

DRAFT—NO LEGAL VALUE

Zoning Board of Adjustment Meeting

October 15, 2018

Members present: Rick Ferreira, Chairman, Susan Arnold, Charles Burnham, Jean Chartrand Ewen, and Scott Hodgdon and Ashley Rowe Alternate members..

The meeting was called to order at 7:05 PM by the Chairman. Notices for tonight's meeting were posted at the Strafford Post Office and at the Strafford Town Hall. Notice was published in Foster's Daily Democrat on or before October 5, 2018. There was a large audience of interested parties for the Cases scheduled for this meeting. Greg Messenger, Road Agent, interested party for Cases Number #407 and #408 was present.

Case Number #407

Petitioner: Tobin Farwell, Farwell Engineering Services is requesting a Special Exception under Article 1.7.1 and Variances to Article 1.4.1 C and 1.4.4, Section 3, of the Zoning and Land Use Ordinances in order to reconstruct and reconfigure an existing seasonal non-conforming structure located on the shore of Bow Lake. The new 28 foot by 34 foot 2-bedroom year-round structure would come within 35.3 feet of Bow Lake at its closest point, which is up to 14.7 feet closer to Bow Lake than current ordinances require and up to 4.3 feet farther from Bow Lake than the existing non-conforming structure. The new structure would come no closer to the side boundaries than the existing structure which is located approximately 10 feet from the northwesterly side boundary and approximately 13 feet from the southeasterly boundary, which is up to 15 feet closer to the northwesterly boundary and up to 12 feet closer to the southeasterly boundary than current ordinances require. (Owners: Robert and Amy Donle, 227 Brown's Pasture Road, Tax Map 33, Lot 28)

Case Number #408

Petitioner: Tobin Farwell, Farwell Engineering Services is requesting a Variance to Article 1.4.1 B of the Zoning and Land Use Ordinances in order to construct a new garage on an existing non-conforming vacant lot. The proposed 24 foot by 24 foot garage would come within 33 feet of the front boundary, which is up to seven feet closer than ordinances require, in order to accommodate the construction of a new septic disposal system to be located on the same lot to serve the structure located at 227 Brown's Pasture Road. (Owners: Robert and Amy Donle, Brown's Pasture Road, Tax Map 33, Lot 31)

Tobin Farwell, petitioner for both cases, was present accompanied by Rob Donle and Wayne Donle. Michael Whitcher was also present for these cases. There were no abutters present. Greg Messenger, Road Agent, was also present.

Tobin Farwell addressed the Board and noted that they had first filed an application for Special Exception for rebuilding the house and an application for Variance for the garage. The proposal is to rebuild the existing single story camp to a 2 story year-round house; the footprint will be larger than the original and would add area within the setbacks, even though the new structure will not come any closer to the side boundaries than the original. Because you cannot expand the footprint in the setback areas without becoming more non-conforming, they submitted the additional request for Variance at the request of the Board. New newspaper and abutter notices were sent for this meeting. This application is paired with the application for Variance for the construction of a garage on the lot across Brown's Pasture Road (Case Number 408). The house has an existing dry well; they are proposing a new system as far back from the lake as possible on the second lot, with a bathroom in the garage but no living space. Ashley Rowe asked if there had been any changes to the plans, and Mr. Farwell said no. The proposal is to pull the structure back from the lake, squaring off the footprint and adding a story. The house footprint will increase by about 100 square feet rear and they are expanding the deck. The corner of the new home will be 23.5 feet from the side property line to the north and 19.8 feet from the side property line to the south. Mr. Farwell noted that the Board had asked that they move forward with submitting the septic design. They have done test pits,

but they have not yet submitted the designs because there are so many things in flux. They will need NH DES Shoreland Program permits for the projects. Board members verified the increase in square footage noted at the last meeting, for a total increase from 849 square feet with a 78 square foot deck to 952 square feet with a 280 square foot deck.

Michael Whitcher addressed the linked application for the lot across the road, and noted that the application for Variance for the garage would allow the garage to keep a lower profile on the lot, even though a garage could technically be built without a variance. He said that he feels that there are no negatives to the combined projects. Charlie Burnham asked if three lines would be needed under the town road if they intend to have water supplied to the garage. Tobin Farwell agreed that this is true, as the proposed well would be located near the shore of the lake. Mr. Farwell said that state regulations will require a 10 foot separation between the pipes, so he suggested that they would put one big line with a gravity line to the septic tank and a force main back to the leach field, and a second pipe with the water line to the garage. Charlie Burnham noted that the concern is that Brown's Pasture Road is a gravel road and there is concern with the road washing out. Greg Messenger said that putting pipes under the road has been done before, and said that he has looked at the area. Mr. Burnham then turned to the garage application, and noted the steep slope behind the lot and asked how much excavation would be required. They replied that there would be 8 feet of concrete and then the attic space and the roof. Mr. Whitcher noted that the septic field would require even more excavation; the new contours were then highlighted on the plans.

