

**MINUTES**  
**ZONING BOARD OF APPEALS**  
**APRIL 11, 2008**

The members met at Stow Town Building at 10:00 a.m. for the purpose of conducting a site visit to 63 Robert Road that had been the subject of a public hearing on April 7th. Members present were John Clayton, Edmund Tarnuzzer, Michele Shoemaker, William Byron (associate) and Bruce Fletcher (associate).

**63 Robert Road - Alan and Julie Fish** - The petitioners had sought a side yard variance of approximately five (5) feet to allow construction of an approx. 19-ft. x 40-ft. single-story addition approx. twenty (20) feet from the lot line.

The members arrived at the subject property and were joined by Ms. Fish and direct abutter David Elkins. The corners of the proposed addition were indicated by stakes. It is proposed to wrap the new construction around the rear corner to join an existing rear deck. The common lot line with abutter Elkins was also indicated by several stakes. A group of three trees on the Elkins property, directly opposite the proposed addition, overhang the property line. Ms. Fish pointed out the location of the septic tank that appears to be about ten feet away from the dwelling, and the approximate location of the leach field. Mr. Fletcher had visited the Board of Health prior to the meeting and learned that the 10-ft. easement is for an interceptor drain serving both the Fish and Elkins properties to protect the septic systems from ground water.

The members returned to the Town Building, accompanied by Ms. Fish and Mr. Elkins. Ms. Fish submitted a memo in response to the comments of the Building Inspector. (1) Relocation of the septic tank is proposed. The location of the easement is a hardship in that it is limiting the placement of the addition. (2) The suggestion of a test pit to locate the 4" perforated drainage pipe within the easement will be difficult to undertake. An attempt in that regard has been unsuccessful, and advice from engineers is not to disturb that area. The petitioner stated that the location of the pipe will be made once all plans are completed.

Mr. Tarnuzzer commented that it does not appear the addition will create a dwelling much larger than others in the neighborhood. He did not have a major problem with the petition and felt it is keeping with the neighborhood.

Mr. Clayton wished to address the hardship issue. Ms. Shoemaker noted that the petitioner cannot add to the rear of the dwelling because of the easement that appears to run to the benefit of the neighbor. Any interference could cause a legal action. Ms. Shoemaker said that easements are strong instruments without having an actual title to same. Any disturbance within the easement could cause septic problems for both property owners.

Mr. Clayton asked if there was anything to justify a need for the addition. Ms. Shoemaker referred to the Fish memo mentioned above. Comments at the hearing were that the addition would put the house "in balance" with the opposite end. Mr. Clayton could not justify that as a hardship.

Mr. Fletcher felt it was possible to construct a significant addition without variance. Mr. Clayton asked how a decision could be drafted to address a hardship. Mr. Byron noted the opposition of abutter Elkins. His property is situated such that it would have an impact on his view. Information was that the nearest portion of the Elkins dwelling contains a garage with an accessory apartment above. Mr. Clayton again voiced his concern with the hardship issue.

**Zoning Board of Appeals  
April 11, 2008 - Page Two**

Mr. Fletcher pointed out it will be difficult to perform the site work around the foundation without impacting the existing trees. As there is a basement planned, soil removal will require a place to store it. There will be much machine and heavy equipment activity on the abutter side of the lot. There is also the question of whether the septic tank can be relocated closer to the leach field and still be ten feet away from the addition. One could say an addition could be constructed without variance, but there would still be construction. There would be some benefit to the Town with additional taxable property. Although the addition would be in scale with the neighborhood, Mr. Fletcher had concern with the hardship issue. On the matter of septic tank relocation, he said there would be a new tank installed and the existing tank would be crushed and buried.

It appeared to Ms. Shoemaker there was a reasonable alternative to the addition without a variance. Mr. Fletcher asked if it was possible to grant a variance without prejudice so if conditions unknown at this time arose (perhaps related to the easement), the petitioner could re-file within the two-year bar to repetitive petitions. Mr. Tarnuzzer said that if it is the decision to grant a variance, there could be conditions relating to the Board of Health and other officials.

Mr. Elkins took exception to the Board's acceptance of the Fish memo, and said that abutters had had no access to it. Mr. Clayton reminded this is an open meeting and any abutter could attend. Additionally, as is customary, it was stated at the hearing that the Board would receive any additional documentation within a week to ten days after close of the hearing.

At this point, Mr. Byron favored denial without prejudice to allow the petitioner to work out matters. Mr. Tarnuzzer pointed out that with that option the petitioner could still return and ask for a lesser variance or drop the matter. He did not feel, however, the petitioner would gain much from that action. Mr. Byron felt the easement issue must be addressed, whatever the decision.

Mr. Elkins pointed out that a greater variance is requested for the front portion of the proposed addition than to its rear corner (about 3.5 feet) as the distances between the dwelling and lot line are not uniform. Ms. Shoemaker advised the Board cannot negotiate that matter, but can only act on the request. If the decision is to grant, then the petitioner and neighbor can work things out.

Mr. Tarnuzzer moved to grant the requested approximately five-foot side yard variance, subject to restrictions to be drafted and required compliance with all bylaws. Mr. Byron seconded. The vote was Clayton, Tarnuzzer, Shoemaker and Byron in favor; Fletcher opposed. The motion was declared carried.

The meeting was adjourned at 11:25 a.m.

Respectfully submitted,  
Catherine A. Desmond  
Secretary to the Board