

DRAFT MINUTES

ZONING BOARD OF ADJUSTMENT

AUGUST 15, 2012

Chairperson Larry Prelli called the meeting to order at 7:04 PM.

Roll Call: Larry Prelli (Chair), Wendy Anderson, Mike Hoffman, Dave Shagoury

Others Present: Ms. Aston-Fleming, Mr. Colbath, Ms. Michaud, David Allen, Thomas Mottl, Cecil Williams

Aston-Fleming: Chair Prelli noted that the applicant has a right to a full board of five members. Only four are present. Ms. Fleming indicated she wanted to proceed. Chair Prelli asked if there was any perception of a conflict of interest regarding any board member. Ms. Fleming and Mr. Colbath, her contractor, indicated there was none.

Ms. Fleming described her situation. She lives six months a year in New Durham and six months in Florida. She drives her car to Florida and back. She anticipates that in a few years, she will no longer be able to make the drive, and she will fly back and forth. While in Florida, she does not want her car exposed to the New Hampshire winter elements. Therefore, she wants to build a garage on the site.

Her contractor, Mr. Colbath said that because of the layout of the existing lot, there is only one site to place the garage: on the northwest corner of the lot. Ms. Fleming is asking to build an 18' x 24' garage that impinges on the 20' setback from the road required by Article XVII.... The well for the lot is located directly behind the proposed garage site making it impossible to move the garage any further away from the road.

The existing structures are a house and a patio. Together they create 16.9% impermeable surface. The proposed garage increases the impermeable cover to 21.2%, greater than the 20% allowed by Article XVII Section F 2 d.

Ms. Fleming stated that it would create a hardship for her to leave the car unused and unprotected from the elements for 6 months of the year, and this hardship justifies the need for exceeding the 20% impermeable surface. The configuration of the lot, specifically the location of the well creates a hardship related to the unique circumstances of the lot that justifies the need for impinging 10' into the roadway setback.

Mr. Prelli asked for board and public questions and comments. Jan Michaud, an abutter, said she agreed on the need for a garage and had no problem with granting a variance. She added that there is an intermittent stream crossing the property that is an additional factor limiting use of the lot.

Mike Hoffman and Larry Prelli said they were not convinced that the ability to garage the car for six months created a hardship that justified exceeding the zoning ordinance limit of 20% impervious surface. David Allen suggested that it might be possible to install a dry well or other stormwater management BMP in order to reduce the net impervious surface below 20%. Mr. Colbath said he had considered that option but the water table is only 3' below the ground that would make a dry well useless. Mr. Allen noted that there were other options as well and he could consult with the Town's stormwater engineer for guidance.

Chair Prelli suggested the Board consider the second request relating to the garage setback from the right of way being 10' rather than the required 20' setback. Mr. Colbath noted that because of the well there was no way to move the garage further away from the right of way.

Larry Prelli asked Board members what their understanding was of the purpose of the 20' setback. Mike Hoffman said he believed it was for safety purposes for access: both for easy access for emergency vehicles and for protection for the structures themselves. Crowding, 24' road, ditches,

Mr. Hoffman asked how the lot is unique from others in the neighborhood. Jan Michaud said it was a much smaller lot: most of the others have combined several small lots into a single larger lot that is now about one acre in size. David Allen distributed a copy of the tax map. It shows that the lots abutting Ms. Fleming are 1.1 acres, 1.0 acre, .47 acre, and .44 acre respectively.

Ms. Michaud pointed out that the right of way on the streets in this subdivision is 30' whereas on nearby South Shore Road the right of way is often less than that, sometimes as little as 18' wide. David Shagoury noted that the town's code had been changed between the time South Shore Road and this subdivision were laid out.

Wendy Anderson noted that public parking spaces are laid out at 9' widths and suggested the full 18' of the proposed garage could be reduced: 12' would be adequate to allow space to open and close doors.

Chair Prelli asked if the Board was ready to make a decision on the setback. Wendy Anderson said she felt the 10' setback was not adequate and it was unclear if there were unique circumstances of the lot. Mike Hoffman added that giving the variance without clarity about how the lot was unique would undermine the purpose of the ordinance. He added the 18' wide garage was larger than necessary for the reasonable use of the property. David Shagoury agreed with Mr. Hoffman regarding the width of the garage.