General discussion of Cases 407 and 408 followed, Board member noting that the projects are linked. Susan Arnold asked if there were any neighbor issues with the proposed second floor on the house. Michael Whitcher noted that the grade of the lot goes downhill and at this time, there is no house behind the proposed garage, which would be tucked into the slope of the hill if a variance was granted. Rob Donle noted that they have spoken with the abutters, and that they have personal emails from several of them in support of the plan.

Board members agreed to consider the two cases separately and began by considering the variance application worksheet for Case 407 for the house, noting that these criteria also apply to Case Number 408, which is intertwined with this case due to the septic disposal system. The first item is public interest: Susan Arnold noted that they would be enhancing the value of the lot. The second item is that the variance must not be contrary to the spirit of the ordinance. Susan Arnold noted that the spirit of setbacks is about ensuring setbacks between buildings and not creating dominating structures. She said that she would argue that meeting this criterion is questionable here. Michael Whitcher noted that the encroachment is slight compared to the value in pulling the house back from the lake. Jean Ewen said that she would like to see them keep the original footprint, but that she understands the reason for squaring off the proposed house. Michael Whitcher again asked to speak. Board members agreed, and he noted that the side boundaries are encroached upon by the existing home, and that the proposal does not decrease the distance to the boundary, while the proposal does pull the structure back from the lake. Mr. Whitcher noted that squaring up the footprint has been allowed when rebuilding several camps such as the Watsons, Palmgrens, and Cophers, and said that he feels that the increased setback to the lake is a public benefit, especially when there is no opposition to the proposal. Ashley Rowe noted the new proposed septic and the proposed well between the house and lake. Susan Arnold noted that setbacks have been established for a reason, and she noted the increase in volume in the setback areas proposed by this application. Michael Whitcher noted that there were no setbacks when these lots were created, and Scott Hodgdon noted that these lots were created for camps. The third criterion was whether substantial justice would be done by granting the variance. Michael Whitcher again addressed the question on behalf of the applicant. He said that he feels it has been the norm to allow rebuilding when the project improves the lot and septic system and that this proposal will allow the owners to enjoy the property. He said that he feels the current proposal is in the spirit of previous approvals, limited to the size of the lot. Rob Donle noted that the abutters closest to the proposed house recently received approval of their proposal to square off their camp and add a second story. Charlie Burnham noted that certainly a number of improvements are proposed.

Board members then addressed the fourth criterion, that a variance not diminish the value of surrounding properties. Board members agreed that the proposed structure would be an improvement over what is there, and noted the proposed modern septic system. The fifth criterion is hardship and the question of

whether there are special conditions that are unique to this situation. Michael Whitcher addressed this on behalf of the applicants, and noted the restrictions of the small lot. He again noted the public benefits of the new septic and added value, and advised that the proposal is for a modest year-round home. Jean Ewen agreed that the proposed design is good, but noted her concern.

The Chairman turned to Board members and asked if there were any additional questions. Board members agreed that there were no additional questions regarding this application. The Chairman then designated Scott Hodgdon as the voting Alternate for this meeting, noting that shifting between alternates would not make sense and Mr. Rowe has indicated that he will be representing some of the applicants later in the meeting. Scott Hodgdon noted the septic system and the pipes crossing the road, and said that any problems that arise with the road because of the pipes under the road for this project must be the responsibility of the homeowner. In the short term, the homeowner and builders need to collaborate with the Road Agent on where and how the work is done. Greg Messenger asked if the water line will be shown on the plan so that the town will have a record of the location. Ashley Rowe agreed that this is important, and Tobin Farwell agreed to the requirement. Randy Orvis noted that in one project in Barnstead they have put markers along the road to show where the water line crosses.

