

## **ZONING BOARD OF ADJUSTMENT**

**JUNE 4, 2019**

## **MEMORIAL BUILDING**

**7:00 P.M.**

*The following are to be considered draft minutes until approved by the Board.*

The meeting was called to order.

Present: Susan Chiarella, Chairman; Bryan O'Day, Justin Hastings, Peter Abair, and Tanner Jacques.  
Absent: Cody Patten. Susan asked Tanner to sit in for Cody.

Minutes of May 7, 2019: correction made, second page line 12 They want to get the cars ~~way~~ away from the edge of the road... Motion by Bryan, seconded by Justin to accept as amended. Motion unanimously approved.

At 7:05 Hearing opened for Terri Gerard for a Variance from Article III, section 3.13 B. Tax Map 34, Lot 646-179, 61 Sugar House Road. The application was complete. Abutters notices were sent; legal notice appeared in the Valley News and posted in 2 public places. Terri stated she would like to remove an existing deck and replace it with a covered porch. A couple of years ago she put a standing seam roof on her house. The snow piles up and slides off the roof and has broken the decks on the North side of the house where the entrances to her house are. She would like to build a covered porch for protection and safety at those entrances. Terri stated the home which she purchased in 2012 was built too close to the abutting property line, which she was not aware of until she started looking into building the porch. She hired Clayton Platt to survey the property line in question. The existing deck is 7.3' from the property line and she is seeking 15' of dimensional relief. The dimensions for the proposed porch are 48' x 8' with 12" eaves, and 6' x 3.5' steps on the ends. The porch covers less square footage than the deck and will have less impervious surface. The Board reviewed the proposal with Terri. Susan asked Terri what she thought the hardship was. Terri stated her home currently cannot be entered and exited safely with the potential for all the snow to come crashing down.

Bryan O'Day moved to accept the application and to grant a Variance for 15' of dimensional relief to build a roofed porch no closer than 20' to the property line, as shown on the plan submitted for this hearing, held June 4, 2019. Said proposed porch is entirely within the 35' setback but is less non-conforming and can't be located otherwise. The motion was seconded by Susan and approved by all five members of the Board. The plan was signed and dated for the file.

At 7:35 Hearing opened for William Hester for a Variance from Article IV, section 4.12 B., Tax Map 29; Lot 605-475, 185 Town Farm Road. The application was complete. Abutters notices were sent; legal notice appeared in the Valley News and posted in 2 public places. William stated he would like to build a 24' x 36' (plus eaves) three-bay garage for inside storage of vehicles, boats, snowmobiles, etc., all within the wetland buffer. The location will be located on higher ground and seems to be the best location as far away from the wetlands as possible. The wetland ordinance was imposed after the lot was created. The garage will be kept to the minimum depth to keep furthest distance from wetlands. Whit Smith stated he has been to the site and the location is reasonable. It is reasonable to have storage inside. The Board reviewed the plan. The Board reviewed the facts supporting the request.

**The variance will not be contrary to the public interest because:** This is the best location and driest spot on the property. The vehicles will be parked inside and not in the wetlands buffer.

**The spirit of the ordinance is observed because:** The garage has been designed with a depth of 24' to lessen the impact.

**Substantial justice is done because:** There is no other place on the property. It is a reasonable request to want a garage.

**The values of surrounding properties are not diminished:** There is no impact to surrounding properties. The vehicles will be undercover.

**No fair and substantial relationship exists between the general public purpose of the ordinance and the specific application of that provision to the property because:** The request is reasonable. The garage is not for business use. The proposed location is the most feasible spot on the property.

**The proposed use is a reasonable one because:** Housing vehicles in the garage will further protect the wetlands.

Motion by Susan Chiarella to accept the application and grant a Variance for 80' of dimensional relief to construct a three-bay garage within the 100' wetland buffer, as shown on the plan submitted for this hearing, held June 4, 2019. Motion seconded by Bryan and unanimously approved. The plan was signed and dated for the file.

Whit, Bryan, Justin and George recently attended a Zoning and Planning Workshop. They reviewed some of the discussions that took place. Whit will put together some materials and criteria for review at a future meeting.

Bryan mentioned it would be helpful to have a checklist to review when there is a hearing. Whit will submit a sample checklist.

The process of joint hearings for Site Plan and Special Exceptions were discussed. Whit noted it seems three hearings at once is going to be too much with consultations etc., the Planning Board deals with, so the number moving forward will be less.

**Amended 6/18/2019 to add:** Whit reported that June would mark the first of several joint meetings of the Planning Board and the Zoning Board of Adjustment (ZBA). The NH statutes are clear that joint meetings are permissible. In response to a question regarding whether "shared members" can participate in both meetings,

Whit explained that he and Susan Chiarella had looked into this question. They were concerned about attendance and perhaps a requirement of recusal, thus reducing the number of land use board members hearing a matter to ensure fairness to all applicants.

Whit explained there might have been some misunderstanding or misinterpretation regarding a "requirement" that a shared member recuse him or herself from one of the land use boards during a joint meeting.

This is different from a conflict (perceived or actual) where it is appropriate for a member to recuse. The New Hampshire Municipal Association provided Chairman Chiarella with an opinion regarding recusal from a joint meeting, but the opinion focused on the matter of a conflict, not the fact that a shared member might participate in a joint meeting. The NHMA view is that where there is a conflict (personal or pecuniary) the shared member would recuse; with a clarifying statement: "... that would be true whether the meeting was a joint meeting or not."

So – if a member sitting on both boards had a conflict, recusal (not excusing themselves, or abstention, which have different implications) would be a requirement. It is the conflict that is the basis for the recusal, and not the fact that the member sits on both boards.

Although a joint meeting, the meetings of the Planning Board and the ZBA do not occur simultaneously, but sequentially. That is necessary because the applicant has the right to be present and witness both proceedings.

The NHMA attorney concluded, "I don't believe there would be anything inherent in the meetings being scheduled jointly that would prohibit the member from participating in both (except, of course, if both were having hearings at the same time and, therefore, it would not be possible for the member to be at both, but I assume that it's more likely that they'll be sequential)."

Whit summed up - specifically, to our procedure in point – Bryan O'Day sits on both boards. If he does NOT have a conflict, he can sit on both boards during sequential proceedings. If he does have a conflict, he cannot participate on either board, whether it is during a joint meeting or individual meetings.

The meeting adjourned at 8:20 p.m.

Submitted by,

Janet Roberts  
Administrative Assistant