

Minutes

Zoning Board of Adjustment Meeting

Location: Strafford Town Hall Conference Room

Date & Time: October 21, 2021 7:00PM

Board Members Present:

Ashley Rowe – Chairman

Charlie Burnham - Alternate

Alison Brisson – Vice Chairman

Jean Chartrand-Ewen - Alternate

Aaron Leff

Terry Hyland

Herman Groth

Others Present:

Natalie Moles, Strafford Regional Planning Commission,
Economic Recovery Coordinator

The Chairman called the meeting to order at 7:00PM, indicated the closing date for new applications to be filed for the November 18, 2021 meeting would be Thursday, October 28, 2021, and recognized the board members present.

The Chairman asked if all board members had reviewed the meeting minutes from the last two months, and all members indicated they had. Alison Brisson moved to accept the minutes as written, Aaron Leff seconded the motion, and all members voted in the affirmative. The motion carried.

The Chairman, acknowledging the cases before the board, indicated the need to address them out of order with new Case #430 first followed by old Case #428 and new Case #431.

Case #430: Equitable Waiver Request – KRJ Finance/Michael Whitcher – Browns Pasture Road, Tax Map 22, Lot 51.

The Chairman read for the record: Michael Whitcher is requesting an Equitable Waiver of Dimensional Requirements under NH RSA 674:33-a for a new home under construction on their property. The foundation was identified to be 9-inches off the survey plan than current ordinances require (the as-built survey determined that the structure comes within 39.1 feet of the front boundary at the southerly corner). Given the angle and location of the 9-inch encroachment, there are roughly 50 square inches of encroachment.

The Chairman asked Mr. Whitcher to address the waiver request. Mr. Whitcher, with reference to the Application for an Equitable Waiver of Dimensional Requirements, indicated the error was discovered during the routine foundation as built inspection. The error was the result of reliance on an iron pipe as the property corner during lot lay out, later discovered to be 9" off the survey plan based on an actual pin under the pipe, but off set slightly. Relocating the home would be expensive or clipping off the corner of the foundation would change the look of house from the roadway view. The

approximately 50 square inches of encroachment does not effect the neighbors or the town in any way. The error was not due to ignorance of the law regarding set backs.

The Chairman asked the board if they had any questions. Herman Groth commented that this error shouldn't have happened if a proper lot survey had been done prior to construction. Mr. Witcher responded that a survey had been requested, but could not be done due to the surveyor's backlog, and he felt confident in proceeding with construction based on corner pipe location. Herman also questioned whether the roof overhang should be considered as part of the encroachment. After a short discussion, it was determined that the Town of Strafford uses foundation location for setback requirements.

There being no further questions or comment from the board, the Chairman opened the meeting for public comment.

Amy Kriete, 122 Brown Pasture Road, property abuter, indicated her understanding that the lot was not suitable for home construction due to size, express concern about what the board could do about this situation since the house construction was complete, and questioned how often the board had Equitable Waiver Requests. The Chairman explained that the Planning Board or the Zoning Board does not have the authority to declare a lot non-buildable. Buildability is determined by obtaining state permits and meeting zoning requirements. He also indicated that this Equitable Waiver was only the second one he was aware of and the first one was denied.

Andrew Powers, 165 Brown Pasture Road, asked what the set back requirements were for a septic system from an abuter property line. The Chairman indicated the set back to be a minimum of ten feet.

Eric Kriete, 122 Brown Pasture Road, property abuter, expressed concerns about the lot size and deeded lot boundaries. The Chairman responded that deeds recorded many years ago were based on called out distances. He indicated current survey measurement technology is very accurate, and he is confident the current property survey indicating lot boundaries is accurate.

A question was raised regarding the construction sequence on this property. The Chairman asked Mr. Witcher to address how he he got a building permit to start construction without a foundation certificate. Mr. Witcher responded that a foundation certificate was not required unless requested by the building inspector. Mr. Witcher asked for a foundation certificate since he expected it would be required for an occupancy permit and that the property abuters were concerned about the foundation location. He asked his surveyors to determine foundation location as soon as it was poured, but a survey backlog prevented it from being done prior to completing the home construction. The Chairman asked Dave Copeland, Town Building Inspector, to comment. Dave indicated it was not unusual for home construction to be completed before a foundation certification is issued. Mr. Witcher immediately called Dave when it the encroachment was discovered.

Amy Kriete asked a follow-up question about what would happen if the Equitable Waiver was denied. Mr. Witcher indicated he would cut off the corner of the foundation in order to comply with setback requirements. This, once again, brought up the question of setbacks based on foundation or building overhang. The Chairman asked Dave Copeland to comment. Dave confirmed that in the Town of Strafford setbacks are determined from foundation location, and that overhang is used for drip line considerations for water runoff.

There being no further public comments, the Chairman closed the public hearing and asked the board if there were any questions. Terry Hyland questioned if the property was a lot of record and if the house would have fit properly on the lot. The Chairman confirmed this to be fact. With no further

discussion from the board, the Chairman asked for a motion. Terry Hyland made a motion to approve the Equitable Waiver which was seconded by Aaron Leff. All members of the board vote in favor except Herman Groth, and the motion carried.

Case #428: Request for 4 Variances and 1 Special Exception - 7 Fire Road 15, Tax Map 31, Lot 2.