The Chairman then opened the hearing to public comment. Don Clifford asked how far they are moving the house back from the lake, and they said that the new house will go from 34.1 feet to 45.3 feet from the lake; the deck will go from 31 feet to 35 feet from the lake. The Chairman then closed the public hearing on Case Number 407. Board members then discussed possible concerns/conditions of approval. Susan Arnold noted that the proposal adds to the impervious surface coverage on the lot, and suggested a requirement for plantings around the foundation. Michael Whitcher noted that they will need to apply to the Shoreland Program and said that the state would require plantings. Rick Ferreira said that the deck needs to remain open, not covered or enclosed, and agreed with the suggestion for plantings, as the Board has required in other cases. Ashley Rowe noted that the state will mandate stormwater treatment, as there will be more than 20% impervious surface. Susan Arnold said that any approval should be made conditional upon a state-approved septic system, noting that the Board should get all the paperwork. Rick Ferreira then made the following motion, which was seconded by Charles Burnham:

To accept and approve the request for Variance and Special Exception to allow the construction of a replacement structure as shown in the plans before the Board for this meeting with the conditions as described below. The replacement structure will come closer to Bow Lake and both the northerly and southerly side boundaries than current ordinances require but will improve the setback from Bow Lake and comes no closer to the side boundaries than does the existing structure. The following conditions are attached to this use: there shall be plantings of native vegetation directly around the foundation and along the two sides and front of the deck to capture roof runoff in a two foot wide garden, or greater if required by the Shoreland Permit; the deck is to remain open and shall not be covered or enclosed; a state-approved septic disposal system to be located on Lot 31 shall be installed; and there shall be a note added to the plans that the homeowners are responsible for repairing Brown's Pasture Road to town requirements for any issues or damages that arise with Brown's Pasture Road, a town road, due to the water and septic lines that will be placed under the road to service this house; and finally, that the homeowners and contractors must work with the Road Agent to finalize the plans for placement of the pipes under the road and must alert the Road Agent and Fire Chief prior to installing the pipes under the road.

The Chairman then called the vote on the motion. The vote was unanimous in the affirmative. The Board then moved to a consideration of Case Number 408, the second part of the paired applications.

Tobin Farwell gave an overview of the garage project. They are proposing a 24 foot by 24 foot garage. They are asking to encroach seven feet into the required front yard setback. The lot is sloped uphill. If granted the variance, they could move the garage forward, which would be a lower profile. They would also be decreasing the impervious surface of the shorter driveway, and the 33 foot setback from the road would allow ample space to pull a car off the road. Bringing the garage forward would also allow them to construct and service/repair the septic disposal system in kind that will serve the house on Lot 28 (Case Number 407). This is why they are requesting the variance. Charlie Burnham said that he is concerned

about the steep slope and how to prevent soil from running off into the driveway and road, further causing issues with the gravel road. Mr. Burnham said that they will need to compensate for adding the impervious surface, and said that the applicants will need to work with the Road Agent about stormwater. He confirmed with the Road Agent that there is very little ditching along the road. Ashley Rowe said that they could elevate the driveway. Mr. Burnham noted that the lot is very steep, and noted that removing the trees will accelerate the water. Jean Ewen noted that there should be a deed restriction that there shall be no living space in the garage. Tobin Farwell suggested that this would not be needed because the state would impose restrictions due to the size of the two lots and that the two lots would never be able to be sold separately. Board members agreed that it should be in the deed. Susan Arnold suggested ditching for stormwater. Michael Whitcher said that they can work with the Road Agent. Ashley Rowe suggested a condition that they must work with the Road Agent to dissipate storm water before it enters the roadside ditch.

The Chairman then opened the floor to public comment. Don Clifford said that having a toilet in the garage opens it up to being used as residential space. He said that he feels that the deed restriction is needed. He suggested a restriction that the upstairs cannot be used for temporary lodging. Discussion followed, with Board members agreeing regarding the living space, but suggesting that the key is not allowing a kitchen, laundry, or shower facilities. The problem with enforcement in lakefront areas was noted. Susan Arnold suggested a 'no rental' restriction, and said that due diligence would lead people to look at the deed. There was some discussion of the suggested restriction on rentals, and it was agreed that the key is to restrict renting for residential use. Charles Burnham then made the following motion:

To accept and approve the request for Variance of seven feet to allow the construction of a 24 by 24 foot garage that will come within 33 feet of the front boundary due to the steepness of the lot and to allow repair of the septic disposal system for Lot 28; with the stipulation that the deed will show that the garage cannot be used as living quarters by adding a kitchen, laundry or full bathroom, and that the garage lot cannot be sold separately from the house to be situated on Lot 28 or rented, and that the Road Agent shall approve the design and construction of the driveway to address stormwater, and that any problems created for the town road shall be fixed by the homeowner of Lot 28.

The Chairman called for discussion on the motion. Phil Auger suggested that the applicant be required to merge the two lots. Ashley Rowe noted that lots cannot be merged across a town road. Michael Whitcher asked about the 'no rental' clause. Charles Burnham then amended his motion to read cannot...be rented for residential use...and added that this restriction only applies to the structure on Lot 31. Jean Ewen then seconded the amended motion. There was no further discussion and the Chairman called the vote. The vote was unanimous in the affirmative. The Chairman advised the applicant that there is a 30-day appeal period for all Board of Adjustment decisions. The Chairman then called the next case scheduled for discussion at this meeting.