Larry Prelli moved to approve the request of Marcia Fleming for a variance to Article XVII.F.2.a to allow the construction of an 18' x 24' garage with a setback from the road right of way of 10' rather than the required 20' on her property at 3 Lake View Way (Map 112, Lot 59). Mike Hoffman seconded. The motion failed on a vote of 0-4.

Mr. Prelli suggested that if the applicants wanted to continue pursuing the option of adding a garage they should reduce the size of the garage and work with Mr. Allen regarding options for stormwater management BMPs that would reduce the net impermeable surface. Mr. Allen added that he would be available to work with the applicant to redesign the plan.

Richard Colbath said it would be helpful if his customer could have some sense that the Board would approve a revised plan if she were going to invest the money on engineering or water table measurement expenses. Would the Board consider a 14' garage? Larry Prelli and Wendy Anderson both noted that it was very hard for the Board to comment on the viability of a potential alternative without having the other information that had been discussed in front of them.

Thomas Mottl: Chair Prelli noted that the applicant has a right to a full board of five members. Only four are present. Mr. Mottl indicated he wanted to proceed. Chair Prelli asked if there was any perception of a conflict of interest regarding any board member. Mr. Mottl indicated there was none.

Mr. Mottl is requesting a variance from Article XVII.D and XVII.F in order to add a walkway and deck within the 50' setback from the Merrymeeting Lake high water line.

Mr. Mottl explained the background for his request. He had initially planned to change his driveway from asphalt to pervious pavement, and add some square footage to the house. This plan would have reduced the impervious surface from 18.9% to 12.1%. Because of the cost of the pervious pavement and the economic situation, he was forced to drop those plans.

The component of the original plan that he wants to continue with is a 4' raised walkway from the driveway, abreast of the west side of the house, to the ground below the house that accesses the waterfront. The raised walkway will replace a ground walkway and stone steps that are in disrepair and have become a safety hazard. About half of this walkway is less than 50' from the waterline.

Currently an open deck extends from the lake side of the house 11' toward the lake. Mr. Mottl also wants to extend this deck 9' to the west of the house and integrate it into the walkway. The entire new section of the deck will be within the 50' setback from the lake.

In addition, Mr. Mottl will construct a gravel-filled basin between the driveway and the house. This will prevent stormwater from running off the driveway toward the house and will mean there will still be a reduction in impervious surface from 18.9% to 18.1%.

The Board reviewed Article XVII.D & XVII.F. In the process, they also reviewed Article XVII.E, which states, "All stairs and walkways within fifty (50) feet of the normal high water level shall not exceed four (4) feet in width." The Board concluded that since Mr. Mottl's proposed walkway meets this criterion it therefore does not require a variance.

The same Article XVII.E states, "The addition of an open deck is permitted up to a maximum of twelve (12) feet towards the normal high water." There was discussion about whether this allowed a deck extending forward the width of the existing house, or if it could extend beyond the existing sides of the house. The Board read nothing in the Article that limits the expansion to the width of the existing house. Since Mr. Mottl's proposed expansion of the deck is 11' towards the water from the house, the Board concluded it is allowed under this article and also does not require a variance.

Larry Prelli moved that the walkway and extension of the deck proposed by Mr. Thomas Mottle at 370 South Shore Road (Map 114, Lot 020) is allowed by Article XVII.E of the New Durham Land Use and Zoning ordinance, and therefore no variance is required. Wendy Anderson seconded. Approved by a vote of 4-0.

New Board Member: David Allen introduced Mr. Cecil Williams to the Zoning Board. Mr. Williams has lived in Litchfield, NH and owned a lake house in New Durham for many years. Recently he has moved full time to New Durham. While in Litchfield, Mr. Williams served 12 years on the Board of Selectmen, 9 years on the Budget Committee, and 9 years on the Zoning Board of Adjustment. He has offered to serve as a member of the New Durham Zoning Board.

Board members discussed the role and expectations of ZBA members and spoke with Mr. Williams regarding his interest and his experience.

Larry Prelli moved that the New Durham Zoning board of Adjustment direct the chair to write to the Board of Selectmen and request the appointment of Mr. Cecil Williams to the ZBA. Wendy Anderson seconded. Approved unanimously.

Minutes of April 18, 2012: Chair Prelli asked if there was any objection to carrying the Minutes of April 18 over to the next ZBA meeting, as members have not yet reviewed them. There was no objection.

Mr. Prelli adjourned the meeting at 9:27 PM.

Respectfully submitted,

David Allen
Land Use Administrative Assistant