The Chairman indicated this case previously before the board had not been addressed due to request and approval for continuance. Subsequently, secondary plans had been submitted under Case #431, and it was determined the board would not be hearing Case #428. The Chairman asked if the applicant was requesting withdrawal of Case #428. In response, Tobin Farwell made a formal request to withdraw Case #428. Alison Brisson made a motion to approve the request, which was seconded by Aaron Leff, and voted upon in the affirmative by all members.

The Chairman requested a short recess. Alison Brisson moved to recess, Aaron Leff seconded the motion, all members voted in the affirmative, and the recess began at 7:30PM.

The Chairman called the meeting back in session at 7:35PM.

Case #431: Request for 3 Variances - 7 Fire Road 15, Tax Map 31, Lot 2.

The Chairman read for the record: Tobin Farwell is requesting multiple Variances in order to construct a 24 foot by 30 foot 2-story addition to an existing non-conforming structure on a non-conforming .24-acre lot on the shore of Bow Lake. (1) The applicant is requesting a Variance to Article 1.4.1 B: the proposed addition would come within 9.8 to 10.5 feet of the front boundary with Fire Lane 15, where 40 feet is required. (2) The applicant is requesting a Variance to Article 1.4.4, Section 3 of the Zoning and Land Use Ordinances in order to construct an addition that is approximately 25.5 feet from Bow Lake at its closest point, where 50 feet is required. The existing structure and deck come within approximately 14.5 feet of Bow Lake at the closest point. (3) Article 1.4.4 Restricted Uses within the Wetland Conservation District, Section 3.0 Restricted Uses within the Wetland Conservation District, to construct a new Advanced Onsite Solutions (AOS) septic disposal system and leach field; the new leach field would come within approximately 64.5 feet of Bow Lake and the septic tank would come within approximately 50 feet of Bow Lake, where 100 feet is required.

The Chairman asked the Applicant the address this case. Tobin Farwell, Farwell Engineering Services, using a site plan display, described the changes made from the previous plan under Case #428 as follows:

- Addition moved from west side of existing house to east side.
- Septic system moved from east side of existing house to west side.
- Removal of a portion of the paved driveway.

Mr. Farwell indicated a request for change from seasonal occupancy to year-round occupancy had been previously approved and would not be part of this application. He asked property owner, Sue McKay, to address the need for the addition. Sue indicated her mother would be moving into the house following surgery and requires additional living space and wheelchair access to the house and bathroom. She believes the addition of a garage would eliminate vehicle fluids from possibly entering lake water. She also believes the overall addition is in keeping with type of surrounding structures, will not further impact town utilities or traffic on Fire Road 15, and improve home waste disposal with a state-of-art septic system. Mr. Farwell indicted the removal of paved driveway which reaches the lake would result in net decrease of nearly 700 square feet of impervious material.

The Chairman acknowledged appreciation for the changes made to the plan, but needed to address a few concerns regarding the current plan; 1) the structure is listed as a two bedroom home because of lot loading requirements. However, according to tax rolls, it is currently a three bedroom home. The plan needs to match the tax rolls one way or the other. 2) the plans need to represent the home as seasonal with conversion to year-round with respect to the septic system to allow proper septic system evaluation at the state level.

The Chairman having asked the board if there were any further questions or concerns, and there being none, opened the hearing up for public comments. Mr. Witcher asked the board if they had received the letters from abutters. The Chairman indicated they had received them.

There being no further public comments, the Chairman closed the public hearing and instructed the board to consider the approval criteria for each variance requested.

Variance to Article 1.4.1 B, building setback requirements: Alison Brisson read each of the five criteria that must be met in order for a proposal to qualify for the granting of a variance and the applicant's response to each. The board agreed that all criteria had been met to include a medical necessity. The Chairman asked for a motion to approve this variance. Alison Brisson moved to approve, which was seconded by Aaron Leff, voted on in the affirmative by all members. The motion passed.

Variance to Article 1.4.4, Section 3, Zoning and Land Use Ordinances: Alison Brisson read each of the five criteria that must be met in order for a proposal to qualify for the granting of a variance and the applicant's response to each. The board agreed that all criteria had been met to include a medical necessity. The Chairman asked for a motion to approve this variance. Alison Brisson moved to approve, which was seconded by Aaron Leff, voted on in the affirmative by all members. The motion passed.

Variance to Article 1.4.4, Section 3, Restricted Uses within the Wetland Conservation District: Alison Brisson read each of the five criteria that must be met in order for a proposal to qualify for the granting of a variance and the applicant's response to each. The board agreed that all criteria had been met to include a medical necessity. The Chairman asked for a motion to approve this variance with the following conditions: Approved septic plans matching the tax rolls, depicting existing home is to be converted from seasonal to year-round occupancy, site and septic plan notes being corrected, removal of proposed well and addition of existing well location, and lastly conditional upon the receipt the required permits, including septic approval and Shoreland Protection permit. Alison Brisson moved to approve, which was seconded by Aaron Leff, voted on in the affirmative by all members. The motion passed.

The meeting continued with the Chairman noting for the record that the meeting open for public hearing was closed. The board briefly discussed Equitable Waiver denial concerning property owner follow-up actions and how the board would respond. The board also discussed with the town building inspector the presence of a new building which appeared to be a garage on Route 126. It was determined that a primary use had not been declared. The Chairman expressed concern about the owner coming forward years later to request commercial use approval after conducting a commercial business without approval. The Building Inspector agreed to contact the owner to obtain a primary use declaration.

There being no further business, Terry Hyland made a motion to adjourn the meeting which was seconded by Alison Brisson and voted upon with all members responding in the affirmative. The meeting adjourned at 8:46PM.