Case Number #409

Petitioner: Randy R. Orvis is requesting a Variance under Article 1.4.1 C in order to construct an addition to an existing non-conforming structure. The existing structure and deck comes within 8.7 feet of the easterly side boundary and within 47.8 feet of an abutting structure; the new addition to the front of the building would extend the existing house 8 feet toward the front boundary, coming no closer to the side boundary than the existing structure. The owners plan to reconstruct a deck of the same width as the existing deck across the front and sides of the house. (Owners: Kenneth and Susan Ryan, 69 Water Street, Tax Map 31, Lot 64)

Randy R. Orvis, petitioner, was present accompanied by Kenneth and Susan Ryan. Ashley Rowe, formerly of Geometres Blue Hills, stepped off the Board and presented the application. Michael Whitcher was also present for this case. Steven Davis, an abutter, was also present.

Mr. Rowe advised the Board and audience that the Ryans had originally proposed a two-story addition last spring, and there was considerable concern from abutters that the project would impact their views. They have come up with a new proposal that no longer includes any work on the second story and there will be no change in elevations. All the work is on the first floor. They hope to push out the front wall to where the existing deck is located, and add an equivalent deck along the front and sides. The new roof will extend out over part of the current side deck areas as well. Jean Ewen asked the width of the existing deck. According to the building plans, the existing deck is 30 feet 8 inches wide and 10 feet 3 ¼ inches deep. The new deck will replicate the existing deck. The new space will not come any closer to the side boundary than the original, but does increase the area of the building within the setback, so would make the existing non-conforming structure more non-conforming. The project will require a Shoreland Permit as the lot falls within the Shoreland zone for Bow Lake, which is directly across the road.

The Chairman then asked Mr. Rowe to go through the Variance worksheet and address the various criteria. The first item is public interest: Mr. Rowe stated that the new space is attached and adds only 8 feet overall, maintaining the distance from setbacks, and will add to the value of the home. The second item is that the variance must not be contrary to the spirit of the ordinance. Mr. Rowe said that the proposal is not changing the use or increasing the use in any way nor causing a safety concern. The new space does not come any closer to the side boundaries and there is ample room to expand toward the front without encroaching on the front yard setback. The third criterion was whether substantial justice would be done by granting the variance. Mr. Rowe said that there is not a reasonable building envelope on the lot and there is no reasonable way to add to the existing non-conforming home only utilizing the area conforming to requirements. They are hoping to keep it simple with the proposal to add 8 feet to the living area. The fourth criterion is that a variance should not diminish the value of surrounding properties. Mr. Rowe said that what they are proposing is in keeping with the way that the neighborhood is built, and the abutters have been consulted in the planning. The fifth criterion is hardship and the question of whether there are special conditions that are unique to this situation. Mr. Rowe said that the special conditions are that the lot is undersized by current standards and that there is a very small building envelope. The existing structure is non-conforming, and they are adding to the front where there is plenty of room and relief is not needed. The existing small lot is the special condition, he said.

The Chairman then opened the discussion to the public. Steve Davis, an abutter, said that he had asked them not to increase the height of the ridge line. He said his only concern was whether his view toward his dock would be blocked by the expansion, and asked if the new space was perpendicular or parallel with Water Street. Michael Whitcher showed him the plans and explained the project and advised that Mr. Davis would still be able to monitor his boat on the dock by looking down the driveway as they are not exceeding the original dimensions toward the side boundary. There will be a roof over a small piece of the existing deck/stairs but it should not impede the view. Ken Ryan addressed the Board and said that they have been working together so that his neighbors will still have their view and that he is committed to trimming vegetation and working with them. Charlie Burnham noted that these issues always are raised for those in the second and third tier of camps away from the lake. Susan Ryan advised the Board that they have been in close contact with the neighbor on the most non-conforming side (Jennifer Roberts) who has been supportive of this project.

The Chairman then closed the public hearing. Susan Arnold suggested that this would be a good opportunity to put the Board's standard stipulations on the decision, including a requirement that the deck remain open. Rick Ferreira agreed and noted that keeping the deck open is to be understood in these cases. Ms. Arnold also noted that although Shoreland permits will be needed, she wants to be sure that there are appropriate native plantings along the drip line to be sure that there is no additional roof runoff and to be consistent with previous decisions of the Board. There was no further discussion. Susan Arnold then made the following motion which was seconded by Jean Ewen:

To accept and approve the request for Variance to allow the construction of an 8 foot addition to the first floor of the existing house and the reconstruction of the surrounding deck as shown in the construction plans before the Board at this meeting, conditional upon the following: a Shoreland Permit from NH DES, the deck shall remain open, and there shall be native plantings along the new deck to be sure that there is no additional runoff toward the lake from the increase in

impervious surface. The addition is located at the front of the structure and meets the front yard setback and the new space will come no closer to the side boundaries than the existing structure.

