating a safety concern for the neighbor.

Helen Wellman indicated she had no reservations about the request. Wendy Anderson said she still had reservations about the garage being so close to the next property. She thinks it might be technically feasible to build the garage in front of the house in the center of the U driveway, but she can see that the cost would be significantly higher because of the ledge, steepness, and water pipe. She also believes the sharp turn that would be needed into the garage does create a legitimate safety concern.

**Larry Prelli moved to grant a variance to Article IV, Section C.2 of the New Durham Zoning and Land Use Ordinance, to allow Mr. Lees Brown to construct a one story garage at the location shown in his application materials at 7 Winsor Way, (Tax Map 27A, Lot 65) in New Durham with the condition that no part of the garage, including overhang, will be less than 5' (five feet) from the property line. Mike Hoffman seconded. The motion was approved unanimously with no abstentions.**

**Minutes:** Chair Larry Prelli tabled the minutes until the next meeting to give Board members time to read and review them.

**Adjourn:** Mike Hoffman moved to adjourn the meeting at 8:40 PM. Bill McGrew seconded. Approved Unanimously.

Respectfully submitted,

David Allen  
Land Use Administrative Assistant

Minutes Approved October 14, 2009

Town of New Durham