There were no additional comments, and the Chairman called the vote. The vote was unanimous in the affirmative. The Chairman advised the applicants regarding the 30-day appeal period for Board of Adjustment decisions. The Chairman then called the next case on the agenda for this meeting.

Case Number #410

Petitioner: Randy R. Orvis is requesting a Variance to Article 1.4.1 B in order to construct a garage on a vacant lot. The garage would come within 28.3 feet of Dillon Drive East, which is up to 11.7 feet closer to the front boundary than current ordinances require. The proposed garage would meet setbacks to the side, rear, and to wetlands on the abutting lot to the rear. (Owner: Clear Creek Builders, Dillon Drive East, Tax Map 33, Lot 65)

Randy R. Orvis, petitioner, was present, accompanied by Alan Williams, Manager of Clear Creek Builders. Atty. Elizabeth Nolin was also present. Ashley Rowe, formerly of Geometres Blue Hills, presented the application. Philip and Carolyn Auger, Joseph Davis, and Bridget DiNapoli and John Thompson, abutters, were also present.

Ashley Rowe advised the Board that the current proposal is to build a garage on the lot, which is quite restricted under current setbacks. He noted the wetlands to the rear of the lot on the land of Philip Auger. He said that Randy Orvis was involved in the wetlands delineations and that Mr. Auger had hired a second wetlands scientist, Mark West, to delineate the wetlands. Mr. West's line is more conservative but they have chosen to use that line. In order to keep the setback to the wetlands, they are looking for a variance to the front yard setback to the road to build a traditionally oriented 2-car garage as the buildable area on the lot is not deep enough for the garage without the variance. He said that the owner is happy to put in a deed restriction that there will never be water and sewer to the structure. Jean Ewen asked if the deed restriction would be necessary. Mr. Rowe noted that this is a separate lot, so it would need the restriction. He said that the owners of one of the two nearby lots where Mr. Williams has built spec houses want the garage.

Board members again asked Mr. Rowe to go over the Variance worksheet for this application and address the required criteria. The first item is public interest: Mr. Rowe stated that the proposed garage would meet wetlands setbacks that Dillon Drive is unlikely to see future development and is essentially a driveway. The second item is that the variance must not be contrary to the spirit of the ordinance. Mr. Rowe said that the use would not be in conflict with permitted uses, will not increase traffic, or require increased infrastructure. The third criterion was whether substantial justice would be done by granting the variance. Mr. Rowe said that there is not a reasonable building envelope on the lot, as the buildable area is about 12 feet deep by 20 feet and would not allow a traditional garage. The fourth criterion is that a variance should not diminish the value of surrounding properties. Mr. Rowe said that a garage will not affect property values and noted that the abutting properties are wooded. The fifth criterion is hardship and the question of whether there are special conditions that are unique to this situation. Mr. Rowe said that the special conditions are that the lot is undersized by current standards and that there is a very small building envelope. He said that this is a residential subdivision dating to 1964 and the lot was never built, and now the wetlands setback encumbers the use of the existing lot.

The Chairman then opened the discussion to abutters. Phil Auger, an abutter, addressed the Board and submitted a document to Board members detailing his response to the variance criteria questions. Mr. Auger said that the original proposal was to build a house, and that he had then hired Mark West to review the original wetlands delineations. He said that the Selectmen had accepted the Mark West delineation and that he was glad to see the application using that delineation. He said that there is a question about whether it is really a hardship. He said that three lots had been purchased by Mr. Williams last year and that all had been assessed as unbuildable. He has now built on two of the lots. He said that the proposed encroachment would amount to a 30% reduction in the required front yard setback and that he feels that it would set quite a precedent. He noted that the town's setback requirements were set in place after the town's master plan process and said that he feels that the setbacks should mean something. He again noted the previous

assessment on the lots. Ashley Rowe said that the town assessor has no professional standing on the question of whether a lot is buildable. The lots were approved before zoning, he said, and that is why there is a zoning board. He could apply for a house, he noted, but he is looking for a reasonable use. Joe Davis then addressed the Board and said that since the two buildings have been constructed on the other lots, they have been having trouble with drainage. He said that he owns the right of way to the lake for this area and that it washed out this year after the trees got cut. He said that now that the area is open, it is washing out and that it will be a bigger problem if this lot is also developed. The Chairman advised that the Board must consider each case on its own and noted that the owner is burdened with taxes, and needs a reasonable use. Charlie Burnham asked the applicants to address the hardship issue. Ashley Rowe said that the hardship is that the lot was approved in 1964. Susan Arnold noted that the lot was purchased last year, after zoning was in effect.

Atty. Elizabeth Nolin said that the title search showed that the lot was created in 1964 before zoning, and is legally considered a buildable lot. She said that they are proposing a reasonable structure for the size of the lot and adhering to wetlands. The proposal minimizes the impact and they are willing to impose restrictive covenants, she advised. Scott Hodgdon said that they must have had some questions when they bought the lots. Alan Williams said that they are in strong disagreement with the wetlands delineation, and are proposing a compromise. They could build without a variance he said, but it would be a monstrosity to fit into the building envelope, looking like a chicken coop. However he is willing to do that if he does not succeed in getting the variance. Scott Hodgdon said that if it was a hardship, they could sell the lot to an abutter. Ashley Rowe said that the hardship is that zoning came into effect after the lot was created, so they cannot develop the way it was intended. Scott Hodgdon noted that these lots were created for camps, and are now turning into houses. Mr. Williams noted that they cannot merge the lot with another parcel because the other lots are across the road. Susan Arnold suggested that not having a garage does not seem like a hardship, as she and many others in town do not have garages. She noted that the applicant bought the property with their eyes wide open. Phil Auger noted that most other lots in this area that have been built on are double lots and said that only the lots recently built by Clear Creek Builders are single lots with houses. Susan Arnold said that granting a 30% variance would be a substantial variance. Ashley Rowe said that they were disappointed because Mark West would not meet with them about the wetlands delineation. There was a question about whether the Selectmen had approved the delineation. Mr. Rowe said that the applicant disagrees with Mark West's delineation but are holding to it in this application. Randy Orvis noted that they had both done their delineation work in the winter, which is more challenging.

Susan Arnold noted that the Board approved a variance earlier in the evening for 7 feet, but suggested that 11.7 is significantly greater. Susan Arnold and Charles Burnham both said that they do not see the hardship in the situation. Atty. Nolin pointed out that the proposal is exclusively for a garage and said that the owner has a right to develop his property. They are trying to keep it harmonious to the neighborhood she said. They are proposing a 24 by 36 foot garage, which is the minimum to make the structure useable. It was noted that the application list the proposed garage as 24 by 32 feet. There followed a discussion of the minimum reasonable garage size. Mr. Williams noted the size of his truck and said that the garage would need to be large enough to fit his vehicle as he lives nearby and may not sell the lot. The Chairman noted that often when all the members of the Board are not in favor of a variance, often some sort of a compromise is proposed, and he asked if Mr. Williams would try and compromise. Mr. Williams said that the only concession he would make would be sideways (in width), not front to back (in depth) where the variance is required. Mr. Rowe said that 24 by 24 is the smallest standard garage.

The Chairman then opened the hearing to the public. Don Clifford said that speaking as a citizen and builder, that 24 by 24 is the bare minimum today. He argued that a chicken coop style shallow garage meeting setbacks would be detrimental to the neighborhood. He said that if the garage is built, it will increase the tax value of the parcel, which would seem like a win if they are willing to impose the restriction. Jean Ewen asked if the lot was already cleared and they said that it is. Don Clifford noted the issue with runoff. Carolyn Auger noted that a garage would increase the impervious surface. Alan Williams said that this summer had been an odd year and that it was unfair to put the problem with runoff down to the beach onto his development. The issue of increased impervious surface and the conversion of forest into roof and lawns near the lake was noted. Don Clifford asked if these was anything that could be done about the runoff. Randy Orvis said that there is plenty of room for stormwater management. Mr.

Rowe said that there are any number of possible solutions for runoff based on best management practices. Mr. Williams said that the plan was to plant shrubs to slow down the water. Loss of trees was discussed. Alan Williams said that the trees he cut were not valuable, while Mr. Auger noted that the forested wetlands still function to absorb stormwater. The Chairman said the Board needs to bring the question back to the setback and to Board member's concerns about the hardship criteria. Charles Burnham said that he still does not see the hardship and thinks that applicant knew what they had. Alan Williams again said that in the spirit of compromise they are going with the abutter's wetlands delineation. Discussion continued between abutters. Jean Ewen noted that there would still be impervious surface if they build the chicken coop. She said that Mr. Williams has said that he would build the chicken coop style garage if he did not receive the variance, so perhaps the variance is the lesser of two evils. Mr. Williams said that he is trying to do the best thing and best compromise. The Chairman then closed the public hearing.

Rick Ferreira said that he would like to see a smaller version of the garage, perhaps 20 feet deep. Susan Arnold suggested that the applicants be asked to consider other configurations, or else suggested that a vote be taken on the application as presented.. Jean Ewen said that the Board should see if he is open to another configuration. The Chairman then reopened discussion. Carolyn Auger said that the Board would need to be sure that the deed with restrictions was conveyed, if Mr. Williams decides to keep the garage for himself. Board members asked Mr. Williams if he would be willing to consider a 22 by 32 garage. Don Clifford noted that a lot of larger cars would have trouble fitting into a garage that is 22 feet deep. Rick Ferreira said that he does not see the hardship. Jean Ewen said that she does not like the choices but that compromise would be better for the neighborhood. Carolyn Auger asked if the use would be commercial if Mr. Williams uses it for his vehicles. Bridget DiNapoli, an abutter in one of Mr. Williams's new houses, said that they would prefer to look at something nice rather than the chicken coop style option. Jean Ewen then made the following motion:

To accept and approve a Variance to allow the construction of a 22 foot by 32 foot garage that would come closer to the front boundary than current ordinances allow, with the deed restriction that there will be no living space in the structure, no second story, and that bushes be planted for stormwater drainage.

Alan Williams said that the design is for an attic truss and that this is the best use of the property and it is his intent not to develop the property further. He said that he is okay with no paving as part of the restriction for the variance. Rick Ferreira said that the Board would likely require that the driveway remain dirt. The motion failed to secure a second.

Susan Arnold said that she does not feel that there is a hardship. The Board reviews applications case by case, she noted, but said that she is concerned with precedent nonetheless. Rick Ferreira said that he too feels that there is little hardship. Ashley Rowe said that they should consider previous cases, and Board members responded that that is the trouble with precedents. Mr. Rowe said that to prohibit building would be a taking. Scott Hodgdon advised that Mr. Williams has said that he can build without a variance. Mr. Rowe said that they cannot make reasonable use without the variance. Unlike the previous case this evening, he said that there is a reason that Mr. Williams cannot push this back farther. Susan Arnold noted that the requested variance here is 50% more than the previous case, and Charlie Burnham said that the issue with the Donle case was the steepness of the lot. Scott Hodgdon then suggested that the Board should either take a look at the lot or take a vote on the application. Mr. Williams said that if the Board delayed the vote to look at the site he won't accept the delay and won't wait to build. Jean Ewen said that he is going to build, so what does the Board want to see. Scott Hodgdon then made a motion to take a vote on the application as proposed for a 24 by 32 foot garage coming within 28.3 feet of the front boundary. Rick Ferreira seconded the motion. Jean Ewen asked if there are any proposed conditions. The Chairman indicated that the motion did not include conditions of approval. There being no further discussion, the Chairman called the vote. The vote went as follows; there were two votes in favor of the motion: Jean Ewen and Rick Ferreira. There were three nay votes: Susan Arnold, Charles Burnham, and Scott Hodgdon. The motion failed to pass. There is a 30-day appeal period for all Board of Adjustment decisions.

Case Number #411

Petitioner: James Hayes Jr. and Wendy Hayes are requesting a Special Exception under Article 1.7.1 and Variances under Article 1.4.4, Section 3 in order to reconstruct an existing non-conforming structure located on the shore of Bow Lake. The existing structure comes within 33.2 feet of Bow Lake at the closest point and comes closer to Bow Lake than current ordinances require on both the southeasterly (33.2 feet) and southwesterly (36.2 feet) sides. The new structure will include an approximately 12 foot by 20 foot addition squaring off the southwesterly corner and will be served by a new septic disposal system. The new addition will increase the square footage of the structure within the setback but will come no closer to the shore of Bow Lake than the previously existing structure. The new septic disposal system will come within approximately 65 feet of Bow Lake at its closest point, which is farther from Bow Lake than the existing septic disposal system but up to 35 feet closer to Bow Lake than current ordinances require. (25 Fire Road 34, Tax Map 25, Lot 14)

James and Wendy Hayes, petitioners, were present. Jonathan Crowdes Tim Bernier of T.F. Bernier presented the application. There were no abutters present.

Tim Bernier of T. F. Bernier Inc. presented the application. He advised that the Hayes have owned their camp since the 1930s. They are here because the camp was heavily damaged in this summer's microburst, making headline news in the region. They are interested in rebuilding and they have been advised, due to cost issues with multiple roof lines, to square off the footprint. The proposed addition as well as the proposed new septic disposal system triggers the application for variance and special exception to allow for the expansion and well as the reconstruction of the original non-conforming building. The new camp will be made slightly more conforming by rotating the camp. The camp comes within 32.2 feet of Bow Lake at the closest point now, and the new structure would come within 34.4 feet at the closest point. He noted that the Shoreland Program always wants a modern septic, and they would lose the septic tank with this proposal for the house. So they are proposing a new state approved septic system and leach field, as the current leach field likely dates back to the 1940s or so. In summary, they hope to rebuild the existing non-conforming camp with a slight increase in square footage within the 50 foot buffer from Bow Lake where the camp is squared off, and are requesting a variance to allow the construction of a new septic disposal system within approximately 65 feet of Bow Lake, which is farther than the current system and set back as far from the lake as possible on this lot. They intend for the camp to remain seasonal.

Mr. Bernier then went through the criteria regarding the application for rebuilding the house with an addition. The new structure will not increase the encroachment into the required lake buffer because it will be farther from the lake because of the new orientation, and will also meet the front and side setbacks. The new structure will not be offensive to property owners or decrease the value of surrounding property because the new structure will be single story with the same height and the same ridge line. There is nothing behind the camp and so they will not block the view. Squaring off the corner will be in keeping with the other camps in the area. The new structure will not be changing in use and will meet the other setbacks and will be more conforming than the original. They are going to get a new state approved septic disposal system. They have now completed a test pit, which was not bad he noted. They intend to continue to draw water from the lake, as do the other camps in the neighborhood. They know that the state will ask for a well location out of the area of the new septic system, but they are not proposing to sink the well. Ashley Rowe asked if the state would approve the system without the well, and Mr. Bernier said that they have experience with this type of system on Lake Winnepesaukee.

Next, Mr. Bernier addressed the criteria for Variance for the septic disposal system, also part of the required buffer to Bow Lake. The first item is public interest: Mr. Bernier advised that the new state approved system will be an improvement and will add to the value of the home. The second item is that the variance must not be contrary to the spirit of the ordinance. Mr. Bernier again noted that having a new septic disposal system will be an improvement. The third criterion was whether substantial justice would be done by granting the variance. Mr. Bernier advised that having the new system would be an improvement for everybody enjoying the lake by cutting down on nitrates and phosphates that might leach into the water. The fourth criterion is that a variance should not diminish the value of surrounding properties. Mr. Bernier again noted the improvement to water quality from updating septic systems, noting that nitrates and

phosphates lead to increased vegetation in the water. The fifth criterion is hardship and the question of whether there are special conditions that are unique to this situation. Mr. Bernier noted that the proposal is reasonable and that the lot is unique. The camp was built before 1940 and all they are hoping to do is to rebuild as it was before the storm with a substantial improvement to the septic system. They have picked the best spot for the system, and he noted that they do not have a setback of 125 feet anywhere on the lot. They are proposing the septic system for the only possible spot, and it is in the best interest of the public to have a septic system. In summary, he said, they are just asking to rebuild with a common roofline and to make improvements to the property by installing the modern septic system at the same time.

Susan Arnold asked if they are okay with a restriction that the property stay seasonal and the owners agreed that they plan on keeping the camp seasonal. Ashley Rowe suggested that the state is likely to approve the new septic system as seasonal anyway. Mr. Bernier noted that they were pleased that they did not hit ledge with the test pit.

There were no abutters present. The Chairman closed the public hearing. Susan Arnold then made the following motion:

To accept and approve the application for Variance to Article 1.4.4, Section 3 and a Special Exception to allow the rebuilding of an existing non-conforming camp with a 250 square foot addition that will come within 34.4 feet of Bow Lake at the closest point but which is farther from Bow Lake than the original camp at its closest point, as shown on the plans before the Board for this meeting, conditional upon state approval of the septic disposal system and Shoreland permits, and with the condition that the property is to remain seasonal.

Charles Burnham seconded the motion, there was no further discussion and the vote was unanimous in the affirmative. Susan Arnold then made a second motion as follows:

To accept and approve the request for Variances to Article 1.4.4, Section 3, to allow the construction of a new septic disposal system that will come up to 35 feet closer to Bow Lake than current ordinances allow but will be set back as far from Bow Lake as possible on the lot, conditional upon state approval of the septic disposal system and Shoreland permits, and with the condition that the property is to remain seasonal.

Charles Burnham seconded the motion. There was no further discussion and the vote was unanimous in the affirmative. The applicants were advised that there is a 30-day appeal period following any decisions of the Board of Adjustment.

In response to a recent inquiry, Board members agreed that they would like to encourage the Planning Board to look for model ordinances for tiny houses and said they would be willing to work on the proposal. Board members then tentatively set the next meeting for Monday, November 19, at 7PM if any applications are submitted. There being no further business before the Board, a motion to adjourn was made and seconded. There was no further discussion, and the vote was unanimous in the affirmative. The meeting adjourned at 10:00 PM.